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Legal Commentary



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Internet News Information Service Industry Reshuffle?

--Comments on *Administrative Provisions for Internet News Information Services*

Sheng LI | Xi YAN

On May 2, 2017, the Cyberspace Administration of China promulgated the *Administrative Provisions for Internet News Information Services* (“**Provisions**”), which will come into effect on June 1, 2017 and replace the existing *Regulations for the Administration of Internet News Information Services* (“**Regulations**”) which was promulgated in 2005.

The Provisions preserve a part of the Regulations, while making significant changes with respect to both structure and content. This article will provide a brief analysis of the Provisions, primarily with respect to businesses subject to licensing requirements, entry requirements and the relevant responsibilities of license subjects.

Businesses required to obtain an Internet News Information Service License

The core requirements of the Provisions are identical to those of the Regulations, which are that operators engaging in Internet news information services must obtain an Internet News Information Service License, and be subject to the supervision and management of the Cyberspace Administration of China.

Compared to with the Regulations, the Provisions more clearly define Internet news information services, mainly from the following three aspects:

- a. Content: The Provisions clearly explain that “news information” refers to reports and commentary related to political, economic, military, diplomatic and other social and public affairs and reports on social emergencies (which means that general sports, culture, science and technology news and news of a commercial nature would not be regarded as “news information” under the Provisions);
- b. Communication channels: The Provisions clearly provide that news information services are provided to the public through channels based on the technology and developments

of the times, including Internet sites, apps, forums, blogs, micro-blogs, public accounts, instant messaging tools and network-based broadcasts; and

- c. Form of services: Depending on the service provider's specific work, the Provisions further classify Internet news information services into three categories: Internet news information editing and publishing services, Internet news information reposting services and Internet news information dissemination platform services.

Based on the definitions and understandings above, operators who engages in Internet news information editing and publishing services, reposting services or dissemination platform services such as Weibo, WeChat and network-based broadcasting platforms are required to obtain an Internet News Information Service License in accordance with the Provisions, although the existing Regulations would not currently require obtaining a license. Based upon our past experience, it would be quite difficult for some small service providers to obtain an Internet News Information Service License, if they have not yet done so. Failure to obtain a license could result in an order to cease operating.

Qualifications for Obtaining an Internet News Information Service License

With respect to the entry of foreign capital, the Provisions preserve the rules found in the Regulations which provide that an Internet news information service entity cannot be established in the form of a Sino-foreign joint venture, a Sino-foreign cooperative venture or a wholly foreign-invested enterprise. Where an Internet news information service entity intends to cooperate with a Sino-foreign joint venture, Sino-foreign cooperative venture or wholly foreign-invested enterprise, the entity should report to the competent authorities for a security assessment. In addition, the Provisions also require the person in charge and the editor-in-chief of Internet news information service entities to be PRC citizens. It is worth noting that the Provisions for the first time require Internet news information service providers to separate editing services from other business operations and clearly provide that non-public capital cannot be used to operate Internet news information editing services. Besides this, the Provisions also set forth that only news entities (including its controlled entities) or entities controlled by the news and publicity department are eligible to apply for an Internet News Information Editing and Publishing Service License. To some extent, these provisions reflect the government's strengthened management of the Internet news editing business and of the content of news information.

The Regulations have clear requirements regarding registered capital and the number of employees for applicants of the Internet News Information Service License. For example, Internet news information service units established by non-news entities must have registered capital of no less than RMB 10 million and more than 10 full-time news editors. The Provisions delete such requirements and only generally require that applicants should have the premises,

facilities and funds, full-time news editors, content reviewers and technical security personnel appropriate for the services, and should establish sound Internet news information service management systems, information security management systems and technical support measures. Based upon our experience, these general requirements are not easy to apply, and the authorities are very likely to put forward specific requirements in practice. In the short term, it is quite likely that the authorities will review applications according to requirements provided in the Regulations in the absence of enforcement rules for the Provisions that may be promulgated.

