

Legal Practice | 法律实践

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Measures on the Standard Contract for Outbound Transfer of Personal Information comes into force on 1 June 2023

On 1 June 2023, the *Measures on the Standard Contract for Outbound Transfer of Personal Information* (the “*Measures*”) issued by the Cyberspace Administration of China (CAC) comes into force. The *Measures* shall be implemented by all “personal information processors” in China (which usually refers to any organization or individual that transfers personal information outside the territory of the PRC). The *Measures* is a supporting legislative document to the *Personal Information Protection Law* (“*PIPL*”). Unless otherwise specified, normal personal information processors may choose to use the Standard Contract for Outbound Transfer of Personal Information (“Standard Contract”) attached to the *Measures* to conclude a contract with the personal information recipient outside China and apply for filing with the cyberspace administration at the provincial level, thereby meeting the compliance requirements for the outbound transfer of personal information in a relatively simple way.

The *Measures* sets a six-month grace period that can be used by personal information processors to meet the requirements until 30 November 2023.

On 30 May 2023, the CAC issued the *Guide to the Filing of the Standard Contract for Outbound Transfer of Personal Information* (the “*Guide*”) to support the *Measures*, which regulates the filing procedures for Standard Contracts.

According to the *Measures* and the *Guide*, personal information processors shall, within ten working days from the effective date of Standard Contracts, file the Standard Contracts with the local provincial cyberspace administration by serving written materials attached with the electronic version thereof. Filing documents include:

- (1) copy of the business license
- (2) copy of the identity document of the legal representative
- (3) copy of the identity document of the handling person
- (4) power of attorney to the handling person
- (5) commitment letter
- (6) the signed Standard Contract
- (7) personal information protection impact assessment report

In particular, the Standard Contract shall be concluded in strict accordance with the annex of the *Measures*. The contractual parties may agree on other terms, provided that such terms do not conflict with the Standard Contract issued by CAC. The outbound transfer of personal information shall not be carried out until the Standard Contract enters into force.

The personal information protection impact assessment report required in filing documents shall be in line with Article 5 of the *Measures*, with a focus on the results of the assessment of the following matters:

- (1) the legality, legitimacy and necessity of the purpose, scope and method of the processing personal information by the personal information handler and the foreign recipient;
- (2) the volume, scope, category, and sensitivity of personal information to be transferred overseas,

and the risks to the personal information rights and interests that may be caused by the outbound transfer of personal information;

(3) the obligations that the foreign recipient promises to undertake, and whether the management and technical measures and capabilities of the foreign recipient to perform the obligations can ensure the security of the personal information to be transferred overseas;

(4) risk of tampering, damage, leakage, loss and abuse after outbound transfer of personal information, and whether the channels for individuals to exercise their personal information rights and interests are accessible and smooth;

(5) the impact of policies and regulations for the protection of personal information on the performance of the Standard Contract in the country or region where the foreign recipient is located; and

(6) other factors that may affect the security of outbound transfer of personal information.

The provincial cyberspace administration shall, within 15 working days upon receipt of the documents, complete the check of the documents and notify the personal information processor of the filing results. The provincial cyberspace administration will issue a filing number to the personal information processor if the filing is passed, otherwise, the personal information processor will receive a notice on unsuccessful filing and the reasons therefor. The processors shall supplement and consummate the documents and submit them again within 10 working days. If the parties amend or re-conclude a Standard Contract, the Standard Contract re-concluded shall be filed anew. The time limit for the check of the supplemented or re-filed documents is 15 working days.

The Standard Contract, as well as requirements for documents for filing and templates can be obtained by contacting us at shanghai@shaohe-lawfirm.com or at [+86 21 5010 6580](tel:+862150106580).

Please feel free to contact us if you have any further questions.

