



HAN KUN LAW OFFICES

# Legal Commentary



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## **New Bike-sharing Rules: The Role of Government, Operators and Users**

### **--- Brief Overview on the Guiding Opinions on Encouraging and Regulating the Development of Internet Bicycle Rentals**

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On August 1, 2017, the *Guiding Opinions on Encouraging and Regulating the Development of Internet Bicycle Rentals* (Jiao Yun Fa [2017] No. 109) (the “**Opinions**”) was jointly promulgated with State Council approval by ten ministries and departments, including the Ministry of Transport, the Publicity Department of CPC, the Office of the Central Leading Group for Cyberspace Affairs, the National Development and Reform Commission, the Ministry of Industry and Information Technology, the Ministry of Public Security, the Ministry of Housing and Urban-Rural Development, the People's Bank of China, the General Administration of Quality Supervision, Inspection and Quarantine and the National Tourism Administration. Before the promulgation of the Opinions, which is the first national departmental rules specially aimed at the Internet bicycle rental (hereinafter referred to as “**bike-sharing**”) industry, road traffic administration or other related departments in Beijing, Shanghai, Tianjin, Shenzhen, Guangzhou, Chengdu, Shijiazhuang and several other cities had successively released normative documents or drafts for comments of such documents related to bike-sharing industry.

According to the Opinions, **the municipal governments shall be responsible for administering the bike-sharing industry.** The Opinions grants a certain degree of autonomy to municipal governments to formulate their own specific local policies in light of their differences in urban planning and development level. In this article, we will summarize and comment on the Opinions around the three stakeholders in bike-sharing industry as put forward by the Opinions, i.e. governments, operators and users.

#### **Role of Government**

The Opinions requires governments to undertake more responsibilities related to administering bike-sharing operations, strengthen the administration and guidance in the bike-sharing

industry and encourage bike-sharing industry to develop in an orderly and secure manner. Governments are to undertake the following duties in terms of administration of bike-sharing industry:

- Stick to giving priority to the development of public transportation. Government may promote the integrated development of public bicycle rentals and bike-sharing, while the development of Internet electric bicycle rentals is discouraged;
- Guide operators to put bicycles into operation in an orderly manner;
- Optimize bicycle transportation networks. Governments may render rational arrangement for slow traffic networks and bicycle parking facilities, actively promote the construction of bicycle paths and improve road signs and line markers;
- Promote the layout and construction of bicycle parking lots. Governments may draw up a negative list to exercise the no-parking policies in those areas and sections of road unfit for parking, plan and construct auxiliary bicycle parking lots in important urban commercial districts, public transport stations, transportation hubs and residential areas and the vicinity of tourist attractions etc.;
- Enhance standardized development of Internet bicycle rentals. Local governments are encouraged to establish local standards with respect to the operation, maintenance and disposal of bicycles in the bike-sharing industry, and to accelerate the establishment of basic and general national standards. Governments may adopt such means as certification and accreditation, supervision and spot-check etc. to ensure product quality and safety;
- Enhance credit management. Governments may accelerate the establishment of a credit record system in the bike-sharing industry, build basic enterprise and user credit databases, punctually share credit information with national credit information sharing platforms and enhance the evaluation of enterprise service quality and user credit ratings.

Since July of this year, municipal governments in Hangzhou, Zhengzhou, Fuzhou, Guangzhou, Nanjing and several other cities have proposed to control the quantity of shared bikes, and have required the suspension of newly increased bikes put into operation. However, as reflected in the Opinions, it is still the major policy that the central government encourages orderly development of bike-sharing industry, and requires municipal governments to bring their role into active play when performing their administrative functions, and furnish public services of guiding, supporting and improving ancillary facilities to the bike-sharing industry. In the future, local governments are expected to formulate detailed requirements based on their administration of the industry of bike-sharing, including local policies and standards related to bike-sharing, which are likely to cause the reduction of damage rate, loss rate and accident rate of shared bikes.

