

Overview of the Chinese Legal System

By Jingjing Liu

The People's Republic of China (PRC) was founded in 1949 by the Chinese Communist Party (CCP). For almost three decades after the PRC's establishment, there was a perception that a formal legal system for many areas of national life was unnecessary since the economy was centrally controlled and conflicts could thus be resolved through mediation or administrative means without reference to legal rights and obligations.¹ However, the "Reform and Open Door" policy in the late 1970s, which began China's current rapid economic development and initiated the ongoing transition to a market economy, has had enormous implications for the country's legal development. The 1980s and 1990s saw massive and rapid enactment of laws, including many environmental laws, regulations, and rules.

The rebuilding of China's legal system over the past few decades has generally abandoned ideological requirements and embarked on a massive effort of law transplantation from western legal systems and internationally recognized practices, especially matters related to economic management, as a tool for attracting foreign investment. Modern Chinese law in its forms, structure, and methodologies thus exhibits many western characteristics, though it is generally modeled on the European Continental civil law tradition in its legislative techniques.² There has also been development in the public law areas and significant implications for protecting human rights (written into the 2004 Constitutional Amendment) since China's entry into the World Trade Organization (WTO), which imposes requirements on transparency and accessibility of law, reasonable administration of law, and impartiality, independence, and effectiveness of judicial review.

The Political Structure

Modern China is in form a unitary state, as compared to the federal system of the United States. All power flows from the central government in Beijing. However, economic reform has brought significant decentralization of economic administration, and in many cases Beijing has been unable to supervise effectively the exercise of local government power, leading to substantial de facto autonomy for local governments in many areas of activities.³

The PRC's system of government has not adopted American-style ideas of separation of powers as a form of "checks and balances" between different branches of government, due to the belief that disagreement between different governmental institutions should be avoided because efficiency is the most important consideration for a socialist state like China. Instead, China's central government resembles much more the parliamentary systems common in Europe where the governmental head, the prime minister, is chosen from and forms a cabinet with other members of the legislature. Thus, unlike in the American system, the head of government (the prime minister) is an individual and office distinct from the head of state (the president of the nation). In the United States, both functions are combined in the American presidency.

According to the Constitution, all power in the PRC belongs to the people and is to be exercised through the National People's Congress (NPC) and local people's congresses at lower governmental levels.⁴ Thus, the NPC in appearance sits on top of China's political power structure as the supreme organ of the state. As a matter of practical reality, however, most governmental power is exercised by the Standing Committee of the Politburo of the CCP. Because the CCP has party organizations attached to government institutions at all levels and because the great

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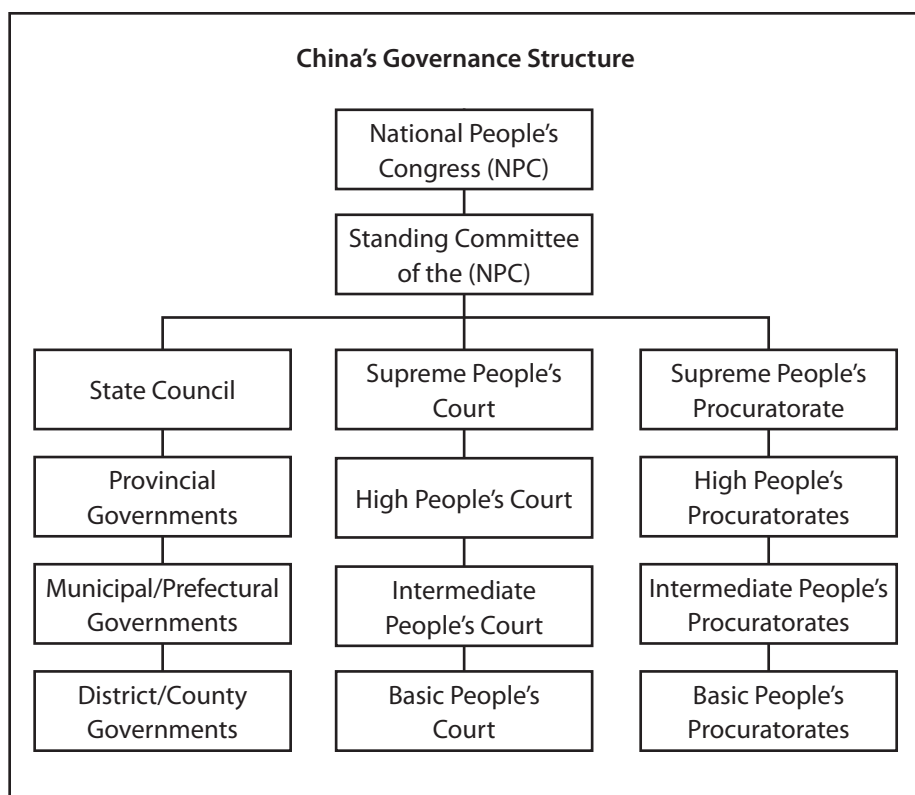
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majority of government officials are CCP members, the party plays an important but nontransparent role in and has enormous influence over the operation of China's government at all levels. The result is that even if the law specifies particular requirements, the policies of the Communist Party organization, through the party's influence over the government officials who are also CCP members, may greatly influence how the government implements or otherwise follows the law. The result has been significant transparency issues regarding governmental decisionmaking, including decisionmaking related to projects that have major impacts on the environment.

