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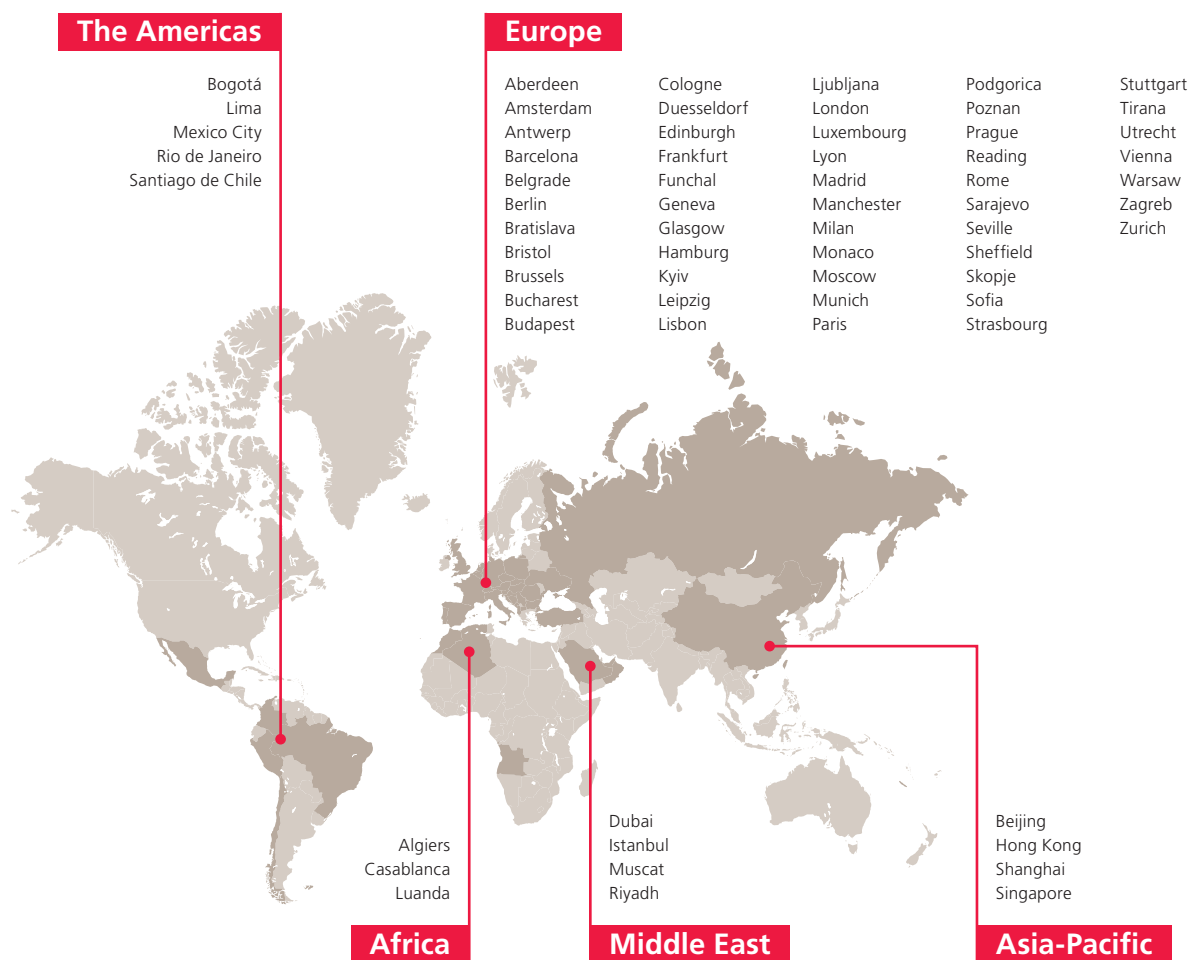
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Top developments and predictions for the TMT sector in China

