



I. Legal News

MOT to Get Rid of the Administrative Provisions on Foreign-invested Road Transport Business

On September 17, 2018, the Ministry of Transport (“MOT”) issued the Circular on Publishing Results on the Clear-up of Policies and Measures with Effects of Eliminating and Restricting Competition (the “Circular”).

The Circular states that a set of rules, which were restricting competition, will be abandoned or revised. Among them, the Administrative Provisions on Foreign Invested Road Transport Business will be scrapped. Four other rules, including the Administrative Measures for the Examination and Approval of Wholly Foreign-owned Shipping Service Companies, and the Regulations on International Air Transport, will be revised.

The Circular also abolishes six normative documents and updates five other ones, among the documents abolished we can find the Approval of the General Office of the Ministry of Communications on the Issues Relevant to the Establishment of Foreign Investment in Road Transportation Industry or the Reply of the General Office of the Ministry of Transport to the Relevant Matters Concerning the License for Road Freight Operation of the Branch of Foreign-Funded Road Transport Enterprises. The reform released in the Circular in relation to the transport business follows the update on the national negative list to guide foreign investment.

China’s Opening-Up Policy while boosting the economy also brought a great demand for transport solutions. Since the 1990’s the Chinese road industry had grown at the fastest pace history has ever seen. In 2015, according to the Ministry of Public Security, vehicle ownership had reached 279 million and China has today more than 280 million licensed card drivers. These numbers are still growing.

http://xxgk.mot.gov.cn/jigou/fgs/201809/t20180917_3087973.html
http://www.chinadaily.com.cn/business/motoring/2016-01/26/content_23253925.htm

The NRTA to extend limits on foreign TV programming

On September 20, 2018, the National Radio and Television Administration (“NRTA”) released the “Regulations on the Introduction and Dissemination of Audio-visual Programs Abroad (“The Draft”), which further regulates the broadcasting of foreign programs. The Draft is open for comments until the 19th of October.

According to the article 22 of The Draft, overseas made films, TV shows, animation and documentaries will be banned from 7 to 10 pm during the evening and shall not exceed 30% of the total daily broadcast for their category. The article 23 of the same text provides that the number of overseas programs should not exceed 30% of the total number of programs available in their one genre. The regulations further state that foreign content that promotes extremist ideologies or incites social instability will be banned entirely. Any programming that damages the sovereignty or “dignity” of the nation will also be barred. This cap on foreign programming also includes online streaming.

China’s radio and television are regulated by the “Regulation on Radio and Television Administration”, a law that was adopted in 1997 and that has been revised in 2017. Before 2004, imported TV programs were limited to 25% of daily broadcasting time and capped at 15% between 7 and 10pm. In 2004 new regulations forbade foreign dramas from being broadcasted during primetime unless granted specific authorization from the NTRA’s predecessor.

<https://baijiahao.baidu.com/s?id=1612189627758627803&wfr=spider&for=pc>
<http://www.sapprft.gov.cn/sapprft/contents/6588/385231.shtml>
<https://usa.chinadaily.com.cn/a/201809/22/WS5ba4ec42a310c4cc775e79da.html>

II. Hot Topic

China’s Ageing Population and Filial Piety’s obligations

Following up on an article that was published in Asiallians’ newsletter on the September 7, 2018, the ageing of the Chinese population and its consequences, the Pingqu Country People’s Court of Sichuan province condemned a son and four daughters to up to two years in jail for abandoning their father. This story was largely discussed on the Chinese social platform Weibo, with over 17 million views on Tuesday evening.

Zhang Shun’an (the “father”) died aged 80 and had been frequently hospitalized. His children refused to visit him after he fell ill, their lawyer argued the elderly man was ill-tempered and sometimes abusive towards his family. According to the Court, the children failed to fulfil their filial duties toward the father. In Chinese law neglecting one’s obligation to nurse aging parents is a criminal offense that could be punished up to five years of criminal detention¹. In that specific case the son was sentenced to two years of imprisonment while the daughters received suspended sentences between 12 to 18 months. By 2020 China’s population should number around 255 million people aged 60 or above. Filial piety is a strong component of Chinese society, however with the economic development children often live in other cities than their parents and must juggle between their professional career and their family duties.

