China

EIA profile

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Overview ESIA procedure

The General Technical Guidelines specify that the EIA procedure in China generally follows three stages (up to the moment when the EIA report is written):

1. Stage of preparation, research and work program (including the Screening process and possibly the Scoping process)
2. Stage of analysis, demonstration and prediction (Assessment process)
3. Stage of report writing (Assessment process)

Thereafter the review of the EIA report (which became legally mandatory in 2017) and the decision-making on its approval follows. The EIA report is then used as a supporting document for the decision-making on the project. Finally, EIA follow-up takes place. The EIA procedure should follow the principle of early intervention, meaning that the EIA should be run as early as possible during the earlier stages of the project and have a focus on the environmental feasibility of the site selection (or line selection) and process route.

Milestone documents for EIA in China are the following: Environmental Impact Registration Form, Environmental Impact Report (EIR), Environmental Impact Form (EIF)

source

Yuan Zhu (MEP), August 2017

Screening

Screening process

The revised technical guidelines for EIA, general program (HJ 2.1-2011) included screening as a formal step in the EIA process. Screening may be done by MEP or the EPB depending on the project.

As part of the screening process, construction projects are categorized according to whether they require a full Environmental Impact Report (EIR), a less detailed Environmental Impact Form (EIF) or a basic Environmental Impact Registration Form (EIRF). The decision to allocate the projects to the different categories is based on a screening list with thresholds related to project features, size, output and environmental parameters:

Category A (Major): projects which are likely to cause a range of significant adverse environmental impacts need to produce a full EIA and submit a full EIA report (EIR). An EIA outline may be prepared by the consultant and submitted to the approval authority prior to preparation of a full EIA but is not mandatory;

Category B (Light): projects which are likely cause to a limited number of significant adverse environmental impacts, they need to conduct a limited EIA and submit a limited Environmental Impact Form (EIF);

Category C (De minimis): projects not expected to cause significant adverse environmental impacts do not require EIA, but still should fill in an Environmental Impact Registration Form. Proponents in this category fill in an Environmental Impact Registration Form (EIRF).

Sensitive areas

Ther are specific provisions for sensitive areas. The environmental sensitiveness of the proposed location of the project is integrated into the screening/classification of projects. For example, category A projects include all regional development projects of river basins development, construction of the development zones construction of the new urban areas and renovation of old urban areas; and the large and medium-sized construction projects that may cause impact on the sensitive areas of the environment.

Contents of the starting document

The content of the starting document shall be the following:

1. Briefing on the proposed projects, including location, investment, project features, etc.
2. Environmental baseline of the project location and surrounding area
3. Potential environmental impacts brought about the project in study
4. Measures for preventing and mitigating the adverse environmental impacts
5. Environmental management plan involving pollution control facilities and investments

Timeline Screening

The timeline for reviewing the EIA registration and taking a screening decision is 15 Days.

Scoping

Scoping process

Before promulgation of EIA law, there was a requirement of scoping document. Currently, the step to develop a scoping document is voluntary.

Scoping is based on the consideration of likely environmental effects in which case TGEIA, 1993 has specified three action-classes (criteria) to determine the complexity of methods to be used in each individual impact assessment.

A five-step scoping process is advised:

(1) the initial analysis of project;

(2) investigation of environmental baselines;

(3) identification of significant impacts;

(4) establishment of the action-classes for each individual impact; and

(5) preparation of an EIA action-outline. Once the EIA action-outline has been approved by the EPB, the developer contracts a licensed agency to conduct the impact assessment.

To be checked

Contents of the scoping document

Developing a scoping document is voluntary. Typically, it includes sources of the project producing emissions or pollutions, determining the environmental standards for evaluating impacts, screening out the chief impacts, the main tasks and technical points for impact predicting and evaluating, work plan and budget estimation.

