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New China Privacy Law

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NEW CHINA PRIVACY LAW

I. Background

A comprehensive framework governing cybersecurity, data protection and privacy protection has been formed.

(1) China Cybersecurity Law (July 2017)

(2) China Data Security Law (Sept. 2021)

(3) China Privacy Law, (or Personal Information Protection Law, Nov. 2021)

(4) Related implementation rules and regulations.

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II. Relevant Issues for Foreign Institutions

(1) Major Internet service providers, with significant numbers of customers, are required to establish an independent supervision entity composed of external experts to supervise the protection of personal data, in accordance with Article 58 of the privacy law.

(2) Foreign companies located outside of China that process personal data collected in China, shall establish a legal entity in China, or appoint a designated representative in China, and the contact information for such entities and representatives should be provided to the relevant administrative agencies in accordance with Article 53.

(3) Governmental agencies' data collected in China shall be stored in China. The transfer of such data across international borders requires special assessments and approvals from the government.

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II. Major Relevant Issues for Foreign Institutions

(4) In the event of a breach occurrence when the data processer has adopted effective measures to prevent the customers from any harm, the breach does not need to be reported in accordance with Article 57.

(5) Article 41 states that, without the Chinese government's approval, the processers of personal data shall not transfer the data collected in China to overseas judicial and law enforcement institutions. (This statement is consistent with the previous existing practice in China, but this is the first time for the government to state it clearly in the Law. However, certain situations can be handled differently.)

(6) The maximum monetary penalty has been raised to one million yuan for a general violation, and 50 million yuan for a serious case. Involved officers can be personally held liable for a maximum fine of one million yuan. In addition, criminal procedure penalties can be imposed for serious cases.

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III. Other Relevant Issues

(1) If a company goes through merger, acquisition, or bankruptcy, the data subjects shall be notified and the contact information for the new data holders should be provided to the data subjects.

(2) Collecting personal images (avatars) in the public are not allowed for commercial usage without the consents of the data subjects, but it is allowed if the purpose of collecting is for the public security.

(3) The audit reports for cross-borders data transfer assessments should be kept for no less than three years.

(4) The law has clearly authorized the China Administration of Cybersecurity (CAC) to launch inquiry, investigation, inspection, seizure, and other related administrative actions against the violation of data protection rules.

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III. Other Relevant Issues

(5) De-identification v. Anonymize

(6) Eco-system for data commercial activities.

(7) Free flow of data economy v. Restrictions for data protection.

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IV. Looking forward

In the current new age of data economy, the means to strike a balance between maximizing the free flow of data commerce and minimizing the risks of causing harm to personal data, has become a daunting task for regulators in every country. The Chinese government's recent rules have clarified certain elements that encourage the industry, while simultaneously imposing certain serious restrictions.

It is a fervent goal that regulators all over the world will strike the right balance between these elements to avoid a situation of, "Stop Eating because of the Risk of Choking," so that more investors and industry players will be more willing to participate in this new data economy.

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Thank you.

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