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E-Commerce in China – Facts and Law Regulations

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I. 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 2016 global E-Commerce sales have now reached 1.5 trillion USD per year, 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.

II. China's E-Commerce Market

China's Ministry of Industry and Information Technology (MIIT) reported figures of 520 million Internet users in July 2015 and according to a new analysis by digital marketing researcher E-Marketer cross-border E-Commerce in China will hit $ 85.76 billion this year, up from $ 57.13 billion in 2015 as 40 % of China's online consumers buy foreign goods. E-Marketer further estimates that each of China's digital shoppers will spend an average of $ 473.26 this year 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 $ 222.3 billion, 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 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.

III. Key Growth Drivers

1. Platforms

There are two distinct models for Chinese E-Commerce-direct purchase and marketplace.

a) 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.

b) Marketplace

The marketplace model is used exclusively by Alibaba with it's Tmall and Tmall Global channels accounting for 55.7 % 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 $ 25 000 deposit, $ 10 000 platform fee, $ 15 000 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.

c) 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 are online marketplace that allows businesses to sell directly to consumers similar to third-party selling on Amazon.com. 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 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] product[s], but test new products, engage [with] consumers and build your brand. Shipping is also a key part of Tmall Gobal'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'.

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 particuarly Tmall Global have emphasised 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 governments, and the imposition of a variety of penalties against offending merchants.

d) 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 on the Taobao Marketplace either at a fixed price or by auction. Taobao claims to have over 500 million registered consumer accounts, 800 million product listings, and holds a staggering 80 % share of China's C2C market. However Taobao doesn't change 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 turning 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 consumerstend 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 optimising 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 microblogging 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).

e) JD Worldwide

Whereas Alibaba is an eco-system JD is a fully owned E-Commerce and logistics business with a logistic network encompassing 213 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 mean 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 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.

f) VIP.com

Is a major player in the E-Commerce sector with 2015 revenues of over $ 6 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 170 million registered users. The time limited sale model imposes 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.

2. 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 microblogging 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 onlineshoppers 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 1billion visits (SimilarWeb2016). This portal is then linked into the full eco-system of Tencent's other offerings including gaming, TV content music streaming and 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. The only catch is that your company has to be registered in China. For companies without an office registered in China, there are other ways to access the market but they don't allow for the same control over presentation and process.

3. Mobile E-Commerce (M-Commerce) and payment

China has the world's largest mobile internet population with 527 million users and the number of consumers shopping on mobile devices (as mentioned above) is growing very quickly, in the quarter ended March 31st 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. A report by Forrester earlier this year predicted that E-Commerce in China will reach $ 1 trillion by 2019, mostly fueled by mobile 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 E-Mails 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.

4. 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 necessaries for a successful O2O strategy.

a) 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 conflicts, as your store managers and E-Commerce teams wont be competing against each other and customers wont 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.

b) 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 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.

c) 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 online 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.

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

5. 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 online 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 are 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.

IV. Barriers to Entry

1. Taxes and Legal Aspects

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. 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' as consumers look to combat their CNY 20,000 annual spending limit. Taxation loopholes such as the 'personal parcel' have also been closed irrevocably.

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

a) Food

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 finalised, 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.

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 produce, 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.

b) 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 must obtain a formula registration certificate from the China Food and Drug Administration (国家食品药品监督管理总局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) 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.

c) Health Foods

From the 1st July 2016 the Administrative Measures for Health Food Registration and Filing came into force, this states that all health foods, including vitamins and mineral supplements, now need to be registered with the CFDA.

d) 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.

e) 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). 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.

2. 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 'Singles 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, 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 prioritised 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.

3. The 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 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 predicable. Current political trends indicate that China will keep it's 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MII) states that an applicant must also satisfy the following criteria:

- Be an enterprise, legal 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.

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 MI. The applicants need to log on to the MII 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 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 then its mainland hosted peers.

4. 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 daft 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 right 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.

5. 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 interest 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 devisal 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. 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 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 applications 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 30 000 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 past the original permits expiration. 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.

Telecommunications 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, 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 set out that a foreign investor cannot 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 filling 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.

6. Logistics capability

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

a) *Direct Shipping*

Direct Shipping from overseas on Hong Kong is the easiest option – however it also has the biggest downside, specifically that of longer delivery times, which becomes a problems 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.

b) 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. However, as of the April tax code updates, total order prices may increase, which may prompt consumers to consider direct shipping at a more viable alternative-despite the increased waiting times of direct shipping-research.

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 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.

Cainao has nine bonded warehouses in China and plans for further expansion are underway, Wan said the company is considering warehouses in Shenzhan and Zhengzhou, the other cities chosen by General Administration of customs for cross-border E-Commerce pilot projects.

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 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.

V. Intellectual Property Rights

Despite the impressive growth 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 potential 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. 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 to for right holders to notice and take down counterfeited products from E-Commerce platforms both in China and the EU.

