

GBA Digest

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Technology



CHINA'S NEW CYBERSECURITY REVIEW REGULATIONS BRING CROSS-BORDER DATA SECURITY INTO FOCUS

Companies engaged in data and information related businesses on the Chinese Mainland, especially those whose daily operations involve cross-border data transferring and processing, should pay close attention to domestic and overseas regulatory changes and their impact.

Foreword

Sparkling prospects for the financial industry in the GBA



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The Cross-boundary Wealth Management Connect (WMC) Pilot Scheme was successfully launched in September 2021, and since then many banks in the Greater Bay Area (GBA) – 21 in the Chinese Mainland, 19 in Hong Kong, and eight in Macao – have commenced cross boundary wealth management services for GBA residents.

The integration of financial markets within the GBA made further progress in the last quarter of 2021.

On 21 October 2021, the People's Bank of China (PBOC) and Hong Kong Monetary Authority (HKMA) announced a new *Memorandum of Understanding on Fintech Innovation Supervisory Cooperation in the Guangdong-Hong Kong-Macao Greater Bay Area*. Under this MOU, the PBOC's Fintech Innovation Regulatory Facility and the HKMA's Fintech Supervisory Sandbox are linked to form a "one-stop platform" to expedite the launch of fintech products and reduce

development costs. We echo the sentiments of Eddie Yue, Chief Executive of the HKMA, who anticipates that this arrangement will strengthen fintech supervisory exchange in an environment of rapidly advancing technology.

The establishment of Qianhai Shenzhen-Hong Kong International Financial City, which was announced in late October 2021, is another key initiative. It is part of the *Plan for Comprehensive Deepening Reform and Opening Up of the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone* announced in early September. We have heard the optimistic views from many Hong Kong-based local and foreign financial institutions and fintech companies who would consider establishing new sales functions or operations centers in the new International Financial City to support their business expansion in the GBA and beyond. In addition, there will be a range of business incentives such as funding support, office facilities, talent resources, and tax incentives, and we are pleased to share more details of these with you in this issue of *GBA Digest*.

In around four years, we have seen tremendous growth in the GBA with the results obvious to all. As many companies in the Chinese Mainland, Hong Kong, and Macao, and foreign multinationals, are planning to expand their businesses by investing in the GBA, we have invited our tax experts to analyse the key factors giving rise to tax implications,

at both the corporate and individual level, for companies investing in the Greater Bay Area.

We are now approaching the festive season, which could see the long-awaited reopening of the border between Hong Kong, Macao, and the Chinese Mainland after almost two years of travel restrictions due to the COVID-19 pandemic. The visit of the delegation of Mainland health experts and officials to Hong Kong at the end of November brought hope that the border will open at a certain time, we expect cross-boundary business to return to its pre-COVID level and soon exceed that.

There are now increasing concerns about data security and user privacy protection, especially when this involves cross-boundary data transfer, and the Central Government recently rolled out a set of new regulations and guidelines to strengthen China's data security and protection. Companies with cross-boundary business must update their privacy policies and terms of service according to these new regulations and anticipate any potential compliance risks. In this issue, our specialists guide companies and practitioners in explaining the key areas of focus and sharing their insights and solutions.

Last but not least, we wish you every success in closing 2021 and hope this newsletter gives you lots of great ideas for planning the New Year ahead.

Policy

Exploring new opportunities: Qianhai Shenzhen-Hong Kong International Financial City



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In September 2021, the State Council of the People's Republic of China released the *Plan for Comprehensively Deepening the Reform and Opening up of Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone*. According to the Plan, the total area of the Cooperation Zone will be expanded eight-fold from 14.92 square kilometers to 120.56 square kilometers,

including modern service areas at the airport and a portal hub and hi-tech zone on the west coast, which will help the coordinated development of multiple sectors. The Plan proposes to support the Qianhai Cooperation Zone in further opening up the services sector to Hong Kong and Macao businesses under the Closer Economic Partnership Arrangement (CEPA). It emphasizes Qianhai's positioning as the "role model for opening up China's financial industry" and the "innovation pilot zone for cross-boundary RMB business".

The commencement ceremony of the construction of Qianhai Shenzhen Hong Kong International Financial City ("Qianhai International Financial City") was held at Qianhai Kerry Center on 28 October 2021.

Qianhai International Financial City will strive to provide a space for Hong Kong financial institutions to expand into the Chinese Mainland market, and become an important hub for Shenzhen-Hong Kong cooperation to realize their complementary advantages and integrated development, support Hong Kong to better integrate into the new landscape of China's financial reform and opening-up, and consolidate and enhance Hong Kong's status as an international financial center.