The NPC, as the supreme organ of state power, has the authority to issue laws binding across China, appoints the president of the nation (currently President Hu Jintao), the premier (the head of the State Council, China's cabinet, currently Premier Wen Jiabao), and the presidents of the Supreme People's Court and the Supreme People's Procuratorate (the national prosecutorial agency). NPC delegates are not elected by a popular vote; they are chosen by the people's congresses at the provincial level. Similarly, provincial people's congress delegates are chosen by people's congresses immediately below them. Direct popular elections are only held at the township and county levels. The NPC has no more than 3,000 delegates,⁵ and representation of women and ethnic minorities is required.⁶ The delegates are selected for a term of five years and can be reappointed for further terms. The NPC convenes once a year, usually in March, for several weeks to discuss important matters of the state.

The large number of delegates in the NPC and the infrequency of its meetings prevent the NPC from exercising its stipulated supreme power.⁷ To facilitate the functioning of the government, the Constitution also establishes the Standing Committee of the NPC (SCNPC) as a permanent body of the NPC. The 175 members of the SCNPC are elected by the NPC. The SCNPC is vested by the Constitution with extensive powers, including the power to interpret the Constitution, make and revise laws, certain powers to appoint top government and judicial officials, and otherwise act when the NPC as a whole is not in session. Within the environmental arena, the SCNPC and the Environment and Natural Resources



Protection Committee of the NPC play an important role in making, revising, and interpreting environmental statutes, inspecting the implementation of environmental laws as well as supervising the work of environmental protection agencies and courts.⁸

The State Council in the central government is responsible for the day-to-day work of operating the government as the highest organ of state administration.⁹ The premier is the head of the State Council, which is divided into various ministries and commissions. This structure of a people's congress on one hand and a day-to-day government on the other hand is replicated at the local levels as well.

The Supreme People's Court is the highest judicial organ,¹⁰ and the Supreme People's Procuratorate is the highest state organ for legal supervision,¹¹ which includes functions of both bringing criminal prosecutions and ensuring that government agencies act in accordance with the law. The State Council, the Supreme People's Court and the Supreme People's Procuratorate are all responsible to the NPC and the SCNPC.¹² A similar structure exists at the provincial, municipal/prefectural, and district/county level with the local governments, people's courts and people's procuratorates being responsible to the local people's congresses (see the chart above on China's governance structure). An important ministry within the State Council is the Ministry of Justice, which administers prisons, oversees the People's Mediation Committees,

the lawyer system and the notary system, manages legal education, and otherwise disseminates legal knowledge.

Though the NPC and the SCNPC are the main legislative bodies, the State Council is *de facto* the most powerful lawmaking institution given its extensive inherent and delegated powers of lawmaking. It issues administrative regulations that touch almost every aspect of political, social, and economic life in China, and over 70% of the laws considered by the NPC and the SCNPC are initiated and drafted by the State Council.¹³

History and Legal Context

China's modern legal system combines a number of legal traditions, including features of the continental European civil law tradition, substantial elements borrowed from the socialist law system of the former Soviet Union, and principles inherited from imperial Chinese law. In recent years, especially in the environmental area, American legal principles are also increasingly reflected in China's legal system.¹⁴ Unlike the western legal systems of continental Europe, however, which have been shaped by their roots in the private-law system of Rome or their early religious basis, traditional Chinese law instead centered on state concerns and dealt with private matters only incidentally.¹⁵ There was no special, differentiated institution, such as a "court," before which disputing parties could advance their legal claims.¹⁶ Instead, law was considered to be primarily an instrument for the sovereign to protect and advance the interests of the state and the rulers. As a result, traditional Chinese law was largely penal in nature; civil matters, those dealing with the interests of private parties, were largely left in the hands of customary law.

