

CHARTING LEGAL LANDSCAPES

Navigating International Complexity, One Issue at a Time
by GC Law Firm

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Legal Challenges for Chinese Sellers on Amazon (pag.2)

中国卖家在亚马逊上遇到的法律挑战 (第8頁)



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LAW FIRM

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*The article discusses the legal challenges that Chinese sellers face on Amazon, focusing on **contractual regulation** and **dispute resolution**.*

*Contracts are governed by the **Amazon Services Business Solutions Agreement**, which includes **binding arbitration** and **class action waiver** clauses. Amazon also offers internal dispute resolution mechanisms, such as the **claim process** and **mediation**.*

*Chinese sellers encounter **linguistic and legal barriers**, **high costs**, and a **power imbalance**. Furthermore, Amazon's European operations are subject to **Luxembourg jurisdiction**, adding further complexity.*

Key words:

- Chinese sellers
- Amazon Services Business Solutions Agreement
- Arbitration clauses
- Dispute resolution
- Linguistic barriers
- Luxembourg jurisdiction

Legal Challenges for Chinese Sellers on Amazon

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General Contractual Regulation Between Chinese Sellers and Amazon

Contracts between Chinese sellers and Amazon are primarily governed by the Amazon Services Business Solutions Agreement. This agreement has a global reach, applying to all sellers who use the Amazon platform, including those based in China.

Dispute Resolution Clauses (Global Agreement)

Amazon's agreement includes a dedicated section on dispute resolution, with these key points:

- **Governing Law:** Generally, the agreement specifies that it will be governed by the laws of the State of Washington in the United States, without regard to conflict of laws principles.

- **Binding Arbitration:** Most versions of the agreement contain a binding arbitration clause. This means any dispute between the seller and Amazon won't be resolved through court but through an arbitration process managed by the American Arbitration Association (AAA), whose decisions are binding on both parties.
- **Arbitration Process:** The agreement outlines the procedure for initiating arbitration, which typically involves sending a request for arbitration to Amazon and filing a demand with the AAA.
- **Arbitration Costs:** Amazon usually covers most arbitration fees, though sellers might be required to pay a filing fee and a portion of the arbitrator's costs, depending on the specific circumstances of the dispute.
- **Class Action Waiver:** The agreement often includes a waiver of the ability to participate in a class action against Amazon, requiring disputes to be pursued individually.

Internal Dispute Resolution Mechanisms Offered by Amazon

In addition to arbitration, Amazon also offers internal mechanisms for dispute resolution, including:

- **Claim Process:** Sellers can submit claims through Seller Central, and Amazon will investigate.
- **Mediation:** In some cases, Amazon offers a mediation service to assist in resolving disputes between Amazon and sellers based in the European Union or the United Kingdom.

Specific Considerations for Chinese Sellers

Chinese sellers can face particular challenges related to disputes:

- **Linguistic and Legal Barriers:** Fully understanding and navigating contractual clauses and dispute resolution processes within a foreign legal system can be more complex.
- **Enforcement of Decisions:** Enforcing an arbitral award or judicial decision in China might require additional legal steps in accordance with Chinese laws.

Luxembourg Jurisdiction for Amazon's European Operations

Many of Amazon's European operations are managed through Amazon EU Sàrl, based in Luxembourg, making Luxembourg laws relevant to Amazon's activities in Europe. Amazon's contracts with sellers operating on European marketplaces (e.g., Amazon.de, Amazon.fr, Amazon.es) often specify that Luxembourg laws govern the agreement and that disputes may be subject to the jurisdiction of the courts of Luxembourg City. This is explicitly mentioned in the "Terms and Conditions" of Amazon Currency Converter for Sellers and the Amazon Services Business Solutions Agreement for the EU.

Implications of Luxembourg Jurisdiction for Chinese Sellers

Luxembourg jurisdiction means that Chinese sellers operating on Amazon's European marketplaces might have to contend with a foreign legal system, presenting potential linguistic and legal barriers. It's crucial to understand Luxembourg laws and their application to the agreement with Amazon for these operations.

Recommendations

For a detailed understanding of the specific dispute clauses applicable to your case, it's essential to consult the latest version of the Amazon Services Business Solutions Agreement available in your Seller Central account or on the Amazon Seller website. It may also be beneficial to consult legal counsel specializing in international commercial law.

