

Guiding Opinions of the Ministry of Commerce on Online Trading (for Interim Implementation)

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In order to implement the tenet of “Some Opinions of the General Office of the State Council on Speeding up the Development of E-commerce” (No. 2 [2005]), propel the healthy development of online trading, gradually regulate online trading activities, assist and encourage online trading participants to carry out online trading, guard against and prevent trading risks, the Ministry of Commerce hereby promulgates the “Guiding Opinions on Online Trading (for Interim Implementation)”.

Please, by using the present Guiding Opinions as reference, actively carry out online trading activities, safeguard the rights and interests of all parties in accordance with the law, create and maintain a good online trading environment, continuously sum up experiences, and propel the development of e-commerce in China with joint efforts.

Ministry of Commerce of the People’s Republic of China
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Guiding Opinions of the Ministry of Commerce on Online Trading (for Interim Implementation)

Online trading is the outcome of the combination of information technology with economic development, is a new trading method, and an important mode of e-commerce. To encourage online trading helps improve the trading efficiency, reduce the trading costs, stimulate consumption, promote the free flow of commodities and various factors of production, and provide services for promoting the effective and rapid development of national economy.

At present, online trading is spreading in the urban and rural markets in China with quick development speed and strong social potentialities. In order to implement “Some Opinions of the General Office of the State Council on Speeding up the Development of E-commerce”, safeguard the lawful rights and interests of online trading participants, and promote the healthy and orderly development of online trading, we hereby put forward the following guiding opinions.

I. Online Trading and the Participants

(I) Online Trading

Online trading is the commodity or service trading made between the buyer and the seller by making use of Internet. The ordinary forms of online trading mainly include: trading between enterprises, trading between the enterprise and the consumers, trading between individuals, and trading between the enterprise and the government.

(II) Online Trading Participants

Online trading participants include online trading parties and online trading service providers.

1. Online trading parties specifically refer to:

- (1) the sellers, who make use of Internet to sell commodities or services; and
- (2) the buyers, who make use of Internet to purchase or acquire commodities or services.

Where it is prescribed in the presently effective legal systems that a corresponding qualification is required for engaging in commodity or service trading, the trading parties shall abide by such provisions.

2. Online trading service providers may, according to the contents of services, be divided into:

(1) online trading platform service providers, who operate online trading platforms and provide the buyers and the sellers with trading services; an online trading platform is the computer information system for a platform service provider to provide online trading services, including Internet, computers, relevant hardware and software, etc.; and

(2) auxiliary online trading service providers, who provide the buyers and the sellers with auxiliary services such as identity certification, credit evaluation, network advertisement publishing, network marketing, online payment, logistics distribution, trading insurance, etc. in order to optimize the online trading environment and to promote online trading.

Where a production enterprise independently develops an online trading platform and carries out purchasing and sales activities, it may also be deemed as an online trading service provider.

An online trading platform service provider may provide auxiliary online trading services concurrently.

II. Basic Principles of Online Trading

(1) Abiding by the laws and regulations of the state.

Due to peculiarity of online trading, Internet and information technology may be used to conclude and implement contracts, provided that each online trading participant must abide by the relevant laws and regulations of the state, abide by relevant provisions and standards in the national system

on graded protection of information safety.

(2) Abiding by Internet technical norms and safety norms.

Online trading shall be based on Internet environment. In order to ensure the trading activities may go on smoothly, all online trading participants, especially online trading service providers, must abide by the Internet technical norms and safety norms formulated by the state.

(3) Being honest, credible, and self-disciplined.

Each online trading participant must obey the basic principles of honesty and good faith, be strictly self-disciplined, carry out online trading activities healthily and orderly, and shall not make use of online trading to carry out illegal or criminal activities.

III. Lawful Acts of Online Trading Participants

(I) For Online Trading Parties

1. Recognizing the characters of online trading

By making use of online trading, the trading parties may exchange information, negotiate on, conclude or even perform contracts with the help of modern information technology and Internet, and thus can achieve their purposes with high efficiency and low costs. However, it is also difficult for the trading parties to know about the true identity, credit standing, capacity of performing contracts, etc. of the opposite parties, and certain risks of breaching contracts and committing frauds do exist. Therefore, the trading parties shall recognize the characters of online trading, engage in the trading prudentially, and prevent risks actively.

