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Data, Privacy & Cybersecurity

CAC releases *Administrative Provisions on Recommendation Algorithms in Internet Information Services*

网信办发布《互联网信息服务算法推荐管理规定》

On Dec. 31, 2021, the Cyberspace Administration of China (CAC) and three other authorities released the *Administrative Provisions on Algorithm Recommendation of Internet Information Services* (the Provisions), which have been in force since March 1, 2022.

1. Scope of Application

The Provisions apply to the use of algorithmic recommendation technology to provide internet information services within the People's Republic of China (PRC) mainland territory. The most commonly used recommendation algorithm recommends an item to a user if similar users previously liked the item. The Provisions mention four typical types of algorithmic recommendation technology subject to the regulation: (1) generative or synthetic algorithm, which includes deepfake and deep synthesis; (2) ranking and selection algorithm; (3) search filter algorithm; (4) decision-making algorithm.

2. Compliance Measures Internet Service Providers Must Take

The Provisions set forth certain compliance requirements for Internet Service Providers utilizing algorithmic recommendation technology (the Providers), where the Providers must:

a. establish management systems and technical measures for algorithmic mechanism examination and verification, technology ethics review, user registration, information dissemination examination and verification, security assessment and monitoring, security incident response and handling, data security and personal information protection, countering telecommunications and online fraud, etc.;

b. formulate and publish the norms related to algorithmic mechanisms and allocate sufficient technical specialists and support;

c. regularly examine, verify, assess, and check algorithmic mechanisms, models, data, and application outcomes, etc.;

d. establish and complete feature databases to be used to identify unlawful and harmful information;

e. strengthen user model and user tagging management and perfect norms for logging interests;

f. strengthen algorithmic recommendation service display or page ecology management, establish and perfect mechanisms for manual intervention and autonomous user choice, and vigorously present information to conform to mainstream value orientations;

g. where providing internet news information services, obtain an internet news information service permit; and standardize the deployment of internet news information collection, editing and dissemination services, resharing services, and broadcast platform services. Providers may not generate or synthesize fake news information, and may not disseminate news information not published by work units in the State-determined scope;

h. not use algorithms to falsely register users, illegally trade accounts, or manipulate user accounts; or for false likes, comments, reshares, etc. They may not use algorithms to shield information, over-recommend, manipulate topic lists or search result rankings, or control hot search terms or selections and other such intervention in information presentation; or to carry out acts influencing online public opinion, or evading supervision and management;

i. not use algorithms to impose unreasonable restrictions on other internet information service providers, or obstruct or destroy the regular operation of their lawfully provided internet information services, or carry out monopolistic or improper competition acts.

3. User Rights Protection

The Provisions also require the Providers to protect certain rights users enjoy, which include:

a. Right to Know: The Providers shall notify users in a clear manner regarding the algorithmic recommendation services they provide, and publicize the basic principles, purposes and motives, main operational mechanisms, etc., of the algorithmic recommendation services in a suitable manner.

b. Right to Choose: The Providers shall provide users with a choice not to target their individual characteristics, or provide users with a convenient option to switch off algorithmic recommendation services. Where users choose to switch off algorithmic recommendation services, the algorithmic recommendation service provider shall immediately cease providing related services. Furthermore, the Providers shall provide users with functions to choose or delete user tags used for algorithmic recommendation services aimed at their personal characteristics.

c. Rights Related to Specific Groups: For minors, the elderly, labor workers and consumers, the Providers must take special care to protect the rights and interests of these groups.

4. Filing Obligation of Certain Providers

The Provisions also mandate that Providers "with public opinion properties or having social mobilization capabilities" shall, within 10 working days of providing services, report the provider's name, form of service, domain of application, algorithm type, algorithm self-assessment report, content intended to be publicized, and other such information through the internet information service algorithm filing system, and carry out filing formalities.

5. Obligation to Cooperate with Security Assessments and Supervision

Under Article 28 of the Provisions, the Providers shall preserve network records according to the law, cooperate with cybersecurity and informatization, telecommunications, public security, market regulation, and other such relevant departments carrying out security assessment, supervision, and inspection work according to the law, and provide the necessary technical, data, etc., support and assistance.

NISSTC Sought Comments on the *Information Security Technology - Guideline for Identification of Critical Data*

信安标委就《信息安全技术 **重要数据**识别指南》征求意见

On Jan. 13, 2022, the Secretariat of the National Information Security Standardization Technical Committee (NISSTC) released the *Information Security Technology - Guideline for Identification of Critical Data (Draft for Comment)* (the Draft Guidelines) for public comment until March 13, 2022.

Consistent with CAC's *Regulations on Network Data Security Management (Draft for Comment)*, the Draft Guideline also defines "Critical Data" as data which, if tampered with, sabotaged, leaked, or illegally acquired or used, may threaten national security or the public interest. Furthermore, the Draft Guidelines explain that the National Secret and Personal Information itself will not fall into the scope of Critical Data, but the statistics and data derived from Personal Information will be considered Critical Data.

