

Major projects: environmental risks in China: overview

by *Monica Sun* and *Jie Li, Herbert Smith Freehills*

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A Q&A guide to environmental risks in major projects in China.

This Q&A provides a high level overview of the key environmental issues and processes in major projects in China and looks at key practical issues including the reporting requirements to regulators, liability for historic environmental damage and the main environmental licence/permit requirements.

To compare answers across multiple jurisdictions, visit the major projects: environmental risks [Country Q&A Tool](#).

This Q&A is part of the global guide to major projects: environmental risks law. For a full list of jurisdictional Q&As visit www.practicallaw.com/majorprojects-guide.

Market overview

1. What are the main trends in major projects in your jurisdiction? What have been the most significant recent deals? What are the major upcoming projects?

Main trends

The Chinese energy sector is transforming from a conventional carbon-based energy to a more sustainable energy market. The State Council's Energy Development Strategy Action Plan frames China's energy strategy between 2014 and 2020, with a focus on clean, efficient, safe and sustainable energy systems. The target is that by 2020, at least 10% of energy must be supplied from natural gas and a maximum of 62% must be supplied from coal.

In addition, there is expected to be a trend of investment in solar energy, nuclear power and other alternative energy. Private investment is increasingly encouraged in sectors traditionally dominated by state-owned enterprises, such as oil and gas pipelines, liquefied natural gas receiving, storage and processing facilities.

China promotes public private partnerships (PPPs) in the public sector, which includes energy, transportation, utilities and other infrastructure projects. Central and local governments are encouraged to implement PPP regimes. Although there are concerns about the implementation of the regime, the authors have seen a lot of interest from international and domestic investors in PPPs in China.

Most significant deals

Some of the most significant Chinese infrastructure deals between 2014 and 2016 include the following (www.preqin.com/docs/reports/Preqin-Infrastructure-China-May-2016.pdf):

- **Chinese Hospital Portfolio Project.** On 25 September 2015, International Hospitals Group (IHG) announced that it signed a long-term partnership with Wanda Group, China's largest commercial property company, to build, equip, commission and manage a new 200-bed IHG Qingdao International Hospital over the next three years. The CNY1 billion-development commenced immediately. In addition, on 6 January 2016, IHG announced that it signed a ten-year exclusive agreement with Wanda Group to be their partner on all their hospital developments worldwide. Two projects

have been initially prioritised under the second agreement, one is a 1,000-bed hospital in Shanghai and the other is a 500-bed project in Chengdu. Wanda said it would invest up to GB£1.5 billion in the first three projects, with IHG targeting revenue of at least GB£300 million (www.ihg.co.uk/latest-news/ihg-and-wanda-announce-23-year-partnership-in-qingdao.html and www.ihg.co.uk/latest-news/ihg-and-wanda-group-announce-10-year-exclusive-global-hospital-partnership.html).

- **United PV Chinese Solar Development Project.** On 25 May 2015, United Photovoltaics Group announced that it would partner up with Huaxia Life Insurance Company Limited to develop solar power plants in China, with a total installed capacity of 1GW and an aggregate consideration of CNY9 billion, in the coming two years (<http://unitedpvgroup.com/en/news-events/press-releases/detail/article/huaxia-life-invests-rmb9-billion-insurance-fund-to-jointly-develop-1gw-solar-power-plants-with-unite>).
- **930MW Hareon Solar Portfolio Project.** On 13 May 2015, United Photovoltaics Group announced its agreement with Hareon Solar Technology Company Limited under which United PV acquired 17 solar power plant projects under Hareon Solar with a total installed capacity of 930MW, which is currently the world's largest-scale single solar power plant acquisition. As estimated in the agreement, the aggregate consideration for the acquisition amounted to CNY8.8 billion, a record-high amount for solar power plants acquisitions in the year (<http://unitedpvgroup.com/en/news-events/press-releases/detail/article/united-pv-acquires-930mw-solar-power-plant-projects>).
- **ChongQing SongZao Sembcorp Electric Power Project.** In December 2015, Sembcorp Industries formed a joint venture with Chongqing Energy Investment Group's subsidiary to invest in a mine-mouth 1,620MW coal-fired power project in Chongqing municipality. It is expected to commence commercial operation by the first quarter of 2017. The total investment value will be approximately CNY6 billion (www.sembcorp.com/en/media/media-releases/utilities/2015/december/sembcorp-forms-joint-venture-to-invest-in-chongqing-power-project/).
- **Jinko Solar Project.** On 30 July 2014, JinkoSolar Holding Co., Ltd (Jinko), a global leader in the solar photovoltaic industry, announced that the China Development Bank International, the Macquarie Greater China Infrastructure Fund, a fund managed by Macquarie Infrastructure and Real Assets, and New Horizon Capital agreed to invest a total of US\$225 million in Jinko's downstream solar power project business. The three investors are expected to provide support and additional resources to facilitate Jinko's business development in terms of project financing, project development, project operation and global green energy network (www.jinkosolar.com/press_detail_954.html?lan=fr).
- **Tian Lun Gas Holdings Project.** On 18 May 2015, IFC, a member of the World Bank Group, and a fund managed by the IFC Asset Management Company invested US\$150 million in China Tian Lun Gas Holdings Limited to help expand the company's natural gas distribution infrastructure in China. The equity investment is expected to substantially increase the supply of natural gas, a cleaner and more economical form of energy than traditional fuels such as coal, diesel, and gasoline, particularly in less developed Chinese cities over the next three years (<http://ifcextapps.ifc.org/ifcext%5CPressroom%5CIFCPressRoom.nsf%5C0%5C2E12B4F5FEB9328F85257E490018CC45>).
- **100MW Dingbian Solar Power Plant Project.** On 28 January 2016, Kong Sun Holdings Limited announced that the Group acquired a PV power plant in Dingbian County, Yulin City and Shaanxi Province, with installed capacity of 100MW. The construction of the PV power plant has been completed and connected to the power grid since January 2016. The total consideration of the PV power plant is CNY895 million (www.kongsun-hldgs.com/wp-content/uploads/2016/01/Kongsun_PV-Power-Plant-in-Dingbian-Shaanxi_EN_FN.pdf).
- **100MW Hubei Solar Power Project.** On 30 July 2015, United PV announced that, one of its wholly-owned subsidiaries entered into an acquisition agreement with Hubei Qixing Auto-Body Company Limited, whereby United PV acquired a 100MW solar power project owned by Hubei Jingtai for CNY850 million. Hubei Jingtai's 100MW solar power project, the largest single plant in Hubei Province, achieved on-grid connection in the second quarter of 2015 and enjoyed the beneficial feed-in tariff (<http://unitedpvgroup.com/en/news-events/press-releases/detail/article/united-pv-acquires-100mw-solar-power-project-in-hubei>).
- **Goldtrust Water Project.** On 27 April 2015, China Water Affairs Group Limited, a leading integrated water service provider in China, announced that the company entered into an agreement with AIRRO Cayman Holding IV CORP.,

managed by JP Morgan Asset management Real Asset (Asia) Ltd, and Ms. Lu Hai, to acquire 100% of interest in Goldtrust Water Holdings Ltd. for a total consideration of US\$109.71 million in cash. It is the single largest acquisition of the group. In addition, the acquisition is also expected to secure 1.13 million tons per day increase in overall water supply and sewage treatment capacity in the future (www.chinawatergroup.com/News_View.asp?NewsID=161).

- **Hua Nan Expressway Project.** On 15 May 2015, Macquarie International Infrastructure Fund Limited announced that it has agreed to sell its 81% effective interest in Hua Nan Expressway (HNE) for a total cash consideration of S\$110 million. The deal will be made with Topwise Consultants Limited, an existing shareholder of HNE (www.macquarie.com/us/about/newsroom/2015/hua-nan-expressway).

Upcoming projects

The 13th Five-Year Social and Economic Development Plans approved on 16 March 2016 set out the goals and plans for China's development in the next five years. Infrastructure, upgrading and environment improvement are among the most important goals. China plans to build or upgrade around 30,000 km highways and build up more than 50 new civil airports. At the same time, the government is promoting the "One Belt, One Road" policy for the construction of the regional trade route. There will be great opportunities for construction, engineering and environmental management.

In relation to environmental protection, the Plans provide opportunities in clean energy and energy-saving/environmental protection technologies sector. In the near future, the authors expect that more direct investment or PPPs in these sectors will be open to investors.

