

# Resolving Cross-Border Consumer Disputes: The Digital Experience in China

*Chan Monica*

Faculty of Law, University of Macau, China

## Abstract

The surge of e-commerce has significantly changed the landscape of consumers' purchasing behaviour in the past twenty years or so around the world. Together with the integration of sophisticated technological infrastructures, e.g., digital platforms for online shopping, has indeed accelerated the emergence of cross-border disputes by the fast-growing number of online transactions. Online consumption is particularly prevalent in China as its development of e-commerce has skyrocketed in the past decades across industries, and lately driven by the outbreak of the COVID-19. According to the latest statistics provided by the China Internet Network Information Center (CNNIC), the user size of online shopping alone accounts for 842 million (as of December 2021).<sup>1</sup> Quantitatively, with the sharp increase in the online transactions being concluded, it is anticipated that the number of disputes related to cross-border consumer transactions may also rise in one way or another. As far as the dispute resolution mechanisms are concerned, some argued that potential lockdown or the imposition of travel restrictions may disrupt the effectiveness of filing a case against a party; whereas others may be reluctant to file a lawsuit with the court due to the tedious legal procedures that one may think it would take when a case involves cross-border disputes, which is normally complex in nature.

This paper attempts to provide an overview of online dispute settlement mechanism resolving online consumer disputes using China as the

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<sup>1</sup> The 49<sup>th</sup> Statistical Report on China's Internet Development. *China Internet Network Information Center (CNNIC)* [online]. February 2022 [cit. 30. 4. 2022]. Available at: <https://www.cnnic.com.cn/IDR/ReportDownloads/202204/P020220424336135612575.pdf>

background, by revisiting the legal framework and relevant legislations, the existing Chinese online dispute settlement mechanisms, and a brief discussion on some potential challenges that may occur when resolving disputes via online settlement mechanisms with selected case studies in online consumer disputes.

### **Keywords**

Chinese Internet Court; Consumer Association; Cross-Border Online Disputes; Digitalisation.

## **1 Introduction**

In recent decades, the advancement in digitalisation has reshaped not only the way how we live and communicate but, at the same time, the application of technology has escalated the proliferation of online consumer transactions concluded by just pressing a button in a split second with any electronic devices. As a consequence of this, the development of e-commerce business has been growing at a tremendous speed worldwide across various industries. Engaging in online shopping activities is somehow virtual and borderless, as it allows parties anywhere and anytime in the world to buy and sell nearly all kinds of commodities and services. By virtue of benefits like speed and convenience that online transactions have to offer to the parties, cross-border online disputes are nonetheless becoming more complex than ever, in particular the way how consumer transactions were traditionally perceived, i.e., go to a shop physically and purchase goods, or through door-to-door, etc. To a great extent, this complexity is attributed to the fact that at least one of the parties involved tends to be a foreigner or an overseas company. Other decisive factors which contribute to the potential challenges in online consumer disputes, in particular from a consumer's perspective, may include considerations such as what is the applicable law to cross-border disputes if the parties did not have any consensus at the time the contract was entered into; which dispute resolution mechanism is to be adopted if a conflict arises; or simply whether the party shall take any cause of action when the dispute started, and if so, how.

Apparently, these questions may look as direct as they are. Very often, when looking for the right path in the dispute settlement, they are easier said than done. As the online transaction figures continue to manifest, the desire to have sufficient and proper consumer-related legislations dealing with online issues in place still carry on as an on-going agenda as part of the legal reform around the world, which is not unique to China. To enhance a better understanding of the topic in the Chinese context, this article attempts to provide an updated overview on how cross-border consumer disputes can be resolved through exploring the options that are currently available, by first delving into the discussion of the current Chinese legal framework related to consumer disputes in Part 2. An introduction to online consumer-related dispute settlement mechanisms using China as the context, in particular the Chinese Internet Court and the Chinese Consumer Association will be introduced in Part 3 of this paper, by further analysing their scopes and functionalities in terms of operation within China. The article will then touch on some specific considerations posed by digitalisation in online consumer dispute resolution in Part 4 through looking at the general overview and practical considerations in the Chinese context. The paper will then move on to study two selected cases in the context of online cross-border disputes involving foreign elements in the context of Chinese Internet Courts in Part 5. In Part 6 of this article, a brief discourse on the challenges for advancing the use of online dispute settlement mechanism in cross-border disputes will be addressed. Last but not least, this article will end with a conclusion and brief observations on the forthcoming outlook relating to the use of digitalisation in online consumer dispute settlement.

## **2 Chinese Legal Framework Related to Consumer Disputes**

In learning what are the existing online consumer dispute mechanisms which are availed of in China and how they operate pragmatically, it is perhaps also important to know the applicable laws to consumer disputes. Under the current Chinese legal framework, consumer disputes are, by and large, regulated by specific sets of rules and legislations, both substantial and procedural. The following legislations illustrate some of the major pertinent

legal authorities (not an exhaustive list) that are associated with online and/or offline consumer disputes in China, which specifically comprise of:

- Civil Code,<sup>2</sup>
- Civil Procedure Law,<sup>3</sup>
- Law of the People's Republic of China on the Protection of Consumer Rights and Interests (2013 Amendment),<sup>4</sup>
- E-Commerce Law,<sup>5</sup>
- Decision of the Standing Committee of the National People's Congress on Amending the Law of the People's Republic of China on the Protection of Consumer Rights and Interests (2013),<sup>6</sup>
- Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption (I),<sup>7</sup>
- Notice of the Supreme People's Court on Issuing the Plan for Establishing the Beijing Internet Court and the Guangzhou Internet Court,<sup>8</sup>
- Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China,<sup>9</sup>
- Measures for Penalties against Infringement of Consumers' Rights and Interests (2020 Revision).<sup>10</sup>

Due to the restricted scope of this paper, principally with a focal point on the discourse of online consumer disputes, a number of selected legislations

<sup>2</sup> The People's Republic of China. Order No 45, Civil Code (2021).

<sup>3</sup> The People's Republic of China. Order No 106, Civil Procedure Law (2021 Amendment).

<sup>4</sup> The People's Republic of China. Order No 7, Law of the People's Republic of China on the Protection of Consumer Rights and Interests (2013 Amendment).

<sup>5</sup> The People's Republic of China. Order No 7, E-Commerce Law (2019).

<sup>6</sup> The People's Republic of China. Order No 7, Decision of the Standing Committee of the National People's Congress on Amending the Law of the People's Republic of China on the Protection of Consumer Rights and Interests (2013).

