

PRC Provisions on Promoting and Regulating Cross-border Transfer of Data

On 22 March 2024, the Cyberspace Administration of China (网信办) (CAC) issued the PRC Provisions on Promoting and Regulating Cross-border Transfer of Data (促进和规范数据跨境流动规定) (**Promoting Provisions**). The Promoting Provisions, which took effect on 22 March 2024, aim to alleviate the compliance burden of companies regarding cross-border data transfer, especially those which effect only small and medium volume cross-border data transfers. This update summarises the salient terms of the Promoting Provisions.

Background

Since 2021, the People's Republic of China (PRC) has promulgated various legislation governing cross-border data transfers. Before the Promoting Provisions, companies dealing with large volumes of data or important data or which are identified as critical information infrastructure operators (CIIOs) were required to conduct security assessments, while other companies were required to sign and file a standard cross-border data transfer contract (**Standard Contract**) for personal information or apply for personal information protection certification before transferring data abroad. Due to the absence of a certification mechanism, companies typically filed Standard Contracts to comply with data transfer obligations.

After the implementation of such legislation, the CAC was faced with a huge volume of filings. To reduce the compliance burden on companies (and reduce the CAC's workload) and to better promote cross-border data transfers, the CAC issued the Promoting Provisions to assist multinational corporations (MNCs) operating in the PRC and domestic companies going overseas.

Changes Brought About by the Promoting Provisions

The Promoting Provisions expressly provide that they will prevail over any conflicting requirements found in previous legislation, thereby effectively amending (where relevant) the Measures for Security Assessment of Cross-border Data Transfer and the Measures for Standard Contracts of personal Information Cross-border Transfer and any other related rules. The changes brought about by the Promoting Provisions are as follows:

Time period for calculating outbound transfer data volume

- (a) **Previously:** from 1 January of the immediately preceding calendar year.
- (b) **Current amended position:** from 1 January of the current calendar year.

Threshold for triggering obligations

- (a) **Previously:** Security assessment, Standard Contract filing or certification would be triggered when the number of persons whose sensitive personal information was transferred abroad reached 10,000, or the number of persons whose personal information was transferred abroad reached 100,000.

(b) **Current amended position:** Compliance obligations are amended as follows:

Number of Persons whose Personal Information is to be Transferred Abroad	Compliance obligations
Below 100,000 (provided no sensitive personal information)	N.A.
Between 100,000 and 1,000,000 (provided no sensitive personal information)	Standard Contract filing or personal information protection certification
Below 10,000 (sensitive personal information)	Standard Contract filing or personal information protection certification
More than 10,000 (sensitive personal information)	Security assessment
More than 1,000,000 (no distinction between sensitive personal information or non- sensitive personal information)	Security assessment

Exemptions

The Promoting Provisions provide for the following exemptions:

- (a) **Exemptions based on contract formation and performance:** Where the provision of personal information is essential for fulfilling a party’s contractual obligations. This is particularly useful for cross-border money remittances, account opening, examination services (e.g., IELTS, TOEFL), online shopping, hotel and flight booking, visa applications, etc.
- (b) **Exemptions based on human resources (HR) management:** Where the provision of personal information is essential for HR management according to HR rules, collective employment contracts, and HR policies and regulations. This will assist MNCs in their integrated and centralised HR administration.
- (c) **Exemptions for protecting life and property:** Where the provision of personal information is essential for protecting the life, health and property of natural persons in an emergency.
- (d) **Exemptions related to “important data”:** The Measures for the Security Assessment of Cross-border Data Transfer requires companies dealing with and transferring “important data” abroad to submit a security assessment declaration to the CAC. However, the CAC has not yet published the list of said important data for most industries. The Promoting Provisions provide that companies do not need to perform the security assessment solely because important data is involved, if:
 - (i) The company is not notified by authorities that it processes important data; and
 - (ii) The data involved has not been publicly announced as important data.

This is helpful to eliminate confusion over the classification of “important data” and provide temporary relief from compliance obligations.

- (e) **Exemptions related to data transition:** This exemption is available if the personal information or important data concerned is not collected or generated within the PRC, but is transferred through the PRC abroad to a foreign country. This assists PRC companies offering data processing services for data collected or generated overseas and provides an inclusive space for PRC companies to integrate with international markets.
- (f) **Exemptions for free trade zone companies:** Free trade zones are entitled to formulate their own data negative list (which sets out a list of data which cannot be transferred without filing, certification or security assessment) and companies within free trade zones may transfer data abroad without filing, certification or assessment as long as the information is not on the negative list after it is approved by the provincial level CAC.

Concluding Remarks

The Promoting Provisions will alleviate some of the compliance burden faced by companies operating in the PRC which need to transfer data abroad. Such companies should be mindful of the implications of this legislation and take the necessary steps to comply with its requirements.

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: 如果您希望获得有关上述或任何其他法律领域的信息或协助，可联系您通常合作的王律师事务所的合伙人或以下任何一位合伙人



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