In addition, similar to the *Administrative Provisions on Internet Publishing Services*, the Provisions also further require qualified Internet news information service providers to implement a special management share system, and specific implementing rules will be separately developed by the Cyberspace Administration of China. The following issues require special attention with respect to the special management share system:

- a. Will the special management share system only apply to news editing and publishing service providers or will it apply to all three categories of service providers (i.e., news editing and publishing service providers, news reposting service providers and dissemination platform service providers)?
- b. Is there a minimum limit for the shareholding ratio for state-owned special management entities (for example, at least 1%)? How will control rights of the state-owned special management entities be ensured (whether the state-owned investor will have a seat on the board of directors or whether the investor will have veto rights with respect to news content)?

There is no doubt that the special management share system, if implemented, will have a significant impact on the financing and listing of Chinese companies that use a VIE structure or on Chinese companies that intend to be listed overseas.

Responsibilities of Internet news information service providers

The Provisions classify Internet news information services into Internet news information editing and publishing services, reposting services and dissemination platform services. In addition to the general requirements applicable to all Internet news information service providers regarding editor and practitioner management, information security management, content dissemination management and the treatment of illegal information, the Provisions also provide certain special requirements related to the three categories of service providers mentioned above:

- a. The Provisions provide that entities engaging Internet news information editing and publishing services should be a news entity (including its controlled units) or a unit

controlled by the news and publicity department, which refers to news organizations in the conventional sense.

- b. The Provisions require that providers of news reposting services should repost news published by central news entities or their direct local subordinates and should indicate the news source, the original author, the original title and the editor's real name. Providers must not distort or tamper with the meaning of the original title or the news content, and should ensure that the news information can be traced to its source.
- c. The Provisions requires Internet news information platform service providers to require users to provide real identity information and cannot seek improper benefits by editing, publishing, reposting or deleting news information, or through interfering in the presentation of news information or search results. Providers should also sign agreements with registered users and audit the users' public accounts with respect to account information, service qualifications and service scope and file the same with the competent authorities based upon the category of the user.

Attachment: Comparison of Core Rules between the Provisions and Regulations

(Note: The English clauses are quoted from lexiscn.com.)

Items	Regulations	Provisions
Competent Authority	Article 4 <u>The Information Office of the State Council</u> is responsible for supervising and administering Internet news information services throughout China. <u>The information offices of the people's government of the provinces, autonomous regions, or municipalities directly under the Central Government</u> are responsible for supervising and administering the Internet news information services within their own jurisdiction.	Article 4 <u>The Cyberspace Administration of China</u> is in charge of the supervision, administration and law enforcement throughout China with regard to Internet news information services. <u>Local cyberspace administrators</u> are responsible for the supervision, administration and law enforcement regarding the Internet news information services within their own jurisdiction, depending on their respective functions and duties.
Applicable Scope	Article 2 Internet news information services as mentioned in the present Regulations include the services of publishing news information via Internet, providing electronic bulletin services on current affairs and politics, and transmitting communicative information on current affairs and politics to the public.	Article 5 <u>Anyone who intends to provide the public with news information services on the Internet via Internet websites, applications, forums, blogs, micro-blogs, official accounts, instant message tools, network-based broadcast, etc. shall obtain a permit for Internet news information services</u> , and is forbidden to carry out any activities concerning Internet news information services without the permit or beyond the permitted scope.
License Category	Article 5 Internet news information service providers are classified into the following three categories: 1. <u>Internet news information service providers established by news entities to publish the news other than those that have not been published and broadcasted by the said entities, to provide electronic bulletin services relating to current affairs and politics, and to transmit communicative information of current affairs and politics to the public;</u> 2. <u>Internet news information service providers established by</u>	Article 5 Internet news information services as mentioned in the preceding paragraph include <u>services of collecting, editing and releasing Internet news information, reposting such news information and providing a platform to spread such news information.</u>

