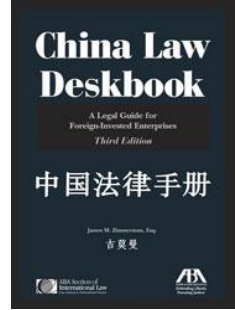


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|  | <p style="text-align: center;"><b>CHINA LAW DESKBOOK</b><br/>(3<sup>rd</sup> Edition 2010)</p> <p style="text-align: center;">A PUBLICATION OF THE AMERICAN BAR ASSOCIATION</p> <p>January/February 2013</p> <p><b>JAMES M. ZIMMERMAN, ESQ.</b><br/><b>BEIJING, CHINA</b></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:

- *China Software Testing Center issued the first set of national guidelines on personal information protection*
- *China Securities Regulatory Commission released provisions for the newly launched national over-the-counter (OTC) equity transfer system*
- *Regulations on the Administration of Credit Investigation are officially effective in March*
- *Ministry of Education issued new regulations providing for penalties for academic fraud*
- *Amendments to the Criminal Procedure Law effective January 1, 2013*

The China Software Testing Center issued the first set of national guidelines on **personal information protection** effective on Friday, February 1, 2013. The guidelines require that services providers, including banks, Internet firms, telecom operators and property developers are required to take steps to protect the personal information of citizens. Specifically, information collectors are required to obtain permission before collecting and using private information. *The government continues to avoid the adoption of a national data privacy law or regulation and, instead, has issued guidelines that do not have the force and effect of a national law. For almost 10 years, the government has been drafting data privacy legislation, which remains in draft form only. Observers speculate that the government's reluctance to adopt a national law is because the government is unable or unwilling to provide full protection for privacy given the government's intrusive presence and control over personal information.*

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On February 4, 2013, the China Securities Regulatory Commission released provisions for the newly launched national over-the-counter (OTC) equity transfer system for non-listed small and medium-sized enterprises. The Beijing-based National Equities Exchange and Quotations Co. Ltd., is the institution managing the new trading platform, which is under the supervision of the CSRC. Equity trading on the so-call "third board" can use a market pricing mechanism or pricing based upon mutual agreement. It can also trade through a

price bidding process. The provisions set up the process to transfer the previous regional off-exchange markets into a national unified system. The national OTC market was launched in Beijing on January 16, 2013, and is based on the pilot programs set up in the Zhangjiang High-tech Industrial Development Zone in Shanghai, the East Lake High-Tech Development Zone in Wuhan, and Tianjin's Binhai High-Tech Industrial Development Area. *The new provisions provide SMEs with access to capital markets that would otherwise be unavailable to small enterprises. The new provisions also set the OTC market at the national level, which will make it easier for the CSRC to supervise and standardize the system.*

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The ***Regulations on the Administration of Credit Investigation*** issued by the State Council is effective March 15, 2013. The regulations set the standards for credit ratings institutions. Records concerning a consumer's poor credit rating may be maintained for a period of five (5) years, and thereafter are required to be deleted. Under the regulations, a poor credit record involving an amount in excess of US\$150,000 may be maintained beyond the five-year period. At present, individual credit reports are based upon a database maintained by the central bank and the Credit Reference Center. The database, which has been in operation since 2004, includes financial information on over 18 million companies and 800 million individuals. *In contrast, US law allows negative credit information to be maintained for a period of seven years and information regarding individual bankruptcy for 10 years. The development of a credit ratings process supports the development of consumer and business loans, and especially in the purchase of real property, automobiles, and other products purchased on credit terms.*

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Effective January 1, 2013, the Ministry of Education issued new regulations providing for ***penalties for academic fraud***. The MOE's objective is to crack down on students, faculty members, and other academics that commit plagiarism, fabricate research reports, or engage in the practice of purchasing academic papers, dissertations, or other academic writings. Misconduct could also lead to the expulsion of students and banning them from reapplying for a period of years, as well as the dismissal of university faculty and staff members or the denial/revocation of academic degrees. *Given the pressures to succeed academically in order to gain admission to graduate-level admissions for advanced degrees, cheating by both students and faculty is endemic in China. For foreign companies doing business in China, academic fraud has serious consequences for HR managers that seek to weed out fraud and misconduct in job applications. Employers can best protect the integrity of the hiring process by conducting due diligence on applicants.*

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Effective January 1, 2013, the Criminal Procedure Law was amended in an effort to ensure ***the right of criminal defendants to effective legal representation***. The amended law stipulates that defense lawyers have the right to meet with clients in detention and that communications between counsel and the defendants is prohibited from being monitored. Defense lawyers are also granted access to case files. The law provides that defense lawyers can apply to the prosecuting departments or courts to investigate evidence collected by public security (police) authorities. If their right to provide an effective defense is violated,

the law provides for a complaint process. The amended law provides that a criminal suspect is required to be informed of his or her right to appoint an attorney at the time of initial interrogation by investigating authorities. *Previously, the law provided that defense counsel could only be provided when a case is handed over to prosecutors. The amendments provide that no one should be forced to prove their own guilt, together with provisions on how to object to evidence collected through illegal means. China has struggled with safeguarding the right of legal counsel in criminal proceedings where traditionally the right to counsel was never recognized in China. Unfortunately, in provincial-level courts it is estimated that criminal defendants are represented by lawyers in only 12% of cases. More than 5 million criminal cases were heard by the courts from 2006 to 2011, an increase of 50 percent over the previous five years, according to the Supreme People's Court. As the caseload continues to increase, the SPC realizes that more emphasis must be placed on developing the criminal defense bar to fill the needs.*

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