

## CHAPTER 3

# Privacy and Data Protection in China when Contracting Online: The Current Situation in the Main Land China and the EU Model

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Though China does not currently have a comprehensive legal framework to regulate the collection, (including process and retain) and disclosure of personal data, the Chinese legislators, especially with the growing importance of e-commerce, is implementing a new legal framework to regulate the protection of this information. This is being done not only to better protect personal data (and thus privacy of individuals), but also to foster e-commerce and improve the treatment of this information when doing business over the Internet. However, this action, the protection of personal information, is not only related to e-commerce. In fact, protection of personal information is also connected to foreign enterprises doing business in China. Corporations should consider adopting safeguards to protect employee personal data to reduce the risk of unauthorized disclosure of personal information, and to prevent claims of infringement of privacy.

As a matter of fact, in response to increasing occurrences of inappropriate collection and use of personal data on a massive scale, and in consideration of the lack of a comprehensive personal data protection legislation at the national level, many provinces in China have adopted, or are considering adopting personal data protection regulations on their own. For example, Jiangsu province enacted data protection regulations last year that prohibit the sale, illegal use, or disclosure of personal data. The Jiangsu regulations also prohibit theft or purchase of personal data. If these things occur, this could complicate the development of a coherent and predictable legal framework regulating both "privacy" and the use of personal data on the Internet. In recent years personal data protection legislation has been widely discussed in China and the concept of privacy has emerged when before it was not considered. In particular, protection of personal information has become of crucial importance mainly because employees of institutions that gather and store the personal data of users and

clients in the course of their business (such as Internet companies, telecommunication companies, banks and insurance companies) are selling the personal data of their clients for profit or disclosing the data to third parties inappropriately.

### §3.01 THE PROTECTION OF PERSONAL DATA: CURRENT SITUATION IN CHINA, APPLICABLE LAWS AND REGULATIONS

It must be noted that the right to privacy is upheld in principle by the *Constitution of the People's Republic of China* (hereinafter "PRC Constitution") and Civil Law Principles. In fact, the PRC Constitution provides that "a citizen's personal dignity is specifically protected as a fundamental right." Although the Constitution has yet to define what constitutes "personal dignity", most Chinese legal scholars take the view that personal dignity should include certain privacy rights. Despite the fact that the term "privacy" is referenced in certain PRC laws and judicial interpretations, the scope of privacy protection (including the right to restrict public access to personal information) has not yet been expressly codified, or addressed in detail by the Chinese legislator (*rectius*, on February 2013 has entered into force the new so-called Code of Conduct for personal data protection<sup>1</sup> but it is not legally binding). However, on March 15, 2012, some legally binding rules have been adopted in order to regulate behavior on the Internet, i.e., the so-called *Provisions on Regulating Market Orders of Internet Information Services*.<sup>2</sup> These specific Provisions will be examined later on in the next paragraph when dealing with protection of personal data during transactions over the Internet. However, a specific or dedicated law which deals with the correct use of personal information in other areas, has not been adopted yet. This situation could impede the correct and smooth development of this new form of doing business on the Internet, and could slow down e-commerce in China. Thus, privacy and data protection should be regarded by the Chinese legislator as a priority to be put in focus, if the Central government is to use e-commerce as a tool to boost internal consumption and to sustain the Chinese economy. It is now clear that China needs a more comprehensive and disciplined national personal data protection legislation. Though some rules exist, a definite framework has not been put into place, and the existing pieces of legislation

1. The PRC Standardisation Administration issued a national standard entitled the "Information security technology - Guideline for personal information protection within information system for public and commercial services" (信息安全技术 公共及商用服务信息系统个人信息保护指南) (the Guidelines) on Nov. 5, 2012. The Guidelines will take effect on Feb. 1, 2013; these Guidelines are also known as "Code of Conduct for personal data protection". Although the Guidelines were proposed by the MIIT and implemented as a national standard, they are intended to regulate all organizations and entities on the protection of personal information. For instance, any service provider in the telecommunications, health and financial services sector, are expected to follow the Guidelines. Notable exceptions are government bodies that exercise any public administration function. The Guidelines are only applicable to any processing of personal information that involves the use of an "information system" (e.g., a computing system). The Guidelines therefore are quite limited in scope when compared to usual data protection law whereby no distinction is drawn on whether an information system is involved or not.
2. *The Several Provisions on Regulating Market Orders of Internet Information Services*, issued by the Ministry of Industry and Information Technology of the PRC (MIIT Provisions) may be a first step in a positive direction. The MIIT Provisions took effect on Mar. 15, 2012.

