Chinese E-commerce Legislation Current Situation, Problems and Ways to Improve

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ABSTRACT

Although the Chinese e-commerce legal construction has made some achievements, but the overall lower legislative rank, authority is not enough; those policies, coordination is not enough; regulatory vacuum, comprehensive enough. Chinese e-commerce is an urgent need to improve the legal system, scientific design of specific legal system. Innovation concept of governance and e-commerce legislation governance model, accelerate the formulation of the Basic Law, e-commerce, improve the supporting laws and regulations of e-commerce; e-commerce credit system and improve the legal system to encourage the use of modern information technology for trading activities, Chinese e-commerce industry to promote the safe and efficient operation.

INTRODUCTION

Chinese e-commerce transactions increasing, the requirement to further improve the legal system of e-commerce is urgent. NPC Financial and Economic Committee of the Electronic Commerce Act have been convened meeting of the drafting group, clear legislative guidelines, principles, vision and main frame content, marking the China Electronic Commerce Act, legislation was officially launched. Chinese e-commerce legislation needs to market regulation and macro-adjustment as the main line of e-commerce, e-commerce development in accordance with the legislation needs to improve electronic commerce legal system to provide legal protection for the Chinese e-commerce development.

THE STATUS OF CHINESE E-COMMERCE LEGISLATION

In order to promote the development of e-commerce, China has formulated a series of e-commerce laws, regulations and rules. 1999, promulgated the “Contract Law” for the first time acknowledged the validity of data messages. In September 2000, the State Council through the "People's Republic of China Telecommunications Regulations" to regulate the telecommunications market order, strengthen the supervision and management of Internet content and services.

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The body of e-commerce Legal Construction

According to the State Administration for Industry and May 31, 2010 promulgated the "Network behavior of commodity trading and related services Interim Measures," the main body of e-commerce has network operators and commodity network service operators. China's relevant laws and regulations are: in September 2000 the State Council promulgated the "People's Republic of China Telecommunications Regulations", "Internet Information Services", issued by the Industrial and Commercial Bureau in May 2010, "Network behavior of commodity trading and related services Interim approach ", April 12, 2011 the Ministry of Commerce promulgated the "third party e-commerce trading platform service specification." "Internet Information Services" Article 6 and Article 13 of the "Telecommunications Regulations" provides a hosted business website should have the substantive conditions. "Network behavior of commodity trading and related services Interim Measures," to provide for the establishment of a natural person online stores. Ministry of Commerce, "third-party e-commerce trading platform service standards" to set up online stores to do a more comprehensive provisions. "Network behavior of commodity trading and related services Interim Measures," the obligations of the network operators made provisions. There are public duty identity, not trade in goods prohibited by law, not infringe the interests of consumers, in advance Obligation distribution methods, form of payment, return the way other major information shall not make false propaganda and false representation, etc. obligations. Ministry of Commerce, "third-party e-commerce trading platform service standards" for commodity network operator (operator station) within the third-party trading platform also provides a platform to inform and cooperate with the operator's obligations. According to the "Network behavior of commodity trading and related services Interim Measures" requirement, the network service operators, refers to provide services through the network operating legal persons, other economic organizations or individuals, as well as provide online trading platform service site operators. At present, the online trading platform service providers, the Ministry of Commerce, "third-party e-commerce trading platform service standards" referred to a third party trading platform.

E-commerce transactions Legal Construction

March 1999 China promulgated a new "Contract Law", to promote the use of electronic contracts and for the future of e-commerce legislation laid the foundation. The law relates to electronic contracts has four. First, clear the data message is a form of a written contract. "Contract Law" Article 11 stipulates that "writing is a contract, letter and data message (including telegram, telex, fax, electronic data exchange and e-mail) can be expressed in a tangible form and other elements contained." Second, OK electronic contract data messages sent and arrival time. Third place was established to determine the electronic contract. Third, the acknowledgment of receipt of electronic contracts. "Electronic Signature Law" was first established from two aspects of the same legal validity of electronic signatures and handwritten signature or seal has. "Electronic Signature Law" at the same time set up electronic authentication service market access system, taking into account China's electronic certification is still in the initial stage of the development of the situation, the government regulations is necessary for electronic authentication mechanism to implement effective, proportionate regulation. Expressly authorized by the State Council department in
charge of the information industry to develop electronic authentication service specific management practices on electronic certification service providers to implement supervision and management. February 8, 2005 to the Ministry of Information Industry issued "electronic authentication service management approach", as the "electronic signature law" is an important supporting regulations. "Electronic authentication service management approach" is the "Electronic Signature Law" empowered to make, and the "electronic signature law" supporting the implementation of departmental rules, has important legal force and effect. In order to standardize the electronic payment services, to prevent payment risks and safeguard the legitimate rights and interests of banks and their customers in the electronic payment activities, promote the healthy development of electronic payment service, October 26, 2005, People's Bank of China issued the "electronic payment guidelines (first No.)" (the "guidelines"). "Guidelines" published as the introduction of the time is ripe corresponding laws and regulations, departmental rules or foundation. January 26, 2006, China Banking Regulatory Commission (CBRC China) promulgated the "electronic banking business management approach" and "e-banking security assessment guidelines."

