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Amended Telecoms Permit Regulations Reduce Market Entry Requirements but Increase Responsibilities for Basic Telecommunications Services Operators

On March 1, 2009, China's Ministry of Information and Industry Technology ("MIIT") issued the amended Measures on the Administration of Telecommunications Business Operating Permits (the "Amended Measures"). The Amended Measures will enter into effect on April 1, 2009, and will replace the original Measures issued on December 2, 2001 (the "2001 Measures").

The 2001 Measures detailed the requirements to engage in telecommunications services ("TS") in China and were one of the first regulations issued by the Chinese government after China acceded to the World Trade Organization ("WTO"). The Amended Measures reflect the Chinese government's experience in administering the TS industry for the past eight years and commitment to lowering market entry thresholds for basic telecommunications services ("BTS") providers and protecting consumers.

PRC telecommunications services are divided into two major categories: BTS and value-added telecommunications services ("VATS"). The Amended Measures lower the capital requirement for operating BTS locally from RMB200 million to RMB100 million and for operating BTS nationally from RMB2 billion to RMB1 billion. The capital requirements under the 2001 Measures have long been viewed as unreasonably high and a barrier to entry for the BTS industry. The reduction in capital requirement will promote greater investment and competition in the BTS industry. In addition, the capital requirements for operating BTS under the Amended Measures are now consistent with those under the 2008 amended Regulations for the Administration of Foreign-Invested Telecommunications Enterprises (the "FITE Regulations"). Currently, despite China's commitment to open up the BTS industry pursuant to China's accession to the WTO, MIIT does not accept applications from foreign investors to engage in BTS in China, and this could partly be due to the inconsistency between the capital requirements under the Measures and the FITE Regulations. Once the Amended Measures enter into effect, MIIT might start accepting applications from foreign investors for BTS permits.

Under the Amended Measures, a BTS operator is required to supervise and manage the content and fees for the services provided by the VATS operators which cooperate with, or engage the services of, such BTS operator and to establish a system to monitor VATS

operators' conduct. In the Chinese TS industry, it is common for BTS operators to operate the infrastructure (e.g., network) on which the VATS operators provide their services. Hence, a VATS operator generally needs to cooperate with, or engage the services of, a BTS operator. During the past few years, the number of VATS operators increased dramatically, and many VATS operators resorted to business practices that are harmful to consumers in order to survive in this highly competitive industry. This resulted in wide-spread consumer dissatisfaction in China. In the past, MIIT was the official regulator of VATS operators, with BTS operators generally only supporting MIIT's efforts unofficially and verifying whether the relevant VATS operators using its services are properly licensed. With the Amended Measures, MIIT would officially be shifting some of the burden of monitoring VATS operators to BTS operators, who are closer to the VATS operators.

Even though the Amended Measures do not introduce major changes, they should satisfy both proponents of relaxing entry barriers for BTS and proponents of consumer protection.

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This article is not intended to provide legal advice with respect to any particular situation and no legal or business decision should be based solely on its content. Questions concerning issues addressed in this article should be directed to any member of the Paul, Weiss China Practice Group, including:

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