Location and policy advantages

Qianhai International Financial City is situated in Shenzhen's Qianhai Guiwan and Qianwan district, within Qianhai Cooperation Zone pre-expansion, with a planned area of 2.3 square kilometers. To date, premium office buildings offering more than 1 million square meters of good value for money office spaces with comprehensive commercial facilities have been put into use, hosting more than 100 financial institutions of which over 30% are from Hong Kong or overseas. An industrial cluster has taken shape. Twelve banks have chosen Qianhai to launch their businesses under the Cross-boundary Wealth Management Connect (WMC) pilot scheme, staying ahead of the curve in Shenzhen and Hong Kong's financial cooperation and innovation.

Preferential policies and incentives

On 22 November 2021, Qianhai Management Authority issued the *Interim Measures for the Management of Special Funds for Supporting the Development of the Financial Industry of Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of Shenzhen*. Provisions to support Shenzhen and Hong Kong's financial cooperation are the most important elements of the Measures, representing 60% of the articles therein.

The Measures include multiple favorable policies, including one-off setting up incentives, move-in incentives, and business innovation rewards, etc., targeting licensed financial institutions and their subsidiaries, fintech companies, green finance institutions, e-CNY operating institutions, commercial factoring companies, finance leasing companies, Qualified Foreign Limited Partnerships (QFLP), and Wholly-Foreign Owned Enterprise Private Fund Managers (WFOE PFM). Each incentive/reward amount can be worth up to RMB10 million. In addition,

operating incentives of up to RMB3 million will be granted to the management team if an institution who moved in the Zone after 1 January 2021, satisfies the annual profit and income requirement.






At the same period of time, the newly rolled out *Measures on Subsidies for Office Buildings in Support of Businesses Aggregation of Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of Shenzhen* offers to subsidize eligible financial institutions with up to RMB30 million for buying offices and RMB5 million a year for renting offices.

Notably, institutions that have moved in Qianhai International Financial City and their main businesses are eligible for the Catalogue of Encouraged Sectors of Qianhai can enjoy a preferential enterprise income tax rate of 15%. Units established by financial institutions, including tech firms, call centers, and back-office service centers (including legal, accounting, tax, and human resources etc.) may be eligible according to the Catalogue.

Set up in Qianhai to seize business opportunities










We believe this series of preferential policies, particularly the Measures, provide great opportunities for Hong Kong's financial institutions to participate in the development in the Greater Bay Area. Financial authorities, institutions, and professionals of Qianhai and Hong Kong will continue to strengthen their collaboration and communication, and work closely to enhance connectivity between Hong Kong and Chinese Mainland financial markets to create more favorable conditions for Hong Kong's financial sector to integrate into the GBA.

Overview of key eligible institutions and policy incentives

 Type of incentive ¹	 Licensed financial institutions ²	 Fintech companies ³	 E-CNY operating institutions	 Green finance institutions
<p>One-off set up incentive Recipients are required not to move its registered domicile, tax domicile, and place of business from Qianhai Cooperation Zone within 10 years. Otherwise, a refund will be required in proportion to the remaining period plus interest at loan prime rate (LPR).</p>	<p>★ RMB1M-10M</p>	<p>RMB1M-3M</p>	<p>Newly established or moved in e-CNY lab, R&D center, APP demo center: RMB500,000 Commence E-CNY operating institutions: RMB1M-3M</p>	<p>RMB1M</p>
<p>One-off move-in/operation subsidy Recipients are required to set up the offices in the buildings at Qianhai International Financial City approved by the Qianhai Management Authority and take it as the place of business for at least 3 years. Otherwise, a full refund will be required plus interest at LPR.</p>	<p>★ RMB500,000-3M</p>	<p>★ RMB500,000-3M</p>	<p>★ Commence E-CNY operating institutions: RMB500,000-3M</p>	<p>/</p>
<p>One-off financial aid for preparation Limited to rewarding the preparation teams of financial institutions from HK, Macao and overseas which have applied to the National Financial Regulatory Authority to establish licensed financial institutions in the Qianhai Cooperation Zone.</p>	<p>RMB500,000-1M</p>	<p>/</p>	<p>/</p>	<p>/</p>
<p>Operation incentive</p>	<p>/</p>	<p>/</p>	<p>/</p>	<p>/</p>
<p>Business innovation incentive</p>	<p>Kick-off its first business in WMC Pilot at Qianhai: One-off incentive RMB100,000 Enabled investors in WMC accounts opening and processed investment transactions: One-off incentive RMB100,000-RMB300,000 Start-up loans to young entrepreneurs from HK and Macao: up to RMB1M per year</p>	<p>Trial projects on regtech selected by the National or Shenzhen financial regulatory authority: RMB500,000-RMB1M</p>	<p>Successful pilot use case in cross boundary business established in Qianhai: One-off incentive RMB100,000-RMB500,000 Expand shops/merchants accepting e-CNY payments: RMB1,000 each</p>	<p>/</p>
<p>One-off listing incentive</p>	<p>For newly approved listings on the stock exchanges in Shanghai, Shenzhen, Beijing or Hong Kong: RMB2M</p>			
<p>Incentive for buying/renting office Applicable to first time office purchase or rental, eligible financial institutions to move in eligible office buildings, include businesses headquartered in Qianhai, key institutions and companies from financial industry, professional services and other Encouraged Sectors in Qianhai.</p>	<p>★ Incentive for buying an office: Up to RMB30M Incentive for renting an office: Up to RMB5M per year</p>			

