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Subject [E-Commerce Law](#)

First Round of Public Comments completed

First Round of Public Comments on E-Commerce Law Completed

E-commerce is booming in China. According to the statistics, during the period of the 12th Five-Year Plan (2011-2015), the average growth rate of E-commerce per annum was over 30%. The sales volume of e-commerce in China exceeded 20,000 billion in 2016, and it ranks the 1st spot in the worldwide E-commerce transaction market. In such circumstances, the legal loophole of lacking a special law regulating the e-commerce transaction in China shall be filled urgently.

On 19 December 2016, the draft of an E-Commerce Law was submitted to the Standing Committee of the National People's Congress (the Draft). Then, the Draft was released in order to gain public comments. Public comments-seeking closed on 26 January 2017.

The released draft focuses on the following matters:

I. Scope of Application

a. Definition of E-Commerce

According to the Draft, E-commerce refers to business activities of trade of goods and services completed through IT-networks such as internet.

Transactions through Taobao, Alipay, and JingDongshall definitely be deemed to be E-commerce business activities as stipulated in the draft. Business activities emerging along with the mobile-internet such as O2O, Uber, and Micro-Business developed rapidly. According to the stated definition of E-commerce, all business activities concluded through IT-networks shall be deemed as E-commerce and thus, the Draft shall be applicable to these kinds of activities too.

b. Exceptions

Considering the special nature of some transactions and industries, the Draft also lists exceptions to which the Draft shall not apply. The draft provides that financial products and services, music & video streaming through IT-networks and online publishing shall be excluded from its scope of application.

II. Obligations of E-Commerce Platforms

The Draft distinguishes E-commerce suppliers from E-commerce platforms. E-commerce platform refers to the legal persons or other entities that, in the process of E-commerce transactions, provide the services such as websites, virtual business site, transaction matching, information distribution, etc. to the transaction parties. And E-commerce supplier means the persons, legal persons and other

entities that, other than the E-commerce platform, sell products or provide services through information networks such as Internet.

Nowadays, approximately 90% of E-commerce transactions in China are concluded through third-party E-commerce platforms. Thus, the Draft focuses on the obligations of the platforms so as to better supervise the E-commerce activities and protect the legal interests of the consumers.

a. Identity check

The Draft requires the platform to check suppliers' information such as identity, and administrative approval when the suppliers apply to enter into the platform for sales of goods and services. The platform shall archive such information and update any changes.

b. Transaction safety

The platform shall adopt necessary technical means and administrative measures to ensure a safe transaction environment.

c. Differentiations of services

Some platform may only provide a platform, while the sales of goods, logistics and communication are all concluded by the suppliers directly and separated from the services of the platform. In order to avoid misinformation of the customers, platforms are required to differentiate the self-operated business and other business concluded with suppliers.

d. Information storage

The information about the goods and services, as well as of transactions shall be stored for at least 3 years after the completion date of the transactions.

III. Protection of Consumers' Rights

Currently, some platforms offer mechanisms in order to facilitate coordination and negotiations between consumer and supplier. However, consumers cannot claim against third-party E-commerce platforms directly, in the event that they experience issues with suppliers in respect of the concluded transaction and negotiations with the supplier fail to provide solutions or the platform does not even enable the consumer to contact the supplier at all.

The Draft provides that consumers may claim against producers, sellers or directly against the third-party E-commerce platform, if legal interests of the consumers are affected during a transaction through the platform. And if the platform fails to provide contact details of suppliers effectively, the

consumer may require the platform to pay compensation in advance. Such regulation shall better protect the consumers' rights.

In addition, the Draft reiterates the customer-protection clauses under the Administrative Measures on Online Transactions to emphasize the importance of the protection of customers' rights, such as the right to know and choose the system of building a customer-right security deposit.

IV. Protection of Personal Information

The Draft requires the E-commerce platform to effectively collect true information about name and address (e.g. through the submission of ID-card copies) of suppliers that purchase goods or services through the third-party platform. At the same time, it is also requires the E-commerce platform to effectively protect the collected personal data. The rules about the collection or handling of such information need to be published on the E-commerce platform and the platform has to obtain suppliers' consent in advance to provide the information. Adjustments and amendments to the rules need to be produced to the consumers too and only apply upon agreement.

In the event of any leakage of personal data, the E-commerce platform shall adopt accurate remedy measures and report the incident to the authority.

However, the Draft also provides a clear contradiction to its rules about data protection. According to the draft, platforms may exchange or share the E-commerce information, if they adopt necessary measures without specifying such measures.

V. Collection of Taxes

The tax issue has always been a problem in online transactions, and no specific law ever regulated the tax-related problems so far. The Draft provides for the first time in Chinese Legislation that E-commerce operators shall fulfil tax-payment obligations, while they are also entitled to tax preference according to the existing tax-related laws.

In this way, the new law shall ensure fair treatment of online and offline trading of goods or services.

However, there is just one provision in the Draft regulating the tax issue for E-commerce, and no further regulations or measures are addressed yet. This may cause difficulty in the execution of levying the taxes from the e-commerce operators. E.g. Micro-Business operators: their transactions are conducted through Wechat or Micro-blog personally without the involving of a third-party platform. For these operators, it may become hard to track their transaction record or business volume, and hence collect taxes based on business turnover.

VI. Protection of Intellectual Property

The Draft emphasizes that the E-commerce platform operators shall build up systems for the protection of intellectual property. If the platform gets aware of the infringement of intellectual property, it shall adopt necessary measures such as deleting, shielding, disconnecting, terminating the transaction and services. Meanwhile, it shall also adopt necessary measures to temporarily suspend the transaction until it is proved that no action of infringement exists.

This regulation shall effectively prohibit the embezzling of pictures during the online transaction. E.g. it is currently observed, that the same picture is presented in different stores when one opens Taobao or similar platform. Also, the Draft provides that portrait pictures fall within the scope of protection of intellectual property.

VII. Uncertain Regulations

There are also some issues in the Draft that will need further improvement or clarification. E.g. platforms shall seek comments from consumers and the customer protection organizations when formulating or revising transaction rules and standard terms. But the Draft does not provide further details about the handling of such comments and potential sanctions, if an E-commerce platform fails to follow the requirement of collecting such information.

VIII. Conclusion

The implementation of the E-Commerce Law would be of high necessity in order to regulate the market and strengthen the rights of consumers in E-commerce transactions. However, the Draft still requires further improvement. In any event, it is expected that the E-Commerce Law will be promulgated soon.

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