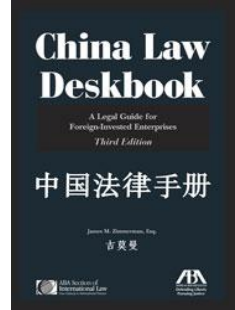


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|  | <p style="text-align: center;">CHINA LAW DESKBOOK (3rd Edition 2010)</p> <p style="text-align: center;">A PUBLICATION OF THE AMERICAN BAR ASSOCIATION</p> <p>February 2012</p> <p>JAMES M. ZIMMERMAN, ESQ. BEIJING, CHINA</p> |
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China 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:

- *Deadline for registration of users of microblog services*
- *NDRC limitations on mortgages to foreigner purchases of real estate*
- *MOF/MIIT preferential incentives for SMEs in government procurement*
- *Regulations on nepotism in the civil service*
- *CBRC preferential policies for loans to “green” companies*
- *MOFCOM measures on investigating failures to file for merger review*

The Beijing Internet Information Office set a deadline for March 16, 2012 for **real name registration of users of microblog services** such as Sina, Sohu, and Netease. Users are required to register with their national identification cards. The stated objective of the registration policy is to reduce the incident of fraud and restrict the flow of damaging rumors. After the deadline, users will be allowed to view microblog posts, but will not be able to file or forward messages until they confirm their identities by providing their real names and state-issued ID numbers. The full names and identification numbers for registrants are required to be verified against the ID database of the Beijing Public Security Bureau. The State Council Information Office earlier had announced that real name registration was being set up in several major cities including Beijing, Shanghai, Tianjin, Guangzhou and Shenzhen, and with more cities to come. The idea of real name registration for microblogs was first proposed at the 17th Communist Party Congress in October 2011. As of the end of 2011, the China Internet Network Information Center reports that there are more than 320 million microblog accounts in China, comprising 65% of China's total Internet user population. *Real name registration requirements would only make sense if the unpopular voices received the full protection of a legal system that supports free speech. The lack of anonymity in a country without effective judicial remedies is a potential blow to dissent and whistleblowing. This is just another example of the Party's*

battle to micro-manage the flow of information online, and while successful in the short-term, it's not likely to succeed in the long-term with the buildup of resentment to governmental control over freedom of speech and expression. And, where there is a will, there is a way and the creative dissenters will find a way to vent online and let their voices be heard.

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On February 2, 2012, the National Development and Reform Commission (NDRC), **issued a notice limiting mortgages for foreigners purchasing properties in China.** The NDRC Notice provides that RMB funds borrowed by foreign banks for a term of longer than one year will be managed as long-term debts. Foreigners hoping to buy a home in China will no longer be granted medium- or long-term mortgages. The new policy is the government's latest measure to cool the country's property market and demonstrate its determination to allow home prices to return to a reasonable level. One of the major barriers to investing in real estate in China is the currency. For individuals who do not work in China they are only allowed to exchange a maximum of US\$50,000, which is not enough to meet the basic down payment for a purchase. If medium-to-long-term loans are prohibited, it will be almost impossible for them to purchase a home. The Notice follows regulations adopted in July 2006 which restricted property purchases by foreigners. According to the 2006 policy, only expatriates who have studied or lived in China for more than one year can buy property, with purchases limited to one unit for self-use and not for investment purposes. *There is much discussion that the residential real estate (bubble) market is in a free fall and on the verge to a collapse. I disagree. Prices have indeed softened but this is more a result of the government's policies working to get a handle on inflation and to better control the property market. With inflation under control (with the exception of food prices), the PRC government is likely to loosen credit controls in the real property market later in 2012.*

