

## Client Alert

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## China's new Law on the Prevention and Control of Soil Pollution imposes new obligations on enterprises and landowners

### Recent developments

As part of its "war on pollution", China recently issued its first law addressing soil pollution, the *Law on the Prevention and Control of Soil Pollution*, which will take effect on January 1, 2019. The issuance of the new law is a major step in China's creation of a comprehensive legal regime for preventing and cleaning up soil pollution. It also creates new obligations, and potential liabilities, for land use right holders and manufacturers and operators in China.

### Implications for companies in China

Previously, soil pollution was addressed only by a scattering of provisions in different laws and regulations, resulting in a legal void and much ambiguity for companies dealing with possible soil contamination issues. Although specific implementing measures still need to be developed by relevant government bureaus, the new law provides much needed guidance and systematic mechanisms for investigating, preventing and cleaning up soil pollution. At the same time, it also creates additional obligations and potential costs for Chinese companies, who, depending on the circumstances, may be responsible for investigating soil pollution status, assessing soil pollution risks, managing and controlling risks, and restoring polluted soil.

### What the law says

For enterprises in China, the law sets out various obligations. Manufacturing and operating companies and land use rights holders must take effective measures to prevent and reduce soil pollution and bear liability for soil pollution they cause. If any survey, monitoring or inspection indicates potential pollution of construction land, the land use right holder will be required to investigate the status of soil pollution. If the investigation reveals pollution in excess of relevant standards, the party responsible for the pollution and the land use right holder must complete and file a risk assessment report on the soil pollution. Based on their review of the risk assessment report, the authorities may include the plot in a list of construction land subject to soil pollution risk management and control and restoration, in which case the party responsible for the soil pollution must take measures to manage and control soil pollution risks. If restoration is required, the polluter must prepare a restoration plan, which also covers prevention and cleaning up of polluted groundwater. Once completed, the polluter must engage an independent entity to evaluate the results of its risk management and control and restoration measures. Moreover, enterprises in certain highly polluting industries will be listed by government authorities as entities subject to substantial supervision and must carry out advanced investigations of soil pollution where there is a change in the use of, or transfer of, land used for production.

The law specifies that the polluter is primarily responsible for managing and controlling soil pollution risks and restoring polluted soil. However, where it is impossible to identify the party responsible for the soil pollution, the land use





right holder must undertake the risk management and control and restoration of the land. The law requires the Ministry of Environment and Ecology (MEE), together with related departments, to develop measures for determining the party responsible for soil pollution in cases where it is uncertain or under dispute.

The Law also sets out the tasks and responsibilities of government authorities in controlling and regulating soil pollution. While MEE will be primarily responsible for supervising and administering soil pollution work, other authorities, such as the Ministry of Natural Resources and the Ministry of Agriculture and Rural Affairs will also play a role. The law requires them to establish a soil environmental information platform, include soil pollution prevention and control in their economic development and environmental protection plans, and establish a soil environmental monitoring system. Local government officials will be assessed and held accountable for prevention and cleaning up of soil pollution.

The Law contemplates, and requires the development of, a system of comprehensive standards for implementing soil pollution control and prevention. MEE is required to establish national standards for soil pollution risk control according to soil contamination status, public health risks and ecological risks. Local governments are authorized to develop additional, stricter standards. These will be mandatory standards.

Finally, the Law advocates public participation in soil pollution management and establishes a framework for greater transparency and increased disclosure in relation to soil pollution. The list of construction land subject to soil pollution risk management and control and restoration will be updated periodically and available to the public. The authorities will input information regarding soil pollution activities in the social credit records of entities and make such information available to the public through the National Credit Information Sharing Platform and the National Enterprise Credit Information Publicity System. Soil monitoring data and investigation, risk assessment and restoration reports will be uploaded to the national soil environment information platform.

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## Actions to consider

Investors and enterprises in China should keep abreast of the related standards and implementing regulations that will be developed extensively over the coming months and years. They should also start considering and addressing risk allocation and liability with respect to existing or potential soil pollution when negotiating relevant agreements, such as land use grant and transfer, lease, and asset or share transfer agreements. Because of the potential for successor liability, companies should place greater importance on conducting thorough due diligence for soil contamination as a part of doing deals in China.

## Conclusion

The new law should bring some much needed attention and action towards addressing soil pollution by all stakeholders in China. It provides a broad and thorough basis for Chinese authorities to systematically restore polluted land and regulate activities that cause soil pollution. For investors and enterprises, the law, together with the development of legally binding and enforceable standards and regulations, will provide helpful clarity and predictability. At the same time, it also creates new obligations and potential liabilities, which could raise costs for certain business activities and transactions in China.