Timeline scoping

Not specified

Assessment

Assessment process

The revised General Technical Guidelines (2011) provide detailed insights into the Assessment procedures including basic requirements, methods to be used and required contents. A basic assessment process involves a survey that is conducted to assess the environmental status of the affected area. Also, an engineering analysis of the project is required in order to identify all of its potential impacts (both during its construction and operational phases) on the baseline environment. Proposed methods to identify potential impacts are a matrix, network, or charts overlay by Geographic Information Systems (GIS), ect. This data will allow a prediction and assessment of environmental factors and an analysis of specific environmental impacts. Identified impacts are then compared to national and local environmental standards, and the mass load limits of certain pollutants (usually SO2 and chemical oxygen demand) which in many cases is allocated to the project by the local regulators. Other parameters may include energy and water use efficiency rates. Impacts exceeding standards require mitigation. On the basis of these results, environmental measures will be proposed and thereafter the EIA report is compliled.

The guidelines recommend that quantitative and qualitative methods are combined, but that a focus lies on the former one. Furthermore, advanced technical methods are preferred.

The assessment includes social, environmental and economic effects. The Revised General Technical Guidelines (2011) strengthen the requirements for social impact assessment, which are the following:

1. Consideration of land acquisition and resettlement, public health, cultural heritage, and community infrastructure.
2. Establishing a socio-economic baseline and prediction of impacts through quantitative analysis or qualitative description of changes.
3. Assessment of positive and negative social impacts and establishment of mitigation/management.

Contents of the EIA report

The EIA report should include the following contents:

1) general information of the construction project;

2) the surrounding environmental conditions of the construction projects;

3) the analysis , forecast and evaluation of the possible environmental impact of the construction projects;

4) the environmental protection measures and their technological and economic proof of the construction projects;

5) the economic analysis on gains an losses of the environmental impact of the construction projects;

6) the suggestion on the implementation of environmental monitoring of the construction projects;

7) the conclusion of the EIA process;

8) those construction projects involving water and soil conservation must also have water and soil conservation plans examined and approved by water administrative competent department.

Additionally, The EIA report should enclose an explanation of how the views of the relevant units, the experts and the public have been adopted in the report.

The EMP is usually a part of the EIA report as pollution prevention and mitigation measures. The proponent has to provide a feasible plan to meet the local emission capacity in case the proposed project causes air/water pollution.

The Revised General Technial Guidelines further specify the content of the report in their appendix.

Accreditation of consultants

China has adopted an EIA engineer professional qualification certification system to foster a contingent of professional technicians in this field. Consultants who conduct the EIA study must be assessed and approved by MEP. Issuing of licence is based on prior experience and size of the consultant. A consultant with License type A is required to conduct EIA that need approval at national level by MEP and Consultant with Licence type B may complete EIA reports which can be approved provincial/local level EPBs.

source

Mc Elwee CR (2008) The Environmental Impact Assessment in China: The First Steps Towards Compliant Operations. International Environmental Law Newsletter. Vol. 10, No.4 .

Review

Review process

The review is done by MEP or the EPB, depending on the project. Until 2017, review was not specified in regulations. Therefore, practice varied between the different review bodies: the bureaus differed in size, approach and financial setup, and some demanded a fee from proponents for EIA review. The 2017 revision of the regulations specified and standardised EIA review in order to make it more uniform.

For full EIA reports (category A projects): EPB consults experts with various research backgrounds, usually through workshops on the quality of the study, the proposed mitigation measures and validity of the overall conclusion of the EIA report. A public hearing or other form of public consultation takes place.A month is given for this consultation.

Limited EIA reports (category B projects) and the environmental impact registration forms (category C projects) are reviewed by MEP or EPB. It is not legally required to collect expert input or the views of the public when compiling the Limited EIA reports.

source

Yuan Zhu (MEP), August 2017

Review expertise

EIA reports can be checked by external parties including relevant experts and scholars as well as interest groups and local residents during a public hearing. Their comments are recorded and submitted as part of the EIA report with reason for acceptance or rejection.

