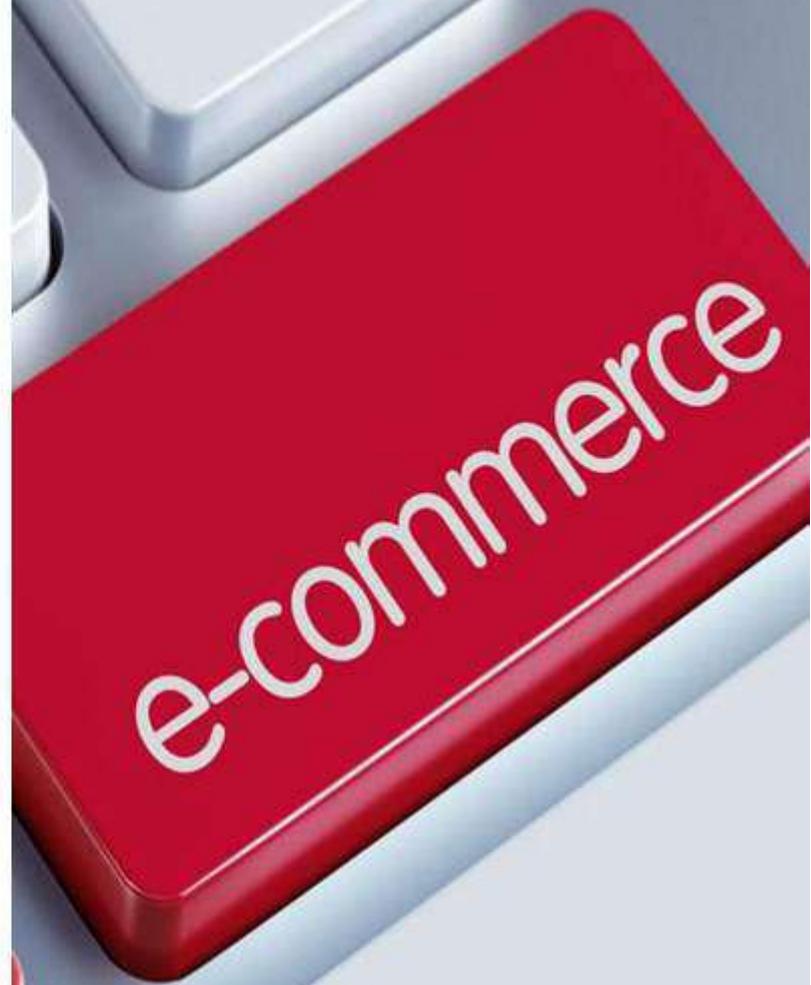


# E-Commerce in China

## Facts, Law and Regulations



Version 2.0



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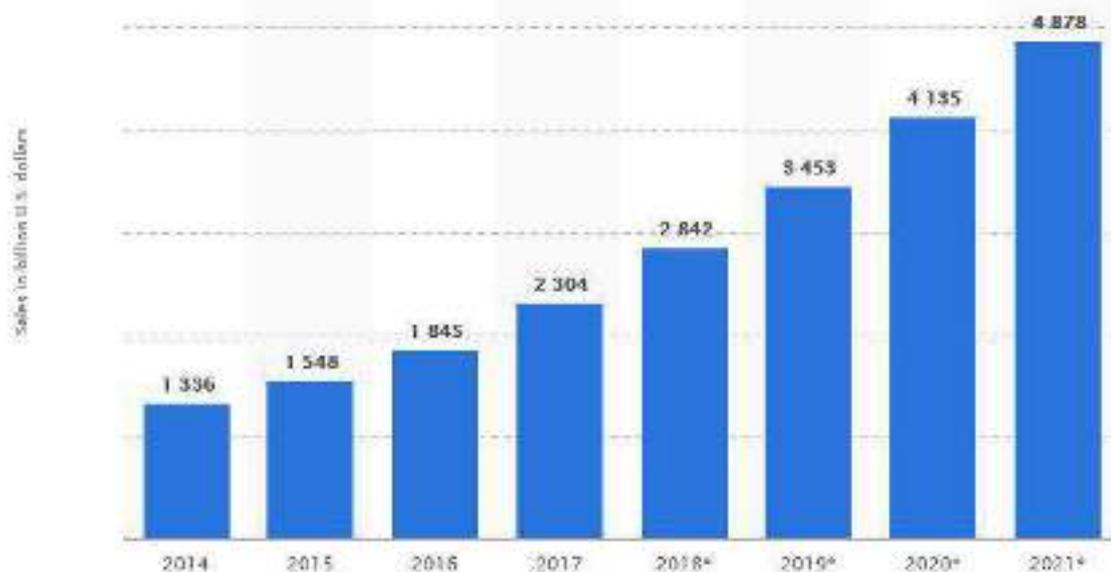
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## A. E-commerce Worldwide

The internet allows consumers to shop online globally, purchasing products and services that may be unavailable and prohibitively expensive in their own countries from websites based in different countries and from marketplaces that host multinational merchants. This phenomenon is known as cross-border e-commerce and as of **2017 global e-commerce sales have reached 2.3 trillion USD<sup>1</sup>**, seeing an annual increase of about 20% compared with an annual growth rate of 6% for global retail sales. The sector will continue to grow as advancing technologies help reduce problems associated with international payments, long shipping times and language barriers and brands look to sustain communication and engagement with consumers in emerging markets, the key one being China.

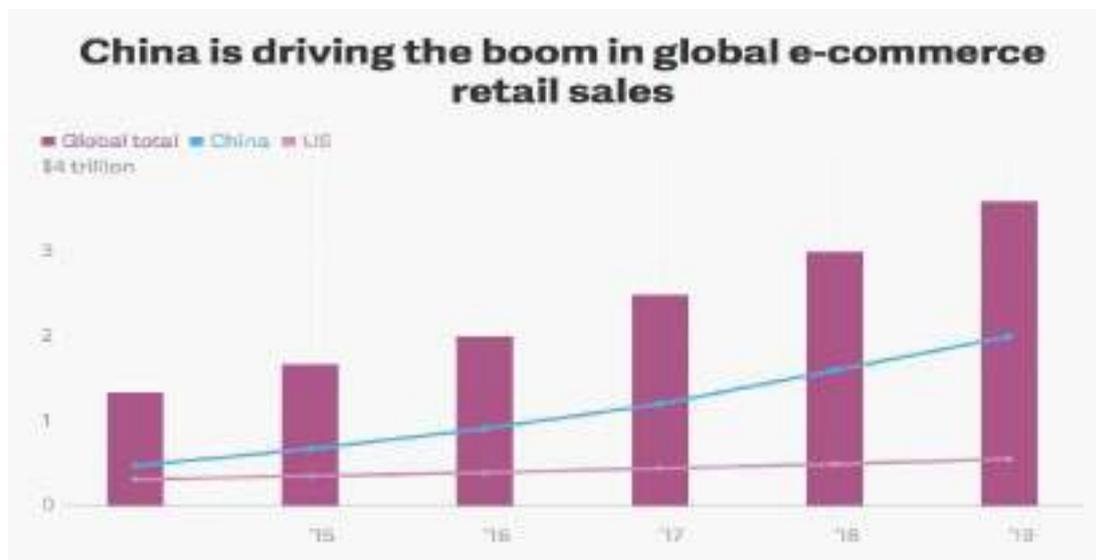
Retail e-commerce sales worldwide from 2014 to 2021 (in billion U.S. dollars)



1 <https://www.statista.com/statistics/379046/worldwide-retail-e-commerce-sales/>

## B. China's E-commerce Market

China's Ministry of Industry and Information Technology (MIIT) reported figures of **772 million Internet users** in December 2017. The total transactions of China cross-border e-commerce market reached 7.7 trillion yuan (US\$1.16 trillion) in 2017<sup>2</sup>, including retail and B2B according to a Chinese research company iiMedia. And, it's expected to reach 8.8 trillion yuan (US\$1.32 trillion) in 2018. The total number of cross-border shoppers in China exceeded 410 million in 2016 and is expected to reach 740 million in 2018<sup>3</sup>. EMarketer estimates that each of China's digital shopper this year will spend an average of \$473.26 and projections that cross-border e-commerce will have a compound annual growth rate of 18% through the end of the decade reaching an estimated \$2.2 trillion, will see China's e-commerce market becoming larger than those of the US, Britain, Japan, Germany and France combined by 2020.



This growth is part of an overall increase in online shopping in China driven in

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2 <https://www.chinainternetwatch.com/24363/cross-border-e-commerce-retail-2021/>

3 <https://www.chinainternetwatch.com/19774/china-cross-border-e-commerce-insights-20162017/>

part by higher standards of living and the advent of global digital sales platforms such as Alibaba's Tmall Global in 2014, with the surge in demand for foreign products due to the combination of overseas travel, increased internet usage and subsequent exposure to foreign brands. Future development of China's e-commerce channel is closely linked to technology developments and the behaviors of Chinese consumers, especially the way they research and order products online and their preference for speed and convenience.

On the so-called **Singles Day** on November 11, 2018, **Alibaba has spent 69 billion yuan in the first hour alone - nearly \$ 10 billion.**<sup>4</sup> Thus, the company increased the turnover of the first hour by about 21 percent compared to the previous year. Singles Day is now the largest online shopping event in the world - even before US Black Friday. Alibaba sold 150,000 razors and 100,000 microwaves in 60 minutes in just 60 minutes in 2017 - and made 24, 15 billion dollars in profits within 24 hours. The company has already achieved this amount after 16 hours in 2018.

There are four main drivers of e-commerce growth in China: **e-commerce platforms, social media platforms, digital payments platforms and mobile devices**, which must be manipulated thoroughly in order to ensure a company's success in China.<sup>5</sup>

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<sup>4</sup> dop/Reuters/dpa, 11.11.2018.

<sup>5</sup> <http://red-luxury.com/digital/the-four-drivers-of-e-commerce-growth-in-china>

## C. Key Growth Drivers

### I. Platforms

There are two distinct models for Chinese e-commerce: direct purchase and marketplace.

#### Direct Purchase:

Direct Purchase is where a platform buys your stock either directly from the brand or through a wholesaler, agent or other intermediary. Alibaba does not own this business model and the largest platform is JD.com which holds 58.3% of the market share.



#### Marketplace:

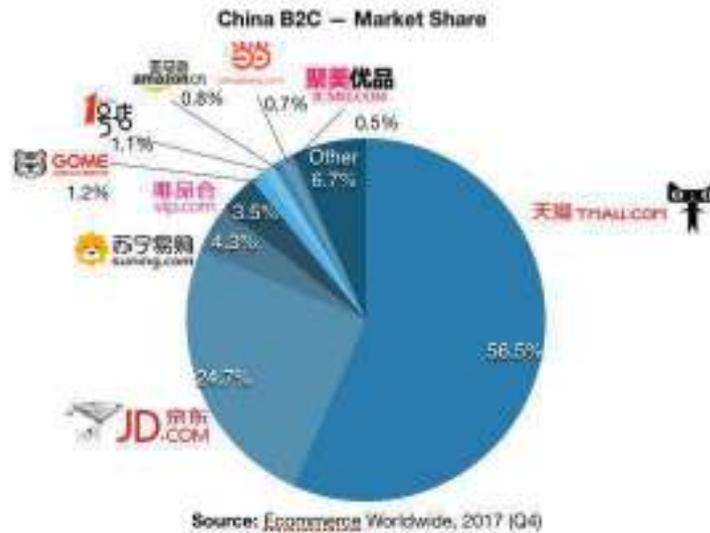
The marketplace model is used **exclusively by Alibaba** with its Tmall and Tmall Global channels accounting for around 60% of the market share. JD also offers a marketplace model in addition to its direct purchase model and thanks to its investment in logistics infrastructure and a strategic partnership with Tencent on social media, it has been reducing Alibaba's dominance of the market.

However, the complexities of actually trading should not be underestimated nor should the costs involved, with fixed costs standing at a \$25000 deposit, \$10000 platform fee, \$15000 trading partner set-up fee and variable 1-5% platform fee. This is very much a volume business and so it's the very large brands and retailers that typically are the ones to make the investment, commit to marketing and get their products into China using this platform.

Sellers operating within the Alibaba ecosystem for example have to build everything from scratch, setting up a Tmall store is like rebuilding your website which is one of the reasons why the time and costs involved are high. Furthermore hiring a Trading Partner (贸易伙伴 TP), something which is mandatory for any seller, is the same as hiring an out-source team in China and will typically cover the following functions: customer service, designing and building the online store, marketing and listing optimization, logistics, payments, data management and working directly with the platform-this is another key reason why the costs are high and the decision is critical to get right.

If you wanted to you could operate your company on both a Direct Purchase Platform and a Marketplace platform, you are not limited to picking just one.

Calculate the costs before trying to set up any kind of operations in China.



## 1. Alibaba

At the end of 2015 Alibaba had recorded gross sales of \$394 billion and results for the first quarter of 2016 have since meant that **Alibaba has overtaken Walmart to become the largest retail economy in the world**. For foreign companies Alibaba provides access to China’s online shoppers.

Alibaba operates two distinct platforms: **Tmall and Tmall Global** Tmall is an online marketplace that allows businesses to sell directly to consumers **similar to third-party selling on Amazon.com**. One of its programs Tmall Global-allows foreign companies to sell directly to Chinese consumers without requiring those companies to have Chinese business licenses or to have inventory there. However it is far more than just a sales channel. By leveraging the entire Alibaba ecosystem, Tmall Global can **access a vast repository of consumer data** on purchasing preferences and habits that merchants can use to improve marketing strategies in China. Moreover **Alibaba’s advertising platform, Alimama** can place products in front of its 407 million users and can help you reach as broad or as specific a demographic as you desire.

