

China

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REGULATORY FRAMEWORK

1. Please briefly set out the key environmental legislation and regulatory authorities in your jurisdiction.

The main environment-related statutes are the:

- Environmental Protection Law 1989 (EPL).
- Water Pollution Law 1984, amended in 1996 and 2008.
- Air Pollution Law 1987, amended in 1995 and 2000.
- Solid Waste Law 1995, amended in 2004.
- Environmental Noise Prevention and Control Law 1996.
- Radioactive Pollution Prevention and Control Law 2003.
- Law on Environmental Impact Assessment 2002 (EIA Law).

On a political level, the People's Republic of China (PRC) environmental planning and policies are primarily shaped and determined by the Five-Year Social and Economic Development Plans, often referred to as FYPs, which are elaborated by the Chinese Communist Party and the Chinese government, and approved by the National People's Congress. Five-Year Plans are supplemented by more specific Five-Year Environment Plans (FYEPs), which are further broken down into five-year sectoral plans in areas such as water management of key rivers and lakes, hazardous waste management or the reduction of air pollution in designated zones (for example, acid rain control zones and sulphur dioxide control zones).

China's highest state body and only legislative house, the National People's Congress (NPC), enacts statutory environmental laws (such as those listed above), which governments at different levels, are responsible for enforcing. The Ministry of Environmental Protection (MEP, formerly the State Environmental Protection Administration (SEPA)), often quoted as the PRC's environmental watchdog, is responsible for overall supervision and administration of environmental protection work (see box, *The regulatory authority*). SEPA's status has changed a number of times over the years, from a lower-level bureau under the Ministry of Construction (1978) to an independent agency directly under the State Council (1987) acting later as a government department (1998), and it was upgraded to ministry level in February 2008.

The actual implementation of environmental policies at sub-national level is vested in the local Environmental Protection Bureaus (EPBs), which are responsible for, for example, monitoring

industrial pollution discharge, site inspections, issuing discharge fees/fines and prosecution.

2. To what extent are environmental requirements enforced by regulators in your jurisdiction?

Although China boasts a wide range of reasonably sophisticated environmental laws and regulations, their enforcement is far from efficient and unified. It is generally felt that enforcement agencies fail to fully perform their mandate. Inconsistencies in enforcement are mainly due to:

- The lack of coherence between regulations.
- Structural deficiencies in the overall environmental management system.
- A general policy framework that favours economic development over environmental concerns.

Recently, the PRC government acknowledged that environmental compliance and enforcement in China has serious shortcomings and the 11th FYP (2006 to 2010) marks a policy shift, from a narrow approach purely based on GDP, to a more sustainable economic development model. The recently revised Water Pollution Law (2008) is a step forward in initiating this change, as it lays the foundation for a national-level assessment mechanism for water protection, and water protection projects will be accounted for in the evaluation of local governments and their officials' performance.

Enforcement of environmental laws through prosecution is rare. According to unofficial estimates, in 60% to 70% of pollution cases victims are not successful in court.

3. To what extent are environmental non-governmental organisations (NGOs) and other pressure groups active in your jurisdiction?

Environmental NGOs are playing a growing role in the development of China's green awareness. Their main activities consist of:

- Providing information to the public.
- Supervising enterprises and public administration activities.
- Advising the government and enterprises on important projects.

- Lobbying on environmental legislation.
- Helping environmental pollution victims in litigation and arbitration.
- Environmental science research.

The first Chinese environmental NGO, now called Friends of Nature, was created in 1994. The Global Village of Beijing and Green Home are other well-known pioneering environmental NGOs in China.

In recent years, attention has focused mostly on the Institute of Public and Environmental Affairs (IPE). Founded in 2006 and led by a famous environmentalist (Mr Ma Jun), the IPE regularly publicises information on environmental issues, including the names of enterprises that have exceeded quotas for discharge or otherwise committed illegal pollution. It has also developed the China Water Pollution Map, the first public database of water pollution information in China.

However, Chinese NGO influence is counterbalanced by tight control by the Chinese political authorities, as their creation depends on formal governmental approval (and not mere registration).

EMISSIONS

4. Is there an integrated permitting regime or are there separate environmental regimes for different types of emissions? Can companies apply for a single environmental permit for all activities on a site or do they have to apply for separate permits?

