

SMART ENVIRONMENT PROTECTION IN 2018

LPA-CGR is happy to present you with a legal update on the environment protection regulations in Mainland China.

1. New regulation for the environmental impact evaluation of construction projects

As of today, in China, construction projects are subject to the revised Law of the People's Republic of China on Environment Impact Assessment, effective since September 1st, 2016 and the Administrative regulations on the Environmental Protection of Construction Projects, applicable from July 16th, 2017.

According to these regulations, an Environmental Impact Assessment (EIA) is required when a new construction project is considered of having an impact on the environment, in view of the Category-based Administration Catalogue for the Environmental Impact Assessment of Construction Projects, effective from April 9th, 2015 and revised in 2017. Such environmental impact assessment shall analyze, forecast and evaluate the potential impact of the project on the environment. The type of environmental impact assessment to be issued shall depend on the environmental impact of the construction project.

| Environmental impact | Type of environmental impact assessment |
|---|---|
| Potentially serious environmental impacts | Environmental Impact Report |
| Potentially mid environmental impacts | Environmental Impact Statement |
| Very small environmental impacts | Environmental Impact Registration Form |

Construction units must submit the environmental impact assessment to the competent administrative department of environmental protection before starting construction, and shall not start construction before obtaining the approval of this authority.

The General Office of the Ministry of Environmental Protection recently issued lists of major changes to construction projects that are subject to environmental impact assessment. These measures will come into effect on July 1st, 2018. Affected industries shall include:

1. Construction projects in the pulping and papermaking industry
2. Pharmaceutical construction projects
3. Pesticide projects
4. Chemical fertilizers (nitrogen) construction projects
5. Textile projects
6. Tannery construction projects
7. Sugar construction projects
8. Plating construction projects
9. Steel construction projects
10. Chemical-recovery projects
11. Flat glass construction projects
12. Cement manufacture construction projects
13. Copper, lead and zinc smelting construction projects
14. Aluminum smelting projects

For each industry, there is a list of major changes subject to environment impact assessment. Changes are classified into 4 sections: "scale", "construction site", "manufacturing process of the unit", and "environmental protection measures". For example, all these lists state that a major change occurs regarding the scale when a factory's production capacity increases by 30% or more.

Approval shall not be granted by the authorities for any project, either for initial construction or extension of project, that is not in line with laws and regulations on environmental protection or in the event that the conclusions of the environmental impact evaluation are unclear and unreasonable.

2. New guidelines for the review of contingency plans for environmental emergencies

Any enterprise in China shall establish an environmental contingency plan based on several Chinese laws including but not limited to the Emergency Response Law and the Environmental Protection law.

This environmental contingency plan aims to respond to all types of accidents and natural disasters. It consists of different emergency response measures to avoid or minimize the impacts on the natural environment, properties and people.

Issued on January 31st, 2018, the Guide to Reviews of Contingency Plans for Environmental Emergencies by Enterprises and Public Institutions (the Guide) specifies the requirements for enterprises to review their contingency plan for environmental emergencies.

❖ A main goal: verifying the deficiencies in environmental contingency plans

The reviews shall focus on whether the ways to respond to emergencies are designed in a clear, reasonable and practicable manner, and meet their requirement of “taking remedial actions first” and “saving the environment”. Deficiencies may be brought to light and ways of improvement may be explored.

❖ Resources shall be allocated for the environmental contingency plan review

A dedicated team shall be involved in the review process. Such team generally includes experts with relevant field knowledge and practical experience, along with potential representatives of residents that are likely to be impacted by environmental emergencies and units' representatives.

Besides, the enterprise shall include the assessment funds in their environmental contingency plan budget.

❖ Methods to conduct the environmental contingency plan review

The review method combines qualitative and quantitative judgments.

Qualitative judgments result from experts review. Each expert determines an evaluation score by

assigning points and gives a conclusion such as "in line with", "partially compliant", or "inconsistent". The conclusion which is "partially compliant" or "inconsistent" shall be motivated.

Quantitative judgments consist of assessing the average value of the assessment expert's scores to set a final quantitative score result.

❖ Clear procedures for the implementation of the environmental contingency plan review

The review shall generally be conducted according to the procedure provided for in the Guide. Main steps of the review include (1) introduction of the enterprise environmental contingency plan to the review team, (2) data review, onsite inspection, qualitative judgment and quantitative scoring, (3) communication of the evaluation's results and opinions by the review team to the relevant personnel of the enterprise.

3. New environmental protection tax policy implemented in China

On January 1st, 2018, the Chinese government implemented a new environmental tax policy replacing the previous pollutant discharge fee that was collected for nearly 40 years.

❖ New environmental protection tax

According to the new law on environmental protection tax, taxpayers are enterprises, entities, other producers and operators that directly emit taxable pollutants into the environment, or store or dispose of solid wastes not in compliance with the national or local standards for environmental protection. Taxable items include air pollutants, water pollutants, solid wastes and noise.

Only pollutants discharged directly into the environment and listed under the law are targeted and the unit for the tax calculation basis differs based on the type of pollutant.

The new law also provides for two kinds of tax reliefs, temporary exemption and reduced collection, to encourage enterprises to reduce pollution discharges.

Punishments for evasion or fraud are not specified by the new law, but offenders shall be held liable in line with the regulations of the Administration of Taxation

and the Environmental Protection law. Indeed, in addition to paying environmental protection tax in accordance with this new law, enterprises that emit taxable pollutants shall be liable for the damage arising therefrom.

❖ Declaration obligations

The announcement on the publication of environmental protection tax returns which was published on January 27th, 2018 and came into on the same date, sets out three different types of Environment Protection Tax Declaration Forms.

When filing an environmental protection tax return, a taxpayer shall in any case submit to the tax authority the varieties and amounts of taxable pollutants emitted, the concentration values of air and water pollutants, as well as other taxation materials required by the tax authority.

The environmental protection tax shall be calculated on a monthly basis, but declared and paid on a quarterly basis.

Any changes to the taxpayer's basic information shall be promptly reported to the competent tax authorities.

In case of any failure to abide by this provision, the tax authority shall order the relevant taxpayer to

make corrections within a time limit, and may impose a fine of not more than CNY 10,000.

❖ Environmental protection-related tax preferences

Besides the environmental protection tax, enterprises should take into consideration the following environmental protection-related tax preferences:

- » Enterprise income tax exemptions may be granted to enterprises conducting projects of environmental protection and energy and water-saving projects.
- » Enterprise income tax credits may be given to special equipment for environmental protection and energy and water conservation.
- » Enterprise income tax preference may be granted for the comprehensive utilization of resources.
- » Refund upon collection of value-added tax (VAT) for the comprehensive utilization of resources.
- » Imports of large environmental protection and resources comprehensive utilization equipment may be exempted from import duties and VAT.

Our dedicated team remains at your entire disposal for any additional information you may need.



Fanny Nguyen

SHANGHAI

Partner

T : +86 (21) 6135 9966

Mail : fnguyen@lpalaw.com.cn



Lucie Tusseau-Leveque

SHANGHAI

Associate

T : +86 (21) 6135 9966

Mail : ltusseauleveque@lpalaw.com.cn