

JUNHE SPECIAL REPORT



August 3, 2020

Questions and Answers regarding Common Compliance Issues Relating to Prize-attached Sales

The provision of giveaways, lucky draws and other prize-attached sales activities has always been an important means of marketing for retailers. While providing economic benefits for business operators, prize-attached sales may also bring up legal issues regarding fair competition and the protection of consumer interests. Prize-attached sales activities have always been one of the main focus areas of anti-unfair competition law enforcement.

On June 11, 2020, the State Administration for Market Regulation of the PRC (the “**SAMR**”, formerly known as the State Administration for Industry and Commerce (“**SAIC**”)) issued the *Circular on Strengthening Law Enforcement against Unfair Competition to Create a Fair Competition Environment* (the “**Circular**”), requiring local authorities to further step up their law enforcement efforts against unfair competition, create a market environment for fair competition, and help fully resume work and production¹. On August 30, 2019, SAMR released the *Interim Provisions on*

Regulating Prize-attached Sales and Other Promotional Activities (Draft for Comment) (the “**Draft Provisions**”)². Both official documents show that the administrative law enforcement authorities attach great importance to the regulation of prize-attached sales and are of guiding significance for business operators.

The *Certain Provisions on Prohibiting Unfair Competition in Prize-attached Sales* (the “**Provisions on Prize-attached Sales**”)³ came into force in 1993 and have been in operation for 27 years. In light of the great changes in society and the rapid economic development over the last 20 years, the *Anti-unfair Competition Law of the People’s Republic of China* (the “**Anti-unfair Competition Law**”), to which the Provisions on Prize-attached Sales is subordinated, was revised in 2017⁴. This included imposing a new upper limit on the highest prize amount in a prize-attached sale in the form of a lucky draw. Nowadays the Provisions on Prize-attached Sales cannot fully address the complicated cases that law

¹ See http://www.samr.gov.cn/jjj/fbzdjz/202006/t20200622_317183.html.
² Published by the SAMR on August 30, 2019 to seek public comments.
³ Published by the former SAIC on and effective as of December 24, 1993.
⁴ The Anti-unfair Competition Law revised in 2017 was promulgated by the Standing Committee of the National People’s Congress (the

“**NPC**”) on November 4, 2017 and effective as of January 1, 2018, and has been revised again in 2019. The currently effective Anti-unfair Competition Law was promulgated and came into force on April 23, 2019, keeping unchanged the provision of the 2017 Anti-unfair Competition Law concerning the upper limit of the highest prize in a prize-attached sale in the form of lucky draw.

enforcement authorities face in practice, and are inconsistent with the Anti-unfair Competition Law to some extent. In practice, law enforcement authorities need to determine complicated cases not only in accordance with the Provisions on Prize-attached Sales but also in reference to the provisions and principles embodied in the Anti-unfair Competition Law, the *Law of the People's Republic of China on the Protection of Consumer Rights and Interests* (the “**Consumer Protection Law**”)⁵ and other higher-level laws.

We understand that compared with the Provisions on Prize-attached Sales, the detailed provisions in the Draft Provisions reflect to some extent some of the existing viewpoints held by law enforcement officers in their current law enforcement practice based on the existing laws and legal principles. Although the Draft Provisions have not come into force officially, they can still be a guide for business operators in terms of legal compliance.

Below we will share with you some of the legal issues related to prize-attached sales that we have encountered in our practice by way of Q&As.

Q1 What is a prize-attached sale? Is it deemed a prize-attached sale if the prizes are provided free of charge without commodities being sold to consumers?

Pursuant to the currently effective Provisions on Prize-attached Sales, a prize-attached sale refers to a business operator's act of providing goods, prize money or other economic benefits to

purchasers in conjunction with its **sale of commodities or the provision of services to such purchasers.**

Pursuant to Article 10 of the Draft Provisions, which has not yet come into force, a prize-attached sale refers to a business operator's act of providing money, goods or other benefits to consumers or the relevant public (and references hereinafter to “consumers” shall include the relevant public) **for the purpose of selling commodities or providing services** (and references hereinafter to “sale of commodities” shall include the provision of services) **or for the purpose of obtaining competitive advantages.**

Brief Analysis:

Both the currently effective Provisions on Prize-attached Sales and the Draft Provisions show that situation qualifying as “prize-attached sales” is not limited to actual sales only. The Draft Provisions further expand the meaning of “prize-attached sales” to include the provision of goods, prize money or other economic benefits “for the purpose of obtaining competitive advantages”, and the actual conclusion of a transaction will not be a precondition.

