

China's New Digital Game Treasure Box Rules Become Effective

CHINA REGULATION WATCH¹

June 6, 2017

By: Greg Pilarowski | Charles Yu | Samuel Gintel

On May 1, 2017, the Notice on Regulating Online Game Operation and Strengthening Concurrent and Ex-Post Supervisions (文化部关于规范网络游戏运营加强事中事后监管工作的通知) (the “New Game Operation Rules”) came into effect. The New Game Operation Rules, together with an official interpretation (《文化部关于规范网络游戏运营加强事中事后监管工作的通知》有关问题的解读) (the “Rule Interpretation”), were issued by China’s Ministry of Culture (文化部) (“MOC”) on December 1, 2016.

The New Game Operation Rules are intended to confirm and introduce a series of regulatory requirements governing online game operation in China. The Rule Interpretation summarizes the main content of the New Game Operation Rules, which includes (i) clarifying several vague terms in existing regulations, such as the term “online game operation” (网络游戏运营), (ii) regulating services related to in-game virtual items, including online game virtual currency, (iii) strengthening the protection of players, (iv) improving the supervision of online game operation, and (v) refining the penalties for violating the New Game Operation Rules.² Such regulations and protections, among other things, directly affect popular “treasure box features” that are utilized as a significant source of revenue for online game operators in China.

Similar to the other rules that regulate China’s online game industry, it is important to communicate with the relevant regulators to understand the vague language and unstated policies that lie behind the New Game Operation Rules. In April 2017, before the New Game Operation Rules went into effect, we had informal discussions with MOC staff where we obtained additional insight into the actual application of the regulatory requirements set forth in the New Game Operation Rules.

1. **Online Game Virtual Currency and Treasure Boxes**

China’s regulatory scheme regarding online game virtual currency has broadened as a result of an expanded scope of the term “online game virtual currency” under the New Game Operation Rules. Moreover, the New Game Operation Rules also change the landscape regarding the “treasure box features” that are widely used in China’s mobile games in an effort to increase transparency and restrict the use of legal currency to purchase treasure boxes.

¹ This Regulation Watch is provided by Pillar Legal, P.C. (the “Firm”) as a service to clients and other readers. The information contained in this publication should not be construed as legal advice, and use of this memorandum does not create an attorney-client relationship between the reader and the Firm. In addition, the information has not been updated since the date first set forth above and may be required to be updated or customized for particular facts and circumstances. This Regulation Watch may be considered “Attorney Advertising” under applicable law. Questions regarding the matters discussed in this publication may be directed to the Firm at the following contact details: +1-925-474-3258 (San Francisco Bay Area office), +86-21-5876-0206 (Shanghai office), email: greg@pillarlegalpc.com. Firm website: www.pillarlegalpc.com © 2017 Pillar Legal, P.C.

² See Article 3 of the Rule Interpretation.

(a) Expanded Scope of Online Game Virtual Currency

The scope of the term “online game virtual currency” has expanded under the New Game Operation Rules to include one subcategory of virtual currency that is issued inside online games (“In-Game Virtual Currency”), thereby subjecting such subcategory of In-Game Virtual Currency to China’s online game virtual currency rules.

Previously, the term “online game virtual currency”, as originally defined in the Notice on Strengthening Administration of Virtual Currency in Online Games (关于加强网络游戏虚拟货币管理工作通知), jointly issued by MOC and the Ministry of Commerce on June 4, 2009 (the “2009 Virtual Currency Notice”), only referred to digital currencies that exist outside online games (“Platform Virtual Currency”, and together with In-Game Virtual Currency, “Virtual Currency”). This narrow definition, however, allowed many online game companies to bypass the restrictions set forth in the 2009 Virtual Currency Notice by issuing In-Game Virtual Currency and using such In-Game Virtual Currency in ways that would not have been permitted by those rules if Platform Virtual Currency had been used.