Chinese environmental pollution monitoring agencies (the MEP and EPBs) focus on emissions in separate media rather than taking an overall approach to the polluter's behaviour during its industrial operations. There is no equivalent to the EU integrated pollution prevention and control regime in Chinese law.

However, a major exception is at the time of an EIA, where a general forecast of an industrial activity's likely impact on the environment is required (*see Question 10*). This must take place before approval of any industrial project.

5. If there is an integrated permitting regime, please provide a brief overview of it, in particular:

- What permits are needed and which regulator issues them?
- How long do permits last?
- Are there restrictions on transferring permits?
- What are the penalties for non-compliance?

All plants/facilities that directly or indirectly discharge hazardous or controlled substances are subject to the Discharge Permit System (DPS). Under this permit system, all discharging entities must declare and register any emission of pollutants with the

local EPB shortly after the facility acceptance and start of operations. The registration form includes quantity and regularity of emissions, as well as their concentration. The competent EPB then issues a permit with precise indications of discharge limits of pollutants (with reference to both volume and concentration) in an enterprise's wastewater/solid discharge and air emissions. The water pollutant discharge permit system is governed by the revised Water Pollution Law, which came into effect on 1 June 2008. The air pollutant discharge permit system is governed by the Air Pollution Law, which was revised in 2000. Discharge fees vary according to the type of pollutant, although rebates are possible where reductions have been verified and sometimes postponed in practice.

Pollutant discharge permits are generally valid for two years, with temporary permits usually only valid for one year. According to the draft Regulation on Pollutant Discharge Permit published by the MEP in January 2008, the maximum duration of validity for a pollutant discharge permit is five years, and one year, for a temporary permit.

As a general principle, discharge permits are location-specific and are not transferable (they are granted *intuitu personae*).

Environmental regulators enforce regulations through administrative sanctions and their powers of prosecution. The MEP and local EPB can issue warnings, injunctions, fines (with escalation of fees in case of a persisting breach), and confiscate illegal gains. In serious cases, they can suspend or shut down plant operations and revoke the permit/licence. However, in reality, administrative penalties are not severe enough to ensure environmental compliance. For example, the maximum fine for the most serious case of air pollution is CNY 500,000 (about US\$72,000), which may explain why the cost of an environmental breach is considered less expensive than compliance itself. This issue has recently been addressed for the first time in relation to water pollution (*see Question 6*), but remains a persistent issue for other types of pollution.

6. Please summarise the regulatory regime for water pollution (whether part of an integrated regime or separate). In particular:

- What permits or other authorisations are required and which regulator issues them?
- Are any activities prohibited (such as causing or failing to prevent water pollution)?
- Can the regulator require a polluter to clean up or pay compensation for water pollution?
- What are the penalties for non-compliance?

The water pollutant discharge permit system is regulated by the revised Water Pollution Law, which came into effect on 1 June 2008. Lawmakers are paying more attention to the importance of protecting bodies of water against various kinds of pollution. The MEP has issued different standards, including water pollutant

discharge standards and water quality standards. Under applicable laws and regulations, the limits to discharge are formulated by competent national and local authorities and an individual must obtain a pollutant discharge permit before he can discharge any pollutant into bodies of water. This permit is given by the relevant local EPB after registration of the enterprise, on condition that the discharge complies with the relevant standards.

The discharge of certain kinds of pollutants, such as oil, highly toxic liquid or radioactive solid waste, is prohibited.

Enterprises and public institutions at risk of potential water pollution accidents must create an emergency plan for dealing with these accidents, make sufficient preparations for emergencies, and rehearse such plans on a regular basis (*Water Pollution Law*). Where an accident occurs that causes or may cause water pollution, the enterprise or public institution must initiate its emergency plan immediately, enact emergency measures and report the accident to the environment protection authorities. It must also compensate the victims of the accident for losses incurred.

Administrative penalties were not severe enough to ensure environmental compliance. This issue has recently been addressed for the first time in relation to water pollution. Under the Water Pollution Law, pollution fines are no longer subject to a cap and offenders are now liable to settle up to 30% of direct economic loss caused by water contamination. While corporate executives were previously faced with only administrative sanctions in most water pollution cases, they can now incur fines up to half their personal income for the previous year. In addition, water pollution victims are expressly granted the right to file class actions, and environmental compliance in this area is now a criterion in the evaluation of local governments.