While ancient China had a highly developed and sophisticated administrative law system, its primary purpose was to ensure that officials followed the law and to increase government efficiency, not to protect individual rights from abuse by public power.¹⁷ The development and operation of the legal profession was strongly discouraged, and lawyers were seen primarily as "litigation tricksters."¹⁸ The emphasis was on substantive justice, with significant attention paid to fact-finding.¹⁹ Notions of procedural justice and due process were virtually nonexistent. In criminal trials, confessions were generally required for conviction, and torture was common.²⁰ The heavy influence of Confucian values on traditional Chinese legal philosophy is particularly reflected in the general antipathy toward litigation and preference for extra-judicial mechanisms such as mediation as the primary means for dispute resolution. Some of these features in traditional Chinese law, to

certain degree, still influence the development of many aspects of the modern legal regime.

One of the most visible set of characteristics of China's modern legal system arises from the principles adopted from the civil law tradition: statutory laws are of key importance; court judgments have formally no precedential effect though they may serve as guidance. However, Chinese laws do give authority to the Supreme People's Court to issue judicial interpretations, essentially interpretive regulations, and to the Supreme People's Procuratorate to issue procuratorial interpretations on questions of law arising out of specific applications of law in their adjudicative and procuratorial work. In practice, the Supreme People's Court is very active in issuing judicial interpretations that are oftentimes extensive and detailed, and are treated as supplementary laws.

The hierarchy of China's laws and regulations is as follows:

- *Constitution*
- *Laws* by the NPC and SCNPC
- *Administrative Regulations* by the State Council
- *Local People's Congress Regulations* by local people's congresses and their standing committees at the provincial level
- *Rules*, including *Government Rules* by local governments of provinces, and *Ministry Rules* by central-level ministries, commissions, and agencies directly under the State Council

International treaties ratified by China are directly applicable and prevail if they conflict with domestic law.

The Judicial System

There are four levels of general courts in China: the Supreme People's Court at the central government level, the High People's Courts at the provincial level, and the Intermediate and Basic People's Courts at the local level. In addition to these general courts, there are several types of specialized courts that include military courts, maritime courts, courts of railway transportation, courts of forestry affairs, courts of agricultural cultivation, and recently, environmental courts. Except for military courts, maritime courts, and environmental courts, these specialized courts are generally established at the intermediate court level and at the basic court level. They are subject to the supervision of the high people's court of the provinces where these specialized courts are located.

The Supreme People's Court has jurisdiction as the court of first instance, i.e., original trial jurisdiction, over

cases that have major impacts on the whole country as well as jurisdiction over appeals from high people's courts and specialized people's courts. The Supreme People's Court also issues judicial interpretation, reviews death penalty cases, administers the judiciary, and participates in certain legislative activities.

There are a total of over 30 high people's courts at the provincial level. They serve as the court of first instance over cases that have major impacts on the areas of its jurisdiction and hear appeals from the lower courts. There are around 400 intermediate courts in cities and prefectures within provinces. They serve as the major appellate review body for most of the cases, and have jurisdiction as the court of first instance over criminal cases subject to sentence of life imprisonment or death, cases where foreigners are accused of committing a crime, major civil cases involving foreign parties, cases that have major impacts in the area of its jurisdiction, and other cases as determined by the Supreme People's Court. The basic courts, a total of over 3,000 at county/district level, serve as the first-instance trial court of most criminal, civil, and administrative cases. Within the environmental arena, the Supreme People's Court plays a role in issuing judicial interpretation, as mentioned above, to clarify important environmental legal concepts and principles as well as guiding lower-level courts in the application of environmental law by retrial of important and complicated cases. For all other courts, their role in environmental governance includes hearing environmental tort litigation and environmental public interest litigation, conducting judicial review of decisions by environmental protection agencies, and mediating environmental disputes.²¹

Courts are responsible and accountable to the people's congresses at the corresponding governmental levels and are financed by the governments at the same level. Courts and judges are, at least theoretically, required to exercise independent judgment in accordance with law. In practice, they are oftentimes subject to influences from a variety of sources, including officials from their local governments, the CCP, powerful individuals, and the public opinion (for example, evidenced through the media or public protests). Other than for simple civil and minor criminal cases, trials are conducted by a collegiate panel consisting of judges and layperson assessors²² (or judges alone for appeal cases).²³ There is no jury. Trials are generally open to the public except when a case involves state secrets, business secrets, as well as personal privacy. While a judgment at the second instance is usually final, with no further appeals permitted except otherwise provided by law, the appeal involves *de novo* review of both factual findings and legal determinations.

