

Client Update: China

2024 APRIL

Technology, Media & Telecommunications

China Relaxes Rules on Cross-Border Data Flow

Introduction

On 22 March 2024, the Cyberspace Administration of China ("**CAC**") published the long-awaited *Regulations on Promoting and Regulating the Cross-border Data Flow* (《促进和规范数据跨境流动规定》) ("**Regulations**"), available [here](#), which came into immediate effect.

Compared to the draft Regulations earlier issued for comments by CAC on 28 September 2023 (available [here](#)), one of the significant changes is the change of the Regulations' name by moving "promoting" before "regulating". This marks a radical shift in China's cross-border data transfer regulatory approach, towards one which seeks to ensure a balance between national security and protection of individual rights on one hand, and commercial practicability on the other hand.

This Update will examine some of the key features of the Regulations.

Key Features of the Regulations

Relieving the Burden on Identifying "Important Data"

Article 2 of the Regulations stipulates that data processors shall "*identify and file important data in accordance with relevant regulations*". Article 2 further stipulates that data processors are not required to file data as important data for Data Export Security Assessment if such data had not been classified by relevant authorities as "important data". This development significantly eases the burden on data processors when it comes to identifying important data and provides greater certainty on whether such data processors are subject to the Data Export Security Assessment requirement.

Under China's Data Security Law, the State will create a tiered data protection system and compile a list of important data. Each region and government department will then identify the specific categories of important data within their own jurisdiction and relevant industries. However, currently, only a few industries (such as the automobile industry) have published their own lists of important data.

Data processors should therefore pay close attention to the relevant standards or catalogues of important data published by local government and competent authorities of their industries on a continuous basis to ensure their cross-border transfers of data are compliant with relevant rules.

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Clarifications on the Data Export Regulatory Requirements

In addition, the Regulations also provide that data processors may be exempted from the requirements to (a) complete and file a Data Export Security Assessment, (b) conclude a standard personal information export contract ("**Standard Contract**"), or (c) obtain a Personal Information Protection Certification ("**PIP Certification**") (collectively, "**Data Export Regulatory Requirements**"), if the cross-border transfer of data falls within certain prescribed scenarios. At the same time, the Regulations also clarify the scenarios in which the Data Export Regulatory Requirements would be applicable to data processors. This is summarised in the table below.

Article	Scenario	Completion of the Data Export Security Assessment	Concluding a Standard Contract	Obtaining PIP Certification
3	Where the data is collected and generated in activities such as international trade, cross-border transport, academic cooperation, transnational manufacturing and marketing, etc., and such data is to be transferred abroad, provided the data contains no personal information or important data.	Exempted	Exempted	Exempted
4	Where personal information is collected and generated abroad, transferred to China for processing, and is now being transferred by a data processor to overseas parties, provided no domestic personal information or important data was introduced in the process.	Exempted	Exempted	Exempted
5	Where any of the following conditions is met (<u>provided that</u> no important data is included): <ul style="list-style-type: none"> Where it is indeed necessary to transfer personal information abroad for the purpose of concluding or performing a contract to which the individual 	Exempted	Exempted	Exempted

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Article	Scenario	Completion of the Data Export Security Assessment	Concluding a Standard Contract	Obtaining PIP Certification
	<p>concerned is a party, such as cross-border shopping, cross-border delivery, cross-border remittance, cross-border payment, cross-border account opening, airline ticket and hotel reservation, visa processing, examination services, etc.</p> <ul style="list-style-type: none"> Where it is indeed necessary to transfer employees' personal information abroad to implement human resources management in accordance with employment rules and regulations formulated in accordance with law and collective contracts concluded in accordance with law. Where it is indeed necessary to transfer personal information abroad in an emergency to protect the life, health and property security of a natural person. Where a data processor <u>other than</u> a critical information infrastructure operator ("CIIO") cumulatively transfers the personal information (<u>excluding</u> sensitive personal information) of less than 100,000 persons starting from 1 January of the current year. 			
6	Where any data processor in a pilot free trade zone transfers abroad any data that is not included in a negative list of data export (elaborated below).	Exempted	Exempted	Exempted

