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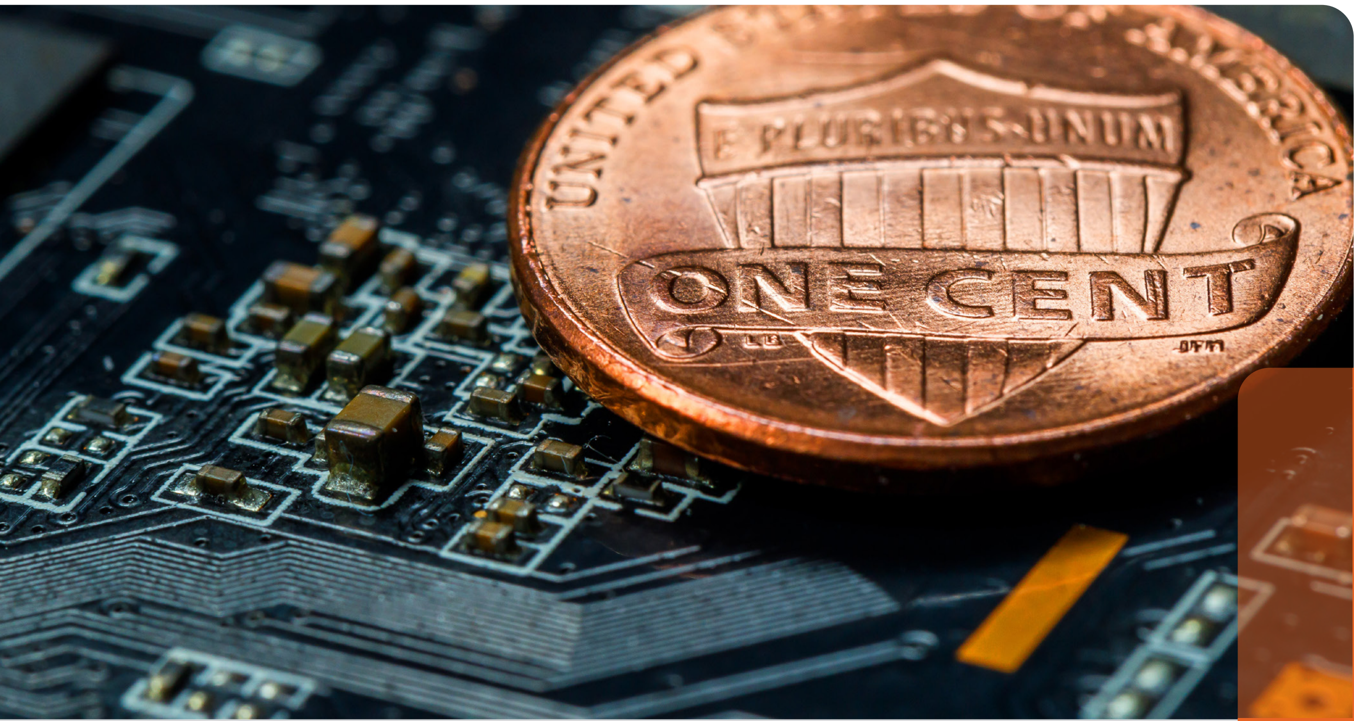

Digital Business 2024

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1 E-Commerce Regulation

1.1 What are the key e-commerce legal requirements that apply to B2B e-commerce in your jurisdiction (and which do not apply to non-e-commerce business)? Please include any requirements to register, as well as a summary of legal obligations specific to B2B e-commerce.

The E-Commerce Law of China (the "**ELC**"), effective since January 1, 2019, is the key law applying to both B2B and B2C e-commerce in China. In addition, rules and regulations regarding competition, intellectual property ("**IP**"), consumer rights, data protection, cybersecurity and advertisement, as well as those applying to specific industries like pharmaceuticals and insurance, act as the major pieces of the legal framework governing e-commerce activities in China. Since many new business models emerge quickly in the digital world, the regulators have been updating and proposing new rules and regulations to catch up with the novel challenges.

E-commerce platform operators shall obtain the necessary operating licences, normally including Internet Content Provider ("**ICP**") and Electronic Data Interchange ("**EDI**") licences, for the value-added telecommunication services they provide, and specific licences or permits may also be required in order to conduct certain forms of e-commerce or provide particular commodities or services. Generally speaking, the operators are obliged to verify the authentication of vendors, report to tax authorities, monitor user activities, record and retain certain information, guarantee trading and data security, protect consumer rights, and establish protocols regarding IP infringement, credit rating and advertisements, etc. In particular, PRC authorities pay special attention to operators' compliance in the areas of anti-monopoly, personal information protection and data security, competition, advertising, commodity quality, consumer rights and interests, pricing and IP.

