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## CHINA

### MIIT Clarifies Requirements for Marketing via Short Message Service

By Eric Carlson and Sheng Huang, of Covington & Burling LLP, Beijing.

New clarifying provisions regulating how marketing can be done via short message service (“SMS”) will come into effect in China on June 30, 2015.

On May 28, 2015, the Ministry of Industry and Information Technology (“MIIT”) published measures to implement various high-level provisions related to SMS marketing in several different laws, such as the Decision of the Standing Committee of the National People’s Congress on Strengthening Network Information Protection, the Consumer Rights Protection Law, which was significantly amended effective March 2014 (see analysis co-written by Eric Carlson at *WDPR*, November 2013, page 11), and the Advertising Law. Taken together, these pre-existing laws generally prohibit companies from sending commercial communications to consumers without consent, and require companies to:

- comply with express requests from consumers not to send such communications;
- disclose the identity and contact information of the advertiser in electronic advertising; and
- provide a way for a consumer to refuse future electronic advertisements.

The newly promulgated measures, entitled the Administrative Rules for Short Message Service (“SMS Rules”)

and effective as of June 30, 2015, flesh out these general rules related to SMS marketing.

In addition to the general consent and disclosure requirements in the laws listed above, the SMS Rules:

1. Define commercial SMS messages as communications used for introducing or promoting goods, services, or business investment opportunities.
2. Require that, if consent to receive commercial SMS messages is requested through SMS, the requesting SMS must specify the “type, frequency, and time limit of proposed SMS” messages. No reply is considered a rejection, and the same or similar requesting SMS must not be sent again.
3. SMS messages containing commercial information must contain a “convenient and effective” way to refuse receipt of such SMS messages in the future, and no obstacles to such refusal are permitted. The message also must expressly contain the name of the content provider (e.g., the advertiser).
4. SMS service providers (e.g., mobile operators such as China Mobile or China Unicom) are required to keep records of commercial SMS messages, including sent time, time of receipt, number or code of the sending and receiving terminals, and information regarding subscriptions and unsubscriptions for at least five months. Subscription and unsubscription information must be maintained for at least five months after the termination of the service relationship between the SMS service provider and the recipient.

Failure to comply with requirements 2 and 3 above may result in a fine ranging from RMB 5,000 (about

U.S.\$800) to RMB 30,000 (about U.S.\$4,800) imposed by the local Administration of Industry and Commerce, which generally regulates advertising. Failure to keep the records required in item 4 above may result in a fine ranging from RMB 10,000 (about U.S.\$1,600) to RMB 30,000 (about U.S.\$4,800) by MIIT's local counterpart, and such fine will be publicly announced.

The SMS Rules appear to be in part a response to calls from the general public to combat the high frequency

of SMS spam, and part of a broader series of laws and regulations issued by the government in the last 24 months to further regulate the collection and use of personal information in marketing.

*The text of MIIT's SMS Rules is available, in Chinese, at <http://bit.ly/1FIWooj>.*

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