

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 utilise 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 is designed to give you a flavour of our global perspective and should any of the items be of particular interest to you please contact the designated person listed with that issue.



India: Prime Minister Calls for Final Consultations On New Manufacturing Policy

India’s High-Level Committee on Manufacturing, consisting of top Indian government ministers and headed by Prime Minister Manmohan Singh, gave its support last month to the Ministry of Commerce and Industry’s new draft National Manufacturing Policy (NMP), moving it a step closer to final approval and implementation. The NMP recommendations are designed to simplify the regulatory environment for foreign and domestic manufacturing companies and create new market incentives to attract foreign investment to India’s manufacturing sector.

Experts say a manufacturing policy with teeth could significantly reduce restrictive regulatory burdens imposed on foreign and domestic manufacturers resulting in a more attractive business environment for foreign investors. Draconian environmental clearance and land acquisition regulations, overly restrictive labour laws, and the expensive administrative burdens of compliance and reporting obligations would all be targeted under the current draft. Furthermore, the policy recommends establishing new National Manufacturing Industrial Zones (NMIZs) where manufacturing companies would have scaled-down regulatory requirements, preferential market access, priority land allotments, and better industrial infrastructure.

Companies producing heavy machine tools, heavy electrical gear, transportation equipment and infrastructure, and earth-moving and mining equipment are expected to be some of the priority

targets for regulatory concessions and special market incentives under the NMP. In addition to relaxing labour and land acquisition regulations, long-cited as deterrents to foreign investment, the current policy draft would introduce new tax concessions, subsidies and other incentives in the NMIZs designed to benefit manufacturing firms. Indian officials project that the new policy will add 100 million manufacturing jobs and boost the sector’s contribution to national GDP from 16% to 25% by 2025.

Final government consultations are now underway and observers expect the NMP to be presented to the cabinet for final approval by November this year. However, final approval for crucial policy provisions remains uncertain. Some of the NMP’s proposed measures, including relaxed labour and environmental regulations lauded by the business community as two of the policy’s most important reforms, are politically controversial. Several government Ministers and other senior officials have promised to remove these measures before the policy is presented for final approval, and the political tug-of-war is expected to continue over the coming months.

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Vietnam: Controversy over new price control law

Foreign embassies and industry associations in Vietnam are re-doubling their lobbying efforts to revise a controversial new Price Law currently being circulated for industry comments by the Vietnamese Ministry of Finance (MOF). If implemented, the new Price Law is expected to consolidate and expand five previous Vietnamese price regulations that were also opposed by western business lobbies; tightening nationwide price controls, empowering new provincial and central government regulators to monitor and investigate companies' sales prices, and providing government agencies with increased discretion to interpret regulations and intervene in pricing issues.

The Price Law follows five other Vietnamese price ordinances, decrees, and circulars passed in recent years – many of which were also opposed by international business groups who felt they were blows to the free market and to Vietnam's commitments under WTO and EU rules. Observers say the Price Law represents the Government's attempt to expand and consolidate its stance on price controls, re-shaping existing regulations into a single revised law to give them a more binding legal status. International business and law experts say the Price Law will increase regulatory interference and impose new compliance burdens and penalties on private firms operating in Vietnam. The draft Price Law would expand the current list of prohibited pricing practices and penalties; require businesses to submit detailed briefs on their pricing structures for government inspection and approval; and increase

the government's powers to manipulate private firm's sales prices through indirect economic policy or direct intervention and price depression.

Foreign diplomatic and business leaders in Vietnam are also protesting the draft legislation's failure to clearly define key terms, clarify regulatory jurisdictions and implementation mechanisms, and specify limits for government price control powers. Western chambers of commerce, law advisors, and several foreign embassies have sent letters to the MOF arguing that the ambiguity of key provisions creates uncertainty for the business community, noting that some foreign companies have already shelved cement and milk investment projects in response to the draft regulation.

The current draft of the legislation is scheduled to be presented to the National Assembly for official discussion by the end of this year and perhaps as early as July, according to some observers. While all companies in Vietnam would, in theory, fall under the draft law's provisions, experts note that implementation of past price control measures has tended to single out foreign-owned companies.

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Korea: Officials Promise Revision of Pharmaceutical Law and Restructuring of Drug Codes

Last month, the Korean Ministry of Health and Welfare declared new plans to revise Korea's Pharmaceutical Law and restructure national drug codes, responding to intense pressure from prominent medical and pharmaceutical associations as well as vocal criticism of current drug policies by President Lee Myung-bak and other senior officials. While the details of a new pharmaceutical policy are yet to be determined, analysts expect policy revision to focus on redefining classifications for over-the-counter (OTC) and prescription medical products, with the intention of increasing market availability for some popular OTC medicines and allowing consumer goods retailers to carry and sell OTC pharmaceuticals in Korea for the first time.