Business vendors using e-commerce platforms or self-run website business operators have similar legal obligations to those of offline vendors. Nevertheless, it is noteworthy that, due to the nature of online business, e-commerce vendors are prohibited from conducting false or misleading commercial promotion by fabricating transactions, making up user comments or any other means of defrauding or misleading consumers. In addition, vendors shall observe data and privacy rules when collecting, processing or using individuals' information.

1.2 What are the key e-commerce legal requirements that apply to B2C e-commerce in your jurisdiction (and which do not apply to non-e-commerce business)? Please include any requirements to register, as well as a summary of legal obligations specific to B2C e-commerce.

E-commerce laws and regulations in China generally do not differentiate B2B and B2C. Thus, our answer to question 1.1 applies likewise.

1.3 Please explain briefly how the EU's Digital Services Act and Digital Markets Act and/or equivalent local legislation, such as the UK's Online Safety Act and Digital Markets, Competition and Consumers Bill, may affect digital business in your jurisdiction.

In late 2021, the State Administration for Market Regulation (the "**SAMR**"), China's top market regulator, released the draft Guidelines of Classification and Grading of Internet Platforms and Guidelines for Implementing Entity Responsibilities of Internet Platforms, which are deemed the Chinese version of the UK's Online Safety Bill and the EU's Digital Services Act and Digital Markets Act. The two draft guidelines aim to divide internet platforms into different classes according to user scale, business type and restriction capabilities, and clarify different responsibilities accordingly in data security, IP protection, cybersecurity, compliance, audit, anti-monopoly, etc. Although the two draft guidelines are yet to become effective, tech giants in China have already experienced pressure from the authorities in their daily operation. In 2021, the SAMR announced over 170 anti-monopoly penalties, more than 50% of which were related to platform operators, including the imposition of an RMB 18 billion fine on Alibaba for abusing its dominant position on the e-commerce platform services market. Although, in 2023, fewer penalties were announced by the SAMR, the enhanced supervision has become a new norm. Tech companies will need to invest more resources in compliance, while policymakers will need to consider how to create a safe and orderly e-commerce environment without stifling innovation and the overall economy. The impact of the relevant laws and regulations on digital business will largely depend on how strictly they will be enforced, but it is widely believed that they will benefit both companies and users in the long run.

2 Data Protection

2.1 How has the domestic law been developed in your jurisdiction in the last year?

The Data Security Law (the "**DSL**") and the Personal Information Protection Law (the "**PIPL**") of China are the key pieces of legislation in the field of data protection, both of which came into effect in 2021. In 2022, China promulgated a series of more specific regulations, aiming to implement and refine the requirements of the preceding two laws in detail. Among others, the Cyberspace Administration of China (the "**CAC**") released the Measures of Security Assessment on Cross-border Transfer of Data on July 7, 2022, specifying under what circumstances a security assessment is required for outbound data transfers and how to apply for such assessment. On November 18, 2022, the SAMR and the CAC jointly issued the Implementing Rules on Certification of Personal Information Protection, providing the requirements relating to security certification for cross-border transfer of personal information. Furthermore, on February 22, 2023, the CAC issued the Standard Contract for the Cross-border Transfer of Personal Information, which came into effect in June 2023 and clarified the rights and obligations of the personal information processing entities and the overseas recipients in protecting personal information. Recently, on March 22, 2024, the CAC released the Regulating and Facilitating Cross-border Data Transfer, which clarified certain questions in practice about the cross-border data transfer, and specified several situations in which the procedures of filing security assessment and the standard contract for cross-border transfer of personal information are exempted.

2.2 What privacy challenges are organisations facing when it comes to fintech, retail, AI and digital health?

Fintech, retail, AI and digital health all rely heavily on the collection and processing of personal data to provide better services and products to customers. The vast amount of data, together with the sensitive nature of such data, create public concerns about potential misuse of personal information and privacy in the commercial field. In addition to the general requirements set forth in the DSL, the PIPL and the Cybersecurity Law of China (the "**CLC**"), detailed rules and requirements are being released across certain industries.

For example, in the fintech sector, data classification and graded protection is a regulatory focus. In 2020, the People's Bank of China ("**PBOC**") issued the Financial Data Security – Guidelines for Data Security Classification (JR/T 0197-2020) and the Personal Financial Information Protection Technical Specification (JR/T 0171-2020), which provide practical guidelines to institutions engaging in the financial industry for establishing internal data management and control protocols. On July 24, 2023, PBOC further issued the draft Data Security Management Regulations for Business Fields of the People's Bank of China, specifying and clarifying the data security and compliance bottom-line requirements for PBOC's business fields.