	<p><u>non-news entities to re-publish news information, to provide electronic bulletin services relating to current affairs and politics, and to transmit communicative information of current affairs and politics to the public;</u></p> <p>3. <u>Internet news information service providers established by news entities to publish the news information which has been published or broadcasted by the said news entities.</u></p>	
<p>Application Conditions</p>	<p>Article 7 The applicant shall satisfy the following conditions when applying for the establishment of an Internet news information service provider as stipulated in Item 1 of Paragraph 1 of Article 5 of the present Rules:</p> <ol style="list-style-type: none"> 1. <u>Having sound rules and regulations on the management of Internet news information services;</u> 2. <u>Having not less than 5 full-time news editors who have engaged in the news work in a news entity for more than 3 years;</u> 3. <u>Having the necessary location, equipment and funds, and the sources of the funds being legal.</u> <p>Article 8 When applying for establishing an Internet news information service provider as stipulated in Item (2) of Paragraph 1 of Article 5 of the present Rules, <u>the applicant shall not only satisfy the conditions stipulated in Items 1 and 3 of Paragraph 1 of Article 7 of the present Rules, but also have not less than 10 full-time news editors, among whom there shall be not less than 5 news editors who have engaged in the news work in a news entity for more than 3 years.</u></p> <p><u>An organization that is allowed to apply for establishing an</u></p>	<p>Article 6 Any party that plans to apply for a permit for Internet news information services shall satisfy all of the following requirements,</p> <ol style="list-style-type: none"> 1. <u>It is a legal person legally established within the territory of the People's Republic of China;</u> 2. <u>Its principal or chief editor is a Chinese citizen;</u> 3. <u>It is staffed by full-time news editors, content reviewers and technical support engineers who are suitable for its services;</u> 4. <u>It has thorough management systems for Internet news information services in place;</u> 5. <u>It has thorough management systems for information security in place and has taken safe and controllable measures for technical support; and</u> 6. <u>There are venues, facilities and capital that are appropriate for its services.</u> <p>The party applying for a permit for services of collecting and editing Internet news information shall be a news entity (including its controlled units) or a unit under the administration of the news propaganda department.</p> <p>The special management share system may be applicable to those Internet news information service providers that meet certain conditions.</p>

	<p><u>Internet news information service provider as stipulated in the preceding paragraph shall be a legal person that has lawfully established for more than 2 years to provide Internet information services, and has not been given any administrative sanction within the latest 2 years due to violation of laws, regulations and rules for the administration of Internet information services. If the applicant organization is a legal person of enterprise, its registered capital may not be less than RMB 10 million Yuan.</u></p>	<p>Specific implementing measures will be enacted by the Cyberspace Administration of China separately.</p>
<p>Admission for News Collecting and Editing Services</p>	<p>/</p>	<p>(newly added) Article 8 Internet news information service providers shall separate their news collection and editing services from other operational businesses. <u>Non-government-owned capitals shall not be used for services of collecting and editing Internet news information.</u></p>
<p>Personnel Qualifications</p>	<p>/</p>	<p>(newly added) Article 11 <u>An Internet news information service provider shall establish a post of chief editor who will be responsible for the content of Internet news information.</u> The candidate for the chief editor shall have relevant practice experience and satisfy relevant conditions. The candidate's name shall be submitted to the Cyberspace Administration of China or the local cyberspace administrator of a province, autonomous region or municipality directly under the Central Government for record-filing purposes.</p> <p><u>Relevant practitioners of Internet news information services shall obtain necessary qualifications and receive professional training and assessment in accordance with the law. If they would like to engage in activities to collect and edit news information, they shall also have the occupational qualifications for being news editors and reporters and hold the press card issued by the State Administration of Press, Publication,</u></p>