While changes to Korean pharmaceutical policy are expected to create new business opportunities for some Korean OTC drug producers, they are also expected to pose a significant business threat to Korea's 21,000 licensed pharmacists, who exercise monopoly control over the 1.9 trillion won (USD 1.7 billion) OTC drug industry and derive ten percent of their total annual revenues from OTC product sales under the current regulatory regime. It is so far unclear to what degree revision of the Pharmaceutical Law may alter this status quo. Some Korean officials and lobby groups are pushing for a total repeal of the ban on OTC drug sales in retail outlets. Others are lobbying for more limited deregulation – allowing only the safest, most exhaustively-tested, and in-demand OTC products to be sold outside of pharmacies.

Korean pharmacists – well represented on key legislative committees and seen by the public as politically powerful in deciding the outcome of pharmaceutical issues – are widely perceived as the

key obstacle to reforming the country's pharmaceutical drug policies. The Ministry of Health and Welfare and the Central Pharmaceutical Affairs Council have both attempted to initiate policy dialogues to reform pharmaceutical drug codes in recent months, but they have been forced to capitulate under pressure from pharmacy-backed interest groups. The most recent attempt to negotiate the sale of select OTC medicines – a limited proposal that would have deregulated several cough drops, pain killers and digestion pills – failed after representatives of medical associations, consumers, and President Lee Myung-bak's administration failed to reach an agreement with pharmacy representatives.


The Korean Medical Association – the country's most influential medical lobby – pharmaceutical companies, and doctor associations are now renewing their efforts to achieve substantive regulatory revisions. They are backed by broad public support as well as by President Lee Myung-bak and other top-level officials who have grown increasingly critical of the Pharmaceutical Law. In response, the Korean Ministry of Health and Welfare has declared its intention to submit a revised pharmaceutical policy to the National Assembly by September. Analysts expect battles between pharmacy-backed interest groups and competing medical and pharmaceutical associations to continue as the policy dialogue unfolds.

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US: Shale Drilling - New York Politicians Go on the Frack Attack



Debate over the controversial practice of unconventional drilling for natural gas, also called hydrofracturing or “fracking”, has recently reached fever pitch in the United States, with New York taking centre stage in the brewing battle over the region’s rich shale deposits.

On June 28, federal lawmakers in the U.S. called on several agencies including the Securities Exchange Commission and the Government Accountability Office to investigate energy companies’ claims about the long-term viability and profitability of shale drilling. Democratic Congressmen Maurice Hinchey of New York and Benjamin Cardin of Maryland both issued letters calling for a closer look into the disclosure of financial risk in these natural gas enterprises. The House Committee on Natural Resources is expected to hold a hearing on the issue in the coming weeks.

At the same time, Democratic state legislators and regulators in New York have taken the issue one step further. Assemblywoman Barbara Lifton has called upon State Comptroller Thomas DiNapoli to use his influence as administrator of New York’s billion dollar pension fund to prompt further investigation. New York Attorney General Eric Schneiderman went so far as to issue subpoenas to five companies - Talisman, Chesapeake Energy, E. O. G. Resources, Baker Hughes and Anadarko – ordering them to provide documents on disclosures made to investors about financial risk of drilling.

In a somewhat incongruous and surprising move, on June 30 New York Governor Andrew Cuomo seemingly cut against the grain of his fellow Democrats who have been critical of the industry by offering a framework to allow shale drilling in the state. The process would be allowed on private lands, banned within various watersheds and underground waters sources, and prohibited on state parks and wildlife preserves. New

York’s Department of Environmental Conservation was set to issue a long-awaited study on July 1 with recommendation on how to proceed.

Media reporting on the emotionally charged debate around fracking has led to sharp words from a state official, New York DEC Commissioner John Martens, who openly criticized The New York Times for unfair and inaccurate coverage of the important issue. In a letter to the newspaper dated July 1, Martens said he was “deeply troubled” by the paper’s coverage which, he said, “created more heat than light on hydraulic fracturing at a crucial moment in the regulatory process.” Martens concluded by saying the paper “failed miserably” in its responsibility to present accurate and balanced reporting.


