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I. SPC's Opinions on Adjudicating AI-Related Disputes

The Supreme People's Court's Opinions on Adjudicating AI-Related Disputes (the "**Opinions**") took effect on 7 Sep 2026. Parts II & III address key rules for AI-related tort and intellectual property disputes.

- **AI-Related Tort Disputes**

AI-related tort disputes generally follow fault liability unless the law provides for strict liability or presumed fault otherwise. When assessing fault, courts should consider the AI's use, autonomy, transparency, risks, and impact. Courts should assess developers' and providers' preventive measures and technical feasibility under current capabilities. The assessment should further consider users' ability to foresee and control potential harm, given the "black box" nature of AI. In judicial practice, AI systems lack legal personality, but users may be held liable for harm if they deliberately prompt AI to generate infringing content.

The Opinions also address unconsented AI face-swapping, voice imitation, and digital "resurrections" of deceased persons which may infringe personality rights. They further address privacy related harms, including doxing and unauthorised surveillance of private spaces. The Opinions included injunctions against violations of personality rights under the Civil Code. For reputation or privacy violations, AI service providers may be liable if, after receiving preliminary evidence and the rights holder's identity, they fail to promptly stop generating infringing content or block relevant prompts. AI service providers should therefore keep proper records of measures taken in response to complaints.

Using publicly available personal information to train AI models generally does not constitute infringement when the individual has consented, or disclosed the information themselves, or the disclosure is required by law, or when the processing remains within a reasonable scope and the individual has not expressly objected.

For physical AI products, courts should assess defects based on their nature and purpose, learning capabilities, updates, user control, and compliance. Courts should also assess whether manufacturers and sellers had accurately explained the uses and limitations and warned their users of foreseeable risks. Algorithmic conduct that infringes consumer rights, such as price discrimination, is subject to the standards and punitive damages under unfair competition and consumer protection laws. Liability for ADAS-related road accidents is governed by the Civil Code, Road Traffic Safety Law and relevant law and regulations.

- **AI-Related Intellectual Property Disputes**

In AI copyright infringement cases, courts should consider the type of AI service, industry characteristics, training data sources and records, model operation, each party's participation, precautions, and allocation of benefits. Free open-source software developers and providers may sometimes be exempt from liability when the functions and risks are publicly disclosed. In disputes over AI development, transfer, licensing, consultancy, or service contracts, courts should consider AI's nature and whether the developers have made reasonable efforts to meet their obligations.

The Opinions clarify that AI-related inventions may be patented if they meet the relevant requirements. A natural person should be regarded as the inventor if they creatively contribute to the invention's essential features. However, the Opinions do not determine whether AI-generated content is copyrightable or whether using others' works to train AI models is fair use or otherwise non-infringing.

- **Conclusion**

The Opinions have clarified applicable laws and adjudication standards for major AI-related disputes. As AI evolves and new applications

emerge, rules will continue to develop through judicial practice. We will keep monitoring supporting regulations, judicial rules, and guiding cases.

II. The Provisions on the Protection of Personal Information by Large Personal Information Processors (Exposure Draft)

On August 7, 2026, the Cyberspace Administration of China (the "**CAC**") released the Provisions on the Protection of Personal Information by Large Personal Information Processors (Exposure Draft) (the "**Draft Provisions**"), proposing rules for determining and regulating large personal information processors (the "**Large Processors**").

Under the Draft Provisions, the determination of Large Processors will be based on a comprehensive assessment of three criteria: (i) whether a processor processes personal information of 10 million or more individuals; (ii) whether it provides important online services involving personal information processing or operates across multiple business areas involving such processing; and (iii) whether its processing activities significantly affect national security, economic operations, social stability, or public health and safety. Processors that meet the 10-million-person threshold and, based on their self-assessment, consider themselves to meet the other two criteria must apply to the CAC for determination. The CAC, together with other competent authorities, will determine and publicly announce the list of Large Processors.

