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Introduction



Throughout the year, we have been keeping you up to date on noteworthy developments across the region with our Regional Round-up Publications. As we enter 2022, we are pleased to share with you our *2021 year-in-review of the Regional Round-up* for our Regional Offices in the Rajah & Tann Asia network.

In each jurisdiction, we recount the key milestones in the path that has been travelled in 2021, as well as consider the terrain of the road that lies ahead in 2022. In the "**Looking Back: 2021**" section, we take stock of the past year and highlight the key legal and regulatory developments affecting each jurisdiction in 2021. In the "**Gazing Into: 2022**" section, we look ahead to some key areas of development that you should take note of in the year to come, referencing the legal and business trends shaping up potential legislative and regulatory changes in each jurisdiction.

We hope that this year-in-review edition of the Regional Round-up provide some perspective and insight into the legal landscape of the jurisdictions across the region. As always, please feel free to contact our lawyers in our Regional Offices if you have any queries or for further discussions.

Please click on the links below to access the full collection of our country-specific *2021 year-in-review of the Regional Round-up*:

- [Cambodia](#)
- [China](#)
- [Indonesia](#)
- [Laos](#)
- [Malaysia](#)
- [Myanmar](#)
- [Philippines](#)
- [Singapore](#)
- [Thailand](#)
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Looking Back: 2021

Looking back on 2021, the world was facing unprecedented changes and struggling with the challenges brought about by the pandemic of the century, the **COVID-19 pandemic**. In contrast, China in that same year has further opened its markets to **foreign investments** and continued to provide strong impetus for the steady recovery of the global economy. For example, on the national level, the National Development and Reform Commission and the Ministry of Commerce jointly issued in December 2021 the updated versions of **two "negative lists"** for the access to foreign investment in China, both of which have taken effect on 1 January 2022, replacing their respective 2020 versions. On the regional level, further to the Master Plan for Construction of Hainan Free Trade

Port which has been rolled out since 1 June 2020, China passed the **Hainan Free Trade Port Law** on 20 June 2021, marking a significant move to upgrade the construction of the Hainan free trade port covering areas from policy support to legislative guarantee.

Together with the opening up of the market, China also focused on **data security and protection** by promulgating two very important laws in the year of 2021, namely, the **Data Security Law** and the **Personal Information Protection Law**. A number of (draft) implementation rules and industry regulations have also been finalised and/or released, such as the Regulations/Rules on: (i) the **Protection of the Security of Critical Information Infrastructure** which came into force on 1 September 2021; (ii) the **Management of Automobile Data Security (for Trial Implementation)** which took effect on 1 October 2021; (iii) the **Measures on Security Assessment of Cross-Border Data Transfer (Draft for Comments)**; and (iv) the **Measures on Network Security Assessment (Draft Revision for Comments)**. These laws and regulations demonstrate the Chinese government's determination and efforts to safeguard data security. It is expected that more detailed rules relating to these will be issued in the year of 2022.

As the tensions between China and the United States over trade and technology have not been eased in 2021, China has promulgated various regulations and/or policies to **safeguard** its **national security and interests** as well as to push back against certain foreign discriminatory restrictive measures. Such regulations include the **Measures for Security Review of Foreign Investment**, the **Anti-Foreign Sanctions Law Measures**, and the **Rules on Counteracting Unjustified Extra-territorial Application of Foreign Laws**.



Summaries of the key developments relating to the above areas are provided below.

Trade – Law on Hainan Free Trade Port

China passed the Hainan Free Trade Port Law on 10 June 2021, marking a significant move to upgrade the construction of Hainan free trade port from policy support to legislative guarantee. Click [here](#) for more information.

Cybersecurity / Data Protection – Data Security Law and Personal Information Protection Law

Two important laws on data security and protection took effect in 2021. These are the Data Security Law ("**DSL**") which came into force on 1 September 2021 and the Personal Information Protection Law ("**PIPL**") which came into operation on 1 November 2021. The DSL, the PIPL and the Cybersecurity Law which came into effect on 1 June 2017, form the core tenets of cybersecurity and data protection in China.