It’s reasonable to expect that fracking will continue to generate controversy throughout the U.S. and the world as activists, regulators and commercial interests continue to clash. It remains to be seen whether the debate in the U.S. will continue to follow predictable, political party lines with Democrats, like those in New York, opposing on health and safety grounds, while Republicans, like the governor and legislature in Ohio, supporting for economic reasons. For organisations in the middle of the debate, increased transparency and engagement with the universe of stakeholders on both sides of the issue will be the best method of building trust and achieving business objectives, while avoiding undue public scrutiny.

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US: Labour Regulators Issue Series of Controversial Decisions



The U.S. labour regulatory agency – the National Labor Relations Board (NLRB) – has issued a series of highly controversial decisions that are presenting significant communication challenges for companies with workforces in the United States.

Expanded Disclosure of Communication Activities

Under current regulations, companies must file detailed NLRB disclosures when retaining consultants that communicate directly with employees about labor-related matters. However, such disclosures are not required when consultants only provide communication advice and assistance to companies, such as writing speeches or creating materials that are distributed to broad audiences of employees.

In June, the NLRB proposed to change the so-called “advice” rule to require companies to file detailed regulatory reports of their use of communication consultants – including both PR firms and law firms – in a much broader array of employee situations. Such proposed changes would apply to a broad spectrum of communication activities, such as creating management presentations, creation websites for employees, conducting communication-training sessions for supervisors and a range of other activities. The rule-making process will continue into the autumn of 2011, and several business groups have promised to challenge the proposed changes.

Reduction of Election Calendar

Under current procedures, employees interested in unionisation file petitions with the NLRB requesting a secret-ballot election, in which the majority vote of the employees decides whether the entire workforce is represented by a union or not. Elections are currently completed by the NLRB within about 40 days, on average, yet unions have complained that this amount of time allows employers to increase communication efforts to convince employees that a non-union workplace is preferred and that employees should “vote no” in the forthcoming elections. (Even so, unions still win a majority of elections held today, according to NLRB statistics).

Bowing to such pressure, the NLRB is exploring significant changes in the election process that would dramatically reduce election windows and limit employers’ abilities to respond to unionisation

petitions – with a goal of reducing the election process to perhaps as few as 10 days. In addition to procedural changes, the agency is exploring electronic-filing options, creating greater interest among employers for innovative digital and social media strategies to engage employees and their families.

Wider Latitude for Public Protests

The NLRB recently revised rules that expand the range of tactics for union pickets and protests, creating significant challenges for companies – particularly companies that are not the focus of union angst, like customers or vendors of union targets. In one recent decision, the agency ruled that a union’s placement of six-metre-tall inflatable rat within 30 meters of the main entrance of a hospital – which was only a customer of a company being targeted by the union complaints – was acceptable behaviour, reversing years of case history that prohibited “secondary boycotts.” In a series of other cases, the agency is allowing unions to arrange stationary banners three-metres wide in front of company locations, also reversing historic “secondary boycott” regulations. Both rulings expose companies that have no direct union controversies to greater vulnerability of public relations attacks.

Company Social Media Policies Under Attack

The agency has issued a series of recent rulings critical of companies’ social media policies and practices involving employees, creating significant controversy for corporate communication staffs. In one case, the NLRB ruled against a company for disciplining an employee for posting comments critical of the company and her supervisor on her personal Facebook page. In another, a company was cited merely for having a social media policy that the agency believed was too restrictive, even though no employee discipline actions had ever been taken. These rulings and others are forcing companies to reevaluate their social media policies and practices, and create new standards that meet the agency’s current perspective.

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European Commission Unveils New Legislative Proposal to Meet Energy Efficiency Targets

Energy Commissioner Günther Oettinger has presented a road map for EU Member States to reach the 20% target of energy savings previously outlined in the 2006 action plan for energy efficiency. The proposal suggests measures to step up Member States' efforts to use energy more efficiently at all stages of the energy chain – from the transformation of energy and its distribution to final consumption.

The Commission foresees major energy savings for consumers by promoting the use of smart metering that empowers consumers to better manage their energy consumption. The proposal also supports the promotion of energy services and creates incentives for companies to undergo energy audits and disseminate best practices. Member States are invited to implement schemes so that energy distribution or retail companies save 1.5 percent of their energy sales every year by using improved heating systems, double glazed windows and/or roof insulation.

Furthermore, the new legislation supports the abolition of administrative obstacles and the enhancement of co-generation (the use of a power station to simultaneously generate both electricity and useful heat). Member States would also be allowed to use their allocations under the European Regional Development Fund (ERDF), which amounts to €4.4 billion between 2007 and 2013, to renovate public buildings.

The Commission's proposal will be discussed in the European Parliament after the summer recess.