In fact, the *Reply of the State Administration for Industry and Commerce to Whether Prize-Attached Contests Conducted by Cable TV Stations in Provision of TV Program Services Constitute Unfair Competition* issued in 1998⁶ clarifies that “*no matter whether prizes are provided to the purchasers of commodities or to other parties concerned, the provision of such prizes may constitute a prize-*

⁵ Published by the NPC Standing Committee on October 25, 2013 and effective as of March 15, 2014.

⁶ Published by the former SAIC on and effective as of April 2, 1998.

attached sale as long as it is for the purpose of promoting the sale of such commodities.” The Reply of the State Administration for Industry and Commerce to the Issue Whether Prized-attached Sales Conducted by Websites in the Provision of Online Shopping Services Constitutes Unfair Competition issued in 2004⁷ clarifies that “the provision of goods, money or other economic benefits by website operators in connection with and during their provision of online services, online shopping and other business activities for the purpose of attracting advertising clients, enhancing the popularity of their websites and increasing the click rates of their users, constitutes prize-attached sales.”

Based on our communications with law enforcement authorities in handling relevant cases, the meaning of “sale” in the Anti-unfair Competition Law enforcement context is far broader than the narrow meaning of “sale” (i.e. the payment of money by consumers and the provision of products or services by businesses). The provision of prizes before the actual transaction between consumers and businesses or for the purpose of promotion and publicity may also constitute a “prize-attached sale”.

Prize-attached sales can be divided into prize-attached sales in the form of lucky draws and prize-attached sales in the form of the provision of giveaways to all purchasers. Under normal circumstances, lucky draws and the provision of giveaways are essentially aimed at obtaining certain competitive advantages and materializing

certain potential economic benefits, regardless of whether consumers are requested to buy relevant commodities as a prerequisite. In practice, a large number of prize-attached activities are aimed at potential customers, with the aim of developing the market, and are not conditional upon actual transactions. Therefore, even if consumers participating in the prize-attached activities are not required to enter into any transactions before claiming prizes or participating in lucky draws, such prize-attached activities may still be determined as “prize-attached sales” and may thus be subject to the laws and regulations governing prize-attached sales.

Q2 What is the relationship between prize-attached sales and sales promotions?

In accordance with Article 8 of the current *Administrative Measures for Sales Promotion Activities of Retailers*⁸, when undertaking a sales promotion, a retailer shall pay taxes on its commodities promoted therein (including the prizes and giveaways in case of prize-attached sales) pursuant to the law. Therefore, sales promotions include prize-attached sales.

Brief Analysis:

Pursuant to the Draft Provisions, prize-attached sales shall be deemed as a type of sales promotion. Therefore, business operators engaging in prize-attached sales activities shall not only comply with the explicit provisions on prize-attached sales, but also comply with the laws and

⁷ Published by the former SAIC on and effective as of March 17, 2004.

⁸ Published by the Ministry of Commerce (“MOFCOM”), the National Development and Reform Commission (the “NDRC”), the Ministry of

Public Security, the State Administration of Taxation and the former SAIC on September 12, 2006 and effective as of October 15, 2006.

regulations governing sales promotions, including the *Administrative Measures for Sales Promotion Activities of Retailers* as mentioned above.

Q3 What are the acts of unfair competition that may be involved in prize-attached sales?

The acts of unfair competition involved in a prize-attached sale mainly include providing unclear information about the prize-attached sale, falsely claiming that there are prizes, adopting a lucky draw mechanism that is not fair and reasonable, and providing prizes in excess of the upper limit set by law in a lucky draw.

