

# China Legal Briefing\* 269

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## 1. Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases by Internet Courts

Following the establishment of the first internet court of the People's Republic of China (hereinafter referred to as "China") in Hangzhou in August 2017, Beijing and Guangzhou officially launched and opened two additional internet courts by the end of September this year. In order to promote the operations of the internet courts, the Supreme People's Court issued the *Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases by Internet Courts* (hereinafter referred to as "*the Provisions*") on September 6, 2018. *The Provisions* are only applicable to the internet courts in Beijing, Guangzhou and Hangzhou (hereinafter referred to as "Internet Courts"). They shall prevail in the event of any discrepancy between *the Provisions* and the judicial interpretations previously promulgated by the Supreme People's Court.

Judicial proceedings are carried out fully online in Internet Courts where the trial shall be conducted by means of video. The Internet Courts may exceptionally decide to complete some of the proceedings offline according to the application of the parties or the need for trial. If a party appeals a court decision made by an Internet Court, the court of second instance shall hear the case online in principle, thus the Court of Appeal should also modify its current system for litigation services to adopt an online trial. However, the Court of Appeal may decide to move the trial of second instance offline where the parties apply for the offline mode, or the court considers, inter alia, that the online method cannot effectively identify the facts or the evidence.

*The Provisions* further clarify the jurisdiction of the Internet Courts and the following key disputes shall be considered with special attention:

- Disputes arising from the execution or performance of online shopping contracts concluded through e-commerce platforms. Whereas the contract signed or executed only through an electronic form which does not involve an e-commerce platform is excluded from such centralized jurisdiction.
- Disputes over the financial loan contracts or small loan contracts with financial institutions or microfinance companies and for which execution

and performance activities are completed online. However, those contracts signed with Online P2P Lending Platforms are currently excluded since such contracts are signed between persons.

- Disputes over the ownership of the copyrights or neighboring rights of the works *published* on the Internet for the first time; and disputes arising from infringements upon the copyrights or neighboring rights of the works *published or disseminated* online through the Internet.

For the convenience of litigation, parties may legally agree upon the jurisdiction of an Internet Court at the place which is actually connected with their disputes. Where an e-commerce operator or network service provider, among others, concludes a jurisdiction agreement with a user in the form of a standard clause, the operator or provider shall give special instructions of such standard clause as required by law. Otherwise the Internet Courts shall determine the agreement on jurisdiction invalid.

The evidence rules in Internet Courts are as well differentiated from those in common courts. As the trial proceedings are to be completed fully online, parties can convert the offline evidence into electronic data by means of scanning, duplicating and transcription and have them uploaded to the litigation platform. As to those online evidence, besides submitted by the parties, the Internet Courts can also obtain structured information from e-commerce platform operators, network service providers, and electronic forensics depository platforms and provide them to the parties for option. As to the authenticity of those evidences, besides the traditional way of notary, the Internet Courts are allowed to adopt other technical means and related supporting mechanisms for substantive identification on the authenticity of electronic data.

## **2. Provisions of the Supreme People's Court on Several Issues Concerning the Determination of the Reference Price of Property Disposal**

In order to better protect the interests of the parties in relevant civil procedures, after the people's court seizes, detains or freezes the property, it shall initiate a procedure for determining the reference price for property disposal within 30 days for the property that needs to be auctioned or sold.

Previously, the reference price of the property disposal was to be determined solely by an entrusted institution. After the implementation of *the Provisions of the Supreme People's Court on Several Issues Concerning the Determination of the Reference Price of Property Disposal* (hereinafter referred to as “*the Provisions*”) on September 1, 2018, parties may obtain new methods as bargaining, targeted inquiry and online inquiry to determine the reference price for the property disposal.

*The Provisions* require the establishment of the list of national judicial network inquiry platform, the list of judicial evaluation agencies of the people's courts, and the system for inquiry evaluation of the people's courts, and move the reference price assessment work from offline to online in order to improve openness and transparency.

*The Provisions* stipulate that the enforcement applicant shall pay in advance the network inquiry fee and the entrusted evaluation fee. The person subject to enforcement shall burden such fees in the end. Furthermore, *the Provisions* introduce an insurance mechanism, in which the enforcement applicant can release itself from the payment of fees before the price assessment by signing a contract with an insurer, thus avoid the delay in such process caused by the unwillingness to pay from parties.

### **3. China Published Preferential Tax Policy in Bond Market**

On August 30, 2018, the State Council announced the exemption of income tax and value-added tax for overseas investors’ interest incomes of their investment in China’s bond markets for a period of three years.

According to article 6 of *Corporate Income Tax Law of the People’s Republic of China*(hereinafter referred to as “*Corporate Income Tax Law*”) and article 17 of *Notice of the Ministry of Finance and the State Administration of Taxation on Overall Implementation of the Pilot Program of Replacing Business Tax with Value-added Tax* (Caishui〔2016〕No.36), the income from interest is subject to Corporate Income Tax Law and *Provisional Regulations of the People’s Republic of China on Value-added Tax*(hereinafter referred to as “*VAT Tax Law*”) and shall be taxed in China. To activate the bond market and attract foreign investment, the State Council published a preferential policy for foreign investors, which

stipulates that income tax and value-added tax for foreign investors' interest incomes of their investment in the bond markets are exempted for a period of three years.

#### **4. Work Permits abolished for Taiwan, Hong Kong and Macao residents**

On 3 August 2018, the State Council issued a *Decision to Abolish a Batch of Administrative Licenses* (hereinafter referred to as "*Decision*"). The application and issuance of work permits which enable Taiwan, Hong Kong and Macao residents ("THM residents") to legally work in Mainland China have been abolished.