need to be re-organized and refined. In any case, it must be noted that local experts are calling on legislators to quickly adopt a personal information protection law, this also in consideration of the rapid development of the Internet and of the e-commerce in China, and consequently of the increasing exchange of information which is going to take place over the Internet.<sup>3</sup>

Before analyzing more in detail some specific pieces of legislation regulating the treatment of personal data in the so-called cyberspace, when concluding some kind of transactions or activities over the Internet, it must be stressed that protection for personal data is to be found in the PRC Constitution (as mentioned before), and for some stretch in the PRC Criminal Law and the PRC Tort Liability Law. Therefore, below is a brief overview of these laws. We will then proceed with the explanation of some dedicated regulations which touch upon the area of personal data protection in connection with online activities.

#### [A] General Applicable Laws and Some Clarifications about the New "Code of Conduct" for Personal Data Protection

As noted above, in China there are not comprehensive PRC laws or regulations on personal information protection. Therefore, businesses have had little guidance on the types of activities that are permissible with the personal information of individuals. Some sort of reference is offered by the PRC Constitution which sets forth rights which have been interpreted as establishing an individual right to privacy. In particular, Article 40 of the PRC Constitution provides that a citizen's freedom of communications and privacy of communications are protected by law. Then, Article 38 of the PRC Constitution sets forth a general right of citizens to be free from infringements on their dignity, and protects citizens from defamation, false accusations and insults.<sup>4</sup>

The PRC Criminal Law also prohibits any person from obtaining personal information about any person by means of theft or other unlawful means. For example, the seventh amendment to the PRC *Criminal Law* (effective February 28, 2009) added the criminal offenses of illegally providing and illegally using personal information of PRC citizens. It is interesting to note that both individuals and legal entities may be found guilty of the offenses: legal entities may be liable for fines, and responsible individual management personnel may be subject to fines and imprisonment and/or probation for up to three years. Despite potentially harsh penalties, little regulatory guidance has been given on the types of behavior which are illegal when collecting and processing personal information (so far). Furthermore a person whose personal data has been unlawfully used or disclosed may also file a civil claim under the PRC Tort

3. Under a proposed regulation published on the Ministry of Industry and Information Technology's website at the beginning of April 2013, people who apply for fixed-line phone service or buy wireless Internet cards would have to present their identity cards. The move follows the adoption of a real-name registration system for cell-phones users three years ago.
4. These articles, namely Arts. 38 and 40, have been interpreted as the foundation for a general right to privacy which is briefly mentioned in various PRC laws and regulations.

Liability Law<sup>5</sup> for infringement of privacy, which provides that infringements of civil rights and interests result in tort liability (and privacy, though it is not defined in detail, it is considered one of these civil rights). For instance, Article 36 of the Tort Liability Law provides that “an Internet user or Internet service provider who infringes on the civil rights or interests of another person through the Internet shall assume the tort liability.”<sup>6</sup> However, due to the lack of detailed interpretations or implementing regulations on the application of the relevant provisions in the PRC Criminal Law, or in the PRC Tort Liability Law, the impact of these two laws on prevention of misuse of personal information has been of limited importance and significance.

Although a draft *Personal Information Protection Law* (“Draft Privacy Law”)<sup>7</sup> was published in late 2006, it remains under review and has not been enacted. This is tentative to introducing an organic legislation on the protection of personal information did not succeed maybe because the time was not yet mature. However, the adoption of the “*Several Provisions on Regulating Market Orders of Internet Information Services*”, together with the “*Information Security Technology – Guide of Personal Information Protection*” (the “*Guidelines*”) would partially fill this void, but in many ways could present compliance challenges for businesses as will be discussed here below in the next paragraphs. However, it is worth noting that in April 2013 the Ministry of Industry and Information Technology has proposed a new piece of legislation about the protection of personal information which should be discussed by the Chinese legislator soon.

