

## **New Environmental Protection Law will lead China into a Cleaner Future**

On April 24, 2014, the Standing Committee of China's National People's Congress (“NPC”) approved to adopt the amendment to the Environmental Protection Law (the new “EPL”), the first amendment since the original EPL was enacted 25 years ago. It will take into effect on January 1, 2015.

With 70 articles compared with 47 in the original EPL, the new EPL begins with the establishment of the environmental protection as the country's basic policy, in order to provide a stronger legal foundation to fight against the environment pollution and improve the environment condition dramatically in China.

The new EPL has established the principles that national economic and social development should be coordinated with environmental protection, and environment and health monitoring, survey and risk assessment mechanism shall be successively improved.

Among others, the new EPL achieves the “reform” of environment protection through the revolutionary changes and improvement in the following main respects:

### 1. Supervision and Management

#### 1.1. Monitoring and Early Warning System (Article 17 – 18)

The state will establish the monitoring system including the relevant network and stations for the monitoring information sharing and management.

Meanwhile, the state and provincial governments will also authorize their departments or professional institutions to survey and assess the environment condition, and establish the early warning system for resource and environmental carrying capacity.

#### 1.2. Environmental Impact Assessment (Article 19)

Besides the existing environmental impact assessment (the “EIA”) towards projects which may cause impacts on the environment, the new EPL introduces the EIA towards framework/plans for the development and use. Any plans without EIA shall not be implemented and any projects without EIA shall not be constructed.

#### 1.3. On-site Inspection (Article 24 – 25)

The environmental protection departments and environmental monitoring agencies of different levels are empowered to conduct on-site inspections to polluting enterprises. If enterprises discharging pollutants violate the laws and regulations, which have polluted the environment or may cause the pollution, the environmental protection

departments will be authorized to detain or seize heavily polluting facilities and equipments.

## 2. Prevention of Pollution

### 2.1. Clean Energy (Article 40)

The State promotes and encourages the clean production and resource recycling. Clean energy shall be the priority to be made use of by enterprises.

Moreover, the technology and equipments to reduce the pollutants and prevent the pollution shall be highly recommended to use.

### 2.2. Quota on Discharging Major Pollutants (Article 44)

The new EPL establishes the rule of quota on major pollutants. The specific quota on total amount of pollutants discharged is set out by State Council and executed by different levels of governments.

For enterprises discharging pollutants, on one hand, they shall comply with national and local pollutant discharging standards, and on the other hand, they shall also control the total amount of discharged pollutant within the quota allocated to them separately.

If the total amount of discharged pollutants from all enterprises in one area is over the permitted quota or those enterprises don't achieve the goal of national environmental quality, the environmental protection departments in that area shall suspend the approval of EIA for the application of construction projects with major pollutants discharging facilities.

### 2.3. Pollutant Discharging License (Article 45)

The new EPL stipulates the system of pollutant discharging license. Without the pollutant discharging license, any enterprises are not allowed to discharge pollutants. Even if one company obtains the pollutant discharging license, the pollutant discharging shall be subject to the requirement of pollutant discharging license.

## 3. Information Disclosure and Public Participation

Individuals, legal entities and other groups are entitled to obtain the environment information and participate in the supervision of environmental protection based on the new EPL.

### 3.1. Information Disclosure (Article 53 – 56)

The new EPL specifies the following information which the public may access to:

- a. Environment related information published by environmental protection departments of governments of different levels and other environmental monitoring agencies;
- b. Information of environmental quality and monitoring to major polluting sources as well as other serious environmental information published by State Council;
- c. Environmental condition reports periodically published by environmental protection departments of provincial governments;
- d. Information of environmental quality, environmental monitoring, environmental emergencies, information of environmental related administrative permission, administrative penalty, collection of discharging pollutants, as well as information of violation of environmental protection laws and regulations by enterprises or other business groups, disclosed by environmental protection departments of country and municipal levels and other environmental monitoring agencies;
- e. Names of major pollutants, discharging methods, concentration and total amount of discharged pollutants, construction and operation of pollution protection facilities published by major pollutant discharging enterprises;
- f. EIA report (except contents relating to national secrets or trade secrets) published by approval departments of EIA.

### 3.2. Whistleblowing System (Article 57)

Individuals, legal entities or other groups are entitled to report the environment pollution and ecological damage activities to environmental protection departments and other environmental monitoring agencies.

Personal information of whistleblowers shall be confidential and benefits of whistleblowers shall be protected.

### 3.3. Public Interest Litigation (Article 58)

The new EPL expands the participants who may bring the environmental cases into litigation in China.

This new rule will apply to social groups who meet the following requirements:

- a. Duly registered with the Civil Affairs Agencies of Municipal People's Governments (with jurisdiction of districts) or above levels;
- b. Keeping conducting environmental protection activities for public interests for more than successive 5 years without any illegal record.

However, such groups shall not make profit through the environment pollution

litigation.

#### 4. Punishment (Article 59)

The new EPL establishes the a new penalty system, which authorizes environmental protection departments to issue corrective orders and penalties based on the original penalty amount to polluting enterprises on a daily basis, from the day after the corrective order is issued, as long as enterprises fail to bring their operations in line with environmental regulations.

This new penalty system replaces the previous one-time penalty on polluting enterprises, which will definitely increase the cost of enterprises who are conducting the environment pollution activities. As there is no maximum limit for the penalty, environmental protection departments will start to pose an existential threat to non-compliant enterprises.

#### Comments

The new EPL establishes many strong amendments to improve environmental protection rules and reinforce the power of relevant authorities and public to fight against the pollution in China. It will certainly have a big potential to influence the dynamics of environmental protection in China in a long term.

Despite the positive changes in the new EPL, it still has space to be perfect and will face many challenges as follows:

- a. Most of the amendments in the new EPL are related to the pollution prevention and environmental protection, however, as one of the important parts of environmental protection, ecological protection is not concerned enough in the new EPL, which causes the imbalance between these two key issues in the new EPL. Therefore, ecological protection shall be also strengthened in future.
- b. Even though the environmental protection departments of governments of different levels are authorized more powers to execute the monitoring and inspection activities, such departments are still tightly controlled by corresponding governments in terms of personnel and finance, which may potentially create difficult conditions for implementation of activities and influence their independence, especially in small places of country level. It is still uncertain to what extent local environmental protection departments will be able to make use of the powerful weapons available to levy real punishments. Moreover, the new EPL doesn't specify how to define and calculate penalties to the polluting enterprises. Whether a maximum amount of penalty will be considered is still unclear.

- c. Even though the participants in the environmental litigation are expanded and social groups are involved in such litigation based on the new EPL, however, possibilities for environmental litigation still remain limited. Since only social groups registered above municipal level will be able to initiate relevant lawsuits, many other active parties engaging in environmental protection activities will be excluded for the litigation, such as many NGOs registered below municipal level and individuals. Therefore, more eligible participants shall be considered in future in order to encourage the legal defense for the purpose of environmental protection.