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## China Law

### Implementation of China's E-Commerce Law in 2019

On August 31, 2018, the China government officially promulgated an “*E-Commerce Law of the People's Republic of China*” (hereinafter referred to as the “*E-Commerce Law*”), which will be implemented on January 1, 2019. This is the first time for the China to enact and promulgated law in the industry of e-commerce. The *E-Commerce Law* was finalized after submitted for five years, pass through three times for public consultation and four time for deliberation.

The *E-Commerce Law* has a total of 7 chapters and 89 articles, which mainly stipulates the five parts of e-commerce operators, there are e-commerce businesses, formation and performance of e-commerce contracts, settlement of e-commerce disputes, promotion of e-commerce and legal liability.

The implementation of the *E-Commerce Law* play a positive role in the standardization and systematization for the e-commerce industry. However, the requirements for the registration e-commerce system and the further strict supervision of taxation will have a major impact on e-commerce practitioners. The business life of the e-commerce practitioners such as the micro-business and purchasing agent will become smaller. The implementation of the *E-Commerce Law* will also make the import and export items inspect stricter by customs.

#### 1. The supervision scope for e-commerce operators, including the business mode such as micro-business

In accordance with the *E-Commerce Law*, the e-commerce businesses means the natural persons, juridical persons or organizations for non-juridical person that engage in the business activities of selling commodities, or providing services, through the Internet or any other network, including e-commerce platform businesses, in-platform businesses, and e-commerce businesses that sell commodities or provide services through a self-built website.

**1. The supervision scope for e-commerce operators, including the business mode such as micro-business (Cont'd)**

Micro-business mainly refers to the practitioners using the Internet social media as a communication tool to complete the goods and services transactions. In recent years, micro-business has almost penetrated the circle of friends of all people, the entry barriers for such business modal are low, no physical store, no business license, and only virtual trading through the network. The *E-Commerce Law* implemented will include the "other network services" of the e-commerce operators, this is the reason for micro-business become one of the supervised subjects because it will be incorporated into new forms of e-commerce and design entities, that are engaged in goods and services using the We Chat circle of friends and live webcasts.

**2. The e-commerce operators should apply for registration and a business license in accordance with the E-Commerce Law**

In accordance with the *E-Commerce Law Articles No.10*, the e-commerce business shall make market subject registration, unless it, as an individual, sells agricultural or sideline products produced by it, or products of a cottage industry, or uses its own skills to engage in public convenience services, or occasional and low-value transactions, no registration is required by laws.

Due to the previously characteristic, that are low barriers to entry and easy to operate, the e-commerce platform has nearly one million sellers such as Taobao and micro-business. Most of the individual sellers will be included in the scope of e-commerce operators. In accordance with the E-Commerce Law, the e-commerce operator shall handle the registration of the market subject, continue to disclose the business license and the administrative license related to its business at a prominent position of the company webpage.

Currently, the business license of the industry does not have different between online and offline. However, when the online store owner applying for a business license, the business scope shall add on the "e-commerce".

## **2. The e-commerce operators should apply for registration and a business license in accordance with the E-Commerce Law (Cont'd)**

The reform of regulation of the *E-Commerce Law* is due to the violation of the online shop but the responsibility is on the platform. The shop owner that ignoring the *E-Commerce Law* or the existing “zombie” shop will face a retreat, and the online store level and reputation will be cleared. For the e-commerce operator that violates the regulations, the market supervision department shall order it to make corrections within limited time and may impose a fine of not more than RMB 10,000. If the operator of the e-commerce platform fails to take necessary measures for the online shop owner that violate the regulations in the platform, the market supervision department shall order it to make corrections within limited time and may impose a fine of not less than RMB 20,000 but not more than RMB 100,000.

## **3. The e-commerce operators should pay taxes in accordance with the E-Commerce Law**

In accordance with the *China's Value Added Tax*, company unit and individuals that sell or import goods or provide processing, repair, and distribution services in China are all taxpayers of value-added tax. Before the E-Commerce Law officially promulgated, in accordance with the Tax Law, as engaged in the aforementioned business, taxpayers who exceed the threshold of the tax law, shall file and pay for value-added tax, corporate income tax, and personal income tax.

The *E-Commerce Law* implemented clarifies the tax obligations of e-commerce. As an e-commerce operator, not only enjoy a qualification of market subject, but also need to fulfill the taxpayer's obligations base on the actual business conditions. In accordance with the *E-Commerce Law Article No.11* stipulates that an e-commerce business shall perform the obligation of tax payment and enjoy tax incentives. In accordance with the *E-Commerce Law Articles No.10*, an e-commerce operator do not require to make market subject registration upon the occurrence of the obligation of tax payment for the first time, shall base on the tax collection legal management and administrative regulations to handle the tax registration and file for tax returns.