*Clarifications on the new “Code of Conduct” for personal data protection:* It must be stressed that the newly introduced “Code of Conduct” (i.e., the “*Guidelines for personal information protection within information system for public and commercial services*” – 信息安全技术 公共及商用服务信息系统个人信息保护指南 – which took effect on February 1, 2013) represents a substantial step forward in the protection of personal information in China though they do not have the force of Law. These new guidelines are expected to boost self-regulation on the Internet because they outline concrete requirements and preconditions for collection, processing, transfer and deletion of personal information by companies. These guidelines also set principles for the use of such data and define how the rights of relevant people can be protected. Classifying personal information into “sensitive” and “general” categories, the guidelines stipulate that consent must be given by people before collecting their “sensitive” information. Protecting personal information has become a big challenge because of the increase of usage of the Internet, and a secure cyberspace is needed to let people feel more secure when acting on the “Net”. This is why it has become necessary to put in place specific

5. *Tort Liability Law*, effective Jul. 1, 2010).

6. According to the Tort Liability Law it is possible to pursue claims for emotional harm and mental distress, and there are provisions for joint and several liability of users and ISP.

7. From 2005 to 2007 a group of experts led by Prof. Zhou Hanhua, the director of the Institute of Law at the Chinese Academy of Social Sciences, were commissioned to draft a national data protection law, i.e. the draft law, to be considered by the Informatics Committee of the State Council, but it did not proceed. See G. Greenleaf, *China’s Proposed Personal Information Protection Act*, Priv. L. & Bus. Intl. Newsltr. Issues 91 and 92 (2008), available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2023065](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2023065).

regulations or legislation to protect people and their personal information. Otherwise, the lack of precise rules could impede the development of this means of communication, and platforms for new business adventures.

The new Code of conduct allows companies to collect private data only for a specific and reasonable purpose. A key element of the Code states that purpose cannot be altered or amended during the process. Data can only be collected on the basis that the subject of the information has been informed, and it must be deleted as soon as possible after use. The Code also requires companies to follow what is called the “minimal principle”, which is to say that companies can only collect data that is sufficient for the specific purpose. No fishing for information is permitted. Companies must set up an internal protection system in which management procedure, and the person responsible for information protection, are clearly stated. Liu Tao, from China Software Testing Center, who helped draft the Code, conceded that the code is not compulsory. Individuals cannot file lawsuits on the basis of the code if their data is compromised.

However, other measures and regulations must be considered. The Code, as it has been stressed, does not have the force of law, and it must be considered as a reference only.

#### [B] Measures for the Administration of Internet Information Services, and Its Amendments

The *Measures for the Administration of Internet Information Services* (effective since September 25, 2000, represent the first national level of regulation aimed at regulating Internet information services (IIS) and promoting the healthy and orderly development of such services.<sup>8</sup> However, there is no clearly definition of “ISPs”. Article 2 of the *Measures* defines the term *Internet information services* (IIS) as service activities for providing information through the Internet to the user, which includes commercial and non-commercial services. Commercial IIS refers to providing Internet users with information via the Internet in exchange for compensation, or providing Web page creation services (directly from the *Measures*). Non-commercial IIS refers to providing Internet users with open-source and shared-information services via the Internet on a non-compensatory basis. It is interesting to highlight that under the above definition, all entities in China providing information services through the Internet to web users could be considered as ISPs. This expression indicates both commercial ISPs and non-commercial ISPs, therefore they are both subject to the said *Measures*.

Recently, in June 2012, China’s National Internet Information Centre and the Ministry of Industry and Information Technology jointly issued the so-called draft amendments to the “*Measures for the Administration of Internet Information Services*” published in 2000. These amendments update the *Measures* in order to cover new issues related to the rapid development of Internet services in China.