Brief Analysis:

The Provisions on Prize-attached Sales contains a non-exhaustive list of those prize-attached sales constituting unfair competition. Article 3 of the Provisions on Prize-attached Sales lists deceptive prize-attached sales acts including “making false and untrue statements on the types of prizes, the probability of winning a prize, the amount of the highest prize, the total amount of the prizes, the types, quantity, quality and methods of offering of the prizes, “deliberately ensuring pre-determined individuals win the prizes by improper means”, “deliberately refraining from putting the commodities or lottery tickets that bear the prize-winning markings into the market or deliberately refraining from putting such commodities or lottery tickets into the market together with the other commodities or lottery tickets; or deliberately putting the commodities or lottery tickets that bear the prize-winning markings representing different prize amounts or prizes into the market at different times” and “other deceptive prize-attached sales

acts.” Among them, “other deceptive prize-attached sales acts” shall be determined by the administration for industry and commerce (AIC) authorities at the provincial level or above, and such determinations as may be made by the AIC authorities at the provincial level shall be filed with the SAIC for record.

Pursuant to Article 10 of the Anti-unfair Competition Law revised in 2017, unfair competition in a prize-attached sale includes (1) providing unclear information about the prize-attached sale, such as the types of prizes, the conditions for claiming prizes, the amounts of the prize money, or the goods offered as prizes, thereby affecting the claiming of the prizes; (2) carrying out the prize-attached sale deceptively by falsely claiming that there are prizes or intentionally ensuring pre-determined individuals win the prizes; and (3) if it is a prize-attached sale in the form of a lucky draw, providing that the amount of the highest prize is in excess of RMB 50,000.

The Anti-unfair Competition Law that was revised in 2017 includes the practice of “providing unclear information about the prize-attached sale, thereby affecting the claiming of the prizes” as an act of unfair competition, because in practice some business operators intentionally create obstacles to hinder consumers from claiming the prizes when organizing prize-attached sales, i.e. “affecting the claiming of the prizes”. The Anti-unfair Competition Law makes it clear that the provision of “unclear information” may constitute an act of unfair competition in a prize-attached sale as long as it may affect the claiming of the prizes, and requires

business operators to make clear and true statements in advance as to the rules, conditions, type and value of prizes for their prize-attached sales. Similarly, Article 15 of the Draft Provisions also specifies a non-exhaustive list, but removes the “other deceptive prize-attached sales acts” determined by the AIC authorities at or above the provincial level.

Q4 If, in a prize-attached sale in the form of a lucky draw, different quantities of prizes are assigned to different regions while only the total quantity of the prizes is disclosed publicly, will there be any risk of unfair competition?

The practice may constitute unfair competition.

Brief Analysis:

In practice, business operators may classify the different prizes in a prize pool based on the number of consumers in different regions and their purchasing ability. For example, by setting a higher probability of winning a prize in those regions having higher sales volumes and a lower probability of winning a prize in those regions having lower sales volumes. The existing laws and regulations do not require all the regions covered in a prize-attached sale to be treated equally. However, based on our communications with law enforcement authorities in practice, in order to meet the obligation to protect consumers’ rights to information and the disclosure obligations set forth in Article 6 of the Provisions on Prize-attached Sales, if a business operator intends to provide different quantities of prizes or set different probabilities of winning a prize for different regions,

then while ensuring that the prize-attached sale is carried out independently in different regions, the business operator shall not only clearly state the quantity of prizes and the probability of winning a prize for each region in its rules about the prize-attached sale, but also clearly disclose the aforesaid differences in the prize-attached sales to be conducted in the different regions. If the business operator only discloses that “the quantity of prizes may vary region by region” without disclosing the specific quantity for each region, the practice may be deemed to have damaged the consumers’ right to information and thus constitute an act of unfair competition under the Anti-unfair Competition Law, i.e. “falsely claiming that there are prizes”.

Q5 What should a business operator do if it cannot confirm the exact probability of winning a prize at the time of publishing the rules of a lucky draw?

If a business operator cannot confirm the exact probability of winning a prize, it may consider disclosing the calculation formula it adopted to determine the prize winners in the rules for the prize-attached sale and provide an explanation for its inability to so determine the probability of winning a prize.