Under its authority to create specialized maritime courts in certain coastal port cities, the Supreme People's Court has established ten maritime courts, located in the following port cities: Beihai, Dalian, Guangzhou, Haikou, Shanghai, Wuhan, Qingdao, Ningbo, Tianjin and Xiamen. Maritime courts have only one level, equivalent to that of the intermediate people's courts. Their decisions can be appealed to the high people's court of the provinces where these ten maritime courts are located. Maritime courts have jurisdiction over maritime torts and contract disputes of first instance. In 2006, maritime courts were given relatively clear jurisdiction over cases involving land-originated pollutants contaminating the ocean as well as navigable watersheds. Experts have supported the maritime courts' jurisdiction over pollution affecting the ocean and other waters because their specialization in maritime cases has led them to accumulate significant experience in hearing ocean and watershed-related pollution cases. Possibly equally important is the prevailing view that maritime courts are relatively insulated from the local government, since their jurisdiction is not defined by administrative districts and thus may be less subject to the pressures of local protectionism. The result may be lesser risk of interference by local government officials and a greater likelihood that environmental pollution cases are heard fairly and disposed of efficiently.

Another promising new initiative within the Chinese court system to promote stronger environmental governance and better environmental enforcement is the rapid development of specialized environmental courts. The history of environmental courts in China can go back to as early as in the late 1980s, but the speed of establishing environmental courts picked up since 2007 in response to a series of devastating environmental disasters. So far there are already over 50 environmental courts, environmental tribunals, and environmental collegiate panels set up in more than a dozen of provinces across China, in both developed and underdeveloped areas, at the levels of high, intermediate, and basic people's courts. The establishment of these specialized environmental courts helps streamline the process of hearing environmental cases, allows cases to be heard by judges (and layperson assessors) with enhanced technical expertise, and expands the standing for plaintiffs to facilitate environmental public interest litigation that regular courts generally would not accept under existing Chinese law.²⁴

Judicial review in the form observed in the United States, where the courts may review the constitutional validity of legislative acts, does not exist in China. Under

China's constitution, the SCNPC has ultimate authority over legal interpretation, an arrangement that some have described as legislative supremacy. The interpretations of law of the Supreme People's Court may be reviewed and adjusted by the SCNPC.

In keeping with the continental civil law tradition, the judiciary is viewed largely as a bureaucratic institution, and the status of judges is more akin to civil servants. To become a judge, now one must pass a national judicial bar exam. Law school graduates commonly enter the judiciary soon after graduation and advance in rank and the internal court hierarchy based on their seniority and experience. The adjudication committee, present in each court, is another unique aspect of China's judicial system. An adjudication committee is a body of senior judges and court officials that reviews controversial or complicated cases already tried by other judges in the court to ensure that such cases are resolved appropriately and "correctly." Because the committee does its work generally outside of the view of the public and the parties, and without the benefit of having experienced the trial itself, it has been heavily criticized by foreign as well as Chinese legal scholars. Among the most significant issues raised have been concerns about the potential for inappropriate political influence in cases and the nontransparent nature of that process.²⁵

In addition to trying cases, courts also make extensive use of mediation in civil cases, including in environmental matters. Especially under the leadership of the current Supreme People's Court Chief Justice, Shengjun Wang, the role of mediation has been heavily emphasized in adjudicating civil cases. In court-performed mediations, the judge who hears the case also acts as mediator and sometimes may decide cases based on a proposed solution that was not accepted by parties. A mediation agreement has the same effect as a judgment award and generally cannot be appealed.

Contrary to the U.S. practice of having the sheriff enforce a judgment, Chinese courts are generally responsible for enforcing their own judgments. As a result, courts have encountered significant difficulties in enforcing their awards because of local protectionism and due to the low status of courts in the political hierarchy. It is estimated that as many as 50% of civil awards are actually unenforced.²⁶ While significant efforts are being made to make the judiciary more professional and independent, there are still many poorly trained judges who are susceptible to outside undue influence in Chinese courts.