The New Game Operation Rules now expand the scope of the term “online game virtual currency” to also include any In-Game Virtual Currency that can be purchased with legal currency (“In-Game Purchased Virtual Currency”).³ In addition, pursuant to the New Game Operation Rules, in-game “virtual items” that can be exchanged for other virtual items or value-added services and can be purchased with legal currency or online game virtual currency, which now includes Platform Virtual Currency and In-Game Purchased Virtual Currency, are now also subject to China’s online game virtual currency rules, including the 2009 Virtual Currency Notice.⁴

The New Game Operation Rules also reiterate and confirm certain existing online game virtual currency rules, including that online game virtual currency, which now includes Platform Virtual Currency and In-Game Purchased Virtual Currency, may only be used to pay for virtual items and services provided by the issuer, and not for tangible products or for third party products and services.⁵ In addition, In-Game Virtual Currency that is earned by way of playing the games (“In-Game Earned Virtual Currency”) and virtual items may not be redeemable by players in exchange for legal currency, with the exception that online game companies may redeem In-Game Earned Virtual Currency or virtual items in exchange for physical products of marginal value.⁶

(b) Rules regarding “Treasure Box Features”

The New Game Operation Rules specifically address regulation of “treasure box features” in online games, and aim to both increase transparency and curb the use of legal currency to purchase treasure boxes. Nevertheless, a work-around exists that effectively allows players to continue to indirectly use legal currency to purchase treasure boxes.

³ See Article 2, Section 4 of the New Game Operation Rules.

⁴ See Article 2, Section 4 of the New Game Operation Rules.

⁵ See Article 2, Section 9 of the New Game Operation Rules.

⁶ See Article 2, Section 10 of the New Game Operation Rules.



MOC first started restricting treasure box features in 2009.⁷ According to the 2009 Virtual Currency Notice, a treasure box feature is a game feature that randomly allocates online game virtual currency, virtual items or value-added services based on the outcome of a lottery style function that requires payment of legal currency or online game virtual currency to participate.⁸ Because the term “online game virtual currency” previously did not include In-Game Virtual Currency, however, many online game companies were able to circumvent the treasure box ban by allowing users to spend In-Game Virtual Currency to access treasure box features. The circumvention was so prevalent that almost every online game company in China not only included treasure box features in their games, but also utilized, and still do utilize, such features as main sources of profit.⁹

Although the New Game Operation Rules significantly change the rules regarding treasure box features, the rules confirm the legality of treasure boxes so long as certain conditions are satisfied.¹⁰ Details of such conditions and how the new treasure box rules differ from the old treasure box rules are set forth in the following table.

No.	Old Treasure Box Rules	New Treasure Box Rules ¹¹
1	<p>Treasure box features may not allow players to spend legal currency or online game virtual currency to participate.¹²</p> <p>The scope of “online game virtual currency” includes only Platform Virtual Currency.</p> <p>As a result, users may use In-Game Purchased Virtual Currency to utilize treasure box features.</p>	<p>Treasure box features may not allow players to spend legal currency or online game virtual currency to participate.¹³</p> <p>The scope of “online game virtual currency” includes both (i) Platform Virtual Currency, and (ii) In-Game Purchased Virtual Currency.</p> <p>As a result, users may not use In-Game Purchased Virtual Currency to utilize treasure box features.</p>
2	No such requirement	Online game operators shall timely and truthfully disclose all information regarding the potential virtual items or value-added services that may be obtained through treasure box features, including the names,

⁷ See Article 3, Section 20 of the 2009 Virtual Currency Notice, and Article 18 of the Interim Provisions on the Administration of Online Games.

⁸ See Article 3, Section 20 of the 2009 Virtual Currency Notice.

⁹ See “[Does MOC’s Prohibition on Item Sweepstakes Decrease the Profits for Game Companies in China?](#)”, published at chinaiplawyer.com on January 6, 2017.

¹⁰ See Article 6 of the Rule Interpretation.

