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1. **First Revision of the Chinese Consumer Protection Law in 20 Years**
2. **Summary of the Reform Goals of the 3rd Plenary Session of the 18TH Central Committee of the Communist Party of China**

1. First Revision of the Chinese Consumer Protection Law in 20 Years

On October 25, 2013, the Standing Committee of the 8th People's Congress of China passed an amended version of the Law of the People's Republic of China on Protection of Consumer Rights and Interests 2013 Amendments ("the 2013 Consumer Protection Law" or "the Law"). Already signed by President Xi Jinping and coming in effect on March 15, 2014 – the international day for consumer protection – the 2013 Consumer Protection Law is the very first comprehensive amendment to its predecessor promulgated in 1994. The new Law aims to strengthen the legitimate interests of consumers and adapts to the current market environment by providing comprehensive rules governing e-commerce. The 2013 Consumer Protection Law features the following highlights:

I. Repair and Return Policy

Articles 24 and 25 of the Law provide for a special rescission period and outline the remedies available to consumers in case of a purchase of defective goods or non-defective goods, respectively.

According to Article 24, if the goods or services provided fail to meet certain quality requirements, the consumer may return the goods within 7 days upon receipt or require the business operator to replace or repair the goods or perform other obligations in accordance with State provisions or as agreed upon between the parties (the latter remedies are not subject to any deadline). After such 7-day period, the consumer may still return the goods if other statutory provisions, e.g. rules of general contract law, allow for a termination of the contract. The 7-day return policy and the repair or replacement policy as outlined by Article 24 are not mandatory rules, they may be amended or waived with the prior consent of the consumer unless otherwise provided in specific mandatory statutory laws and regulations.

Article 25 further contains particular rules for goods sold via internet, television, phone or mail order. Under these circumstances, consumers are entitled to return products within 7 days upon receipt without providing any reasons, with a few exceptions such as tailored-made goods, highly perishable goods, certain digital products, newspapers or other goods that are not suitable to be returned by nature.

The above-mentioned provisions show that the new Law seeks to provide increased, mandatory protection to consumers purchasing goods online or via television and other virtual media. Compared to regular on-site shoppers, online consumers have less information available prior to conducting a purchase and are therefore in greater need of protection by the law. The fact that the 7-day return policy can be waived by regular, on-site shoppers shows that the legislator has tried to strike a balance between protecting the interests of the consumers on the one hand and protecting free market rules and the integrity of binding-contracts on the other hand.

II. New Rules governing E-Commerce and the Use of Personal Information

The tremendous increase of transactions via virtual platforms in recent years has called for legislative measures to curb online fraud, illegal disclosure of client's information and other incidents which have accompanied the surge of e-commerce.

Article 28 of the Law provides that business operators offering goods or services via virtual platforms, television or phone etc. as well as those offering financial services are obliged to provide certain information to the consumer, including their business address, contact details, quantity and quality of goods, price and expenses, safety precautions, risk warning, after-sales services etc.

Article 29 further points out that business operators shall collect consumer information only to the extent that is strictly necessary, and only with the consent of the consumer upon expressly stating the purpose, method and scope of the information collection. Consumer information shall be kept strictly confidential and safe from disclosure.

In addition, Article 44 offers a legal basis for consumers on virtual platform to claim damages from business operators as well as the virtual platform itself for breach of their statutory and contractual obligations.

III. Reversal of Burden of Proof to Business Operators

Traditionally, in disputes arising from product liability, the manufacturer bears the burden of proof to clear itself from the alleged liability. With regard to business operators (e.g. the retailer of certain products or services), such reversed burden of proof does not apply. However, with the implementation of 2013 Consumer Protection Law, this will change.

According to Article 23, where consumers find defects in motor vehicles, computers, television sets, refrigerators, air conditioners, washing machines and other durables as well as decoration or furnishing services within 6 months upon accepting such goods or services, the business operator shall bear the burden of proof regarding those defects. The provision primarily targets electronic and heavy equipment because in this case the assessment of defects requires a certain amount of technical know-how which consumers often do not possess, while business operators are in a better position to make the necessary assessments.

Certain issues arise in connection with the reversed burden of proof: (1) during the time between the sale of the product and the discovery of a defect, the product is usually in the custody of the purchaser, which will make it difficult for the business operator to show that defect was not caused by the purchaser; (2) as business operators become subject to higher risks of product liability claims, such risks are likely to be passed on to the purchasers in the form of increased purchase prices.

