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Update

Shanghai Promoting Multimodal Transport, Optimising and Adjusting Transportation Structure

On October 19, 2022, Shanghai Municipal People's Government released *the Action Plan of Shanghai Municipality on Promoting the Development of Multimodal Transport, Optimizing and Adjusting the Transportation Structure* ("Plan").

The Plan proposes that by 2025, railway freight volume in Shanghai will increase by 10% compared to 2020, the proportion of water-to-water transfer in Shanghai port's container will not be less than 52%, the average annual growth of container sea-rail intermodal transport volume will be more than 15%, the number of cities in the international inbound and outbound truck flight network of the Pudong

International Airport will increase by more than 8%, and 100% of newly added urban logistics vehicles will use new energy or clean energy. The Plan makes it clear that efforts will be made to improve the carrying capacity and connection of multimodal transport, optimize the organization mode of multimodal transport, accelerate the upgrading of technical equipment, create the international-oriented market environment, and improve the policy guarantee system.

Hainan Released Document to Interpret the Catalogue of Encouraged Industries

On November 8, 2022, Hainan released the Guidelines on the Interpretation of the Catalogue of Encouraged Industries in the Hainan Free Trade Port (2020 Version). It is a reference to judge if a business falls under the encouraged industry.

Enterprises in encouraged industries in the Hainan Free Trade Port are entitled to a preferential 15 percent corporate income tax rate, and the catalogue of encouraged industries include the industries encouraged in the National Catalogue and the newly added encouraged industries in the Hainan Free Trade Port.

China Promotes Foreign Investment in Manufacturing Industry to Expand the Quantity, Stabilize the Stock and Improve the Quality

On October 25, 2022, China released Notice on Promulgation of the Several Policies and Measures for Expanding the Increment, Stabilizing the Stock and Improving Quality of Foreign Investment with Emphasis on Manufacturing Sector.

The Measures emphasize the depth implementation of the negative list, strengthen financial support for foreign-invested enterprises, support the import and export of foreign-invested enterprises in the manufacturing industry, focus on encouraging foreign investment in equipment, basic components, key parts and components, research and development design, modern logistics, new energy, green low-carbon key technology innovation and demonstration applications, support foreign-invested enterprises to undertake national science and technology projects, the introduction of international first-class team and support foreign-invested enterprises.

Customs General Issued Regulations on the Management of Bonded Warehouses and Stored Goods (Draft for Comments)

On November 2, 2022, Customs General released the Regulations on Bonded Warehouses and the Management of Stored Goods (Draft for Comments) and the deadline for feedback is on 2 December.

There is one new article in the revised provisions. The main amendments include: (1) the revised provision improve the scope of goods can be stored in bonded warehouses; (2) it stops the management personnel training of bonded warehouse business enterprises and bonded warehouse; (3) it clears time limit for the declaration of goods out of the warehouse; (4) it improves the penalties for non-compliance; (5) there is a new article that supervision of bonded warehouses by Customs in accordance with the law does not affect the local government and other departments to perform their corresponding duties in accordance with the law.

Shanghai Revised Provisions on Encouraging Multinational Corporations to Set Up Regional Headquarters

On November 8, 2022, the Shanghai Municipal Government announced the revised Shanghai Provisions on Encouraging Multinational Corporations to Set Up Regional Headquarters.

The provisions have 20 articles, mainly revised the following content: (1) New provisions for the headquarters of multinational business units clarify that the ratio of business income of business unit headquarters to the business income of the parent company abroad is not less than 10%, and business income is not less than RMB 1 billion. (2) The provisions adjust and optimize the criteria for the recognition of headquarters enterprises, reduce the shareholding ratio of the parent company to not less than 50%. (3) The provisions improve the support for headquarters enterprises, clearly provide adaptation services for the establishment of cross-border capital pools for headquarters enterprises, and explore group-type, industry chain supply chain-based customs credit cultivation certification model. (4) The provisions improve the dynamic assessment mechanism.

China Releases Catalogue of Industries Encouraging Foreign Investment (2022 Version)

On October 28, 2022, China released the Catalogue of Industries Encouraging Foreign Investment (2022 Version), which will come into effect on January 1, 2023.

The new version of the Encouragement Catalog has 1474 articles and mainly revised the following content: (1) It continues to encourage foreign investment in manufacturing industry. (2) It continues to guide foreign investment in productive services. The national catalogue will promote the integration of service and manufacturing industries as the focus of the revision. (3) It Continues to optimize the use of foreign investment in the regional layout. It will expand the encourage scope of the central and western catalogue which will combine with the comparative advantages of local labor and special resources.

Shanghai Issues Regulations on Promoting Development of Hongqiao International Central Business District

On October 31, 2022, Shanghai released the Regulations on Promoting the Development of Hongqiao International Central Business District, which will come into effect on November 1, 2022.

