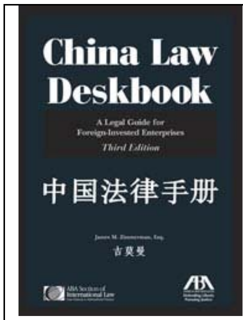

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Colleagues:

The following is the May 2011 posting of ***China Law Deskbook Monthly: News & Views from Beijing*** that supplements the Deskbook. Here are a few new laws, regulations, and policy trends that I find of interest this past month:

- The Legislative Affairs Office of the State Council published the draft 2011 ***Amended Guiding Catalogue of Industries for Foreign Investment*** ("Foreign Investment Catalogue") on April 1, 2011 for public comments. The comment period was short (ending April 30, 2011), and its anticipated that the circulated version will be adopted in the next quarter. The 2011 Foreign Investment Catalogue includes adding a number of industry sectors and products/services to the *encouraged* category including aviation, aerospace, light motorcycles, new materials deemed to be environmentally-friendly, automotive parts and components that result in energy savings, environmentally-friendly battery manufacturing technology, advanced generation equipment for Internet and network systems, advanced semi-conductor development, the construction of water recycling facilities, and investment in charging facilities for electric vehicles. The ***Foreign Investment Catalogue*** (which lists the industry sectors and products that are encouraged, restricted or prohibited), has been going through an amendment review process commenced by the State Council in April 2010. Over the past year, the NDRC and MOFCOM gathered information from various agencies and domestic industry associations to help the government decide whether to open or restrict particular markets. The Principles of Revision, released in Spring of 2010, address various policy objectives that the State Council believes would promote and lead to accelerated economic and technological development in China such as whether further liberalization will promote domestic reform and development and strengthen international investment cooperation, promote the effectiveness and upgrading of the traditional industries, fosters emerging industries of strategic significance (i.e., new energy, new material, energy saving and environment protection, biomedicine, information technology, etc.), promotes the development of the services sector, increase research and development investment in China and cooperation with domestic companies in research and development, promotes energy saving and emission reduction, and supports China's objective to ensure national security. *In the US-China Strategic & Economic Dialogue II, China agreed to "transparent foreign investment regulations" and that the Legislative Affairs Office would publicly and officially solicit comments for a period of not less than 30 days prior to final publication. Given that domestic associations and government agencies have been going through an effectively (selectively) closed-door process for over a year in arriving at the current draft version circulated April 1st, its highly unlikely that any comments received during the notice period would have much impact on the legislative process.*

- The State Administration of Taxation issued the ***Notice To Support the Development of Domestic Emerging Industries*** that, effective May 1, 2011, expands the range of tax exemptions for high-technology enterprises. In order to qualify, *domestic emerging industries* such as integrated circuit design, software design and animation design, are required to be registered with the State Administration for Industry and Commerce for two years. Qualified companies must engage in the following business sectors: (1) exports of repurchased self-developed and designed products that are produced and processed by other enterprises; (2) exports of imported products that are processed by overseas enterprises and being exported under the enterprise's brand name; or (3) exports of outside-procured/externally-purchased hardware loaded with self-developed and designed software. Prior to the Notice, previous rules and practice provided for inconsistent tax treatment. *While support of innovation through tax policy can be a constructive development tool, if the end result is to subsidize and support indigenous innovation and domestic champions over foreign technology firms, these rules may trigger scrutiny under WTO national treatment standards. Its left for observation how these rules will be implemented in practice.*

