

# CHINA INTRODUCES TOUGH NEW TORT LAWS

China's new Tort Liability Law, another step in the Chinese government's strategy for dealing with China's legacy of environmental damage, represents a shift toward a tougher Western-style tort system. The law is in fact harder on defendants than laws in most places around the globe, including the U.S. and Europe. Those doing business in China will need to understand the potential for increased liability and the potential need to expand coverage by the time the law goes into effect July 1.

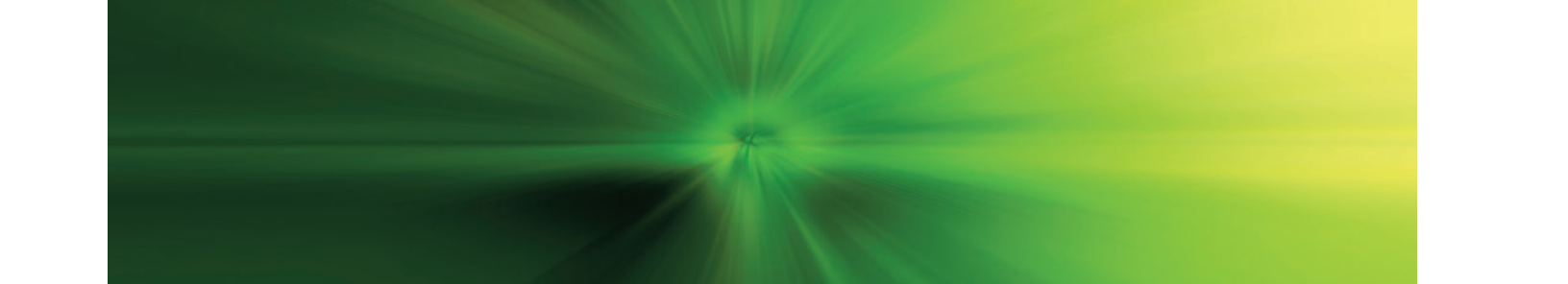
The new tort laws cover many areas, including Products Liability, Automobile Liability, Medical Malpractice and Environmental Liability. It creates liability principles and evidentiary rules that are more stringent than prior environmental legislation and court interpretations. Now, a company that pollutes the environment will not only be liable for the damages it caused, but will bear the burden of proving it did not cause the damages.

## SHIFTING BURDEN OF PROOF

In U.S. tort litigation, the plaintiff bears the burden of proving that the defendant's action caused the damage suffered by the plaintiff. In Europe and Latin America, recent legislation has vastly expanded the responsibilities of businesses in terms of environmental liability. In Europe, for example, businesses must proactively report a pollution incident. However, while there is a degree of strict liability falling on businesses required to obtain an environmental permit, on the whole the burden of proof remains with the plaintiff. China's new law shifts this burden to the defendant. This not only makes it easier and less costly for a plaintiff to bring an environmental tort claim, but it significantly increases the difficulty and cost for defendants.

Previously, the violation of environmental laws or regulations was a prerequisite for tort liability under Chinese law. This link to

- Chinese government figures show that over 80% of China's largest chemical plants are located in environmentally sensitive spots: densely populated or watershed areas.<sup>1</sup>
- China's government recently unveiled its most detailed survey ever of the pollution plaguing the country, revealing that water pollution in 2007 was more than twice as severe as was shown in previous official figures.<sup>2</sup>



regulatory compliance has now been decoupled. Companies operating in compliance with all environmental rules and regulations may still face environmental liability. For example, a company's air emissions may comply with regulatory limits, but if those discharges somehow damage the environment or injure people, then the company may now be held liable for those damages.

The new law also stipulates that if there are two or more polluters, the apportionment of their liability will be determined by the type of pollutants and the quantity of pollutants being discharged. Further, the law provides that an injured party can seek relief from any of a number of polluters and that those polluters bear the burden of apportioning the damages among themselves.

### WHAT'S NEXT?

While no one knows yet how Chinese courts will interpret the new tort liability laws, we foresee significant financial ramifications for companies doing business in China. Companies will experience increased liability exposure and higher defense costs – regardless of their compliance with China's environmental laws and regulations.

These legislative changes are the latest developments in a broader strategy that is designed to make polluters in China take full responsibility for their actions. It represents a fundamental shift in policy and should prompt companies operating in China to reassess their environmental risk exposures and risk management plans.

A little over a year ago, the Chinese State Environmental Protection Administration was elevated to full-fledged ministry status as the Ministry of Environmental Protection (MEP). This move gave the new agency more regulatory clout and meant strong backing for the Green Insurance System, a compulsory program that is expected to extend to all industries with high polluting potential by 2015. (**See *International Alert 32, "China Introduces Compulsory Green Insurance."***) The environmental insurance system is designed to ensure that companies have adequate financial resources to address their environmental liabilities and obligations.

Companies covered by the green insurance requirements should evaluate their additional tort liability exposures with respect to their current limits of insurance. They may need to consider higher limits. For companies not currently impacted by the green insurance requirements, there is now a compelling reason to consider

environmental insurance coverage if they don't already have it.

Willis Environmental experts can assist companies with the quantification of environmental risk, the selection of appropriate insurers and the negotiation of appropriate coverage in anticipation of the implementation of this new system.

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<sup>1</sup> Willis' *International Alert 32, "China Introduces Compulsory Green Insurance."*

<sup>2</sup> "China Report Shows More Pollution in Waterways," *The New York Times*, February 10, 2010.