

AXA EMERGING RISKS WATCH

Environmental Liability : evolving regulations

KEY ASPECTS



End of 2014, six Chinese companies were fined USD 26 million for discharging 25,000 tons of waste of hydrochloric acid into two rivers in the eastern province of Jiangsu, after being sued by a local environment protection organization. This is the highest penalty ever imposed in Chinese environmental public interest litigation. This comes after April 24th 2014 revision of China's 1989 Environmental Protection Law and two days before its entry into force, hereby showing the authorities' willingness to take a tougher stance on pollution control requirements.

The revised Environmental Protection Law introduces changes on the role of civil society in environmental protection. It has new provisions on:

1

ENVIRONMENTAL INFORMATION DISCLOSURE

guaranteeing rights to public information on pollution emissions and compliance;

2

PUBLIC INTEREST LITIGATION

authorizing some social organizations (meeting established criteria) to bring cases to courts on behalf of the public;

3

DAILY PENALTIES

with no upper limits, which cumulate each day after a polluting company has been reminded to become compliant with the law (hereby addressing the previous issue of the low amount of environmental penalties which did not constitute a sufficient enough incentive for compliance).

Environment has become an important political issue in the Republic of China in the recent last years, but the legislation on environmental liability is evolving in other countries than China too.

In the course of 2016, the European Commission is expected to submit a review report on the effectiveness and application of the 2004 European Union Environmental Liability Directive (ELD relying on the "polluter pays" principle). The report should cover the topic on whether there is a need for EU-wide compulsory ELD insurance and an extension of activities falling under strict liability. (Insurance Europe) In preliminary reports, the potential inclusion of 'damage to air' and of other environmental damages has also been discussed.

As signatories of International Convention dealing with Environment and facing more and more expectations from their population, High Growth countries also do not escape to Environmental Law enhancement and effective enforcement any more.

WHY WE THINK IT MATTERS



End of 2014, in 28 Chinese provinces out of 34, a pilot has been conducted to promote Compulsory or Recommended Environmental Insurance depending upon site's activity, location and turnover. This new Scheme entirely driven by the Chinese Insurance Authorities and Chinese Insurance Companies can only be handled on a domestic basis.

- Is your Company aware of these new requirements that may impact the licence to operate ?
- Is your business in the scope of this new scheme ?
- If so, has your company explored the feasibility of local insurance in such a case ?

Due to local Chinese regulations, those mandatory coverages can not be part of EIL international programs. However, our local partner or our international network department can assist by providing more information.

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Back to Europe where the debate was launched in 2000 and more than 10 years after the ELD's publishing followed by complete Transposition into National Laws throughout the Member States, EU's action has been targeting more efficiency and enforcement of ELD as Biodiversity conservation is an increasing concern.

Are the ELD stakes well apprehended?
Is your Company aware of the Compulsory Financial guarantees required in some EU States ?

More generally speaking, has your company assessed its own risk exposure throughout Europe about its potential liability towards protected fauna and flora, water and soil ?
Has your company decided to add these new dimensions into its own Environmental Management System ? To which extent? Does your Liability Insurance Program address these new liabilities ?

AXA Corporate Solutions and AXA MATRIX Risk Consultants can provide their expertise and assistance to help your Company to improve awareness and/or to assess your own exposure thanks to Visio@Risk and/or Iso@Risk approaches and provide insurance solution through ECOSPHERE.

CONTACT

Sylvie MONEREAU

International Technical Manager Environment
AXA Corporate Solutions

✉ sylvie.monereau@axa-cs.com

☎ +33 1 56 92 91 23



HOW TO GET MORE INSIGHTS ON THIS ?



- Insurance Europe - Survey of environmental liability insurance developments (June 2014)
- European Commission – Environmental Damage Claims – the insurer's perspective (with a contribution from Karl-Martin Wischott, AXA MATRIX Risk Consultants Germany)
- European Commission Technical Report – Study on ELD Effectiveness: Scope and exceptions (February 2014)
- EU-China Environmental Governance Programme – Environmental Protection Law of the People's Republic of China
- Columbia Law School – Non-U.S. Climate Change Litigation Chart
- AXA Corporate Solutions - Environment