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I. Interpretation of New Rules — the Measures for the Standard Contract for the Outbound Transfer of Personal Information

On February 24, the Cyberspace Administration of China issued the Measures for the Standard Contract for the Outbound Transfer of Personal Information (“**Measures**”), which will come into force on June 1, 2023. The Measures aim to protect the rights and interests of personal information and regulate the activities of exporting personal information abroad. In this section of this issue of the China Legal Brief, we’d like to briefly introduce you the key content of the Measures and compliance tips for foreign companies in China.

a. Application Scope

If personal information will be sent by personal information processors to overseas recipients through the conclusion of the standard contract for the outbound transfer of personal information, the Measures will be applicable.

b. 4 requirements that have to be fulfilled simultaneously

- It is not a critical information infrastructure operator.
- It has processed the personal information of less than one million individuals.
- It has provided the personal information of less than 100,000 individuals on a cumulative basis to overseas recipients since January 1 of the previous year.
- It has provided the sensitive personal information of less than 10,000 individuals since January 1 of the previous year.

It is worth attention that the Measures specifically point out that no personal information processor shall adopt any means, such as

splitting the quantity of personal information in order to fulfill the requirements. It prevents the situation that some enterprises may reduce the amount of personal information outbound through business splitting.

c. Non-compliance punishments

In the previously released draft of the Measures, it stipulates that personal information outbound activities should be terminated in case of violations. However, the Measures finally conclude that interviews can be conducted and the personal information processors should adopt measures to make rectification and eliminate hidden risks as required. Additionally, it is important for enterprises to notice that the Measures do not rule out the possibility of criminal liability, administrative liability, and huge compensation.

d. Period of rectification

Art.13 of the Measures states as follows, “This Measures shall enter into force on June 1, 2023. If any outbound transfer of personal information before the entry into force of these Measures fails to comply with these Measures, rectification shall be completed within six months from the effective date of these Measures.” That is to say personal information outbound activities before June 1, 2023 should be rectified and completed by December 1, 2023 in accordance with the requirements of the Measures. After June 1, 2023, all personal information outbound activities should not be carried out until after the Standard Contract is signed.

With the vigorous development of the digital economy, the demand for personal information to be exported has grown rapidly, and the

protection of personal information rights and interests is facing greater challenges. Especially in China, since the Measures do not exclude administrative and even criminal liability, foreign companies in China shall be more careful about personal information outbound.

II. New Changes Made to the P.R.C. Anti-monopoly Law

On June 24, 2022, the Standing Committee of the National People's Congress (NPCSC), China's legislature, released the final version of the revised Anti-Monopoly Law (AML). The updated law, which took effect on August 1, 2022, made several significant changes and additions, including prohibiting the use of certain technology to engage in anti-competitive behaviour, raising the maximum fines for violations and curbing abuse by administrative organs and organizations.

The amended AML includes new articles highly relevant to technical companies or online platforms. Article 9 of the General Principles, bans companies from abusing their dominant market position by using technological means to restrict or eliminate competition or engage in other anti-competitive behaviour. In addition, the conditions for antitrust were reviewed and the anti-monopoly authorities can require a declaration and antitrust review of companies even if they don't meet certain standards set for a review.

The amended AML increases the liabilities for companies that violate the law and expands the tools that antitrust authorities have at their disposal for pursuing antitrust cases. The changes in merger control give the anti-monopoly authority (SAMR) greater discretion in reviewing mergers.

The fines were raised for anti-competitive behaviour, as stipulated in articles 56 and 58 AML. For monopoly agreements, the maximum fine was increased to RMB 5 million from RMB 3 million or 10 percent of annual sales for companies and RMB 1 million for individuals. For industry associations, the maximum fine for a monopoly agreement has been raised from RMB 500,000 to RMB 3 million. For business consolidation with an eliminating or restrictive effect on the competition, the fine was increased from RMB 500,000 to up to 10 percent of the annual sales, which means there is no fixed limit anymore. The fine for abusing a dominant market position (Article 57) remains unchanged at between 1 and 10 percent of the previous year's sales. But for serious violations, the fine can now generally be increased to two to five times the original fine (Article 63).

In addition, and also very relevant for companies having business in China, the new Article 64 stipulates that violations of the AML will be added to the company's credit record and disclosed to the public. Consequently, it is recommendable that Companies review their policies and strategies and watch out for the amended rules and regulations to ensure those comply with the amended AML.

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