The Draft Guidelines also have listed 14 defining features for identifying Critical Data, most of which focus on the impact and correlation of said data with national or public security in the areas of politics, territories, the military, the economy, culture, society, ecology, natural resources, nuclear facilities, overseas interests, biology, human resources, space, polar regions, the deep sea, etc. If any data is determined to possess any of the defining features, the relevant data will be treated as Critical Data.

MIIT Seeks Comments Again on the *Administrative Measures for Data Security in the Field of Industry and Information Technology*

工信部对《工业和信息化领域数据安全管理办法》再次征求意见

On Feb. 10, 2022, the Ministry of Industry and Information Technology (MIIT) issued a second draft of *Administrative Measures for Data Security in the Field of Industry and Information Technology (for Trial Implementation)* (the Second Draft Measures) to solicit public opinion. Compared with the first draft released in September 2021, the Second Draft Measures reflect the following amendments:

1. Emphasizing the Protection of Personal Information:

The Second Draft Measures includes the Personal Information Protection Law (PIPL) as one of the legal bases for the protection of personal information. Relevant laws and regulations, including PIPL, are emphasized in Article 37.

2. Broadening the Scope of Data Subject to Protection:

The Second Draft Measures categorize data into three types: Industrial Data, Telecommunications Data, and Radio Data: (a) "Industrial Data" refers to data generated and collected during the research, development, design stages, production and manufacturing, operation and management, maintenance, platform operation, etc. in all areas and fields of the industry; (b) "Telecommunications Data" refers to the data generated and collected from telecommunications business operations; and (c) "Radio Data" refers to the data of radio wave parameters such as radio frequencies and stations generated and collected from radio business operations.

3. Further Clarifying the Authorities of Relevant Governmental Departments:

While MIIT serves as the overall supervisor and regulator of data security in the field of industry and information technology, the local MIIT branch, telecommunication bureau, and radio management bureau supervise data processing activities in the local area depending on the specific data type.

4. Revising the Standards for Grading and Classification:

The Second Draft Measures require the local MIIT bureau, telecommunication bureau, and radio management bureau to report and update the catalogue of important data and core data, while the data processor in the field of industry and information technology can further classify the data based on the hierarchy of general data → important data → core data.

5. Supplementing the Requirements in the Filing Mechanism:

The Second Draft Measures further require the data processor in the field of industry and information technology to file its catalogue of important data and core data with local competent authorities. The corresponding authority must approve the catalogue within 20 business days and issue a filing record to the data processor. In the event of a material change to the catalogue, the data processor should also apply for a change in filing. Furthermore, the destruction of important data or core data also needs to be filed at the local competent authorities.

6. Emphasizing the Legal Representative's Liability:

According to the Second Draft Measures, the legal representative will be chiefly responsible for the data security of their company. Meanwhile, enterprises also are required to establish internal registration and approval mechanisms for processing important data and core data.

7. Updating the Compliance Requirements for Data Life Cycle Management:

The Second Draft Measures also include additional requirement for data processors, namely: (1) when storing important data and core data, the processor should conduct regular data recovery tests; (2) if important data or core data is destroyed, the data processor should update its filing with the local competent authorities in a timely manner; (3) if the task of processing core data needs to be transferred or delegated, the data processor should conduct a risk assessment and apply for review by the local competent authorities.

SAMR and CAC Launch Data Security Management Certification

市场监督总局、互联网信息办公室发布《关于开展数据安全管理认证工作的公告》

On June 5, the State Administration for Market Regulation (SAMR) and the Cyberspace Administration of China (CAC) launched the data security management certification, encouraging all network operators to regulate their online data processing activities and strengthen their online data security protection through certification. Certification agencies engaged in data security management certification must be legally established and carry out certification work in accordance with the *Rules for the Implementation of Data Security Management Certification* (the "Rules").

The highlights of the Rules are as follows:

- The Rules specify the basic principles and requirements governing the certification of various online data processing activities conducted by network operators, covering online data collection, storage, use, processing, transmission, provision, and disclosure.
- The certification basis of the data security is the latest version of GB/T 41479, Information Security Technology - Security Requirements for Online Data Processing and relevant standards and specifications.
- Data security management certification must adopt the mode of "technical verification + onsite inspection + post-certification supervision."
- The certification institutions must carry out a comprehensive evaluation based on the certification entrustment materials, technical verification reports, on-site inspection reports and other relevant materials and information, before making the decision on certification.
- A certification certificate shall remain in force for three years and shall, within the validity period, remain in force so long as the certification client is deemed qualified after a post-certification supervision by a certification agency.
- The Rules set the certification responsibility for different subjects. Certification agencies are responsible for the conclusions of on-site inspection and certification. Technical verification agencies are responsible for the conclusion of technical verification. Certification clients are responsible for the authenticity and legitimacy of the certification entrustment materials.

