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## The Dust Settles - Online Taxi-Hailing Law Promulgated

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The afternoon of July 28, 2016, finally saw the dust settle around the much-anticipated taxi reform proposals and taxi-hailing administrative measures with the promulgation of the *Interim Administrative Measures for Online Taxi-hailing Business Services (Order of Ministry of Transport, Ministry of Industry and Information, Ministry of Public Security, State Administration of Industry and Commerce, State Quality Inspection Administration, State Internet Information Office, [2016] No.60)* (the “**Interim Measures**”) and the *Guiding Opinions of the General Office of the State Council on Deepening Reforms to Promote the Healthy Development of the Taxi Industry (Guo Ban Fa [2016] No. 58)* (the “**Guiding Opinions**”).

Public comments drafts of the Guiding Opinions and Interim Measures were released on October 10, 2015, and have been finally promulgated after having been discussed and revised for ten months. The online taxi-hailing industry had previously developed rapidly, but the relevant requirements, which the Interim Measures now stipulate, were not specified with respect to market entry and industry supervision. The main content of the Guiding Opinions and Interim Measures are summarized below:

### Formally Clarifying the Legal Status of Online Taxi-Hailing Platform Companies

Although online taxi-hailing has developed rapidly in recent years, there were still no definite and formal regulations with respect to the supervision of the industry. Some local governments even applied supervisory laws and regulations that are applicable to traditional taxi and car rental businesses to regulate the online taxi-hailing industry. With the rapid development of the online taxi-hailing industry, how to regulate, manage and guide the industry rather than simply calling for an end to the existing business model has attracted widespread attention from the public. The Interim Measures, for the first time, legally permit online taxi-hailing.

## **Operating Requirements**

Although the Interim Measures acknowledge the legitimacy of online taxi-hailing, they specify quite a few requirements with respect to the qualifications of the platforms themselves, vehicle requirements, driver qualifications, and standards for business conduct.

### **a. Qualifications for Online Taxi-hailing Platforms**

The Interim Measures require that online taxi-hailing operators must meet the basic requirements shown below, in addition to obtaining an “online taxi-hailing business permit,” with a business scope for online taxi-hailing, issued by the road transportation administration:

- The operator shall have the status of enterprise legal person;
- The operator shall have developed an internet platform for online taxi-hailing, have the information data exchange and processing capability suitable for the launch of the proposed business, provide for conditions that enable the transportation, communications, public security, taxation and cyberspace departments to access relevant internet data, have the internet platform’s databases be accessed by the taxi administrative department’s monitoring platform, set up servers in mainland China, and have the network security management system and technical measures for network security that conform to relevant regulations;
- The operator shall sign agreements for the provision of payment and settlement services with banks and non-banking payment institutions in case electronic payment methods are adopted;
- The operator shall have a sound operation and management system, a safety management system, and a service quality assurance system.
- The operator shall have corresponding service agencies and service ability in the location where the services are provided;
- A foreign-invested online taxi-hailing operator, in addition to the conditions above, shall also comply with the relevant legal and regulatory provisions related to foreign investment.

### **b. Vehicle Qualifications**

The Interim Measures require that vehicles used for online taxi-hailing shall meet the requirements below; upon meeting these conditions, the road transportation administration will register the vehicle as a passenger vehicle for hire and issue an “online taxi-hailing transport permit.”

- Vehicles are to have seven seats or fewer;

- Vehicles are to be equipped with satellite positioning and emergency alarm devices and have a driving recording function;
- The technical performance of the vehicles meets relevant safe operation standards.

### **c. Driver Qualifications**

The Interim Measures require that the drivers of online-hailed taxis meet the basic requirements shown below. Either the online taxi-hailing platform operator or the drivers themselves may apply to the municipal taxi administrative department in the service location, and the department shall issue an “online taxi-hailing driver’s permit” to those drivers who both meet the requirements below and who pass an examination:

- Obtain a motor vehicle driver's license corresponding to the vehicle type and have more than three years of driving experience;
- Have no criminal record of causing traffic accidents or dangerous driving, no record of drug abuse or driving under the influence, no record of receiving more than 12 points in the three most recent scoring periods;
- Have no record of violent crime;
- Other conditions stipulated by the municipal government.

