

China Legal Briefing*282

December 2021



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1. Personal Information Protection Law

On November 1, 2021, the *Personal Information Protection Law of the People's Republic of China* took effect (the “PIPL”). It consists of 8 chapters and 74 articles and particularly governs the following areas: 1) processing personal information within the territory of the PRC and 2) processing personal information outside of PRC but providing services to people within China or analyzing or assessing people’s conducts within China.

In addition to the general principle that whoever processes personal information must give adequate notice and obtain prior consent of the person whose data is processed, the PIPL particularly classifies information of minors under 14 as sensitive personal information. When processing such sensitive information, the prior consent of the minor’s parents or other guardians must be obtained. Also, all consents can be recalled. Besides, in response to a frequent occurrence of information leakage caused by governmental authorities, the PIPL specifically states that it will be binding to them as well.

If a private personal information processor does not comply with the PIPL, the processor may be fined not more than one million RMB; and any directly or indirectly liable person in charge may be fined from 10,000 RMB up to 100,000 RMB. In more serious circumstances, all illegal income will be confiscated, and the processor’s business license will be suspended. Such illegal conducts will be published and entered into the processor’s credit record.

Where any governmental authorities improperly process personal information, disciplinary actions (including demotion, removal, salary deduction) may be taken against the directly or indirectly liable person in charge.

2. Measures of the Customs of the PRC for the Credit Administration of Enterprises Registered and Filed with the Customs

On November 1, 2021, the *Measures of the Customs of the PRC for the Credit Administration of Enterprises Registered and Filed with the Customs* (the “Measures”) came into force. The Measures bring about many adjustments in the enterprise credit ratings, remedies for breaches of trust and enterprise management measures. Considering factors such as financial status, legal compliance, and trade security, now enterprises are rated as one of three types: 1) Advanced Certified Enterprises; 2) Enterprises subject to routine administration measures; 3) Dishonest enterprises. Different administrative measures will be imposed to enterprises of different credit ratings.

For Advanced Certified Enterprises, more beneficial measures will be imposed, including but not limited to:

- The average inspection rate of its imported and exported goods is lower than 20% of the average inspection rate;
- priority is given in undergoing customs clearance;
- priority is given in recommending the registration of exporters of agricultural products and food among others, in other countries (regions);
- enterprises may apply to the Customs for exemption from security;
- priority will be given to its goods in customs clearance after the resumption of the international trade interrupted due to force majeure.

For so-called dishonest enterprises, the following unfavorable administration measures may be imposed:

- The average inspection rate of its imported and exported goods is 80% or more;
- security is required to be provided in full amount if it operates processing trade business;
- the frequency of inspection and verification of the enterprise is increased.

In the past, there were no means of relief for breach of trust. Now, enterprises meeting certain conditions may apply to the Customs for credit repair.

3. Request for Public Comments on the Bill to Amend the Anti-Monopoly Law

On October 23, 2021, the *Request for Public Comments on the Bill to Amend the Anti-Monopoly Law* (“**Draft**”) was officially released to the public for comments. Compared with the current Anti-Monopoly Law released in 2018 (the “**Current AML**”), this Draft brings about important changes.

Under the Current AML, operators who only organize and assist operators to enter into monopoly agreements but do not participate themselves in such agreements, or operators who do not have competitive or trading relationships with other competitors, are not subject to the Current AML. Now, under the Draft, either arranging, or providing substantial assistance for others to reach a monopoly agreement is deemed illegal.

In addition, the Draft significantly increases the cost for violations.

First, the upper limit of fines for illegal implementation of operator concentration has been significantly increased. For operator concentrations that do not have the effect of excluding or restricting competition, the Draft raises the upper limit of fines from 500,000 RMB to 5 million RMB. For those who do have such effect, the Draft adds the upper limit of fines to 10% of the previous year's sales.

Second, for operators who have reached and implemented monopoly agreements, the illegal income will be confiscated and a fine of not less than 1% nor more than 10% of its sales for the previous year will be imposed. If there are no sales for the previous year, a fine of less than 5 million RMB will be imposed.

Third, for those who has reached a monopoly agreement but not yet implemented it, a fine of no more than 3 million RMB (instead of 500,000 RMB as currently in force) will be imposed.

Fourth, under the Current AML, the liability is mainly on the operator itself (like a company itself), but its main personnel in charge (i.e. the legal representative) will not be held liable. Article 56 of the Draft adds that the operator's responsible personnel will be fined up to 1 million RMB for entering into a monopoly agreement.

Last, for refusal and obstruction of investigation by individual, the Draft raises the upper limit of fines from 100,000 RMB to 500,000 RMB; for refusal and obstruction of investigation by enterprises, the upper limit of fines raises from 1 million RMB to 1% of the previous year's sales. If there are no sales or sales are difficult to calculate, a fine could be up to 5 million RMB.

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