The DSL comprises 55 Articles spread across 7 Chapters, and deals with important issues such as Data Security and Development, Data Security Systems, Data Protection Obligations, and Security and Openness of Governmental Data. Article 2 of the Data Security Law states that it applies to data processing activities within China. Further, legal responsibility would be pursued against data processing activities that take place outside China, if such activities would harm China's national security or public interests, or the lawful rights of its citizens and organisations. This gives the DSL extraterritorial powers. Click [here](#) for more information.

The PIPL applies to Personal Information processing activities within the territory of the People's Republic of China ("**PRC**"). In addition, it is also applicable to Personal Information processing activities outside the territory of the PRC, if such activities relate to: (i) the provision of goods or services to natural persons within the territory of the PRC; (ii) the analysis and evaluation of the actions of natural persons within the territory of the PRC, and (iii) other situations provided for by laws or administrative regulations. Click [here](#) for more information.

Cybersecurity / Data Protection – Regulation on Protecting Security of Critical Information Infrastructure

The Regulation on Protecting Security of Critical Information Infrastructure ("**CII Regulation**") came into force on 1 September 2021. It provides more clarity on the CII protection regime which was first introduced in China under the 2017 Cybersecurity Law.

Critical Information Infrastructure ("**CII**") is defined under the CII Regulation as "*important network facilities and information systems in important industries and sectors, and those whose destruction, loss of function or data leakage could seriously harm national security, the national economy, people's livelihoods, and the public interest*". The CII Regulation highlights a few "important industries and sectors" where CIIs will be identified, including public communications and information services, energy, transportation, water conservancy, finance, public services, e-government, and the national defence technology industry. Click [here](#) for more information.

Cybersecurity / Data Protection – Regulations on Management of Automobile Data Security

Several Regulations on the Management of Automobile Data Security (for Trial Implementation) ("**Automobile Data Regulations**"), which were jointly promulgated by five departments / ministries of China (including the Cyberspace Administration of China and the PRC Ministry of Industry and Information Technology), took effect on 1 October 2021. Article 3 of the Automobile Data Regulations provides for the definition of Personal Information, Sensitive Personal Information, and Important Data. The Automobile Data Regulations expressly define the scope of important data for the automotive industry ("**Important Data**") as the "*data which once tampered with, damaged, leaked or illegally obtained or utilized, may endanger national security, public interests or the legitimate rights and interests of individuals and organizations*".

The Automobile Data Regulations set out four key principles for handling personal information and Important Data: (i) the Principle of processing data inside vehicles; (ii) the Principle of non-collection by default; (iii) the Principle of applying the appropriate range of

accuracy; and (iv) the Principle of processing with de-sensitisation. Click [here](#) for more information.

Foreign Investment – Application of Foreign Investment Security Review Rules Expanded

The Measures for Security Review of Foreign Investment ("**SR Measures**") was jointly issued by the PRC National Development and Reform Commission and the Ministry of Commerce on 19 December 2020. The SR Measures consist of 23 rules, covering, among others, the types of foreign investment which will be subject to review, the regulatory authority, scope of national security review, review procedures and timelines, and implementation and consequences of violations.

Compared with the PRC national security review mechanism introduced in 2011 that focused exclusively on the mergers and acquisitions of domestic enterprises by foreign investors, and the national security review trial regime launched in 2015 applicable only in the free trade zones, the SR Measures have introduced a revised national security review regime, expanding its application nationwide for different types of foreign investment. This is encapsulated in the SR Measures, which came into force on 18 January 2021. Click [here](#) for more information on the SR Measures.

Foreign Sanctions – Rules on Counteracting Unjustified Extra-territorial Application of Foreign Laws

On 9 January 2021, the Ministry of Commerce of China ("**MOFCOM**") issued the Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures ("**Blocking Rules**"), which came into force on the date of its promulgation.

The Blocking Rules consist of 16 articles, which establish blocking mechanisms against the improper application of the "long-arm jurisdiction" of foreign laws and sanctions ("**Foreign Sanctions**") on Chinese entities through various measures, including:

- (i) imposing reporting obligations on Chinese citizens, legal entities and other organisations adversely affected by the Foreign Sanctions within 30 days;
- (ii) establishing a working mechanism to assess and determine the existence of unjustified extra-territorial application of the Foreign Sanctions;

- (iii) issuing prohibition orders ("**Prohibition Orders**") declaring the Foreign Sanctions unjustifiable and unenforceable, and prohibiting the acceptance, execution, or observation of relevant foreign legislation and other measures;

- (iv) allowing Chinese entities to apply to MOFCOM for exemption from compliance with the Prohibition Orders; and

- (v) allowing Chinese entities adversely affected by the Foreign Sanctions to seek civil recourse in Chinese courts from entities which have infringed such Chinese entities' legitimate rights and interests by complying with the Foreign Sanctions.

