

**Review of the Environmental Impact Assessment System in Hong Kong**

As requested by Hon Kenneth LEUNG in the letter dated 24 November 2015 to the Panel on Environmental Affairs of the Legislative Council, we provide the information as follows:

**(1) Response of the Government to the “Gist of key comments from the public on the EIAO” and whether there is any plan for improvement measures**

The Environmental Impact Assessment Ordinance (EIAO) has provided an important platform for striking a balance between environmental protection and development needs since its implementation on 1 April 1998. To continuously improve our work, EPD reviews and refines the EIA mechanism from time to time to enhance its operational efficiency and effectiveness. Our responses to the “Gist of key comments from the public on the EIAO” and the improvement measures are provided in **Appendix 1**.

**(2) The EIA systems adopted by different countries, including the United States, Canada, the United Kingdom, the Netherlands and Taiwan; and how these EIA systems address the concerns raised in the “Gist of key comments from the public on the EIAO”**

A brief comparison of EIA systems adopted by Hong Kong and overseas countries or regions is set out in **Appendix 2**.

**(3) In the past 5 years, the number of applications for variation of an environmental permit received by EPD, including a summary of the variation content, the number of applications requiring resubmission of an EIA report, and the number of approved applications**

Please refer to paragraphs 7(a) and 7(b) of **Appendix 1** for a detailed response.

### **Responses to “Gist of key comments from the public on the EIAO” and implemented or planned improvement measures** (in order of headings and paragraph numbering of the letter)

#### **Preface**

1. To enable the EIAO to operate in an open and transparent manner, the Technical Memorandum on EIA Process (TM) issued under the EIAO sets out in detail the principles, procedures, guidelines, requirements and criteria for handling various EIA matters. In drawing up an EIA study brief and deciding whether to approve an EIA report, EPD has to take into consideration the comments of the public and the Advisory Council on the Environment (ACE) as required by the EIAO. EPD’s decisions on various applications, EIA study briefs, approved EIA reports and environmental permits issued are uploaded to EPD’s website for inspection by the public.

2. To maintain the flexibility and forward looking feature of the EIAO, the criteria stipulated by the EIAO for EIA approval have embraced the statutory environmental standards under various pollution control ordinances and other relevant legislations. Once these statutory standards are updated, they can be immediately applied in the EIA process. For example, the new air quality objectives implemented on 1 January 2014 by amending the Air Pollution Control Ordinance can also apply to the EIAO without having to amend the EIAO separately. There are also provisions in the TM which allow EPD to incorporate relevant requirements into the EIA study briefs based on local or international developments in EIA technique. For example, adoption of the newly developed regional air quality computer modeling system (“Pollutants in the Atmosphere and their Transport over Hong Kong” (PATH)) and vehicle emissions estimation system (“Emission Factors-Hong Kong” (EMFAC-HK)) was required in December 2015, with a view to enhancing the validity of EIA outcomes and enabling the requirements of the EIA process to keep pace with the times without having to amend the EIAO.

## **Public Engagement**

**3(a) The public consultation period is too short, and not sufficient for the members of public to understand the contents which are wide-ranging and technical.**

The EIAO requires the project proponents to consult the public and ACE on their project profiles for 14 days, and consult the public and the ACE on their EIA reports for 30 days and 60 days respectively, so that the EIA process can be completed in a reasonable time and a decision be made on the EIA report. For large scale projects especially those involving the Government or of public concern, EPD has been encouraging the project proponents to step up efforts on public engagement to let the public fully understand the projects and the relevant environmental issues. Many project proponents will hold public hearings and briefing sessions at the early stage of the project planning and during the EIA study. They would also report to the relevant District Councils, so as to enhance communication and collect public views on the EIA. Project proponents will set up a hotline during the public inspection period of the EIA reports to answer public enquiries on the reports. During the ACE full council meetings and Subcommittee meetings, there is the arrangement for the public and the media to attend the project proponents' presentation on EIA reports and question-and-answer sessions.

**3(b) The EIA reports provide English version only, which does not facilitate reading by the general public.**

As EIA reports involve many professional aspects, scientific terms and expert opinions, the main body of the reports would normally be written more precisely in English. To facilitate public understanding of the study findings and conclusions of the EIA reports, an executive summary of the EIA reports should be made available. The executive summary should give a concise account of the development project and its potential impacts on the environment, key issues and results of the assessment as well as the key mitigation measures which will be implemented. The TM requires that both Chinese

and English versions of the executive summary of the EIA reports should be made available for public inspection.

