



2024/03/26

China Unveils Measures to Promote and Standardize Cross-border Data Flow

The announcement by the State of Council of China on March 19, 2024 of the Action Plan to Boost Foreign Investment ([click here for our Flash Info on the topic](#)), has once again shed a light on the need to facilitate Cross-Border Data Flows between FIEs and their overseas headquarters.

Given this context, on March 22, 2024, the Cyberspace Administration of China (CAC) published the **Regulations on Promoting and Regulating Cross Border Data Flows** (the “Regulation”) and thus confirmed the content of the draft measures published on September 28, 2023.

These provisions will ease the compliance burden for foreign companies in China although some issues, in particular the question of “important data”, remain.

Here are some key takeaways from the Regulation:

1.Exemptions

The following cross border data transfers are exempt from the need of a data transfer mechanism (i.e. CAC Data Security Assessment, standard contract, or personal information protection certification):

- data transferred (not containing personal information or important data) are collected and generated in activities such as international trade, cross-border transportation, academic cooperation, cross-border manufacturing and marketing;
- personal information collected and generated overseas, transferred to China for processing and then provided overseas, without the addition of domestic personal information or important data introduced during the processing in China;
- the personal information that necessarily need to be transferred for the performance of a contract to which the individual is a party (e.g. cross-border shopping, cross-border delivery, cross-border remittance, cross-border payment, cross-border account opening, air ticket and hotel booking, visa processing, examination services etc.);
- necessary transfer of personal information of employees for HR management according to labor rules or collective employment contracts;
- the personal information are necessarily transferred to face an emergency situation to protect life, health and property of individuals;
- the aggregated transfer of non-sensitive personal information does not exceed 100.000 individuals since Jan. 1 of the current year.

2.What are the situations requiring to apply to the CAC Data Security Assessment ?

CAC Data Security Assessment is necessary in the following situations:

- transfer of personal information or important data overseas by Critical Information Infrastructure Operators (CIIO);
- data controllers, other than CIIO, providing important data overseas, or providing (since Jan 1 of the current year) personal information of more than 1 million people (excluding sensitive personal information) or sensitive personal information of more than 10,000 people.

The validity of CAC Data Security Assessment is brought to 3 years instead of 2 years previously.

3. When is a standard contract or certification necessary?

Data controllers, other than CIIO, must conclude a standard contract with the overseas recipient, or pass the certification when they transfer overseas (for the year of reference):

- personal information (excluding sensitive personal information) of more than 100,000 people but less than 1 million people,
- sensitive personal information of less than 10,000 people.

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