Besides that, the *E-Commerce Law Articles No.28* stipulates that the e-commerce platform operator shall submit the operator identification information and the tax-related information to the taxation department in accordance with the provisions of the tax collection legal management and administrative regulations. The *E-Commerce Law Articles No.10* stipulates that e-commerce operators who do not require to make market subject registration shall handle tax registration in accordance with the *E-Commerce Law Articles No.11*.

**3. The e-commerce operators should pay taxes in accordance with the E-Commerce Law (Cont'd)**

The tax registration is based on business registration. In accordance with the *E-Commerce Law Articles No.25 and Articles No.31* stipulates that if the relevant competent authority requires e-commerce operators to provide information on e-commerce, e-commerce operators shall provide to them. The trading information of the e-commerce operation platform shall keep for not less than three years. Taobao and other individual online shop owners will be required to file tax returns, else the platform transaction information will be checked by the relevant competent authority, and the transaction information will be obtained.

**4. The behavior of e-commerce operators such as click fraud will be prohibited, removing negative reviews may impose a fine**

In order to win the trust of the consumers, many online trading platforms have grown the behavior of click fraud and removed the negative reviews. In the e-commerce transaction, the behavior such as click fraud for positive reviews and removing bad reviews to mislead consumers into consumption, this is seriously damaging consumers' right to know and choose. The *E-Commerce Law* specifically stipulates this issue, which is the e-commerce operators should disclose goods or service information in a comprehensive, true, accurate and timely manner to protect consumers' right to know and right to choose.

The *E-Commerce Law* stipulates that e-commerce platform operators should establish credit evaluation systems, publicity credit evaluation rules, and provide consumers with a platform to evaluate the products or services provided. The e-commerce platform operators must not remove the reviews of the products or services provided by consumers.

The *E-Commerce Law* stipulates that if e-commerce operators do not provide consumers a platform to evaluate the products or services, or if the consumer's evaluation is removed without authorization, the e-commerce operators may impose a fine up to RMB 500,000.

## **5. The e-commerce operator shall refund the deposit to the consumer**

The rapid development of e-commerce led to the emergence of a number of new industries such as resource sharing and leasing services. Most of these services are carried out in advance by deposits and advance payments. Most of these e-commerce companies that are emerging small and micro-enterprises. However, after collecting the deposit of the consumer, the illegal use of the deposit for other purposes is common, which causes the consumer deposit to be difficult to refund. For example, Wukong, Xiaoming, Cool Ride and other shared bicycle companies have stopped operations due to financing difficulties, capital chain breaks, etc., and it is difficult to refund the deposit originally paid by customers.

In response to such problems, the *E-Commerce Law* stipulates that if an e-commerce operator collects deposits from consumers as agreed, it shall expressly state the manner and procedure for the refund of the deposits, and shall not set unreasonable conditions. If a consumer applies for the refund of the deposit and meets the qualifications, the e-commerce operators shall make a refund in a timely manner. This has made restrictions on e-commerce operators which engaged in deposit-type consumer services, providing a guarantee for the consumer.

## **6. Refining an intellectual property protection and oppose an adulterated goods**

Many e-commerce operators act as a purchasing agent to sell the adulterated goods. In response to this phenomenon, the *E-Commerce Law* emphasizes the protection of intellectual property rights and refines the rights of intellectual property rights holders to "notify-delete" and the obligation of the platform to "delete-publicity". Through the refinement of intellectual property protection, the sales of the adulterated goods were restricted and combatted from the source. This is mainly reported from the right holders, supplemented by the platform supervision and review, and jointly combat online adulterated goods.

**7. Strengthen the responsibility of the e-commerce platform, the platform operator fails to fulfill the obligations, the fines may increase by RMB 2 million**

In the process of trading with e-commerce, there are some cases impaired consumer rights, such as the purchase of the adulterated goods, or the occurrence of security incidents known to the public on the platform of the car, etc. In response to this phenomenon, the *E-Commerce Law* stipulates that the e-commerce platform operator should know that the goods or services provided by the operators in the platform do not meet the requirements for the protection of personal and property safety, or that there are other acts that infringe upon the legitimate rights and interests of consumers, and if necessary measures are not taken, the operators within the platform bear joint and several liability. If the platform operator fails to fulfill the obligations, not only will need to take responsibility in accordance with the law, and may impose a fine for at least RMB 50,000 and a maximum of RMB 2 million.

Before the *E-Commerce Law* comes into force, the law enforcement agencies have always imposed penalties on the online illegal activities of e-commerce operators with reference to the Trademark Law and the Advertising Law. After the implementation of the *E-Commerce Law* on January 1, 2019, the maximum penalty for administrative punishment will be up to RMB 2 million in accordance with the law, which is the maximum fine that the regulatory authorities can use to punish the platform operators. The *E-Commerce Law* is to propose the e-commerce operators do not try to go beyond the limit of the law, and the e-commerce operators and platform operators are urged to consciously carry out standard rectification and legal operation in accordance with the law.

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