<sup>7</sup> The People's Republic of China. Interpretation No 8, Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption (I) (2022).

<sup>8</sup> The People's Republic of China. No 216, Notice of the Supreme People's Court on Issuing the Plan for Establishing the Beijing Internet Court and the Guangzhou Internet Court (2018).

<sup>9</sup> The People's Republic of China. No 11, Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (2022 Revision).

<sup>10</sup> The People's Republic of China. Order No 73, Measures for Penalties against Infringement upon Consumers' Rights and Interests (2020 Revision).

with online relevance will be examined in the present discussion, notably references will be made to the Law of the People's Republic of China on the Protection of Consumer Rights and Interests (2013 Amendment), E-Commerce Law of the People's Republic of China and Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption (I) in the section below.

## **2.1 Law of the People's Republic of China on the Protection of Consumer Rights and Interests (2013 Amendment)**

Way back in 1990s, prior to the appearance of Internet and the launch of e-commerce platforms, the first consumer law in China, i.e., Law of the People's Republic of China on Protection of Consumer Rights and Interests ("Law on the Protection of Consumer Rights and Interests") which came into effect in 1994, was introduced with a legislative intent to "*protect the legitimate rights and interests of consumers, maintain the socio-economic order and to promote healthy development of socialist market economy*"<sup>11</sup>.

With a sharp increase in transactions completed online, resulting in an urge for a revision of the late consumer law, the Chinese lawmakers have relentlessly made a significant step forward by introducing new rules and revisions. For instance, the Law on the Protection of Consumer Rights and Interests alone has undergone two amendments, in 2009<sup>12</sup> and 2013<sup>13</sup>, respectively. One of the most prominent legal reforms undertaken in the latest amendment, that is the 2013 Amendment, was the incorporation of an additional provision protecting consumers' rights and interests in online trading platform.<sup>14</sup> Different from the original consumer law enacted in 1994<sup>15</sup> and

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<sup>11</sup> Art. 1 Law of the People's Republic of China on Protection of Consumer Rights and Interests.

<sup>12</sup> The People's Republic of China. Order No 18, Law of the People's Republic of China on the Protection of Consumer Rights and Interests (2009 Amendment).

<sup>13</sup> The People's Republic of China. Order No 7, Law of the People's Republic of China on the Protection of Consumer Rights and Interests (2013 Amendment).

<sup>14</sup> Art. 44 Law of the People's Republic of China on the Protection of Consumer Rights and Interests.

<sup>15</sup> The People's Republic of China. Order No 11, Law of the People's Republic of China on Protection of Consumer Rights and Interests (1994).

the first amendment in 2009<sup>16</sup>, Article 44 of the Law on the Protection of Consumer Rights and Interests (2013 Amendment) provided express statutory protection to online consumers by allowing them to seek damages not only against the seller who sells goods or renders services directly through online trading platform, but also enabling them to seek remedies against an online trading platform provider who failed to supply the accurate contact information of the seller whom the consumer is seeking compensation against.<sup>17</sup> Furthermore, pursuant to the same provision, an online trading platform provider may also be held jointly and severally liable if he knows the seller has infringed the consumer's legitimate rights and interests and fails to take appropriate measures.<sup>18</sup>

## 2.2 E-Commerce Law of the People's Republic of China

Aside from the Law on the Protection of Consumer Rights and Interests (2013 Amendment), which addresses general principles towards various kinds of consumer transactions, the Chinese E-Commerce Law of the People's Republic of China ("E-Commerce Law") puts emphasis on the governance of e-commerce.<sup>19</sup> With the objectives of "*safeguarding the lawful rights and interests of all parties to e-commerce, regulating e-commerce conduct, maintaining the market order, and promoting the sustainable and sound development of e-commerce*"<sup>20</sup>, the E-Commerce Law clearly lays down the appropriate rules associated with, e.g., the formation and performance of e-commerce contracts;<sup>21</sup> the settlement of e-commerce disputes<sup>22</sup> and the respective legal liabilities<sup>23</sup>, etc. Accordingly, when a contract is formed or performed by way of information system in e-commerce, contracting parties would be legally bound by it.<sup>24</sup> At the time the contract was entered, it is required under law

<sup>16</sup> The People's Republic of China. Order No 18, Law of the People's Republic of China on the Protection of Consumer Rights and Interests (2009 Amendment).

<sup>17</sup> Art. 44 Law of the People's Republic of China on the Protection of Consumer Rights and Interests.

<sup>18</sup> Art. 44 Law of the People's Republic of China on the Protection of Consumer Rights and Interests.

<sup>19</sup> The People's Republic of China. Order No 7, E-Commerce Law (2019).

<sup>20</sup> Art. 1 E-Commerce Law of the People's Republic of China.

<sup>21</sup> Chapter 3 E-Commerce Law of the People's Republic of China.

<sup>22</sup> Chapter 4 E-Commerce Law of the People's Republic of China.

<sup>23</sup> Chapter 6 E-Commerce Law of the People's Republic of China.

<sup>24</sup> Art. 48 E-Commerce Law of the People's Republic of China.

that a seller or service provider of the e-commerce business “*shall clearly, fully, and explicitly inform users of matters such as procedures for formation of a contract, the dos and don’ts, and download methods and ensure easy and complete reading and downloading by users*”<sup>25</sup>.

It was perhaps at the time when this legislation was drafted that, in view of the rapidly growing amount of online consumer disputes envisaged back in 2000s, the E-Commerce Law provided guidance on e-commerce dispute settlement by encouraging the e-commerce business to come up with various means to resolve these online disputes. For instance, Article 59 of the E-Commerce Law stipulates that “*an e-commerce business shall develop an easy and effective complaint and report mechanism, release complaint and report means and other information, and accept and handle complaints and reports in a timely manner*”<sup>26</sup>. Alternatively, other settlement options such as “*reconciliation through consultation, requesting mediation by a consumers’ organization, an industry organization, or any other mediation organization established according to the law, filing a complaint with the relevant authorities, referring it to arbitration, bringing an action, or any other means*”<sup>27</sup> or even setting up their own “*online dispute settlement mechanism with dispute settlement rules*”<sup>28</sup> are some of the possible measures in dispute resolutions open to the e-commerce business as well as e-commerce platform as recommendations under the current legislation.

