

CHINA LAW UPDATE

Table of Contents

I. LAWS AND REGULATIONS	260
A. Amendments to the Company Law of the People's Republic of China	260
1. Introduction.....	260
2. Removing the Registered Capital Requirements for Company Establishment	260
3. Replacing the Paid-Up Capital Registration System with a Subscribed Capital Registration System.....	261
4. Removing the Minimum Cash Requirement	261
5. Conclusion	261
II. JUDICIAL INTERPRETATIONS	261
A. Provisions of the Supreme People's Court on the Issuance of Judgments on the Internet by the People's Courts	261
1. Introduction.....	261
2. Improving the Enforcement of Issuing Judicial Documents Online	262
3. Clarifying the Scope of Releasing Judicial Documents Online	262
4. Emphasizing the Authenticity of Judicial Documents	263
5. Conclusion	263
III. CASES	264
A. Notice of the Supreme People's Court on Issuing the Fifth Group of Guiding Cases.....	264
1. Zhang Li v Beijing Heli Huatong Automobile Service Co., Ltd., a Sale and Purchase Contract Dispute.....	264
2. ZTE (Hangzhou) Co., Ltd. v. Wang Peng, a Labor Contract Dispute	265
3. Zhao Chunming et al. v. the Automobile Transport Co., Ltd. of Fushan District, Yantai Municipality, Wei Deping, et al., a Motor Vehicle Traffic Accident Liability Dispute.....	266

4. Shenzhen Siruiman Fine Chemicals Co., Ltd. v. Shenzhen Kengzi Water Supply Co., Ltd. and Shenzhen Kangtailan Water Treatment Equipment Co., Ltd., an Invention Patent Infringement Dispute.....	268
5. Inner Mongolia Qiushi Real Estate Development Co., Ltd. v. the Civil Air Defense Office of Hohhot Municipality, a Civil Defense Administrative Levy Case	269
6. Wei Yonggao et al. v. the People's Government of Lai'an County, a Case about a Reply to Recover Land-Use Rights	270
B. Notice of the Supreme People's Court on Issuing the Sixth Group of Guiding Cases	271
1. Sun Yinshan v. Oushang Supermarket Ltd. Nanjing, Jiangning Branch, on Sales Contracts	271
2. Rong Baoying v. Wang Yang and Yongcheng Property Insurance Co. Ltd. Jiangyin Branch, on Vehicle Accident Liability.....	273
3. Huatai Property Insurance Ltd. Beijing Branch v. Li Zhigui, Tian'an Property Insurance Co. Ltd Heibei Province Subsidiary Zhangjiakou Branch, on the Jurisdiction of an Insurer's Subrogation Right.....	274
4. Li Jianxiong v. Guangdong Province Department of Transportation, on Governmental Information Publicity.....	274
III. LEGAL NEWS	276
A. Highlights of the Work Report of the Supreme People's Court of China.....	276
1. Promoting Openness of the Judiciary	276
2. Correcting Injustice According to Law.....	276
3. Intensifying Executive Power through Various Measures.....	277
4. Combating Corruption Crimes.....	278
5. Promoting Convenient Raising of Lawsuits	278
B. Highlights of Work Report of China's Supreme People's Procuratorate	278
1. Intensifying Punishment of Severe Criminal Offences.....	279
2. Combating Duty Crimes	279
3. Preventing Injustice	280

2014]

CHINA LAW UPDATE

259

4. Constructing a Qualified Team for Law Enforcement.....	280
C. Highlights on the NPC Standing Committee's Legislative Plan in 2014.....	281
1. Revisions.....	281
(a) Administrative Procedure Law	281
(b) Budget Law	282
(c) Environmental Protection Law	282
2. Formulation.....	282
(a) Grain Law.....	282
3. Others	283

CHINA LAW UPDATE

I. LAWS AND REGULATIONS

A. Amendments to the Company Law of the People's Republic of China

1. Introduction

On Dec. 12, 2013, the sixth meeting of the Standing Committee of the 12th Session of the National People's Congress amended 12 provisions of the Company Law of the People's Republic of China.¹ These changes to the Company Law ("the Amendments") came into effect on March 1, 2014. With the aim of stimulating social investment and entrepreneurship, the Amendments lowered the company establishment thresholds and reformed the company capital registration regime.

The Amendment introduces three main changes: (1) removing the minimum amount of registered capital for company establishment, (2) replacing the paid-up capital registration system with a subscribed capital registration system, and (3) canceling the minimum cash requirement.

2. Removing the Registered Capital Requirements for Company Establishment

The old Company Law set various thresholds on the amount of registered capital to secure large capital investments. However, under the Amendments, the minimum registered capital for limited liability companies (¥ 30,000), single shareholder companies (¥ 100,000) and limited joint stock companies (¥ 5,000,000) has been repealed.² The Amendment has also canceled the requirement of a capital contribution verification report for company establishment.³ Capital contribution should now be in compliance with the provisions of the articles of association, and promoters of a company now have substantial discretion in deciding the contents of the company's articles of association.

¹ Quanguo Renda Changweihui guanyu Xiugai "Zhonghua Renmin Gongheguo Haiyang Huangjing Baohu Fa" Deng Qibu Falüde Jueding (全国人大常委会关于修改《中华人民共和国海洋环境保护法》等七部法律的决定) [SCNPC's Decision to Amend Seven Laws Including the Marine Environment Protection Law of the People's Republic of China] (promulgated by the Standing Comm., Nat'l People's Cong., Dec., 28, 2013, effective Mar. 1, 2014) (Chinalawinfo).

² Gongsì Fa (公司法) [Company Law] (promulgated by Nat'l. People's Cong., Dec. 29, 1993, effective Jul. 1, 1994) arts 23, 26 (Chinalawinfo).

³ *Id.* art. 29.

3. Replacing the Paid-Up Capital Registration System with a Subscribed Capital Registration System

Under the Amendments, shareholders of the company are able to decide on the form and schedule for the subscription of contributions as set forth in the articles of association. However, they will still be liable for the authenticity and legality of the capital contribution and be held accountable to the enterprise within the limits of their respective subscribed capital or shares.⁴ As a general exception, laws, administrative regulations, and decisions of the State Council may provide otherwise with respect to the minimum registered capital and the actual payment of registered capital. Moreover, the paid-up capital contributions of a company will no longer have to be registered to incorporate.⁵

4. Removing the Minimum Cash Requirement

Under the old Company Law, at least 30 percent of the registered capital contribution had to be made in cash. This requirement has been abolished by the Amendment.⁶

5. Conclusion

The Amendments ease company registration requirements, benefiting both domestic and foreign companies. Zhang Mao, head of China's State Administration of Industry and Commerce, has predicted the Amendments will increase the number of companies and help control fraud.⁷ The Amendments are a solid start to an effort to reduce governmental regulation so that businesses can have more flexibility in their operations.