¹ ★ indicates instances where Hong Kong institutions can receive 1.2 times the standard Incentive. A Hong Kong institution means an entity registered in Qianhai Cooperation Zone with Hong Kong investors holding more than 25% of its shares. As for policies specifying the maximum subsidy ratio, the maximum subsidy shall be the same for all institutions.

² Licensed financial institutions mainly include financial holding companies, commercial banks, Shenzhen-based municipal branches or subsidiaries of a financial institution, and specialised subsidiaries established by a financial institution, etc.

 WFOE PFM and QFLP	 Industry organizations ⁴	 Finance leasing companies	 Commercial factoring companies	 Others
WFOE PFM: RMB1M QFLP: RMB500,000	RMB500,000-2M	/	/	Major financial cooperation platform and financial infrastructure in the GBA: RMB2M
 RMB500,000	/	/	/	 Fintech accelerators: RMB1M (double subsidy for HK entities)
/	/	/	/	/
/	/	 Key leasing businesses such as aircraft and vessels leasing: Up to RMB10M per year Green financial leasing: Up to RMB2M per year Companies with total volume of leasing assets over RMB2 billion: Up to RMB1M per year	 RMB200,000-1M	Green bonds issuers: Up to RMB1M (double incentive amount for HK listing) HK-invested spot commodity trading platform: Up to RMB15M
/	/	/	/	/

³ Fintech companies refers to a fintech subsidiary established by a bank, insurance company, virtual bank, or virtual insurer based in Hong Kong or Macao and their parent company/ies, with no less than 50% of shares directly or indirectly held by its Hong Kong or Macao founder/s; or a fintech subsidiary with 100% of its shares directly or indirectly held by a licensed bank, securities company, or insurer.

⁴ Industry organizations mainly include branches of financial sector trade organizations based in Hong Kong, or wholly-foreign owned enterprises (third-tier or above), established in Qianhai Cooperation Zone that are directly or indirectly wholly owned by financial sector trade organizations based in Hong Kong and certified by Hong Kong financial regulatory authorities to organize practitioner qualification examinations, or branches of national, financial sector or international trade organizations.

Tax

Investing in the Guangdong-Hong Kong- Macao Greater Bay Area



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In 2017, witnessed by President Xi Jinping, China's National Development and Reform Commission, the People's Government of Guangdong Province, the Government of the Hong Kong Special Administrative Region, and the Government of the Macao Special Administrative Region signed the *Framework Agreement on Deepening Guangdong-Hong Kong-Macao Cooperation in the Development of the Greater Bay Area*, which sets out the goals and principles, and key areas, of cooperative development of the GBA.

In the little more than four years since, thanks to the efforts of governments, industry players, enterprises, and society, and supported by encouraging policies, the GBA now ranks among the world's top bay areas in size, population, GDP and cargo and passenger traffic, and is expected to become the largest bay area and metropolitan region globally.

Development priorities for core cities of the GBA

For multinationals with investments or expansion plans in the GBA, the region offers clear advantages in industries such as finance, technology, manufacturing, trade, professional services, transportation, and tourism & leisure. It is one of the most suitable places for investing into the Chinese Mainland and connecting with international markets. For example, Hong Kong, as an international metropolis, has been a platform for communication and cooperation between Chinese and foreign enterprises in outbound and inbound investments, with its convenient business environment, sound financial system and information technology infrastructure, high-end talent and international professional services. Hong Kong's neighbor Macao has unique advantages when dealing with Portuguese speaking countries.



Source: Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area, [Guangdong-Hong Kong-Macao Greater Bay Area - Home](#)

In the context of "one country, two systems, and three tax jurisdictions", reconciling differences in tax systems is one of the priorities for enterprises investing and doing business in the GBA.