8. In this sense, Art. 1, *Measures for the Administration of Internet Information Services*, 2000.

## CHAPTER 7

# Protection of Intellectual Property Rights (IPRs) on the Internet

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The theme of Intellectual Property is of particular importance, in fact every company operating a website for developing and expanding online their own activity involve the use of IPRs. These rights represent an important asset and they need to be protected in order to maintain a certain competitive advantage over competitors. This is a fact, and every entrepreneur employing these rights in developing his/her business cannot agree more to this statement.

As the theme of "Protection of Intellectual Property Rights in China When Doing Business" has already been treated in another manuscript,<sup>1</sup> this chapter is intended to

1. In particular reference must be made to Ch. 8, i.e. "Protection of Intellectual Property Rights in China when doing business" of this manuscript by Cristiano Rizzi, Li Guo, Joseph Christian, i.e. *Mergers and Acquisitions and Takeovers in China – A legal and Cultural Guide to New Form of Investment*, Wolters Kluwer Law & Business (2012). "Despite the fact that China has made some significant progress on Intellectual Property Rights enforcement, concerns about infringement and counterfeiting, which have a broad impact on company operations, remain a major problem when investing in China. The Chinese government has always attached great importance to the protection of IPR and considers it as integral to reform and opening policies as well as the effort to build-up of a socialist legal system. The Chinese government is of the view that the system of IPR protection is of great significance to the promotion of technological advancement, cultural flourish and economic development. However, many foreign companies fear about protection of IPR in China because the violation of IPR rights translates into a wide range of consequences for companies investing in the "Middle Kingdom."

In the age of globalization, the world is involved in a process of creating a global market economy, where the competitors are always concerned about the protection of their products (especially if patented) and trade secrets. In the competitive global marketplace, the winners are not only those who are able to just introduce into the stream of commerce new products and technologies, but are also able to properly protect them. Because of this, intellectual property rights protection has become a complex issue for legislatures, judges, lawyers and scholars. Industrialized countries have joined treaties in order to guarantee, as much as possible, a uniform protection of those rights. During this time, China has made great strides in upgrading and improving its systems of intellectual property rights protection, but it seems some more efforts are needed to put the Chinese system more in line with international standards. Overall, many analysts say that in order for China to attract more investment and move more towards a market economy, it needs to

highlight some aspects of this necessary protection, in particular with reference to specific rights (i.e., "copyright") when operating a business in the online dimension.

Of course, when operating an "online" business, or activity, there will be a number of intellectual property rights which are involved and thus exist in the specific website a business has set up. Primary attention and consideration must be given to any "logos" or "brand names" used in the website. These elements are likely to be protected by registered trade mark rights. These are fundamental elements and the essence itself of a business, and therefore, of course, they are the first asset a company has to protect through proper registration when an activity is initiated, especially here in China. However, using the Internet and creating an online dimension of the activity conducted offline (i.e., creating a website to gain more visibility and hopefully to attract new clients), then there will also be the "content copyright rights" – identifying the website and your specific business activity which will need to be protected. It is worth noting that most of websites employ not only text, but also designs, graphics, data, and website "layout" and other elements such as music and images to render the website more attractive. All these elements will be protected by copyright. Usually copyright is automatic and registration is not strictly necessary, provided that it satisfies certain criteria (e.g., "originality"). It is also worth noting that some countries have registration or deposit procedures which must be followed for the author to benefit from full protection.

However, this chapter is not focused on registration procedures, rather the intent of this part of the manuscript is to highlight how these Intellectual Property rights are perceived in China and treated in the online dimension. The proper functioning of a website, intended as a new channel of distribution to expand a presence in a specific market, depends also on the protection of its contents including both the items used to construct the site, and also the products commercialized in it.

