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CYBERSECURITY LAW FINALLY APPROVED (中国最终出台网络安全法)

On November 7, 2016, after three readings at the Standing Committee of the National People's Congress, the Cybersecurity Law of China was finally approved.

This new law, which will take effect from June 1, 2017, includes the following key elements compared to the second draft, published in July 2016:

- The term “key information infrastructures” refers to those used for public communication and information services, energy, transport, water conservancy, finance, public services, e-government affairs and other major industries and fields that, if they malfunctioned, were destroyed or were subject to data leakage, would seriously jeopardize national security, the national economy, and people's livelihoods and public interest. The State Council will formulate the specific security protection scope and measures for key information infrastructures.
- Key information infrastructure operators will only store personal information and important data collected and generated during operations within the territory of the People's Republic of China. Operators required to transmit this information and data overseas will be subject to a network security assessment.
- Information obtained by cyberspace administration authorities and relevant departments in the course of fulfilling their responsibilities to protect cybersecurity will be used exclusively for protection purposes.
- Personal information protection is no longer limited to Chinese citizens, but is extended to all users, including foreigners.
- For cases of potential or actual personal information leakage, damage or loss, it includes the obligation to promptly inform all users—rather than only those possibly affected by it—and report to the relevant departments.
- It adds a provision making individuals and entities responsible for their use of the network and states that they must not create websites or set up communication groups for the purpose of illegal and criminal activities, including fraud, passing on

criminal methods, producing and selling banned and controlled goods, or disclosing this type of information through the network.

- It adds a provision on overseas organizations, institutions and individuals that attack, invade, interfere with or destroy key information infrastructures in China, resulting in serious consequences, stating that they will be subject to legal liability, and that the State Council's public security agencies may take punitive measures against them, including freezing their assets.

The State Council and other competent authorities must still resolve some uncertainties, including:

- setting national and industrial standards for cybersecurity administration and the security of network products, services and operations;
- formulating the specific security protection scope and measures for key information infrastructures;
- issuing security assessment measures;
- drafting and releasing the catalog of key network equipment and specialized cybersecurity products, and promoting mutual recognition of security certification and security detection results; and
- issuing provisions for network operators to store login information for at least six months.

Date of issue: November 7, 2016. Effective date: June 1, 2017

MINISTRY OF COMMERCE'S DECISION ON ABOLISHING SOME FOREIGN INVESTMENT REGULATIONS

(商务部关于废止部分规章的决定)

On November 3, 2016, the Ministry of Commerce issued Order [2016] No. 2 abolishing the following regulations on foreign investment:

- Administration Measures for Foreign Investments in Commercial Fields and all supplementary provisions;
- Interim Regulations for the Establishment of Foreign-Invested Convention- and Exhibition-Oriented Companies and supplementary provisions; and

- Measures for the Administration of Liquor Circulation.

Based on our oral inquiry with the Shanghai authorities, establishment of foreign-invested commercial enterprises remains unchanged, despite the abolishment.

There is no subsequent provision specifying whether the previous special requirement for foreign-invested conference and exhibition companies to have experience organizing events still applies.

The record filing procedure at state level for liquor circulation is abolished, although at provincial level, and taking Shanghai as an example, the liquor wholesale and retail permit is still required.

We will follow up on these issues and keep you posted on any developments and clarification from the authorities.

Date of issue: November 3, 2016. Effective date: November 3, 2016

SAT AND SAFE COOPERATE TO SHARE INFORMATION AND IMPLEMENT JOINT SUPERVISION (国家税务总局和国家外汇管理局关于推进信息共享实施联合监管合作备忘录)

On November 14, 2016, the SAT and the State Administration of Foreign Exchange ("SAFE") signed a Memorandum on Cooperation for Promoting Information Sharing and Implementing Joint Supervision.

The SAT and the SAFE will jointly establish a routine information exchange system to share data on tax administration and foreign exchange supervision, focused on risk monitoring, assessment and warning, e.g., on export tax refunds, crossborder tax sources and foreign exchange receipts and payment. The two departments will also share information on enterprise classification to jointly implement incentive and penalty measures.

The Memorandum confirms the two departments' resolution to combat tax refund fraud, protect China's tax sources and prevent illegal foreign exchange transfer.

Date of signature: November 14, 2016

COLLECTION OF VAT INVOICES BASED ON TAXPAYERS' TAX CREDIT RATING (国家税务总局关于按照纳税信用等级对增值税发票使用实行分类管理有关事项的公告)

On November 17, 2016, the SAT released Announcement [2016] No. 71 introducing new measures on the use of value added tax ("VAT") invoices based on taxpayers' tax credit rating:

1. Simplified invoice collection

Until now, taxpayers had to collect their VAT invoices from the tax authorities monthly, according to their respective pre-verified volume of transactions.

From now on, taxpayers with grade A tax credit rating can obtain VAT invoices for up to three month's volume all at once, and taxpayers with grade B tax credit rating for up to two month's volume.

2. Extended cancellation of VAT invoice verification

To date, VAT general taxpayers had to scan input VAT invoices to verify them before deducting them.

To simplify the VAT deduction process, SAT's Announcement [2016] No. 7 and Announcement [2016] No. 23, respectively, exempt VAT general taxpayers with grade A and grade B tax credit ratings from VAT invoice verification. Now, Announcement 71 further extends the exemption to VAT general taxpayers with grade C tax credit rating.

Date of issue: November 17, 2016. Effective date: December 1, 2016

ADDITIONAL CONSUMPTION TAX ON SUPER-LUXURY CARS (财政部国家税务总局关于对超豪华小汽车加征消费税有关事项的通知)

Until now, consumption tax on automobiles was paid at the manufacturing and import stages at once, and the manufacturers and importers were the taxpayers—meaning there was no further consumption tax when retailers sold automobiles to consumers.

To guide reasonable consumption, save energy and reduce emissions, Caishui [2016] No. 129 now imposes an additional 10% consumption tax at the retail stage for “super-luxury cars,” i.e., those with a retail price over RMB 1.3 million (VAT excluded).

Taxpayers at the retail stage are those that sell super-luxury cars to consumers. For domestic manufacturers selling super-luxury cars directly to consumers, consumption tax rate is the sum of the respective tax rate at the manufacture and retail stages.

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