

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

- *MEP issues list of targeted chemicals and industry sectors for closer supervision*
- *NPC Standing Committee adopted a new Tourism Law designed to better control the industry*
- *SPC adopts criminal sanction standards for crimes involving extortion and blackmail*
- *SFDA issues amended Good Supply Practices enhancing standards for drug suppliers, distributors, and retailers*
- *Several cities and provinces restrict access to land property records on grounds of privacy but watchdogs believe these rules will restrict scrutiny of corrupt government officials with large land holdings*
- *SPC issues judicial interpretation clarifying criminal penalties for employers that fail to pay migrant worker wages*

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On February 21, 2013, the Ministry of Environmental Protection issued *a list of chemicals and industries where chemical pollution prevention and control efforts will be prioritized* over the next three years. The MEP's announcement lists 58 chemicals that are targeted for enhance registration and supervision for purposes of emission control. Several key areas targeted include petroleum, coking and nuclear fuel processing and the manufacturing of chemical ingredients and products, and pharmaceuticals and chemical fibers. The list also includes smelting and processing of non-ferrous metal, and textile and coal chemical industries. This policy statement warns that China faces significant environmental degradation and exposure, and emphasizes the need for enhanced chemical pollution control. The announcement also cites current practices that remain problematic including inadequate pollution risk control by enterprises, a lack of systematic policies to restrain the production, transport, and use of highly toxic and dangerous chemicals, and insufficient pollution monitoring and governmental supervision capabilities. *Environmental degradation is a nation-wide problem and in 2012 and 2013 China has had a string of chemical pollution*

*accidents, leading to polluted drinking water and higher rates of cancer in some areas. China still produces toxic and hazardous chemicals that are banned or restricted in the United States and other developed countries. But this policy statement is just another announcement and whether action is actually taken in a uniform and consistent manner is left for observation.*

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On April 25, 2013, the National People's Congress Standing Committee promulgated the **Tourism Law**, which is designed to protect consumer interests and ensure the sustainability of the industry. The Tourism Law addresses unfair competition, the forced purchase of goods and services, and illicit price increases by travel agencies, and tour and scenic site operators. The law sets forth a rigid process for raising prices for tours that are under way or already booked, which is a significant problem and especially in the low-end tourist sector. The law also requires operators of tourist sites to hold hearings before raising entry fees. The law adopts standards of disclosure and remedies for effected consumers, and imposes sanctions upon errant operators. The new law also sets forth an entire chapter on government planning and promotion, including funding and personnel training for the tourist sector. *China's domestic travel market is the world's largest and China ranks third as a global destination for foreign tourists. But problems are rife and it will take time to ensure that consumer rights are protect, and especially given that domestic tourism has become a pillar industry driving domestic consumption.*

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The Supreme People's Court and the Supreme People's Procuratorate issued a judicial interpretation on April 26, 2013, outlining the **sanctions for the crimes of extortion and blackmail**. The interpretation bases the length of a prison term on the amount of money or property involved. The extortion of money or property worth between RMB 2,000 (US\$325) and RMB 5,000 is considered a crime involving a "relatively large" sum and carries a prison term of up to three years. In cases involving extortion ranging from RMB 30,000 to RMB 100,000, the suspects are liable for prison terms between three to 10 years. For blackmail and extortion claims between RMB 300,000 to RMB 500,000 the prison term is set for 10 years or more. For those that engage in blackmail and extortion involving minors, senior citizens, or the disabled, the monetary threshold is reduced by RMB 1,000. *China has become a haven for small-time extortion rackets, and especially those that prey on the poor migrant workers that have little to no effective legal remedies to stop criminal gangs. Extortion of public officials – oftentimes coupled with other forms of corruption – is on the increase as well.*

