Global Public Affairs
HOT ISSUES
Burson-Marsteller
September 2011 Edition 5

Welcome

This is the latest edition of "Hot Issues" from Burson-Marsteller's Global Public Affairs Practice. Every month, "Hot Issues" focuses on 10 new forthcoming legislative or policy issues that will impact business from around our global network of 130+ offices in Latin America, Asia-Pacific, Europe, Middle East, Africa and North America.

The public policy dynamics in each country, let alone a particular region can be very different, demonstrated by the different experts we utilize in the countries where we operate. Conversely, there are similarities and you can see this in some of the issues we have picked out.

Hot Issues are designed to give you a flavor of our global perspective and should any of the items raise particular interest with you please contact the designated person listed with that issue.

Regulators Move to Tighten Singapore's Corporate Governance Rules

The Corporate Governance Council (CGC) of Singapore, a government body created in February 2010 to promote high corporate governance standards in Singapore's listed companies, has announced 15 proposed amendments to the country's Corporate Governance Code to increase transparency and boost investor confidence in companies listed on the Singapore Exchange. The recommendations include proposals that would require some companies to reshuffle the composition of their corporate boards, publicise the payrolls for top management and board personnel, and implement new training practices to enhance transparency and protect minority shareholders.

If adopted by the government, the proposed changes would apply to all Singapore-listed companies. Analysts say that the changes would create increased fees and compliance demands for companies as well as tightening rules governing their board selection policies. The CGC's suggested amendments require companies where the role of Chairman and CEO is held by the same person or by family members, to increase the number of independent directors sitting on their corporate boards and significantly tighten the criteria for their selection – disqualifying those who have served for more than nine years as well as those who are significant shareholders or closely affiliated with a significant shareholder. They would also require new training programmes to be implemented for board members, set new guidelines for director remuneration, and require companies to publicly disclose benefits paid to top management personnel on a named basis. Some of the measures were previously proposed in 2005 but rejected by the Ministry of Finance due to resistance from business leaders.

The CGC's recommendations are widely viewed as a response to a string of financial scandals that have hit prominent companies in China in recent years. The scandals implicated major Chinese firms like FibreChem Technologies, Zonghui Holdings, Sino-Environment and China Sun Bio-Chem that had been highly regarded market favourites, depressing investor confidence and creating a public backlash against Chinese firms. The new CGC's proposals are seen as an attempt to increase transparency, protect minority shareholders and repair Singapore's image as an investor-friendly nation in the wake of the crises. Some public officials and industry associations have argued they do not go far enough and are lobbying for more aggressive regulations to be included.

Final deliberations on the CGC's proposals are currently underway at the Monetary Authority of Singapore (MAS) and the CGC hopes to have its proposals approved before the end of 2011. The Securities Investors Association of Singapore – the largest organised investor lobby in Asia – is pressing for stronger regulations to be included that would specifically target foreign-based companies, but it is unclear whether this will result in further regulatory changes.

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China Launches New Regulatory Campaigns to Tighten Control over Rare Earth Elements

Chinese government ministries have announced new policies to further tighten regulation of the country's rare earth elements (REE) industry, including cutting production and exports and threatening to shut down some mining companies. In August, the Chinese Ministry of Industry and Information Technology (MIIT) launched a five-month inspection campaign aimed at cracking down on production and exports of the resources that violate government regulations, and the Ministry of Land and Resources (MLR) issued rules designating new REE reserves that will be closed to mining while promising to significantly cut the number of mining companies allowed to operate in China.

It is currently unclear whether foreign companies will be singled out for inspection by state regulators, but a large number of global industries are expected to be impacted by the likely reduction in global supplies of the resources. Japanese and German consumer technology manufacturers, who collectively account for well over half of China's global exports, are expected to be particularly hard hit by the new regulatory campaigns. A number of German technology manufacturers have already raised concerns over tightening supplies and skyrocketing prices, and other companies who depend on REEs as vital raw materials for their business – a category that includes a long list of international companies in industrial manufacturing, chemical production, and various technology sectors – are considering relocating production facilities to China in order to cope with China's constricted international supply and high export taxes.