II. JUDICIAL INTERPRETATIONS

A. Provisions of the Supreme People's Court on the Issuance of Judgments on the Internet by the People's Courts

1. Introduction

On November 13, 2013, the judicial committee of the Supreme People's Court in its 1595th meeting passed a regulation on releasing judicial documents on the Internet, which came into effect on January 1, 2014. The Provisions of the Supreme People's Court on

⁴ *Id.* art. 27.

⁵ *Id.* art. 7.

⁶ *Id.* art. 27.

⁷ Zhang Mao (张茅), *Zhuze Dengji Gaige Youliyu Jifa Shichang Zhuti de Huoli* (注册登记改革有利于激发市场主体的活力) [Registration Reform Arouses Vitality of Market Entities], XINHUA NET, (Nov. 7, 2013), http://news.xinhuanet.com/fortune/2013-11/07/c_118043252.htm.

the Issuance of Judgments on the Internet by the People's Courts⁸ ("the New Provisions") replaced a looser regulation from 2010⁹ ("the 2010 Provisions"), making the release process more enforceable. The New Provisions are an implementation of the open trial principle and protection of people's right to know, as a response to changing a society and technology. Zhou Qiang, President of the Supreme People's Court, explains the goals of the New Provisions in the Report on the Work of the Supreme People's Court:

1. To propagandize knowledge of law and regulate public behavior.

2. To moralize society and transfer positive energy of rule of law.

3. To urge judges to promote expertise.¹⁰

With these aims, the key improvements are as follows:

1. Improve the enforcement of issuing judicial documents online.

2. Clarify the scope of issuing judicial documents online.

3. Emphasize the validity of judicial documents.

2. Improving the Enforcement of Issuing Judicial Documents Online

According to the 2010 Provisions, the people's courts *could* issue judgments on the Internet. However, the New Provisions makes it a duty.¹¹ Moreover, according to the New Provisions, the people's courts at all levels shall specially designate an institution to be responsible for releasing judgments on a website managed by the Supreme People's Court,¹² which shall release a judicial judgment within seven days after its entry into force.¹³

3. Clarifying the Scope of Releasing Judicial Documents Online

The New Provisions also clarify what is inappropriate to issue on the Internet. Article 4 lists four circumstances for cases involving: (1) state secrets or individual privacy, (2) juvenile delinquency, (3)

⁸ Zuigao Renmin Fayuan guanyu Renmin Fayuanzai Hulanwang Gongbu Caipan Wenshu de Guiding (最高人民法院关于人民法院在互联网公布裁判文书的规定) [Provisions of the Supreme People's Court on the Issuance of Judgments on the Internet by the People's Courts] (promulgated by the Judicial Comm. Sup. People's Ct., Nov. 13, 2013, effective Jan. 1, 2014) (Chinalawinfo).

⁹ Guanyu Renmin Fayuanzai Hulanwang Gongbu Caipan Wenshu de Guiding (关于人民法院在互联网公布裁判文书的规定) [Provisions on the Issuance of Judgments on the Internet by the People's Courts] (promulgated by the Judicial Comm. Sup. People's Ct., Nov. 21, 2010) (Chinalawinfo).

¹⁰ 2014 Nian Zuigao Renmin Fayuan Gongzuo Baogao (2014年最高人民法院工作报告) [Work Report of the Supreme People's Court, 2014], NPC (Mar. 10, 2014), http://www.npc.gov.cn/npc/dbdhy/12_2/2014-03/18/content_1856651.htm [hereinafter *SPC Work Report*].

¹¹ Zuigao Renmin Fayuan guanyu Renmin Fayuanzai Hulanwang Gongbu Caipan Wenshu de Guiding (最高人民法院关于人民法院在互联网公布裁判文书的规定) [Provisions of the Supreme People's Court on the Issuance of Judgments on the Internet by the People's Courts] (promulgated by the Judicial Comm. Sup. People's Ct., Nov. 13, 2013, effective Jan. 1, 2014) art.1 (Chinalawinfo).

¹² *Id.* arts. 2, 3.

¹³ *Id.* art. 8.

matters closed by mediation, and (4) any other circumstances that would make it inappropriate to issue the judgment on the Internet.¹⁴

The New Provisions also emphasize the protection of privacy. When issuing a judgment on the Internet, a people's court must delete the following information: (1) a natural person's home address, contact information, identity card number, bank account number, health status and other personal information, (2) a minor's relevant information, (3) the bank account number of a legal person or any other organization, (4) trade secrets, and (5) any other content which would be inappropriate to disclose.¹⁵

4. Emphasizing the Authenticity of Judicial Documents

To assure the authenticity of online judicial documents, the Supreme People's Court designed a strict procedure:

(1) The New Provisions emphasized the consistency between the judgment served on the parties and the document released on the Internet.¹⁶

(2) A judgment issued on the Internet may not be modified or replaced, except due to network transmission failures or as decided by a special institution of a people's court at least at the level of a higher people's court.¹⁷

(3) The names and other true information of parties will be retained, except for: a. Parties in marriage and family or inheritance disputes; b. Victims and their legal representatives, witnesses, and identification or evaluation experts in criminal cases; c. Defendants sentenced to fixed-term imprisonments of less than three years, exempted from criminal punishment and not recidivist or habitual offenders.¹⁸

5. Conclusion

The New Provisions are an innovative step towards judicial transparency. 3,858 judicial documents of the Supreme People's Court and 1.6 million documents of local people's courts had been released on the Internet by March 10, 2014,¹⁹ and the Number is increasing. In addition, trial process and enforcement information

¹⁴ *Id.* art. 4.

¹⁵ *Id.* art. 7.

¹⁶ *Id.* art. 10.

¹⁷ *Id.* art. 11.

¹⁸ *Id.* art. 6.

¹⁹ *Zhou Qiang: Qunian Difang Fayuan Shangwang Gongbu Shengxiao Caipan Wenshu 165 Wanfen* (周强: 去年地方法院上网公布生效裁判文书165万份) [*Zhou Qiang: Local Courts Issued 1.65 Million Effective Judicial Documents Last Year*], CHINA NEWS.COM (Mar. 10, 2014), <http://www.chinanews.com/gn/2014/03-10/5932454.shtml>.

may soon also be publicized on the Internet, according to Zhou Qiang.²⁰

III. CASES

*A. Notice of the Supreme People's Court on Issuing the Fifth Group of Guiding Cases*²¹

This notice is the fifth set of such guiding cases issued by the Supreme People's Court ("SPC") since it issued a procedure to designate guiding cases to "serve as guidelines for courts nationwide in their trial and execution work"²² in November, 2010. These cases are not precedential, but could someday evolve to have a similar effect.²³ The SPC has previously selected and published 16 guiding cases. The newly released guiding cases include four civil cases and two administrative cases.

1. Zhang Li v Beijing Heli Huatong Automobile Service Co., Ltd., a Sale and Purchase Contract Dispute

(a) Facts

On February 28, 2007, the plaintiff Zhang Li purchased a Chevrolet Epica from the defendant Beijing Heli Huatong Automobile Service Co., Ltd ("Heli Huatong Company") for CNY 138,000. The two parties signed an Automobile Sales Contract. The plaintiff later found the car had been maintained prior to delivery on January 17, 2008. The defendant confirmed this. The focus of the dispute was whether Heli Huatong Company performed its obligations to disclose defect-related information.