Dispute Resolution

SPC issues *Several Provisions on the Trial of Civil Cases for Damages for the Tort of Misrepresentation in the Securities Market*

最高人民法院发布《关于审理证券市场虚假陈述侵权民事赔偿案件的若干规定》

The Supreme People's Court (SPC) issued *Several Provisions on the Trial of Cases of Civil Damages for the Tort of Misrepresentation in the Securities Market* (New Provisions), in effect since Jan. 22, 2022. Compared with the former judicial interpretation regarding civil damages for the tort of misrepresentation SPC released in 2003, the New Provisions have been amended in the following respects to respond to changes in the securities market and judicial practices:

1. Extending the Applicability: The New Provisions not only apply to the tort cases arising from misrepresentation in the stock exchanges but also apply to tort cases in regional equity markets, i.e., over-the-counter markets.

2. Cancelling the Preceding Procedure: According to the 2003 Provisions, the People's Courts can accept tort cases arising from misrepresentation only if a preceding administrative punishment decision or judgment of a criminal case has been given. The New Provisions abolish such requirement. However, according to Article 2 of the New Provisions, the plaintiff should bear the burden of proving the misrepresentation and the losses or damages suffered by it therefrom.

3. Further Defining Types of Misrepresentation: On the basis of three typical misrepresentation acts, which are false records, misleading statements, and material omissions, the New Provisions further distinguish the acts of failing to disclose information as required into three types: false representation, insider trading, and infringement acts that simply harm the interests of shareholders. Meanwhile, the New Provision also establish the "predictive information security port" system to encourage and regulate issuers to voluntarily disclose forward-looking and other information.

4. Clarifying Elements of Materiality and Causation in Civil Liability for Securities Misrepresentation and Relevant Judicial Standards: The New Provisions clarify that the materiality of misrepresentation shall be either (1) material events as the Securities Law of PRC expressly provides; (2) material events or important matters required to be disclosed in departmental regulations or other regulatory documents; or (3) where the disclosure or correction of relevant information would result in an appreciable change in the trading volume or trading price of the relevant securities. On this basis, it would be possible to exclude civil liability if the defendant could submit evidence that the misrepresentation did not cause an appreciable change in the trading price or trading volume of the securities. The New Provisions also further distinguish "transaction causation" from "loss causation," providing more defenses for defendants.

5. Addition in the Subjects of the Liability: Under the New Provisions, liability for civil damages arising from misrepresentation would fall not only to the issuer but also to (1) the controlling shareholder, ultimate controller who instructs the issuer to make the misrepresentation, (2) in the scenario of major asset restructuring, the party who did not provide truthful, accurate, and complete information, and (3) the issuer's suppliers and customers, or the financial institution providing services to the issuer, who knowingly assist financial fraudulent activities conducted by the issuer or intentionally conceal the material information.

Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Case by the Courts of the Mainland and of the Hong Kong Special Administrative Region Takes Effect

内地与香港法院互认婚姻家事案件判决安排生效

On Feb. 15, 2022, the *Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Case by the Courts of the Mainland and of the Hong Kong Special Administrative Region* (Arrangement) came into operation.

The Arrangement realizes the closer and broader coordination within "one country" including in the scope of reciprocal recognition and enforcement of cases related to marriage and family in both the mainland and Hong Kong and the cases of the divorce by agreement. The reciprocal recognition and enforcement will cover not only the identification of relationship but also the determination of property. The Arrangement also enables closer connection between the laws and judicial rules under the "two systems." By integrating the concept of "own" in mainland judgments with the concept of "transfer" in Hong Kong orders, a positive connection can be built in terms of legal expressions; the judicial concept of mutual respect is upheld, the expression "final judgment" is replaced with "effective judgment," and the definition related to "effective judgment" in the laws of the place of original court will be respected to the greatest extent. The review principle of serving the best interest of minors is also clarified.

SPC Releases the *Online Operation Rules of People's Courts*

最高法公布《人民法院在线运行规则》

On Jan. 26, 2022, the Supreme People's Court (SPC) issued the *Online Operation Rules of People's Courts* (Operation Rules), which became effective March 1, 2022, together with the *Online Litigation Rules of People's Courts* and the *Online Mediation Rules of People's Courts* released in 2021, forming a comprehensive online court rule system in China. The Operation Rules mainly focus on the internal management of the court, i.e., the development, application, management of information systems such as litigation platforms and mediation platforms. The Operation Rules further clarify the following matters: (1) the overall requirements and basic principles for the online operation of the people's courts; (2) the composition and main functions of the information system supporting the online operation of the people's courts; (3) the platforms on which the online activities of the people's courts are carried out as well as application methods; and (4) the operation support requirements for information security, operation and maintenance of the people's courts.

The Operation Rules propose that in litigation, the parties and their agents may, according to law-based, voluntary, and reasonable principles, transfer litigation, mediation, and other processes from online to offline, or vice versa. Under the online operation mode, the people's courts allow some participants to participate in litigation, mediation, and other activities online, while allowing others to do so offline. The Operation Rules also require courts at all levels to ensure the security of data related to the smart court information system throughout the life cycle of the litigation, and formulate rules and regulations for data classification protection, data security emergency response, and data security review.