7. Please summarise the regulatory regime for air pollution (whether part of an integrated regime or separate). In particular:

- **What permits or other authorisations are required and which regulator issues them?**
 - **Are any activities prohibited (such as discharging certain substances into the air without a permit or causing air pollution)?**
 - **Can the regulator require the polluter to clean up or pay compensation for air pollution?**
 - **What are the penalties for non-compliance?**
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The air pollutant DPS is governed by the Air Pollution Law, which was promulgated in 1987 and last amended in 2000. All discharging entities must declare and register any emission of pollutants with the local EPB shortly after the facility acceptance and the start of operations. The registration form includes quantity and regularity of emissions, as well as their concentration, and this information must be regularly updated. Pollutant emissions must meet relevant national and local standards. The competent

EPB then issues a permit with precise indications of discharge limits of pollutants (with reference to both volume and concentration) in an enterprise's air emissions.

The emission of certain air pollutants, such as poisonous waste gas and dust, which has not been purified, is prohibited.

Non-compliance with the Air Pollution Law can result in and order for rectification within a specified period of time, an order to stop such activities and a fine.

CLIMATE CHANGE

8. Please provide a brief overview of emissions trading schemes in your jurisdiction, including any national targets and carbon allowances systems. Is your jurisdiction party to international agreements on this issue and how have they been implemented into your national law?

Greenhouse gas (GHG) emission reductions largely take the form of emission reduction credits (CERs) certified under the Kyoto Protocol Clean Development Mechanism (CDM). The CDM arrangement allows industrialised and economy-in-transition parties to the Kyoto Protocol (Annex I Parties) to acquire CERs from GHG emission reduction projects in non-Annex I Parties (including China), to comply with their emission reduction commitments.

The Measures for Operation and Management of Clean Development Mechanism Projects (2005) are the implementing legal framework. They set out the procedure for approval of a CDM project at national level, and allocation of revenues from the sale of CERs between the Chinese government and the project sponsor. If the CDM Executive Board confirms the final verification report on GHG emission reduction from the local Designated Operational Entity and issues CERs, between 2% (emissions reduction projects listed in the encouraged category) to 65% (HFC and PFC emissions reductions projects) of the proceeds of sale of such CERs are remitted by the project owner to the Chinese government.

To date, while numerous CDM Projects have obtained approval from the National Development and Reform Commission, which is the Chinese Designated National Authority, CERs have only been issued by the CDM Executive Board for a limited number of projects.

9. Are there targets to reduce greenhouse gas emissions from buildings in your jurisdiction? Is there legislation requiring buildings to meet certain minimum energy efficiency criteria? If yes, please give brief details.

China's aim to reduce its greenhouse gas emissions has been developed in the National Climate Change Programme (2007) and in the 11th Five-Year Plan for 2006 to 2010, but no target has been fixed (either general or for emissions from buildings).

However, China has developed its legislation concerning energy efficiency, particularly for buildings. The Energy Conservation Law 1997 was amended in 2007 to promote energy efficiency in

the construction of new buildings or the refitting of existing buildings. Since the promulgation of this law, several regulations have been issued by the Ministry of Construction (now the Ministry of Housing and Urban-Rural Development), dealing with issues such as the temperature in large public buildings, building materials that are now prohibited, and new central heating systems to be installed in residential buildings.

Further, energy efficiency standards have been issued at both national and local level, and construction enterprises must now comply with them to be allowed to complete their building projects. In addition, it is possible to apply for high energy efficiency building labels such as the Green Building Label on a voluntary basis.

ENVIRONMENTAL IMPACT ASSESSMENTS

10. Please provide a brief overview of the requirements to carry out environmental impact assessments (EIAs) for certain projects (for example, construction of an oil and gas facility). In particular:

- **What type of projects and impacts are covered?**
- **Are permits or other documents required before the project can start and which regulator issues them?**
- **What are the penalties for non-compliance?**

Any construction project, whether it is greenfield, a renovation or expansion project, is subject to environmental assessment.

Under the EIA Law, the content of an EIA report depends on the degree of estimated future environmental impact. It can therefore take the form of a full report, statement or registration form. It is generally prepared by a qualified agency, and must be submitted for approval to the competent environmental protection authority. This may be the provincial EPB or the MEP itself, depending on the amount of investment. In relation to this, the Regulations on Classified Examination and Approval for Environmental Impact Assessment Documents of Construction Projects 2009 provide that direct MEP approval is required for special construction projects (such as nuclear facilities), inter-provincial and other projects.

