A Study on the Legal Regulation of E-commerce System in China

Xiao-lu NI
Xiamen University Law School, Xiamen, Fujian, China
nixiaolu2013@163.com

Keywords: E-commerce; Legal regulation; Deficiencies; Improvement.

Abstract. Entering into a new era of the prevalence of E-commerce, large numbers of complex issues have emerged, which gives rise to some different impacts to people’s daily lives. In order to make the situation under control, a series of laws and regulations need to be carried out and implemented by competent authority. With regard to the current legal system of E-commerce in China, it is far from flawless and deficiencies exist both in the phases of legislation and implementation. As for the solutions, both domestic and international measures should be taken into consideration, which target at improving the legal regulations system over E-commerce and providing a healthy and safe environment for online transactions.

Introduction

With the appearance and prosperity of internet, more attention has been paid to E-commerce system. E-commerce is a rather popular way to do online business at present. Nevertheless, lots of problems related to E-commerce followed then, which requires legal regulation by relevant national agencies and government sectors. Thus, a preliminary study on the legal regulation of China’s E-commerce system will be proposed.

The entire article consists of five parts. The first part will discuss the current legal system of E-commerce in China. Next, deficiencies in the current legal regulation regarding E-commerce will be put forward in the second part. In the following part, there will be a concise introduction on the legal regulation of E-commerce in some other countries, which mainly focuses on several developed countries. Then, some advice on the improvement of the legal regulation of China’s E-commerce will be offered. In the end, a brief conclusion will be given.

Current Legal System of E-commerce in China

Ever since the internet turned up, Chinese government and its relevant public authorities have been cautiously taking measures to regulate the network activities, including enacting laws and regulations. The State Central Bank issued Notice of the Change of Electronic Inter-banking Business Processing Mode in 1994, which was the first administrative regulation concerning E-commerce in China. Since then, E-commerce activities are supposed to be supervised under legal system. So far, a range of relevant laws and regulation has already been carried out, serving the purpose of regulating E-commerce which aims at keeping a healthy and safe environment for online business. The primary and fundamental legal instruments concerning E-commerce are as follows: Rules on the Management of Internet Information Service, Regulations on Telecom of the Republic of China, and some clauses of Contract Law, etc. In addition to the above formal laws and regulations, a multitude of judicial interpretations and self-discipline codes have also been carried out to act as subsidiary tools in monitoring E-commerce. Especially, some regional governments even enacted some regional legal instruments. For instance, the governments of Guangdong Province passed the Regulations on Electronic Trading of Guangdong Province in 2002, which was regarded as a first try for regional authorities to make use of legal measures to regulate E-commerce activities.

Generally, the regulation of dispute settlement related to E-commerce within a country is relatively simple. However, it is far more difficult to solve the problem when the subjects concerned
are from different countries, which is called cross-border dispute or international dispute. In case of
the international dispute settlement mechanism, several issues remain to be discussed. Normally,
there are different types of E-commerce mode, such as Business to Business, Business to Customer,
Consumer to Consumer, Business to Government and so forth. With regard to the first three types of
E-commerce, the business is conducted between private subjects, while the last one is between
private subjects to public subjects. As a consequence, the dispute settlement regime regarding the
above E-commerce modes varies as well. As for the disputes between private subjects from two
different countries, generally the contracting parties could reach an agreement on the ways to
resolve their disputes in their business contracts. Usually, resort to relevant courts or arbitration are
advisable. Differently, dealing with the disputes between private subjects and public subjects, which
come from different countries, is way more complicated. Commonly, resort to local remedies is
often required in the contract related. In other words, the private party concerned will have to
submit the dispute to the judicial organs of the public party. Nevertheless, international arbitration
may be possible on certain conditions that the public party concerned agrees to settle their dispute
by arbitration. In summary, case practice concerning the dispute settlement on E-commerce in
China is comprehensive in private subjects, while the number of disputes regarding public
authorities is comparatively limited.

Deficiencies of the Current Legal Regulation Regarding E-commerce in China

In reality, present legal instruments of China in relation to E-commerce have already developed
into a rather complicated and interacted system. Whereas, there is no doubt that drawbacks exist
inherently. Firstly, present laws and regulations lack consistency and compatibility, which gives rise
to the regulatory chaos when dealing with E-commerce issues. Consequently, enhancing the
consistency and compatibility also becomes a matter of concern, which is of great urgency.
Secondly, the legal system is not comprehensive enough to deal with various types of legal issues
related to E-commerce, especially over some key issues. Thus, it still has the necessity to be
improved so as to play a pivotal role in the regulation of E-commerce.

Consistency and Compatibility are the main features of good law. Once lacking both of these
characteristics, the law cannot be claimed as a fine one. Nevertheless, present laws and regulations
in regard to E-commerce have not played an adequate role. Some of the legal instruments concerned
even contradictory to each other, which is not conducive to the regulation of E-commerce. As a
common sense, one of the features of law is hysteresis. Among the current legal instruments
concerning E-commerce, they share this feature to different extent. As the internet develops rapidly,
E-commerce shows various forms gradually. Many of the laws and regulations cannot keep up with
the dramatic development of the internet and increasingly variable situation. Seriously, law breakers
and even criminal offenders may get escaped from the loophole-existing law. This phenomenon of
lacking consistency and compatibility is very likely to have negative effects on the establishment of
a safe cyberspace environment for online business, which requires urgent change and improvement.

