

## Legal update

### China regulatory: proposed draft rules tighten control over domain names

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#### **Technology and innovation**

On March 25, 2016, China's Ministry of Industry and Information Technology (MIIT) published a new draft regulation, "*Measures for the Administration of Internet Domain Names*" (Draft Regulation), for public consultation for a period of one month.

The Draft Regulation is intended to replace the current decree, "*Measures for the Administration of Internet Domain Names of China*" (Decree 30), which has been in force since November 2004.

The Draft Regulation's stated aims are to:

- maintain the secure and reliable operation of the Chinese Internet domain name system; and
- standardize administration of that system in line with international standards.

Set out below is a summary of the proposed major changes to the existing position that would be implemented by the Draft Regulation.

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#### **Impact on foreign websites?**

It is still unclear whether the Draft Regulation will ban local access to all foreign websites.

Article 37 provides that domain names engaging in network access within the border shall have services provided by domestic domain name registration service bodies, and domestic domain name registration management bodies shall carry out operational management.

If a literal interpretation of the article is taken, it would mean that:

- a business with a domain name registered overseas, hosted by domestic server, will be subject to the requirements of the Draft Regulation;
- without registration of a local domain name, a domestic Internet access provider (IAP) will not be allowed to provide network access services (and therefore the website will not be accessible in China); and

- the Draft Regulation will restrict domestic IAPs to only provide Internet access to domain names that are both locally registered and whose servers are hosted in China.

At present, many multi-national businesses have registered domain names with overseas registrars (such as GoDaddy and Network Solutions) for better Web security protection while hosting their websites on local servers in China (in order to achieve faster Web access by end users). In light of the Draft Regulation, such businesses may need to approach Chinese registrars for a domestic domain name registration and to ensure that they undergo a real-name registration check and Internet content provider (ICP) filing/permit requirements.

As for foreign websites that have both domain names registered, and servers located, overseas, it is as yet unclear whether such websites will be caught by the new requirements of the Draft Regulation.

### **Restructuring of approval authorities**

Current requirements under Decree 30 stipulate that the MIIT is the regulatory body with administrative scope over the root domain name servers body, domain name root server-running body, domain name registration management body and domain name registration service body established in China (ISPs).

As proposed under the Draft Regulation, the MIIT will delegate its approval powers to telecommunications management bureaus, which will then oversee the setting up of a registration service body. As a result, the MIIT will be responsible for the supervision and administration work on a national level, while local government departments above the provincial level will be responsible for management of domain name services.

### **Requirements for domestic establishment of the registration service body**

Registrars issuing domain names from China must obtain a license, which will have a validity period of five years.

For domestic establishment of a registration service body, the minimum registered capital thresholds are to be removed. However, for foreign investors, foreign investment restrictions for basic telecom and value-added telecom services will continue to apply.

The Draft Regulation also provides for a “dual domestic requirement” on all ISPs, which will require all server, database, management systems and resolution systems of the ISPs to be established in China. In addition, ISPs must also be a legal person lawfully established in China.

### **Strengthening management on domain name resolution**

The Draft Regulation emphasizes obligations on the part of the domain name resolution (DNS) service provider. The DNS service provider shall not:

- tamper with DNS information without authorization;
- redirect Internet traffic in respect of a domain name to another IP address without permission; and
- provide domain name redirection for illegal network information services.

Punishments include making corrections within a limited timeframe or a fine from RMB 10,000 to 30,000 (USD 1,500 to 4,600), based on the gravity of the situation. Accordingly in trademark infringement cases or defamation disputes, the DNS service provider will be liable for tampering with DNS without authorization.

## Potential increases in number of registrations

In light of Article 37 of the Draft Regulation, it is anticipated that an increasing number of businesses will start to apply for registration of domestic domain names in China. In order to meet such demand, it is likely that the domain name dispute resolution policies of the China Internet Network Information Centre (CINIC) will need to be reformed. For example, such reform might need to consider whether the scope of accepting cases is too narrow and the threshold for acceptance of a case is too high.

The Draft Regulation reiterates the existing principle of “first priority” (that is, the first to apply is the first to be registered) for domain name registration, and removes the filing requirement to the MIIT. Under the Draft Regulation, registration shall not prejudice any pre-existing rights of others, such as the prior rights of a trademark owner.

## Next steps for businesses

Given the public consultation period, the Draft Regulation is likely to go through further modifications in the coming months. Businesses with current operations in China, or which are looking to expand into China, will need to comply with the new requirements in order to ensure that their online presence in China remains unaffected.

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