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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:

- *SARFT issues statement ordering more stringent management over international film productions*
- *State Council issues draft set of regulations designed to curb irregular contracting practices and to improve the quality of construction projects*
- *MOHURD regulations concerning privacy rights and access to information concerning affordable housing in China*
- *SAFE issues order relaxing standards for foreign investors*
- *State Council issues new auto recall regulations imposing significant penalties on manufacturers that fail to implement an effective recall system*
- *Supreme People's Court issues an order significantly increasing the penalties for damages to grasslands*

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In August 2012, the State Administration of Radio, Film and Television (SARFT) issued a statement providing that the industry's regulator will **increase controls over international film co-productions**. SARFT intends to review and monitor the content of a film to ensure that there is a meaningful Chinese element and a Chinese actor in a lead role in order to be approved as a co-production. The ratio of China's investment in a co-production film should be no less than one-third, the film should be shot in China, and Chinese actors must play lead roles. SARFT further requires that a foreign film company and a Chinese film company share copyright and other intellectual property rights, and to share the risks and profits in creating a story that depicts China in a positive light. All co-productions must be approved by the Film Bureau of SARFT before any filming activity commences, and also separately approved when the film is completed (namely, for the censorship approval). The approval process is for a single application, and a separate

application is required for each co-production project. The approvals are granted on a case-by-case basis depending on SARFT's review of the screenplay and the completed film. SARFT has appointed the China Film Co-production Corporation (CFCC) as its sole agent to assist in managing and coordinating the co-production applications, including preliminary review of the screenplay and completed film. *China's box office for the first half of 2012 reached RMB 8.07 billion (US\$1.28 billion), a 41.7% increase growth over the same period in 2011. Yet, only 30% of revenue is from domestic films. In 2012, over 379 new theaters and 1,664 new screens have been constructed in China. There are an estimated 6,000 movie screens in China and another 20,000 will be added over the next 20 years. There has been much emphasis on preserving China's cultural legacy and SARFT has been under pressure to rein in truly foreign productions that seek to tap the China market. SARFT views the co-production rules as requiring true cooperation and sharing on intellectual level, and not just as a way to outsource production and save costs. China currently permits 34 foreign films to be imported annually for theatrical release, but co-productions are exempt from the quota and are treated as domestically produced films. SARFT believes that the current rules are manipulated to allow foreign producers easy entry into China, and at the expense of the domestic film industry.*

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The Legislative Affairs Office of the State Council on November 22, 2012, issued a draft set of **regulations designed to curb irregular contracting practices and to improve the quality of construction projects**. Specifically, the regulations would prohibit more than one general contractor on a single project, and requires that only the general contractor is permitted to outsource work on the project to subcontractors. Subcontractors are banned from outsourcing again and the developer is barred from interfering with the contracting process. The regulations provide that, once the project is approved and timeline agreed upon, the developer is not allowed to shorten the duration of a project and expedite completion unless the developer substantiates the need, agrees to cover the extra costs, including overtime compensation, and ensures that the quality of the construction is not affected. Under the new regulations, general contractors are fully liable for all worker compensation, and worker salaries must be made on a monthly basis. *China has a problem with subcontractors outsourcing their work to sub-subcontractors to lower costs, which makes it difficult to monitor qualifications and supervise quality standards. The use of sub-subcontractors has also been used to avoid payments to workers, which is considered a stability question given the large number of migrant workers that sometimes get stranded without compensation.*

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Effective December 17, 2012, **foreign investors will not be required to obtain regulatory approval from the State Administration of Foreign Exchange (SAFE) to open bank accounts, remit profits, and transfer money between different domestic accounts**. In addition, the limits on the number of foreign-currency accounts and the amount of money that can be transferred are relaxed as well. SAFE thus cancelled thirty-five rules concerning approval procedures, and simplified other procedures. *SAFE is making good progress to further relax the procedures for capital accounts in order to ease the capital*

inflows. The steps taken are designed to encourage long-term capital inflows, especially when short-term money inflows are volatile. This move is also to counter the effects of a steady decline in foreign direct investment, which has been the trend in 2012. In addition, relaxed forex procedures will help domestic companies with an anticipated increase in capital outflows as they continue to expand overseas.

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Effective January 1, 2013, the Ministry of Housing and Urban-Rural Development China issued a **regulation that requires local governments to better manage housing records and information files**. The key objective of the new regulations is to make information concerning low-income housing available to the public. *Public access to information on affordable homes is a key objective of the government and specifically after the 18th Party Congress in November 2012 that sought to develop policies to tackle the issue of the widening income gap in China. In response, MOHURD set a target of building "more than 5 million units" of affordable housing in 2013. China started the affordable-housing program in 2008, and the government pledged to build 36 million affordable homes by the end of the 12th Five-Year Plan (2011-15) period. MOHURD anticipates that 20% of the China's housing demand will be met by government-sponsored affordable housing projects, while the remaining 80% will be met by private, market-oriented projects. The new regulations seek to promote and disclose information to the public concerning affordable housing in the community.*

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The State Council issued the **Administrative Regulations on Defective Automotive Product Recalls** effective January 1, 2013, which substantially increase the penalties for sales of defective automobiles. According to the Auto Recall Regulations, both Chinese and foreign automobile manufacturers face fines of between RMB50,000 to RMB200,000 (US\$8,000 to US\$32,000) if they fail to submit recall reports to the government. The Auto Recall Regulations also impose a penalty of between 1-10% of gross sales revenue of defective vehicles if the manufacturer fails to timely stop producing and selling defective products, refuse to carry out the recall when ordered to do so, or in the event that the manufacturer conceals the defect issues. The Regulations also give the government the option to revoke an errant manufacturer's business license. *The new penalties are significantly higher than the prior rules, and should result in better after-sales service for all domestic and imported motor vehicles. In comparison to the United States and Japan, China's recall system is weak. Given that most foreign automotive manufacturers have effective recall systems, these new regulations will likely impact the domestic manufacturers the most and that the new regulations will pressure Chinese automotive manufacturers to improve their quality and technology.*

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On November 22, 2012, the Supreme People's Court issued a **judicial interpretation providing for heavy penalties (five years imprisonment) to individuals who cause damages to protected grasslands**. The order is designed to stop the destruction of grasslands caused by illegal agriculture, mining, road building, and urban construction. *The government estimates that 45 million people (3.5% of the population of China),*

subsists on grasslands, including in the areas of the Xinjiang, Inner Mongolia and Tibet autonomous regions. The prior penalty for wrongful damage to grasslands – a fine of up to RMB50,000 (US\$8,000) – is insignificant to deter crimes, and especially in comparison to large profits gained from illegal mining and development.

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