

	<p><b>China Law Deskbook</b>  (3rd Edition 2010)  A Publication Of The American Bar Association</p> <p><b>October 2011</b></p> <p><b>James M. Zimmerman, Esq.</b>  Beijing, China</p>
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Colleagues:

The following is the October 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 month:

1. The Supreme People's Court and the Supreme People's Procuratorate jointly issued a new **judicial interpretation enhancing the penalties for computer hackers**. Effective September 1, 2011, hackers who break into twenty or more computers are liable for prison sentences of up to seven years. Individuals that hack into 20-100 computers or steal from 10-50 user names/passwords for online accounts will receive a mandatory prison term of three years. Online crimes are provided for in the 2009 Criminal Law and the judicial interpretation is intended to enhance the penalties for violations of the Law. The new rules also apply to China-based hackers who access and steal information from foreign-based computers. The new rules are also an attempt to combat computer viruses which the Ministry of Public Security claims have increased by 80 percent over 2010 and that eight out of 10 computers that are connected to the Internet in China have been hacked during the past five years. *It's left for observation as to whether the enhanced penalties and jail terms will impact the China-based activities of hackers, and this is especially true for those hackers that might be supported, protected, or encouraged by government, Party, or military interests. The enhanced penalties are unlikely to stop the pervasive and systemic cyber espionage and intrusions originating out of China. See the white paper on Operation Shady Rat at the website of McAfee for more information (<http://blogs.mcafee.com/mcafee-labs/revealed-operation-shady-rat>). Any company or organization with valuable and sensitive intellectual property and trade secrets should be aware of the threats of China-originating intrusions.*
2. The People's Bank of China (PBOC) announced on August 23, 2011, that the government will extend nation-wide a program allowing **the use of the RMB to settle cross-border trade**. The objective is to increase cross-border use of RMB, and further facilitate trade and investment. In June 2010, the pilot area was expanded to 20 provinces and municipalities. Overseas, the program was extended to all countries in the ASEAN (Association of Southeast Asian Nations) region. China's RMB settlement in cross-border trade surged to RMB957.57 billion (\$149.62 billion) in the first half of 2011. China started a pilot program of RMB cross-border trade settlements in Shanghai in mid-2009. The gradual internationalization of the RMB is designed to garner support of the acceptance of the RMB by China's trading partners of the surrounding countries and regions and trading partners in many developing countries. At the same time, the **Ministry of Commerce released draft guidelines** on how foreign investors can use RMB legally acquired overseas for inbound direct investment to China. This is another indication that the PRC government desires to internationalize the RMB to be on par

with the Euro, Yen, and US Dollar. *But gradually enhancing the convertibility of the RMB is one aspect in the equation. The PRC government needs to take further steps to allow the RMB exchange rate to be based upon market forces, which is likely to lead to further appreciation of the RMB against major currencies. And be sure to watch China's reaction (retaliation) to pending legislation in US Congress calling for sanctions against China as a result of its perceived manipulation (management) of its currency. Fall 2011 might be the time we actually see such legislation signed into law by the USG.*

3. On August 24, 2011, Liu Guixiang, a senior judge of the Supreme People's Court publicly stated that the court intends to review and enhance the **rules and regulations to better handle rising disputes over marine pollution**. Under current rules, the maximum fine for marine pollution is a seriously low RMB200,000 (US\$31,000). The remarks were made while ConocoPhillips China, the operator of two leaking oil platforms in northern China's Bohai Bay, faces compensation demands for damages resulting from the oil spills. The comments by the court also come at a time when the State Oceanic Administration has accused ConocoPhillips of failing or refusing to diligently cleanup oil spills first detected in June 2011, and the SOA is claiming that higher monetary penalties could have prevented or minimized the effects on the environment of the oil spills. *It's interesting how the PRC leadership is now calling for enhanced penalties in response to the misfortunes of a foreign company which most likely sets its operational standards in China based upon its international practices. The government is beginning to realize that its low-penalty rules, which were for years designed to protect the economics of the state-owned players, were not much of an incentive to ensure compliance. Low criminal and administrative penalty thresholds are just not a deterrent in a broad range of applications – be it environmental and pollution controls, intellectual property rights protection, financial and securities related crimes, and so forth. We can expect to see the courts and administrative agencies start to use higher penalties as a deterrent. But are the state actors ready?*
4. On September 8, 2011, the State Council issued amended regulations concerning the **supervision and evaluation of police conduct and activities**. The new regulations are effective October 1, 2011 and replace existing rules first adopted in 1997. The amended rules seek to provide more uniform and national-level supervision over police activities. Specifically, an inspection committee under the Ministry of Public Security will be in charge of inspecting police work nationwide and will report directly to the Minister of Public Security. The regulations provide that internal inspection committees will evaluate how police handle emergencies and criminal cases, as well as evaluate their usage of weapons, police equipment and vehicles. Police officers and administrators who are suspected to be in violation of the Criminal Law will be referred to judicial authorities for prosecution. *More supervision over the low-paid police force is a welcome step. But what about the military police (wujing) that seem to drive the nicest cars in town and operate independently of the masses? Next time you see a guy driving a Mercedes with a "WJ" white-licensed plate you will immediately know what I am talking about.*
5. And many examples this past month of the good works of the **Party in the recognition and enforcement of China's rule of law**, but to do so in line with Party politics and thinking. On September 23, 2011, Zhou Yongkang, member of the Standing Committee of the Political Bureau of the Communist Party of China (CPC) Central Committee, encouraged procurators to work diligently to safeguard the people's rights and interests, uphold justice and equity, maintain social security and fight against corruption. He also encouraged procurators to use "socialist theories" as guidelines in their work and to be more active in supervising law enforcement to ensure that the

country's laws are properly enforced. Finally, Mr. Zhou hinted that Party organizations should support the work of procuratorates to perform their duties, but to do so in a legal, independent and fair manner; hence, the Party should not interfere with judicial functions. Zhou made the remarks during a forum on September 23, 2011, to mark the 80th anniversary of the forming of China's socialist procuratorial system. *The Party has a history of interfering with the judicial functions, and Zhou's messages continue to reflect that the Party is engaged with the judiciary. Zhou's message to the Party is important, but the procurators are also under pressure to follow "socialist theories" as guidelines in their work which is akin to saying that you will be left alone so long as you toe the party line.* Zhou also made a televised nation-wide address on September 28<sup>th</sup> that called for government officials to strengthen "social management" of private companies, non-government organizations (NGOs), Internet-based activities and telecommunications networks. Zhou's comments were designed to encourage government departments to "improve their abilities to crack down on, prevent and control crime, and to handle emergencies." *The term "social management" is really another way of saying that the Party needs to be more involved with government supervision and with the end results of more political interference in business and society.*

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