In the AI sector, the CAC released the Provisions on the Administration of Algorithm-generated Recommendations for Internet Information Services in 2022, marking a new governmental filing requirement for algorithm-recommended service providers and the implementation of "hierarchical and classified administration of algorithm-recommended service providers based on the public opinion attributes or social mobilisation capabilities of algorithm-recommended services, content categories, user scale, the importance of data processed by recommendation algorithm technology and the degree of intervention in user behaviour, among others".

In the digital health sector, personal health data collected by innovated technologies, such as wearable devices and robotics, needs to be classified, stored, protected, used and processed according to certain specific requirements set forth in a number of rules and regulations. The higher standard and minimisation principle in this sector drive digital health businesses to carefully consider whether they would like to assume more liabilities or implement more control measures due to collection of personal information for their business functions, and whether it is commercially necessary to transfer or share personal information to China and non-China affiliates, third parties, or individuals and organisations outside of China.

2.3 What support are the government and privacy regulators providing to organisations to facilitate the testing and development of fintech, retail, AI and digital health?

Through various policies and initiatives, the Chinese government has provided financial and regulatory support to these industries to promote their growth and development. The five-year plan is China's policy blueprint for medium-term social and economic development. In addition to the overall five-year plan, there are certain sub-plans for specific industries. On December 12, 2021, the State Council issued the Plan for Development of the Digital Economy during the 14th Five-Year Plan Period (2021–2025), where the government aims to "strengthen the construction of digital infrastructure, improve the governance system of the digital economy, both develop digital industrialisation and industrial digitisation, facilitate the transformation and upgrading of the traditional industries, foster new industries, new business types and new models, continuously strengthen and optimise China's digital economy, and provide strong support for building a digital China". With the goal of realising the added value of the core industries of the digital economy, which accounts for 10% of China's GDP, the government has been accelerating the construction of the information network infrastructure, implementing pilot projects for data rights confirmation and pricing service, promoting digital transformation in key industries and supporting innovations in key technologies, etc. On December 29, 2021, PBOC also issued the FinTech Development Plan (2022–2025) to set further goals and plans for developing the fintech industry. With respect to AI, the Ministry of Science and Technology, together with five other departments, issued the Guiding Opinions on Accelerating Scenario Innovation and Promoting High-quality Economic Development with High-level Application of Artificial Intelligence on July 29, 2022, to systematically guide local governments and entities in accelerating the application of AI in business scenarios and promoting high-quality economic development. Furthermore, the privacy regulators have been busy making new rules and regulations in order to better support the fast development in these industries. These support measures have provided significant development opportunities for China's fintech, retail, AI and digital health sectors, laying a strong foundation for future economic growth.

3 Cybersecurity Framework

3.1 Please provide details of any cybersecurity frameworks applicable to e-commerce businesses.

The CLC established China's fundamental cybersecurity framework. Under the CLC, it is key for network operators to fulfil the obligation of security protection pursuant to the requirements of the cybersecurity multi-level protection system to ensure the network is free from interference, damage, or unauthorised access, and to prevent network data leaks, theft, or falsification. In addition, critical information infrastructure operators bear more security obligations, including: setting up specialised security management departments and teams; periodically conducting cybersecurity education, technical training, and skill evaluations for employees; conducting disaster recovery backups of important systems and databases; formulating emergency response plans for cybersecurity incidents; and periodically organising drills. Since cybersecurity is only one part of the larger picture of the Chinese data security framework, additional requirements for cybersecurity may also be found in other rules and regulations.

3.2 Please provide details of other cybersecurity legislation in your jurisdiction. If there is any, how is that enforced?

In order to better enforce the CLC, China has also formulated a series of more specific regulations and implementation rules, including the Regulations on the Security Protection of Key Infrastructure and the Regulations on the Management of Security Vulnerabilities of Network Products. As an example, the Network Security Review Measures were revised and published by 13 departments on January 4, 2022 (the original measures were issued in April 2020), which further clarify the circumstances that trigger the network security review, including, but not limited to, network products, services or data processing activities that are believed to affect national security, and the listing abroad of network platform operators who control the personal information of more than 1 million users. Additionally, the measures specify that the network security review is not equal to data security review.

The implementation of the above-mentioned rules and regulations is largely carried out by certain governmental departments, including the CAC and the Ministry of Public Security. Furthermore, the parties involved in a cybersecurity case can take the initiative to apply for network security review, and the public can also report to the competent departments on matters related to network security.

4 Cultural Norms

4.1 What are consumers' attitudes towards e-commerce in your jurisdiction? Do consumers embrace e-commerce and new technologies or does a more cash-friendly consumer attitude still prevail?

Chinese consumers are highly receptive to e-commerce. Purchasing goods and services on large e-commerce platforms has become the consumption habit of Chinese consumers. In China, e-payment (such as Alibaba's Alipay and Tencent's WeChat Pay) has been used widely and far more frequently than cash.