Click [here](#) for more information.

Foreign Sanctions – Anti-Foreign Sanctions Law

On 10 June 2021, China promulgated the Anti-Foreign Sanctions Law ("**AFSL**"), which came into effect on the same day. Together with the earlier-enacted Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures (*see preceding write-up*) as well as the Regulations on the Unreliable Entity List and various other rules and regulations, China has implemented a number of legal and regulatory measures to push back against foreign discriminatory restrictive measures.

According to the AFSL, the State Council of China has the right to formulate the Counter Sanction List to include individuals or organisations that *directly* or *indirectly* participated in the formulation, decision-making, or implementation of the discriminatory restrictive measures in such Counter Sanction List. Counter measures may also be taken against the individuals and organisations affiliated with the targeted individuals and organisations on the Counter Sanction List as decided by the State Council of China. Click [here](#) for more information.

Gazing Into: 2022

2022 is likely to witness the further opening-up of the China market for foreign investment alongside the tightening of regulations in relation to some aspects of business operations. In response to the negative impact of the COVID-19 pandemic on China's economy and to deliver on its commitments to open up its economy, China will continue to press ahead with the reforms to **streamline administration, improve regulation, and upgrade services** (which is called "放管服" in Chinese) to further optimise the business operation environment for all domestic and foreign investors.

The **2021 Negative Lists** (defined below) have been further shortened, signalling the Chinese government's continuous attempts to **attract foreign investments**.



After around 40 years' implementation of reform and opening-up policies, China has become the world's second largest economic power. Despite this, it is also facing various challenges and issues brought about by the rapid growth of capital, resulting in an unstable and unbalanced social and economic development. It is against this backdrop that President Xi has called for China to achieve "**Common Prosperity (共同富裕)**". In the coming year, China will continue its efforts to reform its existing regulatory regime and strengthen supervision to prevent the uncontrolled growth and disorderly expansion of capital and to promote a healthy and stable social and economic environment. These efforts include:

- reshaping China's **regulatory regime for overseas listing**;
- ongoing amendments to the **Company Law (second substantial amendments)**; and
- continued **enhancement of anti-monopoly enforcement**.

Last but not least, **data protection** will continue to be the China regulators' focus in 2022. China regulators have rolled out several data enforcement campaigns in 2021, the most significant of which was the enforcement against Didi, which announced on 3 December 2021 that it would delist from the New York Stock Exchange (NYSE) and pursue a listing in Hong Kong instead. As we are in an era of big data, data security and protection are to be taken to relate not only to individual privacy but also to national security. China will continue to strengthen its **data enforcement** following the passage of the **Data Security Law ("DSL")** and the **Personal Information Protection Law ("PIPL")**. The basic legal framework of data protection has been established in China through the DSL and PIPL coming into operation. However, it remains to be

seen how the general requirements and principles stipulated under these laws are implemented.

Summaries of some of the developments leading to the trends highlighted above are provided below.

Foreign Investment – Further Opening-up of China Market for Foreign Investment

The National Development and Reform Commission and the Ministry of Commerce unveiled two shortened negative lists for foreign investment on 27 December 2021, namely, the Special Administrative Measures for Foreign Investment Access (Negative List) (2021 Edition) ("**2021 National Negative List**") and the Special Administrative Measures (Negative List) for Foreign Investment Access in Pilot Free Trade Zones (2021 Edition) ("**2021 FTZ Negative List**") (collectively, the "**2021 Negative Lists**"). The 2021 Negative Lists came into force on 1 January 2022. Compared to their respective 2020 versions, the restrictive measures found in the 2021 National Negative List has been cut down from 33 to 31, and those in the 2021 FTZ Negative List has been reduced from 30 to 27. In the 2021 Negative Lists, the foreign ownership limits in passenger vehicle manufacturing and the rules restricting a foreign company from establishing more than two joint ventures producing similar vehicles have been removed, signaling that the automobile sector will be completely open to foreign investors.

