Regulations for the Administration of Mobile Internet Application Information Services

Background

The People’s Republic of China (“PRC”) State Internet Information Office has recently issued the Regulations for the Administration of Mobile Internet Application Information Services (“Regulations”), which will come into effect on 1 August 2016. It is the first mobile-app specific set of rules in PRC and aims at tightening the regulation of mobile Internet applications (“apps”). The Regulations are implemented with the intention to strengthen the management of app information services, promote a healthy and orderly development of the industry, and protect the legitimate rights and interests of the relevant parties.

This is because while apps play a role in the provision of public services and economic and social development, some of them have been misused to spread violence, terror, obscenity, pornography, rumours and other information that violates the law. Instances of theft of personal data, malicious deduction of fees, fraud and other unlawful acts have taken place via apps.

The Regulations will therefore impose certain obligations that both app operators and stores must perform, as well as confer jurisdiction to the State Internet Information Office as well as local internet information offices on the supervision and enforcement of the Regulations.

Outline of the Obligations

App Providers

Article 5 requires app providers to obtain the relevant licenses and credentials under the laws and regulations.

Under Article 7 of the Regulations, app providers are now required to:

(i) Verify a registered user's identity and register his real name based on his mobile number and other valid identification documents;

(ii) Protect users’ personal information; ensure that methods for collecting users’ personal information adhere to the principles of legality, propriety and necessity; inform users of the purpose, methods and scope of the collection or use of personal information and obtain their consent;

(iii) Establish mechanisms to review and manage information content, including punishments, such as warnings or termination of accounts, if one publishes illegal information, as well as retaining and reporting records of non-compliance to the relevant authorities;

(iv) Protect users’ rights to know and choose by obtaining their consent before accessing their geographic locations, contacts, mobile device’s camera or microphone, or before activating any unrelated functions or bundling unrelated applications;

(v) Respect and protect others’ intellectual property (“IP”) rights by not publishing or creating apps that violate their IP rights; and
(vi) Retain records of users’ activities for 60 days.

App Stores

Article 5 requires app stores to be filed with the relevant internet information office within 30 days of its online operation.

Under Article 8 of the Regulations, app stores are now required to:

(i) Review app providers’ authenticity, security, lawfulness etc., as well as establish credit management systems and file such information with the relevant internet information office;

(ii) Ensure app providers protect user information and that they provide sufficient explanations to the users in relation to the collection and use of their personal information;

(iii) Ensure app providers only publish legal information and content, conduct security reviews and appoint relevant personnel, and respect the IP rights of other app providers; and

(iv) Take appropriate action, such as issue warnings, suspend publication or remove the apps, against app providers that violate the provisions under Article 8, while keeping and reporting such violations to the relevant authorities.

Article 9 also requires app stores and app providers to enter into service agreements, clarifying the rights and obligations of both parties as well as to jointly comply with the laws and regulations of the platform.

Implications

Business Practices

It is apparent that the new Regulations would impose unprecedented and onerous obligations on industry participants, specifically app providers and app store services. Such obligations impose management and supervisory responsibilities onto such businesses. Concurrently, app providers and app store services will also be held to a higher standard of scrutiny by regulatory bodies. However, the Regulations themselves do not provide for any penalties for failure to comply with the Regulations and as such, the consequences of failing to abide by the Regulations are unknown. It should be noted that, in other jurisdictions, such responsibilities are not imposed as they exclusively fall under the purview of Government bodies.

The first and foremost matter is that all stakeholders must liaise with relevant PRC authorities and obtain all requisite permits and licenses to operate, with app store services specifically having to file with provincial Internet Information Offices within 30 days of online operation.

All companies utilising or intending to market mobile apps in PRC for business must review their practices to ensure they comply with the new Regulations. An example would be re-examining and redrafting the terms and conditions which app users must accept prior to utilising the app’s functions. These new terms must convey to users:

(i) the types of information which the app will collect and how it will be used by the app provider,

(ii) that their activities will be kept on a log for at least 60 days,

(iii) the penalties or measures to be taken against app users who exploit communication channels to publish controversial content, such as those which contravene Art 57 of the Telecommunications Regulations of PRC.
In addition, app providers would have to introduce new features to their app’s interface to register the User’s phone number to his account, regardless of the type of app. In addition, the app must promptly notify the user and give him the choice to authorise the app to access third party controls and functions. Certain industry practices (e.g. auto-downloading or bundling of other apps) will have to cease.