(b) Ruling

The Peoples Court of Chaoyang District of Beijing Municipality determined that the defendant had committed a fraudulent act. The court ruled that the Automobile Sales Contract was rescinded. Therefore, the court ordered that the automobile be redelivered and the purchase price refunded. Heli Huatong Company was ordered to

²⁰ *Id.*

²¹ Zuigao Renmin Fayuan guanyu Fabu Diwu Pi Zhidaoxing Anli de Tongzhi (最高人民法院关于发布第五批指导性案例的通知) [Notice of the Supreme People's Court on Issuing the Fifth Set of Guiding Cases] (promulgated by Sup. People's Ct., Nov. 8, 2013, effective Nov. 8, 2013) (Chinalawinfo).

²² Zuigao Renmin Fayuan guanyu Anli Zhidao Gongzuo de Guiding (最高人民法院关于案例指导工作的规定) [Provisions of the Supreme People's Court on Case Guiding Work] (promulgated by Sup. People's Ct., Nov. 26, 2010, effective Nov. 26, 2010) (Chinalawinfo).

²³ See Stanford Law School China's Guiding Cases Project, <http://cgc.law.stanford.edu/about-the-cgcp/> (last visited May 2, 2014).

pay Zhangli double compensation. The compensation was double the purchase price of the automobile (CNY 138,000). The Beijing Second Intermediate People's Court dismissed the appeal.

(c) Judgment Essentials

The court clarified that when cars are purchased for personal consumption needs, fraud disputes occurring in these purchases may be handled pursuant to the Law on Protection of Consumer Rights and Interests.²⁴

The court further stated that sales fraud arises if a car seller promises to sell a new unused and not repaired car to a consumer, but the consumer discovers after purchase that the car has been used or repaired, and the seller cannot prove performance of disclosure and acknowledgement of the performance by the consumer. If the consumer demands that the seller compensate his losses in accordance with the Law on Protection of Consumer Rights and Interests,²⁵ the people's court should offer support.

2. ZTE (Hangzhou) Co., Ltd. v. Wang Peng, a Labor Contract Dispute

(a) Facts

On July 2005, Wang Peng joined ZTE (Hangzhou) Co., Ltd. ("ZTE") and was in charge of sales work in the Distribution Department as stipulated in his Employment Contract. In January 2009, Wang Peng was transferred to work as a salesman in the East China Region due to the dissolution of the ZTE Distribution Department.

The results of Wang Peng's performance evaluations were all C2 in the latter half of 2008, first half of 2009 and latter half of 2010. An evaluation of C2 indicated need for improvement. According to ZTE's employee policies, 10% of the total employees would receive the lowest assessment levels of C1 or C2. An incompetent employee would generally be evaluated as C2.

ZTE alleged that Wang Peng was incompetent and remained so after a transfer of position. ZTE thus terminated the Employment Contract after paying economic compensation.

²⁴ Xiaofeizhe Quanyi Baohu Fa (消费者权益保护法) [Law on Protection of Consumer Rights and Interests] (promulgated by Standing Comm. Nat'l People's Cong., Oct. 31, 1993, effective Jan. 1, 1994) (Chinalawinfo).

²⁵ *Id.*

(b) Ruling

The People's Court of Binjiang District of Hangzhou, Zhejiang Province held that ZTE's allegation of Wang Peng's incompetence had inadequate basis and the termination of the Employment Contract was against the Labor Law²⁶ and Labor Contract Law.²⁷ The court ordered ZTE to pay double severance to Wang Peng as compensation.

(c) Judgment Essentials

The court emphasized that ranking last based on a performance evaluation is not equivalent to incompetence and does not constitute a statutory ground for unilateral termination. An employer, therefore, cannot unilaterally terminate a labor contract for this reason.

The court also found that ZTE failed to prove that the unilateral termination of the labor contract was due to Wang Peng's incompetence and continued incompetence after a transfer of position. The result of C2 in the performance evaluations did not by itself constitute incompetence. Moreover, although Wang Peng was transferred, his job duties before and after the transfer were the same. The transfer also directly resulted from the dissolution of the ZTE Distribution Department.

PRC law imposes strict limits on unilateral termination for incompetence. Generally, an employer must have an evaluation policy in place. The policy must have gone through the democratic procedures and be clear, reasonable and publicized. After the employee is deemed incompetent after evaluation, the employer must provide training to the employee or change the employee's position. Only when the employee remains incompetent after training or transfer can the employer unilaterally dismiss the employee.²⁸

3. Zhao Chunming et al. v. the Automobile Transport Co., Ltd. of Fushan District, Yantai Municipality, Wei Deping, et al., a Motor Vehicle Traffic Accident Liability Dispute

(a) Facts

This case involved a traffic accident, which resulted in the immediate death of a passenger. The competent traffic police department determined that the freight car driver Lin Zedong was

²⁶ Laodong Fa (劳动法) [Labor Law] (promulgated by Standing Comm. Nat'l People's Cong., Jul. 5, 1994, effective Jul. 5, 1994) (2009) (Chinalawinfo).

²⁷ Laodong Hetong Fa (劳动合同法) [Labor Contract Law] (promulgated by Standing Comm. Nat'l People's Cong., Jun. 29, 2007, effective Jan. 1 2007) (2012) (Chinalawinfo).

²⁸ *Id.* art. 40.

primarily liable and the passenger car driver Zhou Yaping was secondarily liable.

The freight car in the accident (“accident-causing car”) carried a counterfeit license plate F41703. The owner of the real license plate F41703 was the defendant Wei Deping. Wei Deping was also affiliated with the defendant company Yantai Fushan Automobile Transportation Co., Ltd. (the “Fushan Company”). The owner of the freight car driven by Lin Zedong was his employer, Wei Guanghui, who asserted that Wei Deping knew of the counterfeiting of the license plate and even charged fees for the counterfeiting.

The registered owner of the passenger car was the plaintiff Zhu Rongming. However, the car had been transferred several times and its actual owner was Zhou Yaping. Zhu Rongming neither controlled nor profited from the operation of the car. The plaintiff Shanghai Tengfei Construction Engineering Co., Ltd. (“Tengfei Company”) was the employer of Zhou Yaping. Zhou Yaping was not performing his duties when the accident occurred.

(b) Ruling

The People’s Court of Baoshan District of Shanghai ordered the defendants Wei Guanghui and Lin Zedong to pay compensation of CNY 396,863 to the four plaintiffs. The court held that Fushan Company, Wei Deping, Wei Guanghui, Lin Zedong and Zhou Yaping were jointly and severally liable.

The Court also ordered Zhou Yaping to pay compensation of CNY 170,084 to the four plaintiffs. Wei Guanghui, Lin Zedong and Zhou Yaping were held to be jointly and severally liable for the compensation liabilities. The appeal was dismissed.