Legal framework and authorities

Domestic laws and regulations

2. What are the main domestic environmental laws and regulations applicable to major projects?

Overview

China's legal system is based on the Constitution and is made up of written laws, regulations, rules, directives, and local laws and regulations. Laws are often expressed as relatively general principles or concepts rather than detailed (as more often seen in common law systems). Instead, the details are dealt with in regulations issued by the State Council and departmental rules issued by the State Council's various ministries and departments. The local People's Congress and local government can also enact local legislation and issue local administrative rules, which are applicable to a particular region. Inconsistency between the rules from different sources can sometimes cause difficulties in interpretation and implementation of the rules in China. In addition, detailed implementing regulations are often not available when the primary legislation first becomes effective and therefore disparity can arise between a published law and its implementation in practice. Court judgments do not constitute binding precedents, although they are used for the purposes of judicial reference and guidance.

The domestic legal regime of environmental law is set out more specifically in various national laws, as well as administrative, departmental and local regulations, and national or local standards.

National laws. The National People's Congress (NPC) and the Standing Committee of the NPC are empowered by the Constitution to promulgate national laws, which serve as the primary legislation. The main domestic environmental laws are the:

- Law of the People's Republic of China (PRC) on Environmental Protection Law, which is the cardinal law for environmental protection in China and sets out the basic principles for environmental protection, including the administration of pollution prevention and control, environmental impact assessments and control of pollutant

discharges.

- Law of the PRC on Marine Environmental Protection Law, which provides the legal framework for protecting the marine environment and resources, maintaining the ecological balance and preventing pollution damage, including pollution caused by offshore oil, gas exploration and exploitation.
- Law of the PRC on Water Pollution Prevention.
- Law of the PRC on Air Pollution Prevention.
- Law of the PRC on Prevention and Control of Environmental Noise Pollution.
- Law of the PRC on the Prevention and Control of Environmental Pollution by Solid Waste.
- Law of the PRC on Evaluation of Environmental Effects.
- Law of the PRC on Prevention and Control of Radioactive Pollution.
- Law of the PRC on the Protection of Oil and Natural Gas Pipeline.

Administrative regulations. The State Council has published various administrative regulations in accordance with national environmental laws. These regulations address the administrative issues concerning different aspects of the environmental protection law. For example, administrative regulations in relation to the offshore oil and gas sector include Regulations on Environmental Protection of Offshore Oil Exploration and Exploitation, which provide a number of important environmental requirements applying to all offshore petroleum operations, including the preparation of an environmental impact assessment report, the capacity of emergency response and anti-pollution equipment installed on platforms, whether fixed or mobile.

The Regulations on Safety Supervision and Management of Civilian Nuclear Facilities provide detailed requirements for the licensing system for the development of civilian nuclear facilities in China (including construction permits, nuclear plant operation permits and operator licence and staff permits) and also provide that the National Nuclear Safety Administration and its dispatched institutions are in charge of safety supervision and the management of civilian nuclear facilities.

Departmental rules/local regulations. Relevant departments at central government level and local legislature and local people's governments have issued detailed regulations and rules to implement and provide more detailed rules on the national laws and administrative regulations. For example:

- The Offshore Environmental Protection Regulations set out the general environmental requirements relating to offshore oil exploration and exploitation.
- The Implementation Rules for the Regulations on Environmental Protection of Offshore Oil Exploration and Exploitation further specify the implementation details, such as the timing and scope of the environmental inspection to be conducted by the environmental authority.
- The Interim Provisions on Managing the Decommissioning and Abandonment of Offshore Oil and Gas Production Facilities provide a basis for oil and gas field abandonment and decommissioning at the end of production life.
- The Implementation Rules of Civil Liability Insurance for Oil Pollution Damage state that registered owners of ships within China's territorial sea, whether or not the flag of the ship is Chinese, should maintain ship oil pollution civil liability insurance or obtain corresponding financial guarantees of a prescribed amount of special drawing rights.

National/local standards. Environmental protection standards are issued at both the national and local levels. Local governments can formulate local environmental quality standards for items not specified at national level. With regard to items already specified in the national standards, they may formulate more stringent local standards. The local environmental quality standards must be submitted to the competent authority for record.

National standards include those on environmental quality and pollutant discharge levels. For example, the discharge of any oil-polluted water from a cabin or deck of a vessel is subject to Discharge Standard for Ship Pollutant (GB3552-83) and the discharge of waste from the oil extraction industry is subject to Discharge Standard for Oil-polluted Water of Ocean Oil Exploitation Industry (GB4914-85). In addition, the assessment and management of air quality is subject to Ambient Air

Quality Standards (GB3095-2012).

High-risk areas

Unlike in other areas of law, the concept of punitive damages is not found in China environmental legislation.

The Environmental Protection Law provides that biodiversity should be protected. In December 2015, the General Office of State Council and Central Committee of the Communist Party of China issued a Pilot Reform Program of the Ecological Environmental Damage Compensation System (Pilot Program). Certain provinces have been selected to carry out the Pilot Program between 2015 and 2017. A nationwide eco-environmental damage compensation system will be launched on a trial basis in 2018 and is expected to be developed by 2020. Under the Pilot Program, where an incident of environmental contamination or ecological disruption occurs in a key ecological function area or development-prohibited area specified in a national or provincial main-function-oriented zoning plan (that is, a territorial development plan dividing exploitation of China’s territory into four categories: optimal; priority; limited and prohibited exploitation), the liable entity must compensate for eco-environmental damage. This compensation includes:

- Expenses for the removal of contaminants.
- Eco-environmental remediation expenses.
- Compensation for the loss of the service functions of eco-environments.
- Compensation for the cost of eco-environmental damage investigations, appraisals, and assessments.
- Other reasonable expenses.

3. What reforms are currently in progress/being considered to domestic environmental legislation? What is their likely impact? What is the timing?

A booming economy in China has, in the past, come at the expense of environmental protection and environmental degradation has resulted in a need for sustainable development. One of the biggest issues for China in the near future is how to strike a balance between environmental protection and economic growth.

Environmental policies in China are primarily determined by the Five-Year Social and Economic Development Plans, which are supplemented by more specific Five-Year Environmental Plans. The 13th Five-Year Plan (2016–2020) emphasises environmental protection and sets out the following goals for environmental protection in the next five years (by 2020):

- Reduction of water consumption by 35%, compared to the 2013 figure.
- Total consumption of primary energy to be lower than five billion tons of standard coal.
- Reduction of energy consumption per unit of GDP by 15% (compared to the 2015 figure).
- Reduction of carbon dioxide emissions per unit of GDP by 40-45% (compared to the 2015 figure).

In recent years, enhanced environmental awareness has led to improvements in the environmental legal system. Stricter regulations and enforcement are also expected in the future, in particular in line with a series of recent environmental pollution incidents, including serious haze pollution in major cities, the 2015 Tianjin explosion and the 2013 CNPC Dalian fuel tank explosion in China.

International conventions and agreements

4. What are the main environmental international conventions and agreements that are relevant to major projects and to which your jurisdiction is a signatory? To what extent have they been implemented into national law?

International conventions and agreements

China has acceded to a number of international conventions and agreements in respect of environmental protection, which include for example:

- Marine environment and pollution:
 - International Convention on Civil Liability for Oil Pollution Damage 1969 and 1992;
 - International Convention for Civil Liability for Bunker Oil Pollution Damage 2001;
 - International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972.
- Nuclear damage:
 - Convention on Assistance in Case of a Nuclear Accident or Radiological Emergency 1986;
 - Convention on Early Notification of a Nuclear Accident 1986;
 - Convention on Nuclear Safety 1994.
- Habitats and species:
 - Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973;
 - Convention on Biological Diversity 1992.
- Climate change:
 - United Nations Framework Convention on Climate Change 1992;
 - Kyoto Protocol 1997;
 - Paris Agreement 2016.
- Waste and hazardous substances: Basel Convention on the Control of Transboundary Movements of Hazardous Wastes 1989.
- Others:
 - United Nations Convention to Combat Desertification 1994;
 - Montreal Protocol on Substances that Deplete the Ozone Layer 1987;
 - Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar) 1971.

Implementation into domestic law

The State Council concludes conventions and agreements with foreign states, the Standing Committee of the National People's Congress decides on the ratification and abrogation of conventions and agreements and the President ratifies and abrogates conventions and agreements based on Standing Committee's decisions (*Article 3, Conventions Conclusion Procedure Law*). After this procedure, the conventions and agreements take effect officially in China.