**E-commerce market regulation Legal Construction**

E-commerce market regulation, mainly in online advertising management, e-commerce taxation, consumer protection and so on. Currently, e-commerce taxation and consumer protection, apply the traditional tax law and consumer protection law, no specific e-commerce taxation and consumer protection laws and regulations. Therefore, this section focuses on the legal regulation of online advertising. Internet advertising compared to traditional media advertising, but the carrier change, therefore, online advertising still have to comply with the legal framework for the management of traditional advertising content. October 27, 1994, the tenth meeting of the Eighth NPC Standing Committee adopted the "People's Republic of China Advertising Law", and February 1, 1995 implementation. "Advertising Law" is the history of China's first comprehensive standardized content and advertising campaign laws, is the core and the cornerstone of Chinese advertising legal system. Regulate advertising practices laws and regulations as well as "People's Republic of China Product Quality Law", "People's Republic of China Anti-Unfair Competition Law," "Consumer Protection Law" and so on. In addition, the Chinese for medicines, medical equipment, tobacco, food, cosmetics and other products specific control over advertising, SAIC and other relevant departments on the release of the corresponding regulations. November 7, 2005, Ministry of Information Industry approved the "Internet e-mail service management approach."

**THE MAIN PROBLEMS OF CHINESE E-COMMERCE LEGISLATION**

E-commerce legislation still need to improve rank

China has not yet developed "e-commerce Basic Law", only "electronic signature law" and other special law. At the level of administrative regulations, only the "People's Republic of China Telecommunications Regulations", "Internet Information Services" and other Internet information services and security of transactions made provision. Primarily be regulated in the field of electronic transactions, electronic payment,
third-party online trading platform by departmental regulations, rank relatively low, authoritative enough.

**Inter-governmental coordination mechanisms still need to improve sectoral legislation**

Although the ministries under the State Council issued a number of regulations and supervision to promote e-commerce industry, but the lack of a unified legislative guidance, the lack of coordination between the legislative branch. Chinese e-commerce regulatory departments involved many national ministries and local e-commerce have been put forward about the relevant regulations, but the content of these regulations is more fragmented, lack of industry regulations some depth. Currently registered in the business sector is responsible for network management procedures, business, information industry, quality inspection, customs and other departments have regulatory functions. Regulatory authorities is not clear division of responsibilities, jurisdiction is divided between the departments was not sufficiently clear, overlapping and omissions coexistence, cooperation and cross-sectoral regulatory mechanism runs sluggish, the larger difficulty of coordination between departments. Visible, improve e-commerce legislation, urgent need to address e-commerce regulatory policies from different departments of the problem, clear responsibilities, strengthen cooperation, enhance unity and coordination between the laws and regulations.

**The comprehensiveness and effectiveness of supervision still need upgrading**

At present, the Chinese e-commerce legislation is not comprehensive, there are many gaps in the field, relevant laws and regulations have been missing. An endless stream of fake and shoddy goods, consumer complaints increasing, reflecting the lack of legal regulation of e-commerce system. China urgently needs to improve the quality of products online legal regulatory system, improve consumer protection mechanisms to guarantee the healthy and sustainable development of e-commerce industry. Supplying legal system cannot keep up the rapid development of e-commerce industry, leaving many gaps and loopholes in laws and regulations, affecting the healthy development of e-commerce industry. Transaction security system construction, there are still a series of problems to be solved, including electronic authentication, online payment, credit system, security, standards and market surveillance, etc., we need to build e-commerce security standard system.

