

Monthly Newsletter

Issued by Chang Tsi & Partners | www.changtsi.com | Oct 2023

Partner Michael Wu Delivered Highly Praised Speech on Chinese Design Patents

On October 20, 2023, Michael Wu, Partner at Chang Tsi & Partners, was invited by the American Intellectual Property Law Association (AIPLA) to deliver a speech on Chinese design patents. During the presentation, Mr. Wu elaborated on the scope of protection for design patents and made comparisons between Chinese and European legal practices, earning unanimous praise from industry peers.

Michael Wu's speech provided attendees with a comprehensive understanding of Chinese design patents and their position in international legal practices. His comparative legal analysis offered valuable insights to professionals working in the field of intellectual property worldwide.

This presentation not only highlighted Chang Tsi & Partners' exceptional expertise in intellectual property but also showcased Mr. Wu's outstanding performance in international patent law practices. We are committed to further advancing the IP industry, with our ultimate goal being to deliver the finest legal support to our valued clients.



China Proposes to Ease Cross-Border Data Transfers

Leslie Xu

On September 28, 2023, the Cyberspace Administration of China (the "CAC") released a notice seeking public comments on the Provisions on Regulating and Facilitating Cross-border Data Flow (Draft for Comment) (the "Draft"), which intends to make adjustments to China's current regulations on outbound data transfers to further regulate and facilitate the orderly and free flow of data.

Overall, the Draft releases important signals of structural adjustments and eases the current policy on cross-border data flow. While following the overall framework of the implementing regulations, including Measures for the Security Assessment of Outbound Data Transfers and Measures for the Standard Contract for Outbound Cross-Border Transfer of Personal Information, the Draft substantially exempts specific scenarios from obligations to apply one of the three fundamental transfer mechanisms under the Personal Information Protection Law, namely, undergoing a security assessment for outbound data transfer, entering into a standard contract for the outbound transfer of personal information, and obtaining the certification of personal information protection (hereinafter collectively referred to as the "Outbound Data Transfer Procedures"), and substantially adjusts the applicable standards for cross-border data transfers, thus providing more possibilities for cross-border flow of data. The following is a detailed summary of the key points of the Draft, together with some brief comments and advice.

I. Key Points of the Draft

1. Listing specific scenarios exempted from Outbound Data Transfer Procedures

- 1) Outbound transfer of data generated during international trade, academic cooperation, and transnational production, manufacturing, and marketing activities, excluding transfer of personal information or important data;
- 2) Outbound transfer of data that is not announced or published by relevant department or locality as important data;
- 3) Outbound transfer of any personal information that is not collected or generated within the territory of China;
- 4) Where it is necessary to transfer any personal information overseas to execute and perform a contract to which the individual is a party concerned, such as cross-border shopping, cross-border remittance, air ticket and hotel reservation, and visa application;

6) Where it is necessary to transfer personal information overseas in an emergency to protect a natural person's health, life, and property safety and for other purposes.

2. Adjusting volume thresholds for cross-border transfers of personal information

- 1) Where it is estimated that the personal information of less than 10,000 individuals will be transferred overseas within one year, the Outbound Data Transfer Procedures may be exempted;
- 2) Where it is estimated that the personal information of more than 10,000 individuals but less than one million individuals will be transferred overseas within one year, and a standard contract has been signed and has been submitted for record-filing, or the personal information protection certification has been passed, the declaration for the security assessment may be exempted;
- 3) Where the personal information of more than one million individuals will be transferred overseas, the declaration for the security assessment is required.
- 4) In all of the above cases, where the outbound transfer of personal information is subject to individual consent, such consent from the personal information subject shall be obtained.

3. Authorizing Free Trade Zones ("FTZs") to implement a data "negative list"

- 1) A FTZ may independently formulate a list of data to be included in the management scope of the Outbound Data Transfer Procedures (the "negative list"), which shall be reported to the provincial-level cyberspace authorities for approval and then submitted to the CAC for record-filing;
- 2) Outbound data transfer beyond the "negative list" may be exempted from the Outbound Data Transfer Procedures.