Construction work can begin once the EIA is approved. Obtaining EIA approval is a necessary pre-requisite to securing building and operating permits. Applications for pollution during the operation phase are subject to a distinct legal framework. Having obtained approval of an EIA report by the competent environmental protection bureau, a company must still apply for a licence to discharge pollutants.

Any company that starts construction work without prior EIA approval can be ordered to cease works immediately and/or pay fines of at least CNY50,000 (about US\$7,300). In some provinces (such as Heilongjiang), fines can be a percentage (between 1% and 3%) of the total investment amount of the whole project.

WASTE

11. Please provide a brief overview of the regulatory regime for waste. In particular:

- **What permits or other authorisations are required and which regulator issues them?**
- **What activities are prohibited (such as storing or disposing of waste without a permit)?**
- **Do operators need to meet certain criteria (such as having sufficient financial means to operate landfills and other waste disposal sites)?**
- **Are there special rules for certain types of waste (such as hazardous waste or electrical equipment)?**
- **What are the penalties for non-compliance?**

Waste is a generic term, which is not defined comprehensively in PRC law. Instead, waste is often referred to as a product or substance that falls in certain categories listed in sector-specific state standards. Hazardous waste, for example, is referred to in relation to the list of reactive, toxic, corrosive, and other substances in the National Catalogue of Hazardous Waste 1998. Solid waste is defined in the Solid Waste Law 2005 and includes electronic waste, further defined in the Measures for the Prevention and Control of Environmental Pollution by Electronic Waste 2007. Specific categories of waste (including hazardous waste, radioactive waste, electronic waste, scrapped automobiles, and packaging) are subject to the duties and control provided in the relevant laws and regulations.

The Solid Waste Law clearly provides that companies that collect, store, transport, use or dispose of solid waste must prevent leakage and scattering, and generally avoid non containment. This duty of care is particularly acute during construction of facilities that discharge solid waste. The design, construction and commissioning of these facilities must be synchronised with appropriate pollution storage and treatment facilities, without which the main plant's start of operations will not be authorised. This requirement is known as the three synchronisations system (3S), was first introduced in the EPL, and is specifically reinstated in the Solid Waste Law. Although 3S was to play an important role in stimulating investment in pollution abatement facilities at new factories, it is not strictly enforced in practice. Alternative solutions may be sought, and plants that discharge solid/hazardous waste can entrust storage, treatment and disposal of such waste to licensed companies.

The actual disposal of waste requires a licence. There are specific authorisations for incineration, secure landfill, physico-chemical process treatment (mainly for oily sludge), and for waste collection, recycling and recovering. Licences are issued after consideration of disposal technology and equipment, qualified manpower, and other factors.

The law outlines liability for certain actions and omissions, and sets out minimum and maximum fines. If an enterprise fails to comply with an order to rectify or implement measures to control the pollution caused by solid waste, it can have its operations suspended.

ASBESTOS

12. Please provide a brief overview of the regulatory regime for asbestos in buildings. In particular:

- **What activities are prohibited?**
- **What are the main obligations (such as investigating the presence of asbestos and risk assessments for employees) and who is liable to carry them out?**
- **What permits or other authorisations are required and which regulator issues them?**
- **What are the penalties for non-compliance?**

The Rules on Occupational Safety of Asbestos Work 2007 set out guidelines for prevention and protection against asbestos risk. Employers have a general obligation to prevent asbestos-related risks, as well as a duty to reduce the use of materials containing asbestos. In particular, they must:

- Fully disclose the risks linked to asbestos to employees.
- Place warning signs in a clear place.
- Install monitoring facilities.
- Prepare risk management systems.
- Develop a plan for prevention and protection and review it periodically.
- Provide appropriate safety equipment to exposed employees.
- Organise occupational safety training and examination.
- Introduce a system of occupational health.
- Register the results of health examinations, and keep records for at least 30 years.

A pre-assessment report of occupational diseases is required for all expansion or reconstruction of existing enterprises, and the improvement or introduction of new technologies. If an enterprise entrusts the disposal of asbestos waste to another qualified entity, it must inform this entity of the risks and consequences of occupational diseases.