Timeline Review

The review and decision should be taken within 60 days (full EIAs) or 30 days (limited EIAs).

Decision making

Integration of ESIA into decision-making

The approval of the EIA report and the project approval are two separate decisions. The EIA report is one of the documents that have to be submitted as part of the preliminary documents to obtain project approval.

MEP issued the Regulations on Hierarchical Examination and Approval of EIA Documents (amended in 2009), which clarify the approval authorization of EIA documents of construction projects. In general the regional authorities are responsible for the EIA approval decision. However, article 5 specifies that the competent department of environmental protection under State Council is responsible for approving EIA documents for the following construction projects:

construction projects of nuclear facilities or confidential projects

trans-province, autonomous region or minicipal city construction projects

construction projects with special character that may cause significant impact on the environment

Typically, the NDRC (National Development and Reform Commission) at the central and local level takes the decision on the project approval after EIA review opinions have been issued by environmental authorities.

source

Regulations on Environmental Management of Construction Project, 1998.

Decision justification

The project proponents, the licensed EIA firms, and the local environmental departments of the area where the proposed projects are located, are provided a detailed decision statement including justified evidences and reasons for the decision.

The decisions are published in a simplified format via websites of the environmental departments at all levels which are responsible for reviewing and approving the EIA reports.

Timeline decision-making

The review and decision should be taken within 60 days (full EIAs) or 30 days (limited EIAs).

Possibilities for appeal

The tool of administrative review or reconsideration may be used to challenge EIA decisions at first, and if the result is not satisfactory, a legal case will then be filed to the courts. The public may pursue legal recourse by making public interest litigations, which may access to the supports from public interest lawyers or NGOs such as the Fund for China Environmental Protection. The decision on the EIA report or the final approval may be appealed against.

The public that may be affected by the proposed project is legally allowed to make an appeal, or their representatives such as a NGOs or a lawyer.

Follow-up

Compliance monitoring

Monitoring is a compulsory part of the EIA process in China. It is required during both project construction and operation.

The developer is required to submit an application and necessary monitoring information to MEP or the EPB for a follow-up inspection after the construction phase of the projects. Operation may start only after compliance with approval conditions is approved by the competent authority usually within a period of three months. During the operation phase, EPBs randomly conduct on-site investigations at least three times a year.

source

Chen Q, Y Zhang and A Ekroos (2006). Comparison of China's EIA Law with EU EIA Directive. Environmental Monitoring Assessment Journal. 10661-006-9502-4

Non-compliance penalties

Chapter V of the 2002 PRC Law on EIA makes provisions for legal liabilities: If the construction has commenced without an EIA, the administrative supervision who approved the activity has the right to order that the construciton unit ceases the activities and submit an EIA. Criminal liability can be imposed on the personnel responsible for a commited crime under the EIA law. Although the penalties for operating without an EIA are rather low (maximum of approximately US$28,600), MEP has ordered facilities without approved EIAs to shut down.The absense of a project EIA for an existing project may also limit access to credit or financing for future projects.

The newly revised Environmental Protection Law of the People's Republic of China (2014) particulary strengthens the authority of the EIA enforcement agencies. Its Articles 61 - 63 and 65 provide for specific remedies directed at the failure to submit proper EIA documentation prior to commencing project construction as well as the submission of fraudulent EIA documentation. For instance, the new law allows authorities to detain company bosses for 10 to 15 days if they did not conduct an EIA and refuse to stop construction as ordered by the authorities.

source

The Law of the People's Republic of China on EIA, 2002, Chapter V article 31-32. and;

Mc Elwee CR (2008) The Environmental Impact Assessment in China: The First Steps Towards Compliant Operations. International Environmental Law Newsletter. Vol. 10, No.4

Stakeholder engagement

Public participation requirements for ESIA process stages

The interim measures for public participation (2006) give provisions for public involvement during the reviewing of the draft EIA report. This is especially the case for category A projects in which case the consultant is required to solicit the views of the public that will be affected.