Besides app providers, app store services will also face onerous managerial obligations. They must firstly enter into service contracts with all app providers on its platform and subsequently implement supervisory controls over all app providers, which would incur heavy costs in time and manpower. For the app provider, which typically publishes its app on multiple app store platforms, they must now grapple with the various app store service providers and the different ways in which the Regulation will affect their contractual and management policies.

**Business Decisions**

All of these changes would incur greater costs at all levels of the industry, from Government bodies to the app providers and even to users. Companies must reassess their pricing and marketing strategies to sustain their profits and remain competitive in the massive PRC app market.

Global mobile developers which currently run apps within PRC or aim to in the future will be most affected by these Regulations. The imposition of obligations which are exclusive to the PRC market would affect the app’s user interface and legal terms. The app provider must either conduct a revamp the app to align with PRC’s regulations, provide a separate app exclusively for the PRC market, or withdraw its presence from the PRC app market should the terms be too onerous on the app provider.

It is suggested that any delay in making this decision would inflict a competitive disadvantage to the app provider. For example, foreign apps providers leaving the PRC market might leave a vacuum which local app developers would rush to fill. Local app providers would quickly design and market a functionally similar app previously provided by the foreign developer, albeit that it complies with the new Regulations and are better tailored to the PRC market. It is for this reason that these Regulations might push app development onshore.

Market players should consider options from all aspects and promptly begin preparations in anticipation of 1 August 2016 when the Regulations take effect, rather than speculating on whether or how well these Regulations will be enforced.

**Conclusion**

The Regulations are clearly in line with the PRC Government’s intention to ensure a safer cyber environment by strengthening regulations and control. However, what has been observed is merely theoretical, and how the Regulations will be enforced in practice still remains uncertain, given that PRC regulations have been criticised as being “so vague that they can be used in all sorts of different ways”. As such, the key now is to observe how strictly the relevant PRC authorities would be in enforcing the Regulations.

For further queries, please contact our team below.
ASEAN Economic Community Portal

With the launch of the ASEAN Economic Community ("AEC") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch “Business in ASEAN”, a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the “Ask a Question” feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at http://www.businessinasean.com/.
Our regional presence

Our regional contacts

RAJAH & TANN | Singapore

Rajah & Tann Singapore LLP
9 Battery Road #25-01
Straits Trading Building
Singapore 049910
T +65 6535 3600  F +65 6225 9630
g.rajahtannasia.com

R&T Sok & Heng

R&T Sok & Heng Law Office
Vattanac Capital Office Tower, Level 17, No. 66
Preah Monivong Boulevard, Sangkat Wat Phnom
Khan Daun Penh, 12202 Phnom Penh, Cambodia
T +855 23 963 112 / 113  F +855 963 116
kh.rajahtannasia.com

*In association with Rajah & Tann Singapore LLP*

RAJAH & TANN REPRESENTATIVE OFFICE | China

Rajah & Tann Singapore LLP
Shanghai Representative Office
Unit 1905-1906, Shui On Plaza, 333 Huai Hai Middle Road
Shanghai 200021, People’s Republic of China
T +86 21 6120 8818  F +86 21 6120 8820
cn.rajahtannasia.com

RAJAH & TANN NK LEGAL | Myanmar

Rajah & Tann NK Legal Myanmar Company Limited
Myanmar Centre Tower 1, Floor 07, Unit 08,
192 Kaba Aye Pagoda Road, Bahan Township,
Yangon, Myanmar
T +95 9 73040763 / +95 1 657902 / +95 1 657903
F +95 1 9665537
mm.rajahtannasia.com
Rajah & Tann Singapore LLP is one of the largest full service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Thailand and Vietnam. Our Asian network also includes Singapore-based regional desks focused on Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or e-mail Knowledge & Risk Management at eOASIS@rajahtann.com.

© Rajah & Tann Singapore LLP