Alvin Liu, general manager of Tmall Global and James Zhao, the director of import logistics at Alibaba’s affiliated shipping network Cainiao, detailed the

**It would be advisable to research companies that work in a similar field to your company and that have launched themselves on Alibaba, so you can see whether Alibaba is truly your best option.**

advantages of working with Tmall Global; 'we provide the platform, the IT infrastructure, data analysis and marketing tools that enable you to not only sell your products, but test new products, engage [with] consumers and build your brand. Shipping is also a key part of Tmall Global's strategy, Zhao said the network's aim is to deliver domestic orders **within 24 hours and cross border orders within 72 hours**. In his own words 'from international bulk shipping through to fulfillment to the consumer in the last mile-we provide a one-stop solution<sup>6</sup>.

Finding quality products is important to consumers, and China's well-known problem with counterfeits is a concern for any brand doing business in China. However Alibaba and particularly Tmall Global have **emphasized that they are committed to protecting intellectual property rights**, pointing to the company's recent hiring of Matthew Bassiur as head of global IP enforcement, Bassiur previously served in senior security and IPR enforcement at Pfizer and Apple. Together Bassiur and Alibaba are building a global IP enforcement team, exemplified by the company's programs for spotting and taking down counterfeit product listings from its online shopping sites, initiatives to simplify the trademark registration process, reductions in the time it takes to remove counterfeit products, closer partnerships with global law enforcement authorities and government, and the imposition of a variety of penalties against offending merchants.

## 2. Taobao



Taobao is a C2C site **analogous to Ebay** and was created by Alibaba in 2003. Sellers are able to post new and used goods for sale or resale

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<sup>6</sup> JIM ERICKSON: ALIBABA'S EVANS: TMALL GLOBAL IS CHINA SHORTCUT FOR U.S. BRANDS , MARCH 10, 2016  
<http://www.alizila.com/evans-tmall-global-china-shortcut-us-brands/>

on the Taobao Marketplace either at a fixed price or by auction. Taobao claims to have over **600 million registered consumer accounts, 1 billion product listings, and holds a staggering 80% share of China's C2C market.** However Taobao doesn't charge any commission fees on transactions, its main revenue stream is from advertising on the site. In 2013, Alibaba Group created a special in-house team to speed the transition of its flagship C2C e-shopping site, Taobao Marketplace, to e-commerce by creating a dedicated smartphone app called Mobile Taobao. The app launched in March 2016 also gives users access to Alibaba's B2C websites Tmall and Tmall Global.com. The switch to mobile devices for accessing the web, especially for shopping, is a well-established trend in China.

According to Boston Consultancy Group sales made via mobile devices accounted for **51% of the \$600 billion** in gross merchandise value seen in China's e-commerce market in 2015 and that number is expected to **jump to 74% of the \$1.6 trillion in gross domestic merchandise BCG projects for 2020.** With regards to Alibaba's online marketplaces, the December quarter of 2015 saw mobile sales making up 68% of the company's total GMV, up from 62% in the previous quarter. In the future Taobao is looking to offer merchants data driven tools for better customer acquisition and community management. The companies goal is to continue to turn Taobao from merely a virtual shelf on which products are sold to one rich with data and content.

Content is an important theme across all of Alibaba's platforms and the company is increasingly pushing its websites as lifestyle destinations rather than just places to shop. Zhao has argued that consumers spend a significant amount of time on the platform consuming content and that the most successful merchants use content to engage those consumers. This is specially true with mobile devices he said, because research has shown that consumers tend to view web-pages for longer amounts of time on a mobile phone than

when using a desktop or laptop, therefore if the content is good users will stay. To further a merchant's ability to deliver that content, Alibaba claims it will develop more multimedia features, including optimizing Taobao's video streaming function, to allow them to interact with consumers. The company also plans to loop in other parts of its ecosystem, including micro blogging website Weibo and marketing service Alimama, to serve merchant's needs from end to end, from content creation to dissemination and finally to consumption.

However, despite Alibaba's market position, **the e-commerce market in China is large enough for other competitors** and niche players to thrive including some regional platforms, such as Daminwang and Jingdong. **Jingdong holds roughly 15% of the B2C market** and is primarily focused on electronic items. It is currently the **'3Cs' e-commerce sales leader in China** (computer, communications and consumer electronics).

### 3. JD Worldwide



Whereas Alibaba is an ecosystem JD is a fully owned e-commerce and logistics business with a logistic network

encompassing 500 warehouses in over 50 cities. There are several factors which are unique to JD and aside from the owned **logistics capability which is the largest in the country**, the strategic tie-up with Tencent is another. The ubiquity of social media platforms like WeChat means that JD operates within the Tencent purchase and consideration funnel with a large proportion of sales being completed directly through the WeChat app and payment gateway. JD and Tmall compete with each other but as a merchant it is possible to operate

**WeChat is the key social media platform in China and JD's partnership with them is crucial and would be a key factor in your companies**

on both platforms using the same Trading Partner and so incremental costs to grow sales channels are that much lower once you've established a working operation with your TP.

#### **4. VIP.com**

Is a major player in the e-commerce sector with 2017 revenues of over \$13 billion however the site works differently to the marketplaces of Tmall and JD in that **listings are promoted for a short period, typically 2-4 days and are not searchable on a continuing basis**. This fleeting opportunity gives customers a big incentive to buy. In Europe a flash-sale site is associated with very large discounts on clearance stock but whilst VIP.com shares the time limited feature it is not based solely on discounting, in fact many companies use it as **a promotional tool for in-season stock and as a way to grow their brands** into the Chinese market with a platform that has over 300 million registered users. The time limited sale model does impose difficulties for foreign merchants however because expectations from Chinese customers are so high in terms of delivery times. Typically stock will need to have cleared customs in China before a sale can be initiated, this is achieved by VIP.com either buying the stock and taking the risk of moving it into China or the brand can allocate consignment stock and ship it to China. It must be acknowledged that the **platform has set up international buying teams**, including one in London to form these long term relationships with European brand owners and simplifying the process of getting your products on VIP.com and thus sold.

## II. Social Media



China's social media platforms have become an important additional driver or facilitator of e-commerce activity. These platforms, such as Tencent's WeChat or Sina Weibo (China's leading Twitter-style micro blogging platform) have been growing rapidly: Tencent's WeChat reported over 600 million subscribers, up from 300 million in January 2013. With almost instantaneous feedback and easy-to use interfaces, social media platforms have become a staple in the life of Chinese e-consumers. In particular consumers in China use these platforms for immediate 'buy/don't buy' advice from friends, to post product reviews, and to seek product knowledge/advice from key opinion leaders. According to e-commerce statistics in China, 40% of China's online shoppers read and post reviews about products, more than double the number in the US.

These social media platforms are now stepping up their integration into the e-commerce chain as retailers are developing a more sophisticated social media presence. Tencent's WeChat (similar to WhatsApp) for example has formed a strategic partnership with market platform JD Worldwide adding payment functionality, so users can log into their JD account through the WeChat App and make purchases directly from the application. It is estimated that this purchase route accounts for approximately 60% of all JD sales. Tencent's QQ is the leading mobile and desktop based internet portal which is the second most visited website in China with over 1 billion visits (SimilarWeb2016). This portal is then linked into the full ecosystem of Tencent's other offerings including gaming, TV content music streaming and

**The costs of having to build and research for a new social media platform, must be taken into account.**

other subscription services it describes as Value Added Services (增值服务 VAS). These trends are fostering an environment whereby mobile devices are an increasingly crucial element in China's e-commerce arena.

WeChat as one of China's key social media platforms can also be manipulated by a business to increase sales. With a 'Subscription Account', brands can create content and present new products and offers to followers. This contents can then be linked through to an e-commerce store built inside the WeChat application, or outside of the application (ideally an HTML5 第五次修改后的超文本标记语言 mobile store). This is perhaps the simplest way to explore the potential of sales through WeChat. A "Subscription Account" can be built in an afternoon by using the tools provided by WeChat's [www.Fengling.me](http://www.Fengling.me). The only catch is that your company has to be registered in China. For companies without a China registered office, there are other ways to access the market but they don't allow for the same control over presentation and process.

### **III. Mobile e-commerce (m'commerce) and payment**

China has the **world's largest mobile internet population with 772 million users (data from the beginning of January 2018)**<sup>7</sup> and the number of consumers shopping on mobile devices (as mentioned above) is growing very quickly,<sup>8</sup> in the quarter ended March 31, 2015, 51% of the GMV (gross merchandise volume: 网站成交金额) generated in Alibaba Group's retail marketplaces came from mobile devices.<sup>9</sup> A report by Forrester earlier this year predicted that e-commerce in China will reach \$1 trillion by 2019, mostly fueled by mobile

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<sup>7</sup> <https://www.internetworldstats.com/stats3.html>

<sup>8</sup> Quinton Bronkhorst: The world's largest mobile networks, 14.03.2012, Business Tech: <https://businesstech.co.za/news/mobile/26289/the-worlds-largest-mobile-networks/>

<sup>9</sup> CIW Team: Mobile Accounted for 51% of Total Alibaba GMV in Q1, 08.05.2015, <https://www.chinainternetwatch.com/13329/alibaba-q1-2015/>

commerce. Candice Huang, manager of international corporate affairs for Alibaba said 'It is important for companies to think through their China strategy, including being able to adapt to some characteristics in e-commerce in China, Chinese consumers rely more than Americans on shopping sites, chat features since **return policies are not as popular**, text messages sent to mobile phones, rather than emails are a more effective means of reaching people, especially younger ones'. It is clear that accompanying the rise of e-commerce in China is a clear trend towards mobile devices. In 2012, **mobile transactions totaled USD 7.8 million, representing 3.7% of all e-commerce transactions in China**. However, as of 2016 mobile commerce in China has quintupled to \$ 41.4 billion representing 85% of all e-commerce transactions. A staggering 55% of China's internet users have made a mobile payment, versus only 19% of internet users in the US.

The idea of mobile purchasing aligns with the Chinese consumer's desire for speed and the convenience of 'any time' shopping and according to data presented by Taobao, **the busiest time of the day for mobile shopping is 10pm** with purchasers made by mobile devices being 67 seconds faster than purchases made on personal computers. It is likely that the trend towards 'smarter' and more functional phones and tablets, coupled with the rising use of social media platforms to inform and connect consumers, will fuel the continued rise in the number and proportion of so-called 'm-commerce' transactions in the Chinese e-commerce market.

#### **IV. Online to Offline**



While scale, speed and simplicity proved advantageous during the past 15 to 20 years, McKinsey researchers

predict that the changing shape of Chinese consumption is set to topple some giants of the past and elevate new champions. **Just about every retail brand we see in China is pursuing an online-to-offline (O2O:线上到线下的营销模式) strategy**, brands want to make sure their sales channels reinforce each other, provide for a better customer experience and respect the trend of consumers migrating to e-commerce without undermining a profitable store-based business. Below are the key necessities for a successful O2O strategy.

## **1. Stay consistent**

Maintain consistent communications, pricing and customer service across all channels. The online and offline experience **has to offer the same brand image** and transaction possibilities including the same identity, message and pricing. Pricing consistency will also avoid internal and external conflict, as your store managers and e-commerce teams won't be competing against each other and customers won't feel like they missed out by not shopping on a specific channel.

Similarly, train customer service teams on each aspect of the brand using standardized material. Giving your online merchandising and graphic design the same look and feel Your physical store will also help affirm a brand's image in a consumers mind.

## **2. Cross-sell and cross promotion**

It is not merely enough to be consistent, **you must use your channels to cross-sell making sure that each one promotes and validates the other**. All printed and in-store material should act as a gateway to the brand's digital realm (for example QR codes (矩阵二维码) or hashtags) and all online purchases should insert material with store locations with the shipments. Much harder to achieve is the idea of 'one window' to the customer. However it

**QR codes can be used as a method of payment in China among other things.**

is essential that regardless of what the customer is doing with the merchant, regardless of where, and regardless of what channel, the store has one aggregate view of the customer and the customer has one aggregate view of the store. Thus the customer can purchase an item online and still be able to return said item at the store, or the customer can visit a store and then order online. This is harder to do than it sounds, particularly across multiple markets but it is a necessity for success.

### **3. Follow trends**

As illustrated throughout this brochure, the strongest trend in retail today is the move to e-commerce away from physical stores. Consumers now have better selection and discovery mechanisms than ever before and on-line merchants have lower costs allowing them to experiment more. It is a trend seen in every market in every demographic and perhaps the most effective way to play into it is to **run your e-commerce program DIRECTLY**. Not laying off on your distributor, will see your net improve as you retain control of your brand and drive offline improvement through online improvement.

**China's rural population are likely to become a huge market in the next few years.**

Bring in outside expertise as needed, however the smarter brands will seek to run their Chinese e-commerce operations aggressively, purposely and directly.

### **V. Differences within China**

As the e-commerce market in China matures, businesses must develop more sophisticated strategies to influence and reach target customers: a one-size-fits-all e-commerce strategy is no longer sufficient. China's on-line population is not only incredibly large, it is also **highly diverse**, in terms of consumer behaviour and it would be foolish for businesses to assume that the Chinese consumer market is homogeneous. Sales very widely dependent on tier city. In tier-1 cities such as Shanghai, many consumers are e-purchasing vacations, cars or high end personal care accessories, including cosmetics,

handbags and high-end fashion with greater transactional frequency than their counterparts in tier-2, tier-3 and tier-4 cities and **brand loyalty materializes at a markedly higher rate in tier-1 cities than anywhere else in China**. To contrast, in small markets such as Fuzhou and other lower tier cities 'last season items' still sell well and consumers there are still more focused on basic value propositions when making purchase decisions. Methods of influence also differ between different markets: tier-4 cities tend to rely more on 'key opinion leaders' and less on word-of mouth, or user reviews and blogs. Despite tier-4 city residents having relatively less discretionary income they appear to be spending similar amounts online as consumers from tier-3 or tier-2 cities. Overall, China's e-commerce market does tend to be skewed heavily towards fashion and accessory purchases such as handbags, shoes and cosmetics. **Roughly 40% of all e-commerce transactions are fashion and accessories, purchases made by younger, white collar, urban female shoppers.**



	online shopper	non-online shopper	Internet coverage
Tier 1/2	72%	28%	76%
Tier 3/4	66%	34%	47%
Rural area	64%	36%	19%
National average	67%	33%	55%

## D. Barriers to Entry

### I. Taxes and Legal Aspects

When products enter in to China, they are classified into two categories: personal parcels or commercial cargo. Before entering China's customs border, both are required a declaration at customs by filing 'Article Lists' or 'Cargo Lists' for customs clearance.