Currently, the SPC has promoted and updated the "People's Courts Online Service" platform, integrating litigation service functions such as meditation, case filing, file reading, delivery, preservation etc., satisfying the requirements set forth in the Operation Rules.

Supreme People's Court issues *Interpretation on Several Issues Concerning the Application of the General Part of the Civil Code*

最高人民法院出台民法典总则编司法解释

On Feb. 24, 2022, the Supreme People's Court (SPC) issued the *Interpretation on Several Issues Concerning the Application of the General Part of the Civil Code* (Interpretation), with effect from March 1, 2022. There are 39 articles in the Interpretation, which includes general provisions, capacity for enjoying civil-law rights and capacity for performing civil juristic acts, guardianship, declaration of a missing person and declaration of death, civil juristic acts, agency, civil liability, limitation of action.

The roles of the Interpretation are to: 1) ensure the convergence of the *Civil Code* and the *General Principles of the Civil Law*; 2) systematically sort out the experience accumulated by the people's courts in judicial practice; and 3) solve the issues that remain to be clarified after implementation of the *General Rules of the Civil Law*.

The key observations are as follows:

1. Strengthen the Role of Core Socialist Values:

Article 2 of the Interpretation specifies that a civil custom, customary practice or the like which has been generally observed by ordinary people within a certain geographical area or trade and for a long period of time when they conduct civil activities may be deemed a custom under Article 10 of the Civil Code. Meanwhile, Article 2(3) provides that application of any custom must not contravene core socialist values and must not offend public order or good morals.

2. Highlight the Protection of Rights:

The Interpretation sets forth the protection of fetuses, minors, and persons with limited capacity for performing civil juristic acts.

In addition, the Interpretation refines some commercial behaviors, e.g., agency, mainly setting forth the protection of agents. It specifies that where (1) there was the appearance of authority, and (2) the counterparty did not know that the person performing the act had no authority and was not at fault, the people's court may determine that the counterparty under Article 172 of the Civil Code had reason to believe that the person performing the act had authority. In the event of a dispute over whether there was apparent authority, the counterparty shall bear the burden of proof that the condition stated in (1) is satisfied on the part of the person without authority; and the principal shall bear the burden of proof that the condition stated in (2) is not satisfied on the part of the counterparty.

3. The Interpretation is Brief and Concise:

The Interpretation's text is neither long nor comprehensive. Rather, it is a summary of a number of previous judicial interpretations and also includes the formation of a general consensus in judicial practice.

Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Anti-Unfair Competition Law (2022 Version)

《最高人民法院关于适用<中华人民共和国反不正当竞争法>若干问题的解释》于 2022 年 3 月 20 日起施行

On March 16, 2022, the *Supreme People's Court issued the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Anti-Unfair Competition Law (2022 Version)* (the 2022 Interpretation), which came into force March 20, 2022. The 2022 Interpretation has been formulated in accordance with the Civil Code, the Anti-Unfair Competition Law (AUCL), the Civil Procedure Law, and other relevant laws and regulations and in light of trial practice to help correctly try civil cases arising from acts of unfair competition.

The 2022 Interpretation mainly addresses the following issues.

1. Details on AUCL Article 2

To unify jurisdiction standards, Article 1 of the 2022 Interpretation specifies that where a business operator disrupts market competition order and harms the lawful rights and interests of another business operator or consumers, which act falls outside the violations of Chapter II of the AUCL or other laws such as the Patent Law, the Trademark Law, or the Copyright Law, the people's court may decide the case by applying Article 2 of the AUCL.

2. Detailed Interpretations on "Counterfeit and Confusion":

   - A mark with a certain market awareness and any distinctive characteristics that distinguish the source of the goods bearing the mark may be determined by the people's court to be a mark with "certain influence" as stated in Article 6 of the AUCL.
   - When determining whether a mark described in Article 6 of the AUCL has a certain market awareness, the people's court shall take into overall consideration the degree of knowledge of the mark among the relevant public in China, the time, territory, amount, and target of the sales of the goods, the duration, degree, and geographical scope of the publicity for the goods, and the status of protection given to the mark, among other factors.
   - Where a mark described in Article 6 of the AUCL or a distinctive identifying part thereof is deemed according to the first paragraph of Article 10 of the Trademark Law as a mark that shall not be used as a trademark, a claim made for its protection under Article 6 of the AUCL shall not be supported by the people's court.
   - An enterprise's name legally registered with the market entity registration authority, or the name of an overseas enterprise used for commercial purposes in China, may be determined by the people's court to be the "name of an enterprise" stated in subparagraph (2) of Article 6 of the AUCL.
   - A determination of a name with certain influence, such as the name (including abbreviated name, trade name, and the like) of an individually owned business, a farmer's professional cooperative (association), or any other market entity specified by law or administrative regulations, may be made by the people's court under subparagraph (2) of Article 6 of the AUCL.