China adopts the "transformation method", which means that corresponding domestic laws or rules will be issued or amended to enforce the convention rectified domestically. However, in the case of conflict between domestic law and conventions, the implementation of international conventions or agreements remains controversial and a case-by-case analysis may be needed.

Regulatory authorities

5. What are the main authorities and bodies responsible for environmental policy and enforcement?

Ministry of Environmental Protection (MEP)

Main responsibilities. The responsibilities of the MEP include:

- Establishing and improving basic rules for environmental protection.
- Co-ordinating, co-operating, supervising and administering the major environmental problems.
- Prevention and control of environmental pollution.
- Carrying out environmental impact assessments on delegation by the State Council.

The actual implementation of environmental policies at the sub-national level is vested in environmental protection bureaus (EPBs), which are in charge of monitoring industrial pollution discharges, site inspections, issuing discharge fees/fines and prosecution. Currently, the MEP has issued 27 administrative approvals, which mainly concern civil nuclear utilities, radioactive articles and hazardous waste. EPBs also have power to approve specific administrative items, which will be published on their websites.

Powers. EPBs have investigation and enforcement powers on breach of, or non-compliance with, laws and regulations relating to environmental protection. Enforcement powers include, among others:

- The imposition of fines.
- Ordering the suspension of production or business.
- The temporary suspension or rescission of permits or business licences.

National Energy Administration (NEA)

Main responsibilities. The NEA has broad duties such as:

- Working out energy development strategies, planning and policies.
- Making suggestions on structural reform.
- Administering energy resources, such as petroleum and natural gas.
- Proposing policy measures for developing new energy resources and energy conservation in the energy industry.
- Conducting international energy co-operation.
- Being in charge of the protection of oil and gas pipelines nationwide.

Powers. The NEA has investigation and enforcement powers on breach of, or non-compliance with, energy-related laws and regulations (such as the Renewable Energy Law and the Natural Gas Pipeline Protection Law). Enforcement powers include, among others, imposing fines.

State Oceanic Administration (SOA)

Main responsibilities. The SOA was established under the Ministry of Land and Resources and its responsibilities include:

- Undertaking broad duties of co-ordinating the marine monitoring, scientific research, waste dumping, development and utilisation work.

- Setting up and improving the marine administration systems.
- Monitoring, evaluating and disclosing information about marine economic operations.
- Regulating the use of sea areas and protecting the marine environment.

Powers. The SOA has investigation and enforcement powers on breach of, or non-compliance with, laws and regulations on marine environmental protection. Enforcement powers include, among others:

- Administrative warnings.
- The imposition of fines.
- The confiscation of illegal gains.
- Ordering the suspension of production.
- The temporary suspension or rescission of permits.

State Administration of Work Safety (SAWS)

Main responsibilities. The SAWS is responsible for:

- Drafting laws and regulations on work safety, and supervising and administering work safety nationwide.
- Organising, guiding and supervising the performance evaluation of special operation staff.
- The evaluation of safety qualifications of the chief persons in charge and the work safety management personnel of the production and operation entities in the industrial, mining, commercial and trade sectors.

Powers. The SAWS has investigation and enforcement powers on breach of, or non-compliance with, laws and regulations on work safety. Enforcement powers include, among others:

- The imposition of fines.
- The confiscation of illegal gains.
- Ordering the suspension of production and business.

Ministry of Transport (MOT)

Main responsibilities. The MOT's responsibilities include:

- Supervising and administering water transport safety, including inspection.
- The registration and pollution prevention of vessels and relevant water facilities and emergency responses.

Powers. The MOT has investigation and enforcement powers on breach of, or non-compliance with, regulations on water transport safety. Enforcement powers include, among others:

- The imposition of fines.
- The confiscation of illegal gains.
- Ordering the suspension of production and business.

Bureau of Fishery of the Ministry of Agriculture (BFMA)

Main responsibilities. The BFMA's duties include, among others, the environmental protection of fishery waters, investigation of major fishery pollution accidents and protection of fishery resources.

Powers. The BFMA has investigation and enforcement powers on breach of, or non-compliance with, laws and regulations on fishery pollution. Enforcement powers include, among others:

- Administrative warnings.
- The imposition of fines.
- The confiscation of illegal gains.
- Ordering the suspension of production.

National Nuclear Safety Administration (NNSA)

Main responsibilities. The NNSA is the licensing and regulatory body that monitors the safety of nuclear facilities and is responsible for the licensing and the import of nuclear safety facilities. It also maintains international agreements regarding safety.

Powers. The NNSA has investigation and enforcement powers on breach of, or non-compliance with, regulations on nuclear safety. Enforcement powers include, among others:

- Administrative warnings.
- Ordering the suspension of production and business.
- The rescission of permits.

National Development and Reform Commission (NDRC)

Main responsibilities. The NDRC is responsible for:

- Establishing carbon emission trading markets.
- The administration, supervision and guidance for the operation of such market.

Powers. The NDRC has investigation and enforcement powers on breach of, or non-compliance with, laws and regulations on energy development. Enforcement powers include, among others, imposing fines.

For contact details for the above authorities and their websites, see box, *The regulatory authorities*.

Environmental incidents and damage

Risks

6. What are the main environmental risks faced by major projects in your jurisdiction?
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Public awareness of environmental protection has led to major projects with environmental risks being delayed or aborted. For example, there have been public protests against the construction of paraxylene (PX) chemical plants in several cities (including Dalian, Xiamen, Maoming and Shanghai) since 2007. In addition, serious air pollution, including the particle pollution (including particulate matter 2.5 micrometers or less in diameter) in major cities has been a significant issue in China. According to the data published by Friends of Nature, an influential environment protection NGO, 20% of the environmental public interest suits brought in 2015 are about air pollution.

Chinese central and local governments are under public pressure to improve environment quality. Environmental legislation

and enforcement has largely improved in the recent years and more environmental laws and regulations are being published to establish a more comprehensive and stricter legislation system. In addition, regulators' stricter enforcement and the newly established environmental public interest litigation have further contributed to the development of China's environmental legal system.

Types of liability

7. What types of liability exist for environmental incidents or damage in major projects? What are the reporting requirements to regulators? What defences are available?

Liabilities

China's environmental liability regime. The Environmental Protection Law lays down the foundation for environmental protection responsibilities and liabilities, such as:

- **Environmental impact assessment (EIA).** Before the commencement of a construction project, the EIA must be carried out on the likelihood of the pollution to be produced by the project, its impact on the environment and the proposed preventive and curative measures. It must also be approved by the competent environmental protection bureaus (EPBs).
- **"Three synchronisation" system.** The law also establishes a so-called "three synchronisation" system (that is, that the design, construction and operation of the principal parts of a project must be synchronised with the design, construction and operation of appropriate pollution prevention and control facilities). No operation is permitted to commence until the pollution prevention and control facilities are examined and approved by the same competent EPBs that approve the EIA.
- **Discharge permit system.** All plants and facilities that directly or indirectly discharge hazardous or controlled substances must register with the competent EPBs and apply for a discharge permit. In addition, polluters must pay discharge fees (see [Question 16](#)).
- **Polluter pays principle.** The polluter must bear the costs of cleaning up environmental pollution that it causes, pay discharge fees on waste releases that exceed discharge standards and invest in waste treatment facilities. Chinese legislation uses various different terms for the identity of the polluter. This creates difficulties and uncertainties in practice.

The failure to comply with environmental laws and regulations in China can result in civil liability (including tortious liability), administrative liability, and in extreme circumstances, criminal liability (see [Question 9](#)).

Civil liability. If any pollutant discharge of an entity results in property damage or personal injury to a third party, the entity may be subject to civil claims from the third party affected (*Tortious Liability Law*). Other environmental laws and regulations also set out tortious liability for environmental pollution damage.

Both the environmental tortious liability and ultra-hazardous liability under the Tortious Liability Law are no-fault liabilities, unless the national laws specify the circumstances in which the polluter may not be liable (for example, force majeure events or damage intentionally caused by the victim). The liability for nuclear incidents resulting from a nuclear installation or nuclear damage involving nuclear substances is also a no-fault liability. Therefore a regime similar to strict liability under the English law applies in such cases.