GACC (海关总署) Announcement No. 56, 2014 on Cross-Border E-commerce Trade Supervision<sup>10</sup>, which has been in effect since August 1, 2014, defined the concept of personal parcel. There are two important criteria for it:

- The value of the parcel must be lower than US \$154 except when from Hong Kong, Macao, or Taiwan, where the maximum value is US \$123;
- The goods in the parcel are for personal use (meaning the quantity is reasonable). The customs officer has the authority to determine if the parcel is for personal use or not.

For individual parcels, import duties applies only to goods, and goods without going through CIQ inspection (CHINA ENTRY-EXIT INSPECTION AND QUARANTINE 中国出入境检验检疫) and quarantine process. There is no requirement for labeling and testing; but the import of goods is prohibited. If taxed, they vary according to product category.

Different from individual parcels, commercial cargo must go through customs and CIQ inspection and quarantine procedures.

Import duties and taxes vary from different types of commercial goods, such as import duties, VAT and consumption tax. Applicable tax rate depends on the type and classification of products HS Code (Harmonized Commodity Description and Coding System 协调商品描述和编码系统) and import duties

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<sup>10</sup> <http://www.customs.gov.cn/publish/portal0/tab65598/info714267.htm>

**It is equally likely that the draft rulings could be either disregarded or made much stricter, later on.**

that may be affected by free trade agreement, **MFN agreements (Most favored nation) or other trade agreements/disputes.**

Since 2012, the Chinese Government had a number of measures to boost cross-border e-commerce in place, namely the lowering of import duties on products that are purchased online, however as of the past two years with the industry booming the Government has sought to add some checks and balances which must be made aware of.

**In April 2016 taxation rates for common cross-border products were greatly modified<sup>11</sup>.**

Under new laws certain consumer goods and luxury products will be subject to higher taxes, for example for purchases of CNY 500 or less, tax is now 11.9% up from 0% with the tax rate for purchases over CNY 500 increasing from 10% to 11.9%. The aim of this is to eliminate the previous consumer preference for buying in quantities that total less than CNY 500 in order to avoid tax and is accompanied by the new spending limit in place of CNY 2,000 on a single purchase and up to CNY 20,000 annually. The latter has the potential to cause significant problems for a companies customer relationship team as it is anticipated that there will be a sharp rise in **'dummy accounts (虚拟账户)'** as consumers look to combat their CNY 20,000 annual spending limit. **Taxation loopholes such as the 'personal parcel (个人包裹)'** have also been closed **irrevocably**. According to MOFCOM, March 17, 2017, the supervision mode of cross-border e-commerce retail import remains stable on the whole at the present stage, and the cross-border e-commerce retail import commodities are supervised as **personal belongings<sup>12</sup>**.

It can be observed, that an steadily rising number of Chinese products are attached to safety and quality defects. Therefore the General Administration of

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11 [http://gss.mof.gov.cn/zhengwuxinxi/gongzuodongtai/201603/t20160324\\_1922972.html](http://gss.mof.gov.cn/zhengwuxinxi/gongzuodongtai/201603/t20160324_1922972.html)

12 [http://english.mofcom.gov.cn/article/zt\\_cv/lanmucc/201703/20170302538508.shtml](http://english.mofcom.gov.cn/article/zt_cv/lanmucc/201703/20170302538508.shtml)

Quality Supervision, Inspection and Quarantine (AQSIQ) (国家质量监督检验检疫总局) issued in May a note (《质检总局关于跨境电商零售进口通关单政策的说明》) to clarify that products imported via cross-border e-commerce are considered 'commercial goods (货物属性)' and that those products imported via the bonded warehouse model (网购报税商品: 备货模式) must obtain a customs clearance certificate (通关单 if they are listed in the Catalogue of Commodities subject to entry and exit inspection and quarantine (《出入境检验检疫机构实施检验检疫的进出境商品目录》)). This confirms the regulatory trend of cross-border e-commerce products moving in the direction of being governed in the same way as products imported via traditional methods, reinforced by the introduction of the **Positive List**<sup>13</sup> (《跨境电子商务零售进口商品清单》), released by the **Ministry of Finance** (财政部) and other 10 authorities, detailing the **tariff codes** (税则号列) and **product names** (货品名称) of almost 1400 permitted cross-border e-commerce categories, along with various notes that provide additional regulatory notions where necessary. Although many approved products are listed without such additional notions it is vital that the List be consulted regularly by companies as it has been confirmed that it will be **updated from 'time to time'**. Moreover, a number of products do contain exclusions and additional guidelines, which have been detailed below. However, **the above transition period is also applicable to the Positive List**, and it is the same as the above which will finish at the end of the year.

## 1. Food

The Chinese Government launched its Made in China 2025 plan in 2015, **partly aimed at upgrading and modernizing supply chains**, and during 2017's Two Sessions, Chinese Premier Li Keqiang re-stressed the importance of food safety for the whole nation's sustainable development.

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13 [http://gss.mof.gov.cn/zhengwuxinxi/gongzuodongtai/201603/t20160324\\_1922972.html](http://gss.mof.gov.cn/zhengwuxinxi/gongzuodongtai/201603/t20160324_1922972.html)

One of the most significant findings from a Mintel consumer survey is that food is a much more **significant online shopping category from overseas websites than from domestic websites**. Thus, a market opening for food companies to target Chinese consumers directly without having to set the Administration of Quality Supervision, Inspection and Quarantine (ASISQ) released the Regulations for the Safety Supervision and Administration of Cross Border E-commerce of Imported Food via Bonded Warehouse Model (draft) (《网购保税模式跨境电子商务进口食品安全监督管理细则(征求意见稿)》), which raised the regulatory bar for those distributing food via cross-border e-commerce. This was subsequently followed in the December of the same year by the release of the draft amendment to the Implementing Regulations of the Food Safety law (《中华人民共和国食品安全法实施条例(修订草案送审稿)》), which explicitly stated that cross-border e-commerce imported products shall comply with the food safety law and all relevant regulations. Although this amendment has not yet been finalized, **it is expected to come into affect later this year and it continues the trend in recent regulatory developments**, hinting at the prospect of future regulations which must be kept an eye on.

According to Ipsos' 2015 survey, Chinese consumers are now taking unprecedented care over **food safety and health**. Green or organic food consumption has gradually become an urban trend, and city residents would rather pay a higher price tag for a basket of safety and health assurance. There are also issues with regards to the distribution of **organic products**. Chinese certification systems and foreign organic certification systems have not been mutually recognized and thus, internationally recognized organic products that have not been certified in China or have only been certified **by an overseas organic certifying body cannot be labeled as 'organic' when marketed in China**. To ensure the quality of imported organic products and reinforce regulations on said products, Chinese authorities have advised that

they will verify consignments in accordance with the Regulation on Certification and Accreditation and the Administrative Measures on Organic Product Certification (《有机产品认证管理办法》). Certification costs can vary, as cost is determined by the process of inspection. For example, if a variety of lab tests are required, the cost of certification will increase. On average, inspection can cost up to \$3,252 per product. However there will be added costs if more tests are required. In addition to this cost, companies wishing to seek organic certification will have to pay travel and accommodation expenses of Chinese inspectors coming to inspect suitability. Moreover, **organic certification must be renewed each year**, although fees are reduced by nearly one-third during the re-certification process.

## 2. Infant Formula



The Chinese Food Safety Law promulgated in 2015, sets forth strict supervision for specific products, namely infant and

young children formula milk. Starting from the **1st January 2018**, all infant formula imported via CBEC (cross-border e-commerce) must obtain a formula registration certificate from the China Food and Drug Administration (国家食品药品监督管理局 CFDA), following the **Administrative Measures for the Registration of Baby Formula Milk Powder Products Formula** (《婴幼儿配方乳粉产品配方注册管理办法》) which should be finalized soon. **This suggests infant formula developed per foreign standards will not be available via CBEC platform, unless its formula is also approved in China.**

Once the Registration Measures are published, the industry should gain more clarity as to whether special rules have been tailored to meet the needs of purchasers of infant formula via CBEC. In traditional modes of import, before any infant formula can be shipped to China, not only must the formula be registered, but its overseas producers must also undergo Certification and Accreditation Administration of China (CNCA 中国国家认证认可监督管理委员会) registration (known as producer registration), this is separate from formula registration and their overseas production site must undergo a full audit. The Positive List remains silent in this regard, however further clarification is expected as to whether all infant formula via CBEC must be sourced from CNCA registered foreign producers.

### **3. Health Foods**

From the 1st July 2016 the Administrative Measures for Health Food Registration and Filing (保健食品注册与备案管理办法) came into force, this states that all health foods, including vitamins and mineral supplements, **now need to be registered with the CFDA.**

### **4. Cosmetics**

All cross-border e-commerce products must **have already been registered or notified with the CFDA in line** with requirements for regular imports. A list of products that have already obtained permission is available on the CFDA's website.

### **5. Medical Devices**

Medical devices and related products are also now required to be registered or notified according to existing regulations before import via CBEC, which again puts the regularity requirements on par with the requirements that already exist for traditional modes of import. A list of medical devices that have already been registered (or notified) is available on the CFDA's website.

However, the Positive List was announced within a very short period of time and there are still **a number of issues that require further government clarification**, so much so that the corresponding opinion solicited from major industry representatives of the likes of the Ministry of Commerce and the Ministry of Finance, is the consideration of a one-year postponement of the new policy, although emphasis is still on the regulation of cross-border e-commerce products in line with traditional modes of import. At the local level, several pilot cities are drafting their own rules for the inspection and quarantine of products on the Positive List. Ningbo is considering following the same inspection requirements for cross-border e-commerce products brought

in via the bonded warehouse model as those products imported via traditional modes. The Hangzhou CBEC Pilot Zone too is at the final stage of developing related registration guidelines for the bonded warehouse model. On the 7th march 2016 the states council determined **Hangzhou as the first pilot zone, the China (Hangzhou) Cross-Border E-Commerce Comprehensive Pilot Zone (中国(杭州)跨境电子商务综合试验区)**. In the meantime the number of the pilot zones edged up to ten in 2016 (i.a. Shanghai, Shenzhen and Tianjin). At the current year the number of FTZs has increased to 22. Developments in these pilot areas should be closely monitored as they tend to reflect central government's intended direction for managing cross-border e-commerce.

Besides the measures of the AQSIQ the safety and quality control receives support by the network of testing agencies like **ZAIQ (浙江省检验检疫科学技术研究院), SGS, CAS (中国科学院) or CNCA (中国国家认证认可监督管理委员会)** and the big data analysis. For the latter, information of different channels from all over the internet is evaluated and collected by using internet robots - social networks, costumer reviews and complaints, risk reports of organizations etc. In case deficit products entered nevertheless into the market, they will be withdrawn from circulation and warnings will be issued towards costumers.

## **II. Awareness**

Fueled by a fast **growing middle class**, China racked up **\$295 billion** in online sales last year, according to a report from consultancy company McKinsey & Co. The US, by comparison tallied only \$270 billion in e-commerce sales. China's biggest online sales day 'Single's Day' on November 11th saw sales rise 80% from the previous year to over \$5.7 billion, which is more than triple the amount of revenue made on 'Cyber Monday' in the US. The country's middle class is equal in size to the entire US population and the McKinsey report projects that it will reach 630 million by 2020, it is their hunger for authentic,

**Single's  
Day is  
operated  
by  
Alibaba.**

good quality foreign products that is expected to drive much of the growth of cross-border e-commerce in coming years.

Consumer confidence has also remained surprisingly resilient over the past few years as **salaries have continued to rise and unemployment has stayed low**, in a survey conducted by Mintel, 55% of survey participants said they expected to earn significantly higher incomes over the next five years.

This is good news for global and domestic retailers as in many longer-standing markets, they are also developing brand awareness and increasing proclivity to purchase high quality and/or individually satisfying products, showing a commitment to brand loyalty and repeat business: VANCL, a Chinese online clothing and apparel company reported that **80% of its consumers had made repeat purchases** in 2012, but the report stresses that merchants must take into account new realities, as incomes have risen and consumption knowledge has increased China's shoppers are becoming more discriminating.

One indicator of that change is consumers' continued shift away from a focus solely on products to **greater demand for services and experiences**, for instance, the survey showed that 25% of consumers are planning to spend more on leisure and entertainment compared with just 8% four years ago. Whilst a willingness to spend is clearly apparent, data showed that consumers are continuing to move from mass to premium products-cosmetics, spirits and dairy milk were the top three favorites. Foreign brands still hold a leadership position in the premium segment however in order to retain their share they must adapt to the Chinese ways of shopping, for example **Chinese people tend to think of online shopping as entertainment** and a lifestyle-playing interactive games on shopping sites, browsing to see what's new and generally preferring flashier presentations. Although Tmall Global results will be prioritized in Taobao and will also show up on Tmall searches, only 36% of consumers in 2015 purchased goods from cross-border websites, only 4% purchased cross

border exclusively (China Internet Watch).