Capital Markets – Reshaping China Regulatory Regime for Overseas Listing

On 24 December 2021, the China Security Regulatory Commission released the Provisions of the State Council on the Administration of Overseas Securities Offering and Listing by Domestic Enterprises (Draft for Comments) and the Administrative Measures for the Record-filing of Overseas Securities Offering and Listing by Domestic Enterprises (Draft for Comments) (collectively, the "**Draft Overseas Listing Rules**"). The Draft Overseas Listing Rules seek to create a uniform regulatory regime to impose a record-filing obligation on all the domestic companies that are seeking to raise funds on the overseas capital markets directly or indirectly. The intention is not to delink or decouple the Chinese companies from the global financial system. Instead, it aims to ensure that overseas listings shall comply with the domestic laws. However, it is anticipated that indirect overseas listing, including listing via variable interest

entity (VIE) structure and special-purpose acquisition companies, would not be as easy as before. The comment period for the above drafts ends on 23 January 2022.

Corporate Commercial – Second Substantial Amendments to the Company Law

On 24 December 2021, the Standing Committee of National People's Congress of People's Republic of China released the Company Law (Draft Revision) for public comments. The comments period will end on 22 January 2022. The Company Law enacted in 1993 has undergone five amendments to date. The first substantial amendments were made in 2005. The current public consultation marks the second round of substantial amendments. The proposed amendments include a number of remarkable reforms including, but not limited to: (i) introducing an authorised capital system and multi-class shares for joint stock companies; (ii) exemption from board supervisor requirements under specified circumstances; (iii) specifying ESG (environment, social and governance) obligations of companies; and (iv) enhancing the fiduciary duty of directors, senior executives and board supervisors. This new round of amendments to the Company Law is in response to the gap between the law as set out in the books and the law as practiced in China, and also represents an attempt to make the Company Law more in line with the international practice on the other hand.

Competition & Antitrust – Continued Enhancement of Anti-monopoly Enforcement

The State Administration for Market Regulation ("**SAMR**") has intensified anti-monopoly enforcement actions in 2021, especially against the big tech companies. SAMR imposed record fines of around RMB 18.23 billion and RMB 3.44 billion against Alibaba and Meituan on 10 April 2021 and 8 October 2021 respectively due to their "Pick One out of Two" requirements which unlawfully restrict competition among e-commerce platforms.

SAMR also imposed fines on various companies due to their failure to go through merger-control formalities. On 20 November 2021, the SAMR released another batch of penalty decisions against 43 past deals (including acquisition transactions by Baidu, Tencent, Alibaba, Didi, Ele.me, and JD), with a fine of RMB 500,000 for each violation, which is the maximum fine.

The Amendments to the Anti-monopoly Law (Draft for Comments) were released on 23 October 2021, proposing changes in both substantive and procedural aspects of the Anti-monopoly Law. Monopoly is regarded one of the major contributors to wealth inequality. Following the re-emphasis of "Common Prosperity" by President Xi in 2021, it is expected that China will continue strengthening its anti-monopoly enforcement.

Cybersecurity / Data Protection – Various Implementing Data Regulations and Tightened Data Law Enforcement Expected

2021 has witnessed the coming into force of two important data laws, namely, the [Data Security Law](#) ("DSL") and the [Personal Information Protection Law](#) ("PIPL") on 1 September 2021 and 1 November 2021, respectively. It is expected that there will be a number of implementing regulations in the years to come as to how to (i) implement the general requirements and principles set out in the DSL, the PIPL and the Cybersecurity Law; and (ii) finalise the Measures on Security Assessment of Cross-Border Data Transfer (Draft for Comments) and the Measures on Network Security Assessment (Draft Revision for Comments), which have drawn market attention since they were released.

The China regulators have launched several rounds of data protection enforcement campaigns in 2021. The most recent data protection enforcement was a 6-month suspension of AliCloud's participation in a national network security information sharing platform operated by the Ministry of Industry and Information Technology ("MIIT") due to its failure to report the serious Apache Log4j2 security glitch to the MIIT in a timely manner. Data enforcement is certainly expected to still be the regulators' focus of 2022.

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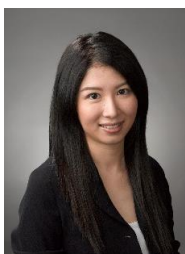
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