### **2.3 Provisions of the Supreme People’s Court on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption (I)**

Alongside the abovementioned two legislations, as well as other relevant laws and regulations, the Provisions of the Supreme People’s Court on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption (I) (“SPC Provisions on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption”) also serve as an important piece of detailed guidance, in particular to indicate how a case in relation to online consumer

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<sup>25</sup> Art. 50 E-Commerce Law of the People’s Republic of China.

<sup>26</sup> Art. 59 E-Commerce Law of the People’s Republic of China.

<sup>27</sup> Art. 60 E-Commerce Law of the People’s Republic of China.

<sup>28</sup> Art. 63 E-Commerce Law of the People’s Republic of China.

disputes shall be tried in order to protect the legitimate rights and interests of the consumers.<sup>29</sup> Besides supervising over the transactions concluded via e-commerce platforms, the SPC Provisions on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption also regulate activities engaged in e-commerce platforms (e.g., online live broadcast marketing platforms and online catering service platforms).<sup>30</sup>

In line with Article 25 of the Law on the Protection of Consumer Rights and Interests (2013 Amendment)<sup>31</sup>, Article 2 of the SPC Provisions on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption allows online consumers who bought goods through Internet, television, telephone, or by mail order, to return the ordered goods within seven days (since the day of the receipt) without reasons, unless the commodities purchased fall into one of the four statutory exceptions.<sup>32</sup> Other protections to online consumers are further enhanced under the SPC Provisions on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption, for example, by ensuring that standard clauses are fair and reasonable to buyers and sellers,<sup>33</sup> and spelling out clearly in the relevant provisions as to the conditions where a party either in e-commerce platform,<sup>34</sup> online live broadcast marketing

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<sup>29</sup> The People's Republic of China. Interpretation No 8, Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption (I) (2022).

<sup>30</sup> Ibid.

<sup>31</sup> Art. 25 Law of the People's Republic of China on the Protection of Consumer Rights and Interests (2013 Amendment).

<sup>32</sup> The four exceptions include (1) custom-made commodities; (2) fresh, live, or perishable commodities; (3) audio-visual recordings, computer software, and other digital commodities downloaded online or unpacked by consumers; and (4) newspapers or periodicals delivered. See *ibid.* and Art. 25 and 2 Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption (I).

<sup>33</sup> Art. 1 Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption (I).

<sup>34</sup> Art. 4–8 Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption (I).



platform<sup>35</sup> or catering service platform is at fault, and who will be liable for compensations in the online consumer disputes, etc.

### 3 Online Consumer Dispute Settlement Mechanisms in China

#### 3.1 Chinese Internet Court

Following the success of the establishment of Hangzhou Internet Court in 2017, the second and third internet courts were set up in Beijing on 9 September 2018, and in Guangzhou on 28 September 2018, respectively. Given the rise of e-commerce and the increasing number of internet-related disputes in the past decade or so, the Chinese Internet Court, which serves as one of the pioneers in online dispute resolution mechanisms, was launched with the initial aim of streamlining the litigation process and promoting an efficient and convenient means<sup>36</sup> to the public at large in settling internet-related disputes by building a unified digital litigation platform.<sup>37</sup>

Essentially, the Chinese Internet Court, which acts as the Court of First Instance, does not have an absolute discretion over all kinds of cases. Instead, its jurisdiction is one that is centralised in nature, with a limited scope to hear specific types of internet-related cases as tried by the basic people's courts.<sup>38</sup> Specifically, these Internet Courts have the authority to hear cases limited to, for instance, those involving the signing or performance of online shopping contracts through e-commerce platforms, disputes over network service contracts or financial loan contracts and small loan contracts in which the signing and performance are completed on the Internet, or disputes arising

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<sup>35</sup> Art. 11–17 Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption (I).

<sup>36</sup> Part 1 Notice of the Supreme People's Court on Issuing the Plan for Establishing the Beijing Internet Court and the Guangzhou Internet Court.

<sup>37</sup> Part 2 Notice of the Supreme People's Court on Issuing the Plan for Establishing the Beijing Internet Court and the Guangzhou Internet Court.

<sup>38</sup> Introduction to Beijing Internet Court. *Beijing Internet Court* [online]. [cit. 30. 4. 2022]. Available at: <https://www.bjinternetcourt.gov.cn/cac/zw/1535125700291.html>; Introduction to Guangzhou Internet Court. *Guangzhou Internet Court* [online]. [cit. 30. 4. 2022]. Available at: <https://ols.gzinternetcourt.gov.cn/#lassen/guangzhou/introduce>; Also see Part 3 para. 2 Notice of the Supreme People's Court on Issuing the Plan for Establishing the Beijing Internet Court and the Guangzhou Internet Court.

out of the infringement of intellectual property rights of works published or disseminated online on the Internet, etc.<sup>39</sup>

In order to bring a more user-friendly experience for the disputing parties and to expedite the case management process (from case filing, to virtual court hearing and even the rendering of ruling), digitalisation has been widely adopted in the entire process of online litigation by incorporating advanced tools such as “artificial intelligence, big data, blockchain and other algorithm techniques” so as to ensure smoothness and effectiveness of the litigation process.<sup>40</sup> Hence, if the disputing parties wish to initiate a case via the Internet Court channel, they first have to comply with certain requirements, e.g., “*identity authentication by online means such as certificate and license comparison, biometric identification or certification on the unified identity authentication platform of the state, and obtain special accounts for logging into the litigation platforms*”<sup>41</sup>.

Once the application made through the online litigation platform is accepted, the Internet Court can contact the parties to the dispute, as well as any third party concerned, by online<sup>42</sup> and/or offline<sup>43</sup> means, and inform them to conduct the necessary formalities, e.g., to carry out identity authentication, to submit the relevant documentation and materials by “*upload[ing] to and*

<sup>39</sup> Other disputes over which the Internet Courts would have jurisdiction include disputes arising from the ownership, infringement and contract disputes of Internet domain names; disputes arising from infringement of other people’s personal rights, property rights and other civil rights and interests on the Internet; product liability disputes arising from product defects that infringe personal and property rights and interests of others for products purchased through the e-commerce platform; internet public interest litigation cases filed by procuratorial organs; administrative disputes arising from administrative acts such as internet information service management, internet commodity trading and related service management; other internet civil and administrative cases designated by the people’s court at a higher level. See Beijing Internet Court’s Scope of Jurisdiction. *Beijing Internet Court* [online]. [cit. 30. 4. 2022]. Available at: <https://www.bjinternetcourt.gov.cn/cac/zw/1536301521905.html> and Judicial Process. *Guangzhou Internet Court* [online]. [cit. 30. 4. 2022]. Available at: <https://ols.gzinternetcourt.gov.cn/?lang=en-US>

<sup>40</sup> Part 3 para. 3 Notice of the Supreme People’s Court on Issuing the Plan for Establishing the Beijing Internet Court and the Guangzhou Internet Court.