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Article	Scenario	Completion of the Data Export Security Assessment	Concluding a Standard Contract	Obtaining PIP Certification
7	<p>Where a data processor transfers data abroad and any of the following conditions is met:</p> <ul style="list-style-type: none"> The data processor is a CIIO that is transferring abroad personal information or important data abroad; or The data processor (<u>other than</u> a CIIO) is transferring abroad important data or, as from 1 January of the current year, is transferring abroad personal information (<u>excluding</u> sensitive personal information) of more than 1 million individuals or sensitive personal information of more than 10,000 individuals in aggregate. 	Required (except for the circumstances exempted in this table)	-	-
8	<p>Where a data processor, <u>other than</u> a CIIO, transfers abroad the personal information (<u>excluding</u> sensitive personal information) of more than 100,000 but less than 1 million individuals cumulatively or sensitive personal information of less than 10,000 individuals since 1 January of the current year.</p>	-	Either (except for the circumstances exempted in this table)	

However, organisations should note that despite the extensive exemptions (as illustrated above), they also have to ensure that their data export activities fully comply with the relevant scenarios in order to benefit from such exemptions.

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Pilot Free Trade Zone Negative List

Article 6 of the Regulations stipulates that pilot free trade zones ("FTZ") in China may formulate their own lists of data to be subject to the Data Export Regulatory Requirements (hereinafter referred to as the "**Negative List of Data Export**"). The Negative List of Data Export must be approved by CAC at the provincial level, and thereafter filed with the national cyberspace administration authority and the national data management authority.

After the Negative List of Data Export is formulated and approved, data processors within the FTZ may freely transfer data without being subject to the Data Export Regulatory Requirements, so long as such data does not fall within the Negative List of Data Export.

Validity of the Data Export Security Assessment

Article 9 of the Regulations extends the validity period of the Data Export Security Assessment results to three years, up from two years as previously stipulated in the Measures for Data Export Security Assessment (数据出境安全评估办法).

Organisations that wish to continue data export activities beyond the validity period may also apply to extend the validity period for an additional three years, provided that they satisfy the relevant requirements.

Continuing Compliance Obligations for Data Processors

While the Regulations significantly relax the Data Export Regulatory Requirements on data processors, where data processors transfer personal information abroad, they are expected to continue to comply with their obligations under the applicable laws and regulations, including, without limitation, the following:

- (a) informing individuals of such transfer;
- (b) obtaining their consent; and
- (c) conducting personal information protection impact assessment.

In addition, data processors shall discharge their data security protection obligations, and take technical measures and other necessary measures to ensure the security of data to be transmitted abroad. If a data security incident occurs or may occur, the data processor shall take remedial measures, and report such incident to the cyberspace administration authority and other competent authorities in a timely manner.

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Concluding Words

As the Regulations have already come into effect, data processors should review their existing practices in cross-border transfer of data in accordance with the Regulation and assess whether any further steps are required to comply with the data transfer regime of China.

Data processors shall also note that on the same day the Regulations were released, CAC also issued the *Guide to the Application for Data Export Security Assessment (Second Edition)* (数据出境安全评估申报指南 (第二版)) and the *Guide to the Filing of the Standard Personal Information Export Contract (Second Edition)* (个人信息出境标准合同备案指南 (第二版)), available [here](#). If data processors do not fall within the exempted scenarios when transferring the data abroad, they shall refer to these latest guides for the Data Export Security Assessment and filing of the Standard Contract.

For further queries, please feel free to contact our team below.

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Contacts



Benjamin Cheong
Deputy Head, Technology,
Media & Telecommunications
Rajah & Tann Singapore LLP

T +65 6232 0738
benjamin.cheong@rajahtann.com



Linda Qiao
Head
Rajah & Tann Shanghai
Representative Office

T +86 21 6120 8818
linda.qiao@rajahtann.com

Please feel free to also contact Knowledge Management at eOASIS@rajahtann.com.