Brief Analysis:

Pursuant to Article 6 of the Provisions on Prize-attached Sales, (i) when holding a prize-attached sale, the business operator shall make clear statements to the purchasers as to the prize type, the probability of winning a prize, the amount of the prize money or the types of prizes, the time and

method for claiming prizes, and other information. and (ii) in the case of a prize-attached sale where the winners are announced on site immediately, the time, venue and method of the announcement of the winners as well as the time and method of informing the winners shall also be disclosed. However, in practice, there are a large number of cases whereby it is objectively unable to predetermine the total number of people participating in a lucky draw, making it impossible to disclose in advance the probability of winning a prize. For example, the organizer of a lucky draw on an e-commerce website may be unable to predetermine the exact number of participants and thus is unable to disclose the exact probability of winning a prize. Based on our case studies and communications with some law enforcement authorities, we understand that the Provisions on Prize-attached Sales is intended to regulate and punish the act of misleading consumers by concealing sales activities. If the business operator is objectively unable to determine and accurately specify the probability of winning a prize, the business operator may consider disclosing its inability in the lucky draw rules, set out a formula in the lucky draw rules, and make an explanation for its inability to confirm in advance the probability of winning a prize.

Q6 Are there any requirements on the time limit for publicly disclosing the prizes in a prize-attached sale in the form of a lucky draw?

Pursuant to Article 6 of the Provisions on Prize-attached Sales, in the case of a prize-attached sale where the winners would not be announced on site

immediately, the participants shall be explicitly advised of the time, venue and method of announcement of the winners as well as the time and method of informing the winners, and in case of a prize-attached sale where the winners would be announced at the sales site immediately, the business operator shall explicitly disclose in a timely manner to the purchasers as to those prizes having a value of more than RMB 500 that have been claimed.

Brief Analysis:

Whether large-value prizes still remain in the prize pool will affect consumers' purchasing decisions. Pursuant to Article 6 of the Provisions on Prize-attached Sales, in the case of a prize-attached sale where the winners would not be announced at the site immediately, the participants shall be explicitly advised of the time, venue and method of the announcement of the winners as well as the time and method of informing the winners, and in the case of a prize-attached sale where the winners would be announced on site immediately, the business operator shall make a public disclosure to the purchasers on a real time basis as to those prizes having a value of more than RMB 500 that have been claimed. In such a case, publishing the information regarding those prizes with a value of more than RMB 500 that have been claimed will constitute an honest statement on the prize-attached sale, and the failure to publish such information may constitute a deceptive prize-attached sale.

Q7 What should a business operator know when indicating the value or price of a prize?

Pursuant to Article 5 of the Provisions on Prize-attached Sales, business operators shall not market commodities that are of an inferior quality and/or overpriced by way of prize-attached sales. When carrying out prize-attached sales activities, the business operators shall truthfully indicate the price or value of the giveaways and keep the relevant evidence. The value or price should be determined based on the market value or price and should not be inflated.

Brief Analysis:

In practice, when determining whether the prizes offered in a prize-attached sale are of inferior quality and/or overpriced or whether the value of the prizes is inflated, law enforcement authorities usually take into consideration the price and quality of the same type of commodities in the same period of time on the market as well as the complaints of the purchasers. Pursuant to Article 12 of the Draft Provisions, if a business operator carries out a prize-attached sales campaign and indicates the price value of the prizes, the price value of the prizes so indicated shall be consistent with the sales price of the same kind of commodities in the same business premises. If the prizes are in the form of articles or other benefits other than cash, the value thereof shall be calculated based on the price of the same type of commodities or services on the market during the same period of time. Therefore, we suggest that in indicating the price of the prizes, business operators should take into account the price of the same types of products in the same

shopping mall or the market prices of the same types of products over the same period of time to avoid the risk of price fraud.

