

SOME NEW POINTS OF THE LAW ON ENVIRONMENTAL PROTECTION 2020

NGOC HA

After more than 5 years of implementation, besides the contributions in creating positive changes in environmental protection, the Law on Environmental Protection 2014 (LEP 2014) has also revealed deficiencies, shortcomings and overlaps with other legal provisions such as the Law on Investment (LOI), the Law on Public Investment. To overcome the limitations of LEP 2014 and generate new mechanisms in environmental protection, the Law on Environmental Protection 2020 (LEP 2020) was approved by the National Assembly on November 17, 2020. In this article, we will analyze some new points of LEP 2020 that may directly affect businesses:

Firstly, amending, supplementing the regulations on environmental impact assessment (EIA)

According to the Government's Submission for the Project of Law amending and supplementing articles of LEP, EIA in LEP 2014 is considered a tool to analyze and forecast environmental impacts when investors deploy their projects. Because it is only a predictive tool, the regulations on EIA have revealed shortcomings during implementation. When a project is deployed, there may be many changes EIA cannot foresee;



it is impossible to provide timely forecast in EIA. In addition, the LOI 2020 only requires investors to conduct a preliminary environmental impact assessment in the stage of project preparation while LEP 2014 requires an EIA in this phase. This inconsistency may cause difficulties for investors in implementing investment procedures in Viet Nam. From the above reasons, LEP 2020 render the following changes regarding EIA:

- *Supplementing the procedure for preliminary environmental impact assessment*: For investment projects classified as Group I, in the period of pre-feasibility study for construction investment, proposal for investment policy and request for approval of investment policy in accordance with the LOI 2020, the investors must self-conduct the preliminary environmental impact assessment. Conducting the preliminary assessment aims to identify and forecast the project's key environmental impacts based on its scale, production technology, and location of project implementation; therefrom, making analysis, assessment, and selecting methods to minimize environmental impacts of the project. At the same time, the preliminary assessment also identifies major environmental issues and scope of environmental impacts that should be noted in the EIA.
- *Amending regulations on the subject implementing EIA*: Instead of identifying subjects based on project approval authority as such in LEP 2014, Article 30 LEP 2020 has narrowed down the scope of subjects and determined them by level of impacts on the environment, including (i) investment projects in Group I which are projects with high risk of adverse environmental impacts and (ii) some investment projects in Group II which are with risk of adverse environmental impact according to points c, d, dd, e, Clause 4, Article 28, LEP 2020.

- *Specifying regulations on contents of EIA reports:* LEP 2020 adds more requirements in the main contents of EIA reports than LEP 2014, especially, an EIA report must contain the assessment and identification of possible environmental incidents; evaluate the suitability of the investment project with the national/regional/provincial environmental protection planning, laws on environmental protection and other relevant laws.
- *Changing the procedures for EIA approval:* Instead of approving EIA reports as stipulated in LEP 2014, LEP 2020 provides the approval of EIA report appraisal result as a basis for state competent agencies to appraise the feasibility study report and basic design of the project.

Secondly, supplementing the regulations on environmental permits (**EP**)

Previously, environmental-related permits are not specified in LEP 2014, but dispersedly governed in laws on irrigation, water resources, etc. This, according to the Government's Submission for the Project of Law amending and supplementing articles of LEP, requires investors to carry out various administrative procedures in terms of environment and related fields after their project is approved and before its official operation. It also causes many difficulties in state management. Therefore, LEP 2020 has integrated all kinds of environmental permits

such as wastewater discharge, exhaust gas discharge, hazardous waste treatment. into one type of permit namely EP.

The subjects that must have EP include (i) Investment projects of Group I, Group II and Group III that generate wastewater, dust, or exhaust gases discharged into environment, which must be treated; or generate hazardous waste that must be managed in accordance with the regulations on waste management upon official operation; (ii) Investment projects; concentrated production, business and service establishments; industrial clusters operating before the effective date of this Law having the same environmental criteria as the above subjects; the projects in circumstance (i) of this paragraph which are urgent public investment projects under the Law on Public Investment will be exempt from EP. Depending on each project type, the licensing authority and EP contents will define the specific requirements of environmental protection.

It is noteworthy that one of the bases to consider granting EP to a project is the assessment of endurance capacity of the environment within the project implementation area. This new regulation of LEP 2020 is added to limit the environment's tolerance to pollution sources in the area. The competent state authority shall neither approve EIA report appraisal result nor grant EP to new projects directly discharging wastewater into the surface water reaching the maximum endurance capacity as announced by competent

authority, unless the investors have a pollution treatment plan, or a wastewater treatment plan satisfying environmental technical regulations on surface water quality to generate no more pollution in the area. This regulation can directly affect the investors when they prepare to deploy projects in the areas with pollution signals.

