



Legal News: Data Security Law (Draft) Released for Public Comment

On July 3, 2020, the long-expected draft of Data Security Law (the "Draft") was released on the website of the National People's Congress for public comment after being submitted to the 20th meeting of the 13th Standing Committee of the National People's Congress for deliberations.¹ The public comment period for the Draft will last until August 16, 2020 and it is expected that the Draft will be finalized within the year.

Internationally, battles over data security has intensified among major nations and protection on data security has become a major theme of the legislation. Domestically, the release of the Draft marks a step forward in establishing a regulatory framework for the protection of data security in China.

We highlight several catching contents for your reference below.

I. Applicable Scope and Extraterritorial Jurisdiction

The Draft provides that the "Data" include any record of information in electronic or non-electronic form; while the "Data Activities" include activities such as collection, storage, processing, use, provision, transaction, and disclosure.² However, the Draft does not reach data activities involving national secrets, personal information, and military information.³

Further, the Draft sets out the extraterritorial jurisdiction by providing the Draft applies to entities and persons located outside of the PRC if their data activities impair the national security, public interest, and the legitimate interest of Chinese citizens and organizations, wherever the activities occur.⁴

II. Multi-level Regulatory and Enforcement Structure

The Draft designs multi-level regulatory and enforcement structure to allocate the duty on data security protection.⁵

National Level	The central national security institution is the principal data security regulator and responsible for <ul style="list-style-type: none"> the overall planning and coordination of the entire data security work; formulating the general strategies and policies for data security.
Regional and Sectoral Level	Sectoral and regional regulators undertake data security administration duties in their respective industries and regions. <ul style="list-style-type: none"> Sectoral regulators in the field of industry, telecommunications, nature resources, health, education, national defense technology, finance supervise data security within their own sectors.
Security Organ Level	Public security organ and national security organ undertake data security duties under relevant laws and regulations.
Cyberspace Administration Level	The cyberspace administration coordinate and supervise internet data security.

Due to the vagueness of the industrial and geographic boundaries involved in data activities, and the lack of guidance on enforcement, the complex structure needs further implementation guidelines in practice.

III. Enterprises' Compliance Obligations and Legal Liabilities

Chapter 4 of the Draft dedicates to protect data safety by imposing obligations on enterprises and potential legal exposure. We hereby summarize the key compliance points in the below table:

Compliance Obligations	Legal Liabilities
Data security management system: <ul style="list-style-type: none"> Establish and improve data security management system, conduct training, undertake technical security measures.⁶ 	The legal consequences for the violations of the obligations listed in the left column or failing to fulfill the safety measures: <ul style="list-style-type: none"> Warning or fines ranging from RMB 10,000 to RMB 100,000 for entities; Fines ranging from RMB 5,000 to RMB 50,000 for the person in charge.⁷
Report: <ul style="list-style-type: none"> Monitor risks of data activities, promptly inform the affected users and report to the regulatory authorities any data security incidents.⁸ 	
Risk assessment: <ul style="list-style-type: none"> Conduct periodic risk assessment and submit the assessment report to the relevant supervision departments.⁹ 	
Collecting data legally: <ul style="list-style-type: none"> Legitimate methods to collect data, within necessity.¹⁰ 	
Cooperation: <ul style="list-style-type: none"> Cooperation by organizations and individuals during evidence collection by police and national security authorities in accordance with legal procedures.¹¹ 	Not mentioned in the Draft
Obtaining approval before disclosing to foreign enforcements: <ul style="list-style-type: none"> Report to competent PRC regulatory authorities upon request by regulatory authorities abroad. 	Not mentioned in the Draft
Specific obligations imposed on data brokers: <ul style="list-style-type: none"> Request the provider of data clarify the source of the data; Verify the identities of parties to the transaction, i.e., data provider and data recipient; Maintain audit and transaction records.¹² 	The legal consequences for violations of obligations imposed on data brokers: <ul style="list-style-type: none"> Correction, confiscation of illegal gains, revocation of business licenses, and fines of not less than one time but not more than ten times the illegal income for entities; Fines ranging from RMB 10,000 to RMB 100,000 for the person in charge.¹³
Specific obligation imposed on online data processor: <ul style="list-style-type: none"> Online data processor must obtain appropriate business license or filings according to regulations to be issued by the telecom regulators.¹⁴ 	The legal consequences for violation of obligation imposed on online data processor: <ul style="list-style-type: none"> Correction, confiscation of illegal gains, and fines of not less than one time but not more than ten times the illegal income for entities; Fines ranging from RMB 10,000 to RMB 100,000 for the person in charge.¹⁵

Given that the Draft roughly delineates an outline of the regulations and obligations imposed on enterprises, and lacks the requisite operational rules and implementing mechanisms, how the data protection actually works in practice is far from clear based on the text of the Draft. Moving forward, we will keep a close eye on the development of the Draft.