Workers who are exposed health hazards from asbestosis are covered by work-related injury insurance, which offers a higher level of protection than standard medical insurance coverage (*Regulations on Work-Related Injury Insurances 2003*).

CONTAMINATED LAND

13. Please provide a brief overview of the regulatory regime for contaminated land. In particular:

- **Which regulator is responsible and which legislation applies?**
- **In what circumstances can a regulator require the investigation and clean-up of contaminated land?**
- **What are the penalties for non-compliance?**

The only texts that specifically refer to soil and groundwater contamination are the environmental quality standards for soils, and the Circular on Environmental Pollution Prevention Work in the Enterprise Relocation Process 2004. This provides that before a plant handling or generating hazardous waste is shut down, it must submit site soil and groundwater contamination reports to the relevant local government authorities, and develop a remediation programme based on the reports. This also applies where the land-use activity at the site of this type of facility is to be changed.

Contamination of land subjects the operator to liabilities under the EPL, the General Principles of Civil Law 1986 and the Criminal Law 1997.

14. In relation to liability for contaminated land:

- **Which party is liable for carrying out or paying for environmental investigation and clean-up?**
- **Can an owner or occupier who has not caused contamination be liable for investigation and clean-up of contamination on their land?**
- **Can previous owners or occupiers be liable for contamination they have caused in the past?**
- **Are there limits on liability or ways for a party to limit its liability?**

According to the polluter pays principle in the EPL, a polluter is responsible for paying rectification costs. Following this principle, the Opinion on Strengthening the Prevention and Treatment of Soil Pollution states that polluted soil or underground water must be restored and treated by the work unit or individual that caused the pollution.

However, given the burden of proof is often complex when polluted land has been transferred, allocation of responsibility for contamination is usually dealt with between the buyer and seller on a contractual basis. This usually translates into a series of representations and warranties given by the seller, tied in with an indemnification mechanism in case of breach.

The seller often requires exclusion of its liability for any kind of pollution (whether land contamination or otherwise), and asks the buyer to rely on his own investigations. Therefore, it is recommended that a buyer of land or assignee of land-use rights conducts an environmental audit before concluding the transaction.

15. Can a lender incur liability for contaminated land and is it common for a lender to incur such liability? What steps do lenders commonly take to minimise such liability?

The general rule is that lenders are not liable for their borrowers' environmental offences, except if they:

- Effectively control their borrower's business.
- Directly cause or participate in causing damage.
- Enforce a mortgage on a polluted piece of land.

Besides the direct risk of liability, lenders may incur indirect risks in terms of rating or reputation due to the new green credit policy jointly adopted by SEPA (now MEP), the Bank of China and the China Banking Regulatory Commission (CBRC) in July 2007, and related regulations. These state that banking institutions do not provide credit support for construction projects that do not comply with environmental standards, and take into account energy conservation and emission reduction in their credit policy.

16. Can a private individual bring legal action against a polluter, owner or occupier (for example, for damage caused by the movement of contamination onto his land)?

The EPL significantly provides for strict liability in environmental pollution cases, whereby a claimant is not required to show any fault, negligence or omission on the part of the defendant. Civil claims can be brought before the relevant administration body (most often the MEP or the local EPB) or a Chinese tribunal. The statutory limit for legal action is three years from the time when the victim became or should have become aware of the loss, which differs from the general two year limit for civil actions.

According to the EPL, the Criminal Law and the Supreme People's Court's Interpretation on Criminal Cases Involving Environmental Pollution 2006, criminal liability can arise when major pollution accidents cause injuries and/or significant losses of public or private property. Sanctions range from fines to imprisonment for up to ten years.

In relation to possible defences, the EPL and a number of anti-pollution laws and regulations provide that no liability is incurred when pollution results solely from unforeseeable natural disasters (that is, force majeure). Generally, liability can be limited or excluded when the victim itself or a third party is at fault, which is in line with the General Principles of Civil Law.

TRANSACTIONS

17. In what circumstances can a buyer inherit pre-acquisition environmental liability in:

- An asset sale?
 - The sale of a company (share sale)?
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Asset sale

A buyer of an asset is less exposed to contingent or undisclosed liabilities than the buyer of shares. Therefore, the buyer of a polluting asset is generally only liable for pollution arising after the date of purchase (*Article 4, EPL*).

