



June 2, 2021

National People's
Congress No. 23,
Xijiaominxiang
Xicheng District, Beijing 100805
The People's Republic of China

Re.: Draft Personal Information Protection Law and Data Security Law

The undersigned organizations represent companies of all sizes and from a broad range of industry sectors with business activities or interest in China. We express our support for efforts to improve both the protection of personal data and standards of data governance, and we would welcome efforts to revise the second drafts of both laws. We also respectfully raise concerns regarding certain provisions relating to data localization and data transfers in the draft Personal Information Protection Law (PIPL) and Data Security Law (DSL).ⁱ

The ability to access technology and transfer data securely across international digital networks is of central importance to any company with international business activities. Cross-border data transfers support many important priorities, including international sales and marketing, transnational research and development, cybersecurity, fraud monitoring and prevention, anti-money laundering, anti-corruption, and a broad range of other activities relating to the protection of health, privacy, security, intellectual property, and regulatory compliance. To avoid prejudicing these priorities, it is recommended that the PIPL and DSL avoid the imposition of data localization mandates, onerous data transfer restrictions, and associated data-related barriers.

Key areas of concern under the draft PIPL and DSL include:

- (1) data localization requirements for “personal information” (PIPL Art. 40) and highly restrictive data transfer provisions for “important data” and “personal information” (DSL Art. 30, PIPL Arts. 38-40);
- (2) lack of definition or overbroad scope for key concepts that implicate data localization requirements and data transfer restrictions, including what constitutes “important data,” a “justified need,” or a “large volume [of data]” (PIPL Art 40; DSL Art. 30);
- (3) mandates for data assessments requiring governmental notification and/or approval in conjunction with the data localization and data transfer provisions noted above (PIPL Art. 38(1), 40; DSL Arts. 29, 30);
- (4) proposed data transfer “standard contracts” that, while encouraging, may not be interoperable with standard contractual clauses under the EU General Data Protection Regulation (GDPR) or other established personal data protection frameworks (PIPL, Art. 38(3));
- (5) the absence from the PIPL of other internationally recognized data transfer mechanisms, such as

intra-corporate binding rules, trustmarks and regional certifications (PIPL, Art. 38); and

- (6) pre-transfer requirements for separate consent from individuals, even where another legal basis for transfer (such as contractual clauses) has been established. (PIPL, Art. 39).

In respect of the foregoing matters, we respectfully inquire whether alternative, less restrictive approaches may exist to achieve the personal data protection and data governance objectives underlying the PIPL and the DSL. Less restrictive approaches would significantly facilitate the important priorities noted in paragraph 2 above. We are grateful for the opportunity to share these perspectives, and look forward to continued engagement on these matters.

Sincerely yours,

1. ACT | The App Association
2. AmCham China
3. American Council of Life Insurers
4. American Property Casualty Insurance Association
5. Asia Cloud Computing Association
6. Asia Securities Industry & Financial Markets Association (ASIFMA)
7. Associação Brasileira das Empresas de Software (ABES)
8. Association of Competitive Telecom Operators (ACTO)
9. Australian Information Industry Association
10. BIO – The Biotechnology Innovation Organization
11. Business Europe
12. BSA | The Software Alliance
13. Coalition of Services Industries
14. Computer and Communications Industry Association (CCIA)
15. Digital Europe
16. European Automobile Manufacturers' Association (ACEA)
17. European Publishers' Council
18. European Services Forum
19. Global Data Alliance
20. Information Technology Industry Council (ITI)
21. Internet Association
22. Japan Electronics and Information Technology Association (JEITA)
23. Japan Information Technology Service Industry Association
24. Securities Industry and Financial Markets Association (SIFMA)
25. Software & Information Industry Association
26. Telecommunications Industry Association
27. The Coalition to Reduce Cyber Risk (CR2)
28. The International Association of Scholarly, Technical and Medical Publishers (STM)
29. US Chamber of Commerce
30. US-China Business Council
31. US Information Technology Office in China (USITO)
32. World Information Technology and Services Alliance

¹ Personal Information Protection Law of the People's Republic of China (Second Draft), <http://www.npc.gov.cn/flcaw/userindex.html?lid=ff80818178f9100801791b35d78b4eb4>; Data Security Law of the People's Republic of China (Draft) (Second Deliberation Draft) (April 14, 2021), <http://www.npc.gov.cn/flcaw/userindex.html?lid=ff80818178f9100801791b3c96374eef>. Many of the undersigned associations have raised in their respective submissions a variety of other comments and concerns beyond the specific cross-border data matters highlighted in this letter. For additional details, please see those other submissions.