## Regulations on Operators

As mentioned above, the Opinions upholds the principle of encouraging the development of and administering in an orderly manner the bike-sharing industry. The Opinions further specifies responsibilities of and requirements for bike-sharing service operators, which sets higher requirements for compliance of operators on one hand, and serves as guidance for operators to observe when operating their bike-sharing business on the other hand. According to the Opinions, bike-sharing service operators need to observe the following operating principles:

- Fully utilize bicycle satellite positioning, big data and other information technologies to strengthen the operation and management of their bicycles;
- **The responsibility of operators regarding management of bicycles parking is specified.** Operators shall enhance the management of bicycle dispatching, parking and maintenance, promote the application of electronic fences and other technologies, timely dispose irregularly parked bicycles and bicycles with security threats or out of service and schedule bicycles in timely manner. **Operators that suffer from severe problems with respect to disorderly bicycles parking or placement and have poor offline operations and services, and fail to take effective measures upon being notified, will have those issues publicly disclosed and such operators will be restricted from placing bicycles into service;**
- Implement and use a real-name system for bike-sharing users;
- Enter into service agreements with users to define their respective rights and obligations, and to specify requirements on users' riding and parking;
- **Providing bike-sharing services to children under the age of 12 is prohibited;**
- Clearly display fee calculation methods and standards, make a public commitment to quality service, and establish a complaint handling mechanism;
- **Purchase personal injury insurance for users;**
- **Timely submit information on the quantity and distribution areas of bicycles that are placed into operation and other operating information to the local competent departments;**
- **Strengthen supervision on user fund.** Operators are encouraged to adopt rental services to users without a deposit, and shall rigorously separate their own funds from users' funds of deposits and advances, open special accounts for user deposits and advances, implement earmarks for special purpose funds, and expedite the process of achieving "prompt deposits upon rental, prompt refunds upon return" of shared bikes;

- Settlement services shall be provided by banks and non-bank payment institutions, and operators shall sign relevant agreements with such institutions;
- **Operators who undergo acquisitions, mergers, restructurings or cease operating shall protect the legitimate rights and interests of users and the security of their funds;**
- Comply with the Cyber Security Law. Operators shall place their servers within the territory of mainland China, implement graded protection to cyber security, data security management and personal information protection systems;
- The formation of credit information sharing alliances and the establishment a promise-keeping inspiring mechanism and a promise-breaking punishment mechanism are encouraged;
- The development of cross-enterprise and cross-brand **rental platform services is encouraged.**

In order to promote orderly management and ensure safe operations in bike-sharing industry, the Opinions clearly provides that it is operators who are responsible for bike parking management and purchase of personal injury insurance for users, and requires operators to accelerate the process of ensuring promptly paying deposits upon rental and refunding deposits upon return. Those aforesaid provisions subject operators to higher requirements in terms of operational modes and cost. In addition, the Opinions requires operators to promote satellite positioning, electronic fences, big data and other technologies, and encourage operators to provide Internet bike rental services on a deposit-free basis. In the future, municipal people's governments are likely to introduce detailed promotion and encouragement rules and regulations, which will encourage investment in technical improvement, implementation of deposit-free policy and users' credit data collection and evaluation etc. In addition, operators shall also upgrade the degree of network security and data security and standardize the collection and use of users' personal information.

Also, the aforementioned measures will promote the development of relevant technology application and credit services, facilitate technological development in operators, promote cooperation between operators and third-party technology providers, urban traffic data providers and credit service institutions, and establish an effective, safe and technology-based travel services network.

### **Regulations on Users**

In order to further achieve the goal of travel safety, the Opinions also requires bike-sharing users to voluntarily abide by the following norm of conduct:

- Observe laws, regulations and provisions regarding road traffic safety and urban administration and service agreements voluntarily, use bicycles in a civilized manner, ride bicycles safely and park bicycles normatively;
- **Check technical conditions of shared bicycles before riding** to ensure cycling safety;
- Do not carry passengers when riding bicycles in violation of the rules or mount child seats or other equipment in shared bicycles without authorization.

The Opinions specifies user's duty of care with respect to the security status of shared bikes before riding. In the event of an accident, whether the user has exercised such duty of care shall be an important factor in division of responsibilities between operators and users. Also, the abovementioned requirement will encourage operators to work out relevant service agreements, which regulate and guide users to use shared bikes properly on one hand, and specify responsibilities borne by users in the event of accident due to misuse of bicycles by users on the other hand, and therefore are of instructive significance to division of responsibilities between users and operators when accidents occur.

## ● **Important Announcement**

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