An Overview of China’s Draft Electronic Commerce Law

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China has the world largest Internet population and the most robust online retailing market. In China’s New Normal of Economy, the Internet is the new powerhouse of economic development. The National People’s Congress (NPC), Chinese highest legislature, officially launched the lawmaking process to provide a comprehensive legal framework for the development of e-commerce at the end of 2013. The lawmaking process was accelerated with the unveiling of the national policy of “Internet plus” at the beginning of 2015, which recognized the Internet as the cross-cutting stimulus for Chinese economy.

The e-commerce lawmaking process was led by the NPC Finance and Economy Committee, supported by a multi-ministerial working group and an expert panel. Based on the extensive consultations and investigations all through 2014-2015, the first Draft of the E-Commerce Law (Draft) was completed in early 2016 and circulated to a variety of governmental agencies, regions and economy sectors for public consultations. A couple of important revisions and improvement have been made to the Draft. The Draft was officially submitted as a Bill to the full session of the NPC Standing Committee for the first review in December 2016. Under the NPC lawmaking procedural rules, a Bill will be subject to two more reviews at the NPC Standing Committee. If the reviews go smoothly, the Draft E-Commerce Law would be approved by the NPC in 2018.

The e-commerce lawmaking process has been consistent with the scientific and transparent principles through effectively harnessing the expertise of e-commerce professionals, legal experts and governmental officials and extensively consulting with various social sectors. It’s noteworthy that the international legal experts from the United Nations Commission on International Trade Law (UNCITRAL), United
States, European Union, Germany, Singapore, Japan, etc., were invited to comment on the structure and substance of the Draft at the two international seminars held in Beijing and Shanghai in November 2014 and June 2016 respectively.

The Draft E-Commerce Law aims to set out a comprehensive and fundamental legal framework for e-commerce under the principles of stimulation of development, protection of the legitimate rights and interests and regulation of market order. The Draft contains eight Chapters as follows:
- General stipulations;
- E-commerce operational subjects;
- E-commerce transactions and related services (including e-contracts, e-payment and logistic and express delivery);
- E-commerce transactional security (including data protection, market order and competition, consumer protection and dispute resolution);
- Cross-border e-commerce;
- Supervision and regulations;
- Legal liability; and,
- Supplementary provisions.

The E-Commerce Law will be an important milestone in the Chinese legal system and lay down the legal foundation for the growth of digital economy. The Draft E-Commerce Law is outstanding and unique in a couple of aspects. Firstly, it is considerably comprehensive, covering a variety of legal issues with respect to e-commerce. Unlike many countries’ e-commerce law, the Draft does not limit to legalize electronic transactions, *per se*, but creates an enabling legal environment for e-commerce through regulating a couple of related critical legal issues, such as e-payment, logistics and express delivery, data protection, market competition, consumer protection, online dispute resolution, cross-border e-commerce, governmental supervision and regulation. The comprehensive E-Commerce Law will be a basic economic law in Chinese legal system. Secondly, the Draft contains the sufficient flexibility to create a coherent and vibrant legal eco-system. Despite its comprehensiveness, the Draft does not attempts to be a lengthy collection of a cluster
of laws. Instead, the Draft sets out the clear and fundamental legal principles to enable the further legal developments, particularly in those essential areas, e.g. e-payment, data protection and online dispute resolution, where no specific law is available at the moment. Meanwhile, the Draft organically coordinates with the preexisting laws, such as Contract Law, Electronic Signature Law, Consumer Protection Law and intellectual property laws. Thirdly, the Draft provides a number of innovative legal norms to fit the need of e-commerce. For example, the Draft sets out the principles of innovative governmental supervision and regulations and endorses the market-oriented approach for the digital economy to replace the old-mode market intervention; the Draft legalizes the automated online transactions and reforms the intermediary liability of the e-commerce transactional platforms. Lastly, the Draft recognizes that e-commerce be an essential part of Chinese international trade. The Chapter on cross-border e-commerce makes sure that the Chinese laws are consistent with the international trade law and standards and establishes, for the first time, the legal framework on paperless trade, single window facilities and cross-border e-commerce complex services.

In sum, the Draft E-Commerce Law that contains comprehensive, flexible, innovative and internationalized legal norms will ensure a new era of development of Chinese e-commerce.