(c) Judgment Essentials

Absence explicit statutory law,²⁹ the Court made its ruling on the ground that the lending of motor vehicle license plates to other persons for counterfeit uses will connive at the operation of motor vehicles not satisfying safety and technology standards, increasing the dangers of road traffic and public safety. Therefore, where a motor vehicle with a counterfeit plate causes a traffic accident injuring a person, the person lending the license plate will be deemed to have committed a misconduct. The accident-causing car with the counterfeit plate will be responsible for making compensation and

²⁹ See Daolu Jiaotong Anquan Fa (道路交通安全法) [Road Traffic Safety Law] (promulgated by Standing Comm. Nat’l People’s Cong., Oct. 28, 2003, effective May.1, 2004) art. 16 (Chinalawinfo); Qinquan Zeren Fa (侵权责任法) [Tort Law] (promulgated by Standing Comm. Nat’l People’s Cong., Dec. 26 2009, effective Jul. 1, 2010) art. 8 (Chinalawinfo).

the party lending the license plate shall be jointly and severally liable.

4. Shenzhen Siruiman Fine Chemicals Co., Ltd. v. Shenzhen Kengzi Water Supply Co., Ltd. and Shenzhen Kangtailan Water Treatment Equipment Co., Ltd., an Invention Patent Infringement Dispute

(a) Facts

Shenzhen Siruiman Fine Chemicals Co., Ltd. (“Siruiman”) applied to the State Intellectual Property Office on January 19, 2006 for an invention patent. The patent was publicized on July 19, 2006 and granted on January 21, 2009. On October 20, 2008, Shenzhen Kengzi Water Supply Co., Ltd. (“Kengzi Water Supply”) and Shenzhen Kangtai Blue Water Treatment Equipment Co., Ltd. (“Kangtai Blue Water Treatment”) signed a Purchase and Sale Agreement, under which Kengzi Water Supply would purchase from Kangtai Blue Water Treatment a set of chlorine dioxide generators at the price of CNY 26,000. On March 16, 2009, Siruiman filed an action alleging that the equipment fell within the scope of protection for the invention patent. Siruiman did not claim royalties for the use of the invention patent during the period of temporary protection.

(b) Ruling

The Shenzhen Municipal Intermediate People’s Court of Guangdong Province ordered that Kangtai Blue Water stop its infringement and ruled that the two defendants were jointly and severally liable for CNY 80,000. The appeal to the Guangdong Provincial High People’s Court was rejected. The Supreme People’s Court, in the process of retrial, reversed the first and the second instance decisions and rejected the claims of Siruiman.

(c) Judgment Essentials

The SPC focused on two issues. The first issue was whether Kengzi Water Supply’s use of products purchased from Kangtai Blue Water Treatment during the products’ invention patent protection period was patent infringement. The second issue was whether Kangtai Blue Water Treatment’s provision of after-sale services for Kengzi Water Supply’s use of these products infringed the invention patent.

After reviewing the Patent law,³⁰ the SPC held that the applicant was entitled to claim royalties for use of the patent during the

³⁰ See *Zhuanli Fa* (专利法) [Patent Law] (promulgated by Standing Comm. Nat’l People’s Cong., Mar. 12, 1984, effective Apr. 1, 1985) (2008) arts. 11, 13, 69 (Chinalawinfo).

temporary protection period. However, the applicant was not entitled to claim for its inability to exploit the invention during this period.

Therefore, the Patent Law does not prohibit the exploitation of inventions during the temporary protection period. The subsequent use, offer for sale and sale of the product shall also be allowed, even without the authorization of the relevant patentee. However, this does not deny a patentee's right to require any person exploiting his invention to pay an appropriate fee. The SPC further explains that such determination is in line with the original intention of the designed patent system and the stipulation of the priority rights.

5. Inner Mongolia Qiushi Real Estate Development Co., Ltd. v. the Civil Air Defense Office of Hohhot Municipality, a Civil Defense Administrative Levy Case

(a) Facts

On September 10, 2008, the defendant Civil Air Defense Office of Hohhot ("Hohhot Office") served the plaintiff Inner Mongolia Qiushi Real Estate Development Co., Ltd. ("Qiushi") with a Notice of Handling the Formalities for Examination and Approval of Completed Construction Projects within Specified Time Limit. The notice informed Qiushi that a basement for civil air defense had not been built for a new affordable housing project and required Qiushi to go through the formalities for the completed construction project with Hohhot Office before September 14, 2008 and provide relevant materials. On June 18, 2009, the Hohhot Office issued to Qiushi the Written Decision of the Civil Air Defense Office of Hohhot on the Levy of the Costs for the Ex Situ Construction of Civil Air Defense Basements (the "Written Decision"), imposing a levy on Qiushi of CNY 1,724,600 for not constructing the basement.

(b) Ruling

The Hohhot Xincheng District People's Court of Inner Mongolia Autonomous Region upheld the Written Decision. The appeal was rejected.

(c) Judgment Essentials

The court clarified that where a construction entity is required to construct an air defense basement, but does not, in violation of the Civil Air Defense Law,³¹ this illegal act is a nonperformance of a legal obligation. Thus, the construction entity shall pay a fee for the

³¹ Fangkong Fa (防空法) [Civil Air Defense Law] (promulgated by Standing Comm. Nat'l People's Cong., Oct. 29, 1996, effective Jan. 1, 1997) (2009) arts. 22, 48 (Chinalawinfo).

ex situ construction of an air defense basement.³² The provisions concerning “the exemption of the urban infrastructure ancillary fee and various other administrative service fees”³³ for construction projects of low-rent housing and affordable housing are not applicable under such circumstances and therefore the levy cannot be exempted.

6. Wei Yonggao et al. v. the People’s Government of Lai’an County, a Case about a Reply to Recover Land-Use Rights

(a) *Facts*

On August 31, 2010, the Land Resource and Housing Administration Bureau of Lai’an County, Anhui Province submitted to the People’s Government of Lai’an County the Request for Instructions on the Withdrawal of the Right to Use State-Owned Land, requesting withdrawal of the right to use a piece of land (the “Land”). On September 6, 2010 the People’s Government of Lai’an County issued the Written Reply on the Withdrawal of the Right to Use a Portion of the State-owned Land Located at Youngyan East Road and Tashan Middle Road (the “Written Reply”). After the Land Resource and Housing Administration Bureau of Lai’an County received the written reply, it failed to prepare a written decision for the withdrawal of the land-use right and serve it on the original land-use right holder in accordance with the law.³⁴ Instead the Written Reply was directly forwarded to the Land Reserve Center of Lai’an Country for implementation. The houses of Wei Yonggao and Chen Shouzhi were located on the Land. They objected to the Written Reply. On September 20, 2011, the People’s Government of Chuzhou City issued a Written Decision on Administrative Reconsideration. Wei Yonggao and Chen Shouzhi objected to the Decision and filed for administrative litigation.

³² Renmin Fangkong Gongcheng Jianshe Guanli Guiding (人民防空工程建设管理规定) [Regulation on People’s Civil Air Defense Construction and Management] (promulgated by National Defense Mobilization Commission, State Development Planning Commission, the Ministry of Construction and the Ministry of Finance, Feb. 21, 2003, effective Feb. 21, 2003) art. 48 (Chinalawinfo).

