

# PRC Measures on Standard Contract for Outbound Transfer of Personal Information

On 24 February 2023, the Cyberspace Administration of China (网信办) (**CAC**) issued the PRC Measures on the Standard Contract for Outbound Transfer of Personal Information (**Measures**), which come into effect on 1 June 2023. The Measures are the secondary legislation for the PRC Cybersecurity Law, the PRC Personal Information Protection Law (**PIPL**) and the PRC Data Security Law and include an annexed standard contract for outbound transfer of personal information (**Standard Contract**). The salient terms of the Measures are summarised below.

## SC Route

The term “SC Route” refers to an entity established in the People’s Republic of China (**PRC**) which enters into a data transfer agreement (**DTA**) in line with the Standard Contract with a foreign recipient for the purpose of outbound transfer of personal information. The SC Route applies where:

- (a) The personal information to be transferred is below the statutory threshold; and
- (b) No “important information” is involved.

The aforesaid “statutory threshold” requires that the personal information processor:

- (a) Is not a critical information infrastructure operator;
- (b) Has processed the personal information of fewer than 1 million individuals;
- (c) Has transferred abroad the personal information of fewer than 100,000 individuals since 1 January of the previous year; and
- (d) Has transferred abroad the sensitive personal information of fewer than 10,000 individuals since 1 January of the previous year.

For completeness, if the volume of the personal information transferred exceeds the statutory threshold, then there is a need to undergo a security assessment organised by CAC.

## Personal Information Protection Impact Assessment (PIPIA)

The SC Route seems to be the simplest way to transfer personal information overseas. However, a DTA in accordance with the Standard Contract is not the only thing a personal information processor needs to do. According to Article 55 of the PIPL, the processor must perform a PIPIA prior to any outbound transfer of personal information. Article 5 of the Measures provides that:

*Prior to outbound transfer of personal information, a personal information processor must perform a personal information protection impact assessment.*

Therefore, even if the SC Route is adopted and a DTA is signed, a PIPIA is still required. In short, a PIPIA involves due diligence on all segments of the outbound transfer of personal information and an assessment of the legitimacy, reasonableness, risk and necessity of the outbound transfer based on the due diligence results.

## Filing of Standard Contract

The Standard Contract must be filed with the local CAC within ten business days after it takes effect, together with the PIPIA report. It remains to be seen whether the local CAC will scrutinise the details of the signed DTA and the PIPIA report or merely accept the filing for record purposes only.

## Deviation from Standard Contract

Article 6 of the Measures stipulates that the DTA must strictly comply with the Standard Contract and the Standard Contract will prevail over the DTA to the extent of any inconsistencies and conflicts. However, Article 6 further provides that the parties may deviate from the Standard Contract as long as the agreed terms and conditions do not conflict with the Standard Contract. Notably, it is provided that the CAC is entitled to amend the Standard Contract from time to time and the signing parties to the DTA will need to comply with such amendments as and when they become effective.

## Dispute Resolution

Article 9 of the Measures provides that the DTA must be governed by PRC law and disputes should be resolved *via* PRC court litigation or arbitration by an arbitration institution recognised by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Article 9 also clarifies that only institutional arbitration (not *ad hoc* arbitration) is allowed.

## Grace Period

Article 13 of the Measures provides for a six-month grace period until 1 December 2023 for rectification of outbound transfers which occurred before the Measures took effect (i.e., before 1 June 2023).

The Measures are the first specific secondary legislation on the Standard Contract for the outbound transfer of personal information from the PRC. The obligations imposed therein will have significant implications for foreign companies operating in the PRC. Multi-national corporations with operations in the PRC should be mindful of these implications and take the necessary steps to comply with requirements before the expiry of the six-month grace period (i.e., 1 December 2023).

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:



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