Investment opportunities attracting Chinese and foreign enterprises

The GBA will be a vital engine of China's economic development. Many companies have shown a keen interest in business opportunities in the GBA that connect the Chinese Mainland and international markets, and have formulated plans to leverage preferential policies, such as those in Qianhai or Hengqin under the "Hong Kong + Qianhai" or "Macao + Hengqin" models, utilize the intellectual capital of the three regions and personal income tax subsidies in the GBA, link domestic and international markets through Hong Kong and Macao to optimize their overall tax burden, and benefit from local governments' preferential investment policies.

Due to differences in the tax systems of the Chinese Mainland, Hong Kong, and Macao, there is no simple or universal tax planning solution for enterprises investing in the GBA. Therefore, it is essential for those that have investments in or plans to expand into GBA markets to understand the critical considerations in financial and tax management.

Based on our observations and experience, common issues encountered by enterprises in the planning and implementation stage usually revolve around choice of investment structure, financing, supply chain management, and daily operations.

How to fully leverage tax incentives under different tax systems

How to establish suitable investment and financing structures for business arrangements

How to properly structure supply chains and business profits across the three regions

How to deploy staff in the GBA



Tax strategies for investing in the GBA

We suggest starting with decisions on investment structure, financing, supply chain management, and daily operations. Questions to ask include: Why choose to invest and operate in the GBA? What are the characteristics of the GBA that are attractive to your company? How does the investment environment in the GBA compare to those of other Asia Pacific regions? Are you able to stay up-to-date with the latest changes in tax regulations in the three regions of the GBA and international tax trends (such as BEPS 2.0) and consider their specific implications?

Asking the following questions in checklists helps enterprise management address key issues around investment in the GBA from tax and business perspectives, and identify problems and seek solutions that target their priorities so they can develop proper tax strategies and operational decisions.



Investment structure

- What are the industry and operational arrangement considerations (e.g. business model and supply chain management) for your investment in the GBA? Does your investment plan fit the positioning of the GBA in the *Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area* and the 14th Five-Year Plan?
- What are the factors you would consider when choosing a specific investment area in the GBA (e.g. its four core cities¹ or free trade, development, or high-tech zones)? What are the differences in business operation costs and supply chain management between these different investment areas, and do they match your company's investment plans?
- What kind of legal entity would your company choose for its investment in the GBA (e.g., establishing a representative office, branch, subsidiary or partnership)? What are the business and tax implications of these different legal forms?
- When designing your investment structure, are you thinking of establishing an offshore holding company or a Chinese holding company? What is the purpose of setting up these holding companies? Are there alternative potential locations? If an offshore holding company is already established, should it relocate to Hong Kong for its future operation?
- What kind of withholding tax would your company bear on future dividend repatriations from your investment in the GBA? Will dividend income be eligible for tax incentives under bilateral taxation arrangements?² Specifically, are you concerned about being a tax resident under the tax laws of the Chinese Mainland, Hong Kong or Macao? Does your company meet the business substance requirements and conditions of the beneficial owner? In addition, what specific foreign exchange management requirements and procedures need to be undertaken if dividend distribution involves cross-boundary payments? Are the facilitation policies and measures applicable?
- What are the possible options for your company to exit your investment in the GBA, and what would be the tax costs? Are the proceeds from the investment exit eligible for tax incentives under the bilateral taxation arrangements? If an indirect transfer of equity interests in the Chinese Mainland enterprise is involved, will this result in domestic tax compliance obligations?

¹ Hong Kong, Macao, Shenzhen, and Guangzhou.

² Arrangement between the Chinese Mainland and the HKSAR for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income; Arrangement between the Chinese Mainland and the Macao SAR on the Avoidance of Double Taxation and Prevention of Evasion of Income Tax; and the Arrangement between the HKSAR and the Macao SAR for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance.

Financing

- What is your company's plan to arrange a financing structure conducive to future investments and operations in the GBA?
- From the business and tax perspectives, what is your preferred ways of financing (e.g. direct investment by shareholders, loans from overseas shareholders or related parties, or loans from overseas or domestic banks secured by a group company)? What are the tax costs under different ways of financing? How can interest income become eligible for tax incentives under bilateral taxation arrangements? Is it possible to claim an offshore exemption for interest income in Hong Kong? Are there any potential risks arising therefrom? What are the VAT input deduction issues for interest expenses paid by a Chinese Mainland enterprise?
- Are your financing costs eligible for tax deductions? Is the pricing of related party loans or secured transactions reasonable?
- How do you manage cross-boundary funds involving the Chinese Mainland, Hong Kong, and Macao? Are there any specific restrictions or facilitation policies and measures for foreign exchange management in the GBA?
- Would you consider setting up the group's treasury center in Hong Kong? What are the business advantages and tax benefits to doing so?