On the burden of proof, the Tortious Liability Law provides that where any dispute arises over environmental pollution, the polluter must assume the burden to prove that it should not be liable or its liability should be mitigated in certain circumstances as provided by national laws, and to prove that there is no causation between its conduct and the damage. Damage resulting from environmental pollution can extend to:

- Direct economic loss (that is, the market value of the damage to the production facilities caused by the environmental pollution or loss resulting from a decrease of production or quality).
- Consequential economic loss (that is, the future loss of production).
- The costs of restoring to the status quo.

The civil liability for nuclear incidents is limited in amount and in time. For a nuclear power plant and/or spent fuel storage, transportation and reprocessing facilities, the maximum amount of compensation for the damages caused by one nuclear accident is CNY300 million. In addition, the State provides up to CNY800 million financial compensation. Claims for nuclear damage must be brought within three years from the date on which the claimant knew or ought to have known of the damage, death or injury, subject to a limit of ten years from the date on which the nuclear incident occurred.

Administrative liability. Administrative liability is mainly set out in the Environmental Protection Law and other special laws and regulations in relation to specific sectors (such as water, air and noise).

The scope of the administrative liability for breaching relevant environmental laws includes:

- Administrative fines (the sum of which usually varies from CNY1,000 to CNY1 million in the national laws). If liable enterprises, institutions, producers or operators refuse to make corrections for their breach, they may be imposed a fine on a daily basis).
- Administrative warnings.
- Correction orders to make restitution and take remedial measures (such as clean-up) within a definite time.
- Orders to restrict, suspend or even close down the production and/or operation if the non-compliance is serious.

The person directly responsible may also be subject to administrative sanctions, including warning and/or administrative fines, or even administrative detention (for between five and 15 days).

In addition, the Marine Environment Protection Law provides a unique mechanism whereby the competent regulatory authorities are entitled to claim damages, on behalf of the state, caused to marine ecosystems, marine aquatic resources or marine protected areas that result in substantial losses to the state. There is no monetary limitation of this mechanism.

Criminal liability. In more serious cases, non-compliance with environmental laws and regulations may result in criminal liability. The relevant criminal offences set out in the Criminal Law include the:

- Offence of smuggling, including smuggling nuclear materials, precious and rare species of wildlife or plants and products of rare wildlife or plants.
- Offence of impairing the protection of environment and resources, including for example offence of causing a major environmental pollution accident.
- Offence of dereliction of duty, including for example offence of dereliction of duty for environmental supervision and control.

The scope of criminal liability includes:

- Criminal fines imposed on either entities or individuals that cause serious environmental incidents.
- The confiscation of property.
- Criminal detention.
- Imprisonment (imposed on individuals that are held directly responsible for the incident), depending on the seriousness of the incident. Judicial interpretation issued by China's Supreme Court in 2013 sets out some guidance as to the

seriousness of the incidents.

Reporting requirements

The Environment Protection Law and other environmental laws or regulations, such as the Water Pollution Prevention Law, the Air Pollution Prevention Law, the Environmental Noise Pollution Prevention Law, and the Solid Waste Pollution Prevention Law provide for reporting duties in cases of environmental incidents. For example, in respect of water pollution, the polluter or potential polluter of an environmental incident or other emergency must promptly report to the local EPB where the incident has occurred or may occur. Any entity, after causing a fishery pollution accident or a water pollution accident involving a fishery vessel, must report to the local branches of the Bureau of Fishery of the Ministry of Agriculture. For a water pollution accident caused by a vessel other than a fishery vessel, the report must be submitted to the local branches of the State Oceanic Administration instead.

However, there is a lack of specific liability for non-compliance with these reporting duties, except that the Marine Environment Protection Law provides that failure of any entity or individual who has caused or may cause marine pollution to report immediately the accident to the competent authority will incur administrative fines of no more than CNY50,000 or an administrative warning.

In addition, the Administrative Measures for Contingent Responses to Environmental Emergencies also provide that enterprises and institutions have environmental information disclosure obligations. Failure to comply with these obligations can lead to warnings and administrative fines of no more than CNY30,000. In 2010, the Ministry of Environmental Protection issued a draft Guidance on Environmental Information Disclosure of Listed Corporations, inviting public comments. The draft includes the requirement that sudden and unexpected environmental incidents must be disclosed within one day of the occurrence. In practice, commentators pointed out that before July 2015, only around 20% of listed corporations disclosed their environmental information. One of the goals of the Overall Plan for the Reform of Eco-civilization System (issued by central Communist Party of China and the State Council in September 2015) is the mandatory disclosure of environmental protection information by listed corporations.

Defences

According to the Interpretation on Several Issues Concerning the Application of Law in Hearing Cases of Disputes over Liability for Environmental Torts issued by Supreme Court in 2015, the situations where a polluter's liability may be exempted or mitigated are governed by specific environmental protection laws (such as the Marine Environmental Protection Law or the Water Pollution Prevention Law) or the Tortious Liability Law if there is no provision in the separate law. For example, the Marine Environmental Protection Law provides that the parties held responsible are exempt from liability where either:

- Damage to the marine environment caused by pollution cannot be avoided, despite the prompt and reasonable adoption of measures.
- The pollution is entirely attributable to war, natural disasters or negligence or other wrongful acts performed by a department responsible for the maintenance of beacons or other navigation aids.

In addition, the Environmental Torts Judicial Interpretation also provides that the people's courts should reject defences such as:

- The discharge complies with national or local standards.
- The pollution and damage are caused by a third party's fault.

8. Can liability for historic environmental damage in major projects be imposed on a current (or purchasing) operator or landowner?



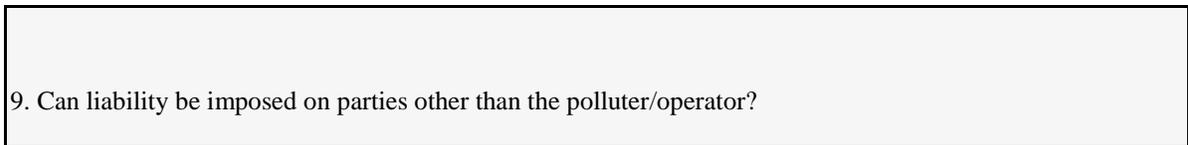
The authors are not aware of any laws or regulations that impose specific historic environmental liabilities on a successor, a purchaser or a transferee of a project and/or operatorship.

However, parties can agree contractually to assume these risks and concession agreements can provide for historic liabilities to be transferred. When an enterprise as a legal person is divided or merged, its obligations and liabilities that result from the division or merger must be assumed by the new legal person(s), unless otherwise agreed on between the obligor and the obligee. In terms of transfer or novation of contractual liabilities, for example in an asset or share acquisition, China has taken a similar approach as many other jurisdictions. In a share acquisition, the target acquired will continue to bear all the liabilities arising out of historic damages of the target, unless the parties have otherwise agreed between them on exclusion of specific liabilities. Third parties, the government and/or regulators would still look to the target for past liabilities. In an asset acquisition, however, the purchaser will not assume the seller's obligations and liabilities unless the purchaser explicitly has agreed to do so. The allocation and assumption of liabilities are without prejudice to creditor's rights. Commentaries have also discussed that the "de facto merger" theory should be introduced into Chinese company laws for an asset acquisition so that historic liabilities may be imposed on a purchaser if the transaction is deemed as having the same effect as a merger.

There is no specific law in relation to contaminated land. However, the State Council issued a Circular of the State Council on Issuing the Action Plan for Soil Pollution Control in May 2016 (Soil Pollution Action Plan). According to the Soil Pollution Action Plan, entities or individuals who cause pollution must be held responsible for treatment and restoration of the soil. If the responsible persons change, the entities or individuals who inherit their rights and obligations must assume respective responsibilities. If the land use right is transferred legally, assignees of land use rights or responsible persons agreed on by both parties must assume relevant responsibilities. If the responsible persons do not exist any longer or it is unclear who the responsible persons are, local governments must bear the responsibilities.

A purchaser of any interests, directly or indirectly, should conduct thorough due diligence on the project, including its environmental compliance obligations and any historic environmental liabilities to assess its associated risks and costs.

Under the Contract Law, a general principle is that an obligor must obtain prior consent from an obligee for the transfer or novation of obligations and liabilities by the obligor. It is generally understood by civil law scholars and commentators that this contract law principle applies to liabilities arising out of tortious acts, including environmental tortious liabilities.



9. Can liability be imposed on parties other than the polluter/operator?

Environmental liability to specific entities

Generally, those liable for civil, administrative and/or criminal liabilities under environmental laws and regulations are persons or entities that pollute or may have polluted the environment. Liable parties include "enterprises, institutions, other producers and operators who cause environmental pollution" (*Environmental Protection Law*).