The procuratorate system is the prosecutorial counterpart to the courts. It has a structure similar to that of the courts. The Supreme People's Procuratorate operates

at the central government level, while there are provincial, municipal, and basic procuratorates at the local level. Similar to other government agencies, all procuratorates are under the dual leadership of the superior procuratorate as well as the local people's congress and government at the same level. China's procuratorate system performs the following major functions: 1) initiate prosecution of criminal cases investigated and handled by the public security bureaus (local police); 2) investigate and initiate prosecution of criminal cases investigated and handled directly by the procuratorate, e.g., embezzlement and bribery, dereliction of duties, and violation of citizens' corporal rights and democratic rights committed by government employees; 3) supervise the legality of public security authorities' decision on arrests and their criminal investigation; 4) supervise the trial, rulings, and judgments on criminal cases and the legality of activities of jails, detention centers, and reform-through-labor institutions; and 5) supervise civil and administrative trials of courts. When it comes to protecting the environment, the procuratorate is responsible for prosecuting environmental crimes. Also, in recent years, several local people's procuratorates have been experimenting with bringing civil environmental enforcement cases, despite lack of clear authorization by existing Chinese law, in maritime court, environmental court, as well as regular court.

Author's Note: This article was originally prepared for U.S. Department of Justice and U.S. Environmental Protection Agency officials participating in environmental enforcement roundtables in May 2010 in Beijing and Guangzhou involving senior officials from the Supreme People's Procuratorate, Supreme People's Court, Ministry of Environmental Protection, Guangzhou Maritime Court, Guangzhou Municipal People's Procuratorate, other agencies, and environmental law scholars. The preparation of this article was supported by the U.S. Agency for International Development and Vermont Law School. The author would like to thank Tseming Yang for constructive comments and editing assistance.

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15 CLARKE, *supra* note 1.
16 *Id.*
17 There was a notion in traditional Chinese culture that there could not possibly be any substantial conflict between the interests of the state and the interests of its individual citizens, and therefore it was unnecessary to protect individual rights against abuse by public power.
18 CHEN, *supra* note 2, at 21.
19 RANDALL PEERENBOOM, CHINA'S LONG MARCH TOWARD RULE OF LAW 37 (Cambridge University Press 2002).
20 *Id.*
21 Liu and Moser, *supra* note 8.
22 The use of layperson assessors in trials is viewed by the CCP as a form of public participation in the judicial process and represents one way of exercising popular democracy related to legal processes.
23 CHEN, *supra* note 2, at 151.
24 Liu and Moser, *supra* note 8.
25 There have been some reforms in recent years on the adjudication committee, such as creating more specialized adjudication committees within a court, e.g., an adjudication committee hearing criminal cases only, as well as requiring members of the adjudication committee to personally attend the hearing. The effectiveness of these reform measures remains to be seen.
26 PEERENBOOM, *supra* note 19, at 287.



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Introduction to Environmental Law in China

By Philip Cheng, Stanley Boots, and Daniel Fogarty

The seeds of China's modern environmental movement can be found in 1971, with the establishment of the environmental protection department—the first governmental entity having an express mandate to address environmental matters—in the State Planning Commission. The subsequent expansion of China's environmental administrative apparatus grew in tandem with the increasing environmental concerns generated by its unprecedented economic growth in the decades that followed.¹

Today, China has developed a comprehensive environmental legal system and an organizational framework with an environmental function housed within the highest national administrative level. At the top of China's environmental administration sits the Ministry of Environmental Protection, a cabinet-level ministry in the executive arm of the Chinese government responsible for protecting China's air, water, and land from pollution and contamination.²

Despite the elevated stature of environmental affairs in China and the legal and political developments in environmental protection over the past three decades, navigating the environmental legal framework is still an exercise in patience and persistence. Chinese laws and regulations are typically not codified or particularly organized, making finding relevant Chinese law somewhat challenging. With regard to environmental laws, national laws and regulations are easily obtainable; however, it becomes significantly more difficult to access regulations on more specific topics. What is available may also be simply too vague or imprecise to offer much guidance. For many foreign investors operating in China, this is the ultimate challenge, and the lack of transparency means that rules are developed on an *ad hoc* basis by the local environmental authorities, making operational planning a daily revisionist exercise.