Consumers don't just need to be aware of your brand's availability in e-commerce marketplaces, they also need to be aware of why buying it there is their best choice. **The following should be considered:**

How can you generate and maintain awareness effectively, efficiently and for the right price?

Purely online brands will need to take marketplace advertising spending into account and completely overhaul how they approach social media to suit WeChat, while brands with an offline presence can see cross border as a chance to vary their product mix, offer exclusives and test new products.

**Daigou** - Although the figures don't lie they fail to take into account the sellers who purchase products overseas, import them and then sell them on via grey market channels. This is known as Daigou. Daigou purchases are often luxury goods as consumers can avoid the large import tariffs that China places on such products, but they pose a challenge to non-luxury brands too. Example: a lot of demand for Daigou services have been generated by consumers who are scared of buying unsafe domestic products-particularly food products.

Daigou sellers need not be the enemy though-they can become Taobaoke instead-official resellers who earn a commission from the brand-the higher the commission the higher the incentive for them to market your brand above the others they sell. This system allows you to filter and choose the sellers you want and set their commission directly.

While it takes time for companies to learn these differences and to hone their China strategy, understanding and responding to the evolution of China's consumers will be decisive in sorting out what companies win and lose both international and domestic competitors.

### **III. Three ways to enter into Chinese Market**

#### **1. Traditional Entry**

That is the so-called to establish a company (foreign invested enterprise, or FIE) in order to conduct commercial activities and to support partners in the market. However, the registration process can be very long.

#### **2. Setting Up On A Domestic E-commerce Marketplaces**

It is required that your company has a legal entity such as a Joint Venture (JV) or a Wholly Foreign Owned Enterprise (WFOE), if you wish to sell products directly on a domestic marketplace such as Tmall or JD's online mall, is required in China. If this is not feasible, you can try to find a joint partner who owned a marketplace store or be qualified to set up one.

#### **3. Entering Through Cross-Border E-commerce**

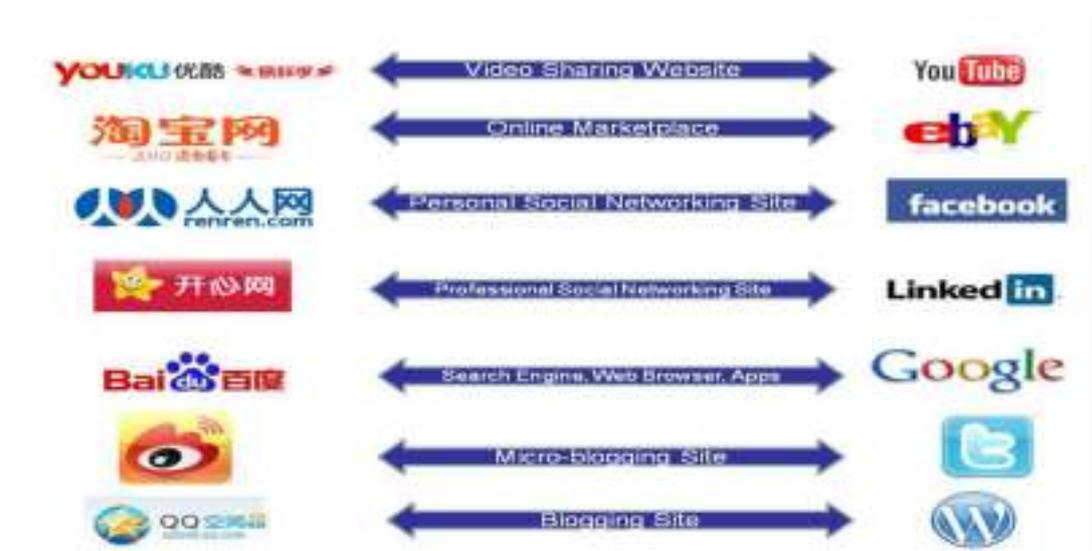
If you can't have a legal entity in China, you can also enter into Chinese market by enter into a Cross-border marketplaces, such as Tmall Global and JD Worldwide, who offer companies access to the aggregate traffic of the marketplace without having to establish a legal entity in China, or sell through partners that list on domestic marketplaces.

### **IV. Internet**

Currently 668 million citizens are connected to the internet, with 178 million of those from rural areas. Chinese consumers are discovering they can go online to buy goods directly from foreign companies. These cross-border purchases by China's online shoppers grew ten-fold between 2010 and 2014, from less than \$2 billion to more than \$20 billion. Although China's internet infrastructure has increased over recent years, censorship of foreign websites through the so-called 'Great Firewall' is increasing, generally speaking a

**Along with Google, many social media platforms that are key to a brand's success at home are also blocked in China.**

foreign website is unlikely to be blocked-unless it is explicitly political or pornographic-but it can be difficult to access for Chinese citizens and is often slow. This tightening of the Great Firewall has important effects, particularly as **Google Search is blocked**, so companies will need a second set of search engine optimization strategies as part of their overall China marketing strategy. Furthermore, as Google Font and Google's analysis tool is also blocked, foreign sites will load slower and become less predictable. Current political trends indicate that China will keep its internet walled off, so for the immediate future it is best to assume that websites that are hosted abroad will continue to be slower and harder to access for Chinese citizens. **However a .cn registered Chinese-hosted website circumvents these problems.**



The China Internet Network Information Center (CNNIC 中国互联网络信息中心) is the official Chinese government body with the responsibility of administering China's domain name registry, to register an application must be made at one of around 60 CNNIC certified registrars. **The company must submit the following to the registrar:**

- A completed.cn registration form;
- A copy of the business license;

A copy of the signatory's national ID. Note that the signatory must be a Chinese citizen and have a valid Chinese personal ID.

Among other things, official legislation from the Chinese Ministry of Information Industry (中国工业和信息化部 CMII) states that an applicant **must also satisfy the following criteria:**

- Be an enterprise, illegal person or an institution legal person established in accordance with the law;
- Have registered capital of not less than RMB one million;
- Hold a business development plan and relevant technical plans.<sup>14</sup>

**Registration is usually on a first to file basis**, some large companies purchase many variations of their company name as a URL, to avoid copycat sites. Disputes over registration can be taken to the China International Economic and Trade Arbitration Commission (中国国际经济贸易仲裁委员会 CIETAC) - a brand name or registered trademark is considered totally independent from domain name registration. If there is no content within 180 days of the complaint, the domain name is considered open for others to take.

The Chinese government also requires that all websites hosted in China apply for an Internet Content Provider license directly at the CMII. The applicants need to log on to the CMII official website, submit a scan of their business license/passport, and fill in the company information form. After obtaining the approval a unique Internet Content Provider (网络内容提供商 ICP) recording code will be assigned to the website indicating that the website has been approved. If the company plans to allow third parties to use their websites as an online platform (for example affiliate marketing), they need to apply for an ICP license as well. In this case, the company must have a minimum registered capital of RMB 10 million. **If a company does not register in the**

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<sup>14</sup> <http://www.miit.gov.cn/n1146300/n1306936/n1307231/n1307236/index.html>

Chinese mainland, they can register their Chinese language website in Hong Kong, this is a feasible alternative for some, but the website would still face slower loading speeds than its mainland hosted peers.

## **V. Internet Service Standards**

All internet service providers (互联网服务提供商 ISP), whether foreign-invested or domestic, are subject to the new provisions under the Supervision of the Market Order of Information Services (《规范互联网信息服务市场秩序若干规定》) introduced in December 2011. This prohibits certain practices that are harmful to other ISPs, such as defaming another ISP or making its platform incompatible with those of another ISP.

Practices that are harmful to internet users, such as collecting, using or supplying the user's personal information to third party without their consent, installing software or plug-ins on the users' computer without their consent, or repeatedly creating pop-ups on the user's screen after they have closed, are also prohibited under the provisions.

These provisions are in addition to the government's guidelines, Services Norms for E-commerce Trading Platforms (《第三方电子商务交易平台服务规范》), issued in April 2011. These set out basic rules for the operation of trading platforms and requirements relating to the collection and retention of data, the verification of user's identities, and fair trading practices in general.

Participants in this sector should be aware that the government will be increasingly policing and taking action against ISPs and internet businesses for non-compliant behaviors. Additionally, ISPs face secondary liability for intellectual property rights infringement under the PRC Tort law.

The added responsibility of ISPs to supervise their users activities appears again in the National Copyright Administration (国家版权局)'s draft

amendments to the PRC Copyright Law (《中华人民共和国著作权法修订送审稿》) . Under the draft law, although ISPs are not obliged to review the copyright information when they simply provide storage, search, connection and other technical internet service to users, ISPs would be held jointly liable for copyright infringement when they have been notified of an infringement but fail to promptly delete, block or disconnect the infringement. ISPs would also face joint liability when they know or should have known that internet users are using their network services to infringe copyright but have failed to adopt the necessary methods to stop the infringement.

## **VI. Telecommunications**

Foreign participation in a range of internet and e-commerce activities comes under China's far-reaching telecommunications regulation. Most non-facilities e-commerce services offered over the internet will be characterized as value added telecoms (增值电信业务 VATs). While the establishment of a foreign invested VATs is possible, up to a maximum 50 percent foreign investment, few joint ventures have emerged in this sector.

The now well-known variable interest entity structure (可变利益实体 VIE structure) has been repeatedly used to support foreign participation in PRC e-commerce businesses. Under the VIE structure, a complex contractual arrangement is put in place in which the required VATS license is held by a domestic company owned by a domestic company owned by PRC nationals who pledge their ownership of the domestic company to the foreign party and allow the VATS license to be used for the foreign party's benefit.

There are strict measures surrounding the devisor of any telecom company in China and all must adhere to the strict rules and regulations laid down in the Measures for the Administration of Telecom Business Licensing (《电信业务经

营许可管理办法》) if they are to successfully operate in China<sup>15</sup>. In order to even apply to operate a telecom business the criteria laid out in Article 5 must be adhered to. **It is set out as follows:**

- The operator shall be a duly established company specialized in basic telecom business, the percentage of state-held equity or shares in which shall not be less than 51%;
- The operator shall have developed study reports and technical schemes on network building;
- The operator shall have capital and personnel sufficient for the operation activities;
- The operator shall have the good will and competence for providing long-term services to users;
- An operator which carries out business within the scope of a province, autonomous region or municipality under the Central Government shall have a registered capital with a lower limit of RMB 100,000,000;
- The operators principal contributor and its principal management have no record of violation of telecom supervision and administration within 3 years.

**In accordance with Article 7 the following, among others must then also be submitted to MIIT to apply for a basic telecom business permit:**

- Written application for operating a basic telecom business signed by the legal representative of the company, specifying the type and coverage of the applied telecom business, company name, correspondence address, postal code, liaison person, telephone and e-mail of the company;
- Counterpart and copy of the enterprise legal person permit of the company;
- Profile of the company, including basic information of the company, organizational structure, management status, technical strength and

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<sup>15</sup> <http://www.miit.gov.cn/n1146300/n1306936/n1307266/n1307267/index.html>

management personnel of the telecom business proposed to be operated, and site and facilities suitable for the business;

- The latest annual financial statement of enterprise legal person audited by an accounting firm, or a report on capital verification and other relevant accounting materials required by the MIIT;
- Articles of association, equity structure of the company and information on shareholders;
- Business development study report;
- Measures for providing long-term services and quality warranty for users;
- Guarantee measures for network and information safety.

After accepting the application, the MIIT shall organize experts to review the materials stipulated, **with examination and approval completed within 180 days upon the application's acceptance**. If approved a permit shall be issued, if not the applicant shall be notified and reasons thereof shall be presented in writing.

Where an applicant has obtained a permit by deceiving, bribing or other improper means, the telecom authority shall revoke such permit, give a warning and impose a fine, with the fine ranging from RMB 5000 to 30000 dependent on the seriousness of the situation. **Where a crime has been committed, those responsible shall be persecuted according to the law in China.**

Once companies have been approved to operate, they must handle filing formalities with the telecom bureau of relevant provinces, autonomous regions and municipalities under the Central Government and submit the materials named in Articles 5 and 7 for filing.

As stipulated in Article 13, the time limit of the Basic Telecom Business Permit

shall be five years or ten based on the type of telecom business. **Telecom operators shall also apply to the original issuance organ 90 days in advance**, for renewal of the permit, if they want to continue the business after the original permits expire. Operators should also report to the original issuance organ 90 days in advance, and do the consequential paperwork, even if they do not intend to continue the business.

Telecommunication is a very broad heading and the rules above would apply for setting up an App in China etc. However, once you have managed to obtain permission to set up an App in China **there are further constraints regarding the day to day running of an app which are specific to just App owners rather than 'telecommunications' in general. For more information on this see the section in this booklet named 'Mobile Apps in China'.**

While the VIE structure appears to be broadly tolerated by the PRC government and is widely used in the e-commerce sector, the highest level official pronouncement by MIIT, the 2006 **Circular on the strengthening of the Administration of the Provision of Value Added Telecommunications Services Involving Foreign Investment** (信息产业部关于加强外商投资经营增值电信业务管理的通知), **states that foreign invested entities must receive foreign investment approval to participate in VATS and that VATS licensees are prohibited from lending or making available their VATS licenses to foreigners.**

The circular was followed more recently by the publication of the government's provisions on the national security review, effective as of September 2011, which sets out that **a foreign investor can not use contractual control arrangements (i.e. the VIE structure) to avoid the government's national security review and approval requirements.**



The VIE structure raises the risks for investors, including the risk that government authorities require the structure to be unwound. A comprehensive ban of the VIE structure would have a significant impact on the e-commerce sector particularly.