The Revised General Technical Guidelines (2011) moreover require ongoing stakeholder consultation throughout the EIA process (including screening, scoping and assessment process).

The Revised Technical Guidelines (2011) determine that stakeholders representing enterprises, social groups, nongovernmental organizations, residents, experts and members of the public that may be affected directly or indirectly by the project shall be consulted. Consultation methods may include questionnaire surveys, interviews, forums, panel meetings, public hearings and/or other measures.The stakeholder comments then shall be combined and summarized based on statistical analysis.

Usually, the proponents and the contracted EIA firms are responsible for collecting the opinions or comments from the public, via questionnaires, public hearing, or ad hoc meetings. The comments should be recorded or filed in written or multimedia formats. The public may also provide their comments directly in written format to the local governments, environmental departments, or even the MEP if there is a potentially severe harm to their interests.

The Interim Measures for Public Participation for EIA (2006) stipulate that the proponent and its EIA consultants have to take public opinions seriously. The EIA report submitted for review is supposed to include an explanation of why the opinions of the general public are accepted or rejected.

Also public opinions have to be considered for the approval decision on the EIA report. An expert advisory committe can be formed to discuss the adoption of public opinions, determine their rationality and formulate recommendations on their consideration in the EIA report. When the competent authority on environmental protection decides on the EIA approval, they should consider the recommendations for of this expert committee carefully.

There are no costs for the public to partake in EIA; they can receive the necessary information on the EIA report for free.

Public participation guidance has bee provided since 2006, but in temporary form (Interim Measures for Public Participation in Environmental Impact Assessment).

Timeline for public comments

45 days

Access to information

Several legal provisions enable the public to access information on the EIA.

According to the General Technical guidelines, consultation should facilitate "informed participation" of stakeholder groups. As such, stakeholders shall be furnished with sufficient project information to enable them to contribute meaningfully to the EIA process. Relevant project information including a project description, summary of the main impacts, scale and significance of the impacts, prediction of environmental risks and consequences, proposed mitigation and outcomes shall be disclosed.

Additionally, the Interim Measures for Public Participation in EIA (2006) stipulate that the disclosure of the following information should be done:

- Project proponent's name
- EIA Contractor's name and period over which the EIA will be undertaken.
- A non-technical summary of the EIA Report and findings.

Article 16 of the Interim Measures further stipulates that construction units, EIA agencies and the competent authorities for environmental protection should keep the original data of the feedback opinions for future reference.

Finally, information on the darft EIA report can be accessed by the public. The proponent is required to provide this information to the public and seek their views.

The proponet is required to designate five or more locations within the area of the environment to be affected for displaying EIA reports. The locations are specified as:

(i) The rural township, urban township, city or district public office or village or borough office where the development activity is located;

(ii) the public offices of other rural townships, urban townships, cities and districts adjacent to the rural township, urban township, city or district in the foregoing subparagraph;

(iii) Schools, temples, churches or markets in the vicinity of the development activity;

(iv) Locations along the roadsides of public roadways within 500 meters of the development activity;

(v) Other locations authorized by the competent authority. Additionally, they are required to publish information in newspapers continuously for three or more days.

ESIA practice

Annual no. of ESIAs

In China, about 300'000 project EIAs are conducted in total per year. At the national level, MEP approves 300~400 EIAs every year.

Central ESIA database

All EIA/SEA reports and their review records are kept in ACEEs at central and local levels. They available

for public inquiry if applications for it are approved.