In particular, please note that in indicating the price of commodities, business operators should be careful to use the term “original price”. Pursuant to Article 3 of the *Circular on Interpretation of Relevant Provisions of the Provisions on Prohibition of Price Fraud*⁹, if a business operator desires to indicate the “original price” of a commodity in a prize-attached sale, the original price shall be the lowest of the prices of those transactions made at its premises within seven days before the prize-attached sale as evidenced by the transaction documents available, or, if no transaction is made within the aforesaid seven days, the price of the last transaction immediately before the prize-attached sale. With respect to a giveaway that the business operator has not sold before, it should avoid using the term “original price”, “original sales price” or other similar words, otherwise it may be exposed to the risk of price fraud.

Q8 What should a business operator know when describing the prizes in a prize-attached sale?

The prizes in a prize-attached sale shall be described in compliance with the *Advertising Law of the People's Republic of China* (the “**Advertising Law**”)¹⁰ and other relevant laws and regulations, in addition to including such information as is required under the Provisions on Prize-attached Sales such as the value and types of the prizes.

⁹ Published by the NDRC on and effective as of June 15, 2015.

¹⁰ Published by the NPC Standing Committee on and effective as of October 26, 2018.

Brief Analysis

In practice, the publicity of giveaways offered in prize-attached sales activities may be determined as advertising and thus be subject to the Advertising Law. Pursuant to Article 8.2 of the Advertising Law, if an advertisement states that any commodity or service will be provided as a giveaway, the type, specifications, quantity, period and means of provision of such a commodity or service shall be expressly stated. No business operator shall make exaggerated descriptions in respect of the giveaways on the grounds that they are not directly sold, and business operators shall make accurate and clear statements as to the names, quantities, performance and intended purpose of the giveaways provided in their prize-attached sales activities. In addition, when describing the prizes offered in prize-attached sales, business operators shall also avoid advertising violations expressly stipulated in the Advertising Law, for example, business operators shall use data prudently to describe the effects of the prizes, clearly indicate the sources of the data cited and avoid using superlative adjectives and adverbs, so as to avoid advertising violations arising out of the improper description of the prizes.

Q9 Are there any special compliance requirements for gift certificates, shopping cards and vouchers?

When offering such prizes as gift certificates, shopping cards or vouchers, business operators

should determine whether such prizes are single-purpose prepaid cards (as defined below) and should comply with the relevant provisions of the law if this is the case.

Brief Analysis:

Pursuant to the *Administrative Measures for Single-purpose Commercial Pre-paid Cards (Tentative)*¹¹, single-purpose commercial pre-paid cards (the “**single-purpose pre-paid cards**”) shall mean the certificates of prepayment issued by a business operator that can only be used by consumers to pay for the commodities or services provided by that business operator or by the group of companies of which that business operator is a member or within the franchise system of the same brand.

The gift voucher and membership cards issued by business operators as prizes in the process of prize-attached sales are very likely to constitute single-purpose pre-paid cards or may only be used to redeem specified commodities or services. For example, the *Administrative Provisions of Shanghai Municipality on Single-purpose Pre-paid Consumption Cards*¹² clearly stipulates that the cards and vouchers to be redeemed for specific commodities or services are not single-purpose pre-paid cards. Based on our communications with law enforcement authorities in Shanghai, cards and vouchers to be redeemed for specified commodities such as moon cakes, rice dumplings, hairy crabs and complimentary coffees should be deemed as

¹¹ Published by the MOFCOM on and effective as of August 18, 2016.

¹² Published by the Standing Committee of the Shanghai Municipal People's Congress on July 27, 2018 and effective as of January 1, 2019.

“cards/vouchers for specified redemption” and should not constitute single-purpose pre-paid cards in Shanghai.

Therefore, in practice, whether the cards and vouchers that business operators issue to consumers as prizes constitute single-purpose pre-paid cards or not is subject to different regulations in different regions and the law enforcement practices of the administrative authorities in the different regions. If the cards and vouchers constitute single-purpose pre-paid cards, business operators shall perform the record-filing formalities with the local commerce authorities and comply with the relevant provisions of law governing single-purpose pre-paid cards.

Q10 Are business operators permitted to organize international prize-attached sales? If yes, is the prize value allowed to be denominated in a currency other than RMB?