However, given that no specific rules expressly regulate land contamination and the burden of proof is often complex in pollution cases, it is usually quite difficult to prove that liability occurred pre-acquisition. Further, if the actual polluter has been dissolved, the current owner of the land use rights is liable. Allocation of responsibility for land contamination is usually dealt with between the seller and the buyer on a contractual basis. This usually translates into a series of representations and warranties given by the seller, linked with an indemnity in case of breach.

Share sale

In contrast, environmental liability remains with the company in a share transfer. Liability vests with the party who caused the damage, so that a subsequent owner (or occupier) of contaminated land can seek compensation from the previous owner who caused the contamination or knowingly permitted the presence of a substance that caused the contamination (*General Principles of Civil Law*). Due to their limited liability status, Chinese companies are only liable for their assets, and shareholders are usually only liable up to the amount of capital they contributed.

However, allocation of responsibility can also be dealt with on a contractual basis, particularly if the seller represents that he will indemnify the buyer from and against any pre-acquisition environmental liability. However, sellers frequently seek to expressly exclude liability for any kind of pollution (whether land contamination or otherwise) and to require the buyer to rely on his own investigations.

18. In what circumstances can a seller retain environmental liability after disposal in:

- An asset sale?
 - A share sale?
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See *Question 17*.

19. Does a seller have to disclose environmental information to the buyer in:

- An asset sale?
 - A share sale?
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There is no statutory requirement for a seller to expressly disclose environmental issues in an asset sale, share sale or merger transaction. Instead, environmental issues are dealt with in contractual terms, and representations and warranties are usually required from the seller of the shares or assets.

20. Is environmental due diligence common in an asset sale or a share sale? If yes:

- **What areas are usually covered?**
 - **What types of environmental assessments are available?**
 - **Are environmental consultants usually used? If so, what issues should be covered in an engagement letter (for example, limit on consultant's liability)?**
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Environmental due diligence is increasingly common in asset and share sales. It is usually undertaken through due diligence related to land and buildings.

Areas covered

The main areas covered are:

- Existing or potential claims, and legal proceedings.
- Administrative approvals and certificates (including pollution discharges and environmental assessment).
- A company or asset seller's history relating to the environmental regulatory framework (non-compliance, violation and sanctions).

Types of assessment

It is common for buyers to hire environmental consultants for technical assessments (for example, land contamination on industrial sites).

Environmental consultants

If the company or asset is exposed to major environmental risks, environmental due diligence is usually undertaken by environmental consultants. Aside from obvious elements such as the scope of work and compensation, the engagement letter for an environmental consultant should also focus on the consultant's limitation of liability, so the employer can realise the extent it can rely on the consultant's findings in making its decisions.

21. When are environmental warranties and indemnities usually given and what issues do they usually cover in:

- **An asset sale?**
 - **A share sale?**
-

Although sellers generally require buyers to rely solely on their own investigation of assets, they may agree on indemnification to a contractually stipulated extent, if environmental liability is incurred following the transfer of shares or ownership of assets to which environmental contingencies may be attached. These agreements on the allocation of environmental liabilities relating to, for example, contaminated land, are valid and enforceable.

Since environmental due diligence is increasingly frequent, so are environmental warranties and indemnities. Issues covered by environmental warranty and indemnity clauses vary depending on the specificities of the transferred assets or the company, and on the nature of risks disclosed during the due diligence process.

THE REGULATORY AUTHORITY

Ministry of Environmental Protection (MEP)

Main responsibilities. The MEP is in charge of implementing environmental legislation, formulating policies and guidelines on environmental aspects and raising public awareness.

W <http://english.mep.gov.cn>

The seller usually provides representations and warranties in relation to the following:

- Valid licences and authorisations.
- Compliance with environmental regulations.
- No environmental pollution or risk of environmental pollution.
- No existing or potential claims in relation to an environmental matter.

22. Are there usually limits on environmental warranties and indemnities, for example, time limits or financial caps?

Breach of environmental laws or permits can give rise to civil and criminal liabilities, as well as to administrative fines. The EPL provides for strict liability in cases of environmental pollution, whereby a claimant (plaintiff) is not required to prove fault, negligence or omission on the part of the defendant. Civil claims can be brought before the relevant administration body (most often the MEP or the local EPB) or a People's court. The statutory limitation period is three years from the time when the victim became or should have become aware of the loss, which differs from the general two year limit for civil actions.