³³ Guowuyuan guanyu Jiejue Chengshi Dishouru Jiating Zhufang Kunan de Ruogan Yijian (国务院关于解决城市低收入家庭住房困难的若干意见) [Several Opinions of the State Council on Solving Housing Difficulties of Urban Low-Income Families] (promulgated by St. Council, Aug. 7, 2007, effective Aug. 7, 2007) art. 16 (Chinalawinfo); Jingji Shiyong Zhufang Guanli Banfa (经济适用住房管理办法) [Administrative Measures for Affordable Housing] (promulgated by the Ministry of Construction, National Development and Reform Commission, Ministry of Supervision, Ministry of Finance, Ministry of Land and Resources, People’s Bank of China and General Administration of Taxation, May 13, 2004, effective May 13, 2004) (2007) art. 8 (Chinalawinfo).

³⁴ Tudi Chubei Guanli Banfa (土地储备管理办法) [Measures for Land Reserve Administration] (promulgated by the Ministry of Land and Resources, Ministry of Finance and People’s Bank of China, Nov. 19, 2007, effective Nov. 19, 2007) (Chinalawinfo).

(b) Ruling

Chuzhou Intermediate People's Court dismissed the action. On appeal, Anhui Provincial Higher People's Court revoked the administrative ruling and ordered Chuzhou Intermediate People's Court to hear the case.

(c) Judgment Essentials

This case concerns the scope of case acceptance in administrative disputes.³⁵ The Court held that the Written Reply was an internal administrative act which could not be served on the counterparty (行政相对人), and which would not effectively affect the rights and obligations of the counterparty. An internal administrative act generally does not fall within the scope of administrative proceedings. However, where the administrative department directly implements the reply, actually impacting the rights and obligations of the administrative counterpart, and where the administrative counterpart is dissatisfied with the reply and initiates litigation, the people's court should accept the case in accordance with law.

B. Notice of the Supreme People's Court on Issuing the Sixth Group of Guiding Cases³⁶

This is the sixth set of such guiding cases released by the Supreme People's Court, including four newly selected cases.

1. Sun Yinshan v. Oushang Supermarket Ltd. Nanjing, Jiangning Branch, on Sales Contracts

(a) Facts

Sun bought 14 packets of sausages which were past the expiry date, went directly to the counter, and asked for ten-fold compensation according to Article 96 Section 2 of the Food Safety Law: "Besides claiming damages, a consumer may require the producer, who produces food which does not conform to the food safety standards, or the seller who knowingly sells food which does not conform to the food safety standards, to pay 10 times the money paid." The respondent submitted that the Claimant was aware that the products purchased were expired thus could not be protected as a "consumer."

³⁵ Xingzheng Susong Fa (行政诉讼法) [Administrative Procedure Law] (promulgated by Nat'l People's Cong., Apr. 4, 1989, effective Oct. 1, 1990) art. 11 (Chinalawinfo).

³⁶ Zuigao Renmin Fayuan guanyu Fabu Diliu Pi Zhidaoxing Anli de Tongzhi (最高人民法院关于发布第六批指导性案例的通知) [Notice of the Supreme People's Court on Issuing the Sixth Set of Guiding Cases] (promulgated by Sup. People's Ct., Jan. 26, 2014, effective Jan. 26, 2014) (Chinalawinfo).

(b) Ruling

The court ruled that Claimant was “purchasing commodities for daily consumption” and thus fell within the scope of a “consumer”.

(c) Judgment Essentials

This case settled the long debate among courts and scholars³⁷ on whether a buyer could be defined as “consumer” and therefore be protected by consumer protection laws when purposely purchasing fake products. The Law on Protection of Consumer Rights and Interests reads: “[t]he rights and interests of consumers in purchasing and using commodities or receiving services for daily consumption shall be under the protection of the present Law, or under the protection of other relevant laws and regulations in absence of stipulations in this Law.”³⁸ However, it does not regulate whether a buyer’s good faith would affect his legal status.

Since the policy of “double compensation” was adopted in 1994,³⁹ “Buy Fake Products on Purpose” behavior and even professional “fake buyers” has arisen nationwide and fueled debate. Different answers has been reached by courts in different provinces: they are protected aggressively in provinces such as Yunnan,⁴⁰ while in another case, courts have refused to protect a professional “fake buyer,” Wang Hai,⁴¹ discouraging such behavior.

In accordance with the new wave of consumer protection,⁴² this case took a pro-consumer stance, interpreting “Buy Fake Products on Purpose” behavior as consuming. However, the speaker of the SPC has declared that professional “fake buyers” are disturbing market order and thus precluded from protection as consumers.⁴³

³⁷ E.g., Ying Feihu (应飞虎), *Zhijiamaijia Xingwei Shiyong Chengfaxing Peichang de Sikao* (知假买假行为适用惩罚性赔偿的思考) [On the Imposition of Punitive Damages in Cases concerning Knowingly Purchased Counterfeit Products], 6 ZHONGGUO FAXUE (中国法学) [CHINA LEGAL SCIENCE] 114 (2004).

³⁸ Xiaofeizhe Quanyi Baohu Fa (消费者权益保护法) [Law on Protection of Consumer Rights and Interests] (promulgated by the Standing Comm. Nat’l People’s Cong., Oct.31, 1993, effective Jan. 1, 1994) (2013) art. 2 (Chinalawinfo).

³⁹ *Id.* art. 49.

⁴⁰ *Yunnan Fayuan Qizhixianming Zhichi Dajia* (云南法院旗帜鲜明支持打假) [Yunnan Courts Expressly in Favor of Cracking Down on Fake Products], BLOG SINA (Aug. 24, 2009), http://blog.sina.com.cn/s/blog_48d99f720100e154.html.

⁴¹ He Bing (何兵), *Wang Hai Baisu de Liyou* (王海败诉的理由) [Why Wang Hai Lost in Court], CHINA LAW INFO (2002), http://article.chinalawinfo.com/Article_Detail.asp?ArticleID=19907.

⁴² *Zuigao Fayuan Shouci Fabu Fayuan Weihu Xiaofeizhe Quanyi Zhuangkuang Baipishu* (最高法院首次发布法院维护消费者权益状况白皮书) [Supreme Court’s First Announced White Paper on Court Protecting Consumer Rights and Interests], XINHUA NET (Mar. 12, 2014), http://news.xinhuanet.com/legal/2014-03/12/c_119741160.htm.

⁴³ Xu Jun (徐隽), *Xiaofeizhe “Zhijaimaijia” Ke Suopei* (消费者“知假买假”可索赔) [Consumers’ “Knowingly Purchased Falsified Products” Are Compensable], RENMIN RIBAO (人民日报) [PEOPLE’S DAILY], Jan. 10, 2014, at 9, available at <http://hb.people.com.cn/n/2014/0110/c192237-20351292.html>.