It should be noted that some Chinese regulators appear to be more overtly concerned with the VIE structure than others. Although foreign-funded enterprises that only engage in online sales of their own products and do not provide internet services or platforms to third parties over the public switched telephone network do not require a VATS license, they must still apply for an internet content provider (ICP) approval or filing from the MIIT if the relevant content of their website is stored on a server located in China.

**An ICP approval is required if the website directly generates revenue. If the website does not generate revenue, it only needs an ICP filing.** The applicant for an ICP filing must be Chinese entity that has a local address, which in practice means that foreign businesses that do not have a presence in China often engage their local Chinese business partners or hosting service providers to apply for the ICP filing on their behalf.

In addition, the foreign business must obtain approval to establish its entity in accordance with the foreign investment laws that apply to its business sector, and the products and services it offers must be approved by and registered with the relevant state department.

## VII. Logistics capability

There are two options available to get your international products to Chinese consumers:

### 1. Direct Shipping

Direct Shipping from overseas onto Hong Kong is the easiest option. However **it also has the biggest downside, specifically that of longer delivery times**, which becomes a problem in a country where next day shipping is the norm. If time hurdles can be overcome, with the new tax rates there is a chance that direct shipping could be less expensive for certain purchases, giving this option some advantages over bonded warehousing.

### 2. Bonded Warehousing

Once you apply for bonded warehousing and are accepted, the customs clearance process and the fulfillment are carried out by one team at the same time, it gets international goods to consumers incredibly quickly.

Alibaba Group's logistics provider, **Cainiao (菜鸟)**, is aiming to streamline the customs process to speed up cross-border delivery. Where once the process was largely handled offline-still with paper forms-Cainiao now has a direct digital link to Chinese customs that allow for more accurate tracking and faster handling of goods which Chinese online shoppers have purchased from overseas retailers. This is possible because Cainiao, runs a logistic information platform that links a network of logistics providers, warehouses and distribution centers, **it is the relay point for the three pieces of information that customs requires for every order: the transaction, payment and shipping data.** According to Cainiao Vice President Wan Lin, 'this kind of thing is very complicated but there's a payoff in reduced delivery times, with other improvements in international logistics channels. Nowadays **goods ordered**

**In China products are delivered in days, and few at that, no exception will be made by Chinese consumers for products that are coming overseas.**

online from Western companies can be delivered in a matter of days instead of weeks, helping to make cross-border shopping a lot more practical and popular among ordinary consumers'. The integrated customs process has been in a testing phase for about 16 months now, and other companies have since followed suit with their own software links to customs, although Cainiao is the only one able to submit all of the information required by customs in one go. Even Cainiao's freight forwarding partners overseas are noticing the difference-John Hu, Vice President at Los Angeles based GELS Logistics, said his customers' orders now take a shorter time and go through more easily'. There are other benefits as well, because the information goes directly to customs from a trusted partner in Cainiao GELS no longer has to submit supplementary data such as transaction receipts which were used to guarantee prices so that customs could calculate the proper tariff, but which Hu said in fact slowed down the shipping process.

This system is one piece of a larger push by the Chinese government to encourage consumers to use the internet to buy from overseas retailers, as Beijing considers it an important step in transitioning the economy from its old manufacturing base to one driven by consumption. Other moves implemented by Beijing include lower tariffs on goods ordered online and the introduction of bonded warehouses dedicated to e-commerce, which can help reduce shipping times from about a month to just seven days. In addition, imports channeled through bonded warehouses are taxed at special rates, China's value-added tax of cross-border e-commerce orders is waived entirely, and the customs duty, which for conventional imports ranges from 0% to 100% of a products price, now ranges from 10% to 50% depending on the product category. Moreover in instances where the duty owed on an e-commerce import is RMB 50 (\$7.71) or less, fees are entirely waived.

A company could utilize both Direct Shipping and Bonded Warehousing as

means of getting its products to customers. It is probably best to start this way until you are sure of the one that most benefits both your business and your customers.

Cainiao has nine bonded warehouse in China and plans for further expansion are underway, Wan said the company is considering warehouse in Shenzhen and Zhengzhou, the other cities chosen by General Administration of customs for cross-border e-commerce pilot.

However, as for the April tax code has been in force since first months of 2018 after the transition period, total order prices have increased, which prompted consumers to consider direct shipping at a more viable alternative-despite the increased waiting times of direct shipping-research.

Nevertheless, the bonded warehouse model did not stop the pace of the forward to NetEase Kaola as the representative. It has bought one of the largest bonded warehouse "Ningbo warehouse" funding had more than 5 million yuan. Because they think that bonded warehouse is a scarce resource, which can be concluded from the rent.

Different from Kaola.com, others took other measures to face the policy change. For example, they intended to invest bonded warehouse in HongKong in order to avoid the policy change<sup>16</sup>.



China's push for more cross-border e-commerce is still a work in progress, however-the government has yet to formalize regulations governing e-commerce imports-instead it has only set out loose guidelines that customs

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16 南方都市报: 《直邮还是保税仓 谁能押中政策走向》, 2016年08月19日

officials implement as they see fit-the goal is to find the right combination of procedure to best develop and add efficiency to the import process.

## E. Intellectual Property Rights

Despite the impressive and projected growth of e-commerce in China it is important to remember that channels of commerce such as Tmall Global provide counterfeiters with an opportunity to flourish and the potential to destroy the market with fake goods. The EU has seen a significant rise in counterfeited goods in recent years and China continues to be the main source country for shipping IPR infringing goods, accounting for 80% of all seized goods in 2014<sup>17</sup>, even if China filed 3.69 million trademark applications in 2016, up 28.4 percent over 2015, and continues to top global trademark application<sup>18</sup>. For many reasons it is important that adequate intellectual property protection is provided but principally for the protection of consumers as badly manufactured food or medicine could kill people. The increase in infringement in recent time correlates with the rise in e-commerce and focus should thus revolve around anti-online counterfeiting, making it easier for right holders to notice and take down counterfeited products from e-commerce platforms both in China and the EU.

With regards to trademarking, some foreign companies are still under the assumption that because they have registered their trademark in their country of origin, it will be protected in China-this is not the case. **China's State Administration for Industry and Commerce (中国国家工商行政管理总局 (工商局) AIC) does not recognize trademark registration overseas and instead has a 'first to fly' system.** This system sees rights to a trademark awarded to the first party to apply, rather than the first year to use it, even if the trademark is already registered in other countries. Subsequently the problem of 'trademark squatting' is very common in China and companies should register under a

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<sup>17</sup> 2014 Annual Report on EU customs enforcement of intellectual property rights, Practice Law:<http://uk.practicallaw.com/0-619-8127#>

<sup>18</sup> Xinhua: China continues to top global trademark application, 24.03.2017, China Daily, [http://www.chinadaily.com.cn/business/2017-03/23/content\\_28652648.htm](http://www.chinadaily.com.cn/business/2017-03/23/content_28652648.htm)

Chinese domain name instead. For more detailed information on IPRs and trademarking please see our Intellectual Property brochure.

If e-commerce platforms were to have stringent rules and regulations regarding intellectual property right misconduct with subsequent penalties and fees attached, this illegal yet admittedly profitable business may stand a chance of being stopped. Currently Chinese law dictates that e-commerce platforms must take down links infringing products on their websites if they are notified by the products IPR holder and a take-down action is requested by them. If they fail to do this then the platform would be liable for infringement under Chinese law.

In some cases, there are not really counterfeiting products presented in the website, but the Chinese distributor sells products in an official store online with an overdue certificate, it is also categorized by certain websites into illegal use of rights of third parties. The takedown or the close of the shop can be implemented after a fixed procedure of the website.

## **I. Alibaba**

### **1. Aliprotect**

Of Alibaba's five e-commerce platforms, three (Aliexpress, Taobao and Tmall) use the Aliprotect IP handling dispute system with the latter two also benefiting from the use of TaoProtect IP as well. As removing counterfeit products from their websites after a notification from said IPR holder is a duty of any e-commerce platform in accordance with Chinese law, there is no charge for registration and submission of IPR infringement claims.

Through Alibaba IP Protection Platform IPR holders and their authorized agents, IPR holders can request a notice and take-down procedure with Alibaba if there is an infringement found. The link to Alibaba IP Protection

Platform, which also operates in English, can be found here:

<https://ipp.alibabagroup.com>.

To proceed you must complete a registration, accept the terms and conditions and also a disclaimer which states that the right holder, will hold Alibaba.com harmless from all claims, causes of action, damages and judgements arising out of any removal of product listings pursuant to intellectual property infringement claims.

### **Necessary documents**

**The three sets of documents listed below MUST ALL be submitted to Alibaba IP Protection Platform for IP infringement claims:**

- Proof of identity - For companies this includes business corporation certificates. For individuals, identification documents such as passport or national identity card are required. For authorized agents this includes the above proof of identity plus the relevant authorization if the agent is not the IP owner;
- Proof of IPR ownership - including patent registration certificate, trademark registration certificate or copyright registration certificate (note that an application receipt is insufficient);
- The exact hyperlink to the infringing listings and details of the listing, which you are asking to have removed.

**After receiving the complaint the alleged infringer must:**

- If there is no objection to the complaint, they must delete the link and clear up other product information involving relevant intellectual property rights on the relevant webpage;
- If there is an objection to the complaint, they must submit a counter notification in the system.

**The complainant must then take the following steps if they receive any counter-notification:**

- If the complainant accepts the counter notification, this must be confirmed so in the system;
- If the complainant does not accept the counter-notification, you must submit a dispute handling request in the system;
- If the complainant does not respond, the listings under complaint will be reinstated until the complainant responds.

Chinese e-commerce giant Alibaba assisted police in busting more than 1,400 counterfeit production sites, leading to the arrest of 880 suspects in 2016, according to a recent report. "Traditionally, counterfeiters produce in China and sell overseas, but now they are apt to produce abroad and sell domestically," said Zheng Junfang, chief platform governance officer of Alibaba<sup>19</sup>.

## **2. Taobao**

Taobao is a domestic online platform aimed at local users. It operates exclusively in Chinese and thus accepts only IPR registered in China for take-down notices. The notice and take down system for Taobao is called TaoProtect, and the link to its webpage, which again operates in English, can be found here: <http://qinquan.taobao.com/>

or the link to file an IPR infringement take down action providing the required documents and links to the infringement here:

<http://ipp.alibabagroup.com/submission.htm>.

**Taobao has a bad reputation when it comes to protecting those from counterfeiters, however they have dramatically improved in recent years.**

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<sup>19</sup> Xinhua:  
[http://africa.chinadaily.com.cn/business/2017-04/01/content\\_28768439.htm?bsh\\_bid=1660528889&from=singlemessage](http://africa.chinadaily.com.cn/business/2017-04/01/content_28768439.htm?bsh_bid=1660528889&from=singlemessage)

## Necessary Documents

### Identification:

- Individuals should provide a copy of valid ID card (e.g. Passport, national identity card or driver license);
- Enterprises should provide a copy of valid business license or incorporation certificate;
- Agents should provide an additional authorization letter with supporting documents of proof of copyright (worldwide) or Chinese registered trade mark/ patent with all documents in electronic format and submitted online.



### a. Taobao's Good Faith notice and take down procedure

Taobao has also devised a notice and take down system whereby the speed of take-down is dependent on the quality profile of the IP owner that is requesting said take-down. Taobao distinguishes three statuses: good-faith users, normal faith users. For good-faith users, it is required to have a take-down accuracy of 90% or higher, counter-notifications success is less than 1.5% and who have undisputed proof of IP. Good faith users will be processed within one working days, the complaints of a normal user will be processed within 7 working days.

From 2015-2016, the number of good faith brands **raise from 500 to more than 1200.**

## **b. Taobao's internal system of punishment**

Taobao has its internal system of punishment for their shops in addition to remove products. Each shop has an initial score to penalize if the shop is found and confirmed to sell counterfeit goods or illegally use rights of third parties. The level of penalty depends on how serious the circumstance is. An infringement with huge influence could directly lead to close of a shop.

## **2. Collaboration with Alibaba Group**

In order to improve its IP protection system, Alibaba group also invite some brands to join its IP protection battle. For example, Nike, Adidas, Lego, Starbucks and etc. At present, over 500 brands agree to do the test buying verification, 252 trade mark holders join Alibaba's IP joint-Force System, 205 of them have Offline Strike Cooperation, and more than 20 companies have built Anti-Counterfeiting Alliance with Alibaba Group<sup>20</sup>.

## **3. Proactive Monitoring**

Apart from the aforementioned passive IP protection measures, Alibaba also conduct plenty of proactive action against IP counterfeit, for example the Proactive Interception & Delisting. They conduct these kind of proactive action 8 times more than brand owners in 2015, and 16 times more in 2016. Therefore, it is not surprised to see that Forbes prized Alibaba as "The World's Most Valuable Consumer Brands"<sup>21</sup>.

## **II. Jing Dong Protection**

Jing Dong has also built his IP protection system and available in Chinese and English.

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<sup>20</sup> IP Key, EU-China Industry Round table on Online IP Protection, 21th April, 2017, Fu Xiaolin, Alibaba Group.

<sup>21</sup> [https://www.forbes.com/home\\_asia/#8217f5214144](https://www.forbes.com/home_asia/#8217f5214144).

## 1. Barriers to entry

In Jing Dong, there are two kinds of business, **Direct sales and Third Party Sales**. Their barriers to entry are also quite different.

Direct sales	Third Party Sales
1. Qualification Verification	1. Qualification Verification
2. On site Visit	2. Routine Inspection
3. inspection before warehousing	3. Mystery Buyer
4. Notice and take-down procedure	4. Notice and take-down procedure

If platform of JD find that vendors sell counterfeits, **Jing Dong removes or retains the items in issue and may take other measures depending on the seriousness of the infringement.**

## 2. Jing Dong's cooperation

In order to improve its IP protection system, Jing Dong builds a cooperating net with several Market participants.