4.2 Do any particular payment methods offer any cultural challenges within your jurisdiction? For example, is there a debit card culture, a direct debit culture, a cash on delivery-type culture?

While traditional payment methods like cash and card are still widely accepted, e-payment via Apps has become the leading payment method for consumers in daily life. Alipay and WeChat Pay can be used in almost all payment scenarios and have quickly become part of China's payment culture in recent years.

4.3 Do home state retailer websites/e-commerce platforms perform better in other jurisdictions? If so, why?

China has become a major player in the global e-commerce market, with many of its online retailers and platforms receiving worldwide recognition. One of the main reasons for the success of Chinese e-commerce platforms is their ability to offer a wide range of products at competitive prices. This is due to the fact that China has a large manufacturing base and the cost of labour is relatively low. Additionally, Chinese e-commerce platforms, such as Alibaba and JD, have invested heavily in logistics and supply chain management, which has led to faster and more efficient delivery of products. Despite the advantages, Chinese e-commerce platforms face several challenges in other jurisdictions that lead their performance to being no better than in China. One of the main challenges is cultural differences, as consumer preferences and shopping habits vary across different regions. Additionally, language barriers, complex local legal requirements and differences in payment and shipping preferences can also pose challenges.

4.4 Do e-commerce firms in your jurisdiction overcome language barriers to successfully sell products/services in other jurisdictions? If so, how and which markets do they typically target and what languages do e-commerce platforms support?

Yes. Chinese e-commerce companies typically target markets with a large consumer base, high purchasing power, and a growing middle class. One of the most popular markets is Southeast Asia. This region has a large population, a growing middle class, and increasing internet usage. Other popular markets include Europe, North America and Australia. Normally, these platforms would support multiple languages, such as English, French, Spanish and Japanese.

4.5 Are there any particular web-interface design concepts that impact on consumers' interactivity? For example, presentation style, imagery, logos, currencies supported, icons, graphical components, colours, language, flags, sounds, metaphors, etc.

In China, consumers tend to prefer websites that are clean and simple with a design that is easy to navigate. Livestream shopping is also becoming a popular function on major e-commerce platforms. Furthermore, almost all e-commerce platforms support a vast range of payment methods and financing tools to facilitate consumers. Some platforms have also developed certain social media functions to enhance user engagement.

4.6 Has the COVID-19 pandemic had any lasting impact on these cultural norms?

Before the outbreak of COVID-19, e-commerce and mobile payment were already well established and widely used in China. Frequent lockdowns during the pandemic significantly boosted consumers' demand for e-commerce.

5 Brand Enforcement Online

5.1 What is the process for online brand enforcement in your jurisdiction?

The process for online brand enforcement in China is complex and requires a multifaceted approach. To begin with, brand owners should register their trademarks with the China Trademark Office to establish a strong legal basis for enforcement. Once a trademark is registered, the brand owner can monitor online marketplaces and e-commerce platforms for potential infringement. If a brand owner recognises an infringement, they should gather evidence, such as taking screenshots of the infringing products and storing information, to support their claim. The brand owner should then file a complaint with the online platform, requesting removal of the infringing products. The online platform will investigate the complaint and take appropriate action, such as removing the infringing products or suspending the store. If the online platform fails to take action, the brand owner can escalate the issue to the SAMR, which will investigate the case and impose penalties on the infringing party, such as fines or the revocation of its business licence.

5.2 Are there any restrictions that have an impact on online brand enforcement in your jurisdiction?

Generally speaking, the channel for online brand enforcement in China is unimpeded. It is worth noting, however, that if the brand holder sends inaccurate notices that result in damages to the network user or network service provider, the holder shall bear tort liability. If the erroneous notice is sent out maliciously, the brand holder shall bear punitive (double-compensatory damage) liability.

6 Data Centres and Cloud Location

6.1 What are the legal considerations and risks in your jurisdiction when contracting with third party-owned data centres or cloud providers?

When contracting with third party-owned data centres or cloud providers, companies shall mainly consider whether: (1) the data centre or cloud provider has obtained all the necessary approvals and licences; (2) the operation of the machine room of such data centre or cloud provider meets the operation security and network security requirements specified in the Measures for Network Security Examination and other relevant rules and regulations; and (3) the data centre has established a data centre for disaster recovery, whether the internal control system and risk control system for data security can reduce the risk of data leakage, and whether the stored data can be completely separated from those owned by others.