Legal Challenges for Chinese Sellers on Amazon

Chinese sellers using the Amazon platform face several legal challenges, including:

- **Linguistic and Legal Barriers:** The need to interact with foreign legal systems, both in the United States and Luxembourg, can be a significant hurdle. Understanding laws, procedures, and legal terminology can be complex and costly.
- **High Costs:** International legal disputes can incur considerable costs for translations, specialized legal advice, and arbitration or judicial expenses in foreign countries.
- **Power Imbalance:** Amazon, as a large multinational corporation, possesses significant legal resources, while Chinese sellers, often small and medium-sized enterprises, might find themselves at a disadvantage.
- **Regulatory Compliance:** Sellers must adhere to Amazon's regulations, which can be complex and subject to change. Non-compliance can lead to account suspension or termination.
- **Intellectual Property:** Protecting intellectual property, such as trademarks and patents, can be challenging for Chinese sellers due to the complexity of international laws and the difficulty of enforcing their rights in cases of infringement.
- **New EU Regulations:** The EU's Digital Services Act (DSA) might introduce new protections for third-party sellers from 2024, so it's necessary to stay updated.

Recent Legal Cases

- **GDPR and Amazon:** The Luxembourg National Commission for Data Protection (CNPD) fined Amazon Europe Core S.à r.l. €746 million for GDPR violations. This demonstrates that Amazon is subject to European data protection laws.
- **Italian Tax:** Amazon was the subject of a tax investigation in Italy for alleged VAT evasion by non-EU sellers, primarily Chinese.

Practical Advice for Chinese Sellers

- **Verify Local Policies:** Some contracts in China include additional clauses related to export regulations.
- **Legal Insurance:** Some sellers use policies to cover arbitration costs.
- **Alternative Platforms:** Using services like Alibaba and JD.com can mitigate risks related to disputes on Amazon.
- **Strictly Comply with EU Policies:** Such as CE standards and GDPR.
- **Maintain Detailed Documentation:** Invoices, certificates of conformity.

- Utilize Services like Amazon Seller Central Support: To resolve disputes before they escalate.

Additions and Insights on Contractual Regulation Between Chinese Sellers and Amazon

Updates on the "Amazon Services Business Solutions Agreement" (2024)

- **Changes to Arbitration Clauses:** In 2023, following regulatory pressure, Amazon introduced the option for sellers to opt out of binding arbitration within 30 days of signing the agreement. This option, if exercised, allows disputes to be resolved in court but remains poorly publicized.
- **Adaptation to EU Regulations:** With the Digital Services Act (DSA) coming into force in 2024, Amazon has updated its European contracts to include transparency obligations regarding ranking algorithms, account suspensions, and complaint management, impacting Chinese sellers operating in Europe as well.

Details on the Arbitration Process (AAA)

- **Average Costs:** An AAA arbitration for disputes under \$75,000 costs approximately \$2,500 in administrative fees, plus \$1,500–\$5,000 for the arbitrator's fee. Amazon only covers these costs if the seller wins the case.
- **Statistics:** According to 2023 data, only 12% of sellers initiate arbitrations, with a success rate below 20%, often due to procedural complexities or an imbalance of legal resources.

Enforcement of Arbitral Awards in China

China has been a signatory to the New York Convention since 1987, theoretically enabling it to recognize foreign arbitral awards. However, in practice:

- It requires a double examination of the legitimacy of the process.
- In the last 5 years, 40% of enforcement requests have been rejected due to "public order" reasons or procedural errors.
- Some Chinese sellers prefer to negotiate privately with Amazon to avoid lengthy proceedings.

Impact of Brexit on Luxembourg Jurisdiction

Chinese sellers operating on Amazon.co.uk are subject to an additional clause since 2021: post-Brexit disputes can be referred to English courts, with Luxembourg law applying only to transnational contractual aspects.

Practical Tools for Chinese Sellers

1. **Certified Translations:** Amazon accepts claims in Chinese only for accounts registered in China. For global accounts, English is required, but some European legal offices accept notarized translated documents.
2. **Legal Insurance:** Some companies (e.g., AIG) provide coverage for international legal expenses related to disputes with e-commerce platforms, up to \$100,000.

Relevant Case Studies

- **Shenzhen Vs Amazon Case (2022):** A Chinese seller won an arbitration for the unjustified blocking of an account, obtaining \$200,000 in

compensation. However, Amazon applied an offset by withholding funds from other linked accounts.