¹¹ For an example of how Tencent and Riot Games comply with the new treasure box rules in connection with their game, League of Legends, see [League of Legends Treasure Box Disclosure](#).

¹² See Article 18 of the Interim Provisions on the Administration of Online Games.

¹³ See Article 2, Section 6 of the New Game Operation Rules.

No.	Old Treasure Box Rules	New Treasure Box Rules ¹¹
		functions, content and quantity of such virtual items or value-added services. ¹⁴
3	No such requirement	Online game operators shall timely and truthfully disclose the odds of obtaining, through their treasure box features, such potential virtual items or value-added services. ¹⁵
4	No such requirement	Online game operators shall provide and disclose alternative methods for players to obtain the same or similar virtual items or value-added services available in their treasure boxes, such as by way of exchanging other virtual items for them or directly purchasing such items or services with online game virtual currency. ¹⁶
5	No such requirement	Online game operators shall disclose the results of user participation in treasure box features on their official websites or in prominent locations in their games, and the records of such results are required to be kept for no less than 90 days. ¹⁷

According to the Rule Interpretation, the new treasure box rules are meant to promote the policy goals of (i) ensuring that players of online games are spending money on an informed basis and fully understand the potential outcomes, and (ii) eliminating the risk that online games are promoting gambling.¹⁸

Although using legal currency and In-Game Purchased Virtual Currency to purchase treasure boxes is prohibited under the New Game Operation Rules, players can still purchase treasure boxes by utilizing In-Game Earned Virtual Currency. Because many online games allow players to exchange Platform Virtual Currency and/or In-Game Purchased Virtual Currency for In-Game Earned Virtual Currency, players can effectively continue to indirectly use legal currency to purchase treasure boxes by way of such conversion (the “Conversion Method”). MOC staff indicated during our recent informal discussions that the Conversion Method does not violate the New Game Operation Rules.

¹⁴ See Article 2, Section 6 of the New Game Operation Rules.

¹⁵ See Article 2, Section 6 of the New Game Operation Rules.

¹⁶ See Article 2, Section 8 of the New Game Operation Rules.

¹⁷ See Article 2, Section 7 of the New Game Operation Rules.

¹⁸ See Article 6 of the Rule Interpretation.

2. Clarifications on Various Vague Terms

The New Game Operation Rules also redefine the term “online game operation” and clarify the scope of the term “online game joint operation”.

Under the New Game Operation Rules, “online game operation” generally refers to providing online game services to the public by way of allowing users to register accounts online or by downloading games from the internet, and obtaining profit from such online games through various means, including charging fees to play, e-commerce, advertising or sponsorship.¹⁹

The term “online game operation” is defined broadly, and includes, for example, uploading a mobile game to a mobile app store for download by players. Companies, however, are technically prohibited from participating in online game operation in China without obtaining an internet culture operation license issued by MOC.²⁰ Nevertheless, at the time of writing this article, we are not aware of MOC punishing any company or individual for distributing a mobile game through an app store without having the relevant internet culture operation license. As a result, it is currently unclear whether the rule will be enforced by MOC.

Moreover, the New Game Operation Rules clarify that any technical tests, such as closed beta or open beta tests, of online games where players are able to register accounts or make payments for Virtual Currency, virtual items or other services, or which includes direct registration and log-in server client software, are within the scope of “online game operation”.²¹

Further, the New Game Operation Rules clarify that entities are involved in “online game joint operation” if such entities: (i) provide user systems, payment systems, game downloads or promotional services for another company’s online game products, and (ii) participate in revenue sharing in connection with online game operations.²² As a result, cooperation between online game developers and various mobile app stores or online game distribution platforms, like Tencent’s WeGame, constitutes online game joint operation, and such app stores and online game distribution platforms therefore should obtain internet culture operation licenses. Pursuant to a compliance check with respect to the top 13 mobile app stores in China we conducted in April 2017, over 77% of the leading mobile app stores have already obtained such licenses.