Before the issuance of the *Decision*, the previous *Administrative Regulations on the Employment of Taiwan, Hong Kong and Macau Residents in Mainland* stipulated that the employment of THM residents in Mainland China shall be subject to an employment permit system. Employers who intended to hire THM residents needed to apply for an employment permit. According to the newly issued *Decision*, work permits are no longer needed for THM residents working in China. In this respect, the *Decision* makes it easier for THM residents to work and live in Mainland China.

In the meantime, the *Decision* instructs the Ministry of Human Resources and Social Security to provide further detailed regulations to supervise THM residents working in Mainland China.

#### **5. E-commerce Law Impact Online Operators**

Having gone through five years of legislative process, the fourth and final draft of the *E-commerce Law of the People's Republic of China* (hereinafter referred to as "E-commerce Law") was finally adopted by the National People's Congress on August 31, 2018. The E-commerce Law will take effective from January 1, 2019.

This is the first fundamental law governing e-commerce industry in China. Compared with the previous third draft, the E-commerce Law comprises of only a very small number of noteworthy changes. You may find relevant information and a report on the third draft of the E-commerce Law in the China Legal Report of Wenfei Law of February 2017.

The main content of the E-commerce Law is as follows:

### (1) Scope of Application

According to Art. 2 of the E-commerce Law, this law applies to e-commerce activities carried out within the territory of the People's Republic of China. E-commerce referred to in this Law means “business activities of sale of goods or provision of services through Internet and other information network.” However, it does not apply to financial products and services, as well as provision of service in terms of news information, audio and visual programs, publishing and cultural products etc. using information network.

### (2) E-commerce Operators

According to Art. 9 of the E-commerce Law, e-commerce operators referred to in this law means natural persons, legal persons and unincorporated associations that engage in business activities of sale products or providing services over Internet and other information networks, including e-commerce platform operators, persons doing online businesses over e-commerce platforms, and e-commerce operators that sell products or provide services over their own websites or through other network services.

### (3) Obligations of E-commerce Operators

The E-commerce Law stipulates that e-commerce operators should abide by a series of general obligations when they undertake e-commerce activities, and the obligations are summarized as follows:

Going through the formalities for the registration of market entries, obtaining required administrative license, displaying details of licenses and other important information; disclosing information of goods or services in a fully, comprehensive, truthful and accurately manner; taking responsibility for any risks in the transportation of goods; taking risk and responsibilities in the transportation of products.

The E-commerce Law also stipulates some special rules for e-commerce platform operators, which allow the Chinese government to control them better. For example, when a business operator uses a platform to sell products or provide services, the platform operator shall require the business operator to provide its

authentic information concerning its identity, address, contact information, and administrative license. In addition, the platform operator shall verify the information submitted by the business operator, handle the registration of the business operator, establish registration files, and verify and update the files and related information periodically. On the other hand, the platform operators should submit such trading information and personnel information to the government departments in charge, such as industry and commerce department, tax department, etc.

#### (4) Standardized E-contracts

The E-commerce Law standardizes the conclusion and performance of e-commerce contracts. It clearly establishes the validity and execution of contracts drawn up via automated decision-making systems. Article 49 stipulates, if the information concerning a product or service released by an e-commerce operator meets the conditions of being an offer, where a user selects the product or service and submits the order successfully, then the contract will be deemed concluded. Besides, the E-commerce Law formulates rules regarding the date of delivery, logistics services and electronic payments.

#### (5) E-commerce Dispute Resolution

The E-commerce Law introduces e-commerce dispute rules for dealing online disputes.

Firstly, e-commerce operators have to bear the burden of proof for transaction information. Article 62 stipulates, if an e-commerce operator loses, falsifies, tampers, destroys, conceals or refuses to provide the original contract and transaction record documents or information, causing the people's court, arbitration institution or other relevant authorities to fail to find out the facts, the e-commerce operator shall bear the corresponding legal liability.

Secondly, the platform operator shall actively assist the consumers in safeguarding their legitimate rights and interests if there is a dispute between a consumer and a business operator regarding online businesses over the e-commerce platform.

Thirdly, E-commerce platform operators may establish an online dispute resolution mechanism, formulate and announce dispute resolution rules, and resolve disputes between e-commerce participants fairly and equitably in accordance with voluntary participation principle.

## **6. Negative List for Cross-Border Service Trade Released**

On October 9, 2018 the China (Shanghai) Pilot Free Trade Zone for the first time released a negative list for the cross-border service trade (hereinafter referred to as “The Negative List”). The Negative List will take effect on November, 1 2018.

The Negative List defines “Cross-Border Service Trade” as (1) commercial activities delivered from overseas service providers to consumers in the China (Shanghai) Pilot Free Trade Zone, that is, the cross-border delivery model; (2) services to consumers from China (Shanghai) Pilot Free Trade Zone in overseas, which is the overseas consumption model; and (3) service of overseas service providers through the presence of natural persons in the China (Shanghai) Pilot Free Trade Zone, that is, the flow of natural persons model.

The Negative List comprises of a total of 159 special administrative measures covering 31 industries in 13 different sectors. Among the 159 special administrative measures, 31 of them belong to the financial sector, which include, inter alia, monetary and financial services, capital market services and insurance services. Others involve postal and courier services, culture, sports and entertainment, leasing and commercial services, telecommunications, software and information technology services, wholesale and distribution services, environment and public facilities management, education, agriculture, construction, health and social services.

Overseas services and service providers investing in areas not listed in the Negative List will be treated as domestic companies, reducing red tape and other restrictions. Special regulations governing investment by foreign entities, such as requiring a Chinese joint venture partner, will continue to apply to those sectors in the Negative List.



The idea of the Chinese government behind the release of this Negative List is to facilitate ongoing service trade in Shanghai and to promote the upgrading of foreign trade.

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