6.2 Are there any requirements in your jurisdiction for servers/data centres to be located in that jurisdiction?

Yes. According to the relevant provisions of the CLC, the DSL and other rules and regulations, specific data must be stored within China and not be provided to overseas jurisdictions without undergoing a security assessment process. Such specific data includes but is not limited to the following: (1) personal information and important data collected and produced during their operation in China by critical information infrastructure operators; (2) data and information control by those who have processed personal information of more than 1 million individuals or provided personal information of a total of 100,000 individuals or sensitive personal information of 10,000 individuals overseas since January 1 of the preceding year; (3) important vehicle data; (4) personal information and important data collected and generated within China by self-driving vehicle manufacturers; and (5) data that may endanger national security, economic operation, social stability, and public health if being altered, destroyed, leaked or illegally obtained or used.

7 Trade and Customs

7.1 What, if any, are the technologies being adopted by private enterprises and government border agencies to digitalise international (cross-border) trade in your jurisdiction?

According to the Shanghai Digital Trading Development Action Plan (2019–2021), cloud computing, blockchain, big data and the Internet of Things were the key areas for international trade:

- *Cloud computing*: In China, cloud computing has three service models: software as a service ("**SaaS**"); platform as a service ("**PaaS**"); and infrastructure as a service ("**IaaS**"). It also has four configuration modes: private cloud; community cloud; public cloud; and hybrid cloud.
- *Blockchain*: Blockchain technology has been gradually applied to various important links in the trade process, such as electronic document exchange, trade financing, customs supervision, logistics and transportation, traceability and IP protection.
- *Big data*: Big data plays an important role in cross-border electronic trade. For instance, in cross-border e-commerce transactions, there are political, legal, and cultural differences between parties from different countries or customs regions, and there are also differences in consumer demand. In addition, domestic cross-border e-commerce started relatively late and has not yet matured, and there exist problems such as product selection, target group identification and consumer preference prediction, drainage and promotion, and cross-border logistics.
- *Internet of Things*: The Internet of Things has internet technology at its core, with the benefits of information sensing equipment, such as radio frequency identification, infrared sensors, global positioning systems, laser scanners, etc., to help it achieve efficient and intelligent identification and positioning of various things, tracking, monitoring and management of network technology. Simply put, the Internet of Things uses sensing devices to connect everything and realise operations.

7.2 What do you consider are the significant barriers to successful adoption of digital technologies for trade facilitation and how might these be addressed going forward?

Barriers to successful adoption of digital technologies include the following:

(1) Key technologies are immature and costly. China's self-sufficiency rate in key core technologies is low, and basic software, core components, and high-end chips mainly rely on imports; there is a significant gap between China and the United States in terms of underlying and core technologies such as semiconductors, operating systems, and cloud computing.

(2) The development of the business model is not perfect. Although China's digital technologies such as cloud computing, blockchain, big data, and the Internet of Things are developing rapidly, compared to other countries with mature technologies, China is still at the initial stage of digital technology development and has not yet formed a suitable environment.
(3) Pain points of digital transformation of small and micro enterprises ("**SMEs**"). Funds, talent, and resources are the top three difficulties faced in the digital transformation of private enterprises, including shortage of funds, lack of talent, limited investment capacity, shortage of information channels, weak ability to identify products and services, insufficient internal organisational structure, incentive systems and corporate culture.

Solutions to such barriers include:
(1) Talent acquisition and training.
(2) Improving preferential policies.
(3) Improving regulatory policies.

8 Tax Treatment for Digital Businesses

8.1 Please give a brief description of any tax incentives of particular relevance to digital businesses in your jurisdiction. These could include investment reliefs, research and development credits and/or beneficial tax rules relating to intellectual property.

Tax incentives, investment reliefs, and research and development credits differ between different provinces/cities and development zones (such as China (Shanghai) Pilot Free-Trade Zone). The local government normally has discretion relating to tax returns and preferential treatment. Below are some incentive and preferential treatment examples for reference.

Investment reliefs

Shenzhen – Implementation Plan of Shenzhen for the Innovation and Development of Digital Economy Industry (2021–2023) (《深圳市数字经济产业创新发展实施方案（2021–2023年）》).

Strengthen financial support: coordinate special fiscal funds for strategic emerging industries, scientific and technological innovation, industrial internet, e-commerce, finance and culture; optimise and adjust key support areas and directions; and increase support for key enterprises and major projects.

Chongqing – Several Policies of Jiulongpo District of Chongqing Municipality for Supporting the Development of Digital Economy (《重庆市九龙坡区支持数字经济发展若干政策》).

Efforts should be made to: establish a guidance fund for the development of the digital economy; encourage social capital to establish private equity investment funds for the digital economy sector; establish a strategic cooperation mechanism to facilitate mutual recognition and trust with the government guidance fund; and directly invest in qualified private equity investment funds or co-invest in qualified quality projects in the district.

Regional policies

Hainan – Hainan may levy corporate income tax at the reduced rate of 15% on enterprises in encouraged industries (such as information transmission, software and information technology service industries) registered in the Hainan Free Trade Port and with substantive operations.