However, there is usually no time limit on environmental warranties and indemnities in the purchase agreement. Financial caps may sometimes be granted to the seller.

REPORTING AND AUDITING

23. Do regulators keep public registers of environmental information (for example, of environmental permits or contaminated properties)? What is the procedure for a third party to search those registers?

In 2007 SEPA (now the MEP) adopted Trial Measures on the Disclosure of Environmental-Related Information, effective as of 1 May 2008. They provide that citizens and private companies are entitled to request environmental information from public authorities, which in turn must make such information available within a set timeframe. The scope of disclosure is broad and includes environmental planning, statistics, discharge levels of major pollutants, as well as the type, volume and disposal of solid waste produced in medium to large cities.

Public authorities must also adopt environmental emergency plans and disseminate information on administrative procedures

(for example, in levying fees and granting permits). They must also publish and update a list of companies whose emission of pollutants exceeds the national or local emission standards, or which refuse to comply with injunctions or pay penalties for environmental offences.

Companies must also publicly disclose environmental information in relation to excess discharges and information on the construction and operation of pollution treatment facilities and equipment.

24. Do companies have to carry out environmental auditing? Do companies have to report information to the regulators and the public about environmental performance?

Companies in China must carry out environmental auditing (in the form of an EIA) before any new construction or expansion projects (see *Question 10*).

Polluting companies' reporting obligations to regulators are mandatory within the DPS system (see *Question 5*).

25. Do companies have to report information to the regulators and the public about environmental incidents (such as water pollution and soil contamination)?

In practice, reporting duties are contained in discharge permits or licences, which usually require the operator to supply the EPB with data on emissions/discharges on a regular basis, and to inform the EPB of any accident without delay.

The Water Pollution Law and its implementing measures provide that a company that caused water pollution must report this to the relevant local government or EPB, and implement an emergency plan.

Soil contamination is subject to a different regime. The only texts that specifically refer to soil and groundwater contamination are the environmental quality standards for soils and the Circular on Environmental Pollution Prevention Work in the Enterprise Relocation Process. They provide that before a plant handling or generating hazardous waste is shut down, it must submit site soil and groundwater contamination reports to the relevant local government authorities, and develop a remediation programme based on the findings in the reports.

26. What powers do environmental regulators have to access a company's documents, inspect sites, interview employees and so on?

Compliance by enterprises with pollution standards and permits is checked by EPB inspectors who carry out regular inspections, and sometimes surprise site visits, without a warrant. Environmental regulators benefit from broad information-gathering powers, and can require production of documents (including technology and trade secret materials, to the extent necessary for compliance verification), demand samples and interview employees. Such powers are given to EPB inspectors by Article 27, Water Pollution Law and Article 15, Solid Waste Law.

INSURANCE

27. What types of insurance cover are available for environmental damage or liability and what risks are usually covered? How easy is it to obtain environmental insurance and is it usually obtained in practice?

Some insurance companies based in China offer environmental liability insurance policies. The policies may cover:

- Liability for personal injury.
- The cost of cleaning up the polluted site.
- Unexpected and unintended loss caused by the pollution event.
- Defence costs in relation to proceedings following any accidental and sudden pollution.

Liabilities incurred in relation to expected or intended pollution, fines, penalties or exemplary damages, underground storage tanks, asbestos or lead are generally excluded. The extent of insurance cover must be negotiated with the insurance company on a case-by-case basis, based on an expert opinion from the insurance company on existing and potential risks.

Managers and other officers in charge of the company's business can subscribe to third party insurance policies covering claims for personal injury or property damage caused by environmental pollution. Under these policies, exemptions generally apply in the case of illegal behaviour or wilful misconduct.

The importance of developing environmental liability insurance policies is recognised in the Guiding Opinions on Environmental Pollution Insurance, issued by the SEPA and the China Insurance Regulatory Commission (CIRC) on 4 December 2007. This regulation promotes the development of the environmental insurance market on a trial basis from 2008 to 2015, under local environmental protection and insurance authorities, relating to designated sites where pollution concerns are above average. Opinions were jointly issued by the former SEPA and the CIRC on 19 February 2008. This regulation confirms the government's intention to implement a mandatory environmental insurance system nationwide after the trial period. In January 2009, the MEP declared the pilot was making substantial progress.