3. Details on Unfair Competition Behavior Online:

   - A URL redirection from another business operator that occurs directly to a user without the consent of that business operator or that user shall be deemed by the people's court as "forcing a URL redirection" as stated in subparagraph (1) of the second paragraph of Article 12 of the AUCL.
   - If only a link is inserted and the URL redirection is triggered by the user, the people's court shall determine whether the act violates subparagraph (1) of the second paragraph of Article 12 of the AUCL by taking into overall consideration the specific way the link was inserted, whether there is a justifiable reason, and the impact on the interests of the user and that other business operator, among other factors.
   - Where a business operator maliciously interferes with or sabotages a network product or service legally provided by another business operator by misleading, deceiving, or compelling any user into modifying, closing, or installing that product or service or by any other means without clear advance notice to the user and without obtaining user consent, the people's court shall make a determination of the case under subparagraph (2) of the second paragraph of Article 12 of the AUCL.

SPC issues the *Arrangement Concerning Mutual Assistance in Interim Measures in Aid of Arbitral Proceedings of the Mainland and of the Macao Special Administrative Region*

最高人民法院发布《关于内地与澳门特别行政区就仲裁程序相互协助保全的安排》

On Feb. 24,2022, the Supreme People's Court (SPC) issued the *Arrangement Concerning Mutual Assistance in Interim Measures in Aid of Arbitral Proceedings of the Mainland and of the Macao Special Administrative Region* (Arrangement), which entered into force March 25, 2022.

More specifically, the Arrangement clarifies several issues and makes it permissible for all mainland seated arbitral proceedings to cross-request interim measures from courts in both jurisdictions:

Types of Applicable Interim Measures	Mainland courts can issue interim measures to preserve assets, evidence, and certain kind of conduct, while Macao courts can issue precautionary measures to ensure the realization of threatened rights.
Applicable Arbitral Proceeding	Cases subject to the Arrangement shall be 1) civil or commercial arbitration; and 2) administered by qualifying arbitral institutions in accordance with the Arbitration Law of Macao or in accordance with the Arbitration Law of the People's Republic of China. Cases administered by other nation/regional institutions are excluded from the scope of the Arrangement.
Governing Court	Mainland: Second Instance People's Court, where the assets, evidence, or domicile of the responding party is located. Macao: First Instance Court of Macao.
Timing of Application	Parties can apply for interim measures prior to commencing or during the arbitration proceedings. Where a party makes an application for an interim measure before the start of the arbitration, a letter from the arbitration tribunal certifying its acceptance of the arbitration case within 30 days after the interim measure is taken is needed, or the People's Court of the Mainland may discharge the interim measures.

Application Documents	Arbitration Agreement, documents of identity, documents related to the case, certificate of admission of the case by the relevant arbitration tribunal, etc. A copy of a Chinese translation is needed if the material is not in Chinese and needs to be submitted to the mainland courts. In parallel, if the documents to be submitted to Macao courts are not in Chinese or Portuguese, an accurate translation is needed.

Foreign Investment

Relevant Matters Concerning Further Facilitating Foreign Institutional Investors to Invest in China's Bond Market

关于进一步便利境外机构投资者投资中国债券市场有关事宜

To further facilitate foreign institutional investment in China's bond market in accordance with laws and regulations, on May 27, 2022 the People's Bank of China (PBC), the China Securities Regulatory Commission (CSRC), and the State Administration of Foreign Exchange announced *Relevant Matters Concerning Further Facilitation Foreign Institutional Investors to Invest in China's Bond Market* (Announcement). The Announcement provides greater convenience for foreign institution investors (FIIs) to invest in China's bond market under the existing institutional framework and unifies the management of cross-border fund transfer.

1. The Announcement Clarifies the Rights and Responsibilities of All Parties:
   - The FIIs that conduct investment business in China's bond market must comply with China's laws and regulations, the relevant provisions of China's bond market, cross-border RMB business, and foreign exchange management.
   - The PBC Shanghai Head Office will formulate detailed implementation rules according to the Announcement, maintain effective management of market access of commercial institutions, and tighten interim and ex-post regulation of commercial institutions and domestic custodian banks.
   - Financial infrastructure and financial institutions that provide services such as trading, registration, custody, and settlement for foreign institutional investors shall, according to their respective responsibilities, follow the relevant provisions of the Announcement and effectively provide services and conduct monitoring in a timely manner.
2. The FIIs Can Invest in China's Bond Market More Conveniently:
   - The Announcement supports FII investment in the bond market in the stock exchange, whether directly or through a stock connect scheme, and FII choice in trading venue.
   - FIIs may conduct transactions of cash bonds, securities lending, related derivative products for risk management purposes, bond ETFs, and other transactions acknowledged by the PBC and the CSRC, in China's bond market.
   - FIIs investing in the interbank bond market may open bond accounts with bond registration and settlement institutions acknowledged by the PBC, or may entrust eligible domestic custodian banks to conduct bond custody directly or through their overseas custodian banks.

- Bonds purchased by FIIs investing in the interbank bond market through their domestic custodian banks shall be registered under the name of the domestic custodian banks, and such investors are entitled to securities rights and interests according to the law.