2. Rong Baoying v. Wang Yang and Yongcheng Property Insurance Co. Ltd. Jiangyin Branch, on Vehicle Accident Liability

(a) *Facts*

Rong Baoying, an aged pedestrian, was knocked down and injured by a vehicle driven by Wang Yang. Wang was clearly fully responsible for causing the accident. Wang and his insurer submitted that Rong's injury was partly caused by her own special physical condition, evidenced by a forensic expert report. The report said that Rong's condition caused 25% of her injury and argued that Wang should be liable for only 75% of the compensation.

(b) *Ruling*

The court ruled that Wang should be fully liable, regardless of Rong's special physical condition.

(c) *Judgment Essentials*

The Tort Law⁴⁴ and Road Traffic Safety Law⁴⁵ both include being an infringed party or pedestrian negligence as a reason to reduce infringer liability. The court held that the special physical condition of an injured party could not reduce the liability of an infringer.

Chinese courts have generally been reluctant to adopt the Common Law eggshell skull rule despite some radical cases.⁴⁶ Instead, they lean more towards adopting a theory of partial causality, a criminal law principle, in situations involving concurrent causal factors.⁴⁷ For example, the Regulation on the Handling of Medical Accidents stipulates: "The following elements shall be taken into consideration in the determination of the specific sum of compensation for a medical accident: the relationship between the injury caused by the medical accident and the state of the original illness."⁴⁸

This guiding case ruled along the lines of the eggshell skull rule, precluding the infringed party's special physical constitution from limiting infringer's liability. Though deviating from courts'

⁴⁴ Qinquan Zeren Fa (侵权责任法) [Tort Law], (promulgated by the Standing Comm. Nat'l People's Cong., Dec.26, 2009, effective Jul. 1, 2010) art. 26 (Chinalawinfo).

⁴⁵ Daolu Jiaotong Anquan Fa (道路交通安全法) [Road Traffic Safety Law], (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 28, 2003, effective May 1, 2004) (2011) art. 76(2) (Chinalawinfo).

⁴⁶ Sun Peng (孙鹏), *Shouhairan Teshu Tizhi dui Qinquan Zeren zhi Yingxiang* (受害人特殊体质对侵权责任之影响) [*The Influence of a Victim's Special Physical Quality on Tort Liability*], 12 FAXUE (法学) [LEGAL SCIENCE] 93 (2012).

⁴⁷ *Id.* at 95–96.

⁴⁸ Yiliao Shigu Chuli Tiaoli (医疗事故处理条例) [Regulation on the Handling of Medical Accidents] (promulgated by St. Council, Apr.4, 2002, effective Sept. 1, 2002) (Chinalawinfo).

consistent past stances, this case accords with China's general pro-pedestrian attitude in traffic accident cases. Whether it will have an impact beyond traffic accidents is undetermined.

3. Huatai Property Insurance Ltd. Beijing Branch v. Li Zhigui, Tian'an Property Insurance Co. Ltd Hebei Province Subsidiary Zhangjiakou Branch, on the Jurisdiction of an Insurer's Subrogation Right

(a) Facts

Huatai Ltd. concluded a vehicle insurance contract with Yadajindu Ltd. in Dongcheng District, Beijing. Li Zhigui concluded a vehicle insurance contract with Tian'an Ltd. in Zhangjiakou, Hebei Province. Both Li and Tian'an resided in Zhangjiakou. A vehicle accident occurred between Yadajindu and Li in Chaoyang District, Beijing. Huatai paid compensation to Yadajindu, obtaining subrogation rights, and started a lawsuit in a court of Dongcheng District, where its insurance contract was concluded.

(b) Ruling

The issue was whether the insurer's subrogation right to sue is entitled by contract or by status and therefore whether *forum loci delicti* or *forum loci contractus* had the jurisdiction to hear the case. The court of Dongcheng District adjudicated not to accept the suit on the grounds that the insurer's subrogation right was entitled by law other than contract, so the competent court should be *forum domicilii* or *forum loci delicti*, according to the Civil Procedural Law, Art. X.⁴⁹

(c) Judgment Essentials

The Amendment of the Civil Procedural Law in 2013 has clarified some jurisdiction questions about parties' choice of forum. This case provides further clarification for jurisdiction issues in insurance cases.

4. Li Jianxiong v. Guangdong Province Department of Transportation, on Governmental Information Publicity

(a) Facts

Li Jiangxiong applied for government information from the Guangdong Province Transportation Department ("Transportation Department") on June 1, 2011 through the public website of the Guangdong government and received reply on August 4, 2011, after

⁴⁹ Minshi Susong Fa (民事诉讼法) [Civil Procedure Law] (promulgated by Nat'l People's Cong., Apr. 9, 1991, effective Apr. 9, 1991) (2012) (Chinalawinfo).

waiting for longer than the maximum set by the Regulation on the Disclosure of Government Information (the “Regulation”). The Transportation Department argued that Li submitted the application to the outer website, which government department could not communicate with or operate, which thus had not “reached” the department as required in the Regulation.⁵⁰

(b) Ruling

The Court found that without special notice, the day the citizen submitted an application for government information on the official website would be deemed the day the application reached the government. Thus Transportation Department failed to comply with the law.

(c) Judgment Essentials

Disclosure of government information has been a contentious issue in the past decade, especially after the Regulation was adopted in 2007. Applications by citizens through the Internet have become a new yet mainstream method of requesting disclosure. Meanwhile, perceived delays by the government, has received criticism both from scholars and the public.⁵¹

The role of courts has increased tremendously since the Provisions of the Supreme People’s Court on Several Issues concerning the Trial of Administrative Cases about Open Government Information were circulated in 2010, causing the number of cases about open government information to multiply.⁵² The judiciary is expected to play a more significant role in protecting people’s right to information.⁵³ This case rigidly interpreted the procedural requirements of the Regulation, eliminating inner procedural regulations as demurrer.

⁵⁰ Zhengfu Xinxi Gongkai Tiaoli (政府信息公开条例) [Regulation on the Disclosure of Government Information] (promulgated by St. Council, Apr. 5 2007, effective May 1, 2008) art. 24 (Chinalawinfo).

⁵¹ See Touming Zhongguo (透明中国) [China Transparency], <http://www.chinatransparency.org/>.

⁵² Baogao Cheng Zhengfu Xinxi Gongkai Anjian Zengzhang Gongmin Shengsu Qingkuang Jiaoshao (报告称政府信息公开案件增长 公民胜诉情况较少) [Report Declares that the Number of Government Information Disclosure Cases Increases but Individuals Seldom Win], CHINA NEWS.COM (Nov. 13, 2013), <http://www.chinanews.com/gn/2013/11-03/5456690.shtml>.

⁵³ Gongmin Shenqing Zhengfu Xinxi Gongkai Weihe Shengsu Buduo (公民申请政府信息公开为何胜诉不多) [Why Do Citizens’ Applications for Government Information Disclosure Always Fail?], ZHONGGUO QINGNIAN BAO (中国青年报) [CHINA YOUTH DAILY], Oct. 25, 2013, at 3, available at http://zqb.cyol.com/html/2013-10/25/nw.D110000zgqnb_20131025_1-03.htm.