However, the principles of civil law and the Tortious Liability Law use varying terminology, such as the polluter, the possessor, the user, the owner, and whoever, when referring to responsible and liable entities. These inconsistent and mostly undefined terms make it difficult to determine who the liable entities are. In addition, different governmental authorities may take different views where the law is unclear. In the authors' experience, some governmental authorities consider that the applicant of a project (that is, the applicant for the environment impact assessment approval and/or other requisite permits/licences or the project owner of a construction project) should be held liable. However, other authorities may take a broader view and consider that the liable entity is the entity being used to carry out the activities. Therefore, a wide range of entities may be held liable, subject to the governmental authorities' exercise of discretion.

Examples of this inconsistency of wording are listed below in relation to the rules on oil and gas:

- The Marine Environment Protection Law refers to ‘entity’.
- The Offshore Environmental Protection Regulations refer to ‘enterprise’, ‘institution’, ‘operator’ or ‘individuals’.
- The Regulations on Administration of the Prevention and Control of Marine Projects Pollution and Damage to Marine Environment refer to ‘entity of marine oil and gas mineral resources exploration and exploitation’.
- The Decommissioning Regulations place specific obligations on the ‘operator’ to prepare decommissioning plans, apply for approval by the State Oceanic Administration (or its local branches), collect money from the investing parties and deposit a decommissioning fund. These provisions may be used to argue that as these obligations are placed on the ‘operator’, which may be held directly responsible for breaching its obligations and/or the liabilities caused.

Foreign oil and gas companies engage in oil and gas operations through a production sharing contract/joint operating contract regime, under which losses caused by any pollution are usually charged to the joint account and therefore shared by the partners in proportion to their respective participating interests, unless (typically) direct losses arise out of the gross negligence or wilful misconduct of the operator or its employees. Therefore, if an operator does incur direct liabilities, it will usually be able to transfer liabilities to the partners of the petroleum contracts, unless its actions constitute gross negligence or wilful misconduct.

In relation to civil liability on the occurrence of nuclear incidents, China is not a signatory to either the Paris Convention on Third Party Liability in the Field of Nuclear Energy 1960 or the Vienna Convention of Civil Liability for Nuclear Damage 1963. However, the State Council issued two replies in 1986 and 2007 in relation to third party liabilities for damages resulting from nuclear incidents (generally accepted by the Chinese nuclear industry as legally binding rules). These replies adopted key principles under the Conventions and provide that liability arising from nuclear incidents must be channelled exclusively to the operators (that is, organisations that apply or hold the safety permits and can operate civilian nuclear power plants and/or nuclear facilities) of the relevant nuclear installations. Where more than one operator is involved in a nuclear incident and their liabilities cannot be distinguished, they must take joint liability. Cross-border nuclear incidents are handled based on the conventions between China and the other country in questions or on the principle of equalisation if no convention exists.

Wider net of liable entities

Given the ambiguities in Chinese laws, liabilities may be imposed on a wider net of parties. For example, based on a literal reading of the regulations regarding offshore oil and gas operations, the primary obligation should generally rest with the operator or sub-contractor whose operations cause the environmental pollution. However, it is not impossible for the courts to take a broader view to hold the parties to the petroleum contracts (that is, owners or investing entities) liable, even if they are not the operators.

As to whether liability can extend to shareholders, the general rule is that environmental liability will be borne by the company who causes it. China has formally adopted the doctrine of ‘piercing the corporate veil’ in the Company Law 2005. It is generally understood by commentators that the principle applies not only to protect interests of the creditors of a corporation but also to protect public interests from the abuse of the legal personality. The difficulties are how this law is to be applied and what its scope is. In practice, it is used only under extremely limited circumstances, for example in relation to the illicit transfer of, and meddling in, the assets, operations, business or legal status of the invested company. Therefore, generally speaking, it would be difficult to hold a shareholder liable for its subsidiary or invested company’s environmental liability, unless special circumstances apply.

In addition, Chinese law requires foreign invested enterprises to be capitalised under a specific debt-to-equity ratio, corresponding to the planned economic scale of its investment and business operations. For an investment over US\$30 million, the minimum registered capital of the foreign invested enterprise must be at least one third. The Chinese foreign exchange authorities also set out detailed rules regulating fund flows, in particular, into and out of China.

It is, however, not unusual for shareholders to guarantee a company’s due payment of loan facilities to a lender where the company is thinly capitalised. However, such a shareholder guarantee is more likely to cover financial performance and would not usually extend to environmental risks of a company.

In addition, in project finance, project sponsors, investors and/or shareholders may consent to provide certain support or commitment to the obligations of an invested company (including post hand-over warranties) during construction and until successful commissioning of a project.

Under the Criminal Law, a company, enterprise, institution, organisation, or group responsible for a criminal act can be fined. The individuals directly responsible, according to some judicial interpretation, can include:

- Heads, management members, de facto controlling individuals or investors who are directly liable for the company's failure to comply with relevant operation safety regulations with respect to production facilities or safety production conditions.
- Individuals in charge of maintenance or management of production facilities or safety production conditions (for example, electricians or gas inspectors).

Class actions

Class actions for environmental matters are permitted under the Civil Procedure Law. However, there have not been many reported environmental-related class actions. A recent example of a class action was brought by a few fishermen against the operator Conoco Phillips and oilfield developer China National Offshore Oil Corporation (CNOOC) after suffering damage from the Bohai Bay oil spill in 2011. According to public news, Tianjin High Court issued the judgment in favour of the fishermen and held Conoco Phillips responsible for compensation of around CNY1.68 million. However, as CNOOC was neither the operator nor the controller of the source of pollution, it was not held responsible in this case. Another example is the claim filed by nearly 400 villagers who suffered damage from the illegal disposal of hazardous waste by a local company. After almost five years of legal proceedings, the Fuzhou Intermediate Court issued the judgment in favour of the villagers in 2014. Despite the lack of class actions in China to date and the difficulties in organisation, procedure handling and evidence collecting, increasing public awareness of environmental protection may lead to more class actions in the future.

Public interest litigation

The Environment Protection Law establishes the regime for environmental public interest litigation, which enables qualified institutions (including NGOs) to bring the suit. In the influential Taizhou case (*Taizhou Environment Federation v Taixing Jinhui Chemical Ltd and others*), the claimant sued against six polluting chemical factories and the court awarded the claimants CNY160 million to remediate the environment. Currently, the trend in environment public interest litigation is that more multinationals and state-owned enterprises are being sued, which include Volkswagen, Guowang Energy Hami Coal Company, Jilin Petrochemical Company and Anshan Steel Company.

Contractual allocation of liability/risks

10. How is liability for environmental issues, including incidents or damage typically contractually allocated in major projects? Is it possible to transfer liabilities contractually to a buyer/contractor or joint venture participant? What legal constraints exist?

Exclusion clauses in contracts

The Contract Law 1999 provides that the following are void:

- Clauses that aim to exclude liability for personal injury to another party.
- Clauses that exclude liability for loss of property to another party caused by wilful misconduct and gross negligence.
- Contracts which breach the compulsory provisions of laws or administrative regulations.

Therefore, contractual arrangements regarding exclusion or restriction of environmental liability should not breach compulsory provisions of laws or administrative regulations. There are however no laws/administrative regulations which prohibit or restrict the exclusion of liability for ordinary negligence.

Although the terms “故意” and “重大过失”, which are often translated as wilful misconduct and gross negligence, are used widely in Chinese legislation and judicial interpretations dealing with contractual or tortious liability, there are no provisions or rules on how these terms are defined.

The authors are not aware of judgments by the Supreme Court in this regard. However, a few local courts have shed light on the interpretation of these terms. For example, according to a judgment issued by Liaoning High Court in 2015, “gross negligence” means non-compliance with the relatively high duty of care prescribed by law, which causes damages due to negligence or overconfidence. Previous cases have found that if a person who owed a higher duty of care acts in a manner that would be considered negligent for a person with a normal duty of care, then this would constitute gross negligence. Courts have also found that other factors, such as the damage that was caused and the seriousness of the misconduct, are also relevant in determining whether an action constitutes gross negligence or ordinary negligence. A higher duty of care may be imposed if the action is very dangerous and it is foreseeable that, if negligent, the tortfeasor may cause significant harm or damage. This would mean that the court would require that individual to exercise more caution or care. However, as China follows the civil law system, judicial cases are for reference and guidance only.