In addition, China is clearly tasked with a difficult challenge of strengthening its environmental oversight, particularly in the face of its pollution issues. One critical factor, among many, in meeting this challenge will be

expanding its environmental legal framework in scope and precision.

Foreign investors also need to consider health and safety issues that typically go hand-in-hand with the environmental issues. The State Administration of Work Safety (SAWS) administers and enforces China's health and safety rules, and other agencies, such as Ministry of Health or the Ministry of Human Resource and Social Security, may be involved as well.

This Article presents an overview of the current legislative framework for China's environmental, health, and safety laws in five areas: exploitation and conservation of natural resources; energy use, conservation, and recycling; prevention and control of pollution; environmental impact assessment; and labor protection and work safety.

Exploitation and Conservation of Natural Resources

There is no single comprehensive law that governs the exploitation and conservation of natural resources in the People's Republic of China. Rather, the legislative framework for the exploitation and conservation of natural resources is dispersed in various laws and regulations at both the national and local level.

The foundational law on the environment is the Environmental Protection Law,³ enacted on a trial basis in 1979 and then amended and reenacted in 1989. With only 47 provisions averaging two to three sentences each, the Environmental Protection Law contains the basic elements for most of the environmental laws that have been enacted since 1979. This law was enacted to protect and improve the human and ecological environment, prevent and control pollution and other public hazards, and safeguard human health.

Growing out of the basic principles of the Environmental Protection Law is a patchwork of legislation governing areas including forestry,⁴ grassland,⁵ mineral resources,⁶ coal,⁷ land administration,⁸ water pollution,⁹ marine environment,¹⁰ and wildlife.¹¹ These relate to the exploitation and conservation of China's natural resources industry.

Viewed as a whole, these laws and regulations emphasize the government's ownership over China's natural resources and highlight the balance between economic growth and environmental preservation considerations.

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Energy Use, Conservation, and Recycling

Hand-in-hand with its laws and regulations on natural resource protection, China has adopted a series of policy documents and legislation aimed at governing industry behavior in energy conservation, energy use efficiency, and adoption of renewable energy.

The key policies, laws, regulations, and guidance in this area include:

- The 12th Five-Year Program for China's Economic and Social Development (12th Five Year Plan)¹²;
- Several Opinions of the State Council on Further Optimizing the Utilization of Foreign Investment (Foreign Investment Utilization Opinions)¹³;
- The Guidance Catalogue for Foreign Investment Industries (Catalogue)¹⁴;
- The Circular on Issues Concerning the Value-Added Tax, Business Tax and Enterprise Income Tax Policies for Promoting the Development of the Energy-Saving Services Sector (Energy Tax Incentive Circular)¹⁵; and
- The Law of the People's Republic of China on Renewable Energy (Renewable Energy Law).¹⁶

The 12th Five Year Plan and the Foreign Investment Utilization Opinions together set out the government's commitment to supporting foreign investment in areas of new energy, energy conservation, and environmental protection technologies. The Catalogue identifies the proposed industries in which such foreign investment in renewable energy is encouraged through tax incentives and financial support. The Energy Tax Incentive Circular specifies the tax incentives available to certain qualified energy-saving enterprises. Under the Energy Tax Incentive Circular, qualified energy-saving enterprises are exempt from enterprise income tax from the first three years and are taxed at half of the legal tax rate of 25% in the next three years.

The Renewable Energy Law sets out government support for the renewable energy industry to address energy demands, over-reliance on oil imports, and increasing public concerns on environmental pollution.

In addition, China has adopted legislation to govern the implementation of Clean Development Mechanisms (CDM) projects for saleable certified emission reduction credits under the Kyoto Protocol, which can be counted toward meeting China's committed greenhouse gas emission targets. China's current CDM management policies are governed by the Measures for the Operation and Management of Clean Development Mechanism Projects¹⁷ (CDM Measures), which are aligned with the

general principles of the Kyoto Protocol. In addition to identifying the objectives of pursuing sustainable development strategies and policies, the CDM Measures specifically highlight three priority areas for preferential treatment that the government has exhibited strong support in developing: (1) energy efficiency improvement; (2) development and utilization of new and renewable energy; and (3) methane recovery and utilization.

Prevention and Control of Pollution

To improve environmental measures over production and other operating processes, China has adopted comprehensive regulatory guidelines on pollution prevention and control. Local governments at all levels have established their own policies on the prevention and control of industrial pollution to supplement the national policies.