There are three ways to cooperate with IPR owners, namely the brands holders:

- **Filters:** According to the information provided by IPR owners, JD can use filters to block high-risk product.
- **Test buying and verification:** JD buys high-risk products and send it to IPR owners for verification.
- **Training:** JD also invite IPR owners to deliver speeches to its Q&A people and sales people to help identifying counterfeits.

JD also **cooperate with police** to cracked intellectual property fraud cases<sup>22</sup>.

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<sup>22</sup> IP Key, EU-China Industry Round table on Online IP Protection, 21th April, 2017, Lin Zhuo, JD.com

### III. Wechat



Wechat is now **the most popular social network** in China. However, it is not unusual to see that several people use Wechat as its sales channels, in Chinese we call it as Weishang (微商). Some of their products are counterfeit, but as

Wechat isn't an e-commerce platform, **it can not inspect directly on every account**. To solve this problem, Wechat built its own IP protection Platform which **depends on users to provide clues and then the IPR owners verify**.

Although this platform doesn't allow Wechat to take the initiative, it also has a lot of achievements. **By march 2017, Wechat has received more than 35000 users report as well as taking-down more than 32000 Infringing items.**<sup>23</sup>

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<sup>23</sup> IP Key, EU-China Industry Round table on Online IP Protection, 21th April,2017, He Jiahe, Wechat

#### IV. Sina-Weibo

As a mini blog, Weibo is not a direct marketing channel, but many shops will set up an official account for their brand to increase awareness and to communicate with customers. In Weibo, you can also directly post Taobao link to the website in Taobao. If ads of counterfeiting products are found in Weibo, the IP holder can also seek removal by providing documents and proofs.

#### V. How does an IP holder act in IP protection battle

In this part we would like to use Adidas as an example.



Adidas has a good relationship with **China Customs**. As more counterfeiters are leaving China in small parcels, upon overseas orders at platforms and stopped by China Custom, so Adidas depend on the related information to do the following IPR protection work.

As it is mentioned before, some main **e-commerce platform** has test buying system under the help of brands. Adidas also cooperate with Taobao.com to do the verification.

What's more, **Adidas also take initiative itself**. Yupoo is a picture sharing social-net work, users can not buying things directly, but if you want to buy the listed product, you should contact them by Wechat, Whatsapp, Skype,etc. Adidas will do the anonymous purchase and collect evidence<sup>24</sup>.

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<sup>24</sup> IP Key, EU-China Industry Round table on Online IP Protection, 21th April,2017,Gao Min, Adidas

## F. Mobile Apps in China

Developing an app is an excellent way to utilize the mobile technology that thrives in China, however as of **June 2016** the rules and regulations surrounding apps in China have become more stringent. The Cyberspace Administration of China (国家互联网信息办公室 CAC) has issued the **Rules on the Management of Mobile App Information Services** (《移动互联网应用程序信息服务管理规定》) which came into effect on the **1st August 2016**.

The App Rules are aimed primarily at regulating the rapidly growing app market and addressing corresponding data privacy issues. Among other things, they impose data privacy, cybersecurity, and content monitoring requirements on app and app store providers. According to Article 7, App providers are required to authenticate the identities of their users-tying their online profiles to verified phone numbers or other information that can be used for identification purposes-and retain users' activity logs for 60 days. They are required to obtain 'relevant qualifications' (Art. 5), this is a term that is not specified but can be interpreted as 'licenses' required under other laws and regulations that specifically regulate the type of service rendered by a given app. For example, in China health service and news service app providers may also need different licenses from their respective regulatory agencies to operate. Moreover, providers must adhere to certain data privacy rules and establish systems for monitoring content on their platforms in order to detect information that is considered illegal under Chinese law and subsequently halt further distribution and file reports with the authorities (Art. 7). Such impermissible content may include posts by users that disseminate obscene or pornographic material, instigate ethnic hatred, relate to gambling or fraud, or are politically insensitive.

The App Rules also regulate app stores, requiring them to establish stricter

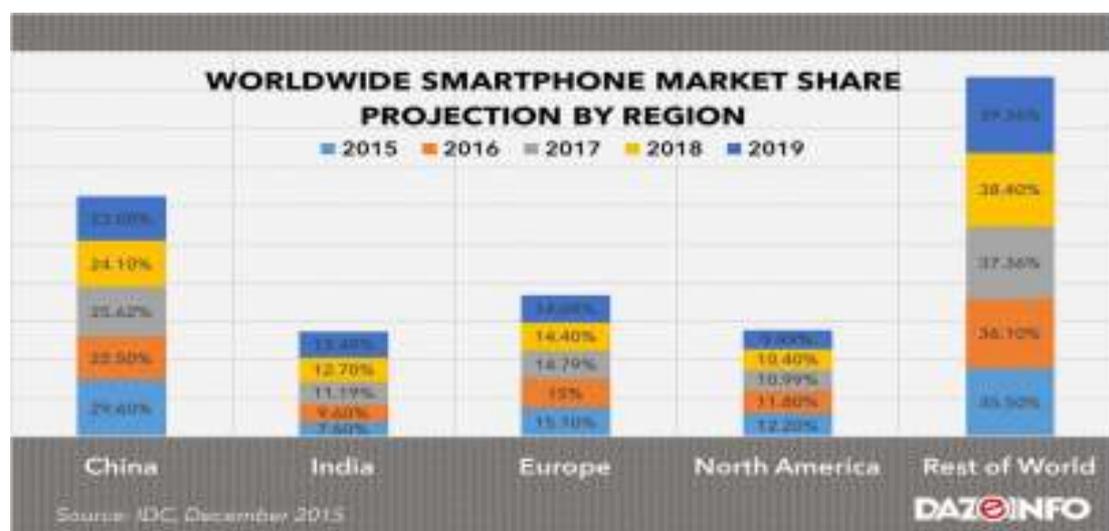
**The Chinese Government have been increasingly tightening censorship over the last few years.**

**This was touched on earlier and it is vital to understand. Please see our other brochure for more information.**

cybersecurity practices, audit app providers and to make certain filings with provincial authorities. App stores must monitor app providers to protect user information, ensure the legality of published content, protect and respect the intellectual property rights of app providers (Art. 8). App stores must also make certain filings with CAC's provincial counterparts within 30 days of beginning online operations (Art. 5). Finally, the Chinese government has this year been on a mission to 'clean up' the comments sections on websites, again to prevent the spread of 'harmful information' but also to encourage what it considers 'more helpful, well intended comments'. These new regulations concerning apps are just a further illustration of the Chinese Governments trend towards general censorship and companies looking to thrive in China's mobile app market are advised to pay close attention to these new rules, this is both to ensure compliance and to remain competitive in the evolving business environment.

For more information on Apps in China go to:

[http://www.cac.gov.cn/2016-06/28/c\\_1119123114.htm](http://www.cac.gov.cn/2016-06/28/c_1119123114.htm)



## **G. China's new E-Commerce Law (新电商法)**

As the e-Commerce market is constantly changing and undoubtedly its major impact on social life and the current economy cannot be denied, it seems to be necessary to **provide a legal framework to give answers to upcoming questions within the scope of e-Commerce**. The new E-Commerce Law - regulating the relationship between consumers, platform operators as well as online providers in the field of e-commerce - remedies the current situation **by promoting the e-Commerce market's development (促进电子商务持续健康发展), putting things straight (规范市场秩序) and satisfying all the parties' interests (保障电子商务活动中各方主体的合法权益)**.

These central ideas are laid down in Article 1 and shall summarize simultaneously the political objectives pursued by this law.

China's cross-border e-Commerce trade saw its online retail sales grow around 32% year on year in 2017 to reach 7.18 trillion yuan<sup>25</sup>.

### **I. E-Commerce Law of the PRC**

**On August 31, 2018**, the Standing Committee of China's National People's Congress (NPCSC) reviewed the **fourth version** of the draft e-Commerce Law at its bimonthly session, adopting, in conclusion, **China's first E-Commerce Law**, that will come into effect from **January 1, 2019**. The draft e-Commerce law was first reviewed in December 2016 then later deliberated in October 2017 and June 2018 by the NPC Standing Committee.

The e-Commerce, as defined and regulated by the E-Commerce Law, refers to domestic "business activities that sell merchandise or provide services on information networks such as the internet" (Article 2, paragraph 2). "Financial products and services, as well as services that use information networks to

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<sup>25</sup> [http://www.china.org.cn/china/Off\\_the\\_Wire/2018-08/27/content\\_60563000.htm](http://www.china.org.cn/china/Off_the_Wire/2018-08/27/content_60563000.htm)

provide such content as news information, audio-visual programs, publications, and cultural products” (Article 2, paragraph 3) are expressly excluded from the purview of the Law.

Commerce Law mainly applies to the following three types of **e-Commerce Operators**:

- **“E-commerce Platform Operators”**, which refer to any legal persons or unincorporated organizations that provide virtual places of business, transaction matching, information release and other services to the parties of an e-Commerce transaction to enable them to carry out independent transaction activities. A typical example would be the operator of Taobao;
- **“Operators on the Platform”**, which refer to e-Commerce operators that sell goods or provide services to customers through e-Commerce platforms operated by the relevant Platform Operators (e.g. a vendor that operates an online shop: on the Taobao platform, for example);
- **Other e-Commerce operators**, which might include e-Commerce operators that sell their own goods or provide their own services through self-established websites or other channels (e.g. merchants on WeChat).

In recent years, the number of micro-businesses online on **non-traditional shopping channels** have considerably increased. A **micro-business** is a small store with no physical storefront, no business license or credit guarantee, and little assurances in terms of customer service. By simply changing the account information or deleting a contact, these businesses can evade legal responsibility and disappear. Although the term ‘micro-business’ is not a legal term, these types of businesses do exist and are one of the newer forms of e-commerce in today’s mobile age<sup>26</sup>.

A key provision of the China’s E-Commerce Law is the inclusion of

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<sup>26</sup> China Briefing, Lauren Eiko Fujino, China’s New E-Commerce Law: Businesses should ready for stronger compliance norms, 09.25.2018, available at: <http://www.china-briefing.com/news/china-new-e-commerce-law-businesses-ready-new-compliance-norms-2019/>

non-traditional shopping channels (such as social media) as places of e-commerce, bringing popular apps like WeChat and Weibo to be covered by the new legislation. If the e-commerce law did not cover these platforms, it would leave a huge gap. That platforms must pay more attention to their obligations in relation to IP once the new law is implemented, due to the additional responsibilities placed on the providers and the penalties if they fail to meet these obligations.

The aim of the new e-Commerce Law is to improve regulation of the thriving market and to reinforce punishments toward counterfeits and substandard products. The E-Commerce Law has been welcomed by consumers and brand owners alike, because since the sale of counterfeit goods online is prevalent in China, it was necessary to have an E-Commerce Law to regulate the online market and clean up China's reputation as a source of fake goods.

The new law strengthens a liability clause to better protect consumers and prevent platform operators from becoming too powerful. The E-Commerce Law requires all e-Commerce operators to fulfill their obligations to protect consumers' rights and interests as well as personal information, intellectual property rights, cyberspace security and the environment.

E-Commerce has become so popular over the past few years that one would have real difficulties to navigate or survive in China now without e-Commerce. A comprehensive body of legislation is a response to China's growing use of e-commerce in daily life, particularly via mobile platforms.

The E-Commerce Law of the People's Republic of China includes 89 articles compared to 86 in the third draft submitted on July 2018. If you are interested in consulting the current text, please referred to the website:

<http://www.lawinfochina.com/display.aspx?lib=law&id=28792> (only Chinese version available)

## **II. The main contents of the E-Commerce Law of the PRC**

### **1. Registration**

The retailers on e-Commerce platforms are required to **register with China's business regulator**, the State Administration for Industry and Commerce, except those exempted by statute or regulations and those who engage in small sporadic transactions<sup>27</sup>. The registration is required to obtain a **business license**, which will make it more difficult for IP transgressor to avoid enforcement actions. They must also comply with various disclosure requirements on, for example, their merchandise/services related information; notably, operators on platform should publish details of licenses (Art. 15) and disclose information about goods or services (Art. 17).

Moreover, Article 12 reads that e-Commerce operators that by law need to obtain the relevant administrative licenses to engage in business activities shall obtain **administrative license** in accordance with law.

### **2. Consumers' personal information**

The new law, which has a considerable awareness of **consumer's privacy** and rights to know, establishes that operators must follow related laws and regulations when collecting and using consumers' personal information. In addition, operators have to clearly point out tie-in sales to consumers and they cannot assume consent.

### **3. Market dominant position**

Article 22 emphasizes fair competition obligations among all E-commerce Operators, in particularly, they must not abuse their dominant market position

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<sup>27</sup> Article 10 E-Commerce Law of PRC

to exclude or restrict competition.

#### 4. Platforms Operators' Liabilities

According to the E-Commerce Law, e-Commerce platform operators should bear different liabilities in accordance with specific circumstances:

- **Jointly and several liability:** E-Commerce platform operators will be held accountable if they fail to adopt necessary measures when they know or should have known that the goods sold or services provided by operators on the platform do not meet personal or property safety standards, or that there are other actions that infringe the legal rights of the customers. Moreover, e-Commerce platform operators will be liable if they fail to adopt necessary measures when they know or should have known that operators on the platform have infringed intellectual property rights.
- **Corresponding liability:** E-Commerce platform operators will be held accountable if they cause damage to consumers because they did not undertake their duty to check the qualifications of platform operators, or their duty to protect consumer safety<sup>28</sup>.

#### 5. IPR protection

E-Commerce operators have to establish rules to protect merchants against intellectual property infringements (Art. 41).