Professional bodies

- Professional Committee of EIA affiliated with the China Society for Environmental Sciences
- China Association for EIA under the China Association for Environmental Protection Industry

Background information

History of ESIA

The use of EIA in construction projects has been developed and implemented in different stages. Its legal framework has been improved and regularly enhanced through the promulgation of a large number of environmental laws, policies, regulations and provisions. The notion of EIA was introduced in China in the 1970s'. In 1979, when the PRC Interim Environmental Protection Law was promulgated, the formal EIA application process began. Thereafter, several laws, regulations ordinances and administrative rules were issued to further regulate the EIA system, formalize the content of the EIA process and improve its methodologies. In 1989, the Environmental Protection Law was amended and officially enacted. It restated the legal status of EIA. The law was supplemented by 15 specific laws that contain provisions for EIA and provide a legislative basis for EIA practice. The Ordinance of Environmental Management of Construction Projects (OEMCP) which was promulgated in 1998 is one of the most important of such regulations as it specifies the implementation of EIA. It sets fundamental requirements for the implementation of EIA and made EIA compulsory for construction projects of all sizes.

The Law of the PRC on EIA, which came into effect in 2003, extended the EIA practice from construction projects to all strategic development plans and elavated the EIA law from administrative legislation to state law. It strengthens the legal status of EIA in China.

In 2006, interim Measures for Public Participation in EIA were issued. They are the first document regulating public participation for environmental protection in China.

More recent developments include the renaming of SEPA (State Environmental Protection Administration) to MEP (Ministry of Environmental Protection of the PRC) in 2008 and the promulgation of revised general technical guidelines for EIA in 2012.

In 2014, the Environmental Protection Law was firstly amended after 25 years of its existance. Among others, an article on strategic environmental assessment (SEA) was added. This was the result of a three-year long drafting process for which different authorities were responsible for. The final outcome is more ambitious than initially expected and is seen to provide authorities with powerful instruments towards increased protection of the environment. It significantly strengthens the conditions for the enforcement of EIA provisions.

Another minor revision of the EIA law took place in 2016. In 2017, the 1998 regulations were revised: some sections that overlapped with the EIA law were deleted, others were clarified or added (for instance on EIA review).

source

Yuan Zhu (MEP), August 2017

Legal framework

Enabling law

Environmental Protection Law of the People's Republic of China - 24 April 2014

source

- Law of the People's Republic of China on Evaluation of Environmental Effects
- Environmental Laws, Regulations and Policies in China - MEP
- Appraisal Centre for Environment and Engineering in China
- Revised Environmental Protection Law (2014)

National detailed regulation

EIA regulations, updated in 2017

Guidelines

Various technical guidelines have been developed for EIA. They can be accessed through the following link (Chinese only). Three types of such technical guidelines can be distinguished: general technical guidelines, technical guidelines for special EIA, and technical guidelines for EIA of industrial construction project. The general guidelines guides over the latter two which must follow the requirements of the former.

In 1993, general technical guidelines for environmental impact assessment (HJ/T 2.1-93) where developed firstly. Those were replaced by the Technical guidelines for environmental impact assessment -- General program (HJ 2.1-2011) that were put into effect as of Jan.1, 2012. The General program is compulsory to all EIAs submitted in China.

Technical guideline for special EIAs concern two different issues: environmental elements and special subjects.

- Guidelines for environmental elements can be the following: technical guidelines for atmospheric EIA, for surface water EIA, for groundwater EIA, for acoustic EIA and for ecological EIA. Guidelines for special subjects are technical guidelines for environmental risk assessment of construction projects and for EIA of pubic engagement.

- Technical guidelines for EIA of industrial construction projects contain for instance: technical guidelines for EIA of thermal power construction projects, for EIA of water resources and hydropower projects, for EIA of airport construction project, for EIA of petrochemical industry.

Sector specific procedures or regulations

A number of governmental ministries are responsible for setting industry specific criteria for EIA at the national level. Thus various sector-specific regulations exist. Moreover, technical guidelines have been developed for different sector, mentioned under the category "Guidelines".

