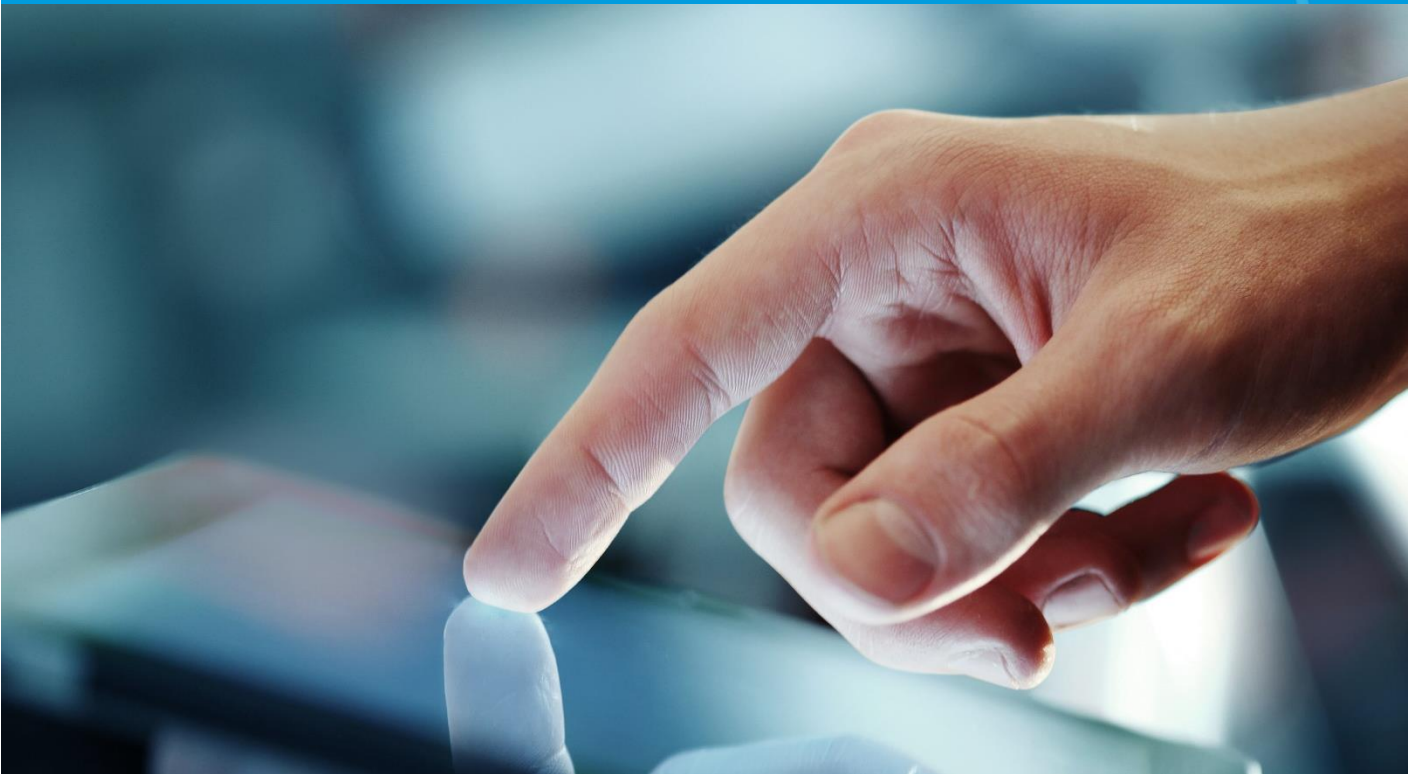


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## PRC law alert – New legislation on export of personal information

### 中国法律更新 - 关于个人信息出境的新立法



On 24 February 2023, the Cyberspace Administration of China (**CAC**) officially published the Measures on the Standard Contract for Export of Personal Information (**Measures on Standard Contract**, effective from 1 June 2023), the previous version of which was published in the form of draft legislation on 30 June 2022 under the name Regulation on the Standard Contract for Export of Personal Information. A standard contract for export of personal information (**PRC Standard Contract**) is attached to the Measures on Standard Contract.