<sup>41</sup> Art. 6 Provisions of the Supreme People’s Court on Several Issues Concerning the Trial of Cases by Internet Courts.

<sup>42</sup> Examples include e-mail addresses and/or instant messaging. – See Art. 8 Provisions of the Supreme People’s Court on Several Issues Concerning the Trial of Cases by Internet Courts.

<sup>43</sup> Examples include mobile phone numbers and/or fax numbers. – See Art. 8 Provisions of the Supreme People’s Court on Several Issues Concerning the Trial of Cases by Internet Courts.

*import[ing] into the litigation platform the online electronic data, or to electronically process the offline evidence (by scanning, copying, duplicating) or other means and then upload it to the litigation platform for the purpose of proof*”<sup>44</sup> for the preparation of the case through the online litigation platform, etc.<sup>45</sup> Upon receiving the necessary documents from the parties concerned and fixing the timetabling, the Internet Court will predominantly hold the hearing virtually online (subject to certain exceptional circumstances depending on the views and discretion of the Internet Court, the hearing may be conducted offline).<sup>46</sup> Following the provisions governing the online court attendance, if a party fails to take part in the online hearing as scheduled or leaves the online court proceeding without obtaining approval in advance, the Internet Court has the right to deem such act as a “refusal to appear in court” or “a retreat during a court session without good cause”.<sup>47</sup> The ruling provided by the Chinese Internet Court is not one that is necessarily final. Pursuant to the “Notice of the Supreme People’s Court on Issuing the Plan for Establishing the Beijing Internet Court and the Guangzhou Internet Court”, if the parties to the dispute are not satisfied with the outcome or judgment rendered by the Internet Court, the appellate case shall be referred to the Intermediate People’s Court for trial.<sup>48</sup> However, for cases concerning “ownership or infringement of any Internet copyright” or “any Internet

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<sup>44</sup> Art. 9 Provisions of the Supreme People’s Court on Several Issues Concerning the Trial of Cases by Internet Courts.

<sup>45</sup> Art. 8 Provisions of the Supreme People’s Court on Several Issues Concerning the Trial of Cases by Internet Courts.

<sup>46</sup> Art. 12 Provisions of the Supreme People’s Court on Several Issues Concerning the Trial of Cases by Internet Courts; Also see Part 3 para. 3 Notice of the Supreme People’s Court on Issuing the Plan for Establishing the Beijing Internet Court and the Guangzhou Internet Court.

<sup>47</sup> Art. 14 Provisions of the Supreme People’s Court on Several Issues Concerning the Trial of Cases by Internet Courts. Exceptions to this provision would apply if parties genuinely encounter circumstances such as network failure, equipment damage, power interruption or *force majeure*.

<sup>48</sup> When an appeal is sought against the Beijing Internet Court’s ruling, it shall be tried by the No 4 Intermediate People’s Court of Beijing Municipality, whereas for a ruling rendered by the Guangzhou Internet Court, the appellate case can be tried by the Intermediate People’s Court of Guangzhou City. See Part 3 para. 2 Notice of the Supreme People’s Court on Issuing the Plan for Establishing the Beijing Internet Court and the Guangzhou Internet Court.

domain name”, these appeal cases shall be heard before the Intellectual Property Court<sup>49</sup> where the respective Internet court is seated.<sup>50</sup>

### 3.2 China Consumer Association

An alternative option which an individual may consider to pursue a settlement via non-contentious way is to lodge a complaint with one of the consumer organisations formed under the China Consumer Association (“CCA”). By way of an overview, the CCA, which was established with the approval of the State Council in 1984, has over 3,000 consumer organisations (with at least 47 of those at provincial-level)<sup>51</sup> within China.<sup>52</sup> The status of the consumer organisations is well-recognised by the current Chinese Protection of Consumer Rights and Interests as “*social organisations [that are] legally formed to exercise social supervision over commodities and services and to protect the lawful rights and interests of consumers*”<sup>53</sup>. In day-to-day operation, the CCA, as well as the consumer organisations, play an important role in, e.g., the provision of consumer information, participation in supervising and inspecting the commodities and services by relevant administrative departments, acceptance of complaints filed by the consumers, conducting investigations and mediation for the complaints, as well as entrusting qualified expert to make an appraisal and form an appraisal opinion.<sup>54</sup>

<sup>49</sup> Art. 4 Provisions of the Supreme People’s Court on Several Issues Concerning the Trial of Cases by Internet Courts. For rulings rendered by the Beijing Internet Court over the disputes on “ownership of or infringement upon any Internet copyright” or “any Internet domain name”, the venue for the appellate case would be Beijing Intellectual Property Office. For those kinds of rulings rendered by the Guangzhou Internet Court, the venue for the appellate case would be Guangzhou Intellectual Property Office. See Part 3 para. 2 Notice of the Supreme People’s Court on Issuing the Plan for Establishing the Beijing Internet Court and the Guangzhou Internet Court.

<sup>50</sup> Part 3 para. 2 Notice of the Supreme People’s Court on Issuing the Plan for Establishing the Beijing Internet Court and the Guangzhou Internet Court.

<sup>51</sup> Contact Details of the Various National Consumer Associations for Complaints and Enquiry. *Chinese Consumer Association* [online]. [cit. 30. 4. 2022]. Available at: <https://www.cca.cn/tsdh/list/20.html>

<sup>52</sup> About us. *China Consumer Association* [online]. [cit. 30. 4. 2022]. Available at: <https://www.cca.cn/En/AboutUs.html>

<sup>53</sup> Art. 36 Law of the People’s Republic of China on the Protection of Consumer Rights and Interests (2013 Amendment).