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On January 6, 2012, the Ministry of Finance (MOF) and the Ministry of Industry and Information Technology (MIIT) issued a joint statement outlining a number of preferential **procurement policies for small- and medium-sized enterprises (SMEs)** to boost their development. Government agencies usually prefer larger companies and well-known brands during the procurement process, and SMEs have had a difficult time successfully bidding on tenders. The MOF/MIIT Notice provides that government agencies are required to set aside at least 30% of their total budgets for SMEs, of which at least 60% should be dedicated to small- and micro-sized enterprises. Small- and micro-sized businesses will also be entitled to an extra price preference between 6% and 10% when they submit a tender for government procurement projects. The MOF/MIIT Notice also encourages SMEs to form consortiums and allows large enterprises to subcontract purchases from SMEs. The PRC defines small, medium or "micro-sized" companies as follows: industrial companies with fewer than 1,000 employees and an annual income of less than RMB400 million (US\$63.32 million) qualify as SMEs, and companies with fewer than 20 employees and less than RMB3 million (US\$477,000) in income are considered to be "micro-sized." China's government procurement was RMB842.2 billion in 2010. *These measures are a positive step in reducing the monopolistic practices of the State-owned sector. It is no mystery that SOEs are favored vendors for government procurement, and especially those SOEs that have historical ties to the government agencies that are also customers. These rules should help to level the playing field between the SMEs and the SOEs, and bring some degree of competition to the procurement sector (although foreign companies still do not have*

effective access). *Going forward, SMEs will likely pose a commercial threat to the monopolistic SOEs. China's SMEs exceed 43 million companies and are reported to account for 58.5% of China's GDP and responsible for half of China's tax revenues.*

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On February 22, 2012, regulations jointly issued by the Organization Department of the CPC Central Committee and the Ministry of Human Resources and Social Security jointly issued regulations that are intended to **control nepotism and corruption in the civil service**. The new regulations provide that civil servants and their spouses/relatives are barred from holding positions that have a director-subordinate relationship or from holding two separate positions that report to the same director. Civil servants are also asked to avoid situations such as recruitment, promotion or demotion of staff, taxation and approval for overseas travel that involve their relatives. If two civil servants marry or form a familial relationship, their posts are required to be adjusted. A failure to comply with the regulations may result in penalties including the removal from office. *These anti-nepotism rules may check the ambitions of the mom and pop teams that seek to control the village coffers, but unlikely to impact the appointment of Party princelings to posts at major State-owned enterprises.*

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The China Banking Regulatory Commission (CBRC) issued new guidelines on February 24, 2012, that requires financial institutions to reduce loans to industries with high energy consumption, high pollution, or excessive capacity, and to increase support for environmentally-friendly industries and projects. The CBRC Guidelines are intended to encourage commercial lenders to facilitate **loans to "green" enterprises** and encourages financial institutions to evaluate, classify, and rate the borrowers' environmental and social risks as part of its analysis in determining the enterprises' ratings and their access to credit. The CBRC Guidelines also urged financial institutions to improve supervision over overseas projects and to ensure that these projects comply with host government environmental, healthcare, and security requirements. *These guidelines are in line with the government's policy of sustainability, environmental protection, and energy conservation. It's left for observation as to how these rules – which are subjective in their implementation – will work in practice. Hopefully these rules will encourage the banks to lend funds to companies in need of purchasing the necessary pollution controls to upgrade outdated production equipment.*

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The *Interim Measures for Investigating and Handling Failure to Legally Declare the Concentration of Business Operators* (Order No. 6 [2011] of the Ministry of Commerce, issued on December 30, 2011) went into effect on February 1, 2012 and outlines a set of penalizes to be imposed on those companies that fail to file for pre-merger review under the Anti-Monopoly Law. Based upon information that it may receive from public or private sources, MOFCOM may conduct an initial investigation, notify the parties, and request the submission of information. Once a formal investigation is initiated, MOFCOM will notify the parties and may demand that the parties suspend implementation of the subject transaction. The formal investigation may take up to 180 days and MOFCOM is empowered to fine the parties (up to RMB 500,000/USD 80,000) or to impose other sanctions such as the unwinding of the transaction. *MOFCOM is getting increasingly more sophisticated with its merger review processes.*

Companies that by-pass the merger review are at risk if they fail to file and thus a careful review of exposure should be undertaken and consultation with MOFCOM be initiated if any uncertainty is evident.

See www.chinalawdeskbook.com for more postings, updates, and resources. If you have any questions or comments concerning the content of this posting, please feel free to contact me. Visit the American Bar Association for more information about the Deskbook: www.ababooks.org. Email: JZimmerman@sheppardmullin.com. *About the Author:* James Zimmerman is a partner in the Beijing China office of the international law firm Sheppard Mullin Richter & Hampton 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. Copyright 2012 James Zimmerman