### **d. Standards for Business Conduct**

With respect to the online taxi-hailing operations, the Interim Measures specify the following requirements:

- Online taxi-hailing platform companies shall guarantee that service vehicles are lawfully operated, in good technical condition, have dependable safety performance, and have the relevant insurance for operating vehicles;
- Online taxi-hailing platform companies shall guarantee that the drivers accessing the platform are legally qualified. The companies must execute either a labor contract or an alternative form of agreement with the drivers, depending upon the drivers’ working hours and frequency of service and subject to the relevant laws and regulations, and;
- Online taxi-hailing platform companies shall record data, including information that drivers and customers publish on the taxi-hailing platform, user registration information, identity certification information, order information, access logs, online transaction logs and travel logs, and to back up the recorded information and logs;
- Online taxi-hailing platform companies shall determine and make public its methods for measuring travel distance and pricing in a manner that conforms to the relevant state rules. When providing online taxi-hailing services, companies shall provide information such as the names, photos, cellphone numbers and driver evaluation ratings, as well as vehicle license plate numbers, etc.;

- Online taxi-hailing platform companies shall reasonably determine the fares for online-hailed taxis, clearly mark the fares and issue corresponding taxi invoices to the passengers;
- Online taxi-hailing platform companies shall not commit any acts that impede fair market competition.
- Online taxi-hailing platform companies shall pay taxes in accordance with the law and purchase the relevant insurance for passengers, such as carrier liability insurance, so as to fully protect the interests of passengers.

## **Key Issues**

### **a. Online Taxi-hailing Platform Operation Qualification Applications**

The Interim Measures stipulate that the online taxi-hailing platform companies shall submit an application to the taxi administrative department in the location where the service is provided by submitting the following materials:

- i. An online taxi-hailing business application form;
- ii. Personal identification documents and credit certificates for the investors and persons-in-charge, in duplicate, and the personal identification documents for the individuals entrusted to submit the application, in duplicate, and a power of attorney;
- iii. An enterprise legal person business license; in case of a branch entity, the business license of the branch; in case of foreign-invested enterprise, a Foreign-Invested Enterprise Approval Certificate;
- iv. Information regarding the workplace, person in charge and management staff for the location where the service is to be provided;
- v. Evidentiary materials on the Internet platform and information data processing and handling capabilities, evidence on the conditions that enable the transportation, communications, public security, taxation and internet information departments to access relevant internet data, a description of database access conditions, a statement explaining that the servers are set up in mainland China, and evidentiary materials on the implementation of an internet security management system and technical measures for network security protection;
- vi. Agreements on the provision of payment and settlement services signed with banks, and non-banking payment institutions in the case that electronic payment methods are adopted;
- vii. Texts for the operation and management system, safety management system and service quality assurance system.

Online taxi-hailing platform companies shall submit an application to the taxi administrative department where the company is incorporated. The provincial road transportation administration in the place where the operator company is incorporated shall cooperate with the communication, public security, taxation and cyberspace administrations and the People's Bank of China to examine and verify the materials with respect to online service qualifications referenced in items (5) and (6), above, and produce a verification letter that will be effective nationally. An online taxi-hailing business permit shall be issued by the taxi administrative department after the examination and approval.

#### **b. Regulations on Private Vehicle Service Life Limitations and Removal from Service**

In addition to the general qualifications required for vehicles and drivers as set forth in Paragraph 2 above, such as holding an operating license, the Interim Measures also specify strict limitations for the service life of private cars. According to the Interim Measures, a vehicle with a distance traveled of greater than 600,000 kilometers shall be removed from service, while a vehicle that has an actual distance traveled of less than 600,000 kilometers, but has been placed in service for more than 8 years shall also be removed from service.

