



Provisional Guiding Opinions of the Ministry of Commerce on Online Transactions

Online transactions result from the integration of information technology with economic development; they are a new type of transaction that constitutes an important mode for electronic commerce. Encouraging the development of online transactions will promote higher transaction efficiency, lowered costs and greater consumption while advancing the free flow of goods and production materials, thereby promoting the beneficial and rapid development of the civil economy.

Currently, online transactions are popular in both urban and rural areas nationwide; their development has been rapid, and their potential for society is vast. These guiding opinions are being issued for the purpose of implementing the State Council's *Several Opinions on Accelerating the Development of Electronic Commerce*, which protect the lawful rights and interests of online transaction participants and promote the healthy development of online transactions.

1. Online Transactions and Participants

(1) *Online Transactions*

Online transactions refer to the completion of transactions for goods or services by buyers and sellers through the use of the Internet. They commonly include: business-to-business transactions, business-to-consumer transactions, peer-to-peer transactions and business-to-government transactions, etc.

(2) *Online Transaction Participants*

The participants in online transactions include the transacting parties as well as online transaction service providers.

I. Specifically, the following entities are parties to online transactions:

- 1) sellers, who use the Internet to provide goods or services; and
- 2) buyers, who use the Internet to purchase or receive goods or services.

Where current laws and regulations set forth transactional requirements for online transaction participants, such parties must adhere to those regulations.

II. Online transaction service providers may be classified in accordance with the types of services they provide, as follows:

- 1) Online transaction platform service providers operate transaction platforms for buyers and sellers. Online transaction platforms are

computer information systems that are provided by online transaction platform service providers for parties to engage in online transactions; components of such systems include the Internet, computers and related hardware and software, etc.

- 2) Online transaction supplementary service providers provide identity verification, credit evaluations, online advertising placement, website operations and sales, online payments, logistics and product delivery, transaction insurance and other services to buyers and sellers.

Manufacturers that launch their own online transaction platforms to make procurements or sales may also be regarded as online transaction service providers.

Online transaction platform service providers may also provide supplementary online transaction services.

2. Basic Principles for Online Transactions

(1) *Adherence to National Laws and Regulations*

Online transactions are special in that parties can execute and perform contracts through the use of the Internet and information technology. However, each participant in an online transaction must adhere to the relevant national laws and regulations and follow the relevant rules and standards for state information security protection systems.

(2) *Adherence to Technical and Security Standards for the Internet*

The Internet is the basic environment for online transactions. In order to guarantee the efficacy of transactions, online transaction participants and especially online transaction service providers must adhere to the technical and security standards for the Internet that are enacted by the State.

(3) *Principle of Good Faith*

Online transaction participants must adhere to the basic principle of good faith to honor their agreements and develop online transactions in a healthy and orderly manner; they must not exploit online transactions for unlawful or criminal activities.

3. Standards of Behavior for Online Transaction Participants

(1) *Transacting Parties*

I. Understanding of the Features of Online Transactions

Online transactions utilize modern information technology and the Internet to enable the efficient and inexpensive negotiation, execution and performance of contracts. However, transacting parties are also susceptible to risks of contractual breach and fraud due to difficulties in ascertaining the identity,

credit status, ability to perform the contract, etc, of other parties. In order to reduce these risks, parties to online transactions should understand these features and be prudent when engaging in online transactions.

II. Understanding the Identity of Other Parties to Transactions

Parties to online transactions should, to the extent possible, understand information relevant to the transaction, including the other party's identity, credit status and ability to perform the contract; they may require the other party to provide such information, inquire through a transaction service provider and, when necessary, request information through relevant administrative and service agencies.

At the appropriate time for the transaction, the parties to an online transaction should provide truthful information to each other, including in respect of business licenses and special operating permits, addresses of operating entities, as well as effective contact methods.

Refusal by one party to provide basic information about its identity should alert the other party to proceed cautiously with the transaction and to remain on guard against potential fraud.

III. Adherence to All Requirements for the Conclusion of Contracts

Where parties to online transactions use e-mail, online communications and other similar methods to execute contracts, they should adhere to the relevant provisions of the *Contract Law* and *Electronic Signature Law*, with attention to the following:

- 1) confirmation of the receipt of relevant details in the form of electronic text;
- 2) withdrawal, cancellation or invalidation of offers that are transmitted via electronic documents, or undertakings to withdraw prior acceptances;
- 3) the validity of documents that are created by automated transaction systems;
- 4) payments for expenses should be rendered on the basis of the delivery of the target goods and the relevant receipts or written instruments;
- 5) the choice of governing court or arbitral body and confirmation of applicable laws; and
- 6) other matters as stipulated in laws and regulations.

Where transacting parties use a standard contract, the party that prepares the contract should adhere to the relevant provisions of laws and regulations concerning standard contracts, paying special attention to the contract's suitability for the characteristics of the Internet, and the other party should carefully examine the detailed provisions of such contract.

IV. Lawful Use of Electronic Signatures

Transacting parties who sign contracts with electronic signatures should adhere to the legal provisions concerning the same by using reliable electronic signatures and choosing authentication services which are provided by lawfully established electronic authentication service providers.

V. Attention to Security of Payments

Transacting parties who opt for online payment methods should use secure and reliable online payment platforms, preserve payment records without delay and strengthen their understanding of the security of online payments. Where they opt for offline payment methods, they should fully consider the features of cash-on-delivery, pre-payment and other arrangements, while paying attention to the secure use of funds.

VI. Lawful Posting and Blocking of Illicit Advertisements

Internet advertisements posted by transacting parties should be truthful and lawful. Parties that view advertisements in discussion forums should remain prudent and discriminating, and be aware of false and unlawful advertisements that appear as news.