Supply chain management and daily operations

- How do you manage your business model in the GBA and overall supply chain tax costs of specific functions (e.g. procurement, manufacturing, sales, R&D, and internal management)? How do you coordinate supply chain arrangements between Chinese Mainland and overseas markets?
- What are the main taxes applicable to your operations in the Chinese Mainland, Hong Kong and Macao (e.g., corporate income tax³ and withholding tax, VAT, customs duties)? Is the company eligible for tax incentives?
- What is the individual income tax liability for senior management working in the GBA and what tax incentives might apply? Are your senior management eligible for any individual income tax incentives of the GBA? How can you assist your senior management in meeting the tax compliance requirements for individual income tax subsidies?
- Is your company eligible for financial subsidies provided by local governments in the GBA? What are the specific requirements of different local governments for companies to apply for financial subsidies? What procedures should companies follow?
- Apart from related party transactions for the sale and purchase of goods, do you need to arrange and manage other related party transactions out of business considerations (e.g. intra-group transactions for the provision of services or licensing of intangible assets)? How do you satisfy transfer pricing compliance requirements and manage risks around related party transactions inside and outside the GBA?
- How do you manage customs compliance risks within the GBA and coordinate the management of customs and transfer pricing compliance requirements?
- How do you address potential permanent establishment risk for Hong Kong or Macao companies in the Chinese Mainland?
- How do you manage compliance requirements such as corporate income tax and stamp duty in the Chinese Mainland, Hong Kong, and Macao regarding intra-group restructuring involved in your operations (including restructuring transactions in the Chinese Mainland or related offshore restructuring transactions)? Is the company eligible for tax deferral or exemptions?
- Is your company's approach to tax compliance and day-to-day management able to meet the requirements of local tax authorities in the GBA? Do you have professionals with tax experience in the three tax jurisdictions across the GBA to handle the company's tax management? Does your company consider adopting digital tools or assets to assist in tax management?
- How do you manage day-to-day tax compliance in the Chinese Mainland, Hong Kong, and Macao, and respond to local tax audits?

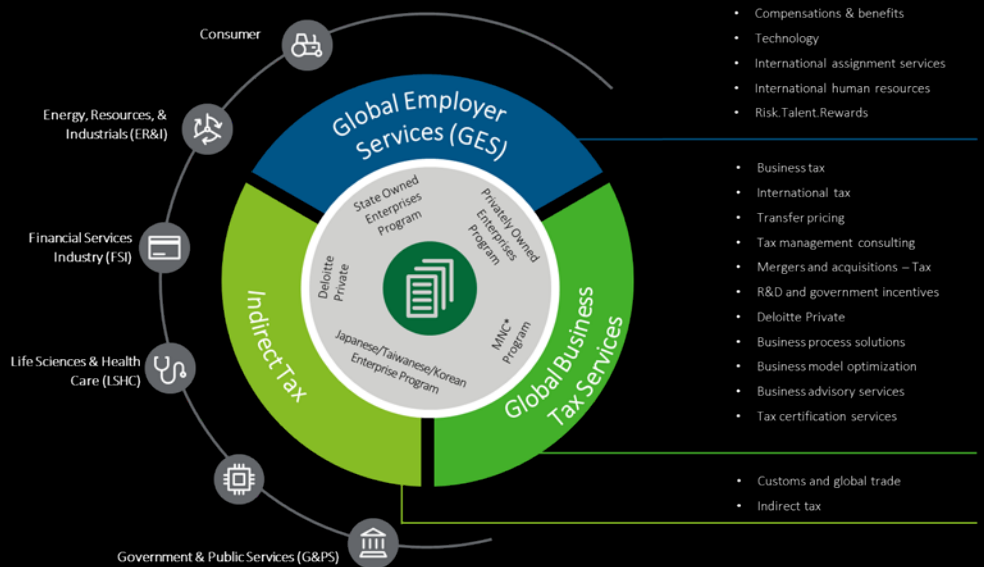
³ Corporate income tax in the Chinese Mainland, profits tax in Hong Kong, and complementary tax in Macao .



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* MNC here refers to companies headquartered outside of China (including HK, Macao and Taiwan), Japan and Korea.