#### §7.01 INTELLECTUAL PROPERTY PROTECTION AND ITS INCREASING NEED OVER THE INTERNET

Protecting intellectual property on the Internet is becoming a significant issue. In fact the vast majority of offline businesses, especially in the retail field, are converging towards Internet because it offers the unique opportunity to expand the business with a relatively small investment, and also because of the increasing number of online shoppers (remember: in China there are already more than 240 million on-line consumers). Intellectual property protection is also necessary for the advertising industry. Advertising agencies assist local and international businesses in marketing their products, and they spend considerable time, effort, and money on creating words, sound, and images which are used to sell their client's products. This is why this issue, i.e., protection of IPRs, is gaining considerable attention here in China. The Internet has also made it possible to distribute, worldwide, perfect digital copies of these words,

*create a more concrete and predictable system of IPR to assure foreign companies intellectual property is fully respected. Cfr. p. 177.*

sounds, and images, to millions of consumers, (and millions of businesses which, at least to some degree, are all competitors). Therefore, IP protection is something necessary to assure the smooth growth and expansion of online activities, and the reference is to be made to not only businesses, but also to third parties helping these businesses expanding their presence on the so called cyberspace (i.e. the Internet). Still, the advertising industry is in a far better position to protect its intellectual property than most industries. Most pirated digital property is used privately, by individuals, which makes it difficult for the lawful and legal owners to stop them. Advertising material is only useful if it's available to the public, and anything public on the "Net" can be searched, either manually by an user, or automatically by computer.

The accessibility of a website poses this "copyright protection issue" which has always been a hot theme, which needs to be addressed in the proper manner in order to instill in businesses more confidence. Internet traffic is currently a fraction of what it will be in the near future. There is no doubt that, in terms of commercial use, the Internet will become the main means to increase the volume of sales, and the number of businesses on the "Net" will increase dramatically. For these reasons, especially the protection derived from copyright is needed. However this issue in China, at least till recently, was not seen as an absolute necessity, and only the pressures from the other industrialized countries has urged the Chinese legislator to pay more attention to this theme. All this has prompted the Chinese legislator to adopt the necessary legislation to protect IPRs, and to put the Chinese system more in line with international standards. Finally, IPRs are becoming an important topic also for local entrepreneurs.

#### §7.02 COPYRIGHT IN THE INFORMATION SOCIETY: THE DIFFERENT ELEMENTS TO BE CONSIDERED WHEN SETTING UP A WEBSITE

When creating a website, it is always necessary to consider whether the entity operating the website is the real (and sole) owner of the site and of the items included in it, or if this entity (which could be a company or a person) have the right to use all of the materials included in the website, e.g.: data, text, photographs and software. If the entity is not the owner of all the materials, then it is necessary to have a license from the copyright owner in order to use them or alter them and include them in the website that this entity intends to operate in order to expand its activity on the online dimension.

Prior to identifying the elements subject to copyright protection (which constitute a website), it is necessary to make clear what "infringement of copyright" means in this online dimension when an entrepreneur uses these assets to promote his activity on the Internet. Substantially copyright in something is infringed, generally speaking, if it is reproduced in any material form. Therefore, if in setting up a website the entrepreneur reproduces someone else's website content without permission, this represents an infringement of copyright (and also may represent unfair competition).<sup>2</sup> Similarly, the

2. Reference must be made to the *Law of the People's Republic of China Against Unfair Competition*, promulgated in 1993. "Unfair competition" shall refer to a business operator's acts violating the

entrepreneur's copyright might be infringed if someone else reproduces the materials on their website without permission. However, it must be clear that copyright protection does not grant the owner a monopoly in something, it only prevents copying. For example, it is not copyright infringement if two entrepreneurs design exactly the same logo completely independently without copying the logo of the other person. In this particular situation, though it is extreme, and unlikely to happen, both parties will have copyright protection in their own logo. Therefore, to successfully prove copyright infringement the interested party would first have to show that the other party had access to the materials of the first entrepreneur in order to copy them. This is obviously easy to demonstrate where it is freely available website content which has been copied. Of course, infringement of copyright will be easy to prove if a work or a website has been copied completely, and the infringer cannot prove the contrary, is it to say he/she has created or developed the website independently. However, to demonstrate copyright infringement becomes extremely difficult when the reproduced elements or the entire website has not been completely reduplicated. On the Internet, it is very easy to forge someone else's website or imitating it, and copyright can be infringed in several different ways. What is more, if one site is reproduced is very unlikely the original owner will find out about, and in any case it would be extremely difficult to demonstrate the infringement and the fraudulent intention to exploit the other's image or content of the website, unless the products are alike and advertising materials almost the same. In fact, whether copyright has been infringed also depends on what has been reproduced.

