

# China Legal Briefing\*300

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## I. **Foreign Trade Law of the PRC (Revised draft for comments)**

Foreign Trade Law of the PRC (Revised draft for comments) (the “**Foreign Trade Law Draft**”) was released on September 13, 2024. It contains 83 clauses, which aim to promote the development of foreign trade and safeguard national sovereignty and security. In this publication, we will briefly introduce the main amendments introduced by the Foreign Trade Law Draft.

- **Entrustment**

Art 13 of the Foreign Trade Law Draft stipulates that foreign trade operators could accept the entrustment to handle foreign trade business on behalf of others within the scope of business. If it accepts the entrustment of others to handle comprehensive foreign trade services such as customs declaration, tax rebate and settlement, it shall fulfil the obligation of reasonable examination.

- **Prohibiting acts**

Art 37 of the Foreign Trade Law Draft stipulates that in foreign trade business activities, no one is allowed to implement market confusion, false propaganda, commercial bribery, or infringing trade secrets. This article aims to prohibit unfair competition.

Art 38 further stipulates that the following acts is prohibited:

- (a) Counterfeiting, altering the mark of origin of import and export goods, or counterfeiting, altering, trading or otherwise illegally transferring certificates of origin of import and export goods and licenses;
- (b) Cheating, bribery and other improper means to obtain certificates of origin of import and export goods, licenses, or issue a false declaration of origin;
- (c) Fraudulent export tax rebates;
- (d) Smuggling;

(e) to avoid the laws and regulations of the certification, inspection and quarantine;

(f) Other violations of laws and administrative regulations.

Additionally, as stated in Art 39, no organization or individual shall provide services such as customs clearance, freight forwarding, shipping, tax rebates, settlement, third-party e-commerce trading platforms and financial services for foreign trade operators engaging in illegal import and export activities.

- **Negative list for cross-border trade in services**

Art 31 states that a negative list management system for cross-border trade in services will be implemented, which uniformly lists special management measures for services provided by overseas service providers through the modes of cross-border delivery, overseas consumption and movement of natural persons. Where services are provided in the mode of commercial presence, they should comply with foreign investment laws and regulations of the PRC.

- **Conclusion**

The current Foreign Trade Law of the PRC was promulgated and put into effect in 1994 and was revised for the first time in 2004 to meet the needs of accession to the WTO. It was further amended in 2016 and 2022 to meet the constant changes of foreign trade environment in China over the past 20 years. Still, new measures and regulations are urgently needed for dynamic trade activities. Hence, enterprises, especially those involved in foreign trade business, should pay close attention to the Foreign Trade Law and ensure a timely compliance.

## **II. Interpretation (I) on the Application of the Tort Liability Section of the Civil Code**

Starting from January 1, 2021, China's Civil Code officially came into effect. In line with the judicial practices of tort cases since the

implementation of the Civil Code, the Supreme People's Court issued its first judicial interpretations regarding tort liability in the seventh book of the Civil Code, effective from September 27, 2024. This judicial interpretation includes 26 articles, covering the following eight areas:

1. Tort Liability for Illegally Removing a Ward from Guardianship (Articles 1-3): These three articles emphasized the civil compensation liabilities for illegal removing wards from their guardianship such as child abduction and deception, which, along with criminal punishment, form civil punishments for such unlawful acts and a remedy for victims' rights.
2. Liability of Guardians, Instigators, Aiders, and Educational Institutions (Articles 4-14): Through 11 detailed articles, the interpretation clarifies the substantive and procedural rules regarding the civil liability of guardians, entrusted guardians, instigators, aiders, educational institutions, and external tortfeasors.
3. Employer Liability and Tort Liability in Labor Dispatch Relationships (Articles 15-17): the interpretation stipulates that the criminal prosecution of employees for crimes committed while performing their duties does not affect the employer's civil liability. It also clarifies the joint liability of dispatching units, coordinating the criminal liability of employees with the civil liability of employers and dispatch units.
4. Tort Liability of Contractors and Ordering Parties (Article 18): It stipulates that contractors bear full tort liability, while ordering parties share responsibility within their fault scope.
5. Defective Product Liability (Article 19): It clarifies the consumer may request compensation from the producer or the seller for damages to the defective product itself as well as for other damages, ensuring convenient rights protection for consumers.
6. Motor Vehicle Traffic Accident Liability (Articles 20-22): It clarifies the liability of traffic accident perpetrators involving vehicles

meeting scrapping standards, the liability for not having mandatory motor vehicle insurance, and insurance liability for damages caused by one's own fault.