Technology

China's new cybersecurity review regulations bring cross-border data security into focus



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Over the past few decades, US capital markets have been highly favored by Chinese companies seeking initial public offerings (IPOs). Despite ongoing geopolitical tensions between China and the US, many Chinese companies are still eyeing US listings, especially emerging tech companies. According to our data, during the first half of 2021, 38 Chinese companies listed in the US, raising combined proceeds of USD14.15 billion – with both figures representing sharp increases from the same period of 2020. The top five IPOs by funds raised were dominated by TMT and consumer businesses, which raised a total of USD9.9 billion – a 374% surge from the same period of 2020.¹

With intensifying regulation and supervision of Chinese Mainland internet technology companies, increasing attention is being paid to

data and information security issues. A series of laws and regulations related to cybersecurity, data security and personal information have been introduced recently.

In July 2021, the Cyberspace Administration of China (CAC) initiated cybersecurity reviews of US-listed Chinese internet companies, which received wide media coverage at home and abroad, drawing the attention of all sectors of society, especially technology companies planning to list overseas, to data security regulations and guidelines. In addition to meeting overseas listing regulations and requirements, these companies must now address new domestic regulatory compliance risks.

The same month, CAC issued the *Measures for Cybersecurity Reviews (Revision Draft for Comments)*,² which propose

to extend the scope of cybersecurity reviews to companies listing overseas as a means of enhancing supervision over cybersecurity and data.

In addition to the expansion in scope of reviews to "operators of critical information infrastructure" and "data processors"³ (herein collectively referred as "operators"), the revised measures also propose new provisions on cybersecurity reviews of companies listing overseas. These reviews will focus on national security risks that may be brought about by any procurement, data processing, or overseas listing. The main risks considered include theft, leakage, corruption or illegal use or export of any critical or key data or a large amount of personal information, and of such data or critical information infrastructure being affected, controlled,

¹ Deloitte Public Offering Group, 1H 2021 Mainland & HK IPO Markets Review & Outlook, June 2021

² Cyberspace Administration of China, Measures for Cybersecurity Reviews (Draft for Comments), 10 July 2021

³ Data processing includes collection, storage, use, processing, transmission, provision, and disclosure of data.

or maliciously exploited by a foreign government after a company has listed overseas.

Data regulatory risks of overseas listings to be assessed more carefully

Judging from recent actions concerning companies applying for US listings, the CAC generally focuses on issues such as cross-border data transfers and security assessments. More Chinese Mainland internet and information services companies listing overseas are expected to be included on CAC's list for cybersecurity review.

Since the implementation of the *Cybersecurity Law* in 2017, Chinese Mainland regulators have issued multiple data protection laws and regulations. Apart from further improving data security and protection, standardizing data processing activities, and promoting data development and utilization, these measures have raised public awareness of data security and personal information protection, and serve the ultimate goal of safeguarding national sovereignty, security, and development.

In accordance with Article 37 of the *Cybersecurity Law*, "critical information infrastructure operators shall store personal information and important data gathered and generated during operations within the territory of the People's Republic of China (PRC). Where it is indeed necessary

to provide such information and data to overseas parties due to business requirements, a security assessment shall be conducted in accordance with the measures formulated by the national cyberspace authority in concert with relevant departments under the State Council."

On 20 August 2021, the 30th Session of the Standing Committee of the 13th National People's Congress passed the *Personal Information Protection Law*, effective from 1 November 2021. Its Article 40 echoes the above provisions of the *Cybersecurity Law*, specifying that critical information infrastructure operators, or personal information processors whose processing of personal information reaches the threshold amount prescribed by the national cyberspace authority, must store personal information collected or generated by them in China. Where it is necessary to provide such information to an overseas recipient, a security assessment organized by the national cyberspace authority should be passed; if a security assessment is not required as provided by laws, administrative regulations or the national cyberspace authority, such provisions shall prevail.

Article 31 of the *Data Security Law*, which came into effect in September 2021, extends the scope of security administration on cross-border transfers of important data to operators

of non-critical information infrastructure. It also specifies that the security administration of cross-border transfer of important data collected and generated by critical information infrastructure operators during their operations in China is subject to the provisions of the *Cybersecurity Law*, and administrative measures for cross-border transfer of important data will be formulated by the national cyberspace authority in collaboration with the State Council.

If a company needs to provide company data and personal information to foreign regulators to meet overseas listing provisions, it must comply with Article 36 of the *Data Security Law* and Article 41 of the *Personal Information Protection Law*. Relevant authorities in the Chinese Mainland shall handle the request for providing any data from a foreign judicial body and law enforcement body in accordance with relevant laws and the international treaty or agreement which the Chinese government has concluded or acceded to, or under the principle of equality and mutual benefit. Any organization or individual in the Chinese Mainland shall not provide any foreign judicial or law enforcement body with any data stored within the territory of the Chinese Mainland without the approval of the relevant domestic authority.