VII. Respecting Intellectual Property Rights

Transacting parties should respect intellectual property rights, should conduct transactions of goods or services involving intellectual property rights in accordance with the law, and must not violate the intellectual property rights of other parties through the use of online transactions.

VIII. Maintenance of Online Transaction Records

Transacting parties may keep transaction records in various forms, at their own discretion, for use as evidence during dispute resolution. Where a transaction involves large purchases, valuables or important services, the necessary written documents may be created. Other reasonable methods may be adopted as a record of the transaction.

(2) *Online Transaction Service Providers*

I. Obtaining Lawful Qualifications

When providing services related to online transactions, service providers should adhere to the relevant national laws and regulations; all corresponding approval and registration procedures that are required should be lawfully handled. Where material conditions are set for capital, equipment, technical support personnel or other matters, such conditions should be met.

II. Standardized Services and Complete Systems

Service providers should provide standardized online transaction services, and should establish and improve various policies and systems, including the following:

- 1) user registration systems;
- 2) platform transaction policies;
- 3) information disclosure, examination and verification systems;
- 4) privacy and trade secret protection systems;
- 5) consumer rights protection systems;
- 6) systems for the examination and verification of posted advertisements;
- 7) transactional security and data backup systems;
- 8) dispute resolution mechanisms;
- 9) mechanisms for the reporting and handling of derogatory information and spam messages; and
- 10) other systems as required by laws and regulations.

III. Disclosure of Information

Service providers should employ reasonable methods to disclose various agreements, policies, systems and other information for their users, calling to user attention any content that closely relates to their lawful rights and interests, and using technology that ensures that users are able to read and save such materials conveniently and completely.

IV. Maintenance of Orderly Transactions

Service providers should employ reasonable methods to safeguard the normal operations of online transaction platforms; they should provide secure and reliable transaction environments and fair, equitable and transparent transactional services, maintain orderly transactions, and establish and improve credit rating systems and risk warning systems for online transactions.

V. Protection of the Interests of Users and the Rights of Consumers

Service providers should employ reasonable methods for the protection of users' registered information, privacy and trade secrets. Disputes that arise between transacting parties should be resolved through mutual consultation or handled with the assistance of the parties to the relevant department in accordance with the law and the agreed provisions.

Service providers should respect and protect the lawful rights and interests of consumers and, to the greatest extent possible, should provide consumers with the services necessary to check the credibility of sellers so that they can conveniently select reliable ones.

Providers of online payment services should, in accordance with the nature of online transactions, employ reasonable mechanisms to ensure the security of transaction funds and user identity and account information.

VI. Maintenance of Transaction Records and Data Security

Service providers should pay special attention to the preservation of various records and materials for online transactions, and should employ the corresponding technical measures to ensure the integrity, accuracy and security of such materials.

VII. Platform Information Monitoring

Service providers should attentively monitor the information posted by users in product descriptions, public forums and feedback areas, and should delete information that violates national regulations and reduce the dissemination of spam messages.

VIII. Maintenance of System Security

Service providers should establish, operate and maintain online transaction platform systems and supplementary service systems in accordance with the relevant provisions and requirements of state information security level protection systems, and should implement technical security measures that ensure the safety of online transactions.

4. Advancement of Online Transactions

(1) *Strengthening the Construction of Environments for Online Transactions*

Commerce departments at all levels should establish broad, high-level systems for electronic commerce work in order to improve regulatory and legal environments, as well as mechanisms for promoting the development of electronic commerce.

Enterprises are encouraged to adopt technology transfers and self-innovation to continue the development of online transaction technology and to improve effective technical support systems for the development of electronic commerce.

Industry associations and transaction communities are encouraged to build effective mechanisms for electronic commerce, including warning, fraud complaint, dispute resolution and credit evaluation systems as well as mechanisms for linking industries with transaction communities.

Enterprises and industry associations are encouraged to assist relevant departments and participate in the research and standardization of online banking and third-party payment platform activities, streamlining product delivery activities, promote the use

of electronic signatures as well as improve the security of online payments and the success of product deliveries.

Enterprises and industry associations are encouraged to participate in the formulation of designations and standards for online transactions as well as the establishment of security verification, credit, online dispute resolution and online notarization systems for online transactions.

(2) *Promoting the Coordinated Development of Online Transactions Nationwide*

Commerce departments at all levels should guide the cooperation of highly developed and less developed areas for electronic transactions, with special attention given to the promotion of online transaction development in central and western regions.

Commerce departments at all levels should guide the expansion of online transactions from urban to rural areas and increase the rate of electronic transactions for rural products.

Commerce departments at all levels should assist in the establishment of third-party online transaction platforms, and should assist, by means of online transactions, small and medium enterprises entering international markets and experiencing international competition.

(3) *Participation in International Communication and Cooperation on Electronic Commerce*

Enterprises and industry associations are encouraged to participate in international electronic commerce organizations as well as international dialogue, communication and cooperation regarding electronic commerce.

Universities, vocational schools and research institutes are encouraged to participate in the research and development of international protocols, treaties and model legislation for electronic commerce.

(4) *Advocating Theoretical Research and Case Studies on Online Transactions*

Universities, vocational schools and research institutes should be encouraged to engage in theoretical research relating to transaction modeling, transaction platform construction, behavioral analysis of transacting parties, website operations and sales, online marketing and advertisements, online payments, product delivery, transactional security, dispute resolution, statistical standards and other matters, such that a necessary theoretical basis can be established for the promotion of online transaction development.

Enterprises and industry associations should be encouraged to cooperate with relevant government departments, universities, vocational schools and research institutes, as well as to summarize the lessons learned from their online transaction experiences, in order to create online transaction models and operating procedures that will result in widespread benefit for the public good.