7. Liability for Harm Caused by Dangerous Animals (Article 23): It specifies that no exemption clauses apply when prohibited dangerous animals, such as aggressive dogs, cause harm.
8. Liability for Harm Caused by Falling Objects (Articles 24-25): It clarifies the substantive and procedural rules of tort liability, determining the order and scope of responsibility for specific tortfeasors, potential harmful building users, and property management entities.

### **Conclusion**

This judicial interpretation aims to provide clearer rules for the application of tort law, offering more transparent attribution of tort liability and remedies, providing citizens whose rights have been violated with a clear legal basis, and offering clear guidance for court applications.

### **III. Regulations on Network Data Security Management**

The Regulations on Network Data Security Management ("**Network Data Security Regulations**") were officially released on the afternoon of September 30, 2024, and will take effect on January 1, 2025. These regulations represent the first administrative-level document in China's network data security field.

The Network Data Security Regulations are based on higher-level laws such as the Cybersecurity Law of the People's Republic of China ("Cybersecurity Law"), the Data Security Law of the People's Republic of China ("Data Security Law"), and the Personal Information Protection Law of the People's Republic of China ("Personal Information Protection Law"). They further refine the general principles and systems established in these three laws, specifying detailed content and

procedural regulations. This article provides an initial introduction to the regulations and an analysis of key issues.

- **Clarification of Measures in the Event of Security Defects or Vulnerabilities in Network Products and Services (Article 10)**

According to Article 10 of the Network Data Security Regulations, when a network data processor discovers security defects, vulnerabilities, or other risks in network products or services, it must immediately take remedial actions, notify users in a timely manner, and report to the relevant regulatory authorities. If the issue involves risks to national security or public interests, the processor must report to the relevant authorities within 24 hours. Previously, in September 2021, the Ministry of Industry and Information Technology, among other agencies, issued the Regulations on the Management of Security Vulnerabilities in Network Products, which required network product providers to report any discovered vulnerabilities to the Ministry's cybersecurity threat and vulnerability information-sharing platform within 2 days. The Network Data Security Regulations build upon this framework, requiring processors to report security risks related to national security or public interests within 24 hours.

- **Strengthened Management Requirements for Data Processors in Network Data Processing Activities (Articles 12 and 13)**

Articles 12 and 13 of the Network Data Security Regulations clarify the chain-of-custody management requirements for network data. Article 12 requires that when a network data processor provides or entrusts the processing of personal information or important data to another processor, they must establish agreements through contracts or other means specifying the processing objectives, methods, scope, and security obligations. The processor must also supervise the receiving party's compliance. Furthermore, the processor must retain related processing records for at least 3 years. On the other hand, the receiving

party must fulfil its obligations to protect data security and process the data according to the agreed objectives, methods, and scope.

Unlike general regulations, these requirements apply specifically to personal information and important data. For personal information, these provisions largely extend the relevant provisions in Articles 20 and 21 of the Personal Information Protection Law, requiring joint processors to agree on their respective rights and obligations and for personal information processors to sign contracts with data processors and supervise their actions. However, it remains unclear whether this provision applies to the scenario described in Article 23 of the Personal Information Protection Law, where one processor provides personal information to another.

Article 13 adopts the framework of Article 22 of the Personal Information Protection Law, specifying that if network data processors transfer data due to reasons such as mergers, splits, dissolution, or bankruptcy, the receiving party must continue to fulfill data security protection obligations. Unlike Article 12, this provision applies to all network data, not just personal information and important data.

- **Special Requirements for National Authorities, Critical Infrastructure Operators, and Public Infrastructure and Systems (Article 16)**

Article 16 of the Network Data Security Regulations imposes additional requirements on network data processors providing services to national authorities, critical infrastructure operators, or participating in the construction, operation, or maintenance of other public infrastructure or public service systems. These processors must fulfill their data security protection obligations in accordance with laws, regulations, and contractual agreements, and they are prohibited from accessing, obtaining, retaining, using, disclosing, or providing network data to others, or from conducting correlation analysis of the data, without the

consent of the entrusting party. This provision addresses long-standing issues in practice and clarifies the boundaries between the roles of data processors and entrusted data processors in public service data processing.

### **Conclusion**

As an important supporting regulation to the three laws, the Network Data Security Regulations further refine the relevant requirements and provisions of these laws and introduce several additional rules and points. They reflect China's experience and expectations in data compliance and regulatory work in recent years. In many respects, they aim to reduce compliance costs for market players, including large and medium-sized platform companies, and to optimize the supervisory and regulatory rules of competent authorities.

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