Articles 42 to 45 reads that in case IP holder believes that an Operator on Platform has infringed its IP rights, he can notify the relevant Platform Operator and request it to take necessary steps, such as to delete or screen information about the alleged infringement, disconnect the relevant web pages, or end the relevant transactions and services ("**Preliminary Measures**"). The IP right holder is held liable if it causes any damage to the Operator on Platform by its wrongful notice. If the IP right holder submits a notice with malice, the liability will be doubled.

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<sup>28</sup> Platform Operators Liabilities, Article 38 E-Commerce Law of PRC

The Platform Operator have to transmit a declaration of non-infringement to the IP rights holder and direct it to complain to relevant competent authorities or take its case to a court. **If the Platform Operator does not receive a notice of a complaint or a lawsuit within 15 days upon transmitting the declaration, the Platform Operator should terminate Preliminary Measures it has taken**<sup>29</sup>. However, if the Platform Operator does not take the necessary Preliminary Measures or it fails upon receiving such notice, **it will be jointly and severally liable for counterfeit goods sold by third parties on its sites and for the entire damages caused.**

According to the E-Commerce Law, e-Commerce platform operators may lead to a **fine** of 500,000 yuan (around 73.000 USD), or up to 2 million yuan (around 300.000 USD) in serious cases<sup>30</sup>, **for failing to act quickly when a violation of IPR by merchants on their platforms is reported, or for operating unreasonably restricted transactions on the platforms.**<sup>31</sup>

## **6. Obligations related to the environment**

Article 13 of the E-Commerce Law establishes that the State Council, local governments at or above county-level as well as related departments have to take related **measures to support and promote environmentally friendly packaging, storage, and transportation in e-commerce.**

## **7. Protection of consumers' rights**

E-Commerce operators should promote the protection of consumer's rights and privacy. The Law stresses that operators must not create reviews to mislead consumers (Art. 17); show consumers targeted ads without also showing them non-targeted ads (Art. 18) and make tied merchandise or

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29 <http://www.cms-lawnow.com/ealerts/2018/09/new-law-governing-ecommerce-is-published-in-china>

30 [http://www.china.org.cn/china/Off\\_the\\_Wire/2018-08/27/content\\_60563000.htm](http://www.china.org.cn/china/Off_the_Wire/2018-08/27/content_60563000.htm)

31 Article 35 E-Commerce Law of PRC

services selected by default (Art. 19). Regarding the collection and refund of deposits, e-Commerce operators shall clearly explain the procedure for deposit refunds, shall not impose unreasonable conditions for refunds, and shall promptly provide refunds.

According to Article 38 of the E-Commerce Law, domestic e-Commerce websites have to guarantee the **protection of consumers' rights in online business transactions**. For example, the new law stipulates that if a consumer suffers from health problems as a result of a product bought online, e-Commerce platforms will be held accountable if they didn't properly audit the business qualifications of the sellers on the platform.

## **8. Recording and storing of products/services/transactions information**

E-Commerce website operators are obliged to **record and store product/service information as well as transaction information on their platforms**. It is necessary to record and store goods, services and transactions information at least for a period of three years<sup>32</sup>. E-Commerce operators should also guarantee that this information is kept secret, complete and achievable.

## **9. Cross-border e-Commerce**

Relevant parties who are involved in **cross-border e-Commerce** should obey relevant rules and administrative regulations regarding import and export management.

## **10 Other relevant provisions**

E-Commerce operators should abide by several other legal obligations, which are not insignificant; they should:

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<sup>32</sup> Article 31 E-Commerce Law

- Taking responsibility for any risks in the transportation of goods, Art. 20;
- Assess and manage operators on their platform, Art. 28;
- Develop service contracts and transaction rules for their platform and keep these prominently displayed<sup>33</sup>;
- Abide by drafting and execution's rules of e-Contract, Arts. 48 to 57;

These provisions involve a **comprehensive body of legislation** that contains legal principles and rules governing the various aspects of e-Commerce: it covers issues such as the protection of consumer rights, the obligations of businesses, e-Contracts, electronic payments, cybersecurity, the protection of personal information, anti-competitive activity, and the protection of intellectual property rights. However, **some areas still need clarification**. For example, provisions, such as the standard of evidence required to initiate take-down procedures or such as how the cross-border e-Commerce will be regulated, are still unclear, may make the process susceptible to abuse. While the new law is expected to be fully enforced, further explanation is needed to clarify the ambiguities which remain.

The E-Commerce Law completes existing laws like the **Contracts Law (合同法)** and the **Electronic Signatures Law (电子签名法)** with special rules for the conclusion and fulfillment of e-commerce contracts.

### **III. Effect on Non-Chinese Companies doing Business in China**

The E-Commerce Law supports the current effective regulations on foreign online trade, according which selling items online in China is an activity reserved to Chinese e-commerce platforms (Article 2), therefore foreign

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33 Global Times, *China's New e-Commerce Law shifts responsibility to websites*, 2018.09.02, available at: <http://www.globaltimes.cn/content/1117986.shtml>

companies are not allowed to open an online shop in China, unless they have a Chinese partner company or a subsidiary in China<sup>34</sup>.

Moreover, the China's E-Commerce Law provides that domestic e-Commerce operators must **set up straightforward and effective complaint and reporting mechanisms, disclose complaint and reporting channels**, and must accept and handle any complaints in a timely manner (Article 59). This provision aims to enforce consumer rights and online retailers' reputation, enabling them to complain if they face with intellectual property infringements. Nevertheless, **these complaint and reporting mechanisms are only available in Chinese language**.

For the foregoing reasons, the enactment of the China's E-Commerce Law could represent a barrier to the development of foreign companies' business.

#### **IV. Does the new e-Commerce Law boost intellectual property protection?**

Doubts persist over the applicability of the provisions related to the intended boost of intellectual property protection, because, as defined and regulated by the E-Commerce Law, the new measures would disproportionately affect smaller platforms without the means to tackle counterfeiting as effectively as larger e-Commerce players like JD.com and Alibaba Group.

Moreover, Article 41 of the E-Commerce Law stipulates that "e-Commerce platform operators shall establish rules for protecting intellectual property rights [...]". The **margin of discretion allowed to operators**, does not permit to establish wide binding measures to root out the counterfeiting phenomenon.

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<sup>34</sup> China Brand, China IP Blog, *What changes come with the new e-Commerce Law in China?*, 7 June 2018, available at: <https://en.blog.chinabrand.de/2018/06/07/what-changes-come-with-the-new-e-commerce-law-in-china/>

## V. General Principles

The fundamental principles emerged from the central ideas and can be regarded as significant basis for both the future implementation and interpretation of the E-Commerce law.

In the drafts the following principles are suggested: Encouraging innovation (鼓励创新发展), honesty and credibility (诚实信用), allocation of resources by the market (发挥市场在资源配置中的决定性作用), self-discipline and social governance (行业自律和社会管理), anti-discrimination (反对歧视), balance between exchange and protection of data (平衡数据交换和保护) . **These principles shall complement each other, as this system achieves to be comprehensive.**

## VI. Legislative History

**Structure of the second and third draft put in comparison**

	Second Draft	Third Draft	Fourth Draft
Articles	94	86	89
Chapter I	Articles 1-10 (General Principles)	Articles 1-9 (General Principles)	Articles 1-8 (General Principles)
<p><b>Chapter II</b></p> <p>Chapter subdivided into two parts:</p> <p>1) <u>General Provisions</u></p> <p>2) <u>E-commerce Platform Operators</u></p> <p>To emphasize the relevance of this law concerning other rules and regulations on e-commerce platforms.</p>	Articles 11-25 (E-commerce Subjects and Operators)	Articles 10-45 (E-commerce Operators)	Articles 9-46 (E-commerce Operators)
Chapter III	Articles 26-44	Articles 46-56	Articles 47-57

	(Trade and Services in the Area of E-commerce)	(Conclusions and Performance of E-commerce Contracts)	(Conclusions and Performance of E-commerce Contracts)
Chapter IV	Articles 45-66 (Safeguarding in E-commerce)	Articles 57-62 (E-commerce Dispute Resolution)	Articles 58-63 (E-commerce Dispute Resolution)
Chapter V	Articles 67-73 (Cross-border E-commerce) This chapter was not only about cooperation and collaboration of several departments (customs office, inspection office, etc.) but also coordination with international systems. <b>Second Draft</b>	Articles 63-71 (E-commerce Promotion) <b>Third Draft</b>	Articles 64-73 (E-commerce Promotion) <b>E-Commerce Law</b>
Chapter VI	Articles 74-80 (Monitoring and management)	Articles 72-85 (Legal Liabilities)	Articles 74-88 (Legal Liabilities)
Chapter VII	Articles 81-93 (Legal responsibilities)	Article 86 (Supplementary Provisions)	Article 89 (Supplementary Provisions)
Chapter VIII	Article 94 (Appendix)	/	/

## 1. Main contents of the second draft

The key highlights of the second draft bill included:

### a. Subject of E-commerce

The draft has made a difference among e-commerce platform operators,

operators who carry out their businesses through the third-party platforms ("operators through the platform"), and operators who build their own websites to support their businesses.

**b. Obligations for the platform's operator**

The draft has envisaged several obligations for the operator of the platform like verifying the providers' information, to **offer only stable and safe services and to act transparently**. Additionally, it were laid down, that E-commerce businesses need to register with local administrators. One the one hand this method has pursued the goal, to make it easier for consumers to acquire information about and report or sue a vendor in a dispute. On the other hand the registration process has also subjected online merchants to sales taxes. However, it should be noted that E-commerce taxes were likely to be lower than those on traditional retailers to avoid hampering the growth of E-commerce.

**c. Electronic contracts**

Not only clear criteria for the recognition of a signed electronic contract but also criteria for an electronic representative were laid down in the draft's regulations. Unlike stipulated by former provisions **a contract can be revoked, if there were tipping errors caused by electronic mistakes**.

**d. Services for electronic payment**

The rights **and obligations of the E-commerce service provider were defined. Especially requirements for the security of the service are necessary**. Further in case of erroneous payment the different reasons and responsibilities of the parties should have been examined. Among other principles the presumed-default liability should have been applied, if the payment happened unfounded.

#### **e. Express service and logistics**

In the second draft there were also some important provisions relating express services and logistics. Thus **the liability of the haulage companies was emphasized. Furthermore the protection of consumers from deception was especially mentioned.** Additionally the necessary of cash-management, security-management and risk-management in the field of debt collection was underlined.

#### **f. Data and information**

While E-commerce was increasing, the consumer protection should have been also adjusted to this change. Hence the draft has provided many regulations about data and information: Thus it was laid down in detail **under which circumstances it was allowed to collect data.** Moreover, before using the private data, the use of that amount of data had to be approved by the user. However, the security of private data must be guaranteed. Therefore, the businesses were also required to take immediate remedial measures when user information was hacked by notifying users and reporting case to authorities.

#### **g. Fair competition**

The draft also has made clear stipulations, in which way the platforms had to respect and protect the intellectual property. Besides that it was stipulated that **unfair competition was strictly prohibited.**

#### **h. Protection of consumers interest**

Apart from private data and information there were also some other provisions in order to protect consumers' interests. Thus, provisions about the **completeness of goods and services and about guaranty for consumer interests in general were laid down.**

Further consumers were protected by fining virtual-shop owners up to 500,000 RMB for coercing or threatening users into deleting negative ratings. In addition, both recording false sales and whitewashing bad comments in order to boost the merchants' reputation and their rankings in online marketplaces would have been punished.

#### **i. Arbitration**

Concerning arbitration i.a. Online-Arbitration-rules (电子商务在线争议解决机制) would have been recognized and the duties and restrictions of platforms relating to this were provided.

#### **j. Monitoring and management system**

Further there were regulations mentioned, which refer to territorial area, social governance and the development of E-commerce i.a.

### **2. Main contents of the third draft**

The third draft bill, taking into consideration the public comments on the second draft, has made the following key changes.<sup>35</sup>

#### **a. Revision of the definition of “e-commerce operator”**

The revised definition of “e-commerce operator”, while retaining the three categories listed in the second draft bill, has further clarified that **these operators could be natural persons, legal persons and unincorporated organizations**. “E-commerce operators” were defined as those engaged in business activities of selling goods or providing services through information networks, such as the internet.

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<sup>35</sup> <https://home.kpmg.com/cn/en/home/insights/2018/07/china-tax-weekly-update-28.html>

## **b. Activities in scope of the law**

It was made clear that **B2B** (short for business-to-business, electronic commerce, is selling products or services between businesses through the internet via an online sales portal), **B2C** (short for business-to-consumer, it focus on retail transaction rather than activities conducted between two businesses) and **C2C** (short for consumer-to-consumer, it focus on electronic facilitated transactions between consumers) **activities**, where they reach a sufficient degree of scale and organization, were **all in scope of the law**. It was also made additionally clear that the selling of goods and provision of services, in the context of live streaming entertainment or via WeChat and other social media, were in scope of the law.

## **c. Non-business activities**

The term “business activities” in the context of an “e-commerce operator” was clarified. This made clear that **non-business activities, such as transfer of personally used second-hand items, between end consumers, were excluded in the context of e-commerce operator**. In other cases, while the activities of a person may have risen to the level of an “e-commerce operator”, they may have still been excluded from the business registration requirement, due to a low level of activity (and so due to a low income level).

## **d. Natural person e-commerce operators**

The third draft law has clarified that **natural person e-commerce operators, who carry out intermittent transactions, for minor amounts of money, were exempted from business registration**. However, such e-commerce operators were required to conduct tax registration and perform tax filings when thresholds were met for tax obligations.

## **e. Reporting requirements for e-commerce platforms**

The **third draft bill has retained the reporting requirements for e-commerce platforms in relation to activities by traders and service providers through their platforms.** However, due to a recent reorganization of Chinese government departments and agencies, there had been consequential adjustments to the reporting provisions.

