

## **Good on paper, good in practice? Glance at the Environmental Protection Law of China**

### **Background**

China's rapid growth has caused negative consequences to its environment. For example, China experienced severe smog and haze in 2013, including metropolitans like Shanghai and Beijing. Environmental protection has become a prominent issue in China. A Chinese documentary film called *Under the Dome* produced by Chai Jing, a former China Central Television journalist, concerning air pollution in China was viewed over 150 million times on Tencent<sup>1</sup> within three days of its release.

The revised Environmental Protection Law of China (the "EPL") was adopted by the 12<sup>th</sup> NPC on April 24, 2014. This is the first significant amendment of the old EPL since when it was promulgated twenty-five years ago in 1989. The EPL takes effect on January 1, 2015.

### **Impact of the EPL**

In general, the EPL plays a role as the fundamental law in the area of environment protections. It has further specified the supervision and administration duties of the government on the environmental protection, improved the basic system of the environmental protection, increased the liabilities for pollution control of the enterprises, and strengthened the legal sanctions against the violations of environmental laws. The total number of articles of the EPL has been increased from the original 47 to 70.

#### **a) Impact on the public**

- Encouragement of public participation. Any citizens, legal entities and other organizations are entitled to report not only any environmental pollution or ecological damage by any entity or individual to the competent departments, but also any failure to perform the duties of environment protection by the local government to its higher level or supervisory authorities. The EPL also regulates that any information provided by such "whistle blowers" shall be kept as confidential (Article 57 of the EPL).
- Extended qualified organizations to file a lawsuit against environment pollution. The EPL has expanded the scope of qualified organizations who can file a public interest lawsuit against the environmental violations when it has satisfied two elements: (1) be registered with the civil affairs department of the government at or above the municipal level with districts and (2) engaging in public service activities in environmental protection for five consecutive years without any record of violation of laws (Article 58 of the EPL). Following the effective date of the EPL, the Interpretations of the Supreme People's Court on Several Issues concerning the Application of Law in the Hearing of Environmental Civil Public Interest Lawsuits has taken into force on January 7, 2015. The promulgation of such interpretations has shown the determination of the government to protect the environment through legal actions.

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<sup>1</sup>An online video media platform in China

## b) Impact on the enterprises

- Increased liabilities to disclose the information. For instance, the “key pollutant-discharging enterprises”<sup>2</sup> shall publish the names of its major pollutants, the ways of emission, the emission concentration and total volume, whether the emission exceeds relevant limits, as well as the construction and operation of pollution prevention and control facilities (Article 55 of the EPL). The project owner of a construction project for which an environmental impact report is required pursuant to the law shall explain relevant situations to the public when preparing the environmental impact report, and solicit public opinions sufficiently (Article 56 of the EPL).
- Increased penalties by regulating a daily penalty without monetary cap. Where a non-compliance enterprise is fined and ordered to make correction due to illegal discharge of pollutants but refuses to make correction, the administrative organ that makes the punishment decision pursuant to the law may impose the fine thereon consecutively on a daily basis according to the original amount of the fine commencing from the date immediately following the date when it is ordered to make correction (Article 59 of the EPL). By the end of February, 2015, two months after the effective date of the EPL, there are 15 cases nationwide involving the new regulation of the daily penalty, totally amounting to RMB 7,230,000.
- New penalties for responsible persons of the polluting enterprise. The person in charge who is directly responsible for the pollutions of the non-compliance enterprise may face a detention up to fifteen (15) days under certain circumstances, such as failure to obtain the environment impact assessment or the pollutant discharging license but refusing to rectify, discharging pollutants illegally and producing and using the pesticides that are clearly prohibited by the State, etc. (Article 63 of the EPL). This is a new punishment of detention for the management personnel of a non-compliance enterprise, even it has not risen to the criminal level.
- Incentives for compliance enterprise. The State and the people's governments shall adopt the policies and measures in finance, taxation, price and government procurement, etc. to encourage and support the development of the environmental protection industries such as technical equipment for environmental protection, comprehensive utilization of resources and environmental services, and the enterprises, public institutions and other producers and business operators that further reduce the discharge of pollutants on the basis of complying with the statutory requirements on discharge of pollutants (Article 21, Article 22 of the EPL).

## c) Impact on the government

- Provided more incentives for government officials to enforce the law. The EPL regulates

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<sup>2</sup> The term of “key pollutant-discharging enterprises” has not been defined in the EPL, which might be subject to future interpretations.

that the completion of the environmental protection targets by a government official shall be taken as an important basis for assessment and evaluation of such government official and the result of such assessment and evaluation shall also be made to public (Article 26 of the EPL).

- Increased liabilities for non-compliance government officials. The primary persons in charge of the relevant government departments may face resignation from office under certain circumstances, such as grant of administrative license to applicants that fail to satisfy the conditions of administrative licensing, covering up environment-related illegalities, failure to disclose environmental information that should be disclosed in accordance with the law, etc. (Article 68 of the EPL).

### **Challenges**

The promulgation of the EPL signals the government's determination to solve the environmental issues. However, the main challenge for the new law is always its enforcement. The local governments still need time to understand the new law and establish a unified standard and process in practice. Also, some provisions of the EPL might require further interpretations and guidance. Hopefully, the EPL will not only look good on paper, but also in practice.