



THE LAW SOCIETY'S SUBMISSIONS AIR POLLUTION CONTROL (AMENDMENT) BILL 2013

1. Background

- 1.1 The current "Air Quality Objectives" ("AQOs") under the Air Pollution Control Ordinance Cap.311 ("APCO") have been in effect since 1987. The AQOs serve as a benchmark for assessing the air quality impact of specified processes under the APCO and designated projects under Environmental Impact Assessment Ordinance Cap.499 ("EIAO").
- 1.2 In 2006, new Air Quality Guidelines were released by the World Health Organization ("WHO") which led to a consultancy study commissioned by the Administration in 2007 and was followed by a public consultation in 2009. In January 2012, the Administration announced a proposal to adopt new AQOs.¹
- 1.3 The Air Pollution Control (Amendment) Bill 2013 was published in the Gazette on 15 February 2013 and introduced into LegCo on 20 March 2013.

2. The Air Pollution Control (Amendment) Bill 2013 ("Bill")

- 2.1 The Bill aims to:
 - (a) introduce updated AQOs to be effective from 1 January 2014;
 - (b) introduce a transitional period, during which the old AQOs will continue to apply to "applications for variation of the conditions of an environmental permit issued before 1 January 2014, if such applications are made before 1 January 2017";

¹ For a summary please refer to "Legislative Council Panel on Environmental Affairs Subcommittee on Improving Air Quality - Update of Air Quality Objectives" issued by Environmental Bureau in April 2012 available at its website www.epd.gov.hk

- (c) repeal the power of the Secretary for Environment (“Secretary”) to promulgate AQOs by technical memorandum under Section 7 of the APCO; and
- (d) require the new AQOs to be subject to review by the Secretary at least once every 5 years. After each review, a report shall be submitted by the Secretary to the Advisory Council on the Environment for review.

2.2 The Land Use, Planning and Environmental Law Committee (“Committee”) has reviewed the Bill. In principle, it welcomes the Bill to update the current AQOs and bring Hong Kong’s air quality in line with international standards. The Committee also makes the following comments on the Bill.

3. Clear Objectives, An Express Reference to Promoting Public Well Being and Health

3.1 The intent of the APCO is found in the Long Title: *"To make provision for abating, prohibiting and controlling pollution of the atmosphere and for matters connected therewith."*

3.2 Under Section 2 of the APCO - Interpretation - *"air pollution"* means:

"an emission of air pollutant which either alone or with another emission of air pollutant-

(a) is prejudicial to health;"

3.3 There have been long and continuing policy and scientific debates on the substantial and serious impact of air pollution on public health and its corresponding economic costs. The Government accepts that reducing air pollution is an important and urgent public health issue.²

3.4 The Law Society proposes that public well-being and health should be added as an express objective under the new Section 7A(2) as follows:

"The air quality objectives for any particular air control zone shall be of a quality to be achieved and maintained in order to:

(a) promote the conservation of air in the zone in the public interest;

(b) promote the best use of air in the zone in the public interest; and

(c) promote public well-being and effectively abate, prohibit and control air pollutants. [Alternatively, subsection (c) could simply say "promote public well-being and health".]

² A Clean Air Plan for Hong Kong issued by the Environmental Bureau in collaboration with Transport & Housing Bureau, Food & Health Bureau and Development Bureau in March 2013 available at http://www.enb.gov.hk/en/files/New_Air_Plan_en.pdf

- 3.5 The original Section 7A(2) would be renumbered as Section 7A(3) and simplified as follows:

"Subject to subsection (4), the Secretary may from time to time review the air quality objectives for an air quality control zone to ensure that they comply with subsection (2)."

- 3.6 In view of the above amendments, the original Sections 7A(3) to 7A(6) should be renumbered as 7A(4) to 7A(7).

The Law Society proposes a redraft of Section 7A as set out above.

4. The Air Quality Objectives - Benchmark and Level of Ambition

- 4.1 There has been much debate over the adoption of the WHO Air Quality Guidelines ("WHO AQG") in full. However, the real problem appears to be that even if Hong Kong is shut down, regional ambient air pollution would still exceed the WHO AQG.

- 4.2 In view of the above, apart from the possible tightening of the proposed sulphur dioxide target, Hong Kong cannot apply the WHO AQG in full until regional air pollution falls.

The Law Society agrees with the proposed new AQO levels but the Administration should set a potentially tighter target for sulphur dioxide under Part 2, Schedule 5 of the Bill.

5. Reporting

- 5.1 Under Section 7A(4) of the Bill, Department of Health ("DOH") should be added in addition to the Advisory Council on the Environment.

- 5.2 The proposed addition reinforces the importance of public health and ensures that the involvement of DOH in the AQO review process is recognized by statute.

The Law Society recommends to add DOH to Section 7A(4) of the Bill.

6. The Transitional Provision, the new Part 3, Schedule 5

- 6.1 The new Part 3 of Schedule 5 provides for a transition of three years from 1 January 2014 for the application of the new AQOs to applications to vary conditions of Environmental Permits (EPs) issued before 1 January 2014 by

project proponents of Designated Projects under the EIAO. The reasoning put forward by the Administration for this three year transitional period is³:

"At present, there are some on-going designated projects which have already had their EIA reports approved and EPs granted based on the existing AQOs. We hence need to consider carefully the potential impact arising from the introduction of new AQOs might have on projects already granted with an EP before the new AQOs come into operation. In the event that the amendments to the scope of such projects should warrant an application for variation of the EP to be supported by a new EIA, the application of the new AQOs may cause substantial changes to the original design of the project and have major cost and programming implications."

6.2 With respect, this explanation is inadequate:

- (a) Not all variations to an EP require a new Environmental Impact Assessment ("EIA"), as there may be no material change to the environmental impact of the relevant designated project.
- (b) If there is such a material change, the question is why there should be an exemption once the new AQOs come into force, as the whole idea is to start applying them from 1 January 2014, and a new EIA report would be needed for the project under Section 13 of the EIAO in any event.

6.3 Instead of permitting a blanket transition period, it would be preferable for the Director of Environment ("Director") to decide under Section 13(5) of the EIAO whether there is a material change that requires a new EIA report due to the new AQOs. Further, if there is a concern over specific projects, the Administration should specifically identify these projects for exemption for policy reasons.

6.4 Alternatively, an amendment may be made to give the Director, on a case by case basis, the discretion to exempt a designated project seeking a variation to an EP issued before 1 January 2014 from applying the new AQOs, if adopting the new AQOs would result in the following:

- (a) requiring the project proponent to change the design of the designated project at an unreasonably and disproportionately high cost relative to the original cost of the project; or
- (b) where granting such an exemption would be in the public interest.

³ Paper on Interface between the EIAO and the APCO available at http://www.legco.gov.hk/yr12-13/english/panels/ea/ea_anlp/papers/ea_anlp0225cb1-567-1-e.pdf

The inclusion of public interest allows the Director to take into account the undesirability of extensive delays caused by the application of the new AQOs to the delivery of an important infrastructure project.

The Law Society proposes that the exemption from the application of the new AQOs should be on a case by case basis instead of a blanket transitional period.

**The Law Society of Hong Kong
14 May 2013**