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 to infringing products on their websites if they are the 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. Alibaba and Taobao are the two biggest platforms and although Alibaba's future plans in counterfeit prevention have been touched on earlier the current procedures and links for notice and take down are explained below.

Of Alibaba's five E-Commerce platforms, three (Aliexpress, Taobao and Tmall) all 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.

1. AliProtect

Through AliProtect IPR holders and their authorised agents can request a notice and take-down procedure with Alibaba if there is an infringement found. The link to AliProtect, which also operates inn English, can be found here: http://legal.alibaba.com. To proceed you must complete a free registration, accepting the terms and the 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.

Ø Necessary documents

The three sets of documents listed below MUST ALL be submitted to AliProtect 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 authorised 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 intellectual 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.

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.

Ø Necessary Documents

Identification：

- Individuals should provide a copy of valid ID card (e.g. Passport, national identity card or drivers 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.

3. 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 and bad-faith users. Good faith users are those who have a take-down rate of 90 % or higher, whose counter-notifications success is less than 1.5 % and who have undisputed proof of IP. Bad faith users are those whose take-down success rate is less than 45 % and who has a bad record in terms of forges and submitting false complaints. Good faith users will be processed within one to three working days, the complaints of a normal user will be processed within five to seven working days and bad faith users complaints will take even more time to be processed.

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

VI. 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' (Article 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 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, and 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.

VII. 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. Hence a new E-Commerce law is in progress and drafts are waiting to be adopted. A new E-Commerce law – regulating the relationship between consumers, platform operators as well as online providers in the field of E-Commerce – shall remedy 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 of the recent draft law and shall summarize simultaneously the political objectives pursued by this law.

1. Fundamental 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 recent draft 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 archives to be comprehensive.

2. Structure of the draft

The draft consists of eight chapters and recently 94 articles. The structure is the following:

- Chapter I: General regulations, Article 1 - 10;
- Chapter II: E-Commerce subjects and operators, Article 11 - 25; this chapter is subdivided into two parts: General provisions and E-Commerce platforms as third parties. The two sub-chapters emphasize the relevance of this law concerning other rules and regulations on E-Commerce platforms.
- Chapter III: Trade and services in the area of E-Commerce, Article 26 - 44; this chapter is about the conclusion of a contract and its performance as payment and logistics.
- Chapter IV: Safeguarding in E-Commerce, Article 45 - 66; this chapter is subdivided into four parts: Data and information, market regulations and fair competition, protection of consumers interests and arbitration.

  It should be mentioned that chapter II, III and IV are the main parts of the draft.
- Chapter V: Cross-border E-Commerce, Article 67 - 73; cross-border E-Commerce is not only about cooperation and collaboration of several departments (customs office, inspection office, etc.) but also the coordination with international systems.
- Chapter VI: Monitoring and management, Article 74 - 80;
- Chapter VII: Legal responsibilities, Article 81 - 93;
- Chapter VIII: Appendix, Article 94.

3. 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 the E-Commerce law 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 includes 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.

4. The main contents of the draft

a) *Subject of E-Commerce*

The draft makes a difference between the normal E-Commerce operators on the one hand and on the other hand the platform operators as third party, which are the targets of this draft. A clear definition of this group is missing. Although this gap provides space for innovations and future development.

b) *Obligations for the platform's operator*

The draft envisages 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 is laid down, that E-Commerce businesses need to register with local administrators. On the one hand this method pursues 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 will also subject online merchants to sales taxes. However, it should be noted that E-Commerce taxes are 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 a electronic representative are 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 are 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 shall be examined. Among other principles the presumed-default liability shall apply, if the payment happened unfounded.

e) *Express service and logistics*

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

f) *Data and information*

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

g) Fair competition

The draft also makes clear stipulations, in which way the platforms have to respect and protect the intellectual property. Besides that it is stipulated that unfair competition is strictly prohibited.

h) Protection of consumers interest

Apart from private data and information there are 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 are laid down.

Further consumers are 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 will be punished.

i) Arbitration

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

j) Monitoring- and managementsystem

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

k) Future prospects

Though its large number of clear regulations, the new E-Commerce law would bring many changes and improvements for instance regarding the consumer protection as well as the protection of intellectual property. At the same time there are also gaps that provides the necessary scope for flexibility and development. However the current draft is not adopted so far. It remains to be seen whether the Chinese legislator will pass the law or whether the market will take out the wind of the legislator's sails with self-regulation. Thus Alibaba (阿里巴巴) – China's E-Commerce giant – has already set up its own rules and systems to claim intellectual property infringements by developing AliProtect (阿里巴巴知识产权保护系统) and TaoProtect (淘宝打假防伪系统).

VIII. 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 (优衣库), 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 to 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 every day lives and thus their purchasing habits too.

About Starke

Starke operates in Beijing (China) and in Düsseldorf, Köln, Essen, Duisburg, Dortmund, Bochum (Germany) through her cooperation partner. Our core competencies are legal advisory, 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. 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.

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. 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. In 2016 he was appointed as External Expert for the EU China IPR SME Helpdesk.