Our Regional Contacts

RAJAH & TANN SOK & HENG | *Cambodia*

Rajah & Tann Sok & Heng Law Office

T +855 23 963 112 / 113

F +855 23 963 116

kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP

Shanghai Representative Office

T +86 21 6120 8818

F +86 21 6120 8820

cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800

F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550

F +62 31 5116 4560

www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239

F +856 21 285 261

la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919

F +60 3 2273 8310

www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346

F +95 1 9345 348

mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32

F +632 8552 1977 to 78

www.cagatlaw.com

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600

sg.rajahtannasia.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991

F +66 2 656 0833

th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673

F +84 28 3520 8206

Hanoi Office

T +84 24 3267 6127

F +84 24 3267 6128

www.rajahtannlct.com

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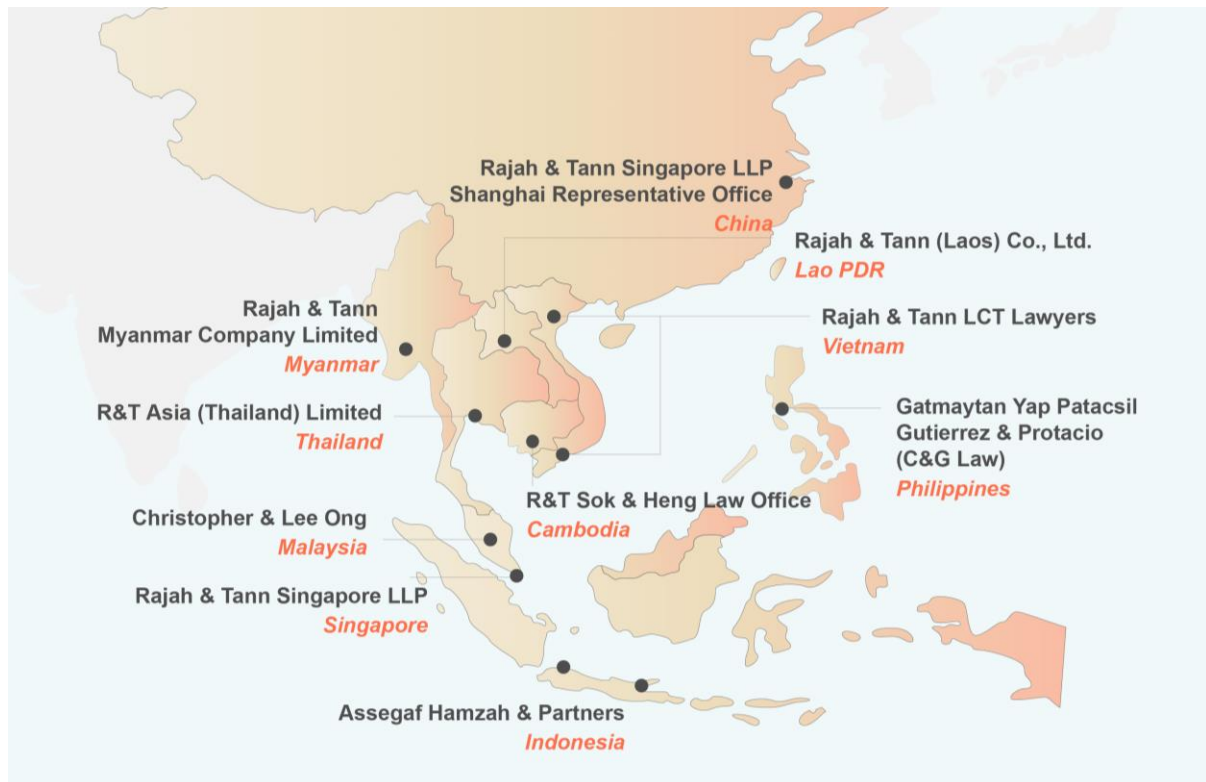
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