The Regulations consist of nine chapters with sixty-nine articles. The Regulations encourage all kinds of investors to set up regional headquarters and functional institutions of multinational companies in the business zone, clarify that qualified enterprises can open free trade accounts and carry out new types of international trade in accordance with the law, and will promote accounts receivable notes in the business zone. The Regulations also provide for financial, transportation and talent elements.

China National Intellectual Property Administration Issued Draft on Revision of Patent Examination Guidelines (Re-Solicitation of Comments)

On October 31, 2022, China National Intellectual Property Administration issued the Draft on Revision of the Patent Examination Guidelines (Re-Consultation Draft) with the deadline for feedback on 15 December.

The Draft made about 50 amendments in six aspects, in the part of preliminary examination, the system of invoking accession, the system of restoring priority claims and the system of reviewing the principle of good faith and credit have been revised; in the part of examination of review and invalidation requests, the provisions of the systems of collegial examination, sole examination, recusal system, prohibition of practice and invalidation procedure have been mainly revised; in the part of patent application and handling of affairs, the acceptance procedure of filing additional documents by invoking prior applications and the content of requests for delayed examination of utility models are added; the content of amendments to international applications for design and the description of amendments are added.

Article(s)

Privacy Policy —— Know-How and Best Practice

by Sang Tian

On May 26, 2022, National Information Security Standardization Technology Committee (“**TC260**”) released the Information Security Technology - Requirements of Privacy Policy of Internet Platforms, Products and Services (Draft) (“**PP Standard Draft**”) for publiccomments. Prior to the publishment of the PP Standard Draft, TC260 has released the Information Security Technology - Personal Information Security Specification (“**PIS Specification**”) on March 2020, which has drawn a big picture of personal information protection. The PP Standard Draft refines the part of privacy policy in PIS Specification. Though the official PP Standard will probably serve as a recommended standard instead of a mandatory one as the PIS Specification does, still, these standards will be no doubt important references for future law enforcement regarding personal information protection, which will therefore make it an important reference for personal information processors’ data compliance practice. This article will introduce general requirements for privacy policy to help personal information processors find the route to the best practice of compliance.

Privacy policy, also known as personal information protection policy according to the PIS Specification, is a notice from the personal information processor (“**Processor**”) to personal information subjects (“**Subject(s)**”) regarding its policy of personal information collecting and processing. The obligation of the Processor to notify the Subjects of its Privacy Policy before collecting personal information was first brought up in Decision of the Standing Committee of the National People’s Congress on Strengthening Network Information Protection in 2012 (“**2012 Decision**”), but was not formally stipulated by law until promulgation of Cyber Security Law in 2016. However, in the 2012 Decision, obligators of personal information protection including network service providers, enterprises and public institutions, but due to the nature of Cyber security law, only network operator is mentioned as obligator of personal information protection. The gap of the law was finally closed in 2021, by Article 17 of Personal Information Protection Law (“**PIPL**”). Therefore, in the context of PIPL, regardless of the industry and organization form, all the Processors are obliged to formulate and notify to the Subjects their privacy policies.

Pre-Drafting Preparation

Before starting to draft a privacy policy, a Processor shall establish a sound personal information security management system. Such a system shall include the appointment of a person in charge, which can be a data protection officer (“**DPO**”) or concurrent post by CEO or GM, and shall include a department to execute the privacy policy to be formulated. The personnel responsible for personal information protection in an institution shall have sufficient knowledge of PIPL and data security, besides, all the staff involved in the chain of personal information flow shall receive relevant data security training to ensure overall compliance. The next step for the Processor is to make a targeted analysis regarding the purpose and goal of personal information collection, and determine the minimum scope of personal information collection which is both reasonable and compliant. Personal information security impact assessment (“**PISIA**”) will be necessary under circumstances such as sensitive personal information collection, personal information cross-border transferring and providing personal information to a third-party, etc. (See Art. 55 of PIPL). The scope of collection and system of protection shall be adjusted based on the outcome of the PISIA to ensure that it will not give rise to high risk of affecting the rights and interests of the Subjects. Following the establishment of the protection system, different description sheets of personal information processing shall be established and maintained based on different services. Description sheets shall include the types of personal information collected and processed, data storage, route of transfer, involved systems and responsible personnel, etc. Last on the list of privacy policy preparation is to set up a response mechanism for Subjects’ demands for protection. Not only shall the Processor respond to a Subject’s requirement to inquire about, correct and delete its personal information, it shall also provide options to withdraw consent and deregister account.

After all the above steps are checked, the Processor may start to draw up its privacy policy, but every now and then it shall review and update the privacy policy to reflect changes to be made of personal information collection and processing, and re-notice to the Subjects of the amendment of the privacy policy.

Preparing a Compliant Privacy Policy

According to Art. 7.1 of the PP Standard Draft, a privacy policy should include at least the scope of application, an abstract, rules for the collection and use of personal information, rules for the protection of personal information, rules to protect the rights of Subjects, rules for the cross-border transfer of personal information, rules for updating the privacy policy, and contact information of the Processor.