**3(c) There are no requirements to establish a direct dialogue between the project proponents and members of the public, such as conducting public hearings.**

As stated above, EPD encourages the project proponents to enhance public consultation. In conducting EIA studies for large-scale projects, the project proponents will generally conduct public hearings and briefings to hear the environmental concerns of the public and relevant groups, and take them into consideration in the EIA studies.

**3(d) There are limited opportunities for public engagement. In particular, there is no channel for the public to follow up and monitor the project once it has been approved.**

During construction of the projects, the EM&A Reports submitted by the project proponents will be uploaded to the relevant project websites for public inspection. Environmental permits also require most project proponents to set up an on-site environmental monitoring team and employ an Independent Environmental Checker (IEC), who is not associated with the contractor, to directly address public comments and complaints. Moreover, EPD will also stipulate in the environmental permit, according to the nature of the project, a requirement for the project proponent to strengthen liaison with the affected residents and timely respond to residents' concern by setting up a Community Liaison Group (CLG), a telephone hotline and holding regular meetings.

#### **Neutrality and credibility of the EIA system**

**4(a) If government department/EPD is the project proponent, EPD would then have a contradictory and conflicting role in approving the EIA report and environmental permit.**

The EIA system in Hong Kong is professional, objective and open. EPD has set up a

dedicated team to administer the EIAO process, and all EIA reports will be scrutinised by various authorities (including Agriculture, Fisheries and Conservation Department (AFCD), Department of Health and Planning Department, etc.) in strict accordance with the requirements of the TM. Besides laying down objectives and clear principles, procedures, guidelines, requirements and criteria for various EIA matters, the EIAO and the TM also stipulate two stages of statutory consultation with the public and the ACE, and require EPD to take into account the comments of the public and the ACE during approval of the EIA report. All EIA study briefs, EIA reports and environmental permits will be uploaded to EPD website for public inspection to ensure impartiality of the EIA findings and all approval decisions. In a judicial review case regarding the EIA report of the “Development of the Integrated Waste Management Facility” Project, the Court of Final Appeal also recognised such in its judgement.

**4(b) The objectivity and neutrality of the EIA report is doubtful as it is prepared by consultant company hired by the project proponent.**

An important principle of the EIA system is to require the project proponent to take into account environmental factors in parallel with the project planning and design stages so as to avoid or minimise environmental impacts as far as possible. As such, EIA work is indeed an integral part of project planning. In engaging an EIA firm to join the consultant team, the project proponent can assess more effectively the environmental impacts of various concepts and plans during the project planning stage, and reiteratively review and make corresponding adjustments to the design of the project according to the assessment results, so as to better comply with the standards and technical requirements stipulated in the EIAO. Moreover, no matter who prepares the EIA report, EPD will, in collaboration with the concerned statutory authorities, scrutinise each EIA report in strict accordance with the requirements, principles and procedures stipulated in the EIAO and the TM. Such arrangement is in line with the mainstream international practice on EIA process.

**4(c) The ACE members are all appointed by the Chief Executive, lacking independence and representativeness.**

The ACE is the Government's principle advisory body on environmental policies. Its terms of reference are to keep under review the state of the environment in Hong Kong; and advise the Government, through Secretary for the Environment, on appropriate measures which might be taken to combat pollution of all kinds; and to protect the environment. The ACE members are appointed by the Chief Executive and come from different sectors of the community, including academia, professionals, green groups, commercial and industrial sector and the local community. In addition, they join the ACE in their personal capacity. One of the duties of the ACE is to provide recommendations on EIA reports of designated projects to the Director of Environmental Protection under the EIAO (Cap 499). The ACE has been listening to the views of different sectors of the community so as to provide impartial and independent advice to the Government.

### **Requirements and criteria of EIA study brief**

**5(a) Some EIA Study Briefs did not require the assessment of cumulative environmental impacts leading to inaccuracy in assessing the cumulative environmental impacts arising from the concerned project together with other development projects**

It is explicitly provided in Section 4.3 of the TM that project proponents must assess the cumulative environmental impacts arising from concurrent construction and operation of their own project and other projects. As such, all EIA study briefs issued by EPD to project proponents will require them to assess the cumulative environmental impacts. When reviewing EIA reports, EPD also ensures that the accuracy and results of the cumulative environmental impact assessment meet the relevant statutory acceptable standards stated in the TM.

**5(b) There is no specification on the assessment methodologies such as the survey period for conducting baseline environmental studies, the scientific approaches for ecological studies etc., leading to controversies over the survey results.**

Annexes 8 and 16 of the TM, which set out clearly in detail the criteria and guidelines on ecological survey and assessment approach respectively, require project proponents to take into account various scientific factors when conducting an ecological assessment. EPD also takes into account the requirements of the AFCD and considers the views of the public (including green groups) and the ACE when stipulating the methodology of the ecological baseline survey including its scope, location, time, frequency and duration etc. in the EIA study brief, with a view to enhancing the objectivity and acceptability of the survey results.