**THE CHINESE E-COMMERCE LEGISLATION WAYS TO IMPROVE**

**Innovative e-commerce regulatory philosophy and governance model**

First, the implementation of e-commerce security and efficiency principles. Implement safety guidelines to protect the security of e-commerce, e-commerce market is a prerequisite for a modern and stable operation. It is necessary to protect the security of e-commerce market, but also to guarantee the safety of the product itself, to protect consumers personal and property rights. To implement the principle of efficiency. Improve the efficiency of e-commerce is a basic requirement for economic development. Rationalization of state and government to promote e-commerce
organizations, the implementation of e-commerce standardization, to encourage the application of modern technology, promoting methods of distribution and management innovation, reduce distribution costs, improve circulation efficiency. The second is to play a role in governance and market allocation of resources decisive role. Strengthen and improve the e-commerce market regulatory norms, follow the principle of international practice, encourage the promotion of the principles, the principle of non-discriminatory trading support, safety principles and the principle of efficiency, strengthen supervision and synergies shared governance, scientific allocation of regulatory functions, innovative regulatory approach. Adhere to market-oriented, using market mechanisms to optimize the allocation of resources, comprehensive use of policies, services, capital and other means to improve the e-commerce application development environment. Third, the role of the government to promote e-commerce in the field of supervision and guidance, coordination, restraining effect. Governments around the set by the government in the provision of public goods, to stabilize the market supply and regulate business activities, leveraging social forces to achieve common governance and other aspects of the e-commerce market duties. Improve the planning and public security system e-commerce infrastructure construction of facilities to improve the efficiency of e-commerce and social benefits.

The development of e-commerce Basic Law

Chinese scientific development of the legislative plan, the formation of the whole idea of e-commerce of the Basic Law, the Basic Law to accelerate the development of e-commerce, e-commerce in order to establish a sound legal system, to ensure the unity and coordination of e-commerce legislation. Legislation can learn from the experience of Singapore "Electronic Transactions Act", the Basic Law to develop e-commerce, e-commerce legal framework to build from the macro development of electronic commerce in order to grasp the overall trend, guide and encourage the development of electronic commerce relies on information technology. Legislative objective scientific design e-commerce law, basic principles and specific system, improve the regulatory and legal regime that promotes e-commerce. Expand e-commerce applications, focusing on the development of retail, cross-border trade, agricultural, and service in the field of e-commerce. Encourage enterprises to use e-commerce to develop domestic and international markets, facilitate cross-border and inter-regional cooperation and exchange of e-commerce. Specific institutional framework including institutional system of e-commerce transaction system, the body system, order system, information rules, intellectual property protection system of e-commerce, information infrastructure and standards system, e-commerce financial norms. For example, the rules should cover e-commerce transactions entered into, execute and modify e-commerce contract, breach of contract and legal effect of relevant laws and regulations, electronic notes, documents Article legislation, data message, the entry into force. Body system covers the main character entry qualifications and exit. Market order system covers anti-unfair competition on the market of e-commerce, antitrust, consumer protection, consumer credit, product quality, price, advertising and other legal norms. Infrastructure system covers ownership and right to use the infrastructure; restrictions, improper use of technical standards; interoperability, the Internet and other regulations.
**Improve the regulatory system supporting electronic commerce**

China should meet the needs of e-commerce development, e-commerce under the Basic Law, the fundamental principles and institutional framework, establish and improve electronic legal system, existing laws and regulations to improve the scientific and operability. For e-commerce transactions, credit, logistics, supply chain collaboration, financial services and other sectors, to develop a forward-looking, feasibility, openness, compatibility of regulations, codes, standards, e-commerce transactions to maintain order and guard against transaction risk. Perfecting consumer rights under the existing laws and regulations of e-commerce systems, e-commerce and improve the conditions of legal protection mechanisms. Strengthen the protection of the personal information and e-commerce network privacy protection laws, and improve e-commerce taxation law and policy framework, and improve e-commerce legal mechanisms to protect intellectual property. Improve the legal system of e-commerce credit system to encourage the use of modern information technology to promote trading activities, Chinese e-commerce market to promote the safe and efficient operation. China to strengthen cross-border electronic business platform and business enterprise and regulatory norms to combat cross-border e-commerce in counterfeit and infringement of intellectual property. Strengthening e-commerce operators to maintain the main responsibility for product quality and safety, build a controlled, traceable e-commerce security system.

**CONCLUSION**

In sum, China should improve the system of e-commerce legislation, a clear governmental organizations in the promotion, technology promotion, guidance and other aspects of information technology to promote, promote responsibility and measures to build the Multi-governing e-commerce regulatory regime. Government departments to protect the e-commerce market supply balance and stable operation, safe and efficient responsibility to rise to the level of laws and regulations, improve the e-commerce industry macro-control system. E-commerce industry regulator to achieve synergies government regulation, social organizations, and other public body between the e-commerce industry to promote the healthy and sustainable development.

**ACKNOWLEDGEMENT**

Thanks for Beijing Municipal Education Commission plans to face social science project (project number: SM201510037007) funding. Thanks for 2016 Beijing Social Science Fund Project (project number: 16FXB014) funding.

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