



## Newsletter

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October 14, 2022

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## Update

### **GACC Issued the Measures on Customs Supervisions and Administration of Transit Goods**

On September 26, 2022, the General Administration of Customs of the PRC (GACC) issued the *Measures on Customs Supervisions and Administration of Transit Goods* (Measures), which will come into force on November 1, 2022. For the purpose of the Measures, transit goods refer to goods that are shipped from abroad and continue to be shipped to a different country via land routes within China’s territory. It is provided that transit goods shipped from countries or regions that have concluded or jointly participated in international treaties or agreements containing good transit clauses with China would be permitted to transit in accordance with the provisions of the relevant treaties and agreements, while other goods shall be approved by the competent departments of commerce, transportation, etc. and filed with the customs at the place of entry before transit. The Measures also list ten types of goods that are prohibited from transit.

### **MOFCOM Takes Policy Measures to Shore up Foreign Trade**

On September 27, 2022, the Ministry of Commerce ( “MOFCOM” ) released the *Several Policy Measures on Shoring up Stable Growth of Foreign Trade* (Measures), deciding to leverage cross-border e-commerce to shore up foreign trade and roll out policy measures to support development of overseas warehouses for cross-border e-commerce. The measures clarifies that all localities strengthen the protection of foreign trade enterprises in all aspects such as epidemic prevention, energy use, labor, logistics, etc., and give full support when necessary to ensure that foreign trade orders are delivered in a timely manner. At the same time, under the premise of compliance with laws and regulations and controllable risks, the support of export credit insurance for the construction and operation of overseas warehouses will be further strengthened. In addition, according to the Measures, the authorities will also move faster to lay out tax policies to facilitate returns of goods in exports through cross-border e-commerce.

### **China Allows Foreign-invested Travel Agencies in Shanghai and Chongqing to Conduct Outbound Travel Operations**

On October 8, 2022, the State Council released the Circular on Approving Temporary Adjustments of Certain Provisions of Administrative Regulations in Tianjin, Shanghai, Hainan and Chongqing (Circular). It is clarified that the State Council has approved adjusting Article 23 of the *Regulation on Travel Agencies* issued by the State Council in 2020, allowing qualified foreign-invested travel agencies, established in Shanghai or Chongqing, to conduct outbound travel operations excluding Taiwan. The State Council also approved adjusting Article 2 of the *Interim Regulations for the Registration and Administration of Private Non-enterprise Units* in Tianjin, Hainan and Chongqing, expanding the market entry for foreign-invested non-profit nursing homes.

### **Hainan Releases Rules to Facilitate Import of Drugs**

On October 8, 2022, the Standing Committee of Hainan Provincial People’s Congress released the *Several Provisions on Facilitating Import of Drugs in the Hainan Free Trade Port* (Provisions), which will come into force on December 1, 2022. With totally eight articles, the rules clarified that enterprises will not need to go through the procedures related to the submission of the Form of Customs Clearance for Imports of Drugs if they import drugs from designated drug import ports of the Hainan Free Trade Port. For the purpose of the Provisions, the drugs exclude imported medicinal materials, vaccines, blood products and other drugs that should be subject to import inspection according to laws and regulations.

### **Shanghai Takes Measures to Promote Development of High-end Manufacturing**

On October 10, 2022, Shanghai government released the *Several Measures of Shanghai Municipality on Boosting the Development of High-end Manufacturing* (Measures), which has come into effective on October 1, 2022. The Measures rolled out 25 specific measures in four aspects. The government will increase financial support and step up gradient cultivation of enterprises in various areas, support enterprises to implement technological and digital transformation, and raise the upper limit of supportive fund for major technological transformation projects in recognized major industries to RMB 100 million. The Measures also proposes that the government will accelerate preliminary review of intellectual property rights, and confirmation and protection of rights for enterprises in key industries and areas,

support application of innovative drugs and devices in biomedicine, and set out key tasks for innovation of application scenarios in artificial intelligence, industrial internet and other areas.