The basic structure of a standard privacy policy shall be as follows:

Part 1, Publisher and scope of application.

This part shall provide to the Subjects the identity and contact of the Processor, and specify the products or services this privacy policy applies to, and types of Subjects it aims to serve. The date of effectiveness shall be stipulated here.

Part 2, Abstract

This part shall provide to users all the main points of the privacy policy. Abstract will let the users understand the concept of the whole document and guide them into detail information they are interested in.

Part 3, Rules for the collection and use of personal information

Starting from one service or function that requires collection of personal information, and list all the detailed steps it involved. Stressing out the text is necessary if the collection involves ID numbers or biometric information. Also the purpose and rules for security of these kind of information shall be explained. Same rule applies when there's cross-border transfer of personal information. Situations like personal information public disclosure and existence of a third-party recipient require special notice and description of collection and usage. Risks involved shall be disclosed to relevant Subjects. All in all, this part shall provide the rules for the collection and use of personal information in a sufficient and detailed manner.

Part 4, Rules for the protection of personal information

This part involves an explanation of the Processor's personal information protection mechanism, including but not limited to internal control design, digital encryption measures and auditing mechanism. In addition, the Processor shall provide a description of possible risks after providing personal information and the corresponding responsibilities it will assume. The Processor must state that it will timely notify the Subject in the event of a security incident.

Part 5, Rules to protect the rights of Subjects

This part is particularly important because the whole idea of publishing the privacy policy is to ensure the rights of personal information be protected properly. No one makes a better supervisor than a Subject itself, therefore the most effective method of personal information protection is to arm the Subjects with substantial rights and effective procedures to realize their rights. Accordingly, the Processor needs to list in detail what are the rights a Subject enjoys and how can he/she exercise its rights. The instruction of "how" shall be clear, detailed and easy to understand, without unreasonable omission. Furthermore, a solid contact shall be provided to Subjects' complaint or requests of help. The responding time shall be reasonable and an explanation is needed if the Processor will not be able to respond promptly. For example, where a Processor receives feedback or complaint from a Subject on the privacy policy, it shall, within five working days, provide a clear and explicit explanation to the Subject and, upon request by the Subject, provide an external dispute resolution method.

Part 5, Rules for the cross-border transfer of personal information

In case of needs to transfer personal information out of China, a Processor must stipulate detailed description of the types of information to be transferred and the supporting standards, protocols and legal mechanisms (e.g., a contract with the overseas recipient) to be followed. The PP Standard Draft does not have detailed requirements on this part, same as the PIS Specification. Further guidance regarding requirements on cross-border data transfer is indicated by Cybersecurity Standards Practice Guide-Security certification specification for cross-border processing activities of personal information, which was released also by TC260 on June 24, 2022. Thereafter, the Cyberspace Administration of China ("CAC") published the Provisions on Standard Contracts for Cross-border Transfers of Personal Information (Draft for Comments) on June 30, and Security Assessment Measures for Outbound Data Transfers on July 7, which has come into effect on September 1, 2022.

Part 6, Rules for updating the privacy policy

This part shall describe procedures for updating privacy policy and the recent updates of the privacy policy (if any). For instance, the PP Standard Draft requires a period of at least 30 working days for public opinion soliciting when significant impacts on users' rights and interests are involved. A prompt notice to the users regarding the updates is also required.

Part 7, Contact information

Besides the contact and responding mechanism for the Subjects to protect their rights, this part shall also indicate an external dispute resolution institution and its contact information.

Presenting a Privacy Policy Compliantly

The key point of presenting a privacy policy is convenience to users. That means easy to find and easy to read. For instance, the PP Standard Draft proposes a “four-click” rule, which means a user of an internet platform shall always be able to view the privacy policy within four clicks. Apart from this, there are rules like the Processor shall take the initiative to prompt the Subject to read the privacy policy before collecting personal information, such as through a pop-up window when a user first opens a product or service, or first registers for an account, and shall not obtain at once the consent of a Subject to multiple types of services/functions by requiring a Subject to agree to one comprehensive privacy policy, which means, instead, the Processor shall remind each time when a user first opens one new service/function to read the corresponding part of the privacy policy (or another privacy policy) and shall get a separate consent for that service/function.

Future Trend of Law Enforcement and Best Practice of Privacy Policy

Privacy policy is a presentation of a personal information Processor's practice of personal information protection. It shows not only what the rules are and how they may protect personal information, but also how an enterprise views the Subjects. Are they real persons or just strings of data from a Processor's perspective? A widely accepted view is that there is almost no effective remedy for the leakage of personal information. Therefore, it is foreseeable that China's personal information protection law enforcement will be further tightened in the future, gradually on par with Europe and the US. Eventually, implementing measures of personal information protection based on the recommended national standards will be the best practice for enterprises to adopt.

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