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**(ACE 54/95)**  
**for Advice**

## **Environmental Impact Assessment Bill**

### **Purpose**

A This paper seeks Members' advice on the draft Environmental Impact Assessment bill, a copy of which is attached at Annex A.

### **Background**

B 2. Members were consulted on the proposed statutory framework for the conduct of Environmental Impact Assessment at the meeting on 18 April 1994. A copy of the previous consultation paper, which outlines the broad principles and major legislative proposals, is at Annex B. Members supported the proposed legislation and urged its early introduction. Since then, industrial and trade organisations, professional bodies and environmental groups were widely consulted. They supported the spirit of the proposed legislation and many useful comments and suggestions on the detailed provisions have been received.

### **The Proposed EIA Bill**

3. To recapitulate, the proposed EIA legislation is part of Government's efforts to prevent future abuses of the environment. It is largely a formalisation of the existing procedures, which are laid down in a joint Planning, Environment and Lands Branch and Works Branch Technical Circular for government projects and in an Advice Note issued by Environmental Protection Department (EPD) for private sector projects. The legislation aims to make the EIA requirements enforceable. Specific proposals are:

(a) **Authority.** DEP will be responsible for regulating and enforcing the EIA process.

(b) **Designated Project.** Projects which are required to comply with the EIA procedures are called Designated Projects, which are listed in Schedules 2 and 3 of the Bill.

- (c) ***Project Profile.*** The proponent of a Designated Project is required to provide EPD with description of the project for preparation of a focused, project-specific EIA study brief. Designated Projects which have been adequately addressed in previous EIAs or those which would not have adverse impact on the environment are not required to carry out further EIA. This step is similar to the environmental review process under the current system.
- (d) ***Preparation of EIA Report.*** Similar to the current administrative arrangements, the project proponent is required to conduct an EIA study in accordance with the study brief, normally by engaging a relevant specialist consultant.
- (e) ***Review of EIA Report.*** The existing system of EPD co-ordinating review of EIA findings will continue.
- (f) ***Public Consultation.*** The existing administrative requirements to make EIA reports available to the public will be formalized and the requirements for notification to the public will be strengthened. The EIA reports will be available for public inspection and comment for one month. Similar to the existing arrangement, the Advisory Council on the Environment will be notified of the projects and may select projects for detailed consideration.
- (g) ***Environmental Permit.*** The end result of the EIA process is the issue of an Environmental Permit for a project which satisfies the EIA requirements. Conditions may be stipulated in the Permit, which are legally enforceable.
- (h) ***Exemption.*** Designated Projects which have already been approved under other legislations before the EIA Bill comes into effect are exempted. However, major changes to these projects will still be subject to EIA requirements.
- (i) ***Enforcement and Penalty.*** The conduct of a Designated Project without an Environmental Permit or not in accordance with permit conditions will constitute an offence.

4. The proposed arrangements are by and large in line with the current administrative requirements, except for the following :

- (a) issue of Environmental Permit, which is the end product of the statutory EIA process, to make EIA recommendations enforceable;
- (b) a list of Designated Projects, with clearly defined thresholds or criteria, will be adopted. Minor or less problematic projects are not included. This provides greater certainty as to the kinds of development projects which require EIA;
- (c) while the EIA legislation sets up a statutory framework for the EIA process, a Technical Memorandum will be introduced after the enactment of the Bill. The Technical Memorandum will contain detailed and well-defined rules and criteria on the EIA requirements and matters relating to the issue of Environmental Permits. This allows likely EIA requirements to be taken into account at an early stage of project planning and costing;
- (d) statutory time limits have been set on EPD's actions;
- (e) provision of a system of appeal against key decisions; and
- (f) a register containing details of applications, EIA study briefs, EIA reports, Environmental Permits and DEP's decisions will be set up and available for public inspection.

C

A comparison of the existing and proposed arrangements is at Annex C.

### **Changes to the Original Proposals**

5. To take into account Members' views expressed during the previous consultation, the following changes have been made:

- (a) ***Role of the Advisory Council on the Environment.*** The Advisory Council on the Environment will be notified when an EIA study brief is issued to a Designated Project and when the EIA report is suitable for public inspection. If the project is selected by the Council for detailed consideration, the project proponent is required to present the report to the Council or its subcommittee before EPD decides on the issue of Permit;

- (b) ***Feasibility Studies of Major Development Projects.*** These projects are included in Schedule 3 of the Bill. The EIA reports for these projects, once approved, will form the basis for decisions on the issue of Environmental Permits for constituent Designated Projects.

