



I. Legal News

1. Shanghai Introduces New Batch of Liberalization Measures to Further Open Service Sectors

At a press conference held on August 13, 2019, Xu Kunlin, vice-mayor of Shanghai released Several Measures for Further Opening-up Service Sectors in Shanghai ("Measures"), in which 40 supportive policies were introduced to enhance Shanghai's global competitiveness in the service market.

We draw your attention to the following new policies:

(1) Performance brokers

On the 2019 Negative List, equity caps on performance brokers have been removed and it will not be mandatory for a performance broker to be controlled by the Chinese investor in the future. Followed the 2019 Negative List, the Measures restates that a foreign investor will be allowed to establish a wholly foreign-owned performance broker in Shanghai and to provide service nationwide.

(2) Travel agency

The Measures also clearly states that foreign investors will be allowed to set up a wholly foreign-owned travel agency in Shanghai to organize Chinese citizens traveling abroad (except traveling to Taiwan).

(3) Audio and video production business

According to the Measures, foreign investors will be allowed to conduct audio and video production business in the Shanghai FTZ (still restricted to Sino-foreign cooperation and must be controlled by the Chinese side).

(4) Chain enterprises

For the multinational enterprise which has set up several chain operations in Shanghai, it will be allowed to only apply for ONE business license (listing all different addresses). Previously, each chain operation located in different address had to apply separate business licenses.

As a guiding policy, it is not clear on when the Measures will be fully implemented in Shanghai; However, it is said that more details will be released soon. It is also said that these policies will be further lifted in the National Negative List in the future as Shanghai is always a good testing area in China.

(<http://www.shanghai.gov.cn/nw2/nw2314/nw2319/nw12344/u26aw61405.html>)

2. SAMR Releases Strict Labeling Requirement on Healthcare Food

Recently, the State Administration for Market Regulation ("SAMR") has released a normative document named Guide to Warning Messages Displayed on Healthcare Food (the "Guide"), which will enter into force on January 1, 2020.

The Guide stipulates the following strict labeling rules on healthcare food:

(1) Displaying warning message

A warning message that "healthcare food cannot be regarded as medications and cannot be used as alternatives to medications to treat disease" is mandatorily to be displayed clearly on the package of all healthcare food.

The warning message shall also follow a strict format requirement. Specifically, it shall be displayed in clear and larger text in bold type and occupy a minimum of 20% of the total packaging area.

(2) Indication on expiry date

The Guide requires that the expiry date should be clearly indicated, in the form of "Best Before MM/DD/YYYY". Such expiry date shall be displayed in a prominent position on all labels of healthcare food.

It is reported that currently there are a series of scandals occurred in the Chinese healthcare food industry, and lots of people were deceived by the misleading advertisement (especially by the exaggerated medicine efficacy). The Guide is released to fight for such irregularities in the healthcare food industry.

(http://gkml.samr.gov.cn/nsjg/tssps/201908/t20190820_306116.html)

II. Hot topic

Beijing to Open Foreign Investment in VPN Services

According to Circular on Clearing up and Regulating the Internet Access Service Market (the "Circular") released by Ministry of Industry and Information Technology ("MIIT") in 2017, without obtaining approval from competent telecom governmental authority, no one is allowed to conduct cross-border business operations by setting up its own or leasing private leased circuits (including virtual private networks "VPN") and other information channels. Under this strict policy, unauthorized operators of VPN have been cleaned-up gradually nationwide as of 2017 and unlicensed VPN sellers have received penalties accordingly. In practice, if the VPN you use is unauthorized, then your connection with network outside of China may be blocked when the VPN is suddenly banned by the governmental authorities and you even have no recourse to unblock it as your connection is outside the legitimate system.

Upon releasing of Circular, it is further explained by a MIIT spokesman at the Circular Briefing Press Conference that "when trading companies or multinational enterprises need a cross-border circuit for their own office use, they can lease one from an authorized telecoms enterprise, and their normal business operations shall not be affected."¹ In practice, it is indeed possible for a company to use a governmental approved VPN administrated by three administered state-owned enterprise (namely China Telecom, China Mobile and China Unicom); however, it is not attracted to most companies due to the high price of VPN as well as security and privacy concerns.

Currently, there is sign that Beijing will open a door for foreign investment in such VPN services in the future. On August 15, 2019, eight three-year action plans ("Eight Plans") was issued by the Beijing Municipal Government of expanding opening up in eight fields of service sectors, including science and technology, internet, information, finance, education, cultural tourism, health care for aged, professional services and comprehensive fields. Among the Eight Plans, the Three-Year Action Plan in Internet Information Industry introduces a relaxation of restrictions of foreign investment in value added service of telecommunications in which Beijing will relax foreign access in VPN services.

Specifically, according to several news released in China, such relaxation shall meet the following criteria:

- (1) Foreign investors will only be allowed to invest VPN services in the demonstration zones in Beijing;
- (2) Foreign investors shall be overseas telecom operators;
- (3) VPN services shall be provided to foreign-invested companies located in Beijing; and
- (4) Foreign investors shall cooperate with a Chinese partner to conduct the VPN business, and the proportion of foreign ownership in VPN provider shall not exceed 50%.

As a guidance document, the Eight Plans provide no details on how to implement such relaxation. Meanwhile, we also notice that major media in China does not release many news coverages about such VPN relaxation, and the full text of Three-Year Action Plan in Internet Information Industry cannot be accessed now at the official website². At this stage, we adopt a wait-and-see attitude towards it.

(<http://www.it-times.com.cn/a/tongxin/2019/0815/29448.html>)

1. <http://www.miit.gov.cn/n1146295/n1652858/n1653018/c5476695/content.html>

2. Official link of this document is not accessible anymore:
<http://open.beijing.gov.cn/html//bjzc/2019/8/1565862793730.html>

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