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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:

- *NPC promulgates a new Trademark Law*
- *CBRC issues new guidelines to enhance consumer protection rights and obligations for financial institutions*
- *SPP issues circular to prevent wrongful and unjust judicial decisions*
- *Multiple government agencies issue a policy statement calling for affirmative action in the employment of the disabled*
- *CSRC and SASAC issue policy guidelines to better supervise horizontal competition between SOEs and their public holding companies*
- *MOFCOM releases a policy statement for improving domestic and export e-commerce transactions*

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On August 30, 2013, the Standing Committee of the National People's Congress (NPC) promulgated *the new Trademark Law*. China adopted its original Trademark Law in 1982 and previously amended the law in 1993 and 2001. The amended law raises the statutory compensation level for infringement to RMB 3 million (\$500,000), an increase from the previous penalty amount of RMB 500,000. The new law also places a heavy burden on trademark agents by prohibiting agents from accepting cases from clients that are acting in bad faith by filing malicious registrations or infringing on the trademark rights of others. Trademark agencies violating the law risk exposure to monetary penalties, the suspension of a business license, and blacklisting by the State Administration of Industry & Commerce. The new law also provides greater protection for renowned or well-known trademarks, and thus grants to mark owners the right to bar others from registering their trademarks, and even if such well-known brand names are not registered in China. The revised law also improves the registration process by reducing the time required for examination of applications. *As of the first half of 2013, China had the world's largest number of registered trademarks (8.17 million). As with China's IP system in general, the implementation of the new Trademark Law is left for observation. Readers can obtain a copy of the original Chinese version of the law and an authoritative English translation by contacting me by Email.*

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The *China Banking Regulatory Commission* issued a set of guidelines on September 4, 2013, enhancing *consumer protection rights and obligations for financial institutions*. The guidelines set forth standards for internal codes of conduct in the design of banking products and services, pricing issues, consumer loan agreement forms, bank marketing practices, etc. The CBRC guidelines also outline certain activities that are prohibited including the concealment of potential risks of banking products and overstating returns on investment; prohibitions on the release of misleading information; and disclosing and misuse of personal information and data without consent. The CBRC guidelines are designed to provide greater supervision for enforcement against errant financial institutions. *Most of the standards set forth in the guidelines are reflected in other laws and regulations but are issued as a benchmark for anticipated enhanced scrutiny of the banking community by the CBRC.*

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On September 6, 2013, the Supreme People's Procuratorate (SPP) issued a *circular to prevent wrongful and unjust judicial decisions*. The SPP measures provide that the “strictest evidence standards” should be applied in death penalty cases and that criminal suspects should not be convicted solely based upon a suspect's own confession. The SPP also reiterated the prohibition in the Criminal Procedure Law on the procurement of confessions by means of torture, threats or enticement. The SPP now mandates that all interrogations are required to be recorded using audio or video devices to prevent illegal evidence-gathering tactics. The circular also orders that the principle of "innocent until proven guilty" should be used in death penalty cases where there is not sufficient evidence to convict a suspect. Interestingly, the SPP circular also states that prosecutors will “bear lifelong responsibility” for their roles in wrongful judgments. The SPP circular follows a set of Party guidelines issued by the Commission for Political and Legal Affairs of the Communist Party of China (CPC) Central Committee. *The CPC guidelines and SPP circular are issued in response to increased public calls for judicial fairness in criminal cases. In 2012 the PRC government amended the Criminal Procedure Law and added a new provision (Article 50) that reflects the concept of prohibition of self-incrimination. This rule change was effective on January 1, 2013. Despite the new rule, the summer of 2013 saw a number of high-profile cases involving both Chinese and foreigners – including British investigator Peter Humphrey who was accused of criminal invasion of privacy and trafficking in personal data – that were allegedly pressured to make a confession in order to obtain leniency. These so-called confessions are suspect and likely violate the rule against self-incrimination in China's Criminal Procedure Law if obtained through threats, enticement or deceit. If involuntary to any degree, the admissibility of the confessions is in question under Chinese law. Separately, parading just-detained criminal defendants in the media is repugnant and reflects political expediency and a rush to judgment as was the situation with Humphrey's case. Where is the due process?*

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On August 29, 2013, the Organization Department of the Communist Party of China Central Committee, the Ministry of Finance, and the China Disabled Persons' Federation

issued a joint statement requiring ***affirmative action in the employment of the disabled***. The policy statement provides that by 2020 at least one disabled person is required to be employed in China's provincial-level Party or government agencies and municipal working committees for the disabled. *China has more than 85 million disabled people and, with the improvements in health care and social services, the number is expected to exceed 160 million by 2050. China's National Human Rights Action Plan (2012-2015) provides that the government is required to take steps to expand employment for the disabled. This is a positive step in the right direction but it seems that one token disabled person is insignificant. In addition, a more serious challenge is the lack of mobility access for the disabled in China. The PRC is not a mobility-friendly country in any respect and the government has a long ways to go before infrastructure investments and improvements to physical access are achieved.*

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The China Securities Regulatory Commission and State-owned Assets Supervision and Administration Commission released a policy guideline on August 30, 2013, which is intended to better ***supervise horizontal competition between State-owned companies*** and their public holding firms. Horizontal competition refers to enterprises that are involved in the same industry sector. The CSRC/SASAC guidelines require that SOEs to provide specific plans to remedy any issues involving horizontal competition and to take steps to clarify business activities.

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On August 29, 2013, the Ministry of Commerce released a policy statement intended to ***improve cross-border e-commerce retail sales and export transactions***. The new policy is effective October 1, 2013 and will initially apply to the municipalities of Shanghai, Chongqing, Hangzhou, Ningbo and Zhengzhou (given that these cities have already started pilot programs in cross-border e-commerce clearance). The e-commerce policy statement outlines rules for outbound e-commerce governing bodies, encourages China Customs to develop a new process for supervising export clearances, and encourages financial institutions to provide payment services for e-commerce companies. *This policy statement is limited to domestic and export e-commerce. E-commerce foreign imports will be addressed separately at a later time.*

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