2. Knowing about the true identity of the opposite trading party.

Each trading party shall, prior to the trading, try to know as much as possible the trading information on the opposite party, such as its true identity, credit standing, capacity of performing contracts, etc., and may require the opposite party to tell such information or may inquire of the trading service provider about such information from. It may also, when necessary, inquire of the relevant administrative or service institution.

Each trading party shall tell the opposite party its true information on the trading at proper times, e.g., the relevant information on its business license and its license for special business, its specific business address and the authentic and effective means of contact.

If one party refuses to provide its basic identity information, the other party shall be cautious, carry out the trading prudentially, and guard against and prevent the fraudulent act committed by making use of online trading.

3. Abiding by all requirements set forth in the contract.

Each trading party shall conclude the contract by e-mail, online communications, etc., abide by the Contract Law and the Electronic Signature Law, and pay attention to the following matters:

- (1) matters relevant to the confirmation and receipt of data messages;
- (2) withdrawal, revocation and invalidation of offers sent by data message, as well as withdrawal of acceptance;
- (3) legal effectiveness of the documents formed from the automatic trading system;
- (4) payment of the price, delivery of the subject matter and relevant documents and vouchers;
- (5) selection of the jurisdictional court or arbitration institution, determination of the governing law; and
- (6) Other matters prescribed in any law or regulation.

Where the trading parties adopt a standard-form contract, the party that makes the contract shall abide by the provisions in laws and regulations on standard-form contracts, and pay attention to adapting to the characters of network, while the opposite party shall carefully read the contractual clauses, and operate prudentially.

4. Using electronic signature according to the law.

Where the trading parties conclude a contract by electronic signature, they shall abide by the legal provisions on electronic signatures, use reliable electronic signatures, and select the certification services provided by a lawfully established electronic certification service provider.

5. Paying attention to the safety of payment.

Where a trading party selects the method of online payment, it shall make the payment on a safe and reliable payment platform, timely preserve the payment information, and enhance the safety awareness of online payment. Where a trading party makes offline payment, it shall fully consider the characters of payment upon sight of goods and those of prepayment, etc., and pay attention to the safety of the funds used.

6. Publishing advertisements in accordance with the law, and preventing illegal advertisements.

The network advertisements published by each trading party shall be true and lawful. The party that browses the advertisements shall enhance its capabilities of alertness and identification, pay attention to identifying and preventing the false and illegal advertisements which may arise in the form of news or forum discussions, etc.

7. Paying attention to the protection of intellectual properties.

Each trading party shall respect intellectual properties. Neither party may, when trading in a commodity or service containing any intellectual property, make use of online trading to injure the intellectual property of others.

8. Preserving online trading records.

Each trading party may preserve various trading records by itself, and may use them as evidence for settlement of disputes. For the trading of bulk commodities, precious commodities and important services, the parties may form necessary written documents or take other reasonable measures to preserve the trading records.

(II) Online Trading Service Providers

1. Being legally qualified as a subject.

A service provider shall, when providing relevant online trading services, abide by the relevant laws of the state. If it needs to go through relevant examination, approval and registration procedures, it shall do so according to the law; when required to meet certain material conditions in respect of funds, equipment, technical managers, etc., it shall meet the required conditions.

2. Regulating services, and improving bylaws.

A service provider shall provide lawful online trading services, as well as establish and improve various rules and bylaws, e.g.:

- (1) customer registration bylaws,
- (2) platform trading rules,
- (3) bylaws on disclosure and check of information,
- (4) bylaws on protection of privacies and commercial secrets,
- (5) bylaws on protection of consumers' interests,
- (6) bylaws on publishing and check of advertisements,
- (7) bylaws on guaranteeing the trading safety and keeping backup of the data,
- (8) dispute settlement mechanism
- (9) mechanism for tipping off and dealing with harmful information and junk mails, and
- (10) other bylaws prescribed in laws and regulations.

3. Information Disclosure

A service provider shall announce all its agreements, rules, bylaws and other important information to customers by a reasonable means, remind the customers to pay attention to the contents closely relevant to their own lawful rights and interests, and enable the customers by technical means to read and preserve the information conveniently and entirely.