2018 - 2019

CMS facts and figures



- **73 offices**
- **67 cities**
- **> 1,000 partners**
- **> 4,500 lawyers**
- **> 7,500 total staff**
- **Combined annual turnover:**
EUR 1.3bn (2017)
- **41 countries**

European countries

Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, France, Germany, Hungary, Italy, Luxembourg, Macedonia, Monaco, Montenegro, the Netherlands, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Switzerland, Turkey, Ukraine and United Kingdom

Outside Europe

Algeria, Angola, Brazil, Chile, China, Colombia, Kingdom of Saudi Arabia, Mexico, Morocco, Oman, Peru, Singapore and United Arab Emirates

Overview

As we enter the Year of the Pig, we take a look back at the top 10 developments of 2018 and towards what lies ahead with our top 10 predictions of 2019, for you and your business operating in China.

This past year we saw the continuous development of the cybersecurity and data protection regime, and the issuance of the first consolidated law governing e-commerce in China. In keeping up with China's fast-paced growth in the TMT sector, this year we expect to see advancements in artificial intelligence and an open cross-border landscape.

We will be closely monitoring these ongoing developments and predictions during the course of the year, providing you with regular updates and analysis as they happen through our various free know-how platforms: our eAlert service, Law-Now, LinkedIn at 'CMS Asia Pacific' and on WeChat at 'CMSAsia'.

For now, we hope you find our reflections and predictions of interest and help to your business as you plan for the year ahead.

If you would like to discuss any of the developments with us, please do let me know.



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Top 10 developments of 2018



1. Cybersecurity Standard Drafts: After the *PRC Cybersecurity Law* took effect, a series of draft technical standards implementing this Law were published to solicit public opinions in 2018. These draft standards cover areas including overall network security and specific technical measures, data protection and cross-border data flow, special requirements for critical information infrastructure, and the evaluation and certification of network products. Although most of the drafts are suggestive in nature, they are considered to be “best practice” measures in the relevant areas and can therefore provide compliance guidance to operators once the final versions are published.



2. E-commerce Law: China published the *PRC E-Commerce Law* in August 2018. This is the first consolidated law governing e-commerce in China, focusing on the obligations and responsibilities of e-commerce platform operators who play dominant roles in the e-commerce eco-system. User data protection, anti-unfair competition, liability allocation between a platform operator and the vendors on its platform and IP protection are the four key areas regulated by this Law. Additionally, this Law also provides operational rules for online advertising, third party online payment, logistics services and other aspects of e-commerce.



3. Personal Data Protection: The protection of privacy and personal data has attracted unprecedented attention from both the government authorities and business operators following the introduction of the *Personal Information Security Specification* and various other relevant draft standards. The top 10 Internet companies in China have all recently reviewed and updated their privacy policies under the guidance of the government, and the China Consumer Association carried out a review of 100 Apps and published a detailed report identifying the major data protection flaws and risks involved in these Apps. Taking action to stay compliant with data protection rules has gradually become one of the key tasks of business operators.



4. Blockchain: The government announced its plan to establish a blockchain technologies standardisation technical committee in March, aiming to promote the formation of a complete blockchain standard system in China. A new blockchain trial zone was also established in Hainan province at the latter end of the year to encourage innovation and promote international cooperation on blockchain development and use. Additionally, in an unprecedented ruling in September, the Supreme People's Court ruled evidence authenticated with blockchain technologies as binding in legal disputes. Alongside a number of draft regulations and standards governing the application of blockchain technologies, it is clear that the government has been taking positive steps towards facilitating the development of blockchain technologies in China.



5. Online Content: A series of regulations governing the generation, provision and distribution of online programmes, community posts and live streaming services were published in 2018. From the administration of information content and programme styles, to control over the involvement of foreign production and personnel, we have seen increasingly strict regulation over the information and content distribution in the online environment. Website and online platform operators should all pay additional attention to their obligations to monitor and control the information and programmes generated and distributed via their platforms.