Joint venture arrangements in offshore petroleum contracts

Foreign oil and gas companies can engage in oil and gas operations through unincorporated joint ventures (UJVs) by entering into petroleum contracts with a Chinese partner. It may be argued that the UJV is a liable entity if the exploration and exploitation are carried out under its name. Under the Sino-Foreign Cooperative Enterprise Law and its Implementation Rules, foreign co-operative enterprises structured as UJVs bear civil liability according to Chinese civil law. The Chinese partner and the foreign partners will be liable according to the participating interest in the petroleum contract, unless joint and several liability is expressly agreed in the petroleum contract.

Vicarious liability in principal/contractor relationships

If an employee of the principal is seconded to another workplace under a contractual arrangement, the party to which the employee is seconded will be liable to third parties for any harm caused by the secondee in the course of his or her performance of work duties while he or she is on secondment. The party dispatching the secondee will assume the corresponding complementary liability only where it is at fault. Some commentators perceive that “complementary liability” means that the dispatching party will assume the liabilities (to the extent that it is liable) only if the accepting party could not (financially) bear all the liabilities and pay for the damages and losses.

Insurance

11. What environmental insurance cover is available for environmental incidents and/or damage for particular projects?

Environmental pollution liability insurance in China is not very developed, but the situation is improving. In 2007, the Ministry of Environmental Protection (MEP) issued the Guidance Opinions on Environmental Pollution Liability Insurance, which set out the government’s principles and objectives in establishing and improving environmental pollution liability insurance. Since then, there have been pilot provinces and cities exploring possible environmental pollution liability insurance systems, such as in Hunan, Jiangsu, Hubei, Shanghai and Shenzhen.

In 2013, the MEP and the China Insurance Regulatory Commission issued the Guidance Opinions on Carrying out Pilot Work for Environmental Pollution Compulsory Liability Insurance, which specified that pilot enterprises should include enterprises involved in heavy metals, enterprises covered under local regulations relating to insurance, and other enterprises

with high environmental risks. In 2014, the amended Environmental Protection Law specified that the state encourages the coverage of environmental pollution liability insurance.

Currently, the major domestic insurers, such as the People's Insurance Company of China, Ping An Insurance Company of China, China Pacific Insurance (Group) Co, Ltd, have designed different kinds of liability insurance for liability in environmental incidents. There are mainly two types: stand-alone environmental pollution liability insurance and endorsement attached to public liability insurance. Both of them cover bodily injury of third parties, property damage to third parties (including clean-up costs), costs of measures to prevent further insured losses and legal costs arising from any relevant lawsuit. However, pollution incidents resulting from the gradual release of pollutants or the restoration of ecological damage are not covered. Foreign-invested insurance companies fall into the negative list (restricted category) for foreign investment in China and therefore their activities are quite limited.

Pursuant to a reply issued by the State Council in 2007, the operator of a nuclear power plant and/or spent fuel storage, transportation or reprocessing facilities in China must purchase sufficient liability insurance to cover its liability before operation. China is not a signatory to the Paris Convention on Third Party Liability in the Field of Nuclear Energy 1960 or the Vienna Convention of Civil Liability for Nuclear Damage 1963, but it actively participates in the international insurance pooling system.

The China Nuclear Insurance Community (CNIC) was established by the China Reinsurance Company, China People's Insurance Company, China Pacific Insurance Company and China Ping An Insurance Company in 1999 and now has 24 member insurance companies. It is reported that CNIC undertook a small portion of the reinsurance for the Fukushima nuclear power plant. Ping An Insurance Company, People's Insurance Company of China and China Pacific Insurance Company reportedly provide construction/erection all risks insurance for nuclear power plants in China.

Regulatory requirements

Typical transaction

12. Provide an overview of a typical major project transaction from an environmental perspective, including a timeline of when to undertake assessment of risks, environmental licence applications, and environmental impact assessments (EIAs).

It is necessary to obtain EIA approval and construct environmental protection facilities for construction projects (*Regulations on Administration of Construction Project Environmental Protection*). In addition, a discharge permit is required for plants and facilities that directly or indirectly discharge hazardous or controlled substances.

EIA

Prior to the start of the construction of a project (or prior to the application for a business licence, if required) a construction unit must typically submit relevant EIA reports or forms for approval. However, for specific construction projects (such as projects relating to railways and communications), an environmental impact report or an environmental impact statement can be submitted for approval, prior to the completion of the preliminary design. In these special cases, the construction unit must undertake the EIA during the project proposal period. For more information, see [Question 13](#).

Construction of environmental protection facilities

China adopts a "three synchronisation" system (see [Question 7](#)). Therefore, construction projects are only formally approved for production or can be delivered for use when the environmental protection facilities required for the construction project have been approved.

Environmental licence/permit

All plants or facilities must obtain a pollutant discharge permit before discharging pollutants during the production and operation period (*Environmental Protection Law, Air Pollution Prevention Law, Water Pollution Prevention Law*). For more details regarding the main licence/permit requirements in China, see [Question 15](#).

EIAs

13. Are EIAs typically required in major projects and what is the procedure?

EIAs are mandatory for all new construction or expansion projects (*Environmental Protection Law, Environment Impact Assessment Law, Regulations on Administration of Construction Project Environmental Protection*). Any project owner who initiates construction work without having obtained EIA approval can be ordered to cease work and/or pay fines.

Chinese regulators determine the nature of the EIA of construction projects based on the seriousness of the environmental impact, for example:

- If the environmental impact may be significant, a full report must be prepared with all-round appraisal of this impact.
- If the environmental impact may be moderate, a prescribed form of environmental impact must be prepared, to include an analysis or special appraisal of the impact.
- If the environmental impact is small so that it is not necessary to conduct an appraisal of the environmental impact, a registration form of the environmental impact must be completed.

To determine which level EIA is required for a particular construction project, reference may be made to the Ministry of Environmental Protection's (MEP) Catalogue for Construction Project EIA Classification Management (EIA Catalogue). In accordance with the EIA Catalogue, the nature and degree of sensitiveness concerning the surrounding environment of a construction project is an important factor in deciding the degree of the EIA. In the case of cross-industry, multi-project construction projects, the EIA categorisation must be determined by the sub-project with the highest degree of environmental impact.

The project owner has the exclusive right to engage qualified EIA service providers without the interference of other entities or individuals. However, the EIA service providers must not be connected to the environmental protection authority responsible for approving the EIA, or with other relevant approval authorities. In addition, no fees can be received by the department handling the examination and approval of the EIA documents.

The report or the prescribed form must be submitted by the project owner to the competent authorities for review and approval. The competent authority must make a decision within 60 days of receiving the report or within 30 days of receiving the form and make a written notice to the applicant. The MEP is responsible for reviewing and approving these reports/forms.

More detailed EIA requirements for a non-exhaustive list of projects are set out below (*EIA Catalogue*):

- **Thermal power generation (including thermal power generation).** The full report is required, except in cases of gas power generation. The prescribed form is required for gas power generation projects.
- **Hydroelectricity generation.** The full report is required for projects where the total installed capacity is over 1,000KW, hydropower generation is through pumped storage or where environmentally sensitive areas are involved. For all other cases only the prescribed form is required.
- **Petroleum exploration.** A full report is required for all projects.

- **Natural gas/shale gas exploitation (purification).** A full report is required for all projects.
- **Tank farms (excluding tank farms in filling station).** A full report is required where the total capacity is over 200,000 cubic metres or for tank farms built underground. For all other cases only the prescribed form is required.
- **Gas storage (excluding gas storage in gas station).** A full report is required for underground gas storage facilities. For all other cases only the prescribed form is required.
- **Oil and natural gas pipelines (excluding urban natural gas pipelines).** A full report is required where the total length is over 200km or where environmentally sensitive areas are involved. For all other cases only the prescribed form is required.
- **Crude oil processing, natural gas processing, extracting crude oil from oil shale, coal-based oil production, biological oil production and other petroleum products.** A full report is required for all projects.
- **Airports.** A full report is required for newly built airports, relocated airports, airfield extension projects where environmentally sensitive areas are involved. For all other cases only the prescribed form is required.
- **Oil and gas ports and liquid chemical ports.** A full report is required for all projects.
- **Gas generation and supply projects.** A full report is required for gas production. A prescribed form is required for gas supply projects.
- **Nuclear power plants (nuclear cogeneration plants, nuclear-based gas and heat generation plants and so on), reactors (research and experimental reactors, critical assemblies and so on), uranium mining and smelting, nuclear fuel production, processing, storage and after-treatment, high-energy accelerator and radioactive waste storage, treatment or disposal, and the abandonment of aforementioned projects.** A full report is required for newly built and extension projects. A prescribed form is required for project reconstruction projects (without any increase in the source items) and other projects, excluding non-radioactive laboratories and experiment devices. A registration form is required for non-radioactive laboratories and experiment devices.

