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Beijing Pilot Free Trade Zone issues new rules to tremendously facilitate data outbound compliance

Background

On August 30, 2024, a significant milestone was achieved in the regulatory landscape for data outbound management in Beijing with the introduction of the [China \(Beijing\) Pilot Free-Trade Zone Data Outbound Management List \(2024 Edition\)](#) ("Negative List", in Chinese "《中国（北京）自由贸易试验区数据出境管理清单（负面清单）（2024版）》") and the [Measures for the Management of Negative List for Cross-Border Data Outbound in the China \(Beijing\) Pilot Free Trade Zone \(for Trial Implementation\)](#) ("Management Measures", in Chinese "《中国（北京）自由贸易试验区数据出境负面清单管理办法（试行）》") by the Beijing City Cyberspace Administration, Beijing City Commerce Bureau, and Beijing City Government Services and Data Management Bureau. These documents are designed to provide a clear framework for companies operating within the Beijing Pilot Free Trade Zone ("FTZ") to manage the cross-border transfer of data, including personal information and other significant data types.

Beijing has become the latest Chinese municipality to introduce a data outbound negative list for its FTZ, following [Tianjin's earlier implementation](#) in May 2024. Preceding Beijing's move, the Shanghai Lingang New Area had also established a [whitelist](#) permitting the unrestricted outbound transfer of certain data categories. These initiatives are in alignment with the [Regulations to Promote and Standardize Cross-Border Data Flows](#) ("Regulations") issued by the Cybersecurity Administration of China, which allows for the creation of a data outbound negative list within the FTZ.

Below are benefits of data outbound compliance for enterprises within the FTZs comparing to the general regime:

- Shortened timeline

The declaration review process has been greatly simplified, and the complete approval cycle has been greatly shortened.

Bayer Healthcare Co., Ltd. is the first enterprise in Beijing to achieve compliant data outbound through the negative list policy for data outbound in the pilot FTZ. It only took 5 working days from declaring the use of the negative list to obtain the notification of the filing result.

- Exemption from filing obligations for data outbound

Data processors within the FTZs who provide data outside the negative list to overseas entities are exempted from applying for Security assessment of outbound data transfer, concluding Standard contract for outbound transfer of personal information, and obtaining Personal information protection certification, which is a special provision for data processors within the FTZs.

- Specified identification standard of important data

The Negative List prescribes a broader scope of important data identification standard, clarifying the application scenarios of partial categories of important data and providing field-level prescriptions for the definitions and scopes, which provides clear guidance for enterprises from different industries within the FTZs to identify important data.

The Negative List focuses on five key industries: automobile, pharmaceutical, retail and modern service, civil aviation, and artificial intelligence training data. These sectors were selected due to their significant reliance on cross-border data transfers and the critical nature of the data they handle. The List outlines 23 business scenarios and 198 specific data elements, providing a granular level of detail that aids companies in navigating the complexities of data compliance and security.

Using the Retail and Modern Service Industry as an example:

Data Requiring Security Assessment for Cross-Border Data Transfer		
Data Category	Data Subcategory	Basic Data Characteristics and Description
Personal Information	1. Personal consumer membership information of more than 5 million individuals provided to overseas entities since January 1 of the current year (excluding sensitive personal information).	Limited to: Membership management scenarios. This includes names, nicknames, contact information, gender/titles, region, address (including postal code, only applicable if consumers opt for cross-border logistics or door-to-door after-sales service), user ID, membership account (alternative online identity information may be used) or number, nationality, age, date of birth, order number, product identification code/serial number, member preferences (limited to product type, numerical identifiers, preferred language, points redemption methods), position, workplace, and transaction and consumption records that do not directly reflect personal property information (including product name, purchase time, purchase records, amount, transaction type, member payment points, member points balance, currency type), etc. The calculation of personal information quantities shall be based on the de-duplicated statistical results per natural person. Information that falls under the circumstances stipulated in the Regulations shall not be included in the cumulative count.
	2. Sensitive personal information of more than 1 million individual consumers provided to overseas entities since January 1 of the current year.	Limited to: Membership management scenarios. This includes personal Internet browsing records (activity booking records, software lists, etc.), commonly used device information (MAC address and device serial number only), and member login verification information, etc. The calculation of personal information quantities shall be based on the de-duplicated statistical results per natural person. Information that falls under the circumstances stipulated in the Regulations shall not be included in the cumulative count.
	3. Personal information of more than 1 million individuals (excluding sensitive personal information) or sensitive personal information of more than 10,000 individuals provided to overseas entities since January 1 of the current year.	For scenarios other than those mentioned in items 1 and 2. The calculation of personal information quantities shall be based on the de-duplicated statistical results per natural person. Information that falls under the circumstances stipulated in the Regulations shall not be included in the cumulative count.
Data Requiring Filing of Standard Contract for Personal Information Transfer Abroad or Personal Information Protection Certification		
Personal Information	4. Personal consumer membership information of more than 500,000 but less than 5 million individuals provided to overseas entities since January 1 of the current year (excluding sensitive personal information).	Limited to: Membership management scenarios. This includes names, nicknames, contact information, gender/titles, region, address (including postal code, only applicable if consumers opt for cross-border logistics or door-to-door after-sales service), user ID, membership account (alternative online identity information may be used) or number, nationality, age, date of birth, order number, product identification code/serial number, member preferences (limited to product type, numerical identifiers, preferred language, points redemption methods), position, workplace, and transaction and consumption records that do not directly reflect personal property information (including product name, purchase time, purchase records, amount, transaction type, member payment points, member points balance, currency type), etc. The calculation of personal information quantities shall be based on the de-duplicated statistical results per natural person. Information that falls under the circumstances stipulated in the Regulations shall not be included in the cumulative count.
	5. Sensitive personal information of more than 100,000 but less than 1 million individual consumers provided to overseas entities since January 1 of the current year.	Limited to: Membership management scenarios. This includes personal Internet browsing records (activity booking records, software lists, etc.), commonly used device information (MAC address and device serial number only), and member login passwords, etc. The calculation of personal information quantities shall be based on the de-duplicated statistical results per natural person. Information that falls under the