- Pursuant to a Notice issued on April 20, 2011 by the International Communication Office of the Central Committee of the Communist Party of China (CPC), the government launched a ***joint agency two-month campaign for the purpose of cracking down on "illegal" publicity activities on the Internet***. The CPC claims that over the past several years certain Internet publicity activities violated China's laws and Party discipline standards. The government claims that private enterprises and individuals recruited "Internet mercenaries" that supposedly publish comments online designed to manipulate public opinion. The Notice stated that a work plan of the campaign had been jointly issued by the CPC, the Ministry of Industry and Information Technology, the Ministry of Public Security, and the State Administration for Industry and Commerce, although the actual "plan" is not publicly available. It is uncertain as to whether the campaign will target foreign investors or their employees, but caution should be exercised. *The timing of the campaign is interesting given the events in the Middle East and the enhanced level of government sensitivities during the months of April through June (when major protests and incidents have historically been triggered around the so-called May 4th Movement period). Timing of the campaign is also interesting given the recent detentions of various members of China's dissident community including artist Ai Weiwei who used the Internet to express his thoughts and criticisms of the government. Ai was taken into custody as he was boarding a Hong Kong bound flight at the Beijing airport on Sunday, April 3, 2011. With over 450 million users by the end 2010, China has the largest Internet community in the world and the leadership needs to realize that micro-managing the Internet – and backed up by extra-judicial detentions – is a near-impossible task and could ultimately have a reverse effect. China's efforts to quash public dialogue will only encourage technically savvy voices to overcome the censorship barriers.*

- On May 4, 2011, the State Council announced the creation of a new government administration called the ***State Internet Information Office***, which would consolidate the functions and duties of various ministries and agencies with jurisdiction over the Internet including the State Council Information Office. The SIIO will supervise online content, gaming, video and publications; promote select news sites; and manage online government information. The SIIO is anticipated to have authority to penalize individuals and companies that violate applicable Internet-related laws and regulations. *The creation of the SIIO is intended to centralize control over the Internet in China, which to date has been regulated by a hodge-podge of agencies with oftentimes overlapping and unclear mandates. The* *development of a high-level centralized entity is also a reflection of the significance that the government places on the Internet – as both a benefit and burden – in managing the government's public message.*

- Effective May 1, 2011, the government ***amended Article 164 of the Criminal Law***, which criminalizes bribery of foreign government officials and "international public organizations" to secure illegitimate business benefits. The penalties for violations include prison time of up to ten years and monetary penalties. This amendment is the Chinese government's effort to comply with the United Nations Convention Against Corruption. Previously, the PRC did not have any law addressing cross-border corruption. *This new rule is akin to the FCPA for US companies doing business abroad. Given the increase in outbound direct investment, amended Article 164, if effectively implemented, will help control the overseas activities of Chinese companies.*

- In early April the government released the text of a March 25th speech by Premier Wen Jiabao that was made before the State Council concerning the status of corruption in China and government's work plan in 2011 to control corruption. Wen characterized the situation involving ***official and commercial corruption*** in China as "grave" and the task to remedy the problem as "extremely arduous." Wen also stated that some industrial sectors are "prone to corruption" due to a lack of regulation or inefficient implementation of the law. A number of action items for 2011 include a requirement that government officials disclose their assets and the employment of family members by government agencies connected with the official. In addition to official corruption, the 2011 plan also targets and prohibits managers of state-owned enterprises from obtaining personal revenue or benefits from SOEs or state assets. *Wen mentioned in his speech that in 2010 there were 146,000 government officials across China that were punished for Party disciplinary violations, and 5,373 of those people were criminally prosecuted. Given the increased focus and crackdown on official and commercial bribery, foreign investors should aggressively adopt and monitor their business and ethics practices in China to ensure compliance with both US (FCPA) and Chinese anti-corruption standards.*

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About the Author: James Zimmerman is a partner in the Beijing China office of the international law firm Squire Sanders & Dempsey (US) LLP. Mr. Zimmerman is a former chairman of the American Chamber of Commerce China. He served two terms as chairman of the Chamber in 2007 and 2008, and has lived and worked in China since 1998. Mr. Zimmerman's China Law Deskbook: A Legal Guide for Foreign-Invested Enterprises is one of the American Bar Association's (ABA) leading publications. The 1st Edition was published in 1999, and the 3rd Edition was released in 2010. The opinions expressed herein are his own, and this email newsletter is designed to be for informational purposes only and not designed to be legal advice.