Business operators may carry out prize-attached sales involving multiple countries/regions but it is not recommended to indicate the value of the prizes to be offered in mainland China in currencies other than RMB.

Brief Analysis:

The prize-attached sales activities held by multinational companies to promote their commodities and services may involve multiple countries/regions. In accordance with the current laws and regulations and practices of China, business operators are not prohibited from making the prizes available internationally. The Anti-Unfair

Competition Law, the Provisions on Prize-attached Sales, the Advertising Law, the Consumer Protection Law and other applicable PRC laws and regulations shall be complied with as long as an international prize-attached sale involves consumers within the territory of the People's Republic of China or is held within the territory of the People's Republic of China, regardless of the number of participating countries/regions.

In addition, pursuant to Article 8 of the *Foreign Exchange Administration Regulations*¹³, foreign currencies are prohibited from circulation in China and may not be used to denominate prices or make payments, unless otherwise provided by the State. If the international prize-attached sale held by a business operator covers mainland China, the price or value of the prizes offered in mainland China shall be clearly denominated in RMB.

If a business operator intends to provide different quantities of prizes or set different probabilities of winning a prize in different countries/regions, it should, at a minimum, explicitly indicate in its rules for the prize-attached sale the quantity of the prizes offered in China and the probability of winning a prize in China. If the quantity of prizes and the probability of winning a prize in China differs from those in the other participating countries/regions, the differences shall also be explicitly indicated. If the business operator only indicates that “the quantity of the prizes differs from country/region to country/region” without disclosing the specific quantity for each country/region, the practice may be determined to have damaged the

¹³Published by the State Council on and effective as of August 5, 2008.

consumers' right to information and may thus constitute an act of unfair competition under the Anti-unfair Competition Law, i.e. "falsely claiming that there are prizes".

Q11 Is there a requirement to keep the relevant records of the lucky draw process for a prize-attached sale in the form of a lucky draw?

The existing PRC laws and regulations have no such mandatory requirements. However, the Draft Provisions touch upon the issue.

Brief Analysis:

Although no existing PRC laws and regulations contain explicit provisions requiring business operators to retain internal records or specify a period for keeping internal records, it is noteworthy that pursuant to Article 18 of the Draft Provisions, business operators shall faithfully, accurately and completely record, among other things, the rules, information publicly disclosed, results of the claiming of prizes and the prize winners, properly keep the said records for two years, and accept supervision and inspection in accordance with the law. We therefore suggest that after the new rule governing prize-attached sales is officially issued, business operators should retain the related lucky draw records and original data about their prize-attached sales, fully retain the internal records as to the lucky draw method, process and results, and, where necessary, notarize the lucky draw process.

Q12 What are the possible consequences if a

prize-attached sale is determined to constitute unfair competition?

A business operator who is found to have conducted a prize-attached sale that constitutes unfair competition may be subject to administrative penalties such as being ordered to stop its illegal act or receive an administrative fine, and may also be required to bear civil liabilities if the legitimate rights and interests of consumers are damaged.

Brief Analysis:

Pursuant to the Anti-unfair Competition Law, the Provisions on Prize-attached Sales and the Draft Provisions, in the case of an illegal prize-attached sale, the business operator will be ordered to cease its illegal act and pay a fine of not less than RMB 50,000 but not more than RMB 500,000.

In addition, in accordance with Article 40 of the *Pricing Law of the People's Republic of China*¹⁴ and Article 7 of the *Provisions on Administrative Punishments for Price-related Violations*¹⁵, if a business operator makes up false prices or falsifies the original prices in its prize-attached sale, it will be ordered to make rectification, surrender its illegal income, and pay a fine of up to five times its illegal income, or, if there is no illegal income, a fine between RMB 50,000 and RMB 500,000; in serious circumstances, it will be ordered to suspend its business to make rectification, or its business license be revoked by the relevant administrative authority.

Article 56 of the Consumer Protection Law,

¹⁴ Published by the NPC Standing Committee on December 29, 1997 and effective as of May 1, 1998.

¹⁵ Published by the State Council on and effective as of December 4, 2010.

