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China Law Deskbook Monthly: News & Views from Beijing

The following are a few new laws, regulations, and policy trends that I find of interest this month:

- *MEP issues its annual report citing that China's pollution remains a "grave" problem*
- *SPC issues a judicial interpretation designed to manage insurance-related disputes*
- *State Council again reduces the number of items that require national level approval*
- *PBOC, MPS, and Ministry of State Security issue draft rules to address the seizure of terrorist-related assets*
- *NDRC releases policy guidelines designed to spur the economy*

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The *Ministry of Environmental Protection issued its annual report* on June 4, 2013 stating that the overall pollution issues in China still remained grave in 2012. Specifically, the MEP found that thirty percent (30%) of the country's major rivers were "polluted" or "severely polluted"; almost sixty percent (60%) of tested groundwater was deemed to be "bad" or "extremely bad"; and only 27 out of 113 major cities in China recorded air quality that is deemed to be safe by national standards. The MEP further reported that the rural areas were experiencing environmental degradation as a result of the increase in industry and mining activities that have moved to the countryside from the urban areas. Also important are the issues that were not addressed in the MEP annual report including the increase in soil pollution that has caused contamination to crops, such as the cadmium-contaminated rice crops, or the increase in airborne particulate matter caused by industrial coal burning and vehicle emissions. On the positive side, the MEP report noted that emissions of sulfur dioxide and nitrogen oxide – pollutants from coal combustion and car exhausts – respectively decreased from 4.5 and 2.8 per cent from 2011 levels. Separately, on May 14, 2013, the MEP issued its annual assessment of all provincial localities and eight central state-owned enterprises on the reduction of major pollutants in 2012, and imposed penalties on both provincial authorities and SOEs that failed to meet pollution control targets. *While the MEP has taken a progressive attitude towards disclosing negative information about the environment to the public, they still hold back critically important negative details that should be revealed, and especially*

data that reflects the serious and debilitating health risks of China's pollution. China is learning to be more transparent, but has much work ahead to gain the confidence of the public, and one way to do that is to release all pertinent data, positive and negative.

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On June 7, 2013, the ***Supreme People's Court issued a judicial interpretation directed to clarify issues in insurance related disputes.*** Specifically, the SPC's interpretation seeks to prevent insurance carriers from unreasonably repudiating claims. One key area of concern addressed by the SPC is the duty of the insured to inform the insurance company. The court has found that some Chinese insurance companies deny compensation in bad faith by citing an insured's failure to fulfill their obligation to inform. To prevent insurers from acting in bad faith, the judicial interpretation only requires the insured to disclose the known facts that insurers request. *China has seen an increase of insurance-related disputes, which includes over 75,000 insurance contract disputes in 2012 (nearly three times as many disputes as filed with the courts in 2008). The SPC has done a commendable job of promulgating JI's that help the courts in managing their ever-increasing caseloads.*

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On June 5, 2013, the ***National People's Congress Standing Committee created an oversight team to review and supervise the implementation of the Law on Renewable Energy.*** The Law on Renewable Energy, which was adopted by the Standing Committee of the 10th NPC in February of 2005, and was amended by the Standing Committee of the 11th NPC in December 2009, is designed to encourage the use of renewable energy sources such as wind, solar, water flow and tidal power (hydro power), photosynthesis (biomass), and geothermal. The objective of the oversight team is to ensure that China is making the required investments to enhance the use of renewable energy, to offset the huge growing demand for energy. *In 2012, China consumed 3.62 billion tons of coal, which is an increase in 3.9% over 2011. The China National Petroleum Corporation reported that China's dependence rates for imports of crude oil and natural gas is fixed at 56.6 percent and 29 percent per year. Thus, the government is realizing that it needs to enhance the use of renewal energy resources to offset the strong energy demands and to move toward self-reliance. The use of NPC-level oversight teams is to ensure full compliance with the law, and especially in situations where local authorities and SOEs are flaunting the requirements to move toward more renewal resources.*

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In mid-May 2013, the ***State Council published a list of items that no longer require central government approval,*** or now only require approval from lower-level authorities. The order provides that a total of 71 items which were previously subject to central government administrative approval, now no longer require such approval. For example, companies that want to invest in civilian airport expansion, subway train production, and oil field development with an annual output of 1 million tons or more will not need government approval. In addition, foreigner vehicle owners will not need a police permit to travel in China in their own vehicles. The State Council order further provides that the

approval of 20 items has been delegated to governments at lower levels. For example, foreign companies can register their permanent representative offices in China with provincial governments, instead of the central government. They can also apply to provincial governments to do business in China. *The stated objective is to increase government efficiency and to make processes more user-friendly. Any time the government reduces the bureaucratic requirements it's a good thing. But, interestingly, as they drop 71 items requiring approval, they add in 100+ items requiring approval for the first time. Two steps forward, and then one step backward!*

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In May 2013, various government agencies released for public comments a draft rule aimed at cutting off ***funding for terrorist activity as part of the country's coordinated efforts to fight terrorism***. Under the draft rule, funds and assets used by both terrorist groups and facilitators of terrorist activity would be frozen immediately after a list of such groups or individuals is confirmed by authorities. The draft rules, jointly prepared by the People's Bank of China (PBOC), the Ministry of Public Security (MPS), and the Ministry of State Security, are intended to put into practice a decision adopted in October 2011 by the NPC. The rules are intended to provide the legal basis for cutting off funding channels for terrorist activity, and provide that financial institutions are required to immediately place a hold on funds and assets once notified by the agencies. The rules also set forth notice provisions for the seizure process. *The key problem with these rules is the lack of effective judicial remedies or accountability in the system to reduce the risk of governmental abuse. Without an independent judicial review, these rules could likely be used or misused for political purposes.*

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In May 2013, the ***National Development and Reform Commission released a set of policy guidelines designed to spur economic development*** and specifically covered luxury and property taxes. Of key interest in the guidelines is the statement that the property tax pilot programs currently in operation in Shanghai and Chongqing, will be expanded to more regions of China. The NDRC's guidelines also promote energy-saving measures and green development and stated that alleged excessive energy consuming products "will be subject to taxation". *Any time the NDRC issues a policy statement its important to remember that the Commission's roots are with the State Planning Commission, which was the agency that micro-managed China's Soviet-styled planned economy in prior years. Today, the NDRC continues to have much power and authority in economic planning and these types of pronouncements need to be taken seriously since they usually are a bellwether of regulatory issues to come.*

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