6. Sharing Economy: After a few years of tumultuous developments in the sharing economy industry, the government has started to emphasise the administration and regulation in certain sectors. For car-pooling and car-hailing platforms such as Didi, more obligations concerning passenger safety, driver and vehicle qualifications, user profiling technologies and unfair competition have been imposed on the platform operators. Meanwhile, high-level policies have been published to promote the healthy development of the sharing economy, concerning both the application of innovative technologies like AI and big data, and investment and financing strategies in sharing economy projects.



7. Foreign Investment: Foreign investment restrictions within certain areas in the TMT sector have been removed in 2018. Foreign invested entities (with certain restrictions on investment ratios) in China's free-trade zones are now allowed to engage in the business of printing and can operate travel agency businesses for approved overseas destinations (excluding Taiwan). Wholly foreign-owned entities are allowed to operate entertainment venues and provide performance agency services within the province where they are registered. In the Hainan Free-Trade Zone in particular, more liberalised foreign investment policies are available in the TMT sector. Outside of the free-trade zones, a foreign invested entity can now operate non-financial institution e-payment services once certain qualification requirements are met.



8. Cybersecurity Enforcement: In 2018, both the central and local government authorities have begun to take serious enforcement actions to implement the *PRC Cybersecurity Law* requirements. The focus was first on network operators' obligations to protect personal information and monitor the distribution of information on their online platforms. Gradually, more focus was put on the proper implementation of necessary technical and organisational measures and the use of qualified network products. The most common enforcement measures taken included administrative orders to make corrections, impose fines and order the suspension of the operations of a concerned business.



9. VPN: China has continued to strengthen the prohibition of unlicensed and illegal operation of international VPN and data communication services in 2018. As a result, many international VPN products and services provided by unlicensed operators or by foreign operators on a cross-border basis have been removed from the market or shut down. International organisations with legitimate business needs now must apply with the licenced operators (mainly the local branches of China Mobile, China Telecom and China Unicom, as well as the foreign suppliers who cooperate with such branches for the delivery of services within China) and purchase the relevant services.



10. Network Security Products: To implement the *PRC Cybersecurity Law*, the first batch of 16 accredited entities that can undertake security testing or certification of critical network equipment and specialised network security products was published, together with the general requirements and procedures concerning how the testing and certification shall be carried out. Whilst the basic framework for testing and certification is gradually being established, further details of the standards governing the framework are yet to be formulated by the relevant authorities.

Top 10 predictions of 2019



1. Sectoral Data Regulation: In line with the general rules governing data protection under the *PRC Cybersecurity Law*, more sectoral rules may be established to address sector-specific requirements and concerns. In particular, following the trial measures regulating the use of big data in the healthcare industry, and the guidance on data management in the banking industry, we expect to see further developments in these two industries, as well as in other industries (e.g. municipal services, communications, and public transportation) critical to social and public interest.



2. Cross-border E-commerce: The new policies published near the end of the transitional period of the trial administration over cross-border e-commerce re-stated the differentiated treatment between domestic and cross-border e-commerce activities. Compared with domestic e-commerce operators, operators of cross-border e-commerce can continue to enjoy more favourable treatments concerning product licensing and registration, tariff and tax, and importation and customs clearance requirements in 2019. The overall administration approach reflects the government's encouraging attitude towards a healthier and wider development of cross-border e-commerce.



3. Cloud Services: *The Implementing Guide to Prompting Enterprises to Become Cloud-Based (2018-2020)* issued this year has pressured more enterprises to begin assessing their business needs and to explore the feasibility of adjusting their information infrastructure to become cloud-based. This will not only reduce the operational cost and increase the IT security of their enterprises, but will also bring great opportunities for mature cloud service suppliers that can provide customised cloud solutions for big enterprises, as well as one-package solutions for SMEs.



