

For information
on 23 May 2011

**LEGISLATIVE COUNCIL
PANEL ON ENVIRONMENTAL AFFAIRS**

Review of Environmental Impact Assessment Mechanism

PURPOSE

This paper provides a brief account of the existing environmental impact assessment (EIA) mechanism.

BACKGROUND

2. The EIA Ordinance (the EIAO) has been in operation since 1998. Its purpose is to provide for assessing the impact on the environment of designated projects, for protecting the environment. The Environmental Protection Department (EPD) has been implementing the assessment requirements and scrutinizing EIA reports strictly in accordance with the statutory requirements, standards and process.

EIA ORDINANCE & ITS OPERATION

3. The EIAO came into operation on 1 April 1998. The EIAO requires specific projects and proposals to assess their impacts on the environment. Schedule 2 of the EIAO lists out the ‘designated projects’ that shall have their environmental impact assessed. Unless exempted, any person who wants to construct or operate a designated project shall follow the statutory EIA process, and obtain an environmental permit for the project from the Director of Environmental Protection (DEP).

4. The ‘Technical Memorandum on Environmental Impact Assessment Process’ (EIA-TM) issued under section 16 of the EIAO was approved by the Legislative Council in June 1997. The EIA-TM sets out the principles, procedures, guidelines, requirements and criteria for handling various matters, including those for: the

technical content of an environmental impact assessment study brief or environmental impact assessment report; deciding whether a designated project is environmentally acceptable; deciding whether an EIA report meets the requirements of the EIA study brief; the issue of environmental permits; and the imposition of environmental monitoring and audit requirements for designated projects as conditions in environmental permits, etc.

5. There are statutory time limits for EPD to respond to various applications, including issuing a study brief, deciding on whether to approve an EIA report, and issuing of environmental permit. The time limits ensure that the EIA process will be completed within a reasonable time frame. For example, for a specific application, if the DEP does not give notice in writing within the statutory time limits specified under the EIAO, the application will be taken to have been approved without condition.

6. In addition, the EIAO has clear procedures for receiving comments from the public and the Advisory Council on the Environment (ACE). When considering whether to approve an EIA report, EPD will consider whether relevant environmental issues raised by the public and the ACE have been addressed. All the EIA Study Briefs, EIA Reports and Environmental Permits are also available in the EIAO website allowing the public to access.

7. From 1998 till 12 May 2011, there have been 216 EIA Study Briefs issued, 162 EIA Reports approved, and 404 environmental permits issued under the EIAO. There were also four appeal cases and two Judicial Review cases.

EFFECT OF THE COURT OF FIRST INSTANCE'S JUDGMENT

8. On 22 January 2010, a citizen filed a judicial review on the air quality assessment of Hong Kong section of Hong Kong-Zhuhai-Macao Bridge project. On 18 April 2011, the Court of First Instance handed down a judgment (the Judgment) which rejected six of the seven issues contended by the applicant. However, after considering the purpose of the EIAO, the Court ruled that apart from assessing the cumulative environmental impacts caused by the designated projects, the EIA report should include a 'stand alone' analysis of the project and put forward relevant mitigation measures, so as to allow the authority to consider whether the relevant impacts have been kept to the minimum.

9. The Judgment involves crucial legal viewpoints and has significant impact on the principles for executing the EIAO in Hong Kong. After seeking legal advice and considering relevant factors thoroughly, the EPD has lodged an appeal against the Judgment.

REVIEW OF THE EIA ORDINANCE MECHANISM

10. A review of the more than 10 years operation of the EIAO indicates that the EIA mechanism under the Ordinance has provided for a set of clear criteria and a stringent process. The review of EIA report, which includes consultation with the public and the Advisory Council on Environment, could effectively assess the environmental impacts of designated projects, and demand project proponents to provide mitigation measures. Nevertheless, the Judgment involves crucial legal viewpoints and has significant impact on the principles for executing the EIAO in Hong Kong. As such, upon completion of the whole appeal process, EPD will take into account the Court's views and judgment and the past experience in studying the need and/or how to review the EIA mechanism. EPD will report back to the Panel on the outcome.

Environmental Protection Department
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