#### **c. Internet Business Operating Qualifications**

The Interim Measures stipulate that online taxi-hailing platform companies shall file an internet information services record with the provincial level communications administration in the location where the company is incorporated. The information to be filed includes the operator's real identity information and access information and the online taxi-hailing business permit issued by the taxi administrative department. Where telecommunications services are involved, the relevant provisions for telecom management shall also be complied with. In accordance with the Administrative Measures for Internet Information Services, the online taxi-hailing platform company shall file an internet information services record or apply for a value-added telecommunications services license, depending on whether the company charges for the required internet information services. If the company does not charge its passengers a fee for the information services, then the service is not considered to be for-profit and the company only needs to file an internet information services record, and it is not necessary to apply for a value-added telecommunications services business license.

#### **d. Whether Signing a Labor Contract is Required**

Considering that the signing of a labor contract would prevent some part-time drivers from engaging in online taxi-hailing, the Interim Measures clearly stipulate that online taxi-hailing platform companies may execute many types of labor contracts and agreements with drivers depending upon their working hours and frequency of service, so as to enable both part-time and full-time drivers to participate in the business. (Note: The Interim Measures (draft for comment) require online taxi-hailing platform companies to sign a formal labor contract with the platform's drivers.)

#### **e. Information Security**

The Interim Measures stipulate provisions with respect to information security in the following aspects:

- i. Online taxi-hailing platform companies shall notify of the purpose, methods and scope of the collection and use of personal information of the drivers, ride hailers and passengers on its platform. Unless expressly agreed to by the owner of the information, the companies shall not use such information for other business purposes.
- ii. Online taxi-hailing platform companies cannot collect the information of drivers, ride hailers and passengers beyond the scope of what is necessary for operating the online taxi-hailing business.
- iii. Except for the purpose of cooperating with state organs to exercise their right of supervision/inspection and to conduct criminal investigations, the online taxi-hailing platform companies shall not provide any information of drivers, ride hailers and passengers to any third party, which includes the name, contact information, home address, bank account or payment account, location and travel routes of such persons, and shall not disclose any sensitive information related to national security such as geographical coordinates and geographical markers.

When such personal or sensitive information is found to have been compromised, the online taxi-hailing platform company shall promptly report to the relevant authorities and take prompt and effective remedial measures.

#### **f. Restrictions on Competition and Price Mechanisms**

The Interim Measures clearly prohibit behaviors that would impede fair market competition or damage the legitimate rights and interests of passengers or the public interest. The Interim Measures also provide that online taxi-hailing platform companies shall not engage in any unfair pricing activity, such as operating below cost, disrupting the normal market order, damaging national interests or the legitimate rights and interests of other companies for the purpose of squeezing out competitors, monopolizing the market or engaging other illegal pricing activity. In addition, we note that the Interim Measures also stipulate price mechanisms for online taxi-hailing services. Except for when the municipal government considers it is necessary to implement government pricing, online taxi-hailing services are subject to market pricing.

#### **g. Encouraging Private Passenger Car Sharing**

The Guiding Opinions encourage and stipulates regulations for private passenger car sharing. Private passenger car sharing, also known as car-pooling or hitchhiking, refers to a mode of travel by which a car-sharing service provider releases a travel plan in advance, and people who share the same travel route may choose to ride in the provider's car for free or by sharing a part of the cost. As this will alleviate traffic congestion and reduce air pollution, the municipal

governments are to encourage and regulate the development of private passenger car sharing and formulate relevant rules to define the rights and obligations of car-sharing service providers, passengers and information service platforms.

In Summary, the Guiding Opinions and Interim Measures not only acknowledge the legitimacy of online taxi-hailing, but also specify the qualifications of parties involved in the online taxi-hailing business and the standards for business conduct, which will certainly have a profound impact on the online taxi-hailing industry.

## ● **Important Announcement**

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