China currently mines about 95% of the world's supply of REEs – a group of 17 metals that are amongst the most sought-after resources in modern manufacturing and vital materials for the manufacture of products ranging from car batteries and wind turbines to aerospace alloys, industrial chemicals, smartphones, and tablet computers. China has repeatedly tightened production and international distribution of the resources in recent years, slashing export quotas from 60,000 tonnes in 2007 to about 30,000 tonnes in 2011 and raising export taxes to as high as 42%.

The MIIT's latest crack-down campaign is expected to run through the end of the year, targeting mining, producing, and exporting companies (ostensibly including both Chinese and foreign firms) found to violate government industry guidelines. The MLR has also ordered regulators to submit a comprehensive review of rare-earth mining rights by October, and Chinese officials have indicated that further regulatory tightening will continue in the future.

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Indonesia Deliberates New Ownership Limit for Commercial Bank Investors

Announcements by Bank Indonesia (BI) Governor Darmin Nasution have confirmed that the country's Central Bank is evaluating proposals to impose a new limit on commercial bank ownership in Indonesia. The new ownership limit, which would apply to both foreign and domestic investors, is expected by analysts to lower the legal ownership stake by any single investor in an Indonesian commercial bank from 99% to below 50%, with Central Bank approval required for any single investors wishing to require an ownership stake of more than 25%.

If approved, the new ownership limit could have significant implications for investors in Indonesia's commercial banks, the majority of which are foreign firms. Analysts say the new policy would limit investors' ability to capitalise on the strong growth of Indonesia's banking sector, and it could also force some foreign investors to cut previously established majority stakes in local banks if the reduced ownership limit is applied retroactively as some expect it will. According to industry observers, BI's announcement has already triggered an upsurge of uncertainty in the banking industry, with several foreign investment companies terminating pending ownership deals in anticipation of the reduced legal ownership limit. Foreign investors including Singapore's Temasek Holdings, Deutsche Bank, Texas Pacific Group, and TPG Capital all hold large majority stakes in local lenders that could be at risk of mandatory ownership reduction if the new ownership limit is approved and applied retroactively.

BI's proposals for a reduced ownership limit are widely viewed as part of the Bank's effort to diversify ownership of the banking sector amidst its strong growth while also reducing vulnerability to single investors and bolstering internal risk controls in response to recent high-profile financial scandals at some institutions.

BI representatives confirmed that the new policy is still in the drafting stage but may be issued as early as the end of this year. The Bank has said that it will assess other regulatory measures to control risk and ensure prudent banking practices in the near future.

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UK: Government focuses on fixing the "broken society"

In the wake of the recent UK riots, Ministers are conducting an internal review of every Government policy. Primarily designed to help fix a 'broken society,' the Social Policy Review offers a once in a generation opportunity for businesses wanting to engage with the Government on high level social and community related issues.

An assessment is being carried out across a spectrum of areas from state benefits, schools, parenting and family policy as to whether health and safety and human rights laws prevent 'common sense solutions' to social problems. The findings are expected to be published in October with the work being carried out alongside a review of 'gang culture' led by Theresa May, the Home Secretary, and Iain Duncan Smith, the Work and Pensions Secretary. This is also in parallel with work being undertaken by an independent Communities and Victims Panel set up by Deputy Prime Minister, Nick Clegg, which is looking at the impact of the riots on communities.

Looking towards the next General Election, with social policy expected to be a key political battleground for all the parties, the coming months represent a crucial time for the Government to ensure that the right policies to deliver change are put in place.

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Germany: a political shift is coming

The federal government coalition of the Conservatives (CDU/CSU) and the Liberals (FDP) is in crisis. The appetite for reform is diminishing and internal conflicts have erupted in the German political arena. This year, several regional elections brought significant losses for both parties. Particularly serious were the electoral losses in the industrial state of Baden-Wuerttemberg which is now governed by a Green Prime Minister, the first in German history.

