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E-Commerce Law In Force: How Registration Requirements Help Enforcement

The first E-Commerce Law in China has come into force on 1 January 2019 (the "Law"). Since the promulgation of the Law on 31 August 2018, many have speculated problems and raised concerns over the implementation. One of the more uncertain areas is the requirement for online businesses to be registered with the Administration for Industry and Commerce ("AIC"). Prior to the Law, no business registrations are required for e-commerce businesses run by individuals. They merely have to provide personal information to e-commerce platforms for registration. This lacks accountability as the control is with the e-commerce platforms but not the government.

I. OPINIONS ON ACCOMPLISHING THE REGISTRATION WORK OF E-COMMERCE BUSINESS OPERATORS

On 3 December 2018, the State Administration for Market Regulation ("SAMR") issued the Opinions on Accomplishing the Registration Work of E-commerce Business Operators (the "Opinions").

The noteworthy points in the Opinions can be summarised as follows:-

1. The following businesses are exempted from the business registration requirement:-

- (i) individuals selling agricultural by-products;
- (ii) individuals selling homemade products;
- (iii) individuals using their own skills to engage in public convenience services;
- (iv) individuals engaging in low-value transactions; and
- (v) other businesses that are not required by law to register.

2. For the purpose of business registration, the e-commerce platform or online business place may be recorded as the place of business.

3. If the operators operate in multiple e-commerce platforms/online business places, all the platforms/places must be registered.

4. Ordinary residential address of the operator must be registered.

5. E-commerce platforms shall work with SAMR and provide all necessary information to ensure compliance of the business registration requirements.

6. Operators shall publicize their business license information in a prominent position.

What is still lacking is how the registration shall take place, in particular as to the role of the e-commerce platform in

ensuring the compliance of the same by the existing operators. The exact measures that e-commerce platforms shall implement in assistance of the enforcement of the Law would require further clarification.

For the time being, the Law does provide obligation on the e-commerce platforms to ensure compliance as e-commerce platforms may be fined for the failure by operators to prominently display the requisite business registration information, or for the failure in taking necessary measures against operators who violated such requirements. The fine could range from RMB20,000 to RMB100,000 (approx. US\$3,000 to US\$15,000), and be increased to RMB100,000 to RMB500,000 (approx. US\$15,000 to US\$74,000) in serious case.

II. SIGNIFICANCE OF E-COMMERCE BUSINESS REGISTRATION

For brand owners, the business registration requirement should be welcomed. The operators should now be more easily identifiable. Also, operators having multiple online business places would be shown, and brand owners may prioritize enforcement targets. In addition, as the ordinary residential addresses of the operators have to be recorded, investigation and potential AIC complaint may now become more feasible.

With the stricter regulation for e-commerce businesses, the hurdles and requirements for bad faith sellers to set up an online selling channel would be increased. This may also mean that the taking down effort against existing operators can become more effective, as it would be more difficult for the infringer to operate a new online business by using a different identity. While this may depend on how e-commerce platforms may assume the patrol role, the obligation imposed and the possibility of facing a fine shall be sufficient catalyst for the setting up of proper mechanism by e-commerce platforms safeguarding how operators may set up new account.

As against the existing operators, it is expected that time will be required for compliance and it may be unrealistic to rely upon e-commerce platforms to proactively enforce the requirement. The Law provides that e-commerce platforms must warn, suspend or terminate business operators who violate laws and regulations in accordance with their terms of services and transaction rules. Brand owners may therefore take actions against non-compliant business operators or infringers by filing complaints with the e-commerce platforms and, if necessary, the SAMR, who has to power to order rectification of non-compliance.

III. NEW LAW IN ACTION

Since the implementation of the Law, many local AIC's across the country have begun the issuance of online business registrations to operators. To illustrate the overall implementation of the registration requirement, as of 31 January 2019, one month since the implementation of the Law, the AIC of Harbin, as an example, has reportedly issued 49 E-commerce Business Registrations, 7 of which for Taobao, 20 for WeChat, and 6 for Pinduoduo. However, this figure is incomparable to the total numbers of operators online. Further efforts will be required before this requirement and the Law are fully implemented.

Other than the requirement of business registrations, other aspects of the Law have also been gradually implemented. There have reportedly been various actions taken by the relevant authorities against the unauthorised sale of medical products, investigations against alleged alteration of customer review records, and customs actions against parallel importer's failure to pay duties. It appears that local authorities around across the nation are taking initiatives in the enforcement of the Law.

Given the increasing popularity of e-commerce among business operators and consumers, there will likely be further practical guidelines concerning the implementation of the Opinions and the Law. We will keep monitoring further developments and keep you updated.