8.2 What areas or points of tax law do you think are most likely to lead to disputes between digital businesses and the tax authorities, either domestically or cross-border?

Transfer pricing risks arising from exported goods to overseas affiliated enterprises

In order to avoid the amount retained in the overseas accounts of the domestic enterprises being taxed according to the unlimited tax obligation of resident taxpayers in China, the enterprise of cross-border e-commerce also tends to avoid tax by way of transfer pricing with the affiliated enterprises in low-tax zones.

Compliance risk arising from digital tax

At present, many countries, such as the UK and France, have implemented digital service tax unilaterally, and the legislation of digital tax in international organisations, such as the Organisation for Economic Co-operation and Development ("**OECD**") and the EU, is also slowly advancing. Currently, digital tax is levied in various forms in various countries, with significant regional differences in taxation objects and rules. Under the current situation in which many countries are levying digital service taxes unilaterally, learning costs and tax compliance costs for tax personnel of cross-border digital trade enterprises with a relatively high degree of internationalisation have increased. If the digital tax plan under the OECD is finally adopted, the burden caused by the calculation of taxes payable in the governing country where subsidiaries conducting relevant business are located and taxes ultimately payable in each country, as well as the related tax compliance cost, will increase significantly.

9 Employment Law Implications for an Agile Workforce

9.1 What legal and practical considerations should businesses take into account when deciding on the best way of resourcing work in your jurisdiction? In particular, please describe the advantages and disadvantages of the available employment status models.

Under the PRC Labor Contract Law, there are three different ways of resourcing work: (i) employment relationship, under which the employer shall sign a labour contract with the employee and such labour contract is subject to the PRC Labor Contract Law; (ii) labour dispatching, under which the company can outsource temporary, auxiliary or substitute labour forces; and (iii) outsourcing services from a third party, under which the company may sign a service agreement with such company that is subject to the PRC Civil Code.

9.2 Are there any specific regulations in place in your jurisdiction relating to carrying out work away from an organisation's physical premises?

We are not aware of any of specific regulations.

9.3 What long-term effects or changes are likely to result from the COVID-19 pandemic?

With respect to employment law, as people are getting increasingly used to remote work, it will not be easy to bring people back to the office immediately. While many companies have been operating well under the remote work model, face-to-face interaction remains important.

10 Top 'Flags' for Doing Business as a Digital Business in Different Jurisdictions

10.1 What are the key legal barriers faced by a digital business operating in your jurisdiction?

Licences are one of the key legal barriers:

- ICP licence:
  - Non-profit internet information service filing (非经营性互联网信息服务备案); e.g., the official website of luxury, self-managed product platforms.
  - Internet information services for business (经营性互联网信息服务许可); e.g., Weibo (小红书).
- EDI licence (Electronic Data Interchange (在线数据处理与交易处理业务)); e.g., Taobao, JD and Farfetch.
- Payment licence (see section 11 below).

Data compliance is another legal barrier, including:

- the collection, processing, storage and use of personal information;
- special requirements for child-related information;
- outbound data transfer; and
- user agreement and user privacy policy.

10.2 Are there any notable advantages for a digital business operating in your jurisdiction?

Notable advantages include the following:

- Mature and innovative business models – high demand promotes innovation of digital business models in China, which are diversified and up to date. Lifeshow (直播), community e-commerce (社区电商) and social media (自媒体) are attracting more and more consumers. The combination of short videos and commerce will bridge a strong connection between the seller and buyer.
- Mature logistics – the network of package sites (快递网点) is dense, which means consumers can freely pick up their packages at a location of their choice.
- Infrastructure – highway.
- Shopping habits – most people, whether living in the city centres or in the countryside, tend to choose online shopping as an important way of satisfying their daily needs.
- Widespread use of smart phones.
- Mature online payment system.
- Availability of goods.
- Rent saving.
- Low cost of human resources.

10.3 What are the key areas of focus by the regulator in your territory in respect of those operating digital business in your territory?

Cross-border data transfer

The Chinese government has already launched the Measures for the Security Assessment of Outbound Data Transfer (数据出境安全评估办法) (the "**Measures**"). In addition to the Measures, the requirement over the outbound data transfer security assessment can be found in various laws and regulations at different levels, such as the CLC, the PIPL, the DSL and the Cybersecurity Examination Law, etc.