Targets and technologies

14. What rules (if any) apply regarding targets for new structures in major projects, such as carbon emissions or climate change targets, and technologies? What, if any, are the sustainable development requirements?

The Standing Committee of the National People's Congress approved the Paris Agreement on 3 September 2016, which came into force on 4 November 2016. Under the Paris Agreement, each individual country should make nationally determined contributions (NDCs). Under Article 3, the contributions should be ambitious, represent a progression over time and set with the view to achieving the purpose of this Agreement. The contributions should also be reported every five years and registered by the United Nations Framework Convention on Climate Change Secretariat. However, the NDCs are not binding as international law and there is no hard enforcement mechanism.

The Chinese Government commits to peak carbon emissions by 2030 and to reduce carbon emissions per unit of GDP to between 60% and 65% by 2030. To meet this target, China has introduced many specific policies (*see Question 16*).

In relation to sustainable development requirements, there is currently no law imposing carbon emissions requirements for building projects in China. However, the state encourages the use of clean energy in projects and restricts or prohibits the use of technologies, materials and equipment with high energy consumption. For example, according to the Regulations on Energy Conservation in Civil Buildings, the state restricts or prohibits the import of technologies, materials and equipment with high energy consumption. The project owners, design units and construction units must not use any technologies, processes, materials and equipment that are listed in the catalogues of items, the use of which is prohibited in construction activities.

The number of carbon capture and storage (CCS) schemes doubled in 2014 to 22 globally (13 in operation and nine in construction). The US and Canada are leading the world in developing carbon capture, however, China and the UK also have significant projects. Although China encourages CCS technology, there is currently no compulsory requirement for it.

Licence/permit requirements

15. What are the main environmental licence/permit requirements for major projects?

Various construction permits are required for project construction. An EIA approval is a prerequisite for the commencement of project construction (see [Question 13](#)).

At both the construction and operation stages, China has implemented a discharge permit system under which all plants or facilities that directly or indirectly discharge hazardous or controlled substances must declare and register the emission of pollutants with the local environmental protection bureaus (EPB) and apply for a permit. The competent EPB must then issue a permit with precise conditions regarding discharge limits of pollutants in an enterprise's wastewater or solid discharge and air emissions. The EPBs are also responsible for enforcing these permit conditions.

There are other licences that may be relevant depending on the nature of the activities. For example, entities running nuclear facilities must, before construction, loading, operation or decommissioning of the nuclear facilities:

- Apply for the permit for construction and operation of nuclear facilities.
- Satisfy the formalities for the approval of loading and decommissioning in accordance with the relevant provisions of the State Council on supervision and administration of the safety of nuclear facilities.

In addition, depending on whether hazardous chemicals will be produced, used or operated in relation to the projects, hazardous chemicals safe production licences, safe use permits and operating licences may also be required.

Cap and trade schemes and others

16. What schemes and charges apply to ensure that environmental costs in projects are paid by private parties? What other relevant policies and incentives have been introduced?

Greenhouse gas emissions trading schemes

China approved and ratified the United Nations Framework Convention on Climate Change (UNFCCC) in 1993, the Kyoto Protocol in 2002 and the Paris Agreement in 2016. China is deemed as a developing country under the Kyoto Protocol, which can sell emissions credits to nations who have difficulty meeting their emissions targets.

The Measures for Operation and Management of Clean Development Mechanism Projects provide general rules and specific requirements for the application for, and approval of, registered Clean Development Mechanism (CDM) projects. Generally, only companies wholly owned or controlled by Chinese parties can carry out CDM projects in China (Project Companies). Consequently, a company controlled by a foreign party does not qualify to apply for the Chinese Government's approval for a CDM project. The exception is that companies incorporated in Hong Kong can be regarded as Project Companies by obtaining a letter of certification from the Environment Protection Department of the Hong Kong Government.

China has pledged to reduce carbon intensity by 18% from its 2015 level during the 13th Five-Year Plan and committed to

using “market mechanisms” to reach the target. China has begun trialling carbon emissions trading schemes in five cities (Beijing, Tianjin, Shanghai, Chongqing and Shenzhen) and two provinces (Hubei and Guangdong) since January 2012. This “cap-and-trade system” sets an overall limit on how much an industry can pollute. A company that invests in reducing its carbon emissions can sell its credits to a company that operates less cleanly. Traders can speculate on the future value of the credits. Due to the success of these trials in certain areas, in December 2014, the National Development and Reform Commission (NDRC) issued the Interim Measures for Administration of Carbon Emission Trading, which provide basic guidance on carbon emission trading and encourage setting up a national carbon emission trading market. According to a notice issued by the NDRC, the national carbon emission trading system will be initiated in 2017, but it is not clear how it will be operated. However, local trial systems have formulated detailed trading rules, for example, Beijing has set up an electronic trading system. Trading forms include public transaction (through bidding) and transfer on agreement (in limited cases such as interested party transaction).

Pollution charges

China implements a comprehensive system of pollution levies. Polluters must pay discharge fees according to applicable laws, regulations and discharge standards for eliminating and controlling pollution. To ensure performance of the pollution levies system, the State Council issued the Regulations on Levying and use of Pollution Charges in 2003 and other administrative regulations. The pollution charge is calculated based on both the total load of pollutants and the degree to which each pollutant concentration exceeds the standard. The charge rate and the discharge factor are set by the central government and concentration standards are set jointly by the national and local governments. The polluter must pay the pollution charges within seven days on receipt of notice. There is a grace period of three months if the polluter has special difficulty in paying the pollution charge and obtains the consent from the local environmental protection bureaus (EPBs). The EPBs can close down existing treatment facilities that operate without their approval, or fail to comply with administrative orders to correct a violation by a fixed day. In addition, there is a fine to compensate for economic losses or adverse human health effects caused by pollution.

Environmental taxes

The pollution levies system was introduced in 1979 and the current Environmental Protection Law still adopts this mechanism. Considering the poor enforcement of the pollution levies system, a long-term discussion is necessary to gradually change the pollution levies system into an environmental tax system. Therefore on 25 December 2016, the Standing Committee of the National People’s Congress (NPC) has approved the draft Environmental Protection Taxation Law. The Environmental Protection Taxation Law will come into force on 1 January 2018.

The law sets up the environmental taxation mechanism in the following manner:

- **Taxpayers.** These are enterprises, institutions, other producers and operators who directly discharge taxable pollutants into the environment in China.
- **Object and scope of taxation.** Air pollutants, water pollutants, solid waste and noise will be subject to tax. There will be no fees for pollutant discharge.
- **Taxation.** Pollution charges should be the minimum environmental protection taxation amount. However, considering their own environmental bearing capacity and pollution emission situation, governments of provinces, autonomous regions and municipalities can raise the taxation amount with approval of their respective Standing Committee of the NPC and on filing this with the national Standing Committee of the NPC and State Council.
- **Tax preference.** The draft law also provides for five situations where certain pollutants are exempt from tax, which include agricultural production pollutants (due to the fact that the state encourages agricultural development) and pollutants discharged from motor vehicles, vessels and aircraft (due to consideration that there are several categories of taxes applicable to vehicles, such as vehicle and vessel tax and consumption tax).
- **Taxation regulators.** Tax authorities are responsible for levying the tax. Environmental protection authorities are responsible for the inspection and management of pollutants.

Corporate responsibility/best standards

International standards

17. How far does domestic legislation relating to major projects comply with the best international standards? How widely are these standards applied by private parties in practice?

There has been criticism about the gap between China's domestic environmental law requirements and international standards. The International Finance Committee is acting as a resource institution to provide strategic advice and technical information on environment protection guidelines in China.

