

Summary of the Circular of Implementing the State Council's Regulations on the Main Functions, Internal Bodies and Staffing of the Ministry of Culture, the State Administration of Radio Film and Television and the General Administration of Press and Publication and the Interpretations by the State Commission Office for Public Sector Reform, Further Intensifying the Administration of Pre-approval of Online Games and Approval of Imported Online Games (promulgated on September 28, 2009)

In July 2008, the General Office of the State Council issued the *Regulations on the Main Functions, Internal Bodies and Staffing of the Ministry of Culture, Regulations on the Main Functions, Internal Bodies and Staffing of the State Administration of Radio Film and Television and Regulations on the Main Functions, Internal Bodies and Staffing of the General Administration of Press and Publication* (collectively the "**Regulations**").

To streamline the respective responsibilities of the Ministry of Culture ("**MOC**"), the State Administration of Radio Film and Television ("**SARFT**") and the General Administration of Press and Publication ("**GAPP**") in regulating the animation and online game industry, the State Commission Office for Public Sector Reform issued the *Circular on Printing and Issuing the Interpretations by the State Commission Office for Public Sector Reform of Relevant Articles in the Regulations Regarding Animation, Online Games and Comprehensive Law Enforcement of Culture Market* (the "**Interpretations**") on September 7, 2009. The Interpretations states that MOC is the governmental body directly responsible for the administration of and supervision over the animation and online games industry.

On September 28, 2009, following the issuance of the Interpretations, GAPP issued the *Circular of Implementing the State Council's Regulations on the Main Functions, Internal Bodies and Staffing of the Ministry of Culture, the State Administration of Radio Film and Television and the General Administration of Press and Publication and the Interpretations by the State Commission Office for Public Sector Reform, Further Intensifying the Administration of Pre-approval of Online Games and Approval of Imported Online Games* (the "**Circular**"). The Circular mainly address the following key aspects:

1. The Circular states that the acts of providing online interactive or downloading services of online games to the public via internet are online game publication activities, which are subject to the pre-examination and approval of GAPP. The Circular further provides that where any online games are placed online without the approval of GAPP or the content of the approved online games are altered without re-obtaining approval from GAPP, GAPP will notify the competent local press and publication departments to order the involved enterprises to suspend the operation services. It appears that these provisions are in discrepancy with those of the Interpretations, which states that MOC shall allow enterprises to put those online games that have passed the

pre-examination and approval of GAPP online and no further or repeated examination shall be conducted; once put online, these online games shall be subject to the sole administration of MOC, including online game publications that have been put online without obtaining the pre-approval of GAPP. MOC is the only department that is authorized to order its cultural market enforcement team to investigate and suppress those online game publications that have been put online without obtaining the pre-approval of GAPP.

2. The Circular expressly precludes foreign investors from engaging in online game operation services. It explicitly provides that foreign investors are prohibited from engaging in online game operation services in China in the form of wholly-owned enterprises, equity joint ventures or cooperative joint ventures. It further states that foreign investor may not control or participate in online game operation services of domestic-funded enterprises via such indirect means as establishing another joint ventures, entering into related agreements or providing technical supports, and may not control in disguised form or participate in online game operation services by directly connecting users' registration, account management and game cards with game networks and battlefields controlled or owned by foreign investors. Those violating the foregoing provisions shall be suppressed by GAPP together with other government organs in accordance with law. Where the circumstances are severe, the licenses of the involved enterprises will be revoked and their incorporation registrations will be cancelled.

3. In addition, the Circular provides that where the operating enterprise of any online games which have obtained the pre-approval or importation approval of GAPP changes or a new game version shall be added or the content of an approved game changes, new submissions shall be re-filed with GAPP for pre-approval or importation approval, as the case may be. During the period commencing from the day the operating enterprise changes to when a new approval is obtained, any and all operation services of the game involved shall be suspended, otherwise it shall constitute illegal online publication.

Set forth above is a brief summary of key provisions of the Circular, a full text of which is enclosed forthwith for your easy reference.

If you have any questions to the above, please feel free to contact us. Thank you!

This Newsletter has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

If you have any questions regarding this publication, please contact:



Beijing Office

Tel.: +86-10-8525 5500
Suite 906, Office Tower C1
Oriental Plaza, 1 East Chang An Ave.
Beijing 100738, P. R. China

Leia ZHANG Attorney at-law

Tel.: +86-10-8525 5547
Email: leia.zhang@hankunlaw.com

Wenyu JIN Attorney at-law

Tel.: +86-10-8525 5557
Email: wenyu.jin@hankunlaw.com



Shanghai Office

Tel.: +86-21-6080 0919
Suite 5709, Tower 1, Plaza 66,
1266 Nanjing West Road,
Shanghai 200040, P. R. China

Yinshi CAO Attorney at-law

Tel.: +86-21-6080 0980
Email: yinshi.cao@hankunlaw.com

Joseph HWANG Attorney at-law

Tel.: +86-21-6080 0988
Email: joseph.hwang@hankunlaw.com



Shenzhen Office

Tel.: +86-755-2681 3854
Suite 4715, Diwang Plaza, Xinxing Plaza,
NO.5002 Shennan Dong Lu, Luohu District,
Shenzhen, P. R. China

Jason WANG Attorney at-law

Tel.: +86-755-2681 3854
Email: jason.wang@hankunlaw.com