Anti-competition and anti-monopoly

In recent years, the Chinese regulators have focused on the digital business market order and launched many regulations to curb abusive behaviour, including, but not limited to, the ELC, the revised Anti-monopoly Law, the revised Competition Law, Opinions on Improving the Regulated, Healthy and Sustainable Development of Platform Economy, etc. For example, Alibaba Group has a dominant position in the online retail platform service market in China. Since 2015, Alibaba Group has abused its dominant market position to impose "either-or" (二选一) requirements on merchants on the platform, prohibiting them from opening stores or participating in promotional activities on other competitive platforms and adopted various incentive and punishment measures to ensure the implementation of the "either-or" requirement, relying on market power, platform rules, data, algorithms and other technical means. The regulator imposed a fine of 4% of Alibaba Group's 2019 domestic sales of RMB 455.712 billion, totalling RMB 18.228 billion, and required the company to take rectification measures as provided in the Administrative Guidance Letter issued to it.

11 Online Payments

11.1 What regulations, if any, apply to the online payment sector in your jurisdiction?

The primary regulations that apply to the online payment sector include:

- The ELC promulgated by the Congress.
- The Settlement Method of Payment promulgated by PBOC.
- Guidelines on the Online Payment promulgated by PBOC.

11.2 What are the key legal issues for online payment providers in your jurisdiction to consider?

According to PBOC's fines in 2021, most of the violations fall into the areas of merchant management and anti-money laundering ("**AML**"). Many institutions have received huge fines for non-compliance with AML regulations, and many management personnel have been held accountable for non-compliance with merchant management and AML regulations.

As for merchant management, the payment business usually involves a large number of merchants, which is, by its very nature, hard to manage. Some institutions lack internal control management and some employees have low awareness of compliance, and even take the initiative to violate regulations for personal gain, which brings a higher possibility of future violations of laws and regulations. Certain key rules concerning the merchant management are detailed as below:

- *Anti-money laundering and anti-terrorism financing*:
  - Know Your Clients ("**KYC**").
  - Suspicious and high-value transaction reporting: analyse transaction details such as frequency, amount, timing, counterparty, and IP address, etc., to handle suspicious transactions and report a single transaction or accumulative transactions in a single day that exceed the value of RMB 50,000 or USD 10,000.
  - Investigation: cooperate with PBOC and its branches in investigations concerning money laundering and terrorism financing.
- *Personal information protection*:
  - Personal financial information protection.
  - Other general personal information protection obligations.

12 Digital and the Green Economy

12.1 With the current global emphasis on the environment and sustainability, is there any current or anticipated legislation in that area that is likely to impact digital business in your jurisdiction?

China has been focusing on the environment and sustainable development for many years and promoting digital business to apply to different industries, such as banking and insurance, manufacturing, automobile and logistics, etc. The development of the digital economy plays a role in promoting the green economy. Digital technology can be directly applied to ecological and environmental protection work and can improve the efficiency of energy and resource use, improve the efficiency of production, sales and consumption of products and services throughout society, and promote the green transformation of the economy. Therefore, the country has emphasised the importance of digital transformation and digital technology in green development policies and legislation across many industries, which will also promote the further development of the digital economy.

According to the 14th Five-Year Plan on the Development of Digital Economy announced by the State Council on December 12, 2021, China will focus on the following areas.

Optimising and upgrading digital infrastructure

(a) Speed up the development of information network infrastructure: to build a high-speed integrated digital information infrastructure and the construction of gigabit fibre-optic network and 5G network infrastructure in a coordinated manner, promote the commercial deployment and large-scale application of 5G, plan ahead the provision of technology for the sixth-generation mobile communication (6G) network, increase support for 6G technology research and development and proactively participate in the promotion of international 6G standards.

(b) Advance cloud-network collaboration and computing power-network integration: to speed up the building of a national integrated big data centre system coordinating computing power, algorithms, data and application resources.

(c) Advance the smart upgrading of infrastructure in an orderly manner: to steadily build intelligent and efficient integrated infrastructure, improve the networked, smart, service and coordinated levels of infrastructure and efficiently distribute AI infrastructure to enhance the ability to empower industries in support of the "Intelligence +" development.

Fully leveraging the role of data

(a) Step up the supply of high-quality data: to support market participants in carrying out data collection in a lawful and compliant manner, with attention paid to data labelling, cleaning, masking, densification, aggregation, analysis and other steps, raising data resource processing capabilities, and fostering and expanding the data service sector.

(b) Speed up the circulation of data in a market-based manner: to speed up the establishment of the rules of the data factor market, foster participants in the market, improve its governance regime and promote market-based circulation of data.

(c) Innovate the mechanisms for the development and use of data: to explore the establishment of diverse mechanisms for data development and use adapted to the characteristics of different types of data and based on actual application demand.

Vigorously advancing the digital transformation of industries

(a) Accelerate the digital transformation and upgrading of enterprises.

(b) Comprehensively deepen the digital transformation of key industries.

(c) Promote the digital transformation of industrial parks and industrial clusters.