Here below are exposed some examples of what can be interpreted as infringement of copyright in the online dimension.

#### [A] Work Created by Employees and Sub-contractors

When the website is the result of the work of the employees then, in the absence of any agreement to the contrary, the copyright automatically remains in the sphere of the business as the employer. This is not the case if you are commissioning contractors (e.g., external web developers) to create your website. This is a common misunderstanding. In the absence of agreement, the contractor will own the copyright in whatever he creates.

Accordingly, an entrepreneur should agree in advance that the copyright in anything created by the contractor for the firm, will be owned by the this firm. In this case the owner (i.e., the entrepreneur) will be able to do whatever he wants with it. If the entrepreneur has paid someone to produce pictures for a brochure – but he/she is not granted a license to use the pictures in the brochure, this does not necessarily mean that the entrepreneur can use the pictures on his/her website.

provisions of the Law, infringing upon the lawful rights and interests of another business operator and disturbing the socio-economic order. Copying the content of someone else's website based on the content of this law, it may be interpreted as an act of unfair competition besides infringement of copyright.

#### [B] Hypertext Links: Does It Configure Infringement of Copyright?

Websites can be linked to each other. A hypertext link allows to reach one website from another website. This capability, however, (i.e., linking) it is not sure it constitutes an infringement of copyright. However, it is possible to argue that anyone whose website includes links to other websites, could be held responsible for any page to which it is linked, even if this link is indirect and involves passing through unconnected parties. In order to avoid any inconvenience (i.e., illegal actions), if the entrepreneur setting up his/her website wishes to include a link to another website, he/she should ensure to have a permission to do so from the owner of the other website. A linking agreement could be used for this purpose. It must be stressed, though it does not exist a precise rule, and it is advisable (and more safe) when linking to other websites (i.e., linking to other businesses), do not display their brand names next to the link on our website unless we have the brand owner's permission to do so, otherwise we risk infringing their trade mark (in showing it). In most cases a simple disclaimer on our website could help.

In case our website was developed by a third party, it is necessary to specify in the contract that link's should not be added by the developer without consultation with the entrepreneur.

It is worth noting that "scraping" the content of others by extracting the data, reformatting the contents and making contents available on our websites is considered an illegal action. For example, news aggregation services which harvest the headlines of news websites and travel or ticketing services which trawl the databases of providers, all these behaviors are illegal if they operate without permission.<sup>3</sup>

#### [C] Downloading and Distributing Software and Other Material

The Internet presents the unique possibility to download certain products such as for example music and software which is usually (in particular the latter) sold on a website often on a "try before you buy" basis. It is therefore easy to download software and other digital products and distribute them. Because of this reason, although the freedom offered by the Internet, if someone download these products and distribute software or digitalized products (photos are to be included) without permission of the owner of the copyright, this action constitutes copyright infringement. In particular software is often provided to download with a license, and distributing the software is likely to amount to a breach of the license terms. Therefore if the business operator of a specific website is making software available to download for online shoppers, it is necessary to have a proper license and respect the terms of the said license, naturally those terms have to be provided to the user.

The business operator if using licensed software could want to include a "click-wrap" agreement, which clearly displays the license terms to the user and which

3. In July 2008, Ryanair began a screen scraping lawsuit in the Irish Courts and Ryanair won an injunction in the German Courts against a tour company that was screen scraping its website (see both stories in OUT-LAW News).

## APPENDIX I

# Interim Measures for the Administration of Online Commodities Trading and Relevant Services

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The Interim Measures for the Administration of Online Commodities Trading and Relevant Services adopted at the executive meeting of the State Administration for Industry and Commerce of the People's Republic of China are hereby promulgated and shall become effective on July 1, 2010.