3. Real-Name Registration and Other Online Game Users Protections

The New Game Operation Rules require online game operators to request that players provide their actual names and government issued identification numbers to complete game registration.²³

In China, many online games, including most mobile games, include a visitor mode under which players are able to play the games without providing their actual names and government issued

¹⁹ See Article 1, Section 1 of the New Game Operation Rules.

²⁰ See Article 6 of the Interim Provisions on the Administration of Online Games (网络游戏管理暂行办法) issued by MOC on March 17, 2010.

²¹ See Article 1, Section 2 of the New Game Operation Rules.

²² See Article 1, Section 3 of the New Game Operation Rules.

²³ See Article 3, Section 11 of the New Game Operation Rules.

identification numbers. In order to promote game registration and discourage visitor mode, the New Game Operation Rules restrict online games from allowing players to spend any money in-game if such users are logged-in as visitors.²⁴ The requirement to register using a player's actual name and government issued identification number is, however, relatively easy to circumvent by registering with either a real identification number together with a false name, or by registering with a false identification number that conforms to the 18 digit form of a real government issued identification number in China.

During informal discussions, MOC staff indicated that online game operators are currently not required to verify actual name and government issued identification number registration information provided by players because (i) it is impractical for online game operators to verify such information for each player, and (ii) such verification would require cooperation by various government departments, including the Ministry of Police Security (公安部), but the logistics of such cooperation has not yet been established. Other governmental authorities, such as the Cyberspace Administration of China, may require identity authentication by way of users' mobile phone numbers, which themselves are subject to actual name and government issued identification number verification by the telecommunications companies that issue such phone numbers. Currently, it is not clear whether MOC will similarly require online game operators to implement player identity verification through mobile phone numbers in the near future.

In addition, MOC requires each online game operator to display user rights protection contact information in a prominent place in the game. When lawful rights and interests of a player are infringed or a player has a dispute with another player, the relevant online game operator may request such player to present his or her valid government issued identification card to verify that the name and identification number matches the information provided by the player during registration. When found to match, the online game operator is obligated to assist such player with collecting evidence against the relevant infringer or other player, and to provide such player with copies of such evidence.²⁵ If the registration information is found not to match the information on the player's identification card, the online game operator has no such obligations.

Moreover, in order to restrict the amount of money players can spend in an online game, the New Game Operation Rules require the relevant online game operator to (i) set upper limits for the amount that a player can spend in a single transaction to purchase In-Game Purchased Virtual Currency, virtual items or value-added services, and (ii) provide a confirmation message in connection with the purchase of In-Game Purchased Virtual Currency, virtual items or value-added services, which such confirmation message shall include the payment amount of legal currency or Virtual Currency and identify the virtual items or value-added services the player is purchasing, as applicable.²⁶

²⁴ See Article 3, Section 11 of the New Game Operation Rules.

²⁵ See Article 3, Section 14 of the New Game Operation Rules.

²⁶ See Article 3, Section 12 of the New Game Operation Rules.

4. MOC Supervision of Online Game Operations

In order to enforce the New Game Operation Rules and other rules regulating the online game industry in China, MOC has adopted the principle of “Double Random, One Public”,²⁷ pursuant to which MOC and MOC’s branch offices in each province will randomly select members of MOC staff to randomly check online games in the market, and disclose the results of such checks to the public.

MOC has a history of performing random content compliance reviews for various online games available on the market. For example, in September 2016, MOC punished 36 online game operation entities, including Beijing Changyou Shidai Digital Technology Limited (北京畅游时代技术有限公司) and Shanghai Youzu Information Technology Limited (上海游族信息技术有限公司), two of the leading online game operators in China, for operating online games that contained gambling or pornographic content.²⁸

²⁷ See Article 4, Section 16 of the New Game Operation Rules.

²⁸ See “[MOC Arranged Random Check on Online Game Market, 200 Entities will be Checked](#)” (文化部部署网络游戏市场随机抽查 200 家单位将接受检查) (Chinese), posted at Xinhua Net on September 28, 2016.