Thirdly, amending the regulations related to damage compensation

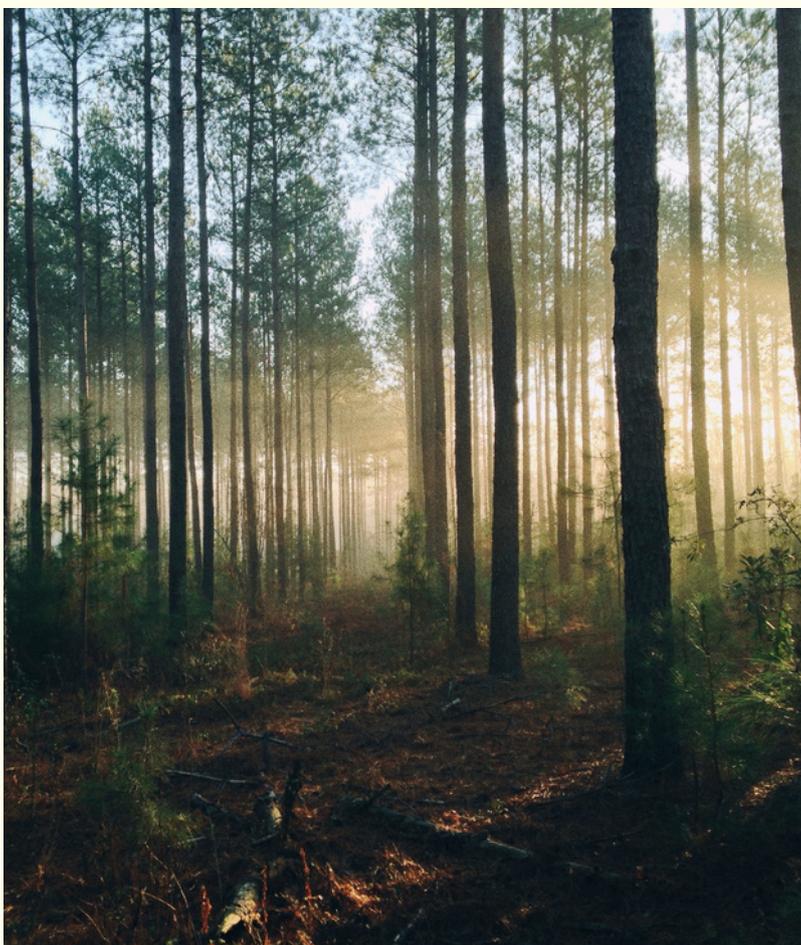
One of the most difficulties in environmental disputes is that the aggrieved party cannot prove the cause-effect relationship between environmental violations and the damage caused by the acts. To overcome this matter, LEP 2020 attributes the responsibility of proving the cause-effect relationship to the defendant, that is, the organization or individual committing the violation acts causing pollution when the case is handled at the Court. This provision aims to protect rights and interests of the aggrieved party suffering from the damage caused by the acts of environmental law violation.

At the same time, LEP 2020 also mentions for the first time the principle of determining the compensation responsibility when two or more organizations, individuals jointly cause environmental damage. The compensation responsibility is determined according to the proportion of damage in the total environmental damage caused by the parties.

Some comments and recommendations

The regulations on EIA in LEP 2020 are consistent with the LOI 2020 and the Law on Public Investment 2019. LEP 2020 also has clearer provisions than LEP 2014 regarding the requirements for EIA in the preparation and implementation of investment projects. EIA not only contains analyses and forecast about environmental impacts of a project, but also identifies environmental incidents to propose measures for minimizing negative impacts on the environment. This helps investors prevent and minimize environmental incidents that may occur during project implementation.

The unified use of one EP type is judged to facilitate investors in implementing projects and reduce costs in investment, production, and business activities. This also helps state management over environment unified and coherent.



However, this can be a challenge for the competent authorities in licensing, managing, and monitoring projects. They need to improve the professional quality of the staff processing and receiving dossiers, update modern technologies to develop a synchronous technical infrastructure for management.

In addition to the compliance with new environmental regulations, investors should also note that the responsibility to prove the cause-effect relationship between the act of violation against environmental law and the damage thereof shall belong to the defendant, which will be binding the investors and add to their responsibility in the implementation and compliance with environmental laws.

Legal documents guiding the implementation of LEP 2020 will be drafted and issued in 2021. Investors should keep updating the guidelines so that they could comply with the provisions of the law, avoiding risks in business investment activities. With our experience of engagement in the research and development of the LEP, NHQuang&Associates will continue with further updates and information when any relevant guiding document is issued in the coming time.