Zhou Bohua, Minister

May 31, 2010

Interim Measures for the Administration of Online Commodities Trading and Relevant Services

### CHAPTER 1: GENERAL PROVISIONS

**Article 1** These Measures are formulated in accordance with the Contract Law, the Tort Liability Law, the Law on the Protection of Consumer Rights and Interests, the Law on Product Quality, the Anti-Unfair Competition Law, the Trademark Law, the Advertising Law, the Food Safety Law, the Electronic Signature Law, and other relevant laws and regulations for the purposes of regulating online commodities trading and relevant services, protecting the legitimate rights and interests of consumers and business operators, and promoting the continuous and healthy development of Internet economy.

**Article 2** Online commodity vendors and online service providers that engage in online commodities trading and relevant services within the territory of the People's Republic

of China shall abide by the laws and regulations of China and the provisions of these Measures.

**Article 3** For the purposes of these Measures, online commodity vendors shall mean the legal persons, other economic organizations or natural persons that sell commodities through the Internet.

For the purposes of these Measures, online service providers shall mean the legal persons, other economic organizations, or natural person that provide relevant for-profit services through the Internet, and those website operators that provide online trading platform services.

**Article 4** The administrative departments in charge of industry and commerce encourage and support the development of online commodities trading and relevant services, and shall implement more proactive policies so as to promote the development of Internet economy. The overall quality and market competitiveness of online commodity vendors and online service providers shall be enhanced so as to leverage the role of Internet economy in promoting the national economy and social development.

**Article 5** The administrative departments in charge of industry and commerce shall, according to their duties and responsibilities, provide fair, impartial, standardized and orderly market environment for online commodities trading and relevant services, advocate and create an honest market atmosphere, and protect the legitimate rights and interests of consumers and business operators.

**Article 6** Online commodity vendors and online service providers shall not harm the interests of the State or the public in online commodities trading and relevant services, or harm the legitimate rights and interests of consumers.

**Article 7** When engaging in online commodities trading and relevant services, online commodity vendors and online service providers shall follow the principles of good faith and integrity, and abide by generally accepted business ethics.

**Article 8** When engaging in online commodities trading and relevant services, online commodity vendors and online service providers shall follow the principles of fairness, impartiality and voluntariness, maintain the interests of the State, and bear corresponding social responsibilities.

**Article 9** Online commodity vendors and online service providers are encouraged and supported to form industrial associations, build an Internet integrity system, strengthen self-disciplinary administration and promote the development of a credit system within the sector.

## CHAPTER 2: OBLIGATIONS OF ONLINE COMMODITY VENDORS AND ONLINE SERVICE PROVIDERS

**Article 10** Legal persons, other economic organizations or sole proprietors that have been registered with the administrative department in charge of industry and commerce and have obtained the business licenses shall, when engaging in online commodities trading and relevant services, make available to the public the information stated in their business license or the link to their business license online at a conspicuous place of their homepages or the websites where their online stores are located.

A natural person that engages in commodities trading and relevant services through the Internet shall file an application with the online trading platform service provider, and submit thereto his actual identification information such as name and address. A natural person that satisfies the registration conditions shall go through the industrial and commercial registrations in accordance with the law.

**Article 11** Commodities and services traded online shall comply with the provisions of relevant laws, regulations and rules. Commodities and services that are prohibited from being traded by the laws and regulations shall not be traded online by business operators.

**Article 12** To provide consumers with commodities and services, online commodity vendors and online service providers shall abide by the Law on the Protection of Consumer Rights and Interests, the Law on Product Quality, and other related laws, regulations and rules, and shall not harm the legitimate rights and interests of consumers.

**Article 13** When providing consumers with commodities or services, online commodity vendors and online service providers shall explain to consumers the name, type, quantity, quality, price, freight, delivery method, form of payment, way of returning or exchanging of the commodities or services, adopt measures to ensure the trading is safe and reliable and provide commodities or services in the way they have promised.

Online commodity vendors and online service providers that provide electronic contract clauses shall comply with the provisions of the laws, regulations, and rules, and clarify the rights and obligations of the two parties according to the principle of fairness, adopt reasonable and noticeable ways to remind consumers of the clauses concerning their rights and interests, and render explanations to those clauses upon request by consumers.

Online commodity vendors and online service providers shall not, by means of using electronic contract clauses, make stipulations that are unfair or unreasonable to consumers, or which mitigate or waive the obligations and responsibilities of the business operators, or which exclude or restrict the main rights of consumers.