The key environmental rules, regulations, and guidance for prevention and control of pollution include water,¹⁸ air,¹⁹ noise,²⁰ solid waste,²¹ and radioactive materials.²² The underlying principle in such legislation is pollution prevention as opposed to controlling pollution already created. In essence, the legislation sets up guidelines and standards for managing industry practices to minimize pollution creation.

With regard to enforcement, the government has adopted strict penalties for noncompliance with these environmental laws and regulations. For instance, an enterprise that fails to meet environmental standards for one of its projects may have the approvals for all its projects suspended.²³ In addition, the threshold for criminal liability was lowered to deter violations of environmental laws and regulations.²⁴ The 2010 People's Republic of China Tort Liability Law also requires that the polluter bear the burden of proving that the environmental pollution did not cause damage to a defendant once the defendant can show the existence of pollution and damage. As a whole, these recent legislative actions represent China's continuing efforts to rectify the deficiency in penalizing severe environmental violations.

Environmental Impact Assessment

Environmental impact assessments (EIAs) are a key mechanism for managing the environmental impact of a project or development plan. It requires the environmental impact of every new project or substantive change to an existing operation to undergo a formal EIA process²⁵ that involves: (1) filing EIA-related reports and forms to secure government approval; and (2) undergoing an inspection of its environmental compliance controls

prior to commencement of operations. If the EIA process reveals any harmful impacts from construction or any proposed facility operations, these impacts must be mitigated to ensure the constructed facility operates in strict compliance with relevant environmental requirements. Failure to undergo the EIA process can lead to a suspension of the construction project until the EIA process is completed. In addition, the administrative department of environmental protection can impose a fine of RMB 50,000 or more (generally up to RMB 200,000), and the person in charge might be confronted with an administrative punishment.

Labor Protection and Work Safety

There have been a number of recent legal developments in China relating to worker safety and health, reflecting political interest in addressing occupational hazards. Worker health and safety regulations emphasize worker protection from, among other things, exposure to harmful pollutants and other environmental hazards. This is one area of the law where multinationals in China need to be particularly vigilant in achieving full compliance. There is enough specificity in the rules that allow the authorities to enforce workplace safety measures and shut down unsafe facilities. Quite often, they will exercise such powers, despite media coverage to the contrary, although there is a prevailing sense that multinationals are more often the target of such enforcement actions than domestic companies.

Production Safety Law

The Production Safety Law of the People's Republic of China, promulgated by the Standing Committee of the National People's Congress, effective November 1, 2002, is the principal law on production safety and is further supplemented by several State Council regulations on production safety governance. This batch of laws and regulations on mining, oil, and hazardous chemical industries are applicable to both domestic and foreign-invested enterprises. Established in 2001 as an agency directly subordinate to the State Council, SAWS is the production safety regulator for mining, oil, and hazardous chemical industries. Notably, within SAWS, the specific State Administration of Coal Mine Safety is dedicated to crafting and enforcing safety regulations for the country's coal mines, a unique organ demonstrating the Chinese government's efforts to rein in the high fatality of coal mine accidents in China.

Chemicals Regulations

Since the 1970s, China has developed a comprehensive regulatory framework to ensure the proper management, treatment, and disposal of chemicals, notably hazardous chemicals. The complex patchwork of regulations on chemicals combines five main systems governing chemicals in China. The most significant of these regulations include:

- Regulations on the Safety Management of Hazardous Chemicals²⁶;
- Measures for Hazardous Chemicals Registration Management²⁷; and
- The Implementation of Measures on Environmental Control of New Chemical Substances.²⁸

The Regulation on the Labour Protection in Workplaces Handling Toxic Materials,²⁹ in conjunction with the Occupational Disease Control Law, discussed below, further strengthens the measures on safe management of dangerous chemicals to reduce workplace accidents.

China's laws and regulations on the use, storage, and other aspects of handling chemicals are fairly complex and continuously evolving. This regulatory framework is governed by a patchwork of government agencies and departments, such as the Ministry of Health, the Ministry of Public Security, SAWS, and the National Development and Reform Commission.

The evolving nature of the regulatory framework for chemicals reflects the trend in China toward establishing and enforcing more sophisticated technical standards. In light of this trend, foreign-invested enterprises with high technical standards and compliance measures may find opportunities to increase their competitiveness in the local markets against other companies with lesser standards.