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On February 19, 2013, the State Food and Drug Administration (SFDA) issue amended **regulations on Good Supply Practices (GSP)** for pharmaceutical distributors and wholesalers, which are effective on June 1, 2013. The 187 articles of the GSP regulations emphasize the adoption of greater risk-control capabilities for drug distributors, including quality management standards for both wholesalers and retailers. The amended GSP enhance the standards for purchase channels, storage temperatures and temperature monitoring, tracking documentation and recordkeeping, and transportation. In particular, the GSP regulations now require that invoices be issued for drug purchases and the

transportation of drugs must be accompanied by matching records. For third-party delivery firms, consigners are required to sign liability agreements to ensure that the quality of the drugs is not effected during transportation. Although the effective date is June 1<sup>st</sup>, companies will have a three-year transition period to adjust to the new rules. A failure to comply with the new GSP regulations by June 1, 2016 will result in a ban from the pharmaceutical business. *The SFDA is making great strides to improve the supply chain and retail operations of drug companies, which have been rife with problems involving tainted drugs, poor storage and delivery, and significant losses for drug producers that are dealing with large returns and disposal of drugs that have been improperly handled during transport and storage.*

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In the name of privacy rights, several city and provincial governments have quietly **banned the release of information concerning house registrations**. However, these restriction appear to counter the efforts of private parties from seeking to exposure corrupt government officials who own significant real property holdings. Municipal governments such as Guangzhou, Zhanghou, and Yancheng will only allow judicial authorities to access records. The only exception is that homeowners themselves can seek to obtain documentation for their own house records. A request for such documents requires that the requesting party provide identification. *This is a blow to watchdog organizations and individuals seeking to expose corrupt officials' illegal real estate ownership. In 2012, a slew of government officials were punished when exposed for hold vast real property, notwithstanding their low government salaries. In Guangdong, a police officer is under investigation for owning 192 houses using multiple fake ID cards. A housing administrative director from Henan Province is under investigation for having 31 houses. Many voices inside and outside of government are calling for property records to be made public, but also for full asset disclosure by government officials (the latter of which will take much time to adopt and implement).*

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Effective on January 23, 2013, the Supreme People's Court issued a judicial interpretation that sets for standards for **criminal penalties against employers of migrant workers that default on wages** (includes salaries, bonuses, or overtime pay). The SPC order imposes prison terms of up to seven years for employers who default on wages. The SPC order clarifies a rule in a 2011 amendment to the Criminal Law that made it a crime, subject to a prison term between three to seven years, for employers that fail to pay their employees in situations involving “serious consequences”, which was undefined in the amendment. The court thus found that “serious consequences” justifying a full seven year prison term include situations where employers refuse to pay employees by threatening to use or actually using violence. The SPC also ordered that the withholding of wages that severely affects the quality of life of the employees or results in the employees or their relatives having to discontinue important medical treatment or schooling, will result in serious punishment to the employers. The SPC further clarified that even in situations that do not result in “severe consequences”, an employer can still be sentenced to prison for three years. Employers can mitigate their liability if the employer pays the outstanding wages before a case is initiated for prosecution. *Since May of 2011, the PRC courts have convicted 120 employers nationwide for wage defaults. Migrant workers in China are an oppressed class and many are taken advantage of by unscrupulous employers, and for the Communist Party this is a stability issue. The SPC judicial interpretation is a step in the right direction to protect workers rights.*

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On April 16, 2013, the State Council issued a policy circular indicating that China will speed up the ***improvement of food safety standards*** and will finish clarifying existing food standards by the end of this year. This policy statement emphasizes that in 2013 the government will enhance supervision of various sectors of the food industry, and will impose severe punishment for food safety violations. The circular also emphasized that the government will promote self-regulation and monitoring by the food industry. The government will also launch a national center for food safety to develop a national set of standards. *Part of the problem is that the standards from province to province are not uniform or consistent, and there are over 5,000 standards on food quality and hygiene in food production and service, and many are inconsistent and overlapping making supervision and compliance difficult. With more uniformity, the government hopes to raise the level of compliance.*

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