3. The Announcement Adheres to Pass-Through Data and Information Collection Requirements:

- The China Foreign Exchange Trade System, Shanghai Stock Exchange, Shenzhen Stock Exchange, and other electronic trading platforms acknowledged by the PBC and CSRC, domestic and overseas custodian banks, and other bond registration and settlement institutions acknowledged by the PBC and CSRC, shall record the data of trading, custody, settlement, etc. of FIIs in an accurate, complete and timely manner, and, in accordance with relevant requirements of the transaction reporting system, regularly submit the detailed data to the PBC Shanghai Head Office.
- If an FII and a counterparty transact in other ways, both parties to the transaction shall submit trading data to the PBC Shanghai Head Office respectively.
- Overseas custodian banks shall report information on foreign institutional investors and their custody and settlement data to domestic custodian banks on time.

The GAC Issues *Measures on Comprehensive Bonded Zones*

海关总署发布《中华人民共和国海关综合保税区管理办法》

On Jan. 1, 2022, the General Administration of Customs (GAC) issued the *Measures on Comprehensive Bonded Zones of the Customs of the PRC* [Decree of the GAC No.256] (Measures). The Measures came into effect April 1, 2022), and GAC simultaneously revised and annulled the *Interim Administrative Measures of Customs of the PRC for Bonded Port Zone* [Decree of the GAC No. 243] (《中华人民共和国海关保税港区管理暂行办法（2018 年 11 月修订）》in November 2018.

The Measures specify and refine various administrative issues regarding management of Comprehensive Bonded Zones (CBZ, a special customs supervision area established by the Chinese government, with favorable taxation policies), based on the key elements of Decree No.243, and the updated legal requirements that new laws, regulations, decrees, and announcements provide. Compared with Decree No.243, the main changes in the Measures are as follows:

1. Extended Scope of Permitted Business Activities:

Under the Measures, enterprises registered in the CBZ are permitted to carry out re-manufacturing, financial leasing, cross-border e-commerce, bonded futures delivery business. Enterprises may need to revise the scope of their business license if they wish to undertake such activities. The expansion of permitted business activities in CBZ may aim to stimulate foreign investment back into China.

2. Streamlined Procedures:

The GAC plans to enhance investor-friendly statutes through several simplified procedures. For instance, the entry/exit procedures for goods shipped to and from CBZ have been expedited and will apply in all instances where the goods are not subject to export tariff/licensing or are not eligible for export tax rebates and are not subject to standard customs record procedures.

3. New Rules Concerning Inspection, Quarantine, and Supervision of Goods:

The Measures clarify that goods transported from foreign countries to CBZ shall be subject to quarantine inspection at the entry port. Note that, up until now, the GAC has not provided details regarding such quarantine inspection. Entities with a location in the CBZ should watch this closely.

The Measures are a positive development for investors whose businesses are in CBZ and provide practical guidance.

Finance

The Futures and Derivatives Law of the People's Republic of China is Adopted

《期货和衍生品法》表决通过

The Futures and Derivatives Law of the People's Republic of China (the Law), adopted at the 34th meeting of the Standing Committee of the 13th National People's Congress of the People's Republic of China on April 20, 2022, took effect Aug. 1, 2022.

The Law has been drafted to regulate futures and derivatives trading, safeguard the legitimate rights and interests of all parties, maintain market order and public interests, promote the services of futures and derivatives markets for the national economy, prevent and resolve financial risks, and safeguard national economic security. The Law also may apply to trading activities outside of China according to the Article 2 of the Law, which says that "any trading of futures and derivatives and related activities outside China that disrupt the domestic market order in China and damage the legitimate rights and interests of domestic traders shall be handled and investigated for legal liability in accordance with the relevant provision of the Law." However, the exact meaning of a disruption of the domestic market order is unclear. Nor is it clear how the Law will be enforced in relation to transactions and the activities conducted outside China.

The Law mainly focuses on the following aspects:

1. Promoting Futures and Derivatives Markets to Better Serve the Real Economy:

According to Article 4 of the Law, the State encourages the use of futures and derivatives markets to engage in risk management activities including hedging. In furtherance of the articulated purpose, Article 23 of the Law mandates position limits for all futures and derivatives while the same article also enables market participants "whoever engages in hedging and other risk management activities" to apply for exemption from the position limit. These articles highlight the purpose of the Law to promote the role of futures and derivatives in serving the real economy, which helps stabilize business operations, promote economic transformation, and facilitate high-quality enterprise development.

2. Emphasizing the Importance of Risk Prevention:

The Law requires that futures and derivatives markets establish and improve a system or mechanism for monitoring, controlling, solving, and disposing of risks to restrict excessive speculation in accordance with the law and to prevent systematic market risks.

3. Cross-Border Trading and Regulatory Cooperation:

Chapter XI of the Law provides guidance on cross-border trading activities and regulatory cooperation.