Scope of application

All projects involving any construction require EIA. Any one building (or modifying or renovating) a restuarant, or a new housing development, commercial office space, a manufacturing facility, a

restaurant etc needs to prepair an EIA. The Circular on Management of Foreign-Invested Construction Projects (1992) specifies that all foreign-invested construction projects that may have an impact on the environment must comply with the provisions on the management of environmental protection of construction projects of the State and implement the examination and approval system for the environmental impact statement (Article 3).

Exemptions from application

In China, a layered review and approval system is exerted on EIA. So far, the MEP has not issued any exemption policy. However, several provinces (e.g. Zejiang in 2011) produced a list of EIA exemptions for the projects with very minor environmental impacts. For example a restaurant or teahouse may then be exempted from EIA requirements.

Exemptions are not regulated at a national level.

Institutional setting

Central ESIA authority

In China the central EIA authorities are the competent authorities of environmental protection at central and local government. The main authority at national level is the Ministry of Environmental Protection (MEP). In March 2008 the MEP replaced the SEPA (State Environmental Protection Administration) and an elavation of MEP to a cabinet-level ministry in the executive branch of Chinese government followed. The MEP has an Department of Environmental Imact Assessment. This department has the following main functions concerning EIA:

- the development of policies, laws, rules and regulations on EIA
- to develop the inventory of categorized management of EIA
- be in charge of examination and approval of EIA reports of major development and construction activities

Regional management is the main mode of environmental management in China. Local Environmental Protection Bureaus (EPBs) are local environmental protection agencies for provinces, autonomous regions, cities, districts, and counties. They are the local EIA authorities as they in charge of the supervision of local EIA work. While the MEP approves certain projects only, about 30 Environmental Protection Bureaus (EPBs) under provincial level governments and 200 bureaus under municipal governments may review and approve all other EIAs. Local environmental protection agencies are under supervision from both their superior agencies and the local government.

source

Yuan Zhu (MEP), August 2017

Other key (governmental) parties

At national level as well as at local level, several governmental parties are involved in EIA, supporting the central EIA authorities.

At national level, the Appraisal Centre for Environment and Engineering ('The China EIA Centre') is since 1992 responsible for providing technical reviews of EIA reports, supporting research and training for

licensed assessment agencies and for Environmental Protection Bureaus (EPB). It is affiliated to the MEP. According to the legislation, several other departments such as the Ministry of Water Resources can take part in the management of EIA at national level.

At local level, EPBs operate from provincial level down to environmental protection offices at the lowest level of township and village governments. Only the national, provincial and municipal level EPBs can approve EIAs though. Furthermore, local appraisal centers for environmental engineering exist. They are technical support institutions that operate directly under the EPBs. Finally, local agencies can take part in the the management of EIA.

source

Yuan Zhu (MEP), August 2017

(De)centralisation of mandates

Local governments can enact local departemental regulations, local ordinances and local government rules on EIA in order to be able to address environmental problems more effectively. They have to comply with national law and regulations though.

Moreover, there is vertical decentralisation of decisions. MEP approves all projects with an investment of US$100 million or more (or US$50 million or more for foreign invested projects in the 'restricted' category of the Foreign Investment Guidance Catalogue); projects involving construction of 'special nature' such as nuclear power facilities or; with cross provincial impacts. Provincial level governments may approve all other EIAs, and may delegate approval authority to sub-provincial (municipal) authorities.

source

Mc Elwee CR (2008) The Environmental Impact Assessment in China: The First Steps Towards Compliant Operations. International Environmental Law Newsletter. Vol. 10, No.4

Payment system

No fee is charged for EIA, as stipulated by law and the Provisions on Code of Conduct for EIA and honest and clean administration concerning construction projects.

Contact

Appraisal Center for Environment and Engineering

China State Environmental Protection Administration

No.8 Dayangfang, Anwai,Chaoyang District, Beijing 100012

Tel: +8610 5109 5493

Fax: +8610 5109 5482