<sup>54</sup> Art. 37 Law of the People’s Republic of China on the Protection of Consumer Rights and Interests (2013 Amendment); see also Art. 8 Articles of Associations of the Chinese Consumer Association. *Chinese Consumer Association* [online]. [cit. 30. 4. 2022]. Available at: [https://www.cca.cn/public/detail/851\\_3.html](https://www.cca.cn/public/detail/851_3.html)

Prior to the launch of the CCA's Complaint Settlement Supervision Platform on 15 March 2016, when a consumer organisation at county- or provincial-level received a complaint filed by a consumer in paper form, such consumer organisation would normally entertain the complaint when the evidential materials show substantial level of “causal relationship between the purchase or use of goods or services and the damage”<sup>55</sup> and the complainant shall furnish any outstanding materials on time with the consumer organisation concerned<sup>56</sup>. Thus, in majority, the burden of proof rests with the complainant.<sup>57</sup> As part of the complaint procedure, the consumer organisation would also take into account the basic personal information of the complained party and the complainant, the details of the complained subject matters, etc. as filed by the complainant.<sup>58</sup>

In view of the growth in the number of online consumer transaction, as mentioned above, the CCA introduced the Complaint Settlement Supervision Platform in 2016, which serves as a direct, cheaper and efficient method to lodge the claim entirely online.<sup>59</sup> Similar to the paper submission, once the online complaint form has been filled in with the preferred venue for conducting the settlement, the submission can be sent online for handling.<sup>60</sup> As of the first quarter of 2022, the CCA has received and handled around 285,358 consumer-related complaints nationwide and, out of those filed complaints, 222,487 cases have been resolved.<sup>61</sup> Among those complaints that concerned online shopping disputes (a total of 2,330 cases), the majority of those claims deals significantly with the issue of quality (472 cases), contractual-related issues (617 cases), false advertisement (460 cases), and after-sales services (498 cases).<sup>62</sup>

<sup>55</sup> Complaint Handling Workflows With the Compulsory Documentation for Application and Application Form. *Chinese Consumer Association* [online]. [cit. 30. 4. 2022]. Available at: <https://www.cca.cn/tsdh/list/21.html>

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> CCA's Complaint Settlement Supervision Platform. *Chinese Consumer Association* [online]. [cit. 30. 4. 2022]. Available at: <https://hjxt.cca.cn>

<sup>60</sup> Ibid.

<sup>61</sup> Analysis on the Acceptance of Complaints by the National Consumer Association in the First Quarter of 2022. *Chinese Consumer Association* [online]. [cit. 30. 4. 2022]. Available at: <https://www.cca.cn/tsdh/detail/30417.html>

<sup>62</sup> Ibid.

## 4 Specific Considerations on the Use of Digitalisation in the Online Consumer Dispute Settlement Mechanisms in China

### 4.1 General Overview

Deploying digitalisation to resolve consumer disputes is no stranger to many users and practitioners around the world, especially when Online Dispute Resolution (ODR) first emerged in late-1990s.<sup>63</sup> Apparently, the application of digitalisation in online dispute settlement mechanism and other systems has become increasingly important in recent years. In light of the outbreak of the pandemic, and with the aid of Artificial Intelligence (“AI”) and other algorithm techniques, online transactions have increased vastly through the e-commerce marketplace as well as online shopping platforms. This has, in turn, led to a sharp rise in the number of consumer-related disputes pending resolution, either through the court system or by non-contentious fashion, such as filing complaints with a consumer organisation.

Despite the fact that ODR and other online settlement mechanisms, e.g., Internet Courts in the case of China, employ modern technology in the settlement process in order to assist parties to come up with an ultimate determination, yet in comparison, ODR tends to put more emphasis on the software application in the dispute resolution process<sup>64</sup> without much human interaction as compared with the use of Internet Courts. Indeed, for many individuals, it remains true that practical factors such as costs, *forum conveniens* and flexibility<sup>65</sup> are some of the primary concerns that many of them share. And perhaps, the flip side of these considerations are somehow true, that resolving disputes through online dispute settlement mechanisms may have inherent drawbacks, e.g., confidentiality issue, authenticity issue, technical failure, and accessibility problem in contrast to physical court setting.

<sup>63</sup> KATSH, M. E. Dispute Resolution in Cyberspace. *Connecticut Law Review*. 1996, Vol. 28, no. 4, pp. 953–980; RULE, C. Online Dispute Resolution and the Future of Justice. *Annual Review of Law and Social Science*. 2020, Vol. 16, pp. 277–292.

<sup>64</sup> RULE, C. Online Dispute Resolution and the Future of Justice. *Annual Review of Law and Social Science*. 2020, Vol. 16, pp. 277–292.

<sup>65</sup> GOODMAN, J. W. The Pros and Cons of Online Dispute Resolution: An Assessment of Cyber-Mediation Websites. *Duke Law & Technology Review*. 2002, Vol. 2, pp. 1–16.

In the following section, this paper will highlight some of the practical considerations in online settlement specifically in the Chinese context.

## **4.2 Practical Considerations in the Chinese Context**

### **4.2.1 Choice of Forum**

Amongst many of the factors, when a party intends to file a case with an Internet Court or lodge a complaint with a consumer organisation in China, oftentimes the choice of forum forms a crux of the matter which is not seen as an obvious factor to many individuals. To start with, it is important for one's best interest to consider, whether it is worthwhile pursuing a legal proceeding with one of the three Internet Courts or simply lodging a complaint with a local consumer organisation to settle the dispute taking into account the costs and time issues. This question may look a bit trivial yet critical, as the ultimate outcome would vary depending on the way how the dispute is being settled. Hence, disputing parties shall seriously consider the right route at the beginning, be it ending up in litigation or non-litigation path, and ideally being more rational and practical in making a wise guess on the most feasible outcomes they could get, which can either be damages, enforcement of judgment, other forms of remedies, etc., or a combination of those kinds.

For the parties themselves, once the online dispute settlement mechanism is properly chosen, the next question that they have to bear in mind is the issue of *locus standi*. Perhaps, for many consumers, they may select the settlement mechanism which they think might be most favourable, most efficient and convenient, yet without noticing that in fact they lack certain grounds to file an application with a specific Internet Court or a local consumer organisation. For instance, when a dispute arises from an online consumer contract which involves two Chinese parties seated in the same city in China, say Beijing, intuitively the proper selection of forum seems to be either Beijing Internet Court or the consumer council located in Beijing. Of course, it would also depend on the scope of the online consumer dispute that is involved as well as other criteria, e.g., the type of final outcome that the parties aimed at. However, sometimes it may become trickier for the

party to pick the right forum, especially in the case of Internet Court, when one party is either located outside the three cities where the Chinese Internet Courts are located, or when one party is located outside China, which could well be a company registered outside its territory. In order to put this point into the context of the Chinese legal application, the relevant discussion will be further delved into in the next section related to the discussion on the selected case studies.