- Where an overseas futures trading venue (e.g., a futures exchange) provides any domestic entity or individual with trading services directly connected to the trading system of the trading venue, it shall apply to the futures regulatory authority under the State Council, i.e., CSRC for registration and accept the supervision and regulation of CSRC, unless otherwise prescribed.
- A domestic entity or individual shall appoint a domestic futures operator with an overseas futures brokerage qualification to conduct overseas futures trading, unless otherwise prescribed by the State Council. Where a domestic futures operator further appoints an overseas futures operator to conduct overseas futures trading, such overseas futures operator shall apply to CSRC for registration and accept the supervision and regulation of the futures regulatory under the State Council, unless otherwise prescribed.
- Foreign brokers and their domestic proxies are required to obtain approval from CSRC for any marketing, advertising, and soliciting activities of futures and derivatives within China and such activities are subject to the applicable provisions of the Law including the requirements regarding trader/investor protection.

4. Comprehensive Protection of Traders:

- *Classification of traders*: The Law divides traders into ordinary traders and professional traders according to factors such as property status, financial asset status, trading knowledge and experience, and professional ability. In the case of a dispute between an ordinary trader and a futures operator, the futures operator must prove that its behavior complies with laws, administrative regulations, and the provisions of the futures regulatory authority under the State Council and involves no misleading circumstances or fraud. Where a futures operator cannot prove itself, it shall bear the corresponding compensation liability.
- *Rights of traders*. Traders have the right to inquire about their authorization records, trading records, margin balance, and other important information related to services they accept.
- *Preventing conflicts of interest*. Futures operators, futures trading venues, and futures clearing institutions, functionaries of the futures regulatory authority under the State Council and futures industry associations, and other personnel prohibited from participating in futures trading by laws, administrative regulations, or the provisions of the futures regulatory authority under the State Council shall not engage in futures trading.
- *Protections for trader information*. Futures operators, futures trading venues, futures clearing institutions, and futures service providers and their functionaries must keep trader information confidential in accordance with the law, and may not illegally buy, sell, provide, or disclose trader information.

SAFE Releases revised *Measures for Administrative Penalties of the State Administration of Foreign Exchange*

国家外汇局发布《国家外汇管理局行政处罚办法》

On May 11, 2022, the State Administration of Foreign Exchange (SAFE) promulgated *Measures of the State Administration of Foreign Exchange for Administration Penalties (Revised in 2022)* (Measures),

which will repeal the *Measures of the State Administration of Foreign Exchange for Administrative Penalties (Announcement of the State Administration of Foreign Exchange [2020] No. 1)*. The new Measures will standardize the imposition of SAFE and its branches (collectively the "foreign exchange authority"), guarantee and supervise the performance of duties by the foreign exchange authority under the law, and protect the lawful rights and interests of citizens, legal persons, and other organizations.

The new Measures are revised based on the newly revised *Administrative Penalties Law of People's Republic of China*. The Revisions focus on the following:

1. Refine Provisions on Jurisdiction and Filing Standards:

According to Article 7 of the Measures, the investigation and dealing of an unlawful act involving foreign exchange falls under the jurisdiction of the foreign exchange authority in the place where such act was committed. Article 8 of the Measures specifies that where two or more foreign exchange authorities have jurisdiction over an unlawful act involving foreign exchange, the unlawful act falls under the jurisdiction of the foreign exchange authority that first filed the case. In addition, for any unlawful act involving foreign exchange under a lower-level foreign exchange authority's jurisdiction, where the higher-level foreign exchange authority deems that such act shall directly fall under the jurisdiction of the foreign exchange authority at the corresponding level, the case may directly fall under the jurisdiction of the foreign exchange authority at the corresponding level or, after investigation, be transferred to the lower-level foreign exchange authority for handling.

2. Conduct Legal Review Before Making an Administrative Penalty Decision:

According to the new Measures, under any of the following circumstances, before a foreign exchange authority makes an administrative penalty decision, the decision shall be subject to legal review and verification by authorities or personnel at the posts responsible for legal affairs. No decision shall be made without a legal review or passing of a legal review:

- where the administrative penalty decision involves major public interests such as national security, public safety, economic security, and social stability;
- where the significant rights and interests of a party concerned or a third party are directly involved, which has undergone hearing procedures;
- where there exist complicated case facts and multiple legal relationships;
- where the administrative penalty decision is made under "serious circumstances"; and
- other circumstances under which a legal review is required as prescribed by laws and regulations.

3. The Right to Request a Hearing:

Where a foreign exchange authority intends to make an administrative penalty decision that involves the following, it shall notify the party concerned of their right to request a hearing:

- it intends to impose a penalty of suspending or ceasing the operation of foreign exchange settlement and sales;
- it intends to impose a penalty of suspending or ceasing the operation of a foreign exchange business or revoking the relevant foreign exchange business permit;
- it intends to impose a fine of above CNY1 million on the legal person or any other organization, or confiscate illegal gains equivalent to above CNY1 million;

- it intends to impose a fine of above CNY100,000 on citizens, or confiscate illegal gains equivalent to above CNY100,000; and
- other circumstances under which a hearing is required as prescribed by laws, regulations, and rules.