### **Implementation and monitoring of environmental mitigation measures**

**6(a) There are no detailed guidelines for planning, implementing and managing the mitigation and compensation measures, and as such no assurance that the measures would be implemented truly and effectively for mitigating the environmental impacts or for ecological compensation**

Section 8 and Annex 21 of the TM stipulate that project proponents are required to propose an EM&A programme in the EIA report, for submission to EPD for approval. In the environmental permits, EPD will require project proponents to appoint an IEC with at least seven years of relevant experience in environmental monitoring and an ecologist to carry out the EM&A work during construction and operation phases, and submit EM&A reports to EPD on a regular basis. EPD and the relevant departments will also conduct on-site inspections from time to time, and take necessary follow-up actions according to the laws if any violation of environmental permit is found.

### **Variation of an environmental permit**

**7(a)&(b) There is no public notification or consultation process in the applications for variation of an environmental permit, nor any mechanism for the ACE to raise their comments; the process for variation of environmental permit is relatively easy, with no limit on the number of variations, resulting in major deviations of the environmental impact from the findings in the EIA report**

The EIAO has provisions which allow an application for variation of an environmental permit to be made under Section 13(1) of the EIAO as and when the project requires. Section 13(5) of the EIAO stipulates that EPD may amend the environmental permit without calling for an EIA report only if there is no material change to the environmental impact of the project with the mitigation measures in place; and the project complies with the requirements of the TM. Otherwise, EPD should request the environmental permit holder to go through the EIA process again, including resubmission of an EIA report for consultation with the public and the ACE, in accordance with Sections 5, 6, 7 and 8 of the EIAO.

In the past 5 years, EPD received a total of 155 applications for variation of environmental permits, of which 149 were approved, 6 were withdrawn by the applicants voluntarily. A brief analysis reveals that 79 applications for variation of environmental permits were made because of the need to modify the construction methods during the construction stage, while 70 applications were made for adjusting the project designs to suit the actual site conditions. In approving 148 of the above applications, EPD had consulted various authorities to confirm that there was no material change to the environmental impact of the project, and that the project complied with the requirements of the TM. There was one application<sup>1</sup> for variation of environmental permit involving material changes to the environmental impact, which required submission of a new EIA report. Upon consultation with the public and the ACE, an amended environmental permit was eventually issued by EPD.

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<sup>1</sup> Alternative Ground Decontamination Works at the Proposed Kennedy Town Comprehensive Development Area Site



**A Brief Comparison of EIA Systems at Selected Countries/Places**

	<b>Hong Kong</b>	<b>European Union</b>	<b>US (California)</b>	<b>United Kingdom</b>	<b>Canada (Ontario)</b>	<b>The Netherlands</b>	<b>Taiwan</b>
<b>EIA Legislations</b>	Environmental Impact Assessment Ordinance (EIAO)	European Union (EU) EIA Directives	California Environmental Quality Act (CEQA)	Town and Country Planning (Environmental Impact Assessment) Regulations	Environmental Assessment Act	Dutch Environmental Management Act	Environmental Impact Assessment Act
<b>Public Participation</b>							
<b>Public consultation on the Project Profile<sup>1</sup> and the consultation period</b>	14 days statutory consultation period.	No statutory consultation process.	No statutory consultation process.	No statutory consultation process.	No statutory consultation process.	28 days statutory consultation period.	20 days statutory consultation period.
<b>Public consultation on the draft EIA Study Brief<sup>2</sup> and the consultation period</b>	No statutory consultation process	No statutory consultation process (Project proponent may consult the public on the study brief during its preparation stage by following the relevant guidelines. Proposed consultation modes include holding public hearings.).	No statutory consultation process (Project proponent may consult the public on the study brief during its preparation stage, but no consultation methods and modes are recommended.).	No statutory consultation process (Project proponent may consult the public on the study brief during its preparation stage by following the relevant guidelines. Proposed consultation modes include holding public hearings.).	30 days statutory consultation period (The finalised study brief will be prepared after collecting public views and submitted to the Provincial Ministry of Environment for approval. Summary of the public views and responses should also be included in the finalised brief.).	No statutory consultation process.	30 days statutory consultation period including public hearings (Scope of the assessments will be defined by the Environmental Protection Agency (EPA) of the Executive Yuan after collecting public views and will be dealt with in the EIA report).
<b>Public consultation on the draft EIA report<sup>3</sup> and the consultation period</b>	No statutory consultation process (project proponent may hold public hearings for the preliminary results on environmental impact assessment, if needed).	No statutory consultation process.	30 to 60 days statutory consultation period (project proponent may hold public hearings on the draft EIA report by following guidelines).	No statutory consultation process.	No statutory provision in the Act. Project proponent may commit in his study brief to conduct public consultation on the draft EIA report. With the approval from Provincial Ministry of the Environment, the public consultation process becomes a legal requirement.	No statutory consultation process.	30 days statutory consultation period including public hearing.