#### 4.2.2 Authenticity Issue

Apart from choice of forum, authenticity is another interesting point that has been addressed in many sources. Be that as it may, the discussion on the authenticity issue confining to online settlement dispute mechanisms with a Chinese perspective is still underdiscussed. For instance, authenticity is one of the most important aspects in the online dispute settlement mechanisms when it comes to cross-border disputes, not only because it is essential in the confirmation of a party's identity or the extent to which the document is valid or not, but more eminently, the authenticity itself is regarded as part of the formal procedure in litigation<sup>66</sup> or the complaint, which is viewed as a decisive factor for an Internet Court or a consumer organisation in China, specifically when reviewing and making a decision of acceptance or rejection in an application that contains foreign elements (e.g., involvement of a party located overseas).

Within the existing Chinese legal framework, in particular, statutory provisions under the Civil Procedure Law of the People's Republic of China (2021 Amendment) have expressly provided the necessary prerequisites for authenticity.<sup>67</sup> Subject to Article 62 of the Chinese Civil Procedure Law, when a legal representative acts on behalf of a party (who is a Chinese citizen but residing in a foreign country), an authenticated power of attorney is required.<sup>68</sup> Such a power of attorney which is sent from overseas to China has to undergo so-called 'authentication procedure' by submitting the documents to 'the embassy or consulate of the People's

<sup>66</sup> Art. 62 Civil Procedure Law of the People's Republic of China (2021 Amendment).

<sup>67</sup> The People's Republic of China, Civil Procedure Law of the People's Republic of China (2021 Amendment).

<sup>68</sup> Art. 62 Civil Procedure Law of the People's Republic of China (2021 Amendment).



Republic of China in that country’ for authenticity.<sup>69</sup> In the circumstance where there is neither Chinese Embassy nor Chinese Consulate within the foreign jurisdiction where the Chinese party is located, it is required by law that the power of attorney “*shall be first authenticated by an embassy or consulate of a third country which has a diplomatic relationship with the People’s Republic of China in that country and then be authenticated by the embassy or consulate of the People’s Republic of China in the third country or be authenticated by the local patriotic overseas Chinese organization*”<sup>70</sup>. Despite the relevant legislations in place regarding authenticity, some parties may still have some concerns about the hidden costs, effort and the time spent purely in the process of authenticity, which is way before the start of the court case or the complaint being filed. On top of that, one needs to think twice before deciding whether or not it is worth pursuing the route of online settlement dispute mechanism if the amount in dispute is far smaller than the costs being incurred solely for authenticity.

### 4.2.3 Other Considerations

In addition to those abovementioned factors, there are other considerations in online dispute settlement mechanism which are universally recognised as challenges that may overwhelm the parties when determining whether to put forward a case or not virtually. For instance, since the outbreak of COVID-19, one of the ‘new normal’ that many of us have to live with, is to use Zoom for work and communication. Like any courts and consumer organisations around the world, due to lockdown and travel restrictions, holding online hearings and meeting remotely has essentially become a pragmatic solution to minimise the disruption caused by the pandemic. Therefore, using videoconferencing for meeting sessions and/or virtual hearings, which may sometimes take longer hours than expected or parties located overseas may experience time zone difference, are likely to turn out to be an alternative to a traditional court setting or filing a complaint face-to-face with a consumer organisation. However, like anything else, there are two sides of the same coin. As time goes by, long-hour hearings and virtual meetings may impair one’s physical and mental state to a certain

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<sup>69</sup> Art. 62 Civil Procedure Law of the People’s Republic of China (2021 Amendment).

<sup>70</sup> Art. 62 Civil Procedure Law of the People’s Republic of China (2021 Amendment).

extent, and can lead to the so-called “zoom fatigue”.<sup>71</sup> On another note, not all kinds of cases would fall under the ambit of the Chinese Internet Court’s jurisdiction. Effectively, even if a case falls within the scope of disputes that the Chinese Internet Court has the right to handle and hear, this does not necessarily guarantee parties that their application with the Internet Court is automatically accepted and will certainly be held online. At the end of the day, by looking at all facts and circumstances, the judge of the Internet Court would still retain discretion to have the case heard offline if the Internet Court is of the view that the initial application does not meet the necessary criteria for online trial, or does not suit for a virtual hearing from the start.<sup>72</sup> Having said that, by the same token, parties (whose case has been accepted by the Chinese Internet Court) would have the say, anytime during the virtual hearing, to raise an application to the court, to either withdraw or switch the mode of hearing from online to physical presence depending on the circumstances of the case, while making sure that the necessary procedures are complied with.<sup>73</sup>

To put everything into perspective, the following section is devoted to demonstration of two selected case studies on cross-border online consumer disputes with a foreign party involved as a defendant: (1) *Chen Zhenfa vs. Gome (Hong Kong) International Trading Co., Ltd. and Gome Online Electronic Commerce Co., Ltd.*<sup>74</sup>; and (2) *Cui Jin Seng vs. Jung Han Shin*<sup>75</sup> using Chinese Internet Court as the online dispute settlement mechanism.

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<sup>71</sup> DENIZ, M. E., SATICI, S. A., DOENYAS, C., GRIFFITHS, M. D. Zoom Fatigue, Psychological Distress, Life Satisfaction, and Academic Well-Being. *Cyberpsychology, Behavior, and Social Networking*. 2022, Vol. 25, no. 5, pp. 270–277.

<sup>72</sup> Part 3 para. 3 Notice of the Supreme People’s Court on Issuing the Plan for Establishing the Beijing Internet Court and the Guangzhou Internet Court.

<sup>73</sup> CHEN, G. and Z. YU. Practical Exploration and System Construction on the Court of Internet in China. *China Legal Science*. 2017, Vol. 5, no. 3, pp. 15–16.

<sup>74</sup> Judgment of Beijing Fourth Intermediate People’s Court, China, of 23 January 2019, Case No. (2018) Jing 04 MinChu, no. 507.

<sup>75</sup> Judgment of Beijing Fourth Intermediate People’s Court, China, of 15 January 2019, Case No. (2018) Jing 04 MinChu, no. 548.