### **SAMR No Longer Implements Compulsory Product Certification Management for 9 Types of Electronic and Electrical Products**

On October 11, 2022, the State Administration for Market Regulation (SAMR) issued the *Announcement on No Longer Implementing Compulsory Product Certification Management for Several Electrical and Electronic products* (Announcement), adjusting the catalogue of the products subject to China Compulsory Certificate (CCC Certification) according to the principles of necessity and minimization. The Announcement proposes that Compulsory Product Certification will no longer be implemented for 9 electronic and electrical products such as audio power amplifiers, CD-ROMs, magnetic tapes, electronic organs, and data terminals with relatively low safety risks and relatively mature technologies.

### **Shanghai Plans to Issue “Pollutant Emission Standards for Semiconductor Industry”**

On September 22, the Shanghai Municipal Bureau of Ecology and Environment issued a letter to solicit comments on the “*Pollutant Emission Standards for Semiconductor Industry (Second Draft for Comments)*”, and the feedback is accepted by October 20.

This document is applicable to the discharge management of water and air pollutants in the semiconductor industry in Shanghai, and specifies the water and air pollutant emission control requirements, implementation and supervision of monitoring and its standard for relevant enterprises. It mainly stipulates relevant requirements with respect to new construction, reconstruction and expansion projects, including the environmental impact assessment, the design of environmental protection facilities, the environmental acceptance upon completion, the approval and issuing of pollutant discharge licenses, water and air pollution control and emission management after operation, and pollutant emission permit management for enterprises in the semiconductor industry.

Specifically, compare with the used standards, this document adjusted the classification of water pollutant discharge standards, changed pollutant control items, altered emission limits for some pollutant items, increased concentration limits of the air pollutant control point at the boundary of the plant, and updated the determination and analysis methods of some pollutant items.

### **Shanghai Stock Exchange Revised and Issued the “Shanghai Stock Exchange Fund Business Guide No. 2 - Listed Fund Market Making Business (Revised in 2022)”**

On September 20, Shanghai Stock Exchange revised and issued the “*Shanghai Stock Exchange Fund Business Guide No. 2 - Listed Fund Market Making Business (Revised in 2022)*”, which was implemented on September 21, 2022.

The main contents of this guide include the general requirements of fund market making business, business application conditions and acceptance procedures, and fund market makers’ quotation obligations, rights, evaluation, risk management, compliance and internal control, supervision and management, etc.

# Article(s)

## **Security Assessment Primer for Outbound Data Transfer**

by *Sophie Chen*

The Measures for Security Assessment for Outbound Data Transfer ( “ Measures ” ) issued by the Cyberspace Administration of China ( “ CAC ” ) came into force on September 1, 2022. The Measures is an implementation regulation intended to supplement the Cybersecurity Law issued in 2016, the Data Security Law issued in 2021, and the Personal Information Protection Law ( “ PIPL ” ) issued in 2021. Its purpose is to protect personal information rights and interests, national security, social and public interests as well as clarify the specific requirements of cross-border data transfer.

### **1. Scope**

#### Applicability

Once critical data and personal information generated and collected in PRC are to be provided abroad, the Measures will be applicable. Cross-border transfer means that foreign subjects can access the above data or information, whether or not the data or information is stored in PRC or overseas. For example, access to personal information of domestic entity’s employees by foreign management of the foreign parent company of the domestic entity will qualify as cross-border transfer of personal information.

#### Critical Data

Critical data has been identified according to the harmful consequences, i.e., data that, once tampered with, destroyed, leaked, illegally obtained or illegally used, may endanger national security, economic operation, social stability, public health and security, etc. The subject of critical data assessment extends from operators of critical information infrastructures to all data processors.