国家互联网信息办公室（网信办）于 2023 年 2 月 24 日正式颁布了《个人信息出境标准合同办法》（**标准合同办法**，自 2023 年 6 月 1 日正式生效），其先前版本为《个人信息出境标准合同规定》，该版本以征求意见稿形式已于 2022 年 6 月 30 日发布。个人信息出口标准合同（**中国标准合同**）作为附件附于该标准合同办法。

The Measures on Standard Contract supplements the previous Measures on the Security Assessment of Data Export (**Measures for Security Assessment**, published on 7 July 2022 and effective from 1 September 2022). 标准合同办法填补了之前《数据出境安全评估办法》（**安全评估办法**，于 2022 年 7 月 7 日发布，自 2022 年 9 月 1 日起生效）未涵盖的部分。

These two measures mentioned above, together with the Security Certification Specifications for Cross-border Processing of Personal Information, set out the PRC regulatory regime for data export, covering both personal information and important data.

上述两个办法以及《个人信息跨境处理活动安全认证规范》共同构成了中国的数据出境（涵盖个人信息和重要数据）的监管制度。

A data exporter is required under the Measures for Security Assessment to carry out a compulsory data export security assessment (**DESA**) where any of the following criteria (**DESA Threshold**) is triggered, 安全评估办法要求数据出境方在触发以下任何标准（**数据出境安全评估门槛**）之一时须进行强制性数据出境安全评估（**数据出境安全评估**），

- (a) The information to be export is important data<sup>1</sup>;  
向境外提供重要数据<sup>2</sup>;
- (b) The data exporter is a CII operator<sup>3</sup>;  
数据出境方是关键信息基础设施运营者<sup>4</sup>;
- (c) The data exporter has processed personal information of more than 1 million individuals;  
处理 100 万人以上个人信息的数据出境方向境外提供个人信息;
- (d) The data exporter has exported personal information of more than 100,000 individuals (in aggregate) since 1 January of the preceding year; and  
自上年 1 月 1 日起数据出境方累计向境外提供 10 万人个人信息; 和
- (e) The data exporter has exported sensitive personal information of more than 10,000 individuals (in aggregate) since 1 January of the preceding year.  
自上年 1 月 1 日起数据出境方累计向境外提供 1 万人敏感个人信息。

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<sup>1</sup> “Important data/information” is a concept appearing for the first time in the Cybersecurity Law in 2016. So far there is no clear definition of “important data/information” in the effective legislation. In some draft legislation, “Important Data” has been defined as the data (including original data and derived data) collected or developed by relevant organisations, institutions and individuals within the territory of China, which do not involve state secrets but are closely related to national security, economic development and the public interests, and which if disclosed, lost, misused, tampered with or destroyed, or combined, integrated or analysed without authorisation, would cause severe adverse influences on national security, state economic and financial security, social and public interests or individual legal rights and interests. Important data could be grouped by industry and/or region. Some examples of important data in different industries, information related to natural resources and energy, telecom information, data related to steel and nonferrous industry, nuclear facilities information, national security and military industry, geographical data, chemistry industry data, certain transportation data, data on the population and health, certain financial information, meteorological data, etc.

<sup>2</sup> “重要数据/信息”是 2016 年《网络安全法》中首次出现的概念。到目前为止，有效立法中还没有关于“重要数据/信息”的明确定义。在一些立法草案中，“重要数据”指相关组织、机构和个人在中国境内收集、产生的不涉及国家机密，但与国家安全、经济发展和公共利益密切相关的数据（包括原始数据和衍生数据），一旦未经授权披露、丢失、滥用，篡改或销毁，或汇聚、整合、分析后，对国家安全、国家经济和金融安全、社会公共利益或个人合法权益造成严重不利影响。重要数据可按行业和/或地区来分类。不同行业的重要数据举例：与自然资源和能源有关的信息、电信信息、与钢铁和有色金属工业有关的数据、核设施信息、与国家安全和军事工业有关的数据、地理数据、化学工业数据、某些部分交通运输数据、人口和健康数据和气象数据等。