The recent elections and subsequent changes mean that the opposition parties - the Social Democrats (SPD) and the Greens - will have the chance to show themselves as a veto player in the second chamber (the Bundesrat). Forecasts point at a scenario with a new government coalition after the next Federal elections in autumn 2013. The liberal FDP is even in danger of not passing the election threshold of 5%.

Considering the current trend, it appears plausible that the year 2013 will end with comfortable majorities for the SPD and the Greens in both chambers, which are the parliament Bundestag and the second chamber, the Bundesrat.

This implies multiple policy changes including:

- New legislation proposing higher taxation on the wealthy and a stronger promotion of green growth. This will create significant opportunities for firms with innovative concepts and technologies in infrastructure, energy and production technology; the potential was highlighted at the recent IFA trade fair with energy efficiency in household appliances becoming a particular focus for German consumers.
- A more left-wing Foreign Office with a more reserved outlook concerning Germany's commitment to international security operations, but a stronger German voice at EU level and international institutions like the UN Security Council.
- Germany will continue to be critical player in the ongoing Euro crisis and in tackling the challenges this creates for the EU. While there has been criticism in some quarters, on the whole German politicians and, importantly, the public remain supportive of the Euro. However, they are skeptical about Eurobonds which could potentially undermine the German economy which currently enjoys a stronger economic outlook in comparison to most other OECD countries. Unemployment is at historically low levels and so is youth unemployment.
- A greater focus on the increasing domestic demand to bolster German growth and reduce the reliance on the country's exports. Measures under discussion are the introduction of minimum wages (particularly in services) and new wage negotiations rounds. Though it may increase labour costs for firms producing in Germany, the prospects for those firms offering products and services to the domestic market are more positive than ever.

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Next steps for smart grids: Europe's future electricity system will save money and energy

Over the last decade the EU has spent about €300 million on research and development projects for modern electricity networks. A central aspect of this is smart grids and following an earlier Communication this year from the European Commission, a proposal for EU legislation on smart grids is expected in November this year. This legislation will aim to drive smart grids from the innovation and demonstration stage to deployment.

Smart grids are expected to offer great benefits to all the actors of the upgraded electricity system. Grid operators can manage the network more efficiently, retailers will be able to improve customer service. For consumers smart electricity grids mean a shift from a passive receiver of electricity into an interactive participant in the supply chain.

To achieve these benefits, the European Commission currently foresees the following main actions:

- Develop common EU-level technical standards that would provide interoperability of different systems;
- Ensure the highest level of data protection for consumers and grid operators;
- Ensuring consumers' access to their consumption and billing information;
- Adjust the existing EU legislative framework which incentivises grid investments that are targeted at enhancing energy efficiency and higher quality of services;
- Guarantee transparency and competitiveness of the retail market;
- Promote further technological innovation – throughout 2011 the Commission will propose new large-scale smart grids' demonstration initiatives.

By September 2012 EU Member States will have to produce an implementation plan and timetable for the roll-out of smart metering systems.

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Mexico: New opportunities for oil companies

While energy security is a critical issue, energy sustainability and efficiency has also become a priority for Mexico. As a result, and to help develop a more competitive market place, authorities are looking at ways to promote greater private sector participation in oil exploration and extraction.

The 2008 Energy Reform changed the juridical regime for hydrocarbons: its aim was to simplify Mexican industry processes and make them more compatible with international practices; national legislation was drafted to establish rules and norms to encourage the private sector to participate more confidently. Three years on, the Integral Agreements of Explorations and Production (CIEP, by its Spanish acronym) are about to become a reality in the coming months. There are 17 companies competing for three contracts of exploration and exploitation of oil in Carrizo, Magallanes and Santuario – areas which PEMEX, the state-owned petroleum company, consider to have great potential for extraction for the next 25 years.