Occupational Disease and Control

The Law of the People's Republic of China on Occupational Disease Prevention and Control (Occupational Disease Control Law)³⁰ sets out prevention and control measures for employees against occupational diseases, defined as diseases contracted by employees due to exposure in the course of work to dust, radioactive substances, and other toxic and harmful substances.³¹ The Provisional Regulations on the Supervision and Administration of Occupational Health at the Workplace³² requires employers to adopt specific safety standards by means of proper equipment installation, worker training, occupational hazard awareness, and effective monitoring systems.

The Occupational Disease Control Law is the overarching law governing the occupational health rights of workers, the obligations and duties of employers to protect the health of their employees, the responsibilities of the governments at various levels, and trade unions' representation in workers' health protection. The main elements of this law relate to hazard preassessment and prevention.

Occupational Disease Hazard Preassessment

All new construction projects—which includes new constructions, expansions, reconstructions, technology reconstruction, and technology introduction projects—that may potentially produce occupational hazards may be required to have occupational hazard control installations designed, constructed, and put into operation in conjunction with the projects. The project proponent must conduct an occupational hazard preassessment at the feasibility study stage of the project and submit the preassessment report to governmental health authorities for approval. Upon completion of the construction project, the proponent should assess the effectiveness of the project in the prevention and treatment of occupational diseases and apply to the competent health authority for a completion acceptance. No project can be put into operation if it fails to meet the occupational health standards or obtain the completion acceptance.

Operational Prevention Measures

Employers are primarily responsible for the health of their employees in workplaces and for occupational disease prevention and treatment. The basic operational prevention measures encompass the appointment of a qualified and expert agent for monitoring in this respect, well-established planning and management and implementation scheme, maintenance of archives of occupational diseases and custodian archives for employees' health, monitoring and evaluation system for hazardous factors contributing to occupational diseases in the workplace, and preliminary plans for emergency rescue in accidents caused by occupational diseases.

Summary

The Chinese government has clearly recognized the environmental, health, and safety challenges China faces and has demonstrated a profound shift in priorities in recent years to elevate worker health and safety and environmental protection and sustainability to the top of its national agenda. To advance this new agenda, the Chinese government has made significant efforts to develop,

implement, and enforce a solid environmental, health, and safety legislative framework. Despite these efforts, China continues to face critical challenges in effectively implementing the laws and regulations, clarifying the roles of its national and provincial governments, and strengthening the operation of its legal system.

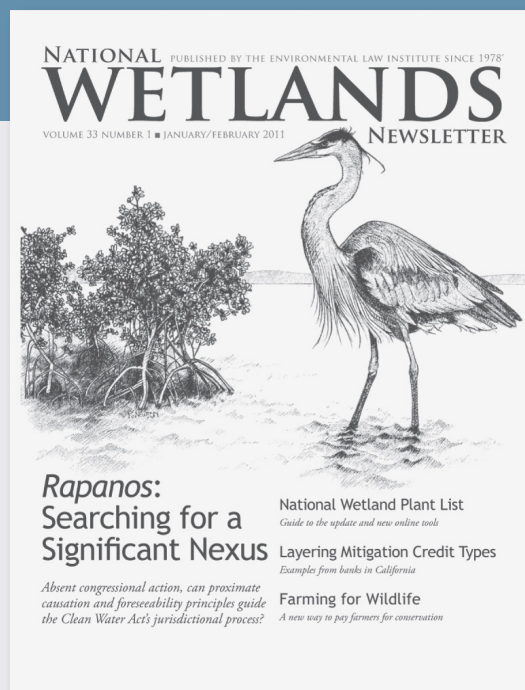
Indeed, the environmental, health, and safety legislative framework in China has so far been broad and comprehensive yet strikingly brief on particulars and details. If the past decades are any indication of China's fast-changing social, political, and economic landscape, we can expect more developments in this area in an equally quick pace.

China's significant environmental predicaments are well known. Less well known and certain is whether the ambitious spirit of its current legislation will be reflected under the economic, social, and political realities of enforcement.

ENDNOTES

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- 3 Environmental Protection Law (adopted on a trial basis by the National People's Congress Standing Committee Sept. 13, 1979, amended and reenacted Dec. 26, 1989), *available at* <http://www.asianlii.org/cn/legis/cen/laws/epl307/>.
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