At present, it is impossible to assess the results of insurance claims in China. Judgments are generally not published, environmental insurance claims figures are kept confidential by insurers, and the availability of environmental insurance policies is new to the market.

TAX

28. What are the main environmental taxes in your jurisdiction (for example, tax on waste disposal, carbon tax and tax breaks for carrying out clean-up of contaminated land)? For each tax, please briefly state how it is calculated, who pays it and the tax rates.

China has not yet implemented any environmental taxes. However, according to the Opinions regarding the Job of Furthering

Economic Regime Reform in 2009 issued by the NDRC and approved and forwarded by the State Council on 19 May 2009, the Ministry of Finance and the State Administration of Taxation are currently working on an environmental tax scheme and considering levying environmental tax at an appropriate time.

Aside from this, other taxes promoting environment protection include:

Enterprise income tax (EIT)

EIT is imposed on the profit derived by the taxpayer. The standard tax rate is 25%. The following tax incentives are provided under the EIT regime:

- Enterprises that engage in public wastewater treatment, public refuse treatment, comprehensive exploitation and use of biogas, upgrades of energy saving/pollution discharge reduction technologies and seawater desalination projects are entitled to a three plus three tax holiday (that is, a three-year tax exemption followed by a three-year 50% tax rate reduction), from the year when the first operating revenue is generated.
- For producing goods using recycled materials, the taxpayer can record 90% of the relevant income as taxable income.
- 10% of an investment made by a taxpayer to buy specialised equipment for environment protection, energy/water conservation or production safety can be used to offset tax.

Value added tax (VAT)

VAT is paid on the turnover generated from the sale or import of goods or provision of taxable services (that is, processing, repair and replacement service) in China. The standard VAT rate is 17%. Qualified taxpayers can deduct input tax paid on the purchase of goods or taxable service from the output tax they collect from clients. Preferential VAT treatment is available for revenue generated from recycling activities. In addition, the turnover from sales of certain recycled goods, such as recycled water, and the provision of wastewater treatment, is exempt from VAT. For some other recycled products, such as power generated by using refuse, VAT paid can be fully or partially refunded.

Consumption tax (CT)

CT is mainly imposed on consumer goods which may cause pollution or consume non-renewable resources, such as cars and wooden floorboards. Manufacturers and importers of taxable goods pay CT. The rate of CT varies for different categories of taxable goods, from 3% to 45%. For some taxable goods, a fixed sum CT applies.

Resource tax (RT)

RT applies to persons who explore mineral products or produce salt in China. Crude oil, natural gas, coal, non-metallic mineral ore, ferrous metallic mineral ore, non-ferrous metallic mineral ore and salt in both solid and liquid forms are taxable products.

RT is assessed at a fixed sum of tax multiplied by the amount of goods sold or self-consumed. The fixed tax amount varies from CNY0.3 (about US\$0.04) to CNY60 (about US\$8.8) per tonne or thousand square metres, depending on the type and grading of the taxable goods.

Vehicle Purchase Tax (VPT)

VPT is imposed at a flat rate of 10%. Effective from 20 January 2009 until 31 December 2009, the VPT on passenger cars with an engine of 1.6 litres or below is reduced to 5% (*circular issued by the Ministry of Finance and State Administration of Taxation, 16 January 2009*).

REFORM

29. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.

In 2007 to 2008, the Chinese authorities shifted their focus from climate change-related legal instruments to more traditional tools, developing China's tax burdens and incentive policies.

Under the corporate income tax reform (effective since January 2008), certain incentives are granted to any Chinese enterprise (either foreign-invested or not) undertaking environmental protection and other projects (*see Question 28*). However, reforms such as the increase of consumption tax on oil products (December 2008), or the increase in water price (announced in July 2009), show the government's willingness to implement the polluter-pays principle and build environmental awareness among the population.

In the 2009 economic crisis context, the main trend was a constant emphasis on the development of renewable energies, seen by the Chinese government as a mean to alleviate pollution issues (China receives more than two thirds of its electricity from coal) and dependence on imported fossil energy sources (mainly oil and gas), as well as to foster employment in new industries. Official sources referred to CNY2 trillion (about US\$0.3 trillion) to CNY3 trillion (about US\$0.44 trillion) (until 2020) of public investment in renewable energies. A recent implementation measure was the decision in July 2009 to subsidise utility-scale solar power projects.

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