- Resolution through EU Mediation: In 2023, a group of 15 Chinese sellers successfully used Amazon EU's mediation service, recovering \$1.2 million in refunds for false counterfeiting accusations.

Updated Recommendations

- Policy Monitoring: Use tools like SellerBench or Helium 10 to receive alerts on contractual changes.

Specific Considerations for Chinese Sellers (Repeated for emphasis and context)

Chinese sellers can encounter particular challenges related to disputes:

- Linguistic and Legal Barriers: Fully understanding and addressing contractual clauses and dispute resolution processes in a foreign legal system can be more complex.
- Enforcement of Decisions: The enforcement of an arbitral or judicial decision in China might require additional legal steps in accordance with Chinese laws.

Luxembourg Jurisdiction for Amazon's European Operations (Repeated for emphasis and context)

Many of Amazon's European operations are managed through Amazon EU Sàrl, based in Luxembourg, making Luxembourg laws relevant to Amazon's activities in Europe. Amazon's contracts with sellers operating on European marketplaces (e.g., Amazon.de, Amazon.fr, Amazon.es) often specify that Luxembourg laws govern the agreement and that disputes may be subject to the jurisdiction of the courts of Luxembourg City. This is explicitly mentioned in the "Terms and Conditions" of Amazon Currency Converter for Sellers and the "Amazon Services Business Solutions Agreement" for the EU.

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Luxembourg jurisdiction means that Chinese sellers operating on Amazon's European marketplaces might have to face a foreign legal system, with potential linguistic and legal barriers. It is fundamental to understand Luxembourg laws and their application to the agreement with Amazon for such operations.

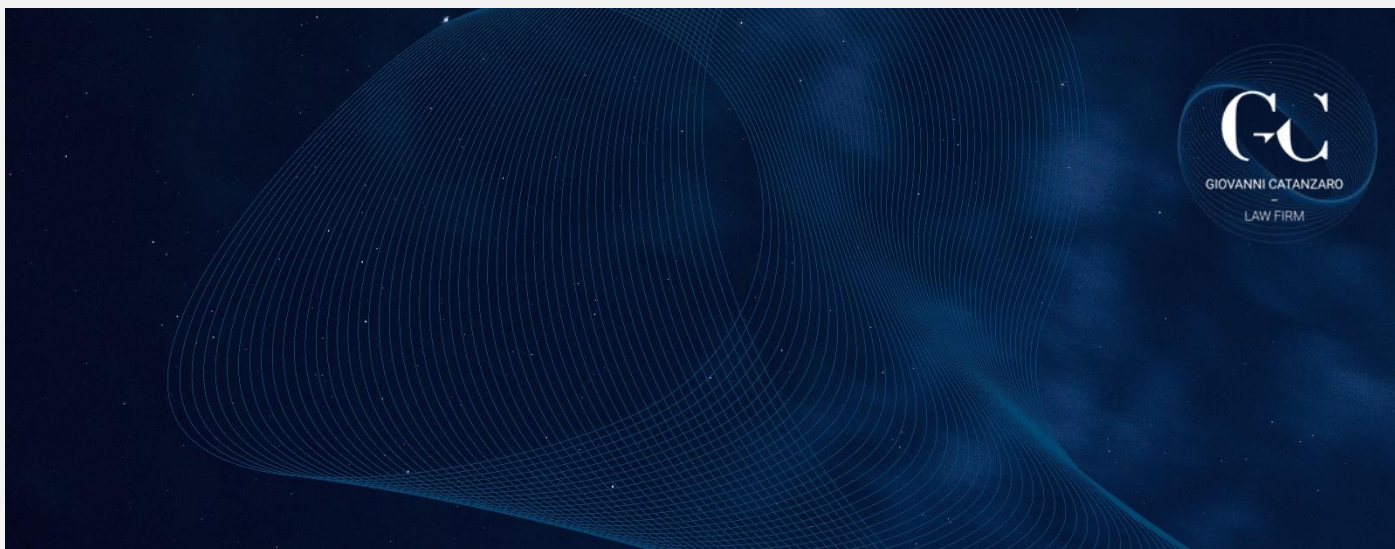
Recommendations (Repeated for emphasis and context)