<sup>3</sup> Critical information infrastructure (“**CII**”) is defined as the important network infrastructure and information system, the destruction, loss of function or data leakage of which could seriously harm the state security, national economy, people’s livelihood and public interests. We understand if a PRC entity is identified as a CII operator, it will be notified by the relevant authority in charge of the relevant industry to which the CII belongs to.

<sup>4</sup> 关键信息基础设施是指重要网络设施和信息系统，一旦遭到破坏、丧失功能或数据泄露，可能严重危害国家安全、国计民生和公共利益。据我们了解，如果任何一家中国实体被认定为关键信息基础设施运营者，则其将收到由该关键信息基础设施运营者所属相关行业的相关主管部门发出的认定通知。

Where none of the DESA Threshold is triggered, the data exporter is allowed to provide personal information to overseas recipient by entering the PRC Standard Contract and preparing a report on personal information protection impact assessment (**PIPIA Report**) in accordance with the Measures on Standard Contract. Export of personal information is only allowed to be carried out after the executed PRC Standard Contract becomes effective. Furthermore, the data exporter is required to file the executed PRC Standard Contract with the local CAC at provincial level within 10 working days from the effective date of the executed PRC Standard Contract, and for the purpose of such filing, the executed PRC Standard Contract and the PIPIA Report should be submitted.

如未触发数据出境安全评估门槛，数据出境方在根据标准合同办法签署了中国标准合同及编制了个人信息保护影响评估报告后可以向境外接收方提供个人信息。只有中国标准合同生效后方可开展个人信息出境活动。此外，数据出境方应当在中国标准合同生效之日起 10 个工作日内向所在地的省级网信部门备案，并须提交已签署的中国标准合同和个人信息保护影响评估报告。

Clause 6<sup>5</sup> of the Measures on Standard Contract provides that a data exporter is required to enter into the PRC Standard Contract strictly in the form appended to the Measures on Standard Contract, and if any additional terms are entered into between the data exporter and the overseas recipient, they shall not be in conflict with the terms of the PRC Standard Contract.

标准合同办法第 6 条<sup>6</sup> 规定，数据出境方必须严格按照标准合同办法所附附件签订中国标准合同，如果数据出境方与境外接收方之间签订了任何附加条款的，该等附加条款不得与中国标准合同的条款相冲突。

The Measures on Standard Contract set a grace period of 6 months from its effective date, namely a grace period expiring on 30 November 2023.

标准合同办法规定了自生效之日起 6 个月的宽限期，即宽限期到期日为 2023 年 11 月 30 日。

The guideline for DESA under the Measures for Security Assessment has already been released on 31 August 2022 and effective from 1 September 2022, the same date with the effective date of the Measures for Security Assessment. We envisage that a guideline for the requisite filing under the Measures on Standard Contract may be published in the coming months for data exporters to follow.

安全评估办法下的数据出境安全评估申报指南已于 2022 年 8 月 31 日发布并于 2022 年 9 月 1 日起生效，该指南生效日期与安全评估办法的生效日期相同。我们预计在未来数月内相关部门会颁布与标准合同办法配套的备案指南，供数据出境方遵循。

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<sup>5</sup> The standard contract shall be entered into strictly in line with the form set out in the appendix to these Measures. Subject to the actual circumstances, the national cyberspace department may make further adjustment to the appendix. The personal information handler may enter into other terms with the overseas recipient provided that these terms will not be in conflict with the standard contract.

<sup>6</sup> 标准合同应当严格按照标准合同办法的附件订立。国家网信部门可以根据实际情况对附件进行调整。个人信息处理者可以与境外接收方约定其他条款，但不得与标准合同相冲突。

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