In fact, overseas listings are just one of many situations in which regulation by the *Measures for Cybersecurity Reviews* is applicable and data security risks can be triggered.

Considering the sensitivity and regulatory trends of data and information security in China, we suggest that,

all companies engaged in data and information related businesses on the Chinese Mainland—and not just companies planning to list overseas—should pay close attention to domestic and overseas regulatory changes and their impact, and gain an in-depth understanding of regulations, guidelines and requirements to assess all the data regulation risks they face, particularly if their daily operations involve cross-border data transfer and processing.

Identification of important data and personal information

The current laws and regulations of the Chinese Mainland do not require all cross-border data to be reviewed. Besides a stricter management system for the core data of the State (i.e. data related to national security, key elements of the national economy, important aspects of people's livelihoods, and major public interests), the laws and regulations primarily focus on the security administration of cross-border transfers of important data and personal information.

Important data

In 2017, CAC released the *Measures for Security Assessment of Cross-border Transfer of Personal Information and Important Data (Draft for Comments)*, providing guidelines for the identification of important data for the first time, and specifying the scope of important data in 27 industries.⁴ In addition, the People's Bank of China defined important data in the financial industry in Appendix C of the *Financial Data Security – Guidelines for Data Security Classification*, which took effect in September 2020. In August 2021, five administrative departments issued the *Provisions on the Management of Automobile*

Data Security (Pilot) for the automobile industry, which defines important data in the sector. Both industries have put forward requirements for data localization.⁵

A new research project by the National Information Security Standardization Technical Committee⁶ aims to draw on domestic and overseas experiences in industry data management and cross-border data controls to explore the applicable subjects and scope of important data security management, analyze the attributes, threats and distribution of important data, and establish criteria for its identification of. It aims to support the implementation of important data management policies and security assessments of cross-border data transfers.

We understand this research will result in new criteria for the identification of important data. Data attributes will be assessed from perspectives including their impact on national security and public interests and any major security risks involved. This indicates more detailed analysis of the management scope of important data will be required, including confidentiality and other risks.⁷

Chinese Mainland authorities have issued other industry standards, including the central bank's *Financial Data Security – Data Life Cycle Security Specification* in April 2021, which guides financial institutions to reasonably formulate and effectively implement security management strategies throughout the lifecycle of financial data.

Personal information

According to Article 4 of the *Personal Information Protection Law*, "personal information" is any kind of information related to an identified or identifiable natural person that are electronically or otherwise recorded, excluding information that has been anonymized. "Processing of personal information" includes the collection, storage, use, processing, transmission, provision, disclosure, and deletion of personal information, which is basically the same as "data processing" under the *Data Security Law*. In addition, Article 28 defines "sensitive personal information" as personal data that, once leaked or illegally used, will easily lead to infringements of human dignity or harm to someone's personal or property safety.⁸ Personal information processors can process sensitive personal information only when they have a specific purpose and sufficient necessity, and take strict protective measures.

The Personal Information Protection Law aims to protect rights and interests in relation to personal information, regulate personal information processing activities, and promote reasonable use of personal information. It applies to the processing of personal information of a natural person that is carried out within the territory of the Chinese Mainland. It also applies to processing outside the territory of the Chinese Mainland of personal information of any natural person in China when: (1) The purpose is to provide a product or service to that natural person located within the Chinese Mainland; (2) The purpose is to analyze or assess the behavior of that natural person located within the Chinese Mainland; or (3) Any other circumstance as provided by laws or administrative regulations. The quality of personal information should be ensured when it is processed, to avoid damage to a person's rights and interests due to any inaccuracy or incompleteness of the information processed. Personal information processors must ensure the processing of personal information is compliant, expressly state any related rules (such as the purpose, method and scope of processing), and take measures necessary to ensure the security of the personal information processed.

Voluntary reporting of security risks concerning cross-border data transfer

Under the Measures on Security Assessments for the Export of Personal Information and Important Data (Draft for Comments) and Measures for Cybersecurity Review (Revision Drafts for Comments), companies that are in-scope of the review are mainly required to organize security self-assessments for cross-border data transfer and apply for cybersecurity reviews proactively.

Article 8 of the Measures on Security Assessments for the Export of Personal Information and Important Data (Draft for Comments) specifies that where the data to be transmitted overseas involves or totally involves the personal information of more than 500,000 individuals or the volume of important data exceeds 1,000GB, network operators shall report to the relevant authority or regulator of the industry for security assessment. Network operators generally conduct security self-assessments for cross-border data transfers prior to transferring any data overseas and are responsible for the results thereof. Assessments shall focus on the necessity of transmitting data overseas; the quantity and scope of the personal information

involved; the important data concerned; data protection capability of data recipients and the network security environment in their jurisdiction; and the risks of leakage and abuse of data or national security threats after the cross-border transmission or retransmission of data.