Accelerating digital industrialisation

(a) Enhance the capability of innovation in key technology: to improve the basic research and development capabilities for digital technology aimed at strategic or forward-thinking fields such as sensors, quantum information, network communications, integrated circuits, key software, big data, AI, blockchain and new materials.

(b) Enhance the competitiveness of core industries: to make efforts to improve the level of supply of basic software and hardware, core electronic components, key basic materials and production equipment.

(c) Accelerate the fostering of new business forms and new business models.

(d) Create a prosperous and orderly ecosystem for industrial innovation.

Establishing a sound digital economy governance regime

(a) Enhance the mechanism of collaborative governance and regulation.

(b) Enhance the government's digital governance capabilities.

(c) Establish a sound new paradigm of co-governance by diverse stakeholders.

Effectively expanding international cooperation in the digital economy

(a) Accelerate the digitalisation of trade: to drive the transformation of traders and modes of trade with digitalisation, and create a sound environment for the digitalisation of trade.

(b) Promote further development of the "Digital Silk Road": enhance overall planning to promote China-ASEAN cooperation in smart city development and China-CEEC cooperation in digital economy at a high-quality level.

(c) Actively create a good environment for international cooperation: to advocate the building of a peaceful, secure, open, cooperative and orderly cyberspace community with a shared future, actively safeguard cyberspace sovereignty and enhance international cooperation in cyberspace.

12.2 Are there any incentives for digital businesses to become 'greener'?

Different provinces and development zones have different incentives or preferential treatment, and the local government may have discretion when deciding it. Below are some examples for your reference:

- *Yangtze Delta Area* – according to the Overall Plan for the Construction of Science and Technology Financial Reform Pilot Zone in Shanghai, Nanjing, Hangzhou, Hefei and Jiaxing (《上海市、南京市、杭州市、合肥市、嘉兴市建设科创金融改革试验区总体方案》), it supports financial institutions, science and technology enterprises, credit reporting agencies and credit rating agencies in the Pilot Zone to actively use big data, AI and other technologies to establish credit scoring, internal credit rating and risk prevention and control models that meet the characteristics of science and technology enterprises.

- *Beijing* – according to the Beijing Data Center Overall Development Implementation Plan (2021–2023), Beijing will actively promote the construction of green data centres, strengthen green design, and encourage the use of efficient system design schemes such as hydrogen energy, liquid cooling, distributed power supply and modular computer rooms to achieve energy saving, water saving, land saving, material saving and environmental protection. It will also strengthen the application and transformation of green technology in stock data centres.
- *Shenzhen* – according to the Several Measures to Promote the High-quality Development of Green and Low-Carbon Industries, Shenzhen will promote the green transformation of the digital industry, support the construction of green data centres, promote the energy-saving and carbon-reduction transformation of existing data centres, and accelerate the application of advanced energy-saving technologies such as cold-source, near-end refrigeration and liquid cooling in the construction of green data centres. Moreover, it will create a zero-carbon data centre demonstration, and reward national, provincial, and municipal green data centres.

12.3 What do you see as the environmental and sustainability challenges facing digital businesses?

The digital economy itself generates carbon emissions and digital technologies consume a lot of electricity. 5G network services require high-energy consumption and high-density base station construction. AI computing power requirements are also based on a large number of high-energy consumption graphics processing units. With the expansion of business volume and service types, the Internet of Things and cloud computing-related equipment services, the demand for electricity also continues to increase. By 2025, high energy-consuming data centre services will account for 33% of global energy consumption. Although data centres try to locate places with cheap electricity and low temperatures, the power required for transmission and operation is still staggering.

Zhiyi Ren is a leading regulatory lawyer in China, specialising in regulatory matters, financial markets, fund products and M&A transactions in the financial sector. Since 2003, he has provided legal services to multinational financial/asset management companies in China, covering such areas as entity establishment, products, compliance, regulatory investigations, crisis management and cross-border transactions.

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Prior to joining Fangda Partners, he worked as Head of Compliance in an internationally renowned investment bank's domestic subsidiary on all its China investments, covering securities, futures, funds, commodities, trusts, guarantees, special opportunity group and quant research. He gained an abundance of experience handling the legal affairs of financial enterprises. He also worked in an international law firm for many years and is a member of the PRC Bar and the New York State Bar.

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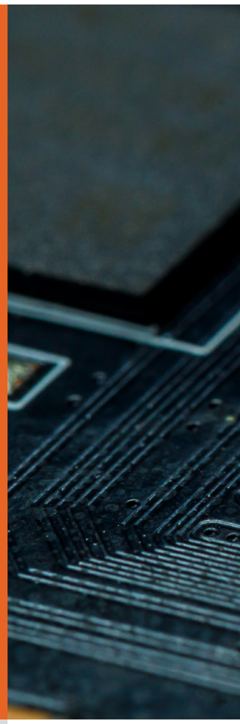

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