

# The Liabilities of Companies and their Management Personnel in Environmental Violation Cases



ASIA

## - Analysis on Ten Classic Cases on Environmental Violation along Yangtze

The Supreme People's Court of the People's Republic of China announced 10 classic cases on environmental violation along Yangtze River Economic Zone (including Shanghai Municipality, Jiangsu Province, Zhejiang Province, Anhui Province, Jiangxi Province, Hubei Province, Hunan Province, Chongqing Municipality, Sichuan Province, Yunnan Province and Guizhou Province) in January 2020. Among these 10 cases, there are 7 criminal cases of illegal discharge of pollutants into the Yangtze River tributaries, and 1 administrative case.

### ■ DEBRIEF OF THE CRIMINAL CASES

Among the 7 criminal cases, 4 cases are only related to individual criminal liabilities, **where:**

- (i) in one case with the purpose to gain illegal proceeds, the defendants established a company to illegally dispose of industrial sludge;
- (ii) in one case for the purpose to reduce the cost of pollution treatment, the defendants illegally discharged the waste water generated by their company;
- (iii) in one case the defendants illegally discharged wastes and illegally disposed of hazardous waste to a third party without a valid hazardous waste treatment license; and
- (iv) in the remaining case the defendants operated mine factory without any applicable licenses and resulted in the pollution of the surrounding soil and water environment.

The remaining 3 cases are considered as corporate crime. The companies and their management personnel are punished as follows:

- (i).  
Offense committed: to pass the environmental inspection by the authority, the individual defendants illegally discharged waste water into the Yangtze River and provided false data to the authority:
  - The Company: fine of RMB 4,000,000;
  - The "Person(s) in charge" (defined below) who also serves as the legal representative, chairman and general manager: fine of RMB 100,000 and sentenced to 30 months in prison;
  - The "Personnel who are directly responsible" (defined below), one of whom is the environmental specialist of the Company: fine ranging from RMB 20,000 to RMB 80,000 and sentenced in prison ranging from 9 months to 27 months.
- (ii).  
Offense committed: the Company failed to upgrade its existing waste treatment facility and individual defendants illegally discharged waste water into the Yangtze River:
  - The Company: fine of RMB 1,000,000;
  - The "Person(s) in charge" who also serves as the legal representative and general manager: fine of RMB 100,000 and sentenced to 12 months in prison.
  - The "Personnel who are directly responsible", one of whom is the operator of the waste treatment facility of the Company: fine ranging from RMB 30,000 to RMB 100,000 and sentenced in prison ranging from 10 months to 12 months.

(iii).

Offense committed: the Company illegally treated hazardous waste without a valid license:

- The Company: fine of RMB 1,200,000;
- The “Person(s) in charge” who serves as the supervisor but is also the actual controller of the Company: fine of RMB 200,000 and sentenced to 60 months in prison.
- The “Personnel who are directly responsible”: fine ranging from RMB 40,000 to RMB 60,000 and sentenced in prison ranging from 10 months to 36 months.

#### ■ CORPORATE CRIME

In fact, the *Criminal Law of the People's Republic of China* provides that a company can be criminally liable for damaging environmental resources, such as illegally discharging hazardous pollutants in the environment. According to the *Meeting Notes on Handling Criminal Cases of Environmental Pollution*, a corporate crime shall be constituted in a criminal case of environmental pollution when such misconduct was committed in the name of such company and for the benefit of such company, and where such misconduct is:

- (1) determined by the company's decision-making body in accordance with its decision-making procedures;
- (2) decided and agreed by the company's actual controller, person in charge or responsible person of a department;
- (3) recognized, indulged or acquiesced by the company's actual controller, person in charge or responsible person of a department, who also learned that the individual members of the company committed the crime of environmental pollution, but did not stop it or take timely measure; OR
- (4) committed by using the company's business license, contract instrument, seals for company activities, etc. to carry out business activities with third parties, and by utilizing the company's vehicles, ships, production equipment, raw and auxiliary materials, etc.

#### ■ POTENTIAL RESPONSIBILITIES OF LEGAL REPRESENTATIVE / SENIOR MANAGEMENT PERSONNEL

As is revealed in the above section, once a corporate crime is constituted, such company shall be fined and its persons in charge and other personnel who are directly responsible shall also bear criminal responsibility.

- “Personnel who are directly responsible” are the individuals who committed the crime with concrete action and have played an important role during that course.
- “Persons in charge” are individuals who have the actual power to decide, approve, authorize, indulge, and command during the course of crime commitment, usually including the actual controller of the company (e.g. the legal representative), senior management personnel (e.g. the general manager), or responsible person of a department (e.g. the department manager).

Usually in practice, the legal representative, or senior management personnel may be considered as a “Person in charge” not only when such person has the power to decide, approve, authorize, indulge, and command during the course of crime commitment pursuant to his/her scope of duty, but also when such person either participates in the decision-making of such crime commitment, or specifically decides on/ agrees to such crime commitment, or refrains from crime prevention when he/she is aware of such crime commitment.

In the 2 out of 3 corporate crime cases, legal representatives are considered as “Persons in charge”. One legal representative concurrently holds the position as the chairman and general manager, and the other holds the position as the general manager. They are ruled criminally liable by the court because they proactively discussed with or authorized “personnel who are directly responsible” to conduct the crime commitment. However, in the remaining corporate crime case, the legal representative is NOT considered criminally liable because she managed to prove that, though serving as the executive director of the company, she is only in charge of invoice issuance, and that she was not aware of such crime commitment.



Therefore, when a company is considered to commit crime of environmental pollution, it is possible that its legal representative or senior management personnel may bear criminal liability even though he/she did not commit concrete crime. But he/she may have counter-argument to excuse themselves based on case-by-case scenario.

#### ■ CONCLUSION AND RECOMMENDATIONS

The 7 classic cases reveal the trend that China is paying more and more attention on rectification of environmental violations, especially along Yangtze River Economic Zone with greater focus on criminal cases.

For companies, they shall pay special attention on environmental compliance during daily operations and for the pollution already done, companies shall take timely measures to restore the environment or to mitigate the damages.

When a corporate crime is constituted, its legal representative or senior management personnel may be exposed to criminal liabilities. Foreign-invested enterprises which may have management personnel of foreign nationality not participating in daily operations need to think about and adopt some measures in order to reduce such risk for these management personnel of foreign nationality. One of the measures is to restrict their powers in a way (such as provided under the articles of association and power of attorney) that they are not involved in routine operations of the companies so that they would not be able to decide, approve, authorize, indulge, command or even be aware of the crime commitment, e.g. purely as a nominal legal representative or purely in charge of high-level operation plan rather than day-to-day operations. DS is available for assisting in the preparation of the documents in this regard.



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