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Laws and Regulations Updates

I. Law of the People's Republic of China on Protection of Consumers' Interest

In order to protect consumers' legitimate interest, to maintain social and economic order and to facilitate the proper development of the social market economy, the Standing Committee of the National People's Congress resolved and passed the newly amended Law of the People's Republic of China on Protection of Consumers' Interest (the "Law") on 25 October 2013. The Law shall come into effect on 15 March 2014. The newly amended Law lays down new stipulations in respect of the consumption practice, personal data protection and standard terms for online purchase. Some of the contents are as follows:

1. Burden of Proof on Product Quality

Operators which provide durable goods like automobiles, microcomputers, televisions, refrigerators or offer services like decoration and renovation shall bear the burden of proof should there be a dispute concerning defect(s) arisen within six months of the acceptance of such goods or service by the consumers.

2. Online Purchasers Enjoy a 7-day Cooling-off Period

Online purchasers shall enjoy the right to unilaterally terminate the contract within a reasonable period. They may return the commodities within seven days of the receipt of the same, except those which are not unsuitable to be returned in nature. The operator shall refund the amount paid by the consumer within seven days of its receipt of the returned commodities. In the event that the online transaction platform is no longer used by the seller or service provider concerned, the consumer may claim against the online transaction platform provider for compensation.

3. Consumers' Request for Return or Replacement of Goods

When the commodities or services provided by an operator do not meet the quality requirement, the consumer may return the commodities or request the operator to perform its obligations to replace or repair the same pursuant to statutory requirement and the agreement between the parties; when there is no such statutory requirement and agreement between the parties, the consumer may return the commodities within seven days of his receipt of the same. After the expiration of the seven-day period, the consumer may return the commodities if the conditions for contract termination required by the Contract Law are fulfilled; otherwise, he may demand the operator to replace or repair the same.

4. Privacy Protection

Consumers shall be entitled to the protection of their personal data, such as the right to name, the right to their own image and the right to privacy in the course of purchasing and/or using the goods and accepting the services. Operators shall only collect and use consumers' personal data when it is lawful, appropriate and necessary. They shall expressly state the purpose, manner and scope of such

collection and use of data and seek prior consent from the personal data owner. Operators and their staff members shall procure the personal data collected from consumers be kept strictly confidential and ensure the safety of the same. They shall not send any electronic commercial information to consumers without their consent or request or when refusal has been expressly indicated.

II. Explanations of Several Matters Concerning the Applicable Laws in the Handling of Criminal Cases of Snatching

In order to punish offenders for snatching and to protect public and private property in accordance with the law, the Supreme People's Court and the Supreme People's Procuratorate, pursuant to the relevant requirements under the Criminal Law of the People's Republic of China (the "Criminal Law"), jointly promulgated the Explanations of Several Matters Concerning the Applicable Laws in the Handling of Criminal Cases of Snatching (the "Explanations"). The Explanations took effect on 18 November 2013.

According to the Explanations, snatching would be categorized as involving "relatively high amount", "huge amount" and "extremely huge amount" pursuant to Article 267 of the Criminal Law if the public and/or private property so snatched amounts to RMB1,000 to RMB3,000 above, RMB30,000 to RMB80,000 above and RMB200,000 to RMB400,000 above respectively.

The Explanations stipulate that the standard for "relatively high amount" may be ascertained at 50% of the required standard contained in the preceding provision if the snatching of public and/or private property falls within any of the ten categories, such

as the offender “has previously been subject to criminal punishment because of robbery, snatching or ganging up for robbery”, “has been subject to administrative punishment within a year because of snatching or ganging up for robbery”, “has committed the offence of snatching for more than thrice within a year”.

The Explanations stress that snatching of public and/or private property shall be regarded as involving “other severe case details” under Article 267 of the Criminal Law if there are circumstance such as “causing serious injury or suicide to others”; it shall be regarded as involving “other extremely severe case details” under Article 267 of the Criminal Law if there are circumstances such as “causing death to others”.

The Explanations also set out provisions on cases that may be regarded as minor in nature. When the offence of snatching involves a “relatively high amount” of public and/or private properties, if the accused person, being a first-time offender, has caused nothing more than minor injury to the victim and admits his/her guilt, repents, returns the stolen properties and compensates, provided that he/she has not participated in sharing the stolen goods or received a relatively smaller portion of the stolen goods and/or he/she has been understood and forgiven by the victim, the case may be regarded as minor in nature and no prosecution shall be brought or no criminal punishment should be imposed, and if necessary, the relevant authority may impose an administrative punishment on the accused person.

The summary is only intended to provide an outline of certain recent developments in the PRC and is not intended to be relied upon or taken as legal advice provided by Sit, Fung, Kwong & Shum or Hong Kong Sit, Fung, Kwong & Shum Xi’an Representative Office. If you have any enquiry, please contact Alex Chan, our partner in Xi’an Representative Office at Tel: (852) 29097320 and fax: (852)

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Please note that amendments have been made to the Personal Data (Privacy) Ordinance in Hong Kong in regard to the use of individuals' personal data for direct marketing purposes. We have been using your personal data (and in particular your name and address) to send to you our regular electronic news as well as information about the legal services that our firm is able to provide to its clients. We hope that you find these communications and information useful and of value and we would like to continue to send them to you if you agree. If you no longer wish to receive our communications, please email us at sfks@sfks.com.hk. If you have any queries, or you would like to update your contact details, please also email us at sfks@sfks.com.hk.