Article 20 of the Anti-unfair Competition Law and Article 22 of the Anti-unfair Competition Law all provide that business operators will be subject to administrative punishments for false publicity with respect to information about their prize-attached sales. In practice, law enforcement authorities may impose administrative punishments based on one or more of the provisions of law as to the false statements made on the probability of winning a prize or prizes.

In addition, if the improper prize-attached sale has damaged the legitimate rights and interests of a consumer, the consumer may file a civil lawsuit on the basis of fraud or breach of contract to require the operator to return the purchase price paid and compensate the consumer for his/her loss. If the business operator conducts any prize-attached sale in which any false publicity is conducted or the information provided is unclear, and such false publicity is sufficient to affect the purchasing decisions of consumers, the business operator may be determined by the relevant judicial authority to have committed fraud. Pursuant to Article 55 of the Consumer Protection Law, if the prize-attached sale carried out by a business operator constitutes fraud, the business operator may be required to pay the relevant consumer compensation in an amount equal to three times the price paid by that consumer for the purchase of goods or receipt of services.

Q13 What should business operators know in order to use personal information correctly in their prize-attached sales?

Business operators collecting and using personal information in their prize-attached sales shall comply with the relevant laws and regulations, including the execution of agreements on the collection and use of personal information and the adoption of measures to prevent the leakage of personal information.

Brief Analysis:

Pursuant to Article 41 of the *Cyber Security Law of the People's Republic of China*¹⁶, (i) in collecting and using personal information, cyber operators shall follow the principles of legitimacy, fairness and necessity, publicly disclose their rules for information collection and use, and expressly indicate the purpose, method and scope of information collection and use, and obtain the consent of the individuals whose personal information is collected; and (ii) cyber operators shall not collect personal information unrelated to the services they provide, or collect or use personal information in violation of the applicable laws and administrative regulations or their agreements with the individuals whose personal information is collected; and shall dispose of the personal information they have stored in accordance with the applicable laws and administrative regulations and the agreements reached with users. Article 42 of the law stipulates that (i) cyber operators shall not divulge, tamper with or destroy the personal information they have collected, and shall not provide personal information to others without the consent of the individuals whose information is

¹⁶ Published by the NPC Standing Committee on November 7, 2016 and effective as of June 1, 2017.

collected, except where the information has been processed so that it is no longer personally identifiable and cannot be restored; and (ii) cyber operators shall take technical and other necessary measures to ensure the security of the personal information they have collected and prevent such information from being divulged, destroyed or lost, and if any personal information has been or may be divulged, destroyed or lost, it shall take remedial measures immediately, and inform the users and report the matter to the competent authorities in a timely manner in accordance with the relevant requirements.

In practice, if a business operator requires participants to provide their personal information (such as their name, mobile phone number or email address) to participate in a prize-attached sale, it is advisable for the business operator to include, in its rules for the prize-attached sale, the relevant clauses stating that the consumer has given their explicit consent to the use of their personal

information for the purposes of the prize-attached sale, including for the purpose of notifying the prize-winners, and draw the attention of the consumer to such clauses in a prominent manner. During prize-attached sales activities, especially those carried out online (such as through mobile applications), business operators shall pay attention to the personal information storage locations and storage methods and undertake security measures to protect the personal information.

The above information is based on our understanding of the current PRC laws, regulations and law enforcement practices. After the new rules governing prize-attached sales come into force officially, the compliance requirements for prize-attached sales may change in practice. Helping business operators to achieve legal compliance and minimize their legal risks in their marketing activities remains one of our long-term goals.

Qi, Da	Partner	Tel: 86 21 2208 6347
Chen, Yi	Associate	Tel: 86 21 2283 8226
Tang, Yingpei	Associate	Tel: 86 21 2283 8385

Email: qid@junhe.com

Email: chenyi_Yvette@junhe.com

Email: tangyp@junhe.com

Legal advice or opinion of Jun He Law Offices. For more information, please visit our official website at www.junhe.com or our WeChat public account “君合法律评论”/WeChat account “JUNHE_LegalUpdates”

