

## China Insight



# Cross-border Transfer of Employees' Personal Information Becomes Easier in China

---

In China, many foreign invested companies, especially multinational companies, need to transfer some information about their employees to overseas global headquarters for human resource management purpose. Since such information is mostly personal related, with the effectiveness of the *PRC Law on Protection of Personal Information* on 1 November 2021, the transfer of such employees' personal information abroad became difficult. Based on common understanding of the *PRC Law on Protection of Personal Information* in the past, the transfer of employees' personal information abroad needs specific consents of the employees, and companies shall also fulfill administrative requirements such as adopting security assessment as required by the national cyberspace authority, getting personal information protection certification as issued by a qualified professional institution, or signing a standard contract with overseas recipient as formulated by the national cyberspace authority, etc.

### Recent updates

On 22 March 2024, the Chinese government issued the *Provisions on Regulating and Facilitating Cross-border Data Flow* ("Provisions"). According to the Provisions, the administrative requirements are no longer required for the transfer of employees' personal information abroad, if such transfer is for implementing human resource management under lawfully established labor rules and regulations and pursuant to a lawfully executed collective contract (note that in China collective contracts are not common in current practice). Also as clarified by the *Guideline on Declaration of Security Assessment of Cross-border Transfer of Personal Data* (2<sup>nd</sup> edition), the transfer of employees' personal information abroad for implementing human resource management falls into the statutory circumstances as provided under Article 13 Item 2 of the *PRC Law on Protection of Personal Information* and can be exempted from the employees' consents. Despite the above, companies shall still comply with the requirements on cross-border transfer of employees' personal information as required by statutory laws, for example, notification obligations, conducting personal information protection impact assessment, etc.

### Actions to be taken

- Under this new legal framework, to transfer employees' personal information abroad without getting employees' consents and without fulfilling administrative requests, a company must fulfill the following requirements:
  1. The employees' personal information necessarily to be processed for human resource management purpose must be covered by its internal labor rules and regulations such as Employee Handbook with specification of the employees' personal information to be transferred abroad;

2. The validity of the labor rules and regulations of the company by following statutory procedures as provided by law for formulating such rules and regulations must be ensured;
  3. The employees must be notified of the details of processing their personal information according to law, such as the types of personal information involved, processing purpose and method, retention period, ways and procedures of employee's exercising legal rights, contact person of the overseas recipient and other necessary information which shall be notified to employees according to law.
- Companies which already updated their Employee Handbook for the purpose of processing the employees' personal information in their daily management work in China still need to specify the details of the employees' information to be transferred abroad and relevant processing information in the Employee Handbook so that the Employee Handbook can serve as the regulatory basis for the companies to make such cross-border transfer in a legal way.
  - Companies which already obtained the employees' consents on processing their personal information and transferring such information abroad but without updating the Employee Handbook yet are strongly recommended to duly update their Employee Handbook in time. A lawfully established Employee Handbook will facilitate the companies to process their employees' personal information including cross-border transfer in daily human resource management work legally and efficiently.

Please note that as required by the *PRC Law on Protection of Personal Information*, as long as the cross-border transfer of personal information is involved, even if consents of employees and administrative requirements can be waived, companies shall still make individual information protection assessment to evaluate the validity, legitimacy and necessity of processing the personal data, related risks and protective measures. Companies do not need to make assessment specifically on processing the employees' personal information but can do so together with other kinds of personal information processed by companies.

---

In case you have questions or for further information, please contact the author of this newsletter:

	<p><b>Jeanette Yu</b> Partner Head of Employment &amp; Pension Practice Area Group CMS, China</p> <p>T +86 21 6289 6363 E <a href="mailto:Jeanette.Yu@cmslegal.cn">Jeanette.Yu@cmslegal.cn</a></p>
---	--

---

This information is provided for general information purposes only and does not constitute legal or professional advice. Copyright by CMS, China.

"CMS, China" should be understood to mean the representative offices in the PRC of CMS Hasche Sigle and CMS Cameron McKenna Nabarro Olswang LLP, working together. As a foreign registered law firm in the PRC, we are not licensed to practice PRC law. This applies to all foreign law firms in the PRC. CMS, China is a member of CMS Legal Services EEIG, a European Economic Interest Grouping that coordinates an organisation of independent member firms. CMS Legal Services EEIG provides no client services. Such services are solely provided by the member firms in their respective jurisdictions.

[cms.law Disclaimer Privacy Statement](#)

CMS Hasche Sigle Shanghai  
Representative Office (Germany)  
3108 Plaza 66, Tower 2  
1266 Nanjing Road West  
Shanghai 200040, China

CMS Cameron McKenna LLP Beijing  
Representative Office (UK)  
Room 1909, China Youth Plaza,  
No. 19 Dongsanhuan North Road,  
Chaoyang District  
Beijing 100026, China