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The cover features several large, dark green leaf silhouettes of varying sizes and orientations, scattered across the background. The leaves are stylized and have a smooth, rounded shape.

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Environmental Law

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Taiwan: Trends & Developments
Lee and Li Attorneys at Law

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Trends and Developments

Contributed by Lee and Li Attorneys at Law

Lee and Li Attorneys at Law is Taiwan's largest law firm and has more than 100 licensed attorneys. Its environmental law practice group has around 40 members, and some are attorneys with an environmental engineering background. The group offers a wide array of services, from general consultation and periodic legal updates to environmental litiga-

tion, EHS due diligence in mergers and on-site checks. It has helped an aviation company obtain all the needed EHS permits before its factory started to operate, and its findings during on-site checks have saved clients from potential legal liabilities. The group also communicates with the government on behalf of clients for its environmental inquiries.

Authors



Wei-sung Hsiao is a partner at Lee and Li and heads the firm's environmental law practice group. He focuses on environmental protection law, construction safety regulations and occupational safety law. He has led the

group on many high-stake environmental cases, corporate mergers and on-site compliance surveys. He is currently an adjunct assistant professor of practice at two universities and frequently speaks in seminars and forums held by international and domestic business associations.



Chun-wei Chen is a junior partner at Lee and Li and a member of the firm's environmental law practice group. Her practice focuses on environmental law, especially the law regulating exhaust emissions, solid waste disposal and soil

contamination. She advises clients on pollution prevention issues, conducts EHS compliance checks, performs EHS due diligence in M&A projects, and represents clients in environmental disputes. She is a regular contributor to trade and legal publications, writing on environmental class actions.

The global focus on environmental protection has prompted the lawmakers and competent authorities in Taiwan to reexamine the domestic environmental laws and enforcement action. The latest changes and developments in Taiwan's environmental law can be summarised as follows.

Culpability of Negligent Polluters

Article 190-1 of the Criminal Code is the main provision that punishes actors in environmental pollution. On 13 June 2018, the latest amendment to Article 190-1 was enacted. Under the new, amended article, factory or business proprietors, supervisors, agents or employees will be sentenced up to seven years in prison, and/or fined up to TWD15 million (approximately USD500,000) if they throw out, abandon, dump, or release toxins, or in any other manner allow toxins or other substances detrimental to human health to pollute the air, soil, or any bodies of water intentionally or negligently.

Unlike the old Article 190-1, the revised Article 190-1 removes the prerequisite of "likely to cause danger to the public" for punishing the offender. That means a polluter can be subject to criminal investigation or liability regardless of whether his or her offence will likely endanger the public. The new article further holds negligent polluters culpable. Lack of criminal intent is no longer a valid defence for business operators that fail to exercise reasonable care.

Besides the proprietor and supervisors of a business, the new article holds criminally liable the business' agents or employees involved in the offence. Foreseeing that the new article may ensnare offenders that lack sufficient culpability, the lawmakers excluded from its purview offences that cause minor or negligible pollution. Despite the narrowing of the purview, the new Article 190-1 is expected to have a greater deterrent effect on the individuals and enterprises running factories in Taiwan.

Increased Liabilities and Disgorgement of Illicit Gains

Environmental law violations in Taiwan, when found, usually result in an administrative fine. If the pollution is serious or the polluter is a repeat offender, an administrative order to suspend operations or shut down will follow. In some cases, criminal liability will be incurred if the pollution is caused by intentional release of contaminants or harmful substances and results in deaths or serious injuries. To better prevent violations, the lawmakers in Taiwan have in the past few years gradually increased the criminal and administrative liabilities under the environmental law.

On 25 June 2018, a bill to amend the Air Pollution Control Act – the law regulating exhaust emissions in Taiwan – was passed by the legislature. It took effect on 3 August 2018 and is the most significant overhaul since 2002. The new act subjects polluters to harsher criminal sentences and administrative fines. The maximum fine was raised from TWD1 million

(approximately USD33,000) to TWD20 million (approximately USD660,000). Where air pollution causes deaths, the polluter can be sentenced up to life in prison and fined up to TWD30 million (approximately USD1 million). The penalty imposed on corporate entities for environmental violations is increased tenfold.

