

New draft for measures on Cybersecurity Law provides for further restrictions

On June 13th, 2019, the Cyberspace Administration of China (CAC) published a new draft of measures concerning Cybersecurity Law of China. Among other things, the draft provides for a comprehensive tightening of security assessment regarding the export of personal data. Companies that are dependent on cross-border data transfers, in particular in the e-commerce sector, may in the future have to expect noticeably more bureaucratic obstacles. The draft was open for comment until July 13th, 2019. It is not clear yet, when and with what amendments the new measures will come into force.

EXPANDED SCOPE FOR SECURITY ASSESSMENT OBLIGATION

Under the new measures, all network operators that transfer personal data from China to a third country (and thus de facto all companies doing business in China) are now required to carry out a security assessment. Under previous legislation, only so-called critical infrastructure operators were required to carry out such an assessment.

Additionally, Article 20 of the draft measures require foreign companies that do not operate an own business entity in China but collect personal data from users there – for example because they have Chinese customers – to also carry out a security assessment. And as part of the security assessment, the companies will be required to present a domestic representative in China. For foreign companies that are only occasionally active in China, this could mean more bureaucracy and a noticeable worsening of the legal situation.

STRICTER SUPERVISION BY AUTHORITIES AND DATA TRANSFER CONTRACT

The draft also foresees stricter supervision: Network operators are now actively obliged to submit a comprehensive report to the authorities on a regular basis (usually annually). Until now, the authorities have only taken action if there was actual information about a personal data violation. As far as the obligation to keep records is concerned, Article 8 of the measures will require companies to keep detailed logs of data transfers to third countries. Furthermore, the new draft will oblige companies which transfer data to third countries to conclude a "data transfer contract". This contract must contain general liability provisions.

RECOMMODATIONS

The implementation of the measures and requirements by enterprises, in particular foreign invested enterprises means a great deal of paper work, lengthy assessment process, uncertainty of authority discretion, extra administrative burdens for regular reporting and recording etc. Before the effectiveness of the draft, foreign invested enterprises may already begin to consider the following:

- Whether such personal information transfer could possibly be reduced by data localization in China and to consider exploring the possibility to adjust the strategy of oversea data processing or centralized data storage in the company headquarter;
- Whether or what kind of personal information must be transferred to the parent company or affiliated companies abroad during the daily business operation of the company;
- Starting to communicate with data recipients for terms and conditions for cross-border data transfer, e.g. based on the standard contractual clauses under the EU General Data Protection Regulation (GDPR).
- Start to keep records of the cross-border transfer of personal information. Based on the purposes and necessity of such cross-border transfer, it could also make sense to start to

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prepare an assessment report for personal information export security risk and safety guarantee measures etc.

In view of the fact that the implementation of the safety assessment is practically for many companies a previously unknown task, the first steps may prove difficult. Our law firm therefore is available to assist you with the process.

CONTACT FOR MORE INFORMATION



Sebastian Wiendieck
sebastian.wiendieck@roedl.com



Wang Li
li.wang@roedl.com

Our Offices in China			
Shanghai Office 31/F LJZ Plaza 1600 Century Avenue Pudong District Shanghai shanghai@roedl.com T +86 21 6163 5200 F +86 21 6163 5310	Beijing Office Suite 2200 Sunflower Tower 37 Maizidian Street Chaoyang District, Beijing peking@roedl.com T +86 10 8573 1300 F +86 10 8573 1399	Guangzhou Office 45/F, Metro Plaza 183 Tian He North Road Guangzhou kanton@roedl.com T +86 20 2264 6388 F +86 20 2264 6390	Taicang Office 16/F Dong Ting Building Middle Zheng He Road 319 215400 Taicang taicang@roedl.com T +86 5125 3203 171