4. Still emphasizing compliance obligations and government regulation

1) Outbound data transfer still needs to be legally compliant. Data processors should fulfill their data security protection obligations to ensure the security of outbound data transfer and should adopt remedial measures and timely report in the event of a security incident or discovery of increased security risks;

2) Local cyberspace administration authorities should strengthen guidance and supervision and enhance the regulation before, during, and after outbound data transfers.

II. Brief Comments on the Draft

Firstly, the Draft reflects a relaxed regulatory attitude towards the necessity of the Outbound Data Transfer Procedures. The draft reduces the compliance costs associated with outbound data transfers by specifying scenarios where the Outbound Data Transfer Procedures are exempt and adjusting the volumes triggering such procedures. If the draft comes into effect, these provisions will have a substantial impact on promoting the orderly and free cross-border data flows while boosting confidence in the digital market.

Secondly, the Draft extends control of outbound data transfers from the central government's power to both central and local levels. By authorizing the implementation of a data "negative list" in FTZs, the Draft alters the original security regime for outbound data transfer, which was centrally controlled, and further relaxes policies on cross-border data flows within FTZs, providing FTZs full freedom of decision-making and pilot authority. These provisions, especially for foreign-invested enterprises and some specific companies, may further enhance the cross-border data flows.

Thirdly, the Draft embodies China's governance philosophy in the digital economy, balancing security and development. There has yet to be a global consensus on cross-border data flow rules, and China needs to actively participate in formulating international data flow regulations while accelerating the development of a unique Chinese framework for cross-border data flow rules. The fact that the Draft allows for a public comment period of less than 20 days (including 8 days of national holidays) indicates that the authorities are eager to implement the regulations efficiently and make them effective promptly.

III. Our Advice

If the Draft is finally formed into a formal text and comes into effect, it will significantly change the existing mechanisms for outbound data transfers. Although it can be speculated that the formal text is likely to retain the provisions mentioned and efficiently go through the implementation process, enterprises currently in the process of handling the Outbound Data Transfer Procedures or with needs are advised to re-evaluate the specific situations in light of the Draft to determine whether they fall within the exemption scenarios. After the evaluation, if an enterprise qualifies for exemption, it may consider, in consultation with relevant authorities, whether it needs to adjust the existing plans based on the specific situations. If an enterprise still needs to initiate the Outbound Data Transfer Procedures, it is recommended to closely monitor the legislative developments and act when the timing is appropriate.

Also, it is worth noting that while the Draft exempts specific scenarios, as data processors, companies must continue to fulfill their security obligations and ensure the security of outbound data transfers. In case of security incidents or increased security risks, they should take remedial measures and report promptly to avoid triggering other compliance issues.



Leslie Xu

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Dr. Leslie Xu has been focusing on intellectual property (IP) related practice and research since 2013. His practice areas cover the overall strategy of IP prosecution and enforcement, trademark and copyright infringement litigation and non-litigation dispute resolution, IP administrative protection, IP due diligence, IP licensing, online IP protection, domain name dispute resolution, anti-unfair competition, antitrust, etc. The sectors he serves include consumption and retail, manufacturing, leisure and catering, industry, technology, finance, energy, advertising, etc.

New regulation in China for Apps ICP-filing

Yue Liu

In order to crack down on telecom and online fraud crimes, the Ministry of Industry and Information Technology (MIIT) of China issued a circular on July 21, 2023, requiring App developers who engaged in the provision of internet-based information services within the territory of China to carry out the ICP-filing procedures. Failure to do so will result in the App developer being prohibited from providing such services. The App developer shall carry out ICP-filing procedures with the provincial communications administrations of the places where they are domiciled. Their Internet Data Centre (IDC) service providers shall file an application and conduct verification and review online through the National Internet Basic Resource Management System.

In accordance with the circular's requirements, the App developers must provide accurate information during the ICP-filing procedures, which includes ICP-filing subject information, App basic information, App feature information, and App access information. Additionally, the App developers must display the filing number prominently in areas such as "settings" or "introduction" within the App. With regard to the timeline, Apps that have already launched on shelf prior to the issuance of the circular must carry out the ICP-filing procedure before April 2024. Apps that intend to launch after the issuance of the circular shall first carry out ICP-filing procedure before launch.



