

Personal Information Protection

The MIIT has issued The Administrative Regulations on Short Messages for Communication and Voice Call Services (draft) for comment

On August 31, 2020, the Ministry of Industry and Information Technology (the "MIIT") issued *The Administrative Regulations on Short Messages for Communication and Voice Call Services (Draft for Comment)* (the "Draft"), which add requirements for voice call services and further adjusts the service specifications of short message services and voice call services, on the basis of the "Administrative Regulations on Short Message Services for Communication" (the "Short Message Regulations") that came into effect on June 30, 2015. The requirements for commercial short messages and business calls are particularly worthy of attention.

I. Business qualification

The following two types of entities are required to obtain a telecommunications business license under the Draft: (1) Short message service providers, i.e. telecommunications business operators that provide short message services to other organizations and individuals, including but not limited to information service providers and mobile communication resale business operators in basic telecommunications businesses and value-added telecommunications services; and (2) voice call service providers, which refer to telecommunications business operators

providing voice call services for other organizations and individuals (*Articles 6 and 42*).

II. Service Specifications

The Draft requires short message services providers and voice call services providers to comply with the following service rules in their operations:

- 1、 **(Information Provision)** Provide relevant information to basic telecommunications business operators truthfully, and update any information within 10 days after any changes to the information (*Article 7*);
- 2、 **(Data Storage)** Record the time of the sending and receiving of the short message or voice call, the telephone number or code of the sending end and the receiving end, the status of the user's subscription and any unsubscribe points, as well as the content of the port-based short message¹ and the recording of the platform-based voice call. Additionally, the signaling data should be kept for at least one month, other data should be kept for at least five months, the user's subscription and any unsubscribe request should be kept for five months after the termination of the service relationship with the user (*Article 8*);

¹ Port-based short messages refers to short messages sent by short message services providers by utilizing their own ports or

industry application ports.

- 3、 **(Use of Code Numbers)** Use code numbers in accordance with the structure, bit length, purpose and the scope of the use of the telecommunications network code number as approved by the telecommunications administrative authorities (*Article 9*);
- 4、 **(Service Rules)** Formulate service rules, charging methods and standards, as well as the means to unsubscribe, and inform users of the above information (*Articles 10 and 11*);
- 5、 **(Identity Verification)** Check and register the true identity information of the organizations and individuals that send short messages or make voice calls through the services (*Article 12*);
- 6、 **(Information Security)** Strengthen personal information protection and network security management (*Article 14*);
- 7、 **(Complaint Mechanism)** Establish a mechanism for complaint response (*Article 29*).

Compared with the Short Message Regulations, the above relevant requirements for voice call services have been added in the Draft, and there is no major change in the service requirements on short message services.

III. Regulations on Commercial short Messages and Business Calls

Several laws and regulations provide requirements for sending commercial short messages and making business phone calls, such as the *Law on the Protection of Consumer Rights and Interests*, and the *Advertising Law*.

Article 16 of the Draft reiterates the basic requirements of the above regulations, and on the basis of which, it particularly requires that commercial short messages should not be sent and business calls should not be conducted if users specifically refuse so. In addition, the Draft lifted the criteria of consent to “explicit consent” by providing that it should be deemed as being refused by users if the users do not provide their explicit consent.

At the same time, the Draft deletes the provisions that “if users explicitly refuse or do not provide a reply, short messages of the same or similar contents should not be re-sent to them” , indicating that the contents

prohibited to be sent should not be limited to “short messages of the same or similar contents” .

The Draft sets out that for those sending port-based short messages, it should be ensured that: users have consented to or requested to receive the messages; the evidence for proving consent should be stored for at least five months; the name and contact telephone number of the organizations/individuals that sends the short messages through its services should be marked in the short message; and convenient and effective methods for refusing to receive the messages should be provided to the users without obstacle (*Article 19*). For business calls, the Draft requires that service providers for voice calls should not dial platform-based business calls (*Article 20*).

In addition to service providers for short message and voice call services, basic telecom business operators should establish mechanisms for early warning and monitoring and big data analysis to prevent the relevant entities as mentioned above from non-compliance activities. At the same time, the Draft provides for the first time that MIIT will organize a unified “Do-not-call” platform for basic telecom business operators to provide the “Do-not-call” services (*Article 23*).

The Draft dedicates a separate chapter for regulating short messages for public interest and also regulates the handling and response time for user complaints and reporting.

IV. Supervision and Responsibility

For organizations and individuals that send short messages or make phone calls in violation of the Draft, basic telecom business operators and business operators of mobile communications resale businesses should take the necessary measures to prevent their activities, and may be restricted in providing new communication resources or relevant services may be suspended for them. For basic telecom business operators and business operators of mobile communications resale businesses that fail to take the above measures, the telecommunications administrative authorities may impose punishments which include being ordered to make corrections, a warning, a fine of RMB 10,000 to RMB 30,000, and an announcement of the above to the

public (*Article 40*).

The relevant enterprises are obliged to cooperate in providing relevant materials when the telecommunications administrative authorities conduct supervision and inspection (*Article 34*). If service providers for short message and voice call services violate the relevant service regulations, the telecommunications administrative authorities may impose punishments which include being ordered to make corrections, a warning, a fine of RMB 10,000 to RMB 30,000, and an announcement of the above to the public; the revocation of the relevant telecom licenses and code number resources in serious circumstances (*Article 40*).

V. Our Observations

The Draft focuses on service providers for short message and voice call services, and refines the management requirements for commercial short messages and business calls. In addition, it is also proposed to establish a unified MIIT “Do-not-call” platform, with the intention of regulating and fixing the harassment of frequent spam calls.

For companies in other fields and industries, it is foreseeable that government departments will further strengthen the compliance enforcement and supervision of commercial short messages and business phone calls, which is worthy of attention from the internal compliance department of the company to ensure compliance of its business departments.

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