

ASIA NEWS

Newsletter

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I. Amended Family Planning Law Removes One-Child Policy

On 27 December 2015, the Standing Committee of the National People's Congress passed amendments to the Law of the People's Republic of China on Population and Family Planning that came into effect on 1 January 2016 ("Amended Family Planning Law").

The Amended Family Planning Law replaces the one-child policy with a nationwide two-child policy through language that "encourages a couple to give birth to two children". It also allows the application of more liberal local family planning provisions enacted in the jurisdiction where the couple's household is registered.

According to the Communist Party's Central Committee, the changes are expected to "improve the balanced development of the population" and to deal with an aging population..

The Amended Family Planning Law also removes benefits for couples who marry and give birth at an older age. It only provides that "couples who give birth to children pursuant to laws and regulations may be entitled to the award of extended maternity leave or other social welfare benefits". The details of such benefits are subject to local implementation regulations.

A few localities have already promulgated regulations that remove the obligation for employers to provide such benefits. Shanghai authorities, for example, have removed the preferential seven-day leave for those who marry late; they are only entitled to "ordinary marriage leave" of one to three days, depending on

employer policy. Likewise, only those couples who gave birth to their first child before 1 January 2016 can qualify for the 30-day late birth leave.

Couples who deliver a child after 1 January 2016 will not receive "one-child parent certificates" and related subsidies. In Shanghai, for example, the current monthly subsidy (until the child reaches 16) for a one-child couple is RMB 30. Further implementation details will be clarified by local regulations.



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II. Modified Coverage under New Telecom Services Catalogue

On 28 December 2015, the Ministry of Industry and Information Technology of China ("MIIT") released the revised Classification Catalogue of Telecommunications Services ("2015 Catalogue"), due to take effect 1 March 2016. This is the first revision to a catalogue that dates to 2003 ("2003 Catalogue")

Under the Chinese legal regime, the operation of telecom services, including basic telecom services and value-added telecom services ("VATS"), is subject to a licence granted by telecom administrative authorities ("Telecom Licence"). China's classification for telecom services is applied nationally, and the 2015 Catalogue lists the businesses that require a Telecom Licence.

The 2015 Catalogue brings various new telecommunication businesses into the scope of VATS, including internet-based resource collaboration services, content distribution network services and internet domain name resolution services. It also re-categorises certain VATS. For example, online data and transaction processing as well as domestic multi-party real-time communication, which were Type I VATS under the 2003 Catalogue, are now classified as Type II VATS.



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The information service business has seen the most amendments, largely because, in comparison to other telecom businesses, it has been extremely active and has attracted the most private domestic investment. The 2015 Catalogue assigns information service businesses to the following five service sub-categories:

- Information publishing and distribution
- Search engines
- Community information platforms
- Real-time information exchange
- Information protection and processing

Services that fall under any of these sub-categories are subject to the VATS regulation, regardless whether provided via online websites or mobile devices. This means that mobile application operators (i.e., app providers) who provide such services must obtain a VATS licence, which is a new requirement.

The 2015 Catalogue is expected to cover some new technological advances and business models, especially in the context of VATS. It remains to be seen how it will encourage additional domestic private investment in the telecom sector and whether it signals the liberalisation of this market to foreign investment and participation.



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III. New Unified Platform for Investment Projects

On 3 October 2015, the General Office of the State Council issued Several Opinions on Innovating Investment Management Approaches and Establishing a Collaborative Regulatory Mechanism ("State Council Opinions"). The State Council Opinions instructed the government to accelerate the establishment of a vertical and lateral joint and collaborative regulatory mechanism for investment projects. The vertical aspect refers to connections between the central government and local counterparts, and the lateral aspect refers to connections among different central government authorities. The State Council Opinions further called for the accelerated establishment of an online examination and approval regulatory platform for investment projects ("Platform").

The National Development and Reform Commission ("NDRC") had already started to establish the Platform in anticipation of the

State Council Opinions. In June 2015, the lateral connection of the Platform was implemented among 16 relevant central government bodies. Later, in December 2015, the vertical connection was realised with the participation of 37 local governments, and the Platform was put into trial operation.

The Platform provides an enterprise with overall guidance on project examination and approval, including information on deadlines. It also allows authorities to monitor ongoing projects more easily.

The Platform gives an enterprise easy access to examination and approval guidance for projects before the formal application. If the enterprise decides to initiate an application, it does so online by submitting information about the project. The Platform issues a unified code and conveys the project information to the relevant departments. The applicant uses the unified code to check on the progress of the application, which obviates the need to inquire with various examination and approval authorities. The various departments deal with the application after they receive the project information and use the Platform to notify the enterprise to submit material on an ongoing basis.