6. In the light of the views and suggestions received during consultation with professional bodies, the following changes have been made to the original proposal:

- (a) ***Power to designate projects.*** The power to designate a project not listed in the Schedules now rests with SPEL. This will be effected by a notice in the gazette.
- (b) ***Initial environmental report.*** This has been dispensed with in order to streamline the procedures and reduce the time required. Full EIA requirements will apply to Designated Projects as a matter of course.
- (c) ***Mechanism for conflict resolution.*** The mechanism for resolving different opinions on an application is provided for in the Technical Memorandum, which is also a legal instrument. Under the Technical Memorandum, EPD will act on SPEL's advice.

## **The Bill**

7. The Bill applies to all Designated Projects from both public and private sectors. Its main provisions are highlighted in the following paragraphs.

8. Section 4 provides for the designation of development projects which require Environmental Permit. Schedules 2 and 3 have listed out all the Designated Projects. Projects in Schedule 2 are individual projects, while those in Schedule 3 are composite projects involving a number of development agents and constituent developments, some of which may also be Schedule 2 Designated Projects.

9. Sections 5 - 9 stipulate the EIA process. The proponent of a Designated Project is required to make an application to DEP for an impact assessment brief. If a study brief is issued, the project proponent will then prepare an EIA report in accordance with the brief and the requirements in the Technical Memorandum. If the report meets these requirements, it will be displayed for public inspection. The Advisory Council on the Environment will be notified and may select projects for detailed consideration. Having taken into account relevant environmental concerns and comments received, DEP will decide whether an EIA report should be approved, whether Environmental Permit should be issued, and if so, whether and what conditions should be imposed.

10. Section 9 renders it an offence to carry out a Designated Project without Environmental Permit or not in accordance with Permit conditions. Section 10 details the procedures for the application of Environmental Permit.

11. Section 16 (Part V) provides for the issue of Technical Memorandum, subject to negative approval by LegCo, to describe the requirements on the structure and content of the EIA, to guide DEP in the issue of Environmental Permit and to provide for mechanisms for taking advice from other government authorities and the resolution of conflict. A draft outline of the Technical Memorandum is at Annex D. The Technical Memorandum will be drawn up in consultation within Government and with interested professional organisations and will be introduced after enactment of the Bill. Members will be consulted before its introduction.

12. Sections 17-21 (Part VI) put in place an appeal mechanism. Project proponents may appeal against DEP's decisions :

- (a) not to issue an Environmental Permit;
- (b) not to approve an applicant to apply directly for an Environmental Permit;
- (c) to impose conditions on the issue or variation of an Environmental Permit;
- (d) to vary or to cancel an Environmental Permit; and
- (e) to claim costs incidental to remedying a defect arising out of the breach of an Environmental Permit.

13. Sections 22-25 (Part VII) concern enforcement issues. DEP is given the power to investigate into possible offences. He may require cessation of works with the consent of SPEL and remedial actions to be undertaken to rectify any serious environmental damage caused by an offence under the legislation. Where an offence results in damages to the environment, DEP will be able to recover costs for any remedial work.

14. Sections 26-29 (Part VIII) deal with offences for breaching the terms of an Environmental Permit, failing to obtain a Permit and interference with the enforcement of the legislation. Company directors and other officers may be criminally liable for offences undertaken by companies. A strong deterrent in the form of stiff penalties will be provided. Offence under the legislation will be liable to a maximum fine of \$5 million, and a commensurate custodial sentence.

15. Section 30 empowers the Governor-in-Council to exempt a Designated Project from the EIA legislation in the public interest with or without conditions.

### **Legislative Timetable**

16. The Bill is at the final stage of drafting. We aim to introduce it to the Legislative Council in early 1996.

### **Advice Sought**

17. Members are invited to note progress in the drafting of the Environmental Impact Assessment Bill and to endorse the draft Bill.

**Planning, Environment and Lands Branch**  
**November 1995**