The Waste Disposal Act, the law regulating solid waste in Taiwan, was also overhauled in 2017. In view of the rampant illegal dumping of solid waste and the concomitant environmental hazards and health threats, the lawmakers in the amendment increased the fines: the smallest adjustment was double the original fine, while the largest adjustment was 100 times the original. Also, the prison sentence for causing harm to human health and disease went from a maximum of five years to between one year and seven years. Following the amendment, guidelines for determining the amount of the fines were promulgated on 28 May 2019. The guidelines require that the authorities factor in: (i) the type of violations; (ii) the number of times the same provision is violated; and (iii) the type of solid waste illegally dumped to set a fine within the statutory limit. If a violation is severe, the polluter can be fined the maximum amount specified by the law; where the illicit gains reaped by the polluter exceed the statutory ceiling, the authorities can go over the statutory ceiling in setting the fine.

The Water Pollution Control Act, the law regulating waste water in Taiwan, was largely revised in 2015. The revision is worth noting because, besides increasing the legal liabilities of the polluters, it authorises the authorities to confiscate the illicit gains the polluters obtained from violating the law. In the past, business proprietors often succumbed to the substantial profit to be earned from illegally treating or discharging waste water, writing off the comparably small fines as a necessary cost of doing business. The amendment disincentivises the proprietors by empowering the authorities to issue fines and confiscate illicit gains at the same time. Under the amendment, illicit gains are defined to include the additional profits earned and the costs saved by the polluters. This enforcement mechanism can also be found in the 2018 bill on the Air Pollution Control Act.

Intensified Environmental Law Enforcement

Environmental law violations are difficult to uncover. Violations of this kind are usually committed surreptitiously. If they are not exposed immediately, most of the evidence will not be secured. Also, in most cases, tracing pollution sources and identifying polluters consumes considerable time and energy.

Taiwan was once known for its ineffective enforcement of the environmental law. The securing of evidence was too often handicapped by the fact that the authorities were short-handed and poorly equipped. To solve these problems,

certain actions have been taken by the authorities and the legislature.

Firstly, whistleblowing is now encouraged. Both the Water Pollution Control Act and the Air Pollution Act have been amended to protect employees who report misconduct by their employers. The fines paid by the polluters are used to reward whistleblowers.

Also, starting 2017, the competent authority installed 3,300 small air-quality sensors in 120 counties and towns, covering 44 industrial zones and around 38,000 factories. By analysing live streaming data from the sensors, the authority is able to find when and where a factory is emitting exhaust air illegally, and follow up with an extensive on-site inspection. These air-quality sensors operate 24 hours a day, seven days a week, serving as powerful deterrents to potential polluters.

All these efforts seem to have paid off. According to the statistics from the authority, between 2015 and 2018, there were 91 waste water pollution violations investigated by the law enforcement agency, resulting in around TWD39 million in penalties and TWD133.28 million (approximately USD44.4 million) in disgorged illicit gains. Also, administrative fines totalling around TWD1.57 billion (approximately USD52.3 million) were assessed. In contrast, between 2011 and 2014, only 23 violations were investigated, which resulted in TWD7.6 million in penalties and no disgorged illicit gains. As to the fines imposed by the authority, they amounted to around TWD900 million (approximately USD30 million), roughly two-thirds of the fines between 2015 and 2018.

Since the small air-quality sensors were installed, 65 illegal exhaust emissions have been discovered, leading to TWD62.4 million (approximately USD3.08 million) in fines and nearly TWD200 million (approximately USD6.6 million) in air pollution control fees evaded by the polluters. By the end of 2019, 5,200 more air-quality sensors will be installed, and a total of 10,200 sensors can be expected at the end of 2020.

Takeaways for Enterprises in Taiwan

Taiwan is backing its commitment to environmental protection by taking concrete steps to monitor enterprises having factories in Taiwan, multinational and domestic. The legislators and the authorities are regularly amending the environmental law and stepping up the enforcement efforts. This direction is not likely to change.

Enterprises in Taiwan would be wise to heed environmental regulations when making business decisions. Besides monitoring the developments of the environmental law closely, they should establish a management system to effectively control their input of raw materials and output of products and post-production waste. As negligent polluters are culpable now, internal standards such as SOP, OCAP and ERP should be set up for the frontline operators to follow, and legal compliance checks should be conducted periodically. The internal standards, if properly crafted and strictly observed, and the compliance checks can greatly mitigate the enterprises' exposure to environmental liabilities.

Lee and Li Attorneys at Law

8F, No. 555
Sec. 4, Zhongxiao E. Rd.
Taipei 11072
Taiwan



Tel: +886 2 2763 8000
Fax: +886 2 2766 5566
Email: attorneys@leeandli.com
Web: www.leeandli.com