		circumstances stipulated in the Regulations shall not be included in the cumulative count.
	6. Personal information of more than 100,000 but less than 1 million individuals (excluding sensitive personal information) or sensitive personal information of less than 10,000 individuals provided to overseas entities since January 1 of the current year.	For scenarios other than those mentioned in items 4 and 5. The calculation of personal information quantities shall be based on the de-duplicated statistical results per natural person. Information that falls under the circumstances stipulated in the Regulations shall not be included in the cumulative count.

Notes:

1. The retail and modern service industry enterprises applicable to this list mainly include consumer-facing retail, accommodation, catering, software and information technology services, Internet information services, and related enterprises.
2. This list is only applicable to personal information involved in the membership management scenarios within the retail and modern service industry.

The Management Measures prescribe the formulation and management, implementation, supervision and management of Negative List, which encompass the general identification process of important data, the classification and grading of data, and the mechanisms for applying for security assessments and standard contract necessary for data transfers.

The Management Measures propose a **Uniform Identification Reference Rules for Important Data** (in Chinese, “《中国(北京)自由贸易试验区数据分类分级参考规则》”):

- Personal information of more than 10 million individuals (excluding sensitive personal information) held by enterprises in the Beijing FTZ.
- Sensitive personal information of more than 1 million individuals.
- Personal sensitive information of more than 100,000 individuals, which includes personal bank account details, personal insurance account details, personal registration account details, and personal medical treatment data.
- Personal information of more than 100,000 individuals held by operators of critical information infrastructure recognized by the state.
- High-value sensitive data collected and generated by Beijing FTZ enterprises during the research and development design process, production manufacturing process, and business management process, which is related to industry competitiveness and industry production safety.
- Data related to the supply chain of enterprises that involves national security.
- Control system parameters, as well as control, operation and maintenance, and testing data in areas related to the national economy and people’s livelihood, held by Beijing Free Trade Zone enterprises.

It is important to note that the above rules apply to non-confidential data only. Confidential data is regulated by separate standards and regulations.

The Measures then provide a reference catalog of data classification in different industry sectors, including specific examples. There are a total of 13 categories and 41 sub-categories in the reference catalog, covering areas such as natural resources and the environment, industry, national defense, telecommunications, and radio, television, and online audio-visual media.

Data Outbound Implementation Process under the Negative List

For entities seeking to transfer data outbound designated within the Negative List, a stringent application and compliance process must be adhered to, involving submission to the respective free trade zone authority and fulfilling several documentation and regulatory standards.

The application procedure is outlined as follows:

- **Application Submission:**
Companies are required to submit an application to the relevant free trade group, following the Management Measures. The application should encompass details such as the company’s registration location, industry classification, operational status, administrative penalties imposed over the past two years, and any regulatory investigations or corrective actions taken.
- **Documentation Filing:**
Upon successful review, companies must file the necessary documentation in accordance with the Management Measures. This includes outlining the data outbound scenarios, data catalogs, volume of data, recipient details abroad, justifications for negative list utilization, and specific data subcategories involved in the outbound transfer.
- **Ensuring Legal Compliance:**
Once the filing is complete, companies are authorized to proceed with data outbound transfer as per the directives issued by the free trade group. They must also collaborate with municipal regulatory bodies and the FTZ authority for ongoing supervision and verification. Any changes in the data outbound circumstances necessitate timely updates to the filing with the respective free trade zone authority.

Each free trade zone authority is tasked with reviewing the applications based on the implementation manual. Companies will receive written notification of the review outcome within five working days, with the authority providing assistance to those who pass the review in filing for negative list usage.

Within the same timeframe of five working days after receiving the filing materials, each authority will offer preliminary assessments on whether the proposed data outbound aligns with the negative list criteria. Post-validation by the Beijing FTZ management, companies will be informed accordingly. For data listed on the negative list, the authority will guide companies through the process of applying for data outbound security assessments, executing standard contracts for data transfers, or acquiring personal information protection certifications. Data outbound transfers that do not fall within the purview of the negative list, such as those from industries not yet covered, will be managed according to existing legal and regulatory frameworks.

In cases of severe non-compliance, the company may face termination of data outbound activities, be subjected to enhanced regulatory oversight, and have their case escalated to the municipal management department for further action.

Conclusion

The introduction of the data outbound negative list in the Beijing FTZ represents a pivotal step for businesses registered and data outbound activities carried out in the zone, enhancing the transparency and directionality for data processors required to conduct relevant procedures of cross-border data transfers. By specifying "important data" in automotive industry, pharmaceutical industry, civil aviation industry and the artificial intelligence training data industry, the Negative List provides significant reference and basis for the identification of important data, this increased clarity is instrumental in guiding companies through the intricate requirements of data outbound compliance, minimizing ambiguity and facilitating strategic planning.

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