4. Cybersecurity Standards: During 2019 we expect to see the finalisation of a few very critical cybersecurity standards, including the standards relevant to the implementation of the multi-level security protection regime, the data localisation requirement and cross-border transfer of data, and the scope of critical information infrastructure operators. In 2018, rounds of discussions and public comments were carried out to balance the various interests involved. We hope that the final versions of the standards can eventually bring certainty and practical guidance to allow for greater precision and efficiency in complying with the changing cybersecurity landscape.



5. MPS's Authority in Cyberspace: During the past years, we have seen a gradual increase in the power and authority of the Ministry of Public Security and its local branches in their administration over Chinese cyberspace. Whilst the *Provisions on the Supervision and Inspection of Internet Security by Public Security Organs* published in 2018 had set out the major enforcement measures that public security organs may take, a series of existing regulations (e.g. regulations related to the classified cybersecurity protection scheme) and draft standards (e.g. the *Guideline for Internet Personal Information Security Protection*) will also expand public security organs' reach in taking enforcement actions in cyberspace. In 2019, network operators might need to prepare themselves for engaging in more communication and co-operation with the public security organs.



6. Intelligent Vehicles: The government has long identified the development of intelligent vehicles as an inevitable trend of the Chinese automotive industry. With the introduction of a series of national policies in 2018 such as the *Guidelines for the National Intelligence Connected Vehicle Industry Standard Construction and the Trial Measures on Road Testing of Intelligent Connected Vehicles*, we expect to see more technical standards to be published in 2019 to guide the R&D and manufacture of intelligent vehicles. In addition, more local-level rules are likely to be published to set out the requirements and procedures for research institutions and manufacturers to carry out road testing of intelligent vehicles in different provinces and cities.



7. Artificial Intelligence: In accordance with the 2018-2020 three-year action plan to encourage the development of AI in China, 2019 is envisaged to be a critical year for growth and progress. The innovation of AI products such as service robots, unmanned aerial vehicles, medical imaging auxiliary diagnostic systems, video image personal identity verification systems, voice interaction systems, translation systems and home appliances, as well as other innovation tasks including the creation of intelligent sensors, neutral network chips, open-source and open platforms will likely become the focus of the industry and shall enjoy both favourable industry policies and heavy government support. Additionally, we expect to see increased use of AI in the judicial system following recent initiatives for implementation, including the iFlyTek-designed AI-assisted judicial system pilot in Shanghai.



8. Anti-unfair Competition in Cyberspace: Following two significant decisions (*Sina vs. Mai Mai* and *Taobao vs. Mei Jing*) concerning misuse of big data and unfair competition in cyberspace, as well as the continuous rapid development of various online business models in China, there are likely to be more unfair competition disputes in the coming years. These disputes might be relevant to an e-commerce platform's manipulation of its dominant market position or other advantages, a data controller's inappropriate processing or sharing of personal data, or in other new forms that are unique to different online contexts. While the unfair competition laws and regulations only set out the general principles, we expect to see more detailed interpretation and guidance established via specific case decisions in the future.



9. 5G: The development of 5G will continue in China in 2019. The three major telecom operators, (i.e. China Mobile, China Telecom and China Unicom) have all disclosed plans to launch commercial trials for 5G in 2019. A few companies such as Huawei have also announced their plans to introduce their first 5G smart phones in 2019. Issues concerning the allocation of spectrum, the establishment of base stations, the formulation of specific technology standards and the testing of 5G applications are all expected to be addressed in 2019. In overseas markets, New Zealand's ban on Huawei supplying components for its 5G phone network followed previous bans and pressure in Australia, the US and Germany, which may further lead to a prioritisation of efforts to roll-out 5G in the domestic market prior to international expansion.



10. Industrial Internet: To realise the goal to promote around 10 cross-sector and cross-region industrial Internet platforms by 2020, we expect to see the government's continuous efforts to promote standardisation in the areas of edge computing, data management, data security and the smooth transfer of data between different platforms. In addition, more local government authorities are likely to launch their pilot or trial programs to invite the contribution and involvement of industry players, identify the key development targets, and to formulate encouraging policies to facilitate the development of industrial Internet in the relevant areas.



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