IV. Other Amendments

In addition to the above-mentioned provisions, there are a number of other changes included in 2013 Consumer Protection Law, which – though seemingly minor – could profoundly change the rules of the game in the world of sales of goods and services. A few of those are:

- (1) The role consumer organizations is clarified. They shall provide consumers with information and consulting services and may file class actions against business operators in cases where the rights of large groups of consumers have been infringed upon (Article 37, 47).
- (2) Business operators, advertising agents and those designing, producing and publicizing false advertisements of products or services shall be jointly liable for compensation to harmed consumers. Social groups, other organizations and individuals recommending such goods may also be subject to joint and several liability (Article 45).
- (3) Harsher penalties are imposed on business operators who defraud consumers. Compensation for commercial fraud can be equivalent to three times the price of the products or the service charges paid by consumers, with a minimum fine of RMB 500. Where defective products have damaged people's health or have resulted in death, business operators shall compensate consumers for economic and

psychological losses. In addition, they may be liable to pay punitive damages up to twice the amount of the losses (Article 51, 55).

2. Summary of the Reform Goals of the 3rd Plenary Session of the 18th Central Committee of the Communist Party of China

On November 9 to 12, 2013, the 3rd Plenary Session of the 18th Central Committee of the Communist Party of China (“Plenary Session”) took place in Beijing under national and international spotlight. The 3rd Plenary Session is a major political event in China and is convened every five years in order to discuss and determine the long term development goals of the nation.

Ever since the year 1978, when policy of reform and opening up was first promulgated, China has undergone a series of progressive reforms, starting at an economic level and slowly moving to other aspects of governance. In recent years, the call for a comprehensive reform – encompassing not just the economic, but also the political and legal areas – has grown more and more urgent. Upon conclusion of the Plenary Session on November 15, 2013, the Central Committee passed the Decision by the CPC Central Committee on Issues Regarding a Comprehensive and Profound Reform (“the Decision”), with the aim of providing a clearer guideline as to the direction and aim of the upcoming reform efforts.

The 20-page long Decision includes 60 detailed targets in a variety of areas, such as: improving the market system; transforming the role of the government; reform of the tax and fiscal system; alignment of urban and rural development; further opening up of the economy; the exercise and supervision of power; reform of education and social welfare system, etc.

The following aspects are worth highlighting:

I. Transformation of the Role of Government

In general, government and authorities will have less supervision and control over businesses, except for those related to national security or environmental safety; business operators shall gain more discretion and freedom in determining their management and strategy. More specifically, this means that many government approval procedures which used to put hindrance and barriers for investors shall be relieved, for those still in force, approval procedures will be simplified in order to enable businesses alleviate the cost burden on businesses and the government.

Some of those policies have already been implemented in the newly established Free-Trade Zone in Shanghai, where a range of approval procedures for foreign invested entities has been cancelled. Furthermore, investors in the Free Trade Zone are free to determine the amount of capital, investing period, and other matters which used to be determined by the Company Law. Some other provinces with a long history of receiving foreign investment have also shortened their approval time considerably already in order to facilitate transactions by foreign invested entities.

The above-mentioned measures are expected to alleviate administrative costs of business operators, thus creating a more attractive market environment for existing businesses and future investors. Furthermore, the reform measures are intended to streamline government functions and remove bureaucratic barriers, thereby reducing the tax burden for the general population.

II. Further Opening Up of the Economy

To build an open economy has long been the purported aim of the Chinese government. The Decision seeks to implement this aim by way of the following three steps:

- (1) Removing restrictions on foreign investment: a number of industries still facing restrictions in the field of foreign direct investment, such as education, logistics and medical care etc., are expected to be opened up to more investment from abroad.
- (2) Accelerating the development of free trade zones, including the negotiation and conclusion of free trade agreements with other countries. In other words, China is planning to engage more deeply in international trade, with investors in free trade zones receiving preferential treatment.
- (3) Enhancing the link between coastal cities and inland cities in order to further harness the market of China's central and western parts and increase living standards there. This development could lead to a potential boom in the industry of transportation infrastructure and its related industries.

III. The Exercise and Supervision of Power

The Decision purports to adjust the mechanism of the exercise and supervision of power in the following aspects:

- (1) A more efficient system of checks and balances shall be enacted. More specifically, the government, at each level of hierarchy, shall devise and publish a list of delegations which shows the different powers and functions vested in each department and how these departments coordinate with one another.
- (2) The anti-corruption system shall be innovated and anti-corruption efforts stepped. Unfortunately, no specific measures or plans are mentioned in the Decision. The main responsibility for anti-corruption measures will continue to rest with the Commission for Discipline Inspection of the Central Committee of the CPC, which means the power to supervise the government as well as the CPC members will remain in the hands of the CPC. While 2013 has been a year where more officials were found liable for corruption, it is still unclear whether this phenomenon is the result of a well-founded reform plan or just a show of power by the newly elected administration.
- (3) Unnecessary expenses of the governmental officials and their relatives shall be curbed by way of specific legislation. Furthermore, the budget for government activities will be strictly audited to prevent misuse.

In summary, the Plenary Session's show of commitment towards further reform has been welcomed by the business community, further adding to existing positive developments such as the continuous improvement of market access for foreign investors and in particular the development of free trade zones in Shanghai and elsewhere. The next few months and years will tell to what extent the targets presented in the Plenary Session's final Decision will be implemented in practice.

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