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文章讨论了中国卖家在亚马逊上遇到的法律挑战，重点关注合同监管和争议解决。合同受《亚马逊服务商业解决方案协议》管辖，其中包括具有约束力的仲裁条款和集体诉讼弃权条款。亚马逊还提供内部争议解决机制，例如投诉流程和调解。中国卖家必须面对语言和法律障碍、高昂的成本以及权力不对称。此外，亚马逊的欧洲业务受卢森堡管辖，增加了额外的复杂性

关键词：

- 中国卖家，
- 亚马逊服务商
- 解决方案协议，
- 仲裁条款，
- 争议解决，
- 语言障碍，
- 卢森堡管辖权

中国卖家在亚马逊上遇到的法律挑战

由 GC Law 撰寫

中国卖家与亚马逊之间的合同一般监管 中国卖家与亚马逊之间的合同主要受《亚马逊服务商业解决方案协议》（Amazon Services Business Solutions Agreement）管辖。本协议具有全球适用范围，适用于所有使用亚马逊平台的卖家，包括位于中国的卖家。

争议解决条款（全球协议）亚马逊协议中包含专门的争议解决条款，其关键点如下：

- **适用法律：**通常，协议规定其将受美国华盛顿州法律管辖，不考虑法律冲突原则。
- **有约束力的仲裁：**协议的大多数版本都包含有约束力的仲裁条款。这意味着卖家与亚马逊之间的任何争议将不通过法院解决，而是通过美国仲裁协会（AAA）管理的仲裁程序解决，其决定对双方均具有约束力。

- **仲裁程序**：协议概述了启动仲裁的程序，通常包括向亚马逊发送仲裁请求并向AAA提交申请。
- **仲裁费用**：通常，亚马逊承担大部分仲裁费用，尽管根据争议的具体情况，卖家可能需要支付立案费和部分仲裁员费用。
- **集体诉讼豁免**：协议通常包含放弃对亚马逊提起集体诉讼的可能性，要求争议单独进行。

亚马逊提供的内部争议解决机制 **除了仲裁**，亚马逊还提供内部争议解决机制，包括：

- **投诉流程**：卖家可以通过卖家中心提交投诉，亚马逊将负责调查。
- **调解**：在某些情况下，亚马逊提供调解服务，以协助解决亚马逊与欧盟或英国卖家之间的争议。

中国卖家的具体考虑事项 中国卖家在争议方面可能会遇到特殊挑战：

- **语言和法律障碍**：**完全理解**和处理外国法律体系中的合同条款和争议解决程序可能会更加复杂。
- **裁决的执行**：在中国执行仲裁或司法裁决可能需要根据中国法律采取额外的法律步骤。

亚马逊欧洲业务的卢森堡管辖权 亚马逊的许多欧洲业务通过位于卢森堡的Amazon EU Sarl进行管理，这使得卢森堡法律与亚马逊在欧洲的活动相关。亚马逊与在欧洲市场（例如Amazon.de、Amazon.fr、Amazon.es）运营的卖家签订的合同通常规定卢森堡法律管辖协议，并且争议可能受卢森堡市法院管辖。这在《亚马逊卖家货币转换器条款和条件》以及欧盟的《亚马逊服务商业解决方案协议》中明确提及。

卢森堡管辖权对中国卖家的影响 卢森堡的管辖权意味着在中国卖家在亚马逊的欧洲市场上运营时，可能需要面对外国法律体系，并可能存在语言和法律障碍。对于此类业务，理解卢森堡法律及其在与亚马逊协议中的应用至关重要。

建议 为了详细了解适用于您具体情况的争议相关条款，务必查阅卖家中心账户或亚马逊卖家网站上提供的最新版《亚马逊服务商业解决方案协议》。咨询国际商业法领域的法律专业人士也可能有所帮助。

中国卖家在亚马逊上遇到的法律挑战 使用亚马逊平台的中国卖家面临多项法律挑战，其中包括：

- **语言和法律障碍**：**与美国和卢森堡的外国法律体系打交道**可能是一个重大障碍。**理解法律、程序和法律术语**可能复杂且成本高昂。
- **高昂的成本**：国际法律纠纷可能涉及高昂的翻译、专业法律咨询以及外国仲裁或司法费用。
- **权力不对称**：亚马逊作为一家大型跨国公司，拥有大量法律资源，而中国卖家通常是中小企业，可能处于劣势。
- **合规性**：卖家必须遵守亚马逊的法规，这些法规可能很复杂且会发生变化。**不合规**可能导致账户暂停或关闭。