III. LEGAL NEWS

A. Highlights of the Work Report of the Supreme People's Court of China

On March 10, 2014, the President of Supreme People's Court, Zhou Qiang, presented the work report of the Court to the 12th National People's Congress, which included the main work of the Court in 2013 and the Court's annual work arrangement for 2014. The work of the Court in 2013 was centered on the principle of pursuing judicial justice for people.

1. Promoting Openness of the Judiciary

(a) Statistics

The Supreme Court launched its microblog, Wechat account and news client last year, which by March 9, 2014, had fans and subscribers exceeding 3.28 million, 25,000, and 340,000 respectively. 45,000 cases in local people's courts at various levels were also live-broadcasted last year, including the trial of Bo Xilai by the Jinan Intermediate People's Court. 3,858 copies of valid judgment documents of the Supreme People's Court and 1.646 million valid judgment documents of local people's courts at various levels were released online.⁵⁴

(b) Implications

Bai Quanmin, president of Shandong Higher People's Court, believes that promoting openness of the judiciary is an inevitable demand of the exercise of the people's courts' legal obligations and an essential measure to promote public trust in the judiciary. Yang Wu, chairman of the China Patent Agents Association also contends that the SPC's online outreach further facilitates public scrutiny of its work.⁵⁵

2. Correcting Injustice According to Law

(a) Statistics

116,000 appeals (申诉) and retrials were reviewed last year, and 30,000 retrial cases were reheard according to law and 7,415

⁵⁴ SPC Work Report, *supra* note 10.

⁵⁵ Xu Jun (徐隽) & Zhang Yang (张洋), *Lianggao Baogao, Ganshou Shuju Beihou de Gongping Zhengyi* (两高报告, 感受数据背后的公平正义) [*The Fairness and Justice Hidden Behind the Statistics in the Work Report of the Supreme People's Court and Supreme People's Procuratorate*], RENMIN RIBAO (人民日报) [PEOPLE'S DAILY], Mar. 11, 2014, at 10.

judgments (0.09% of the total valid judgments) were amended. Local people's courts at various levels acquitted 825 defendants.⁵⁶

(b) Implications

Sun Jungong, spokesman of the SPC, explains that four essential measures taken by the SPC contributed to effective correction of injustices: (1) intensifying the work of review and retrial (2) attaching great importance to public opinion and timely responses, (3) establishing cooperative and specialized working mechanisms between higher and lower courts, strengthening scrutiny and guidance for unjust cases, and requiring lower courts to report cases likely involving major miscarriages of justice in a timely manner, and (4) carry out providing state compensation immediately after amending a judgment.⁵⁷

3. Intensifying Executive Power through Various Measures

(a) Statistics

2.989 million enforcement cases were received by local people's courts, of which 2.718 million were concluded, an increase of 14% and 10.2% from last year, respectively. 30,000 cases concerning people's livelihoods were concluded though a special concentrating project to enforce verdicts that had not been enforced due to various reasons. The amount of money involved in these cases was 1.14 billion RMB. A dishonest debtors list was also made up.⁵⁸ 72,000 dishonest debtors were punished for discreditable behavior, 20% of whom later carried out their obligations.⁵⁹

(b) Implications

Xu Hai, a delegate of the 12th National People's Congress and president of a branch bank of the Industrial and Commercial Bank of China, contends that establishment of the dishonest debtors list promoted the construction of a social credit system.⁶⁰ The punishment of dishonest debtors helps to solve the long-lasting problem of enforcement.

⁵⁶ SPC Work Report, *supra* note 10.

⁵⁷ Zhang Jingyi (张景义), *Jiedu Zuigao Renmin Fayuan Gongzuo Baogao* (解读最高人民法院工作报告) [Analysis of the Work Report of China's Supreme People's Court], RENMIN FAYUAN BAO (人民法院报) [PEOPLE'S COURT DAILY], Mar. 11, 2014, at 3.

⁵⁸ Zuigao Renmin Fayuan guanyu Gongbu Shixin Beizhixingren Mingdan Xinxi de Ruogan Guiding (最高人民法院关于公布失信被执行人名单信息的若干规定) [Several Provisions of the Supreme People's Court on the Announcement of the List of Dishonest Persons Subject to Enforcement] (promulgated by Sup. People's Ct., Jul. 16, 2013, effective Jul. 16, 2013) (Chinalawinfo).

⁵⁹ SPC Work Report, *supra* note 10.

⁶⁰ Xu & Zhang, *supra* note 55.

4. Combating Corruption Crimes

(a) Statistics

29,000 cases of corruption, bribery, dereliction, and rights violation crimes involving civil servants were concluded last year. 31,000 criminals were sentenced, including Bo Xilai, Liu Zhijun and other serious criminals.⁶¹

(b) Implications

As revealed by spokesman Sun Jungong, the SPC used four major measures to combat corruption crimes of judges: (1) discovering alleged corruption crimes promptly and severely punishing guilty judges according to law, (2) reporting corruption cases to all courts to prevent similar cases from happening again, (3) holding video and telephone conferences in all courts about enhancement of discipline construction, and (4) formulating the Guidance of the Enhancement of Discipline Construction under the New Situation.⁶²

5. Promoting Convenient Raising of Lawsuits

(a) Statistics

2,082 cases about the crime of endangering food safety were concluded, with 2,647 criminals sentenced. 3.554 million civil cases of first instance were concluded.⁶³

(b) Implication

From the point of view of Liu Baosheng, president of CSIC Sailing AG, to further safeguard people's livelihoods, barriers in every step, including registration, trial, execution and petition, which prevent the general public from lodging lawsuits, should be eliminated.⁶⁴

B. Highlights of Work Report of China's Supreme People's Procuratorate

On March 10, 2014, the President of China's Supreme People's Procuratorate, Cao Jianming, presented the work report of the Supreme People's Procuratorate to the 12th National People's Congress.

⁶¹ SPC Work Report, *supra* note 10.

⁶² Zhang, *supra* note 57.

⁶³ SPC Work Report, *supra* note 10.

⁶⁴ Xu & Zhang, *supra* note 55.

