

RIMÓN



RIMÔN

New Development of China Cybersecurity Rules

Global Forum Annual Conference
Muscat, Oman
October 17, 2022

Sarah (Xiaohua) Zhao, Partner

Sarah.zhao@rimonlaw.com

Phone: 001-202-262-5396

[Sarah \(Xiaohua\) Zhao » Rimon Law](#)





NEW DEVELOPMENT OF CHINA CYBERSECURITY RULES

I. A comprehensive framework governing cybersecurity, data protection and privacy:

- (1) China Cybersecurity Law (June 2017)
- (2) China Data Security Law (Sept. 2021)
- (3) China Privacy Law, (or Personal Information Protection Law, Nov. 2021)
- (4) Measures for Security Assessment of Cross-Borders Data Transfer (Sept. 1, 2022)
- (5) Draft of Amendment to China Cybersecurity Law (Sept. 2022)
- (6) Sectorial implementation regulations, as an example, Measures for the Administration of Consumer Rights Protection of Banking and Insurance Institutions (Draft issued in May 2022; formal rule is expected to be issued within 2022)
- (7) Other related implementation rules and regulations.



NEW DEVELOPMENT OF CHINA CYBERSECURITY RULES

II. Measures for Security Assessment of Cross-Borders Data Transfer

- (1) Based on the Cybersecurity Law and Privacy Law, data collected in China shall be stored in China, unless exceptions apply. For the purpose of being qualified to conduct cross-border data transfers, certain security assessments may be conducted.

- (2) In the past, such security assessments were difficult to be enforced because the security assessments standard did not exist. This confusing situation has been clarified by the new rule, *Measures for Security Assessment of Cross-Borders Data Transfer*, which became effective last month on September 1, 2022. This new rule has set forth a road map for conducting a security assessment if it is necessary.



NEW DEVELOPMENT OF CHINA CYBERSECURITY RULES

III. Who Shall Apply with the New Rule

- (1) Based on Article 4 of the new rule, a company that handles cross-borders data transfer shall conduct security assessments if they meet any of the following four situations: (i) data handler transfer of critical information out of the country; (ii) Critical Information Infrastructure operators that handle the information of more than one million people; (iii) Since January 1 of the previous year, the data handler has transferred overseas more than 100,000 pieces of personal information, or 10,000 pieces of sensitive personal information; and (vi) Any other required data security assessments by the government.
- (2) The following circumstances are defined as cross-border data transfers: (i) The data handler transfers and stores the data collected and generated in the domestic operation to overseas destinations; (ii) The data is collected and generated within China, and overseas institutions, organizations or individuals may inquire, retrieve, download, or transfer; (iii) Other data transfers that may be required by the CAC (Cyberspace Administration of China).



NEW DEVELOPMENT OF CHINA CYBERSECURITY RULES

IV. How to Apply the New Rule

- (1) Data handlers shall apply for security assessments via their local provincial CAC. The submitted materials shall be in both written and electronic versions. After the provincial CAC receives the application materials, it shall complete the review within 5 working days. When the local CAC completes the approval process, it shall forward its report and the application materials to the Central CAC.
- (2) Within 7 working days from the date of receipt of the local approval, the central CAC shall determine whether to accept and notify the data handler in writing.
- (3) If approvals are rejected, the data handlers may require the CAC for re-evaluation within 15 working days of receiving the notification of the assessment result, and the re-evaluation result shall be the final conclusion.

VI. Cross-Border Transfers for Judicial Procedures

- (1) The Ministry of Justice issued a notice to clarify the requirements for cross-border data transfer involved in litigations in September, 2022.
- (2) “Hague Service Convention”, “Hague Convention on Evidence Collection,” and the 38 Sino-foreign bilateral judicial assistance treaties, as well as diplomatic channels.
- (3) Relevant foreign entities shall submit requests for evidence collections to the Ministry of Justice through the channels specified in the treaty, or to the Ministry of Foreign Affairs through diplomatic channels, and the requests shall be executed by the People's Courts after the approvals.
- (4) Based on the Civil Procedure Law of China, evidence collection shall be carried out by the People's Court or by a lawyer with the approval of the People's Court.
- (5) It may be feasible if a party in China voluntarily submits evidence materials located in China directly to a foreign judicial authority.

Thank you.



Sarah (Xiaohua), Partner

Email: sarah.zhao@rimonlaw.com

Phone: 001-202-262-5396