In accordance with the Measures for Cybersecurity Review (Revision Drafts for Comments), a Cybersecurity Review Office will be established by CAC to develop rules and regulations, and conduct security reviews. In addition, when procuring network products or services, operators must assess whether the purchase will affect or is likely to affect national security, and voluntarily apply for a cybersecurity review by the Cybersecurity Review Office, for which they must submit a declaration form; risk analysis report on the impact or potential impact on national security; the procurement contract, agreement, or contract to be executed; and IPO materials to be filed.



⁴ National Information Security Standardization Technical Committee, *Information Security Technology – Guidelines for Data Cross-Border Transfer Security Assessment (Draft)* for public consultation, 27 May 2017

⁵ Editor's note: Since this article was first published, China's Ministry of Industry and Information Technology has released the *Industrial and Information Technology Data Security Rules (Pilot) (Draft for Comments)* on 30 September 2021.

⁶ The national standardization plan, *Information Security Technology – Identification Guide of Important Data* is centrally managed, reported and implemented by TC260 (the National Information Security Standardization Technical Committee) under the supervision of the Standardization Administration of the PRC. The plan was released on 6 May 2021, with a project cycle of 24 months.

⁷ Editor's note: Since this article was first published, CAC has released *Information Security technology – Identification Guide of Important Data (Draft for Comments)* on 30 September 2021. In addition, the *Data Regulations of the Shenzhen SEZ* and *Shanghai Data Regulations* will both come into effect on 1 January 2022.

⁸ Including biometrics, religious belief, specific identity, medical and health details, financial account, location tracking and other information of a natural person, and any personal information of a minor under the age of 14.

Article 6 of the *Measures for Cybersecurity Review (Revision Drafts for Comments)* also says any operator that holds the personal information of more than one million users and seeks a foreign listing shall apply for a cybersecurity review by the Cybersecurity Review Office. For the procurement of critical information infrastructure that affects or might affect national security, operators are also required to apply for a cybersecurity review. Nevertheless, for network products or services, data processing activities, and foreign listings deemed harmful or likely to be harmful to national security by member organizations of the cybersecurity review mechanism, the Cybersecurity Review Office can obtain approval from the Central Cyberspace Affairs Commission to conduct a cybersecurity review of the operator in question.

The new *Personal Information Protection Law* also stipulates that where it is necessary for a personal information processor to provide personal information to a recipient outside the territory of the Chinese Mainland for business or other purposes, at least one of the following conditions shall be met:

- A security assessment organized by the national cyberspace authority passed in accordance with the provisions of Article 40 of the *Personal Information Protection Law*;
- A certification of personal information protection given by a professional institution in accordance with the regulations of the national cyberspace authority;
- A contract wherein the rights and obligations of both parties are specified has been entered into with the overseas recipient as per the standard contract provided by the national cyberspace authority; and
- Any other conditions as prescribed by laws, administrative regulations or the national cyberspace authority.



Our recommendations

In this digital era, data has long been a critical asset for most companies. In our experience, businesses and organizations in every industry need to focus on improving pertinence, accuracy, and security at all stages of their data processing activities.

Therefore, we suggest companies take the following actions:



1. With new regulations and guidelines on data, personal information, and cybersecurity being introduced, executives including the Chief Information Security Officer, Chief Digital Officer, and Chief Information Technology Officer should stay up-to-date with regulatory updates on data security and personnel information on the Chinese Mainland, and analyze and understand the impact of any new regulations and guidelines for businesses.
2. After obtaining a preliminary understanding of the potential impact, companies can conduct a risk assessment of their data processing and cybersecurity by themselves or using a third-party organization. This assessment should cover data classification (identification of important data), the risk rating of existing systems, "cross-border data" transfer in the systems (if any), and the volume of data involved. This enables companies to summarize their regulatory compliance risks, and determine whether they are obliged to apply for a cybersecurity review.
3. Where a cybersecurity review by the Cybersecurity Review Office is required, apart from making timely reporting, companies should cooperate with the competent regulator to ensure smooth communication, and take necessary measures in accordance with their own circumstances. For example, companies should adjust their information technology and security policies, and determine whether corresponding technologies and infrastructure can be improved or updated to further enhance their data processing and cybersecurity.
4. Additionally, companies should ensure they have sufficient data security professionals, and provide regular training and cybersecurity information for relevant personnel, so that they remain cognizant of the latest regulatory updates and industry news, identify security gaps and take the right actions and measures at an early stage, to provide sound protection for data assets.

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