NCP Outbreak: China's Movie Theaters Back to business Soon

On July 16, 2020, China film administration announced that movie theaters in **low-risk regions** may resume business starting from July 20, 2020.¹⁶

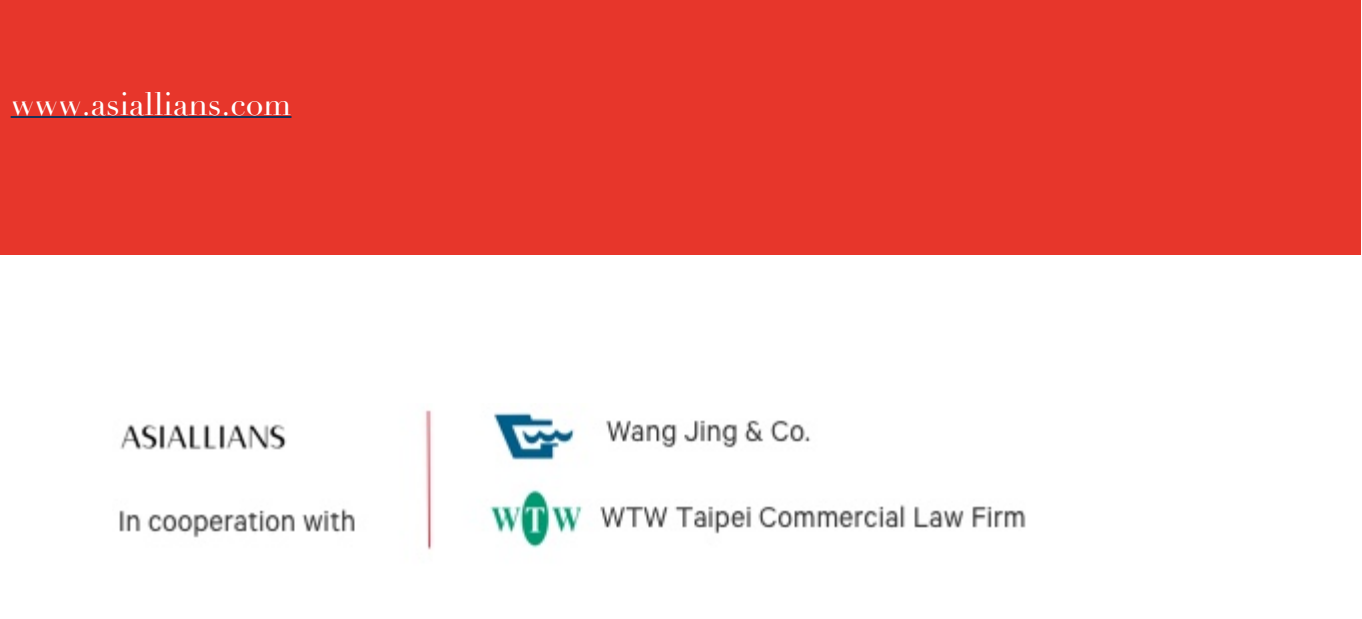
NCP Outbreak: China's GDP up 3.2% in Q2

On July 16, 2020, the National Bureau of Statistics of China, China's GDP grew by 3.2 percent year-on-year in the second quarter.¹⁷

Asiallians will keep a close eye on the above mentioned legal news. Should you need more details, please contact us at asiallians@asiallians.com. As always, Asiallians remains at your service and our teams are currently mobilized in all our offices in China, Hong Kong and Taipei.

- <http://www.npc.gov.cn/flcaw/userIndex.html?Jid=ff80808172b5fee801731385d3e429dd>
- Article 3 of the Draft
- Article 49, 50 of the Draft
- Article 2 of the Draft
- Article 6, 7 of the Draft
- Article 25 of the Draft
- Article 42 of the Draft
- Article 27 of the Draft
- Article 28 of the Draft
- Article 29 of the Draft
- Article 32 of the Draft
- Article 30 of the Draft
- Article 43 of the Draft
- Article 31 of the Draft
- Article 44 of the Draft
- <http://www.chinafilm.gov.cn/chinafilm/contents/141/2457.shtml>
- http://www.stats.gov.cn/english/PressRelease/202007/t20200716_1776211.html

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