		<u>Radio, Film and Television in a unified manner.</u>
Dissemination Platform Responsibility	/	<p>(newly added) Article 13 An Internet news information service provider shall <u>request its users to submit their real identification information</u> in accordance with the provisions of the Cybersecurity Law of the People's Republic of China, provided that it provides such users with a platform to disseminate news information on the Internet. Where any user refuses to provide its real identification information, the Internet news information service provider is not allowed to provide it with relevant services.</p> <p>Any Internet news information service provider <u>shall be obligated to maintain the confidentiality of information pertaining to its users' identification and logs</u>, and shall neither divulge, falsify or destroy such confidential information, nor sell or illegally provide others with such confidential information.</p> <p>Any Internet news information service provider as well as its practitioners <u>shall not seek unjustified profits by collecting and editing, releasing, reposting and deleting certain news information or otherwise for the purpose of interfering with the presentation or search results of news information.</u></p> <p>Article 14 Where an Internet news information service provider provides a platform for spreading Internet news information, <u>it shall enter into an agreement with any user who registers for an account on its platform, so as to specify both parties' rights and obligations.</u></p> <p>In the event that a user sets up an official account, the Internet news information service provider shall verify its account information, service qualifications, scope of services and other information, and file a record of the same by category with the local cyberspace administrator of the</p>

		<p>province, autonomous region or municipality directly under the Central Government at its locality.</p>
<p>Reposting Cooperation</p>	<p>Article 16 In case an Internet news information service provider as stipulated in Item 1 or Item 2 of Paragraph 1 of Article 5 of the present Rules publishes any news information or transmits any communicative information on current affairs and politics to the public, it shall do so by either news entities of the Central Government or news entities directly under the people's government of a province, autonomous region, or municipality directly under the Central Government, <u>give a clear indication of the sources of the news information, and may not misrepresent the contents of the original news information.</u></p> <p>An Internet news information service provider as stipulated in Item 2 of Paragraph 1 of Article 5 of the present Rules may not publish the news information gathered and edited by it.</p> <p>Article 17 In case an Internet news information service provider as stipulated in Item 1 or Item 2 of Paragraph 1 of Article 5 of the present Rules publishes any news information, it shall conclude a written agreement with the news entity of the Central Government or the news entity directly under the people's government of a province, autonomous region, or municipality directly under the Central Government. The Internet news information service provider established by a news entity of the Central Government shall submit a copy of the agreement to the Information Office of the State Council for record; while any other Internet news information service provider shall submit a copy of the agreement to the relevant local information office of</p>	<p>Article 15 An Internet news information service provider, if to repost any news information, shall repost the news information released by the range of units enumerated by the State, such as the central news entity or the news entity directly affiliated to a province, autonomous region, and municipality directly under the Central Government, and <u>specify the source of the news information, its original author, the previous title, and the real name of the editor.</u> It shall not distort or tamper with the original meaning of the title or content of the news information, and is required to <u>guarantee the possibility to trace the origin of the news information.</u></p> <p>Any Internet news information service provider <u>shall abide by the provisions of copyright-related laws and regulations when reposting any news information, and protect the legitimate rights and interests of the copyright holders.</u></p>

the people's government for record.

A news entity of the Central Government or a news entity directly under the people's government of a province, autonomous region, or municipality directly under the Central Government shall check the other party's license for Internet news information services when concluding the agreement as stipulated in the preceding paragraph. And it may not provide any news information to an entity that has no license for Internet news information services.

Article 18 In case a news entity of the Central Government plans to cooperate with an Internet news information service provider as stipulated in Item 2 of Paragraph 1 of Article 5 of the present Rules in Internet news services other than making contributions, it shall, 10 days before engaging in business cooperation, report of such intention, to the Information Office of the State Council; in case any other news entity plans to cooperate with an Internet news information service provider as stipulated in Item 2 of Paragraph 1 of Article 5 of the present Rules in Internet news services other than making contributions, it shall, 10 days before engaging in business cooperation, report of such intention to the relevant local information office of the people's government of the province, autonomous region, or municipality directly under the Central Government.

● **Important Announcement**

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Should you have any questions regarding this publication, please contact **Mr. Sheng LI** (**+8610-8525 4691**; **sheng.li@hankunlaw.com**) .