



Colleagues:

The following is the September 2011 posting of *China Law Deskbook Monthly: News & Views from Beijing* that generally supplements the 3rd edition of the Deskbook. Here are a few new laws, regulations, and policy trends that I find of interest this month:

1. *More restrictions on Internet Freedom.* In mid-July 2011, the Ministry of Public Security quietly promulgated a regulation that requires bars, restaurants, hotels and bookstores providing WiFi for their customers to install Web-monitoring software. The software is intended to monitor customers for illegal activities at public WiFi locations. The software is designed to pass on the identities of customers using free wireless services to public security departments (i.e., the police). Those establishments that refuse to purchase the software, which costs RMB 20,000 (\$3,100), and yet continue to offer Internet access may face a hefty monetary fine of RMB 15,000 (US\$2,307). The regulations are in the process of being implemented in Beijing, and the MPS is purportedly planning to implement the rule nation-wide. *Word on the street is that many of the affected smaller establishments cannot afford to buy the expensive software and are likely to abandon the free WiFi services for their customers. That's unfortunate given that the result of this requirement is to limit Internet access at the retail public level, which people have increasingly become accustomed to. Users will be required to access the Internet from home, work, or at a licensed Internet café where their identification is traceable. In the meantime, the real criminals will find ways in which to hide their identities and do what they do under the radar screen.*
2. As part of an ongoing crackdown, foreign companies are effectively banned from providing *Internet mapping services* in China according to a notice issued by the State Bureau of Surveying and Mapping on June 8, 2011. A foreign company may only engage in Internet mapping services by and through a dedicated joint venture whereby the foreign party's ownership cannot exceed more than 50% of the enterprise. The SBSM found that online maps generated by both foreign and domestic companies included sensitive strategic and confidential State Secrets (i.e., military installations), as well as information that "fails to respect China's territorial integrity" (i.e., maps that fail to clearly recognize China's territorial claims including coastal areas and islands, that are deemed a part of China, and even if disputed internationally). The regulations also ban foreign companies and individuals from actually engaging in map-related services such as surveying and mapping of borders between administrative regions in China, as well as surveying and mapping of China's maritime boundaries. At the same time, the SBSM issued a warning to unlicensed online mapping services to secure a license by July 1, 2011, or face undefined punishment. This is part of an ongoing crackdown of thousands of

companies that provide mapping services for a variety of uses. *There are serious questions about the implementation and impact of these rules on those companies that provide online maps and satellite photos as a customer service (e.g., bus routes, tourism and travel-related websites, real estate development, environmental watch groups, educational websites, etc.). The licensing process, restrictions on foreign ownership, and various other regulatory controls over licensed-providers, is a means for the government to manage its message with respect to the PRC's perceived territorial limits, and without regard to territorial claims that are disputed internationally.*