1. Intensifying Punishment of Severe Criminal Offences

(a) Statistics

The arrests of 879,817 criminal suspects were approved. The public prosecutions of 1,324,404 people were initiated. In addition, the Procuratorate, together with the Supreme Court, issued an interpretation on crimes against food safety. 10,540 suspects of the crime of producing and selling hazardous food and fake drugs, 20,969 suspects of environmental crimes, and 84,202 suspects of the crime of sabotaging the order of the market economy were prosecuted.⁶⁵

(b) Implications

Sun Huanquan, secretary of Shengli Petroleum Administration Bureau, believes that safeguarding people's livelihoods is the ultimate goal of procuratorates. The severe punishment of criminal offences helped solve grave public concerns and further maintained justice for the whole society.⁶⁶

2. Combating Duty Crimes

(a) Statistic

37,551 cases of duty crimes involving 51,306 people were filed, an increase of 9.4% and 8.4% respectively compared to last year. 11,948 corrupt administrative personnel and 2,279 judiciary personnel were investigated. 10.14 billion RMB of illicit money and goods were recovered. 762 suspects of duty crimes were captured.⁶⁷

(b) Implications

Zhang Bencai, spokesman of the Supreme People's Procuratorate, explains that four essential measures taken by the Supreme People's Procuratorate contributed to effective combating of duty crimes: (1) improving reporting mechanisms, further facilitating public reporting and expanding access to cases, (2) improving cooperation between different departments, (3) strengthening collaboration with discipline inspection organs, administrative organs and other concerned organs,

⁶⁵ 2014 Nian Zuigao Renmin Jianchayuan Gongzuo Baogao (2014年最高人民检察院工作报告) [Work Report of the Supreme People's Procuratorate, 2014], NPC.GOV.CN, (Mar. 10, 2014), http://www.npc.gov.cn/npc/dbdhhy/12_2/2014-03/18/content_1856655.htm [hereinafter *SPP Work Report*].

⁶⁶ Xu & Zhang, *supra* note 55.

⁶⁷ *SPP Work Report*, *supra* note 65.

and (4) intensifying internal and external supervision of law enforcement.⁶⁸

3. Preventing Injustice

(a) Statistics

The cancellations of 25,211 cases were supervised, up by 25% from last year. Opinions on making corrections for 72,370 cases were proposed, up by 27.3% from last year. Procuratorates decided not to arrest 100,157 people, up by 2.8% from last year. Procuratorates decided not to initiate because of insufficient evidence public prosecutions of 16,427 people, up by 34.4%.⁶⁹

(b) Implications

Deng Chuan, chief procurator of Sichuan Provincial People's Procuratorate, contends that the public has derived new demand and desire for procuratorial work from the development of the economy.⁷⁰ The number of cases handled should not be the only standard to measure procuratorial work. How well the cases are handled should be the key consideration.

4. Constructing a Qualified Team for Law Enforcement

(a) Statistics

The Supreme People's Procuratorate formulated 87 specific methods to improve, focusing on 14 problems. 172,000 procuratorial personnel were provided with training. 210 undisciplined procuratorial personnel were investigated. 2,758 procuratorial offices in towns, villages and neighborhood were established.

(b) Implications

The enhancement of training for procuratorial personnel is essential to strengthen their skills in legal practice and professionalism, which will help further prevent injustice during each step of law enforcement.

⁶⁸ Zhang Bencai Jiedu Zuigao Renmin Jianchayuan Gongzuo Baogao (张本才解读最高人民检察院工作报告) [Analysis of the Work Report of China's Supreme People's Procuratorate by Zhang Bencai], XINHUA NET (Mar. 10, 2014), <http://www.xinhuanet.com/politics/2014lh/ft/20140310-3/index.htm>.

⁶⁹ SPP Work Report, *supra* note 65.

⁷⁰ Xu & Zhang, *supra* note 55.

C. Highlights on the NPC Standing Committee's Legislative Plan in 2014

The National People's Congress (NPC) is the supreme organ of state power in China. It is composed of NPC deputies who are elected according to law from 35 electoral units from the people's congresses of provinces, autonomous regions, municipalities directly under the Central Government, the People's Liberation Army, the deputy election council of Hong Kong Special Administrative Region, and the Taiwan compatriots' consultation election council. Each congress is elected for a term of five years. The NPC meets in session once a year.⁷¹

The power to enact national laws is the most important official function conferred on the NPC and its Standing Committee by the Constitution. The Eighteenth National Party Congress set forth requirements to improve the socialist legal system with Chinese characteristics.⁷² The Third Plenary Session of the Eighteenth Central Committee provided overall arrangements for comprehensively deepening reform, many of which are about the legislative work of the NPC.

1. Revisions

(a) Administrative Procedure Law

(i) Background

Four to six million petition cases are triggered by administrative disputes annually. Only 100,000 thousand of these are solved by administrative litigation.⁷³

(ii) Focus

This is the first thorough revision of the Administrative Procedure Law since its promulgation. This revision aims at clearing various impediments to bringing lawsuits against the government, enlarging the number of cases accepted, improving mechanisms for hearing administrative litigation and reconsideration cases, and correcting illegal or improper administrative actions.

⁷¹ *Brief Introduction to the National People's Congress of the People's Republic of China*, NPC.GOV.CN, http://www.npc.gov.cn/englishnpc/Organization/node_2846.htm (last visited May 12, 2014).

⁷² *Work Report of NPC Standing Committee (2014)*, NPC.GOV.CN, (Mar. 18, 2014), http://www.npc.gov.cn/englishnpc/Speeches/2014-03/18/content_1856663.htm [hereinafter *NPC Work Report*].

⁷³ *2014 Nian Renda Changweihui Lifa Gongzuo Jihua* (2014年人大常委会立法工作计划) [Legislation Plan of the Standing Committee of the National People's Congress, 2014], LEGAL CHINA, http://legal.china.com.cn/2014-03/11/content_31744770.htm [hereinafter *Legislation Plan*].

(b) Budget Law

(i) Background

2014 will be a critical year for the revision of the Budget Law after two deliberations. Budget review is of great use to restrict wasteful government behavior. The budget reports of some local governments and departments presently remain difficult to supervise.

(ii) Focus

All government expenses will soon have to be incorporated into the budget management system and a comprehensive, standardized, open and transparent budgeting system will be established.⁷⁴

(c) Environmental Protection Law

(i) Background

The causes of severe environmental problems such as haze and water shortages are hard to investigate. The expense of controlling pollution is greater than the potential costs of administrative punishments, further promoting illegal behavior by corporations in recent years.

(ii) Focus

The improvement of the environmental protection and management system will further facilitate united prevention and control which enables the emissions of all pollutants to be supervised, controls pollution at the source, and holds polluters accountable for the damage they cause.⁷⁵

2. Formulation

(a) Grain Law

(i) Background

Although the total grain output has increased for 10 consecutive years, it has been impossible to guarantee the quality of grain during this period.⁷⁶ Problems such as farmland pollution and decreases in arable land have also emerged during this time.

(ii) Focus:

It has been 10 years since the formulation of the Grain Law, which is of great importance to the security and stability of the

⁷⁴ NPC Work Report, *supra* note 72.

⁷⁵ *Id.*

⁷⁶ Legislation Plan, *supra* note 73.

2014]

CHINA LAW UPDATE

283

nation. The focus of the Grain Law will be the system of distributing responsibilities to provincial governors and allowing full participation of the market.

3. Others

Other items on the Standing Committee's legislative agenda for this year include: revising the Legislation Law, Food Safety Law, Production Safety Law, Securities Law, Advertising Law, Military Equipment Protection Law, and Education Law; and enacting the Asset Evaluation Law, Waterway Law, State Medals and Honorary Titles Law, Futures Law, and Chinese Medicines Law.⁷⁷

⁷⁷ *NPC Work Report*, *supra* note 72.