CSRC Unveils *Measures for the Supervision and Regulation of the Directors, Supervisors, Senior Executives and Employees of Securities and Fund Operators*

证监会发布《证券基金经营机构董事、监事、高级管理人员及从业人员监督管理办法》

On Feb. 18, 2022, the China Securities Regulatory Commission (CSRC) issued *Measures for the Supervision and Regulation of the Directors, Supervisors, Senior Executives and Employees of Securities and Fund Operators* [Order of the CSRC No.195] (Measures), effective April 1, 2022, implementing the new Securities Law revised in 2019. The Measures replaced the *Measures for the Administration of the Qualifications for Securities Practitioners* [Order of CSRC [2002] No.14], *Measures for the Administration over Post-holding of Senior Officers of Securities Investment Fund Management Companies* [Order of CSRC [2004] No. 23], *Measures for the Supervision and Administration of the Required Qualifications for Directors, Supervisors, Senior Officers and Principals of Branches of Securities Companies* [Order of the CSRC No. 88], which expired on the Measures' effective date.

Highlights of the Measures are summarized below:

1. Roles and Responsibilities:

The Measures clearly describe the thresholds for three tiers of roles, which would apply to 1) board directors, supervisors, executives ("Tier 1 Employee"); 2) head of branches; and 3) other professionals (all together, "Employees") in practice. Note that, in the past, the Tier 1 Employee of the operators were to be reviewed and approved by relevant CSRC office in advance. Currently, per the changes, the operator only needs to file the appointment to the relevant CSRC office after the decision is made. Where the relevant CSRC office finds that an appointee does not meet the job requirements afterwards, it shall require the operator to replace such appointee.

2. Prohibitions:

While clarifying the thresholds for Tier 1 Employee, the Measures also specify seven circumstances where a person shall not serve as a Tier 1 Employee. For instance, he/she has been sentenced to criminal punishment for committing an offence of endangering state security, terrorism, embezzlement, bribery, etc.; and he/she has been subjected to an administrative penalty imposed by a financial regulator or prohibited by the CSRC from accessing the securities market due to major violations of laws and regulations, and it has been less than five years since the term of enforcement expired. Meanwhile, the Measures clarify 10 "can't do" employee actions, such as privately accepting the entrustment of clients to engage in securities and fund investment, making promises to clients of profits or bearing of losses in violation of regulations, etc.

3. Operator Responsibilities:

The Measures emphasize operator responsibilities, which include engaging in activities to enhance the internal control system to identify and evaluate unlawful factors concerning conflicts check and integrity at work, and to manage the same in a company-wide manner. The operator should undertake activities

focused on raising employee awareness and fostering a lawful climate through position review, performance management, etc.

The Measures focus on integrity. It is reported that a one-year period would apply to unqualified employees from the Measures' April 1 effective date.

Medical Treatment & Health

SAMR issues two revisions regarding the supervision and administration of medical devices

国家市场监督总局颁布《医疗器械生产监督管理办法（2022 年）》与《医疗器械经营监督管理办法（2022 年）》

On March 10, 2022, the State Administration for Market Regulation (SAMR) issued its revisions to two administrative regulations on the production and distribution of medical device, i.e., *Measures for the Supervision and Administration of Medical Device Production (2022)* or Order No. 53, and *Measures on the Supervision and Administration of the Business Operations of Medical Devices (2022)* or Order No. 54. The new revised regulations took effect May 1, 2022.

The key points in Order No. 53, the regulation on medical device production, are summarized below:

- Contract manufacturers are allowed to use the device registrant's certificate to apply for medical device production licenses; in the past, only the device registrant itself could apply for the medical device production licenses with their own certificate;
- The same medical device is allowed to be manufactured by multiple contract manufacturers;
- The device registrant and the contract manufacturers are assigned with different duties and responsibilities; and the contract manufacturer is primarily responsible for production;
- Contract manufacturers and device registrants must sign a quality assurance agreement and a contract manufacturing agreement in accordance with the Guidelines for the Quality Agreement of Entrusted Manufacturing formulated and issued by the National Medical Products Administration (NMPA) March 22, 2022;
- The new measures also specify the responsibilities of device registrants when executing surveillance for cross-reginal contract manufacturing.

Key changes in Order No. 54, which regulates distribution of medical devices, are summarized below:

- If a distributor applies to obtain the distribution license for class III medical device and the registration for distribution class II medical device at the same time, the on-site inspection can be carried out once;
- If a distributor holding a class III medical device distribution license applies for the registration for distribution of class II medical device, or if a distributor applies for both the distribution license for Class III medical device and the registration for distribution of Class II medical device, certain documentation can be exempted.

Both Order No. 53 and Order No. 54 further simplify the application procedures and reduce the paperwork for obtaining the requisite licenses and registrations for medical device production and/or

distribution. The time period for NMPA to issue the manufacture/distribution license is reduced to 20 working days, which is extendable if any issue that requires remedial action is identified.

** This GT Newsletter is limited to non-U.S. matters and law.*

Read previous issues of GT's China Newsletter.

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