<sup>1</sup> Project Profile - A document prepared by the project proponent to provide information of the project and describe the possible impacts on the environment, including the location and scale of the project, implementation timetable, major elements of the surrounding environment and environmental protection measures to be incorporated in the design, etc. in the project profile.

<sup>2</sup> EIA Study Brief - The EIA study brief sets out the purposes and objectives of the EIA study, the scope of environmental issues which shall be addressed, the EIA requirements and environmental criteria needed to be fulfilled, as well as the necessary procedures during the EIA study and the detailed requirements of the EIA report, primarily based on the information provided in the project profile.

<sup>3</sup> EIA report - In accordance with the study topics and relevant environmental criteria laid down in the study brief, the EIA report assesses the potential environmental impacts of the project, including assessing in detail the impacts on the environment and the cumulative environmental impacts during the construction and operation stages, recommends effective mitigation measures and sets out the EM&A requirements.

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<b>Public consultation on the Final EIA report and the consultation period</b>	30 days statutory consultation period.	Member States shall decide the statutory consultation period which is no less than 30 days.	No statutory consultation process.	21 days statutory consultation period.	35 days statutory consultation period.	28 days statutory consultation period, including public hearings.	No statutory consultation process.
<b>Consulting independent EIA consultation bodies on the EIA report and the consultation period</b>	60 days statutory consultation period for Advisory Council on the Environment (ACE).	No statutory consultation process.	No statutory consultation process.	No statutory consultation process.	No statutory consultation process.	35 days statutory consultation period for EIA Commission.	No statutory consultation process.
<b>Open meetings held by independent EIA consultation bodies for reviewing EIA report</b>	Open meeting of ACE (presentation and Q&A sessions).	No relevant statutory provision.	No relevant statutory provision.	No relevant statutory provision.	No relevant statutory provision.	No relevant statutory provision.	No relevant statutory provision.
<b>Participation in EM&amp;A process during construction stage</b>	EPD regularly uploads EM&A reports on EPD website for public inspection and provides hotline for public enquiry after commencement of the construction of the project.	No relevant statutory provision.	No relevant statutory provision.	No relevant statutory provision.	No relevant statutory provision.	No relevant statutory provision.	No relevant statutory provision.
<b>Public announcement of decision on approval of EIA report</b>	Public announcement of decision on approval of EIA report. Approval will be given to EIA report which has met the requirements of EIA study brief and Technical Memorandum and has addressed the comments from the Advisory Council on the Environment and public. The reasons for not approving an EIA will be made public.	Public announcement of decision on approval of EIA report and reasons.	Public announcement of decision on approval of EIA report.	Public announcement of decision on approval of EIA report and reasons.	Public announcement of decision on approval of EIA report and reasons.	Public announcement of decision on approval of EIA report.	Public announcement of decision on approval of EIA report.