3. ***China Corruption Watch:*** To fight corruption at the village level, Beijing has issued the first regulations forbidding township and village officials from illegally appropriating land, embezzlement and vote buying. The regulation applies to China's 600,000 villages, which includes millions of officials at the lowest administrative levels. The Central Party Committee and the State Council published regulations at the end of July 2011 that outlines a village officials' code of conduct designed to better control corruption at the local level and promote good governance. The regulations and code prohibit 41 acts of misconduct, including appropriating lands, embezzling subsidies intended for agricultural workers, taking advantage of local businesses, and spending public funds unnecessarily on official events and functions. The regulations also prohibit officials from abusing their power or influence to gain benefits for their family members. Officials who violate the regulations and code of conduct may be reprimanded, suspended or removed from posts, or face criminal prosecution in serious cases. Financial penalties, including the loss of subsidies and allowances, can also be imposed on errant officials. *After years of cracking down on corrupt activities at the senior levels in the national and provincial governments, the PRC government is now directing more attention at the village and local levels where corruption affects the daily lives of people and has been a widespread source of public tension and protests.* The new regulations also support the implementation of the Election Law and prohibit vote buying, as well as expressly prohibiting the use of religious groups, family clans, or organized gangs to interfere with or sabotage village elections. *And, yes, there are elections in China, although at the county, township, and village levels. The PRC Constitution and the Election Law grant qualified Chinese citizens the right to vote and to be elected, but election activities must adhere to specific provisions for the election procedures of lawmakers. A PRC citizen must first register and have his/her qualifications scrutinized in order to be qualified as a candidate. Then, the candidate is required to be nominated by a political organization (i.e., one of eight approved political parties in China), a social organization, or with the signatures/support of ten or more voters in the candidate's constituent jurisdiction. China started elections of lawmakers at the county- and township-levels in May 2011, which granted, for the first time, equal representation in legislative bodies to rural and urban citizens. The election, held every five years, involves more than 2,000 counties and 30,000 townships nationwide. It's left for observation if China will ever allow for the election of leaders for higher posts at the national or provincial levels.*
4. On August 17, 2011, the PRC government announced a series of new ***financial services*** measures to ***support development of Hong Kong*** and enhance cooperation between the mainland and Hong Kong Special Administrative Region. Under the measures, China will allow Hong Kong based Qualified Foreign Institutional Investors (QFII) to use RMB deposits to invest in the mainland equities markets and with an initial quota of RMB 20 billion. China will also launch exchange-traded funds (ETFs) that invested in Hong Kong-listed stocks in the mainland's stock exchanges. The measures also provide that Hong Kong banks will be permitted to sell financial products in the mainland markets and the mainland will

support their network expansion in the Guangdong province. In addition, the PRC government's policy is to continue to develop Hong Kong as a center for offshore currency settlement, and China will allow more Hong Kong enterprises to use RMB to invest in the mainland. *There has been much grumbling by various services sectors in Hong Kong – including the financial and legal services sectors – that believe that the Closer Economic Partnership Arrangement (CEPA) has not lived up to its expectations and many in HK are pressuring the governments for greater market access to the Mainland. See page 1086-89 of the Deskbook for more details on CEPA.*

5. The State Council on July 27, 2011, announced **new tax regulations** designed to facilitate the enforcement of the country's new individual income tax law, which takes effect on September 1, 2011. The amendment raised the monthly tax exemption threshold from RMB 2,000 (\$307) to RMB 3,500 (\$538). The new regulations reduce the previous nine-bracket system to a smaller seven-bracket system, eliminating tax brackets of rates of 15% and 40%. The regulations also reduce the minimum tax rate from 5% to 3% for people whose monthly incomes are between RMB 3,500 and RMB 4,500. *These rules are designed to provide the low-income citizens with exemption status during inflationary times. After September 1st, about 60 million people will no longer be required to pay income taxes. This is more of a stability issue (i.e., keeping the masses happy) rather than one of collecting revenue for the State.*
6. The China Banking Regulatory Commission (CBRC) on June 7, 2011 announced new regulations to encourage lenders to offer more **loans to small-scale enterprises**. The new rules are designed to alleviate the financial pressure on smaller businesses while the PRC government is engaging in monetary-tightening measures. According to the new regulations, a lower risk weighting (25-percentage-point less) will be applied when calculating the capital-adequacy ratio for loans of less than RMB 5 million (\$772,000) to individual small enterprise. The CBRC will no longer require that loans to small businesses be included in the lenders' loan-to-deposit ratio. In addition, the CBRC will conduct different standards for non-performing-loan ratios and raise tolerances to allow banks to accrue a larger ratio of non-performing loans to small enterprises. The regulations also encourage the banks to set up separate branches specializing in providing financial services for small-scale enterprises, and to issue bonds to provide loans for small businesses. *The central bank has raised interest rates four times since October 2010, and has also increased the reserve requirement ratio for banks eight times over the same period to a record 21 percent for major lenders. These monetary policies are intended to soak up liquidity and combat inflation, which has led to restrictions on credit facilities for SMEs. The CBRC's policy move comes during a time of sliding industrial output and rising inflation and SME's have clearly had difficult times in China since the 2008 global financial crisis. This is another measure to ensure stability and a "soft landing" of the economy by providing the SMEs with the resources to promote job and economic growth.*

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