**Article 14** When providing commodities or services, online commodity vendors and online service providers shall guarantee the completeness of the commodities and services and shall not sell the commodities or services by unreasonably splitting them or set minimum consumption standards or additionally charge unreasonable fees.

**Article 15** The issuance of purchase vouchers or service receipts by online commodity vendors and online service providers shall conform to the relevant provisions of the State or common business practices. Upon consent of the consumers, such vouchers or receipts can be issued in electronic form. Electronic purchase vouchers or service receipts can be relied upon when complaints from consumers are handled.

When consumers require online commodity vendors and online service providers to issue purchase vouchers or service receipts, they shall do so.

**Article 16** Online commodity vendors and service providers are obliged to keep safe, reasonably use, hold within the specified time and properly destroy the collected consumer information. They shall not collect or provide information unrelated to their commodities or services; nor shall they make available to the public, lease or sell such information, unless otherwise provided by the laws or administrative regulations.

**Article 17** The information on trading of commodities or services released by online commodity vendors and online service providers shall be authentic, accurate, complete and sufficient. No false promotion or indication is allowed.

**Article 18** When providing commodities or services, online commodity vendors and online service providers shall abide by the Trademark Law, the Anti-Unfair Competition Law, the Provisions on the Administration of Enterprise Name Registration, and other laws, regulations and rules, and shall not infringe upon the exclusive rights of others to use the registered trademarks or enterprise name rights, etc.

**Article 19** No online commodity vendors or online service providers shall carry out, among other things, unfair competition acts that damage the business good will or commodity reputation of other business operators or infringe the trade secrets of right-owners by adopting Internet technology means, using the Internet as a platform, or through other means.

### CHAPTER 3: OBLIGATIONS OF ONLINE TRADING PLATFORM SERVICE PROVIDERS

**Article 20** An online trading platform service provider shall examine the status of the legal persons, other economic organizations or natural persons that apply for providing commodities or services through its online trading platform.

An online trading platform service provider shall examine and register the real identification information of the natural persons that apply for providing commodities

or services through its online trading platform but temporarily do not satisfy the industrial and commercial registration conditions. Such service providers shall establish registration archives and verify and update the same at fixed intervals. Marks proving the authenticity and legitimacy of the individuals' identity information shall be issued through verification, and shall be indicated on the webpage where their commodities trading and relevant services are carried out.

An online trading platform service provider shall, when conducting examination and registration, cause the other party to know and consent to the registration agreements, and remind the other party of the obligations and responsibility clauses.

**Article 21** An online trading platform service provider shall sign contracts (or agreements) with the business operators that apply for entering the online trading platform to conduct trading, expressly stipulating the rights and obligations of both parties concerned with entry and exit of the online trading platform, quality assurance of commodities and services, protection of rights and interests of consumers, etc.

**Article 22** An online trading platform service provider shall formulate rules and systems on the administration of its online trading platform including, among other things, trading rules, trading security guarantee, protection of rights and interests of consumers, disposal of undesirable information. The rules and systems shall be available on its website and the users shall be able to conveniently read and save the entire texts of them, free from technological difficulties.

An online trading platform service provider shall adopt necessary technical approaches and management measures to ensure the normal operation of the online trading platforms, provide a necessary and reliable trading environment and trading services and maintain the order of online trading.

**Article 23** An online trading platform service provider shall establish an examination and monitoring system for business operators that provide commodities or services through its online trading platform and for the commodities and service information they have released and shall, when discovering any act violating the laws, regulations and rules on industrial and commercial administration, report to the local administrative department in charge of industry and commerce, take immediate measures to stop such acts, and cease to provide online trading platform services when necessary.

Where an administrative department in charge of industry and commerce discovers on an online trading platform any act violating the laws, regulations and rules on industrial and commercial administration, it shall require the online trading platform service provider to take measures to stop such acts in accordance with the law, and the business operator shall render cooperation accordingly.

**Article 24** An online trading platform service provider shall take necessary means to protect the exclusive rights to registered trademarks and enterprise name rights, etc.