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TABLE OF CONTENTS / 本期内容

DATA SECURITY / 数据安全

China Passed Data Security Law / 《数据安全法》出台 2

PRIVATE FUND / 私募基金

Beijing Launched Pilot Program on Transfer of Private Fund
Interests / 北京试点私募基金份额转让 3



DATA SECURITY / 数据安全

China Passed Data Security Law 《数据安全法》出台

2021年6月10日，第十三届全国人民代表大会常务委员会第二十九次会议审议通过《数据安全法》（“《数据安全法》”），该法将于2021年9月1日起施行。《数据安全法》是我国继2016年《网络安全法》之后在数据安全领域的又一重要的基础性立法，该法主要从以下方面规定了数据监管的基本框架：

1. 明确数据定义及适用范围。《数据安全法》下的“数据”指任何形式的信息记录，任何在中国境内开展的数据处理活动均受该法的监管。由于《数据安全法》并未对何为“在中国境内”作出进一步解释，除了物理空间上在中国境内开展的数据处理活动外，境外实体通过境外网站、APP及境外服务器对中国个人或实体进行的数据收集、存储、使用等行为是否受到《数据安全法》监管尚不明确。
2. 建立数据分类分级保护制度。根据《数据安全法》，我国将在国家、地区以及各行业部门层面分别制定数据分类分级保护制度，并将对重要数据制定更加严格的管理制度，包括建立数据安全审查制度、对特殊数据实施出口管制等。对于重要数据的处理者而言，《数据安全法》要求其承担相应的数据安全保护义务，定期开展风险评估并向主管部门报送风险评估报告。
3. 严格规管数据出境行为。目前的《网络安全法》仅规定了关键信息基础设施运营者（CIIO）应当将重要数据存储在境内，其向境外提供重要数据前应根据国家网信部门要求进行安全评估，《数据安全法》进一步明确，关键信息基础设施运营者之外的其他数据处理者对重要数据的收集、储存、使用与出境也将受到相应监管，具体办法将由相关部门制定。此外，《数据安全法》还规定，未经我国主管机关批准，任何境内组织、个人不得向外国司法或者执法机构提供存储于中国境内的数据。
4. 明确法律责任及处罚力度。《数据安全法》对相关违法行为的法律责任进行了明确规定，违反该法的行为可能被处以最高人民币1,000万元的罚款、责令暂停相关业务、停业整顿、吊销相关业务许可证或者吊销营业执照的行政处罚。此外，从事数据交易中介服务的机构未要求数据提供方说明数据来源、未审核交易双方的身份，或未留存审核、交易记录的，除了前述行政处罚外，还可能被处以没收违法所得以及最高10倍违法所得的罚款。

总体而言，《数据安全法》是数据安全领域的原则性规定，其中许多条文的解释及实际操作有待相关部门进一步出台细则予以明确。鉴于该法将对中国境内的数据处理活动产生重大影响，我们建议在中国境内有业务经营活动的外国企业持续关注 and 遵守中国在数据安全领域的监管规定和实践。

On June 10, 2021, China's top legislative authority the NPC Standing Committee passed the long awaited *PRC Data Security Law* (the “DSL”), which will take effect on September 1, 2021. The DSL is China's second comprehensive data security legislation following the issuance of the PRC Cyber Security Law in 2016 (the “CSL”), and has established a fundamental regulatory framework for data security and protection together with the CSL mainly in the following aspects:

1. Specification of the applicable scope. The DSL will apply to all types of data record in electronic and other forms and all types of data processing activities carried out within the territory of China. However, the scope of “within the territory of China” is not defined in the DSL, thus it remains unclear whether data processing activities such as collection, storage and usage of data involving PRC individuals or entities by foreign entities through Apps or websites hosted outside of China will subject to the DSL's regulation.
2. Establishment of a data classification system. The DSL has established a data categorization and classification system for protection and security covering different categories of data. Important data will be subject to stricter management and protection requirements including but not limited to data security review and export control. The DSL further requires an important data processor to take the data protection responsibilities by conducting regular risk assessments and submitting assessment reports to the competent authorities.
3. Tightening regulation on data export. Under the CSL, only critical information infrastructure operators (the “CIIOs”) are required to store important data collected by themselves within the territory of China and to conduct security assessment before cross-border transfer of such data. The DSL clarified that for data processors who are not CIIOs, the collection, storage, usage and cross-border transfer of important data are also required to comply with relevant regulations to be formulated and promulgated by competent authorities. Moreover, according to the DSL, without pre-approval by the competent PRC authorities, no PRC domestic individual or entity is allowed to provide any data stored within China to foreign judicial body or administrative authorities.
4. Imposition of severe penalties. The violation of DSL may result in up to RMB10 million monetary fine, suspension of the business, and even revocation of operation permits or business license. For data transaction intermediary services providers who fail to examine data source, verify identities of transaction parties or properly archive verification and transaction records, in addition to the abovementioned penalties, they may also be subject to confiscation of unlawful gains and monetary fines up to 10 times of unlawful gains.

As a fundamental law governing data security, the SDL has set out more principles but lacks practical guidance. The specific implementing regulations and rules are expected to be issued in the near future to flesh out the essentials and concepts introduced under the SDL. Given that the SDL will have a profound impact on data processing activities, we suggest that all foreign companies with business operations in China continue to closely monitor the developments of the PRC data protection regulations and ensure general compliance as well.

PRIVATE FUND / 私募基金

Beijing Launched Pilot Program on Transfer of Private Fund Interests 北京试点私募基金份额转让

2021年6月25日，北京市地方金融监督管理局、中国证券监督管理委员会北京监管局等七部门联合制定并发布了《关于推进股权投资和创业投资份额转让试点工作的指导意见》（“《指导意见》”）。该意见是我国首个私募基金份额转让交易的规范性文件，标志着国务院常务会议在2020年7月15日提出的在区域性股权市场开展股权投资和创业投资份额转让试点率先在北京落地执行。

《指导意见》的主要内容包括：(a)支持各类国资基金份额通过份额转让试点交易，并采取市场化方式确定转让价格；(b)允许在京注册登记的有限合伙企业通过北京股权交易中心办理有限合伙人的财产份额质押登记；(c)支持符合条件的外资机构在北京设立私募股权二级市场基金（S基金），并参与股权及创业投资基金份额转让交易。

根据公开信息，《指导意见》实施当日北京股权交易中心给两单基金份额转让交易发放了转让凭证，2020年12月至今已有三只S基金（包括一家外资S基金管理人）在北京设立。《指导意见》的出台表明国家对发展S基金和拓宽基金退出渠道的支持态度，但转让试点从北京扩大到其他地方可能尚需时日，对此，我们将保持持续关注。

On June 25, 2021, seven departments for Beijing local government (including, among others, Beijing Local Financial Administration Bureau, Beijing branch of China Securities Regulatory Commission) jointly issued the *Guidelines on Implementing the Pilot Program of Transfer of Interests in Private Equity Funds and Venture Capital Funds* (the “Guidelines”). The Guidelines is China’s first mandatory rules governing transfer of fund interests, which indicated that the trials of fund interests transfer as proposed in the executive meeting of the State Council on July 15, 2020 has been formally launched in Beijing.

Highlights of the Guidelines include, among others: (a) facilitating trade sale of the interests in the state-owned PE or VC funds in the secondary market with a market-based transfer price; (b) allowing limited partners of a limited liability partnership incorporated in Beijing to register the pledge against their interests in such partnership with Beijing equity transaction center (“Beijing OTC Center”); and (c) encouraging qualified foreign institutions to establish secondary funds (or S Funds) in Beijing to participate in the equity or interests transfer involving PE and VC funds.

It is reported that at least three S Funds (including one S Fund manager) have been established in Beijing since December 2020 and two fund interests transfer transactions have been certified by Beijing OTC Center on June 25, 2021. In brief, the enactment of the Guidelines shows China’s positive attitude towards the development of S Funds and promotion of the exit channel for the PE/VC funds, but it may take some time for such pilot program to be rolled out nationwide. We will continue to monitor and update major regulatory developments in this connection.

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