According to the circular, internet access service providers and application distributors are obligated not to provide relevant services and distribution for the applications without ICP-filing recordal number. Most foreign applications supplied to the Chinese market are distributed through app store. Apple Developer has recently updated their app store notice for CN store requiring the ICP-filing for the applications on shelf.

If you are the app developer, we kindly recommend that you give greater attention to the circular issued by the MIIT, and promptly carry out the ICP-filing procedure. We are more than happy to provide assistance over the issue.

Lastly, we would like to briefly introduce our capability on corporate law. We have been acting as corporate general permanent outside counsel to clients for consecutive years, and the extensive history as corporate outside legal counsel now boasts our outstanding record in extensive coverage including corporate law, contract law, inbound foreign investment and operation, M&A, tech law, labor law, compliance counselling, etc. For more information, please refer to our website: <https://www.changtsi.com/practice-areas/corporate-law>



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Yue Liu is mainly engaged in dispute resolution in the field of intellectual property and anti-unfair competition, and can creatively provide clients with solutions to difficult legal issues, and provide clients with trademark rights, copyrights, patent rights, etc. through administrative litigation, civil litigation, etc. Right confirmation and rights protection services. Mr. Liu has earned licenses to practice as an attorney at law and as a patent attorney.

China Joins Apostille Convention, Simplifying the Use of Foreign Documents



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I. Background

On March 8, 2023, China officially acceded to the Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents, also known as the "Apostille Convention". China's accession to the Apostille Convention changes the requirement for legalization of official documents to an apostille issued by the authorized body in the country of origin. The Apostille Convention will officially take into effect in China on November 7, 2023.

II. Applicable Scope

Geographical scope

The present Convention shall apply to public documents which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State.

- Limited to between Contracting States. An apostille may be used only between states which are members of the Multilateral Apostille Convention. As of June 2023, 125 states are contracting states of the Apostille Convention.
- China's declaration. When China acceded to the Apostille Convention, it made a declaration as to the territorial application of the Apostille Convention, to the effect that, in respect of a sovereign state which China does not recognize, even if it is a Contracting State, the Apostille Convention shall not apply as between China (including the Hong Kong SAR and the Macau SAR) and that state. China's declaration does not address countries with which China has not established diplomatic relations and to which the Apostille Convention shall be applicable.
- The other contracting states of the Apostille Convention will now have a six-month period in which to object to China's accession. However, if a contracting state objects to China's accession, it will only mean that the convention will not apply between China and that state, not that China will not be able to accede. For that reason, it is still possible that the apostille procedures cannot be used in China for documents from certain countries, even if they are members of the Apostille Convention, and vice versa.

Documents scope

Not all types of documents are covered by the Apostille Convention – only public documents, as determined by the laws of the issuing country. The convention is usually applied to:

- documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server ("huissier de justice");
- administrative documents;
- notarial acts;
- official certificates which are placed on documents signed by persons in their private capacity.

III. Advantages over the previous consular certification

1. Simplified certification procedures. The Apostille Convention with a simple one-step proof of procedures to replace the previous consular certification, greatly simplifying the certification process and shortening the certification time.
2. Reduced cost of accreditation. The Apostille Convention does not provide for fees, and it is up to each Member State to decide whether or not to charge fees and the standard of fees. According to the feedback from Member States, the average fee for an additional visa is EUR 15 or USD 20. The Hong Kong SAR charges HK\$125 per visa extension, while the Macao SAR is exempted from the fee.
3. Expanded scope of application. In contrast to consular certification, which can only be used in one targeted country, the Apostille certification can be used in all Apostille Convention members.
4. Considerable flexibility is maintained. The Apostille Convention leaves relevant matters to the discretion of the Apostille Convention member States in accordance with their own laws and policies, such as the scope of notarial instruments, fees for countersignatures, and the content of reservations by contracting States.

Regarding the implementation of the Apostille certification, we ensure constant interaction with the governing authority, and we shall provide you with regular updates. Should you have any inquiries, please do not hesitate to reach out to us at michaelfu@changtsi.com and info@changtsi.com.