《个人信息出境标准合同办法》于2023年6月1日起施行

2023年6月1日，国家互联网信息办公室（网信办）《个人信息出境标准合同办法》（以下简称“《办法》”）将正式实施。凡中国境内的“个人信息处理者”（通常首先包括了向境外提供在中国境内采集的个人信息的组织和个人）均应执行。《办法》是《个人信息保护法》的配套立法文件。除特定条件下另有规定外，一般的个人信息处理者可以选择使用《办法》随附的《个人信息出境标准合同》（“标准合同”）与境外信息接收方订立合同，并将合同向网信办提交备案，从而以较为简便的方式满足个人信息出境的合规要求。

该《办法》设定了6个月的宽限期，即：个人信息处理者可以利用该宽限期，在2023年11月30日之前满足要求。

2023年5月30日，网信办又发布了与《办法》配套的《个人信息出境标准合同备案指南》（以下简称“指南”），对标准合同的备案程序作出了规范。

根据《办法》及《指南》规定，个人信息处理者应当自其与境外信息接收方订立的标准合同生效之日起10个工作日内，向其所在地的省级网信办递交书面材料，并附带材料的电子版，申请办理备案。备案申请文件包括：

- （一）统一社会信用代码证影印件
- （二）法定代表人身份证件影印件
- （三）经办人身份证件影印件
- （四）经办人授权委托书
- （五）承诺书

（六）签订的标准合同

（七）个人信息保护影响评估报告

其中，标准合同应当严格按照《办法》所附的标准合同文本订立；合同方可以另行约定补充条款，但是不得与标准文本冲突。在标准合同生效后方可开展个人信息出境活动。

备案申请文件中要求的个人信息影响评估报告，应当按照《办法》第5条规定，重点体现对下述事项的评估结果：

（一）个人信息处理者和境外接收方处理个人信息的目的、范围、方式等的合法性、正当性、必要性；

（二）出境个人信息的规模、范围、种类、敏感程度，个人信息出境可能对个人信息权益带来的风险；

（三）境外接收方承诺承担的义务，以及履行义务的管理和技术措施、能力等能否保障出境个人信息的安全；

（四）个人信息出境后遭到篡改、破坏、泄露、丢失、非法利用等的风险，个人信息权益维护的渠道是否通畅等；

（五）境外接收方所在国家或者地区的个人信息保护政策和法规对标准合同履行的影响；

（六）其他可能影响个人信息出境安全的事项。

省级网信办收到备案申请材料后，应在15个工作日内完成材料查验，并通知个人信息处理者

备案结果。通过备案的，省级网信办向个人信息处理者发放备案编号；不通过的，个人信息处理者将收到备案未成功通知及原因，并应当于10个工作日内再次提交补充完善材料。当事人修订或者重新订立标准合同的，应当重新办理备案。补充或者重新备案的材料查验时间为15个工作日。

标准合同文本，以及办理合同备案应当提交的材料要求及文书模板，可通过邮箱

shanghai@shaohe-lawfirm.com 或者电话+86 21 5010 6580 联系我们获取。

如有任何问题请随时与我们联系。

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About Shaohe Law Firm 关于劭合

Shaohe Law Firm is a full-service Chinese law firm with local expertise and global reach. Founded in 2007, Shaohe Law Firm has become one of the most trusted legal service providers for foreign, especially European, business in China.

- Shaohe Law Firm is a **PRC-licensed law firm**. We support clients in negotiations with Chinese counterparts, deal with government departments and represent clients in Chinese courts and arbitration.
- Shaohe Law Firm provides **full range of legal services** to foreign companies entering and developing in China.
- With more than 20 international and local lawyers, Shaohe Law Firm is one of the largest **German-speaking** laws firm in the country.
- As an independent law firm headquartered in Shanghai, we support you **all over China and cross borders**. We maintain a close cooperative relationship with other local firms in China and in other jurisdictions.

劭合律师事务所是一家在中国注册的律师事务所。我们拥有本地专业知识和全球视野。劭合律师事务所成立于2007年，目前已成为外资企业（特别是欧洲企业）在中国最信赖的法律服务提供者之一。

- 劭合律师事务所是一家在中国注册的律师事务所。我们代表客户与中国合作伙伴谈判，与政府部门进行磋商，同时也代理诉讼和仲裁。
- 劭合律师事务所帮助外资企业开拓中国市场以及在中国获得长久的发展提供全方位的法律服务。
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