## 5 Selected Case Studies on Consumer Disputes Resolving Through Chinese Internet Court

### 5.1 Chen Zhenfa vs. Gome (Hong Kong) International Trading Co., Ltd. and Gome Online Electronic Commerce Co., Ltd. (2018) Jing 04 MinChu, no. 507

The plaintiff, *Chen Zhenfa* (“Chen”), bought a pack of Gerber (U.S.) Puffs (cereal snack) with sweet potato flavour via the online platform provided by *Gome Online Electronic Commerce Co., Ltd.* for \$ 36. The ordered product was regarded as unsafe due to the absence of labelling in Chinese language, and at the same time, the advertisement was considered as false by claiming the product as the “Best Selling Brand” in the U.S. sales, and “Number 1” among the baby food branding in the U.S. without any substantial evidence in support. As one of the defendants, *Gome (Hong Kong) International Trading Co. Ltd.*, is a company registered in Hong Kong in the present dispute, according to the “Interpretation of the Supreme People’s Court on the Application of the Civil Procedure Law of the People’s Republic of China”, provision stipulated in Article 551 would be applicable.<sup>76</sup> Pursuant to Article 551, it provides that “*The People’s Courts may apply, mutatis mutandis, the special provisions on foreign-related civil procedures to civil actions that involve the Hong Kong Special Administrative Region, the Macao Special Administrative Region, or the Taiwan Region*”<sup>77</sup>.

In order to explore the solutions for this potential dilemma, perhaps it is of paramount importance to answer the following questions: (1) where the contract is actually formed and (2) whether the Chinese Internet Court is the competent court to hear the case. Article 20 of the Interpretation of the Supreme People’s Court on the Application of the Civil Procedure Law of the People’s Republic of China (2015) provides that, “*for a sales contract concluded on an information network, if the subject matter is delivered on the information network, the place of domicile of the buyer shall be the place where the*

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<sup>76</sup> The People’s Republic of China. Interpretation of the Supreme People’s Court on the Application of the Civil Procedure Law of the People’s Republic of China (2015).

<sup>77</sup> Art. 551 Interpretation of the Supreme People’s Court on the Application of the Civil Procedure Law of the People’s Republic of China (2015).

*contract is performed; or if the subject matter is delivered by any other means, the place of receipt shall be the place where the contract is performed, unless the parties have agreed otherwise on the place of performance in the contract*<sup>78</sup>. Therefore, by studying this provision loosely, it can be understood that if the buyer is located in Beijing (the place of domicile of the buyer), then Beijing would be regarded as the place where the contract is concluded if the subject matter is delivered through information network. Otherwise, unless parties have alternative arrangement, and if the subject matter was not delivered by means of information network, then the location of the receipt would be deemed as the place where the contract is concluded.

In deciding whether the Internet Court has jurisdiction to hear a case involving a party, say a defendant, not located in China, Article 265 of Civil Procedure Law of the People's Republic of China (2017 Amendment)<sup>79</sup> may shed some light on this discussion point. Pursuant to Article 265, it states that: *“where an action is instituted against a defendant that has no domicile within the territory of the People's Republic of China for a contract dispute or any other property right or interest dispute, if the contract is signed or performed within the territory of the People's Republic of China, the subject matter of action is located within the territory of the People's Republic of China, the defendant has any impoundable property within the territory of the People's Republic of China, or the defendant has any representative office within the territory of the People's Republic of China, the people's court at the place where the contract is signed or performed, where the subject matter of action is located, where the impoundable property is located, where the tort occurs or where the domicile of the representative office is located may have jurisdiction over the action”*<sup>80</sup>.

## **5.2 Cui Jin Seng vs. Jung Han Shin (2018) Jing 04 MinChu, no. 548**

The plaintiff, *Cui Jin Seng* (“Cui”), who bought three packs of instant noodles for RMB 504 from the defendant, *Jung Han Shin* (“Jung”), a Korean national who sold the products in his online store called “PLEASEME” on Taobao online shopping platform on 9 November 2017. Later, as the

<sup>78</sup> Art. 20 Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (2015).

<sup>79</sup> This provision is equivalent to Art. 272 Civil Procedure Law of the People's Republic of China (2021 Amendment).

<sup>80</sup> Art. 265 Civil Procedure Law of the People's Republic of China (2017 Amendment).

order was delivered to *Cui's* home in Beijing, he noted that the package, which was in English, did not contain any labelling or warning in Chinese. Coincidentally, upon checking *Jung's* selling webpage, neither declaration on the absence of Chinese labelling/warning nor the applicable law for settling the contractual disputes were identified. In the present case, the ultimate issues are (1) whether the place of signing and performance of the contract is within China, and (2) whether the court in China has the jurisdiction over the dispute which involves a foreign national.

Similar, if not the same, to the first case study, this case involves a defendant who was a foreign party. Thus, being a foreign national, the special provision prescribed by Article 522 para. 1 of the “Interpretation of the Supreme People’s Court on the Application of the Civil Procedure Law of the People’s Republic of China” was applied.<sup>81</sup> Based on the limited facts and circumstances provided in the case, it seems to indicate that the people’s court in China would be regarded as the most suitable venue to hear the case, given that no evidence was adduced to suggest that the defendant has a domicile in China, nor any other identity information in relation to the defendant was provided.

In the instant case, no special arrangement was expressly entered into between the parties regarding the place of the performance of the contract. What is clear, though, in terms of factual evidence is that the Chinese plaintiff, located in Beijing, bought food through Taobao, an online shopping platform based in China, and properly concluded the contract online<sup>82</sup> in China. As such, one may infer that the court in Beijing would have jurisdiction over the dispute subject to Article 265 of the Civil Procedure Law of the People’s Republic of China (2017 Amendment).<sup>83</sup> Provided that the case was filed on 19 October 2018, the Beijing Internet Court is viewed as the competent court to determine this online consumer dispute.

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<sup>81</sup> Art. 522 para. 1 Interpretation of the Supreme People’s Court on the Application of the Civil Procedure Law of the People’s Republic of China.

<sup>82</sup> Art. 20 Interpretation of the Supreme People’s Court on the Application of the Civil Procedure Law of the People’s Republic of China.

<sup>83</sup> Art. 265 Civil Procedure Law of the People’s Republic of China (2017 Amendment).