<https://s.weibo.com/weibo/%23%E9%81%97%E5%BC%83%E7%BD%AA%E8%8E%B7%E5%88%91%23>

China’s actress disappeared over rumors of investigation for tax evasion

China’s highest earning actress, Fan Bingbing (范冰冰) has not been seen since the end of July. There are lots of rumors on the reasons of her vanishing but so far nothing has been confirmed officially. Fan Bingbing was notably the ambassador of several European luxury brands, such as Louis Vuitton, Mont Blanc, Guerlain or De Beers.

At the end of May, a famous TV host, Cui Yongyuan, posted pictures of one of Fan Bingbing’s employment contract on the platform Weibo. Then in another post he made critics about an unnamed actress’, which many thought to be Fan Bingbing, extravagant demands and added that she actually had two employment contracts. These posts led to fierce discussions on the Chinese internet, firstly about the very high wages and lifestyles of movie stars and secondly about “yin-yang contracts”.

To avoid having to pay a higher income tax, actors will often have two contracts drawn up and split their remunerations between the two. There is an “official” contract with a small sum, used for taxation purpose and an “hidden” one with the actor’s real remuneration. According to rumors, Fan Bingbing would have been arrested. She would have been accused of taking advantage of this dual-contract system, which allows tax evasion. She would also have been charged of several other crimes, including illegal bank lending and other corrupt practices.

The whole Fan Bingbing story also raised the spotlight on a city located in northwestern Xinjiang, Khorgos (霍尔果斯). Khorgos is based in the Khorgos Economic Development Zone and is home of roughly 87 000 people. The city was established in 2014. In the last four years Khorgos has become the home of multiple media entrepreneurs, even though few of these entrepreneurs actually live there. The Khorgos Economic Development Zone proposes preferential tax policies to companies that registered in the zone between 2010 and 2020. Thus, if Corporate tax in China is usually 25%, Companies that registered in Khorgos enjoy a corporate tax holidays for the first five years. After that, even if they must pay taxes to the central government, they continue to be exempted from the local proportion of corporate tax (around 40% of the total amount).

In addition to that, movie companies usually pay 6% of Value Added Tax (VAT) on their final revenue, half of which goes to local governments. In Khorgos, assuming that a company’s local VAT payments exceed YUAN 1 million, part of this money will be returned to the company².

In 2017 there were around 1500 movie and media companies in Khorgos, some of them having close links with Chinese celebrities, such as Fan Bingbing.

The government has recently implemented new policies to fight against tax evasion, which went into effect on the 1st of August, 2018. Among these regulations, the income tax rates on celebrities has risen to 42%, whereas it used to be between 6.7% and 10% depending on the location. The government has also imposed salary caps on Chinese celebrities. According to a notice issued by the NTRA and the State Department of Taxation, lead actors cannot be paid more than 70% of the cast’s total wages and cast remunerations cannot exceed 40% of production costs.

On September 15th, a Chinese director and screenwriter, Jingyu Guo (郭敬明) exposed a new scandal in the TV industry. According to its post on Weibo TV producers commonly buy fake ratings. The NRTA promised to “deal with this matter seriously”.

<http://chinafilm insider.com/desert-tax-haven-draws-moviemakers-chinas-far-west/>
<https://taxlinked.net/blog/june-2018/china-tax-evasion-ying-yang-contract>
<https://www.scmp.com/lifestyle/fashion-beauty/article/2164508/fan-bingbing-tax-evasion-scandal-four-luxury-brands-caught>
<http://bazyd.com/rumor-khorgos-is-still-a-tax-haven-and-the-annual-operating-cost-increases-by-8000-yuan/>
<http://www.hi.chinanews.com/hnnew/2018-09-19/472085.html>

□ Article 261 of PRC Criminal Law: “whoever refuses to fulfill his duty to support an aged person, minor, sick person or any other person who cannot live independently, if the circumstances are flagrant, shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance.”

□ These were the rules in 2017, the VAT incentives has recently been abandoned

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