4. Maintaining the trading order.

Service providers shall take reasonable measures to ensure the smooth operation of the online trading platform, provide safe and reliable trading environment, as well as fair, just and public trading services, maintain the trading order, establish and improve the credit appraisal system for

online trading and the trading risk warning mechanism.

5. Safeguarding the interests of customers, and protecting the rights and interests of consumers.

A service provider shall take reasonable measures to protect customers' registered information, privacies and commercial secrets. When the trading parties fall into a dispute, they shall negotiate to settle it according to the laws and the contract or assist the relevant department in settling it.

A service provider shall respect and protect consumers' lawful rights and interests, endeavor to provide consumers with necessary services for inquiry of sellers' credit information, and to facilitate the selection of reliable sellers by the consumers.

An online payment service provider shall, according to the characters of online trading, adopt reasonable measures to guarantee the safety of the trading funds, and guarantee the safety of the information on users' identities and names.

6. Preserving trading records, and ensuring the safety of the data

A service provider shall pay particular attention to preserving various records and information of online trading, and take corresponding technical means to guarantee the entirety, accuracy and safety of such information.

7. Supervising the information on the platform.

A service provider shall pay attention to supervising the commodity information published by customers, publicize the information in the forum and the column of customers' feedbacks, lawfully delete the information violating the legal provisions of the state, and reduce the spreading of junk mails.

8. Maintaining the safety of the system.

A service provider shall, according to the relevant provisions and requirements on national graded protection of information safety, build up, operate and maintain the online trading platform system and the auxiliary service system, fulfill the technical measures for Internet safety protection, and improve the safety of online trading.

IV. Promotion of Online Trading

(1) Strengthening the environmental construction of online trading.

The administrative department of commerce at each level shall build up a high-level e-commerce work system covering a wide scope, improve the policy and legal environment as well as the promotion mechanism for the development of e-commerce.

Enterprises are encouraged to, by bringing in technologies and making independent innovations, continuously develop online trading technologies, and construct technical support system favorable to the development of online trading.

Industrial associations and trading communities are encouraged to build up various mechanisms favorable to online trading, including pre-warning mechanism, mechanism for complaints against frauds, dispute settlement mechanism, credit evaluation mechanism, and mechanism of interaction between the industry and the trading community.

Enterprises and industrial associations, etc. are encouraged to participate in and provide assistances to relevant competent departments' research and regulation of the acts of online banks and the third party payment platforms, to regulate the logistics distribution activities, to promote the application of electronic signatures, and to improve the safety of online payment and the accuracy of logistics distribution.

Enterprises and industrial associations, etc. are encouraged to participate in making standards and norms on online trading, participate in building up the safety certification system, credit system, network arbitration system and network notarization system, etc. of online trading.

(2) Promoting the harmonious development of nationwide online trading.

The administrative department of commerce at each level shall guide the cooperation between regions where online trading is developed and those not, and pay particular attention to promoting the development of online trading in the Middle and Western Regions.

The administrative department of commerce at each level shall guide urban online trading to spread to the countryside, and raise the proportion of agricultural products in online trading.

The administrative department of commerce at each level shall support the construction of the third party online trading platforms, and guide medium and small enterprises to face the outside world and take part in international competition by online trading.

(3) Participating in international exchanges and cooperation on e-commerce.

Enterprises and industrial associations are encouraged to join international e-commerce organizations, and to take part in international exchanges and cooperation on e-commerce.

Institutions of higher education and research institutions are encouraged to participate in researching and formulating relevant international rules, treaties and model laws on e-commerce.

(4) Advocating the theoretical research and case research on online trading.

Institutions of higher education and research institutions are encouraged to carry out theoretical researches on online trading modes, trading platform construction, analysis on trading subjects'

acts, online marketing, network advertisements, online payment, logistics distribution, trading safety, settlement of disputes, statistical standards, etc., and provide necessary theoretical basis for promoting the development of online trading.

Enterprises and industrial associations, etc. are encouraged to cooperate with relevant government departments, institutions of higher education, and research institutions, to sum up experiences and lessons on online trading, and to form online trading modes and operational rules worthy of being popularized.