## 6 Brief Discourse on the Challenges for Advancing the Use of Online Dispute Settlement Mechanism in Cross-Border Disputes

### 6.1 Predicament in Promoting Online Dispute Settlement Mechanisms and the Incorporation of an Online Dispute Settlement Clause in the Agreement

For a very long time, incorporating a dispute settlement clause (such as an arbitration agreement) in a contract has been regarded as a resort for parties to resolve the disputes before bringing the case for litigation. Nowadays, quite a number of courts around the world started to embrace the use of digitalisation in trials, and a vast majority of international arbitration institutions attempts to promote dispute settlement mechanisms,<sup>84</sup> in the hope that disputes can be sorted out through non-litigation means in a quicker and more efficient manner. For instance, some of those well-established international arbitration institutions have provided recommended model clauses for parties to incorporate in the contract at their wish.<sup>85</sup> That being said, strictly speaking, parties are not bound by those terms as party autonomy and freedom of contract, being core principles of contract law in both common law and civil law jurisdictions, are always observed in the process of contract formation and its performance. Regardless of the nature of the transaction being concluded, be it online or offline, not only do the parties have the right to opt in or opt out a dispute settlement clause in the contract at the outset; they are also given the choice to resolve the conflict either online or by other dispute resolution regimes. As a result, this may make it even harder for the promotion of the use of online dispute resolution

<sup>84</sup> For instance, American Arbitration Association, Hong Kong International Arbitration Centre, International Centre for Settlement of Investment Disputes, International Chamber of Commerce.

<sup>85</sup> For example, Arbitration Clause. *ICC* [online]. [cit. 15.10.2022]. Available at: <https://iccwbo.org/dispute-resolution-services/arbitration/arbitration-clause/>; Model Clauses. *HKIAC* [online]. [cit. 15.10.2022]. Available at: <https://www.hkiac.org/arbitration/model-clauses/>; Recommended Clauses. *LCLA* [online]. [cit. 15.10.2022]. Available at: [https://lclia.org/Dispute\\_Resolution\\_Services/LCIA\\_Recommended\\_Clauses/](https://lclia.org/Dispute_Resolution_Services/LCIA_Recommended_Clauses/); SIAC Model Clause. *SIAC* [online]. [cit. 15.10.2022]. Available at: <https://siac.org.sg/siac-model-clauses/>; Model Clause. *CIETAC* [online]. [cit. 15.10.2022]. Available at: <https://www.cietac-eu.org/model-clause/>

mechanism. Lack of social awareness of the availability of various existing online dispute settlement mechanisms in place seems to create additional obstacles too.<sup>86</sup> Not only do existing promotional measures seem to be far from sufficient, but unfamiliarity with digitalisation due to the technology gap and embedded human perception to resolve problems in court tend to invite new challenges.<sup>87</sup> Hence, striking a fine balance between the pros and cons that online dispute settlement mechanisms have to offer remain a dilemma in many cross-border disputes.

## **6.2 Practical Impediments of Using Online Technology-Driven Platforms in Resolving Contractual Disputes**

Despite the fact that online dispute settlement mechanisms were not as prevalent as one would think, in particular in consumer disputes, they started to gradually gain their popularity especially after the outbreak of COVID-19 due to the travel restrictions and lockdown worldwide, including China. Moreover, like anything else in the technology world, potential risks in cybersecurity and personal data breach remain paramount concerns, notably for those who customarily contract online. Therefore, aspects such as system security have begun to ring a bell to people at large, arguably when determining whether or not to have the case heard in the physical presence (like the court setting) or through online means (e.g., in a Chinese Internet Court).<sup>88</sup> In the case of China, when filing a case to the court or other institutions for virtual hearing, at times parties have to take into account the issue of locality, i.e., where the contract is formed. This is because, as mentioned in the case studies above, the location would be one of the decisive factors in relation to the applicant's standing. Indeed, for parties who conclude a contract in a place other than the cities where the three Chinese Internet Courts are located, depending on how the contractual terms are drafted, they may well have to take the case to another competent court physically, or a respective arbitration commission where the contract

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<sup>86</sup> YU, Z., DONG, P. On Practical Exploration and Development Path of Online Dispute Resolution System. *China Legal Science*. 2019, Vol. 7, no. 4, p. 57.

<sup>87</sup> Ibid.

<sup>88</sup> LI, X. Research on the Building of China's Smart Court in the Internet Era. *China Legal Science*. 2020, Vol. 8, no. 3, p. 46.

was actually entered in China, or even possibly start a lawsuit in another jurisdiction where they are currently living. Thus, in a way, the limited number of Chinese Internet Courts available may, to certain extent, geographically confine the accessibility and choice of forum for the disputants who so wish to pursue the case resolved through online court.

## 7 Conclusion

Consuming online is no longer a trend, but for many people, this has become a necessity. The way how technology advances and how online shopping mode developed expeditiously have pushed lawmakers to respond quicker taking measures, such as enacting new laws and setting up institutions to supervise the consumer activities, etc. in a timely fashion. On the one hand, China being one of the Asian countries, which is strongly influenced by Confucian tradition and values, stresses harmonisation in maintaining positive relationship, resolving disputes through litigation means is not a preference at all times, but rather a last resort. Filing a complaint with a local consumer organisation may seem to be a better alternative, yet with the uncertainty on the enforceability of the decision made by consumer organisation, and the aim to seek compensation out of the court setting, Internet Courts seem to be a way out for many, especially amid the pandemic.

Like any legal regime in the world, there are pros and cons embedded in any kind of online dispute settlement mechanism. As a party to the dispute, perhaps one has to consider what is best for them – resolving through litigation or non-litigation means taking into account all the factors and resources that they may have, specifically when the case involves a foreign party as the defendant. In the case of China, as long as the applicant satisfies the prerequisite conditions that are required under the law (e.g., the place where the contract was performed or concluded, the place of domicile, etc.) for filing a case with the Chinese Internet Court or Chinese Consumer Association, notwithstanding the nationality and other aspects concerned, the party can exercise their legitimate right by filing the claim in either way. On the technology side, especially with artificial intelligence which is anticipated to bring a stronger impact on all disciplines worldwide, the law in relation to online consumer disputes, or even consumer law in general,



needs to bear in mind the fast pace change in this kind of technology, and to catch up with the latest legal development in the same respect as other jurisdictions have been handling by exchanging views and/or other means. With the prevalent application of AI around the world, it is expected that AI will continue to have a powerful impact on the realm of e-commerce, and it will be interesting to see whether the new online dispute settlement mechanisms will be created to tackle conflicts, e.g., an online consumer dispute with AI embedded technology being the subject matter. All in all, this area of law may require further exploration on the topic which is beyond the scope of the present paper.

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**Contact – e-mail**

*yc07214@umac.mo*

**ORCID**

*0000-0001-8404-5967*