



HAN KUN LAW OFFICES

Legal Commentary



CHINA PRACTICE • GLOBAL VISION

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MOFCOM Released Service Standards for Third-party E-commerce Trading Platforms

After publishing a draft for comment on February this year, the Ministry of Commerce (MOFCOM) officially promulgated and implemented the *Service Standards for Third-party Ecommerce Trading Platforms* (the “**Standards**”) on April 12, 2011. The Standards, with nine sections and thirty-two clauses in total, cover issues such as platform establishment and basic code of conduct, platform participants (i.e., individuals and enterprises engaging in trading and related service provision activities on the platform) management and consumer protection by platform operators, coordination and supervision between platform operators and relevant service suppliers, etc. The Standards particularly clarify and reinforce platform participant management and protection for consumers by platform operators. Set forth below is a summary of salient points of the Standards.

Business Separation Principle

Where a platform operator trades on its own platform, the Standards require the platform operator to separate its platform operation business from its trading activities, and disclose the relevant information on its platform. This principle ensures the openness, fairness and impartiality of the platform to the trading parties.

The Standards further explicitly regulate in Section 6.9 that, where a third-party trading platform uses its own platform to engage in online goods (service) transactions, it shall not conclude with each other or take advantage of its convenient position to manipulate market price or disrupt market order, causing damage to the lawful rights and interests of other business operators or consumers.

Information Disclosure and Data Storage

The Standards require that platform operators shall disclose the following information on the

homepage of their websites or on the webpage through which their business activities are carried out: (1) business license, organizational code certificates, tax registration certificate, and a variety of business permits; (2) internet-based information service permit registration or electronic verification identifier which has been filed with the relevant authorities for record; (3) contact information including business premises, postcode, telephone numbers, and email, and the address for the service of relevant legal documents; (4) contact information of relevant supervisory authorities or organizations responsible for processing consumer complaints; (5) other information to be disclosed as required by laws and regulations.

Also, the Standards require that identity information of platform participants and their trading counterparts shall be kept by platform operators for at least two year after their last login; and transaction information shall be kept for at least two years after relevant transactions are conducted. With respect to third-party trading platform with a daily turnover of RMB 100 million or more, remote systems for data backup and disaster recovery shall be set up, and contingency plans shall also be prepared. Platform participants shall be entitled to checking, downloading or printing information pertaining to their own transactions within said periods for information reservation; the Standards encourage third-party trading platforms to handle other entities' inquiry, download and printing requests via independent data service providers.

Formulation of and Modification to User Agreements and Trading Rules

According to the Standards, user agreements of platform operators and modifications thereof shall be disclosed at least 30 days in advance. Where consumers' rights and interests are affected, the agreements concerned shall be forwarded to local consumer right and interest protection organizations; any changes to the trading rules shall be announced at least 30 days in advance. In the event that the change is not accepted by a user, the user may withdraw from the platform, with a written notice, within 60 days after the announcement. Platform operators shall process such withdrawals properly in accordance with the original trading rules.

Platform Participant Management and Guidance Provided by Platform Operators

The Standards explicitly require platform operators to assume the responsibility of platform participant management and guidance. The following is the key requirements:

➤ Platform Participant Registration

The Standards require that any entities, before running any operation on the platform, need to apply with platform operators, supplying necessary licenses and information such as their identity certificates, business license, company address, and contact details; platform operators has the obligation to verify business licenses, tax registration certificates and various business permits

provided by platform participants. The Standards further require that, platform operators shall conduct regular verifications regarding registration information of platform participants registered using their real names on a yearly basis, indicating platform participants whose registration information cannot be verified.

➤ Reasonable and Cautious Information Examination and Inspection

The Standards require platform operators to disclose relevant trading information, ensure the authenticity of such information, and assume the management responsibility of such information on their platforms. According to the Standards, platform operators assume the following management responsibilities and obligations against platform participants: (a) in the event that any platform participant publishes advertisements in violation of laws and/or regulations, measures shall be adopted to stop such conducts and, where necessary, online transaction platform services may be suspended for the platform participants concerned; (b) where evidence supplied by a complaint proves that an act of infringement has been committed, or any illegal advertisement has been published, by a platform participant, the platform operator concerned shall issue a warning against the party in question, stop the infringement act, or delete harmful information, and may provide the complainant, at his or her request, with registered ID and contact details of the respondent; (c) the Standards further explicitly require platform operators to assume the “responsibility to conduct reasonable and cautious information examination and inspection”. The requirement not only includes the two obligations above, but also requires in a nutshell that for any information which is evidently illegal or of infringement nature, platform operators shall conduct positive information examinations and inspections, delete in a timely manner, and issue warning against platform participants involved.

Trading Order Maintenance and Consumer Protection by Platform Operators

Besides platform participant management and guidance, the Standards also require and encourage platform operators to establish relevant system to protect consumers’ interests and maintain regular trading order. According to the Standards, for the convenience of consumers to supervise and complain, platforms shall require and urge platform participants to establish and implement various product credit rating systems by contracts or other ways, in order to restrain platform participants from conduction improper actions.

➤ Pre-warning Mechanism and Double Transaction Confirmation

The Standards require that platform operators shall, by adopting technical or other means, guide users to read the entire user agreement, remind users, to a reasonable extent, of transactions risks, limitation of liability and disclaimer clauses. Moreover, platform operators shall request

users to confirm on transaction details before executing transaction payment instructions received from users; in the case of operators engaging in online payment services, payers shall also be requested to confirm before his payment instruction can be executed.

➤ Quiet Period System

The Standards encourage platform operators to set up a “quiet period” system, whereby consumers are allowed to cancel an order unconditionally within the quiet period. This system allows consumers to return products with no cause in a certain period. According to public statement by Mr. Jinqi Li, director of Department of Information Technology of the MOFCOM, this is not a mandatory requirement. Whether to set up such quiet period is in the sole discretion of platform operators; and also, not all products are subject to such quiet period. Certain special products such as frozen products, food, cosmetic, and medicines are excluded.

➤ “Seller Deposit” System

The Standards encourage online third-party trading platform and platform operators to provide consumers with “seller deposit” services, where deposits are used to compensate consumers for their losses occurred during transactions. The amount and payment methods of such deposits shall be reported in advance to local administrations for industry and commerce for record-filing and published by said administrations. The seller deposit system which is aimed at protecting consumers’ interests, ensure that the consumers can get compensation from third-party platform in advance in the event they cannot find the seller.

Now several group purchase websites have established similar deposit system. For example, in the dispute between Meituan and DQ, Meituan has activated the “compensation in advance” system.

➤ Returning and Changing Products

The Standards set forth that platform operators shall require, by signing a contract or employing other means, platform participants to adopt after-sales service and product exchange/return systems in accordance with relevant regulations of the State. Where a platform participant is found in violation of after-sales service and/or product exchange/return regulations, platform operators concerned shall process consumer complaints and may invoke default liabilities clauses against said participants according to the contract.

It should be noted that, the Standards explicitly state that all technical contents thereof are recommendative. Thus, from a legal perspective, relevant contents in the Standards are not

binding on and enforceable against platform operators. However, taking a long term perspective, the promulgation of the Standards has significant implications in guiding and regulating business activities on third-party e-commerce trading platforms, safeguarding lawful rights and interests of enterprises and consumers, and creating a fair, trustworthy, safe transaction environment.

Should you have any questions regarding the above, please do not hesitate to contact us.

Important Announcement

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