JUNHE BULLETIN

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Telecommunications Law

Released for Public Comment: Draft Revisions to Telecommunication License Measures

The Measures for the Administration of Telecommunication Business Operation Licenses (Draft Revised Measures) (in Chinese《电信业务经营许可管理办法》（修订征求意见稿）, hereafter the "**Draft**") were released by the Ministry for Industry and Information Technology ("**MIIT**") on April 11, 2017 allowing for public comment until May 11, 2017. These are the first revisions to the *Measures* since being issued in 2009.

The existing *Measures for the Administration of Telecommunication Business Operation Licenses* (the "**Measures**") were promulgated on April 10, 2009. In recent years, the State Council has been implementing several administrative reforms with respect to administrative approval, company registration with the Administration for Industry and Commerce ("**AIC**") and supervision mechanisms. For the telecom industry, those reforms propose to no longer require filing for the basic telecom service operation license and the multi-region value-added telecom service operation license, to permit companies to obtain telecom service business operation licenses ("**ICP License**") after their AIC registration, and to no longer require a minimum paid-in capital for ICP License application. In response to implementing those changes, MIIT proposes to update the Measures accordingly.

The Draft proposes major revisions in four aspects as summarized below.

I. Revisions to Resolve Inconsistencies with Recent Rule Revisions

The Draft no longer requires the submission of the company's capital verification report and

accounting report for ICP License application in accordance with the *Company Law of the PRC* (revised in 2014) and the *Reform Plan for the Registered Capital Registration System (Guo Fa [2014] No.7)*.

Under the Measures, the shareholders of a telecom company must make capital contribution for a certain required minimum amount to apply for an ICP License. For example, as a pre-condition for obtaining an ICP License for operating value-added telecom service within a province, an autonomous region or a municipality directly under the Central Government, the minimum paid-in capital is RMB 1 million. The Draft actually no longer requires the threshold of paid-in capital by no longer requiring the submission of an accounting report and capital verification report.

Further, the Draft no longer requires filing for the basic telecom service operation license and the multi-region value-added telecom service operation license in accordance with the *Decision of the State Council on Issues Concerning Removing or Delegating to Lower-level Authorities a Batch of Administrative Approval Items (Guo Fa [2014] No. 5)*.

In addition, the Draft no longer requires a Notice for Pre-approval of the Enterprise Name for ICP License application, it also no longer requires an ICP License before a telecom company obtains its business license, both of which are in consistent with the *Decision of the State Council on Issues Concerning Removing or Adjusting a Batch of Administrative Approval Items (Guo Fa [2015] No.11)*.

II. Establishment of Online Telecom Business Administration Platform

The Draft proposes that MIIT will establish an online telecom business administration platform (the "**Platform**") to support the online processing of ICP Licenses, including applications, approvals, and administration, as well as publication, inquiry and sharing of relevant information.

III. Establishment of Credit Administration Mechanism and Increased Supervision

The Draft proposes to compile a "Grey List" of the operators who are penalized once within one year and who fail to submit the required annual report. A "Black List" would be similarly compiled of the telecom business operators who receive any subsequent penalties within three years, who obtain ICP Licenses by fraud or bribery, and who are suspended from operation due to lack of licensure. Both lists are to be made publicly available and those operators on the lists will be under increased supervision by the Telecom Authority.

Further, the Draft proposes to replace the annual inspection with an annual report via the Platform. The business operators will be required to be responsible for the authenticity of the reported information and the MIIT and its counterparts may conduct random inspections of business operators.

IV. Promoting Flexibility for Telecom Business Operations

The Draft proposes a telecom operator with ICP License can authorize any of its subsidiaries (in which it directly or indirectly holds no less than 51% shares) to operate the telecom service.

Further, the Draft no longer requires every change of the shareholders to be approved, and only requires approval where the change leads to a change in the operation entity.

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