PEMEX plans several bids through an incentive scheme for payments, which will depend on the production objectives of the successful company. Ultimately, this is a major business opportunity for both foreign and domestic companies and from Mexico's perspective, the diversity in the market place influx of expertise will bring significant benefits to the national economy and oil industry.

To attain a company license to operate in Mexico, it will be crucial for energy companies to communicate effectively to all stakeholders, underlining their commitment to being responsible corporate partners and reliable energy services providers.

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Brazil: Changes to the regulatory framework for Ethanol

Together, ethanol and sugarcane bagasse represent 16% of the Brazilian energy matrix. Ethanol use in Brazil has grown steadily, especially since the introduction of Flex-Fuel vehicles (FFVs), in 2003. But there is still no regulatory framework that defines the guidelines of the Brazilian energy matrix. This is a concern throughout the industry, since the lack of a clear regulation affects the investment in the sector.

With this in mind, the Brazilian Government is preparing "structural changes" in the sector. The National Petroleum Agency (ANP) will have more power to monitor and control the ethanol production chain, much as the agency does today with gasoline and diesel. The government believes ethanol is facing "a hybrid regulatory situation", with it considered to be half farm production and half fuel.

This will be an important step to avoid soaring prices and the threat of product shortages in the domestic market. Privately, the ministries of Finance, Mines and Energy and Agriculture believe the "status" accorded to ethanol needs to change so that it is treated as a fuel instead of a product derived from agriculture.

In June, the National Agency of Petroleum, Natural Gas and Biofuels (ANP) opened a public consultation for developing a regulatory framework of this sector in Brazil and a report will be published later this year.

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Land acquisition restrictions in Argentina

President Cristina Fernández de Kirchner, who is currently running for re-election and recently won primary elections with more than 50% of the poll, reconfirmed the Government's priority to regulate and restrict land acquisition by foreign persons or companies.

The Executive originally submitted a formal proposal to Congress in April and delivered a nationwide broadcast announcing this development. However, little progress was made in the Chamber of Deputies, which has still to start discussions on this. Consequently, in her first public speech after winning the primary elections, President Cristina Kirchner requested Congress now focuses on this subject, which was reinforced as a Government priority.

Although the project would not affect property rights on past acquisitions, it will restrict future land acquisitions to both foreign natural persons and legal entities to a maximum of 1,000 hectares. It also creates a public register of foreign land owners. The official project will not differentiate between those lands acquired for personal recreation or productive investments. Congress is expected to start discussing imminently and to ratify the law before the end of the year.

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US: Updates from the States

2011 has been a very busy year for state legislatures. The lingering effects of the recession have put severe stress on state budgets for the third successive year. The ongoing deficit and budget debates in Washington, serve as a reminder that states are better positioned to pass legislation than the federal government. Below we capture a snapshot of key legislative activity that could potentially impact businesses across the country. Corporations should be watching these initiatives, and where necessary, taking action.

COMMERCE

California ABX1-28: California lawmakers have passed a bill to force out-of-state Internet retailers such as Amazon.com Inc. to collect taxes under two different legal theories.

Georgia HB 1221: Georgia will now become the 24th member of the Streamlined Sales Tax Governing Board. This act will allow volunteer out-of-state sellers to collect sales taxes for the state of Georgia on purchases that are made through online sellers, catalogs and shopping networks.

CONSUMER PROTECTION

Connecticut SB 187: A new Connecticut law adds a penalty of up to $11,000 for each violation of the "do not call" list.

New York AB 11007: A new law in New York requires businesses advertising or offering consumer rebates to conspicuously disclose if the rebates will be issued in any form other than cash or check (ex: gift certificate or gift card) and whether any additional fees may apply.

CYBER CRIMES

California SB 1411: Malicious, credible impersonation through a website, e-mail account or social media will become a crime in California punishable by up to a $1,000 fine and a year in county jail. The law makes "harming, intimidating, threatening or defrauding another person" online and without their consent a misdemeanor. It allows the victim to sue the imitator for damages and losses. Hawaii, New York, Massachusetts and Texas also have laws targeting harassing electronic impersonation.