In 2007, the People's Bank of China, the China Banking Regulatory Commission (CBRC) and the Ministry of Environmental Protection (MEP) issued the Opinions on Implementing Environmental Protection Policies and Rules and Preventing Credit Risks, which announced the launch of the green credit policy in China. In 2012, the CBRC issued Guidelines on Green Credit, which provide detailed requirements on applying the green credit policy. The Equator Principles are deemed to be one of the central foundations of the green credit policy. China's Industrial Bank (a local state-owned bank) adopted the Equator Principles in October 2008 and is still the first and only Equator Bank. All the big state or private owned commercial banks and policy banks in China have subsequently launched their own internal credit examination system to implement the policy.

The green credit policy aims to restrict lending activities to enterprises and projects that violate environmental regulations and limit the expansion of energy-intensive and highly polluting industries. Under the policy:

- Companies with proposed new projects falling into the "restricted" or "abolished" category under the Industry Structure Adjustment Catalogue are disqualified from obtaining loans.
- Companies with existing "abolished" projects must not receive any form of incremental credit support.
- Banks must take appropriate actions to call in the outstanding loans.

According to MEP officials, the green credit policy has helped curb pollution and energy wasting to a certain extent, but has not yet achieved its full impact, due to a lack of supporting policy, proper monitoring, evaluation and systems of liability, as well as a lack of experience in all other aspects of the environmental and financial mechanisms.

Disclosure

18. What duties are imposed on the seller/licence holder regarding the disclosure of environmental issues in major projects to the buyer/contractor or joint venture participants?

The authors are not aware of any Chinese laws or regulations that specifically require the disclosure of environmental issues to potential buyers, contractors or joint venture participants. However, the Contract Law adopts a general principle of good faith, which requires contracting parties to negotiate and perform the contract in good faith. When concluding the contract, if a party deliberately conceals important facts relating to the conclusion of the contract or provides false information or performs other acts that violate the principle of good faith and therefore causes losses to the other party, the first party will be liable for damages caused to the other party. However, proof of bad faith is normally difficult to establish in practice. The doctrine of *caveat emptor* (buyer beware) is otherwise recognised between parties with equal footing and in transactions on an arm's-length basis. Obligations are placed on the buyer to carry out reasonable due diligence to identify liabilities including environmental issues and to negotiate contractual protection such as representations, warranties and indemnities.

19. To what extent is corporate reporting on environmental matters in major projects mandatory?

In addition to the environmental compliance obligations set out above (including conducting EIAs, applying for discharge permits and paying for discharge levies), enterprises and institutions must also disclose environmental information on (*Administrative Measures for Contingent Responses to Environmental Emergencies*):

- The prevention of environmental risk.
- Emergency plans.
- The occurrence and processing of environmental emergencies.
- Complying with rectification requests.

In 2014, the Ministry of Environmental Protection issued Measures for the Disclosure of Environmental Information by Enterprises and Institutions. These measures provided that enterprises and institutions should be included in the list of key pollutant-discharge units under certain circumstances (for example, if they have experienced large or more serious environmental emergencies, or they have caused significant social impact due to environmental pollution issues within the last three years). Therefore key pollutant-discharge units must disclose:

- Basic information, such as the name and organisation code.
- Information on pollutant discharge.
- The construction and operation of pollution prevention and control facilities.
- Information on the environmental impact assessment of the construction project and other environmental protection administrative licences.
- Contingency plans for environmental emergencies.
- Environmental self-monitoring programmes (if the units are included in list of state key monitoring enterprises).

The above provisions can apply *mutatis mutandis* to the disclosure of environmental information by enterprises and institutions other than key pollutant-discharging units.

In addition, under the Environment Protection Law and Air Pollution Prevention Law, when there is an environmental incident, the polluter must notify the residents that may be affected in a timely manner. However, some specific laws, such as the Water Pollution Prevention Law and the Environmental Noise Pollution Prevention Law, do not include such provisions.

The above does not include any analysis of relevant stock exchange requirements in China or elsewhere.

20. Must corporate entities and/or regulators or other public authorities disclose environmental information in major projects to third parties or the public?

Competent departments of environmental protection administration at both national and local levels must regularly issue bulletins on environmental situations (*Environmental Protection Law*). Similar provisions are also included in sectoral laws such as the Air Pollution Prevention Law, the Water Pollution Prevention Law and the Marine Environment Protection law. In accordance with this requirement, the Ministry of Environmental Protection (MEP) and the environmental protection bureaus must provide information about the state of the environment in a variety of forms, including state of the environment reports, bulletins, brochures and news releases.

In 2007, the MEP also adopted the Trial Measures on the Disclosure of Environmental-Related Information. These measures

provide that citizens and private companies can request environmental-related information from public authorities. 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:

- Adopt environmental emergency plans.
- Disseminate information on administrative procedures.
- Publish and update a list of companies whose emission of pollutants exceeds the national or local emission standards.

For information disclosure by corporate entities, see [Question 19](#).

The regulatory authorities

Ministry of Environmental Protection

No. 115 Xizhimen Nanxiaojie, Xicheng District, Beijing

T 010-66556114

E advice@mep.gov.cn

W www.mep.gov.cn/

National Energy Administration

No. 38 Yuetan Nanjie, Xicheng District, Beijing

E nea@nea.gov.cn

W www.nea.gov.cn/

State Oceanic Administration

No. 1 Fuxingmenwai Dajie, Xicheng District, Beijing

T 010-68032211

W www.soa.gov.cn/

Bureau of Fishery of the Ministry of Agriculture

No.11 Nongzhan Nanli, Chaoyang District, Beijing

W www.yyj.moa.gov.cn/

Ministry of Transport

No. 11 Jianguomennei Dajie, Beijing

T 010-65292114

W www.moc.gov.cn/

State Administration of Work Safety

No. 21 Hepingli Beijie, Beijing

T 010- 64463685

E wzbj@chinasafety.gov.cn

W www.chinasafety.gov.cn/

National Nuclear Safety Administration

No. 115 Xizhimen Nanxiaojie, Xicheng District, Beijing

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

National Development and Reform Commission

No. 38 Yuetan Nanjie, Xicheng District, Beijing

W www.sdpc.gov.cn/

Contributor profiles

Monica Sun, Partner

Herbert Smith Freehills



T +86 10 6535 5122

E monica.sun@hsf.com

W www.herbertsmithfreehills.com

Professional qualifications. New York, Attorney; China, Attorney

Areas of practice. Project development and project finance; M&A; joint venture; private equity investment; corporate and corporate finance.

Non-professional qualifications. LLM, Harvard University School of Law; LLM and Bachelor of Laws, Peking University Law School

Recent transactions

- Advising a confidential client in relation to environmental liability regimes in the oil and gas sector in China.
- Advising Edison SpA on various Clean Development Mechanism (CDM) projects in China.
- Advising HSBC and Standard Chartered Bank as joint lead arrangers on a US\$100 million secured borrowing base facility to fund the development and operation of the Panzhuang coalbed methane (CBM) block in China.
- Advising Sirius (a CNPC and Shell JV) on the legal matters in its daily operations in China.
- Advising Goldman Sachs in relation to the private equity investment in Guangdong Weihua Corporation, a forestry product processing company.
- Advising Talpa Beheer B.V. on its US\$27.5 million investment in Universal Display Technology (Jilin), an equity joint venture in China.

Languages. Mandarin, English

Publications

- *Chapter 5, The Energy Regulation and Markets Review, June 2015.*

- *Shale Gas in China: Regulatory Framework and Opportunities for Foreign Investors*, Bloomberg BNA, 18 March 2014.
- *The Evolution of China's M&A Strategy*, Natural Gas Daily, Volume 3 Issue 163, 23 August 2013.
- *Going Outbound: What private companies can learn from SOEs*, China Law & Practice, Issue May/June 2013.
- *Environmental Risks for Major Projects: China Chapter*, European Lawyer Reference, 1st Edition 2012.

Jie Li, Associate



Herbert Smith Freehills

T +86 10 6535 5013

E jie.li@hsf.com

W www.herbertsmithfreehills.com

Professional qualifications. New York, Attorney; China, Attorney

Areas of practice. M&A; project development and project finance; foreign direct investment in China.

Non-professional qualifications. LLM, Columbia Law School; LLM and Bachelor of Laws, Peking University Law School

Recent transactions

- Advising a confidential client on the PRC environmental liability regime in relation to its oil and gas operation.
- Advising a confidential client on the PRC regulatory environment for investment in the oil and gas sector.
- Advising Sirius (a joint venture between CNPC and Shell) on legal matters related to its daily operations in China.
- Advising a confidential client in relation to the refinancing of a project with underlying unconventional

gas assets in China.

Languages. Mandarin, English

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