

March 2025

Brief comments on the relevant questions in relation to SCC filing



In the era of the Internet and artificial intelligence, data has evolved over the years into a vital asset of companies. Compliance in personal data export has become one of the major data compliance issues with the increase of data cross border transfer dictated by cross border investment and operation. This article intends to answer some key questions that a company often encounters in the process of carrying out the Standard Contract for Export of Personal Information ("**SCC**") filing ("**SCC Filing**"), based on our recent experience of assisting our client – a multinational company, with their successful SCC Filing and aims to be a useful reference for companies intending to or in the process of carrying out their SCC Filing.

● Preparatory Work for SCC Filing

For the purpose of the SCC Filing, a personal information protection impact assessment report (for export) ("**PIA Report**") is required, the preparation of which is a systematic project that requires collaboration of internal and external forces, including domestic and overseas affiliates, clients, suppliers etc. Internally, in addition to the data compliance team, it also requires inputs and support from business, human resource and IT teams.

Key workstreams for the preparation of PIA Report includes,

- 1) **Data mapping and data sorting:** sorting out the type, volume, sensitivity of the personal information to be exported and the relevant information systems involved as well as the relevant export links, identifying whether the SCC Filing is applicable and ascertaining the overseas recipients;
- 2) **Analyzing the data export scenarios and purposes:** analyzing the data export scenarios and purpose based on the primary results of the data mapping and data sorting, clarifying the necessity of the data export and the applicable requirements on notices to be made/consent to be acquired before the export of personal information;
- 3) **Preparing the consent form on the data export:** on the basis of the results of the data mapping, data sorting, analysis of the data export scenarios and purposes, preparing the corresponding consent forms targeting different data subjects, and obtaining separate consents from the data subjects in respect of the proposed export of personal information.

It is a complicated process to go through the data mapping, data sorting and analysis of the data export scenarios, requiring internal and external collaborations. For most multinational companies operating or investing across borders, we would expect that at least the applicable scenarios will include human resource management scenario, customer/vendor/partner relationship management scenario, compliance management scenario. To prepare the PIA Report, it is crucial to clarify the purpose, type, sensitivity and volume of personal information being exported and to assess its impact on the protection of personal information under each scenario.

● **SCC Filing by a Group Company**

Most group companies will have multiple entities acting as separate personal information handlers to collect and handle personal information in China, and then further export such personal information to overseas recipients, including overseas affiliates and non-affiliated parties.

- 1) **Joint filing:** where the China subsidiaries of a group company use the information systems deployed by the group company and export personal information in similar approach, Cyberspace Administration of China ("**CAC**") may allow the China subsidiaries to delegate one of the China subsidiaries to submit a joint SCC Filing to the CAC local branch where the filing entity locates to cover all the China subsidiaries. CAC local branch may form different views regarding the feasibility of a joint SCC Filing after reviewing a case, therefore, it is advisable to consult with the CAC local branch before preparing the SCC Filing to assess the specific requirements and feasibility of a joint SCC Filing, in order to carry out the SCC Filing in a more efficient way.
- 2) **The intra-group data process agreement ("**IGA**") under the context of data export:** group companies usually will sign their IGA to specify the fundamental rights and obligations of the respective entities when handling personal data, taking into consideration of their data related practice. It is a PRC law requirement that the SCC shall prevail over the IGA regarding a data export, therefore, it is recommended to set out in the IGA that a separate SCC should also be entered into between the relevant China subsidiaries and the overseas recipients for filing with the CAC if the data export scenario is also applicable under the IGA.

- **Professional assistance with SCC Filing**

The SCC Filing involves different stages of work, including data sorting, determination of the applicable data export mechanism, preparation of PIA Report, execution of the SCC and compliance rectifications to be made before and/or after the filing. The regulatory requirements and guidelines for SCC Filing are updated very frequently and despite of being a filing process, the filing submission will be reviewed by CAC thoroughly and in details, it is therefore essential to be able to communicate promptly with CAC local branch during the whole process of the SCC Filing, in order to address regulatory concerns and implement compliance measures in a timely manner to secure a successful filing. Therefore, a successful SCC Filing would require not only internal collaboration, but also support and assistance from well-experienced professionals, who may guide and assist the company with SCC Filing and also assist with compliance rectifications in a more efficient and comprehensive manner.

- **SCC Filing Timeframe**

Based on our experience, the turnaround time for CAC is typically one to two weeks from the submission of SCC Filing, provided that the documents are well organized and no substantial amendments to be made, which makes the SCC Filing a process of total three to four weeks. However, the SCC Filing requires inputs and support from internal and external sources to sort out data being exported and the applicable export scenarios and the information collected may further change during the process of preparing the PIA Report, it would usually take several months or even longer to prepare the PIA Report. In addition, where there are multiple data exporters and overseas recipients being involved, the review and execution of the SCCs by different parties will prolong the timeframe further. In practice, if a company has not sorted out data being exported and the applicable data export scenarios, a timeframe of several months or longer is necessary for the whole process of SCC Filing.

Wei Tu has navigated and gained extensive hands-on experience on data compliance, together with our CEPA associated firm Stephenson Harwood*, we can provide a full spectrum of data compliance legal support to our client. You may reach out to our team members below for any data compliance query.

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