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China Adopts Environmental Tort Law

January 20, 2010

On December 26, 2009, China passed a *Tort Liability Law*, which will become effective on July 1, 2010. Chapter 8 of the *Tort Liability Law* is dedicated to environmental tort and systematically codifies special liability and evidentiary rules that are significantly more stringent than prior environmental legislations and court interpretations. Under this new law, a company that pollutes the environment will be strictly liable in tort for damage caused and will bear the burden of proof in respect of causation.

Strict Liability

Article 65 of the *Tort Liability Law* provides that a company is liable for the damage caused by its pollution of the environment. Unlike the existing General Principles of Civil Law, violation of environmental laws or regulations is not a prerequisite for tort liability under the *Tort Liability Law*. Therefore, a company that operates in compliance with all environmental laws and regulations can still be found liable in environmental tort. For example, a company that discharges waste water into a river may be liable for damage suffered by a farmer downstream, even though the company is in full compliance with permit limits.

Article 68 of the *Tort Liability Law* provides that an injured party can seek relief from any of multiple tort feasons who, in turn, bear the burden of apportioning damages among them.

After it has compensated the injured party, a company that is not at fault may pursue other third parties at fault in contribution.

Shift of Burden of Proof

In general tort litigation, the plaintiff bears the burden of proving that the defendant's action caused the damage suffered by it. Article 66 of the *Tort Liability Laws*, however, shifts this burden of proving causation in an environmental tort case from the plaintiff to the defendant. In other words, in order to defend itself against an environmental tort claim, the defendant will have to prove that its actions have *not* caused the damage suffered by the plaintiff. This special rule for environment tort reduces the evidentiary barrier for a plaintiff to bring an environmental tort claim, and increases the difficulty and cost for defending against such claim.

Conclusion

The *Tort Liability Law* is a new development in China's environmental laws and will have significant ramification on companies doing business in China. Companies should be aware that they may face heightened exposure to environmental tort claims notwithstanding full compliance with China's environmental laws and regulations, and defending against such claims can be costly. How Chinese courts will interpret and enforce the *Tort Liability Law* remains to be seen, but an increase in environmental tort claims in the future can be expected.