#### **f. Identity information and business activities information**

Under the second draft bill platforms were required report both identity information and business activities information on “operators through the platform” to both the SAIC (State Administration for Industry & Commerce) and the tax authorities. In the interim, the SAIC has merged into the State Administration for Market Regulation (“SAMR”). Consequently, **the third draft bill has required the platform to report solely operator identity information to SAMR, and both identity information and a widely drawn category of ‘tax-related information’ (which could of course include certain business related information) to the tax authorities.**

#### **g. Market dominant position**

The third draft bill has added a provision which **prohibits the abuse of their market dominant position by e-commerce operators** and the restriction imposed by e-commerce platform operators on operators on platform to carry out operating activities on other platforms. NPCSC members have also suggested further revisions to the draft’s personal information protection provisions.

### **VII. Relation to other relevant laws and regulations**

The E-commerce law shall not repeat the contents already mentioned in prevailing laws and regulations as the electronic signature law (《中华人民共和国电子签名法》) of 2004. Moreover the regulations of this law shall refer

especially to issues relating to E-commerce. Thus the general provisions of the contract law (《合同法》规定) are applied in general and **only concerning special questions of E-commerce will be relevant**. Moreover in the field of consumer protection the E-commerce law will only be used in addition to the law on protection of consumers' rights and interests.

**While working on the draft other ministries' regulations were taken into consideration and some of them as the Standards and Regulations Governing Online Transaction Services (《网络交易服务规范》) of the MOFCOM (中华人民共和国商务部) were even incorporated into the draft in order to increase the draft's efficiency.**

Although the draft included provisions about transnational E-commerce as well, international treaties and agreements like the UN Convention on the Use of Electronic Communications in International Contracts (联合国国际合同使用电子通信公约), the UNCITRAL Model Law on Electronic Commerce (《电子商务示范法》), the WTO's Work Programme on Electronic Commerce (世贸组织电子商务工作计划), the Preferential trade agreements (PTAs 特惠贸易协定) in the Asia-Pacific region (亚太地区) and the data protection provisions of the APEC (亚洲太平洋经济合作组织的数据保护规定), the TPP (跨太平洋伙伴关系协定) and the RCEP (区域全面经济伙伴关系) will still prevail. But nevertheless, it is permissible to specify these provisions by national regulations as intended by the E-commerce law.

## **VIII. New Law on inspections of Internet Service Providers**

As the Chinese government tightens its grip on the countries already heavily restricted cyberspace, it has issued a new regulation empowering central and local public security authorities as of the 1. November of 2018 to enter the premises of all Internet Service Providers, to investigate and copy any

information relevant to cybersecurity.<sup>36</sup> Under the new law, police can demand managers to elucidate all items which are subject to an inspection, as well as conduct off-site inspections, via remote detection of any network security vulnerabilities in the companies.

While these regulations definitely cause concerns amongst Internet Services Providers, the new provisions do not contain much new, as public security forces have long had the authority to conduct inspections as mentioned above.

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<sup>36</sup>  
<https://www.scmp.com/news/china/politics/article/2167240/chinese-police-get-power-inspect-internet-service-providers>, see also for the following.

## **H. New cross-border e-commerce zones to promote opening-up**

China marks the 40<sup>th</sup> anniversary of its reform and opening-up policy this year. At the State Council executive meeting held on July 13 it has been elaborated a solution to promote opening-up, to upgrade foreign trade and to encourage cross-border e-commerce. China has newly identified cities as venues for comprehensive cross-border **e-commerce pilot zones** in an effort to focus on these achievements.

**New pilot zones will be established in 22 cities, including Beijing, Hohhot, Shenyang, Changchun, Harbin, Nanjing, Nanchang, Wuhan, Changsha, Nanning, Haikou, Guiyang, Kunming, Xi'an, Lanzhou, Xiamen, Tangshan, Wuxi, Weihai, Zhuhai, Dongguan and Yiwu.<sup>37</sup>**

The development of pilot zones is a key point in Chinese Government discussions as it is seen crucial to increase the country's global competitiveness. China's main goal is to turn itself into a trader of quality in order to upgrade consumption, development and export in the global market.

The number of cross-border e-commerce pilot zones has considerably increased since the settlement reached by the State Council in 2015, in which 13 pilot zones were identified. Since the pilot zones were established, they have become an area of economic growth thanks to their clearance practices in customs and logistics facilitation, that have helped encourage foreign trade, innovation and industrial upgrading.

In order to deepen reform in foreign trade, it is essential to streamline administrative procedures, to improve regulation (enacting more effective policies) and to strengthen services. To reach an effective implementation of

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<sup>37</sup> [http://english.gov.cn/premier/news/2018/07/13/content\\_281476220744874.htm](http://english.gov.cn/premier/news/2018/07/13/content_281476220744874.htm)

cross-border e-commerce efficient system, these above measures should be tailored to local circumstances, bearing in mind institutional innovations and supporting measures that will facilitate the development of cross-border e-commerce.

## I. What it takes to succeed

Despite China's e-commerce growth, success is certainly not a given; businesses need to do their homework to understand the target market, and how best to influence and direct their online purchases.



Uniqlo (优库), a Japanese retailer, chose to operate on Alibaba's Tmall upon entry to China in 2009. Uniqlo set up two sites: a company specific site that shows detailed information about the company as well as brand clothing offerings and price info, and

another that is hosted on Tmall. The two sites use the same layout, categories, assortment, and pricing schemes, and because Uniqlo's site executes purchases through Taobao, both of Uniqlo's sites centralize ordering and payment with Alibaba. This notion of having two sites has proved successful for Uniqlo and it is something that other companies may want to manipulate in order to reap similar rewards.

Mars Inc, has become the latest global consumer-foods brand to partner with e-commerce giant Alibaba and grow its online presence in China. All of Mars' products are now being sold on Tmall and the company states that the new tie-up will give consumers a 'convenient and international one-stop shopping experience'. That includes consumers in the rural countryside, whose rising spending power has drawn the attention of companies engaging in business in China. Alibaba will also partner with Mars' Beijing based Global Food Safety Center to enhance food safety management, promote consumer education and share the latest scientific research findings with industry stakeholders.



There are many other routes to success however, and many companies have had success without listing on an established

platform. One such example being Suning. Suning (苏宁电器) is a national electronics retailer in China who entered the e-commerce arena relatively early, in 2009, and does not occupy space on Tmall. They instead developed a user-friendly website, heavy in content and products and invested in their technology to ensure seamless cross-channel fulfillment between their online store and their physical store. Over the last four years, it has expanded product categories online and those accessed through mobile applications, integrating its digital channel with its brick and mortar stores. From 2010-2012 online sales grew by a compound annual rate of 190% and Suning is now rated amongst the top three B2C e-retailers in China, by market share.

China's e-commerce landscape is still experiencing rapid growth and for businesses seeking entry into this competitive market, it would be advisable to develop a strategy that encompasses a thorough understanding of the target market, including how consumers evaluate and purchase products, and how they prefer to utilize technology. It is also important to devise strategies that not only cater to the needs of tier-1 consumers, but also those outside the major cities as these are important and growing markets despite the disparity in uniform behavior. Finally, the approach towards and integration of social media should be a crucial element of any e-commerce strategy today, as consumers are increasingly integrating these applications into their everyday lives and thus their purchasing habits too.

It is worth researching in further detail the case studies of these companies in order to pick up on ideas and advice that have not been mentioned in this brochure.

## J. Important Cases

### I. Trademark and Copyright Infringement Case

#### Outcome: Won



The Korean brand E-land World found that counterfeit products were selling on the Taobao platform from December 2009 to February 2010. The counterfeit caused significant losses to the brand and negatively affected its reputation. Thus, E-land sued both the seller of the counterfeit products and Taobao before the Shanghai Intermediate Court. Taobao claimed that:

- It wasn't aware that counterfeit products were selling on its platform;
- It had removed the infringing item from the website whenever requested.

The Court decided that Taobao has failed in its duty to adopt additional measures in April 2011 to prevent counterfeiting. The Chinese Court requires from the online platforms to improve the fight against counterfeiting by setting stricter actions.

## **II. Patent Infringement Case**

### **Outcome: Won**

Zaigle owns a patent which covers a system of infrared cooker. The barbecue manufacturer claimed that tens of online shops from Tmall and Taobao infringed its patents by selling a barbecuing device similar to Zaigle's barbecue. Zaigle also argued that Tmall had failed to remove those products despite the notification made by the patent owner.

The Supreme Court ruled that an online platform shall either directly remove the products in issue or forward the notice to the seller of the counterfeit products, whenever a platform has been notified of an infringement. Thus, Tmall is jointly and severally held liable for damages suffered by Zaigle.

## **K. About Starke**

Starke was founded by a group of experienced Chinese and international lawyers and consultants to provide top quality law and management consulting services. Starke operates in Beijing (China) and in Düsseldorf, Köln, Essen, Duisburg, Dortmund, Bochum (Germany) through her cooperation partner. Our core competencies are legal advisory, M&A, as well as management consultation. We customized our advisory activities to the requirements of internationally active companies and individuals, who need **corporate-, IP-, contract-, labor-, and investment advises** in China or European countries.

We are a Trademark Agent licensed by the State Administration for Industry and Commerce (工商总局 SAIC) of the PRC. With several years of experience in Asia we support our clients in every situation. We communicate with our clients in English, Chinese, Japanese or German.

### **Our services**

#### **I. Intellectual Property**

Starke provides services regarding general **IP law consultancy, IP litigation and trademark registration**. We provide both domestic and overseas clients with full spectrum of services in all fields of trademark rights.

We have expertise on:

- Drafting and filing of trademark applications
- Trademark portfolio management
- Representation before the Chinese authorities for trademark matters
- Drafting and filing of responses to office actions

- Trademark prosecution
- Search for and analysis of trademarks
- Monitoring trademarks and trademark applications of competitors
- Oppositions, invalidation proceedings or proceedings for cancellation
- Expert opinions

When it comes to patent registration, we work together with local patent agencies that have the sufficient technological expertise to make a successful application at SIPO for your patent.

## **II. Legal Service**

Starke is specialized in corporate law, commercial law as well as trademark law and labor law. Our team also assists their clients in drafting and negotiating complex contract documentations.

## **III. Mergers and Acquisitions**

We can assist companies in acquisitions and mergers in China. We can locate, assist in negotiation, perform due diligence and manage the overall process

Whether your firm is multinational looking to value a potential acquisition target the professionals at Starke Consulting have the experience in guiding your project.

## **IV. Consulting**

Starke is as a competent partner for the safeguarding and further development of your company. Our consultants bring a know-how for your long-term success, which goes far beyond the classic consulting services.

We will conduct sector analysis and provide strategic advice and

**recommendations.** In addition to this, we work closely with the professional consulting fields of project management, negotiation, recherche and partner identification in China and Europe. We also arrange the appointments for you with key players in the market.

**Daniel Albrecht** is a German attorney at law and has been running Starke since 2014. He specializes in corporate law, commercial law as well as trademark law and labor law. He also assists his clients in drafting and negotiating complex contract documentations. Further on Daniel advises international businesses on the acquisition or sale of public and private companies. Before joining Starke, Daniel practiced for a well-known law firm in China and the oldest foreign law



firm in Japan, where he represented mostly German speaking companies in the field of corporate and IP law. He had his first professional encounter with his own law firm in Frankfurt am Main, Germany for more than five years. His first professional encounter with China was in 2004 as a law clerk and he worked at one of the top Chinese law firms in mainland China.

He is a Guest Professor for civil law at the China University of Political Science and Law (CUPL) 中国政法大学 and former member of the board of the German Chamber of Commerce in North China. In 2016, he was appointed as External Expert for the EU China IPR SME Helpdesk.

Daniel speaks German, English and Japanese.

## Term List

MIIT	China's Ministry of Industry and Information Technology	中国工业和信息化部
TP	Trading Partner	贸易伙伴
C2C	Consumer to consumer	个人与个人之间的电子商务
B2C	Business to Customer	商户与个人之间的电子商务
VAS	Value Added Services	电信增值服务
HTML5	HyperText Markup Language	第五次修改后的超文本标记语言
GMV	Gross merchandise volume	网站成交额
O2O	Online to Offline	线上到线下的营销模式
QR codes	Quick Response Code	矩阵二维码
GACC	General Administration of Customs	海关总署
CIQ inspection	China Entry-Exit Inspection and Quarantine	中国出入境检验检疫
Dummy accounts		虚拟包裹
Personal Parcel		个人包裹
AQSIQ	General Administration of Quality Supervision, Inspection and Quarantine	国家质量监督检验检疫总局
CFDA	China Food and Drug Administration	国家食品药品监督管理总局

CNCA	Certification and Accreditation Administration of China	中国国家认证认可监督管理委员会
CAS	Chinese Academy of Sciences	中国科学院
CNNIC	China Internet Network Information Center	中国互联网络信息中心
CIETAC	China International Economic and Trade Arbitration Commission	中国国际经济贸易仲裁委员会
ICP	Internet Content Provider	网络内容提供商
ISP	Internet service providers	互联网服务提供商
VIE structure	variable interest entity structure	可变利益实体
GELS	Global E-commerce Logistics Solutions Enterprises Inc.	
AIC	China's State Administration for Industry and Commerce	中国国家工商行政管理总局
CAC	Cyberspace Administration of China	国家互联网信息办公室
MOFCOM	Ministry of Commerce of the People's Republic of China	中华人民共和国商务部
PTAs	Preferential trade agreements	特惠贸易协定
APEC	Asia Pacific economic cooperation organization	亚洲太平洋经济合作组织
TPP	Trans -Pacific Partnership Agreement	跨太平洋伙伴关系协定

RCEP	Regional Com-prehensile Economic Partnership	区域全面经济伙伴关系
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