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**Panel on Environmental Affairs**

**Meeting on 27 October 2008**

**Background brief on Technical Memorandum for Allocation of Emission Allowances in respect of Specified Licence**

**Purpose**

This paper gives a brief account of previous discussions relating to the Technical Memorandum for Allocation of Emission Allowances in respect of Specified Licence.

**Background**

2. To improve air quality, the Hong Kong Special Administrative Region Government (HKSARG) reached a consensus with the Guangdong Provincial Government (GPG) in April 2002 to reduce the emissions of sulphur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), 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 89% of SO<sub>2</sub>, 44% of NO<sub>x</sub>, and 32% of RSP emitted locally in 2006. For Hong Kong to achieve the 2010 emission reduction targets, it is essential for the power companies to substantially reduce their emissions of SO<sub>2</sub>, NO<sub>x</sub>, and RSP by 2010. Since 2003, the Administration has been engaging the two local power companies regarding the imposition of emission caps in 2010. Emission caps on the power stations have been imposed since 2005 upon renewal of their respective specified process licences. These emission caps are being progressively tightened to ensure that Hong Kong can meet the 2010 emission reduction target.

4. In February 2008, the Air Pollution Control (Amendment) Bill 2008 was introduced to amend the Air Pollution Control Ordinance (Cap. 311) (APCO) to, among others, cap the emissions of specified pollutants, namely SO<sub>2</sub>, NO<sub>x</sub> and RSP, of power plants in Hong Kong in 2010 and beyond. To set a cap on the maximum emissions of the specified pollutants allowed for the power sector, the Secretary for the Environment (SEN) is empowered to set this out in a technical memorandum

(TM). SEN will also set the emission allowances and the methodology for allocating these allowances to individual power plants in relation to each emission year commencing on or after 1 January 2010. A Bills Committee was subsequently formed to study the Bill.

### **Previous discussions by the Bills Committee on Air Pollution Control (Amendment) Bill 2008**

5. The Bills Committee noted that any change in the allocation of emission allowances in respect of an emission year would not have effect unless the TM for making the allocation had commenced to have effect at least four years before the commencement of the emission year. Members questioned the rationale behind such arrangement. The Administration's explanation was that to cater for the change of the market share in electricity generation for local consumption, the allocation would be updated regularly starting from 2010, but in any event not less than once every three years in accordance with their total amount of electricity generated for local consumption for the past 60 months. 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. In case of such revision, SEN would take into account the following -

- (a) the use of the best practicable means for the prevention of emissions;
- (b) the need to attain and maintain the relevant air quality objectives; and
- (c) whether the emissions would be, or likely to be, prejudicial to public health.

To provide sufficient time for power companies to adjust their operation, such as installation of emission abatement facilities and adjustment of fuel strategy, an advance notice of no less than four years would be given for any change in the allocation of emission allowances, including that resulted from the regular updating. However, such arrangement did not apply to the first TM since the power companies were well aware of the emission allowances to be allocated under the first TM, a draft copy of which had been submitted to the Bills Committee for reference.

6. In view of the significance of TM, members considered that any amendments to TM should be subject to the scrutiny of the Legislative Council (LegCo). According to the Administration, TM might be amended by LegCo through the vetting procedure as stipulated in section 37B of APCO, which followed the same way of how subsidiary legislation might be amended under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). However, such amendment must adhere to the applicable restrictions with regard to the scope and nature of TM as stipulated in APCO. A TM might not commence to have effect before the expiry of the period for LegCo to pass a resolution to amend TM or before the day of the publication in the

Gazette of any such resolution (section 37C of APCO). The first TM would be published in the Gazette for introduction into LegCo at the beginning of the 2008-2009 legislative session.

### **Relevant Papers**

House Committee Report of the Bills Committee on Air Pollution Control (Amendment) Bill 2008 on 20 June 2008

<http://www.legco.gov.hk/yr07-08/english/hc/papers/hc0620cb1-1946-e.pdf>

Draft Technical Memorandum provided by the Administration

<http://www.legco.gov.hk/yr07-08/english/bc/bc07/papers/bc070526cb1-1643-2-e.pdf>

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