The Draft Provisions set out specific requirements for data storage and outbound transfers of personal information. Large Processors must ensure that personal information collected and generated during their operations in China is stored domestically. The data centers they use for such storage must be established in China, and the legal representative or actual controller of the data center management institution must be a Chinese national. When providing personal information to an overseas recipient, Large Processors must assess the management and technical

measures adopted by that recipient. If they find that the recipient is unable to fulfill its legal or contractual personal information protection obligations, they must suspend transfers to that recipient.

Regarding internal governance, companies determined to be Large Processors must establish a personal information protection supervisory committee within six months of that determination. The committee must have an odd number of members (at least seven), and at least two-thirds of them must be external. Large Processors must conduct personal information protection compliance audits at least once every two years and assess risks associated with their processing activities annually. Furthermore, before launching products, services or functions that may significantly affect individuals' rights and interests, such as those involving automated decision-making or sensitive personal information processing, Large Processors must conduct a personal information protection impact assessment. They must submit the assessment report to the CAC for recordation within 15 working days after completing the assessment.

Although the Draft Provisions do not clarify what constitutes an "important online service" or when personal information processing has a "significant impact", the 10-million-person threshold is clearly defined. Companies meeting this threshold may wish to consider the potential implications of the proposed requirements for their data storage, data center management and internal governance arrangements. Wenfei will closely monitor the issuance of the final Provisions and any significant changes from the current draft.

III. Announcement on Individual Income Tax Policy Matters Concerning Dividends and Profit Distributions Received by Foreign Individuals

On 1 September 2026, China's Ministry of Finance and State Taxation Administration issued *the Announcement on Individual Income Tax Policy Matters Concerning Dividends and Profit Distributions Received by*

Foreign Individuals (Announcement No. 27 of 2026, the "**Announcement**"). With effect from the same date, dividends and profit distributions received by foreign individuals as shareholders from foreign-invested enterprises in China are no longer exempt from Chinese individual income tax. Under the Announcement, such income is now subject to individual income tax at a rate of 20%. However, individual investors who are tax residents of Switzerland and qualify for treaty benefits are entitled to a reduced rate of 10% under the China–Switzerland double taxation agreement (the "**DTA**").

- **General implications for foreign investors**

The Announcement affects foreign individuals who directly hold equity in foreign-invested enterprises in China. It applies to dividends and profit distributions received in their capacity as shareholders, and does not cover salaries, wages or employment-related bonuses. Living or working outside China, or receiving the dividend in an overseas bank account, does not exempt such distributions from Chinese tax. The Chinese company paying the dividend must withhold individual income tax upon payment and file it by the 15th day of the following month. If the company fails to withhold the tax, the individual must file and pay the tax by 30 June of the year following receipt of the income.

- **Specific implications for Swiss investors**

The impact on Swiss investors differs depending on whether the shares are held directly by an individual or by a company.

(1) <u>Swiss tax-resident individuals move from exemption to a 10% Chinese individual income tax</u>:

Under Article 10 of the DTA, Swiss tax-resident individuals who are the beneficial owners of the dividends are entitled to a reduced Chinese

individual income tax rate of 10%. Following the abolition of the domestic exemption, their Chinese individual income tax burden therefore increases from zero to 10%.

(2) Swiss corporate shareholders remain unaffected:

The Announcement only applies to dividends received by foreign individuals and therefore does not change the tax treatment of dividends received by Swiss corporate shareholders. Such dividends remain subject to Chinese enterprise income tax at a standard rate of 10%. The reduced 5% rate under the DTA applies when the shareholder is a Swiss tax-resident company (other than a partnership) and the company must also have directly held at least 25% of the Chinese company's capital for the entire 12-month period before receiving the dividends.

- **Conclusion**

The Announcement ends the dividend tax exemption for foreign individual shareholders. Foreign investors should carefully review their dividend arrangements and take account of applicable treaty relief. For Swiss individual shareholders, the Announcement means a shift from exemption to 10% Chinese individual income tax, while the existing treatment of Swiss corporate shareholders remains unchanged.

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