- **知识产权**：对于中国卖家而言，保护商标和专利等知识产权可能很困难，无论是由于国际法律的复杂性，还是由于在侵权时难以主张权利。
- **新的欧盟法规**：欧盟的《数字服务法案》（DSA）可能从2024年起为第三方卖家引入新的保护措施，因此有必要及时了解最新情况。

近期法律案例

- **GDPR与亚马逊**：卢森堡国家数据保护委员会（CNPD）对Amazon Europe Core S.à r.l.处以7.46亿欧元的罚款，原因是违反了GDPR。这表明亚马逊受欧洲数据保护法律的管辖。
- **意大利税收**：亚马逊因非欧盟卖家（主要是中国卖家）涉嫌逃避增值税而在意大利接受税务调查。

给中国卖家的实用建议

- **核实当地政策**：中国的一些合同规定了与出口法规相关的额外条款。
- **法律保险**：一些卖家购买保险以支付仲裁费用。
- **替代平台**：使用阿里巴巴和京东等服务以降低与亚马逊争议相关的风险。
- **严格遵守欧盟政策**：欧盟CE标准，GDPR。
- **保留详细文件**：发票、合规证书。
- **使用亚马逊卖家中心支持等服务**：在争议升级之前解决争议。

关于中国卖家与亚马逊之间合同监管文本的补充和深入分析

《亚马逊服务商业解决方案协议》更新（2024年）

- **仲裁条款的修改**：2023年，亚马逊在监管压力下引入了卖家在合同签订后30天内放弃有约束力仲裁的可能性。这一选项如果行使，允许在法庭上解决争议，但宣传不足。
- **适应欧盟法规**：随着《数字服务法案》（DSA）于2024年生效，亚马逊已更新欧洲合同，以包含有关排名算法、账户暂停和投诉管理的透明度义务，这也影响了在欧洲运营的中国卖家。

仲裁程序详情 (AAA)

- **平均费用**：AAA仲裁中，争议金额低于75,000美元的案件，行政费用约为2,500美元，外加仲裁员费用1,500-5,000美元。亚马逊仅在卖家胜诉时才承担这些费用。
- **统计数据**：根据2023年的数据显示，只有12%的卖家启动仲裁，成功率低于20%，这通常是由于程序复杂性或法律资源不平衡造成的。

中国仲裁裁决的执行 中国自1987年起就是《纽约公约》的缔约国，理论上能够承认外国仲裁裁决。然而，在实践中：

- 需要对程序的合法性进行双重审查。
- 在过去5年中，40%的执行请求因“公共秩序”或程序错误而被驳回。
- 一些中国卖家更倾向于与亚马逊私下协商，以避免漫长的过程。

英国脱欧对卢森堡管辖权的影响 在Amazon.co.uk上运营的中国卖家自2021年起受到额外条款的约束：英国脱欧后的争议可提交给英国法院，卢森堡法律仅适用于跨境合同方面。

中国卖家的实用工具

- 认证翻译：亚马逊仅接受中国注册账户的中文投诉。对于全球账户，需要英文，但一些欧洲律师事务所接受经公证盖章的翻译文件。
- 法律保险：一些公司（例如AIG）提供与电商平台争议相关的国际法律费用保险，最高可达100,000美元。

相关案例研究

- 深圳诉亚马逊案（2022年）：一名中国卖家因账户被不当冻结赢得了仲裁，获得了200,000美元的赔偿。然而，亚马逊通过从其他关联账户中扣除资金进行了抵销。
- 通过欧盟调解解决争议：2023年，一个由15名中国卖家组成的团体成功使用了亚马逊欧盟的调解服务，追回了120万美元因虚假侵权指控而产生的退款。

更新建议

- 政策监控：使用SellerBench或Helium 10等工具接收合同修改警报。

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卢森堡管辖权对中国卖家的影响 卢森堡的管辖权意味着在中国卖家在亚马逊的欧洲市场上运营时，可能需要面对外国法律体系，并可能存在语言和法律障碍。对于此类业务，理解卢森堡法律及其在与亚马逊协议中的应用至关重要。

建议 为了详细了解适用于您具体情况的争议相关条款，务必查阅卖家中心账户或亚马逊卖家网站上提供的最新版《亚马逊服务商业解决方案协议》。



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