As a matter of fact, there are a number of laws and regulations involving the management of
E-commerce in China which cover most of the types and objects online, and both substantive
regulations and procedural regulations have been passed. In observance of the concrete contents of
these laws and regulations, it can be concluded that little attention has been put on some core issues
related to E-commerce. Such legislation mode will increase the difficulty of supervising the process
of online trading, especially in the field of finance. Although China established relevant review
mechanism to monitor E-commerce, it mainly focuses on the review of technical issues rather than
the content of E-commerce. Compared to other countries such as United States, Russia, Singapore,
China’s legislation is far from complete and impeccable. Specifically, basic law still has not been
carried out within the whole legal system related to E-commerce. Further, detailed rules have not
been issued by government and other public authorities, which leads to some difficulties in the
interpretation and application of laws and regulations.
Legal Regulation of E-commerce in Selected Developed Countries

Admittedly, the legal system of some developed countries are much more advanced considering that the internet showed up years before which came into being in China. These countries have more E-commerce practice, along with more experience in the regulation of E-commerce activities. In case of improving the legal regulation of E-commerce in China, learning and cooperation are of great necessity. With respect to learning, unawareness of learning from the experience of other countries makes the legal system stuffy, which is hard to get progressed. In relation to cooperation, unawareness of cooperation with other countries makes it difficult to take advantage of some useful international regulation techniques. Therefore, in this part, legal regulation of several countries on E-commerce will be discussed. In this regard, United States and Singapore are chosen as examples.

As for United States, assorted laws and regulations have always been enacted to adapt to the varying E-commerce activities. In summary, the right of legislation on E-commerce is entitled to each state. Namely, all states of US have the right to carry out laws and regulations to supervise the operation of E-commerce. As a result, the concrete legislation mode and contents varies from state to state. Actually, this approach is quite reasonable concerning that every state has its own regional conditions and special situations. Further, various types of technical standards and norms are formulated to guarantee the safety of E-commerce. Additionally, according to the changes of the network issues, those standards or criteria shall be updated correspondingly. United States plays a leading role in regulating E-commerce all over the world. The laws and regulations regarding E-commerce mainly focus on the E-commerce security, electronic signature and electronic notarization and some other fields.

Singapore puts more emphasis on the management of electronic signature, electronic contracts and the responsibility of network service provider, which exist in E-commerce. Thus, Singapore enacted the E-commerce Law in 1998. This law was the first specialized legal instrument relating to E-commerce in Singapore, which focused on dealing with the key issues that were prevalent in E-commerce. Some concrete clauses and rules were stipulated in this law to instruct the government authorities. The approach of enacting special law to regulate E-commerce activities sets an example for China, which is quite worth learning for other inexperienced countries as well.

Advice on the Improvement of the Legal Regulation of E-commerce in China

Based on the above analysis of the current legal system regarding E-commerce in China and several developed countries, corresponding advice on the improvement of the regulation of E-commerce should be put forward. Generally, the advice will be divided into two dimensions.

From the dimension of domestic legal system, the most urgent issue is to improve the legislation on E-commerce. Firstly, public authority should enact the basic law on the regulation of E-commerce. Purpose of legislation and general principles as such are ought to be contained in this basic law, which serves the function as guidance for the application and implementation of other related regulations and rules. Enhance of consistency and compatibility of above laws and regulations is needed as well. In addition, rights and obligations of the actors involved should be stipulated explicitly. Thirdly, anyone who breaks the law should be punished in accordance with the relevant provisions, which aims at raising citizens’ awareness of observing the law. Besides, relevant supervision system should be established. It is not enough for merely enacting a range of laws and regulations, what of equal importance is the supervision of the implementation of the rules. Additionally, it is of great necessity to put more emphasis on the education over security of E-commerce. Various types of propagandas can be organized by governments, communities and schools.

As for the advice on the international level, international legal instruments on E-commerce should be carried out. Anyhow, treaty-making can be an effective way to strengthen the awareness of every country to attach more importance and significance to the regulation of E-commerce. China should play its role in this treaty-making process and make some contributions as well. During the treaty-making period, some detailed rules and norms on E-commerce shall be discussed.
and countries should reach a consensus on relevant issues eventually. Meanwhile, international cooperation regimes should be established which aims at helping countries to share resources and track down criminals on E-commerce. By far, crimes committed in the field of E-commerce are quite complicated, which increases the difficulty of detection for public security organs. Therefore, it is of great necessity to establish a global cooperation mechanism by which countries can share resources and fight against crimes on E-commerce.

Conclusion

With the rapid development of network and its relevant activities, more significance should be attached to the legal regulation on E-commerce. In regard to the current legal system of E-commerce in China, it is far from comprehensive and flawless. China ought to improve the present legal regulation system over E-commerce from both domestic and international dimensions which targets at providing a healthy and safe environment for all the citizens to conduct online business. On the one hand, improvement of domestic legal regulation system is critical and fundamental. On the other hand, international legal instruments should be carried out to promote mutual communication and cooperation between different countries on E-commerce as a subsidiary means.

Apart from the above analysis on E-commerce, some other issues are left to be further discussed in the future research.

References