#### Personal Information

Personal information in need of security assessment include: (i) a critical information infrastructure operator provides personal information abroad; (ii) a data processor processing the personal information of more than one million individuals transfers personal information abroad; (iii) a data processor has cumulatively transferred abroad personal information of 100,000 individuals or sensitive personal information of 10,000 individuals since January 1 of the previous year.

### **2. Assessment Progress**

A data processor shall not only declare security assessment for an outbound data transfer but also conduct self-assessment. Self-assessment is the pre-procedure of the declaration of security assessment. Whether or not the data processor will make the final declaration to the relevant authorities, it shall complete the self-assessment. Security assessment shall be conducted throughout the entire process of the outbound data transfer.

In general, security assessment consists of the following steps:

(i) self-assessment;

(ii) application for security assessments to the provincial-level cyberspace administration with an application form, a self-assessment report, a copy of the outbound data transfer agreement and other necessary materials;

(iii) the cyberspace administration organizes and completes the assessment and issues a written result; if a data processor has any objection to the result, it can apply to CAC for a re-assessment.

The results of the security assessment for an outbound data transfer are valid for 2 years except that the data processor shall update the security assessment immediately with any circumstance affecting the security of the data transferred abroad.

### 3. Assessment Matters

Self-assessment and security assessment generally focus on the following matters:

Self-Assessment	Security Assessment
legality, legitimacy and necessity of the purpose, scope and method of the outbound data transfer and data processing by the overseas recipients;	legality, legitimacy and necessity of the purpose, scope and method of the outbound data transfer and data processing by the overseas recipients;
scale, scope, type and sensitivity of the data to be transferred abroad, and the risks to national security, public interests or the legitimate rights and interests of individuals or organizations caused by the outbound data transfer;	size, scope, types and sensitivity of data to be transferred abroad, and the risks that the data may be tampered with, destroyed, divulged, lost, transferred, illegally obtained or illegally used during and after the data is provided abroad;
risks of data to be tampered with, destroyed, divulged, lost, transferred, illegally obtained or illegally used during and after the outbound data transfer; whether the channel for the maintenance of personal information rights and interests is smooth;	whether data security and personal information rights and interests can be fully and effectively guaranteed;
responsibilities and obligations that the overseas recipient promises to undertake, and whether the overseas recipient's management and technical measures and capabilities for performing its responsibilities and obligations can guarantee the security of the outbound data transfer;	impact of data security protection policies and regulations and the cybersecurity environment of the country or region where the overseas recipient is located on the security of data to be provided abroad, and whether the data protection level of the overseas recipient meets the requirements of the laws and administrative regulations of the People's Republic of China and mandatory national standards;

whether the relevant contracts on the data to be concluded with the overseas recipient or other legally binding documents have fully agreed on the responsibilities and obligations to protect the data security;	whether the legal documents to be concluded by the data processor and the overseas recipient have fully agreed on the responsibilities and obligations of data security protection;
other matters that may affect the security of the outbound data transfer.	compliance with Chinese laws, administrative regulations and departmental rules; and other matters that CAC considers necessary to assess.

#### **4. Liabilities**

Where CAC finds any violation of the Measures, the outbound data transfer shall be terminated until the data processor completes the rectification and passes a new security assessment.

Any violation of Measures is also subject to liabilities stipulated in the Cybersecurity Law, the Data Security Law and the PIPL. The legal liability thereby includes rectifications, warning, penalties up to 1 million RMB, revocation of business license, and criminal liability where a crime is committed.

#### **5. Other Matters**

The Measures provide for a six-month grace period to complete the rectification of the outbound data that has been transferred before the effectiveness of the Measures. In addition, CAC issued a draft standard contract on border data transfer so as to serve as a guide. If a data processor and overseas recipients of the data or information have signed a contract on border data transfer and this contract is in conflict with the draft standard contract issued by CAC, the standard contract will prevail. The parties shall launch negotiations as soon as possible in order to comply with the standard contract requirements.

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