The Platform not only sets a deadline for each engaged department, it also replaces the existing practice of serial departmental review with a concomitant process that requires multiple departments to review a project at the same time. This improves the efficiency and transparency of project examination and approval.

Monitoring the progress of a project is also easier. The enterprise uses the Platform to upload work commencement and completion reports for the project as well as annual reports. Supervisory entities monitor these reports and use the system to send feedback to the enterprise.

The NDRC is still in the process of rolling out the Platform. It is an interesting development in China's investment terrain, and investors should be aware of how it may impact their activities.



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IV. Blacklisting Disreputable Enterprises

In 2015 the State Administration of Industry and Commerce ("SAIC"), the National Development and Reform Commission

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("NDRC") and several other government departments jointly issued a Cooperation Memorandum on Collaborative Supervision and Joint Reprimand of Discredited Enterprises ("Memorandum"). It aims to establish a cross-sectoral collaboration and joint disciplinary supervision mechanism among market regulatory organs and to create a credit supervision system that flags problematic enterprises. On 30 December 2015, the SAIC created a legal basis to implement the Memorandum by promulgating the Interim Administrative Measures for the List of Disreputable Enterprises Committing Grave Illegalities ("Interim Measures"), which will take effect on 1 April 2016. "Blacklist" databases will be established by the respective administrative authorities for disreputable enterprises within their jurisdictions, shared nationwide with other authorities and made available to the public.

Under the Interim Measures, when an enterprise commits a grave violation of industrial or commercial administrative laws, rules or regulations, the competent AIC may add the enterprise to the blacklist, implement credit constraints and joint sanctions with other governmental authorities and publish the violation in the Enterprise Credit Information Publicity System.

The Interim Measures stipulate the purpose and basis of their formulation, the definition of a disreputable enterprise committing grave illegalities, AIC jurisdiction, conditions and procedures for blacklisting and removal from the list, sanctions and remedies.

The Interim Measures list ten conditions under which an enterprise may be blacklisted by the AIC, including the following: being named on the AIC's List of Enterprises With Abnormal Business Operation for three consecutive years without fulfilling relevant obligations; having a registration revoked because it has previously obtained modified registration or deregistration by submitting false materials or by other fraudulent means in concealment of material facts; being subject to administrative sanctions on three or more occasions within two years for unfair competition or for causing physical injury to consumers with its goods or services or by publishing false advertisements; causing a highly adverse social impact by publishing false advertisements and being subject to administrative sanctions on two or more occasions within five years due to trademark infringement.

It is noteworthy that the AIC can place an enterprise on the List of Enterprises with Abnormal Business Operation for many reasons, including failing to file its annual report when required by law (January 1 to June 30 of the following year); concealing true situations or practices and thus committing fraud when disclosing information; being unreachable at its registered domicile or business premises; or failing to disclose relevant information by deadlines set by the AIC.

Examples of such information cover topics such as capital subscribed and paid up by the investors; equity transfer by share-

holders and other equity changes; the granting, change and renewal of administrative licensing; the registration of intellectual property rights pledges and the administrative punishments meted out against the enterprise. Reports about these matters need to be filed within 20 days after their occurrence.

Special attention should also be paid to anti-competitive activities. The Anti-Unfair Competition Law covers matters such as commercial bribery, false advertisement, infringement of another person's trade secrets or trademarks, bid rigging and bundled sales. An enterprise that commits any such activities three times within two years and is subject to the AIC's administrative sanctions can be blacklisted.

The blacklist system allows the AIC to restrict an enterprise from market access and strip its legal representative of certain authorizations. Standard sanctions on a blacklisted enterprise include more intense inspection and supervision; prohibiting the enterprise's legal representatives and person in charge from holding office in another enterprise; rejecting the enterprise's application to obtain the Certificate of Contractual Trustworthiness and Integrity and withholding the award of relevant honours and titles.

The AIC may enter information about the blacklisting into the enterprise's public record and publish the record in the Enterprise Credit Information Publicity System. In addition, the AIC may share the information with other government authorities, who may then impose sanctions on the blacklisted enterprise. They can, for example, restrict or prohibit involvement in internet information services, financing and credit extension, government procurement, acquiring government-supplied land and project bidding. Combined with the Memorandum, the Interim Measures aim to construct a credit supervision framework and joint sanction mechanism under the motto "violation in one area, limitations in all areas".

The ultimate goal of the Memorandum and the Interim Measures is to impose more rigorous business credit standards. In response, enterprises should more closely monitor daily business activities to ensure full compliance with industrial and commercial administrative laws and regulations, since a violation and subsequent blacklisting may lead to joint sanction by multiple governmental authorities and result in the serious impairment of business operations.



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