EDUCATION

Arizona HB 2664: A new Arizona law requires annual adjustments to the maximum credit that taxpayers may claim for donations to state tuition organizations to account for inflation. It also prohibits these organizations from awarding scholarships based solely on the basis of donor recommendations, and in addition, prohibits taxpayers from claiming tax credits and circumventing the prohibition against taking tax credits for donations for the benefit of one's own dependent by agreeing with others to "swap" donations.

ENVIRONMENT

Arizona SB 1254: A new Arizona law creates individual and corporate income tax credits based on the amount of electricity produced from renewable sources, including wind, biomass and solar. Each facility may claim up to $2 million of this new credit a year on a first-come, first-served basis, for 10 years with a cumulative cap of $20 million a year for all facilities.

New York A11308: Legislation in New York will require companies making or selling electronic waste equipment to begin free recycling programs for consumers. Manufacturers will need to pay $5,000 to register with the state by the end of 2010 and pay a $3,000 annual fee to disclose how much they've recycled from customers. The law will also require retailers to make available information provided by manufacturers on their e-waste acceptance programs and prohibit retailers from selling any covered electronic equipment unless such brands are registered with the Department of Environmental Conservation.

FINANCIAL/INSURANCE SERVICES

Montana I-164: Starting Jan. 1, Montana will limit the interest rates and fees that payday lenders can charge to an annual interest rate of 36 percent. This initiative also prohibits businesses from structuring other transactions to avoid the rate limit, and reduces the license and examination fee revenue paid to the state since certain lenders may not renew their licenses.

New York 2811: An ominous bill that includes conforming laws to the federal Dodd-Frank Wall Street Reform and Consumer Protection Act; extends certain provisions of laws relating to franchise tax; updates the tax classification of diesel motor fuel to be consistent with federal laws and makes the diesel tax structure consistent with this new tax treatment.

Tennessee HB1845: Insurance Companies, Agents, Brokers, Policies - as enacted, revises authority of commissioner of commerce and insurance to investigate insurance agents; revises rights of insurance agents under investigation; revises penalties imposed against insurance agents.

HEALTH

Connecticut SB 50: Connecticut will soon be requiring health insurance policies that cover anticancer medications to cover the oral drugs at least as favorably as it does the IV ones. The law prohibits insurers from reclassifying anticancer medications or increasing the patient's out-of-pocket costs as a way to comply.

Missouri HB 1311: A new Missouri law requires all group health benefit plans to cover the diagnosis and treatment of autism spectrum disorders. Coverage is limited to medically necessary treatment ordered by the insured's treating physician. The law also requires the Department of Insurance and other institutions to submit a report to the legislature regarding the implementation of this coverage, including specified costs.

OIL AND GAS

Texas House Bill 3328: Texas Gov. Rick Perry has signed a bill requiring drillers to publicly disclose the chemicals they use when extracting oil and gas from dense rock formations, the first state to pass such a law.

North Carolina Bill H242: This bill signed into law June 23rd contains immediate protections for anyone in North Carolina signing a new oil or gas lease. The bill also increases the amount of the bond required upon registration in order to drill for oil or natural gas in the state and increases the amount of fees applicable to drilling and abandoning oil or gas wells.

Ohio House Bill 133: The Ohio Senate has approved a bill to allow oil and gas drilling in state parks.

Oklahoma House Bill 1909: This legislation modernizes oil and gas statutes to update them to accommodate technological advances in horizontal drilling in shale.

VOTING AND ELECTIONS

UTAH HB 329: Anyone who pays for a political ad in Utah valued at $10,000 or more, clearly identifies a candidate or judge, and is disseminated within 45 days of an election, must now file a report disclosing how much was spent on the advertisement and the names and address' of anyone who donated $100 or more. It also requires all campaign reports to be filed electronically and specifies that corporations must also disclose any existing government contracts in excess of $100,000. The bill also creates new financial disclosure requirements for labor organizations that engage in political activity.

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