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<b>Impartiality and Credibility of the EIA System</b>							
<b>Preparation of EIA Report</b>	Project Proponent	Project Proponent	Lead agency for public project or public agency for approving private projects.	Project Proponent	Project Proponent	Project Proponent	Project Proponent
<b>Independent EIA consultation bodies</b>	Members of ACE are appointed by the Chief Executive and represent different sectors of community, including EIA professionals, academia, green groups, commercial sector and the local community.	No independent consultation body.	No independent consultation body.	No independent consultation body.	No independent consultation body.	Members of EIA Commission are appointed by Ministry of Infrastructure and the Environment and other relevant Ministries. The members mainly from EIA professional sectors.	No independent consultation body.
<b>Authorities on EIA report approval</b>	EPD is responsible for approving the EIA report after taking into considerations of the advice from relevant authorities and the comments from ACE and public.	Competent authorities of Member States responsible for making decision on the project.	Lead agency for public project or public agency for approving private projects.	Local Planning Authority	Provincial Ministry of the Environment	Competent authorities responsible for making decision on the project after considering the recommendation from the EIA Commission.	Taiwan's Executive Yuan EIA review committee (a quasi-official body with members of government official, academia and professionals and led by Director and Deputy Director of Executive Yuan's EPA).
<b>Independent Appeal Board</b>	Appeal Board is provided under the EIA Ordinance to allow project proponent lodging appeals to the Appeal Board Panel.	No statutory provision	No statutory provision	No statutory provision	Environmental Review Tribunal (Project Proponent or the public could make a request to Provincial Ministry of the Environment to refer the EIA report to the Tribunal for a decision).	No statutory provision	No statutory provision
<b>Requirements and Criteria of EIA Study Brief</b>							
<b>Requirements and criteria for assessment</b>	The Technical Memorandum issued under Section 16 of the EIA Ordinance sets out principles, procedures, guidelines, requirements and criteria, including 22 Annexes for assessing different environmental impacts.	Competent authorities of Member States specify technical requirements and standards in the EIA study brief for specific project according to regulations.	Technical requirements and standards in EIA report are stipulated in CEQA's regulations.	No statutory provision for specifying technical requirements and standards in EIA reports. However, the competent authorities shall specify relevant requirements in the EIA study brief for specific project according to regulations.	No statutory provision for specifying technical requirements and standards in EIA report. However, the Provincial Ministry of the Environment shall specify relevant requirements in the EIA study brief for specific project according to regulations.	Competent authorities are responsible for specifying technical requirements and standards in the EIA study brief after considering public views on the Project Profile and the advice from EIA Commission. The contents of EIA reports shall follow the EIA study brief and relevant EIA guidelines.	Technical requirements and standards for EIA report are stipulated in the "Standard practice for development" for specific nature of projects according to the EIA Act.

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<b>Implementation and Monitoring of Environmental Mitigation Measures</b>							
<b>Environmental Monitoring and Auditing Mechanism</b>	EM&A Manual forms part of the EIA report, which is under the EIA report approval process. Project proponent needs to submit monthly EM&A report to EPD and upload the reports on website for public inspection. EPD could also request the project proponent to submit investigation report for any follow up actions on non-compliance of specific environmental aspects.	The implementation details to be determined by individual Member States to ensure that the required mitigation and remedial measures would be properly implemented, and formulate appropriate monitoring and audit process.	Implementation and monitoring of environmental mitigation measures are carried out according to the CEQA requirements.	No statutory provision	Project proponent shall carry out EM&A works according to the approval conditions for the EIA report, and submit annual monitoring report.	Competent authorities are responsible for supervising EM&A works and implementation of the mitigation measures.	Environment Protection Agency (EPA) is responsible for supervising environmental monitoring and auditing. EPA may request project proponent to submit "EIA investigation report".
<b>Implementation of EM&amp;A</b>	To be implemented according to the Environmental Permit issued.	The implementation details to be determined by individual Member States.	To be implemented according to the CEQA.	To be implemented according to the conditions imposed in the planning permission under the Regulation.	To be implemented according to the "Follow-up programme" under the Act.	To be implemented according to the "Evaluation programme" under the Act.	To be implemented according to the "Development Permit" under the Act.
<b>Penalty for violation of regulations</b>	Pursuant to the EIAO, the maximum fine is HKD\$5,000,000 and imprisonment for 2 years.	The fine of an offence is determined by individual Member States.	No statutory provision	No statutory provision	The Act set out the penalty (maximum is CAD\$ 25,000 per day).	No statutory provision	The Act sets out the penalty (maximum is NTW\$1,500,000 and imprisonment for 3 years).
<b>Variation for an Environmental Permit</b>							
<b>Implementation of Project Changes</b>	Project proponent shall, according to the EIAO, provide sufficient assessment information to demonstrate the proposed changes would not constitute a 'material change' to the environmental impact and would comply with the relevant requirements described in the TM. EPD shall consult all relevant authorities before granting the amended EP.  If the proposed changes would constitute a "material change" to the environmental impact, EPD shall request project proponent to carry out a new EIA study and go through the EIA report approval process, including consultation process for public and ACE under the EIAO. Upon the approval of the new EIA report, EPD shall amend the EP for the proposed changes.	If there are proposed changes or extension of the project, project proponent shall, according to the Directives, provide supplement information to the Member States' competent authorities for approval.	Lead/public agency needs to prepare an addendum if only minor technical changes/additions to the project without going through the public.  If substantial changes are proposed for the project, Lead/public agency needs to prepare a subsequent EIA for consultation and approval.	No statutory provision	Unless the proposed significant changes have been accounted for in the approved EIA report, the change may requires the preparation of a new study brief and a new EIA report.	No statutory provision	No statutory provision