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UK: Launch of Open Public Services White Paper

The Open Public Services White Paper, published July 11, brings together policies that the Coalition Government has already initiated, including personal budgets for social and health care. It was expected to provide the opportunity for private companies and charities to bid for contracts for some public services and while Prime Minister David Cameron, in launching the White Paper, said he wants to “release the grip of state control”, there is no specific detail in the document about how voluntary or private providers will be attracted. However, the White Paper, which is now out for a three month consultation period, could offer opportunities for private companies to expand into the provision of

some public services including in the areas of health and social care, education, welfare and justice.

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Italy: The Challenge for the Development of New Energy Policies Following the Ban to Nuclear Power

The Italian Government has announced its intention to strongly commit to the promotion and use of renewable energies in the production of electricity and power.

This decision came as a consequence of the popular consultation vote held in mid-June. Voters said no to the building and realisation of new nuclear plants in Italy and caused the Executive to review its initial energy policy that was based on a mix of nuclear, fossil fuels and renewables (the latter amounted to only a quarter of the entire Italian energy requirement).

The announcement focuses on the establishment of a National Energy Conference with the task of developing a National Energy Plan – something which Italy has been expecting for over twenty years – probably based on three key points: the development of gas infrastructures with the consolidation and opening of the market; a better balance in the distribution of mixed energy sources (including photovoltaic, wind and biomass); support for the joint use of renewable and traditional energy. To date, the moves to increase the use of greener

energies have faced an uphill struggle with criticism over the actual cost of incentives to the sector and how realistic they are as an alternative to nuclear and traditional energy sources. In this context, the renewables industry – especially the photovoltaic sector – has started to take a strong stand vis-à-vis the Government and joined forces to have its voice heard.

Despite these challenges, increasing the role of renewables in Italy's energy mix would seem to have the twin advantages of not only a positive impact on the environment, but the potential to create new business and job opportunities at a time when its economy is in need of a boost.

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Brazil: Airports Facing Privatisation

Brazil's airport infrastructure is dysfunctional and could do much more to support economic growth. This is the view of the National Civil Aviation Agency (ANAC), a government body which has approved a regulation establishing procedures for the application, authorisation and approval of studies and technical projects that will support the privatisation of Brazilian airports.

The rules for this development will be applied in projects already identified as priorities by the Brazilian government, such as the airports in the following cities: Brasilia (Federal Capital), Campinas and Guarulhos (São Paulo). The Secretary of Civil Aviation (SAC) has requested these airports be included in the National Privatisation Program (PND). This represents a major business opportunity as the development of studies and projects will attract the interest of national and international groups who want to compete in the bidding for the expansion, maintenance and operation of these airports.

The privatisation process is also likely to include other Brazilian airports although these are still to be determined. Currently, Brazilian airports are run by Infraero, a government-owned company, and its participation in the privatisation process remains unclear.

Ultimately, this whole initiative is aimed at preparing the country's infrastructure for major global events such as the World Cup in 2014 and Olympics in 2016.

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Brazil: New Regulatory Framework Focuses on Exploration of Mineral Resources

New legislation for the mining sector in Brazil is in vogue, with the Department of Geology, Mining and Mineral Processing of the Brazilian Ministry of Mines and Energy initiating the process for public debate for the reformulation of the current model of the Financial Compensation for Exploiting Mineral Resources (CFEM). It provides restrictions on foreign capital in the exploitation of deposits of various ores and tries to limit foreign ownership of Brazil's natural resources. The Brazilian president Dilma Rouseff also intends to review the royalties paid by companies for mineral exploitation in Brazil.

The new legislation proposes auctions to choose mining companies, evaluating the goals to be met and determining the penalties for violating the rules of the contract. This is a notable change because currently there are no restrictions, with no distinction between national and foreign capital. In addition, there are likely to be tax incentives with the onus being on benefiting those who direct their production TO the domestic market.

Not surprisingly, the Government's proposals for a new Brazilian Mining Code face strong opposition

from mining companies and an assessment will be made on the tax implications, which some see as a threat to the competitiveness of the industry. For example, according to the National Department of Mineral Production (DNPM), the national giant, Vale, has a debt of \$5 billion, including \$4 billion related to the exploitation of iron ore in the States of Minas Gerais and \$1 billion in Pará. However, these amounts are calculated by taking the final price of the iron ore when sold to foreign customers which Vale believes distorts the real value.

Although this was initially scheduled to be voted on in Congress during the first half of this year, it is now due to be discussed in August. President Dilma Rouseff wants this matter resolved by the end of this year.

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