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Bird & Bird

China Cyber Security Law Update (4)

Finalised Measures on Security Examination of Network Products and Network Services Issued!

5 May 2017

Background

As the date of implementation of the China Cyber Security Law draws near, the Measures on the Security Examination of Network Products and Services was finalised and promulgated on 2 May 2017. The security examination measures will become effective 1 June 2017, that is on the same day that the Cyber Security Law comes into force. This is the first piece of regulations promulgated to support the implementation of the Cyber Security Law.

The security examination measures will be applicable to the procurement of network products and network services by critical information infrastructure operators.

In our [China Cyber Security Law Update \(2\) – Will Network Products and Network Services Pass the Test?](#), we highlighted the key provisions of the draft of the security examination measures that was put forward for consultation in February 2017. The final security examination measures in substance follows the provisions in the draft, with the following notable changes and features:

1. National security is the key focus

Whether any network products or services supplied will be subject to security examination will depend on if the system concerned will raise any "national security" concern. The final security examination measures clarifies this by removing references to "public interest" in determining the scope and purpose of the security examination.

2. Who are "critical information infrastructure" operators

The security examination measures specifically lists out the scope of who may be regarded as "critical information infrastructure" operators. This list mirrors the definition of "critical information infrastructure" under Article 31 of the Cyber Security Law, i.e. critical information infrastructure is likely to be in the sectors of public communications and information service, energy, transport, water conservancy, finance, public services and e-government affairs. As with the Cyber Security Law, the list is non-exhaustive, and makes reference to "other important industries and sectors" which according to the Cyber Security Law, will be determined by the State Council.

3. Right to Report Breach to the Office of Network Security Examination

Security examination will be conducted by an expert committee comprising third parties designated by the Network Security Examination Committee. The security examination measures now sets out an express right to providers of network products and network services to report any breach of confidentiality or principles of objective fairness by any third party in the course of conducting security examination to the Office of Network Security Examination and other relevant departments. This right is not included in the consultation draft.

Observations

1. The security examination measures is substantially similar to the consultation draft. In other words, and as with the draft, limited guidance is given on how the security examination will be conducted, in particular, whether there are specifications or technical requirements that should be met. Until more details are available, it may be difficult in practice for critical information infrastructure operators and providers of network products and network services to start preparing for the security examination when the Cyber Security Law comes into force.
2. There is less than one month to go before the Cyber Security Law comes into force. The application of the provisions of the Cyber Security Law is potentially very wide and businesses that have an operation in China are keenly awaiting much needed further clarity on many other aspects of the law which may be released shortly.

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