

个人信息和重要数据出境安全评估办法

**Measures for the Security Assessment of Personal Information
and Critical Data Leaving the Country**

(征求意见稿)

(Draft for the Solicitation of Comments)

第一条 为保障个人信息和重要数据安全，维护网络空间主权和国家安全、社会公共利益，保护公民、法人和其他组织的合法权益，根据《中华人民共和国国家安全法》《中华人民共和国网络安全法》等法律法规，制定本办法。

Article 1 These measures are formulated in accordance with laws and regulations such as the *P.R.C. National Security Law* and the *P.R.C. Cybersecurity Law*, in order to assure the security of personal information and critical data, and to uphold internet sovereignty and national security, and the societal and public interests, and to protect the lawful interests of citizens, legal persons and other organizations.

第二条 网络运营者在中华人民共和国境内运营中收集和产生的个人信息和重要数据，应当在境内存储。因业务需要，确需向境外提供的，应当按照本办法进行安全评估。

Article 2 Network operators should store within China personal information and critical data which they collect or generate in the course of their operations within the territory of the People's Republic of China. In instances of a genuine need to transfer it overseas for reasons of operational necessity, they should conduct a "security assessment" in accordance with these Measures.

第三条 数据出境安全评估应遵循公正、客观、有效的原则，保障个人信息和重要数据安全，促进网络信息依法有序自由流动。

Article 3 A "security assessment" for a cross-border transfer of data should adhere to the principles of fairness, objectivity and effectiveness, assure the security of personal information and critical data, and promote the lawful, orderly and free flow of information over networks.

第四条 个人信息出境，应向个人信息主体说明数据出境的目的、范围、内容、接收方及接收方所在的国家或地区，并经其同意。未成年人个人信息出境须经其监护人同意。

Article 4 When personal information is being transferred cross-border, the cross-border transfer's purpose, scope, content, recipient, and country or region in which the

recipient is located should be explained to the data subject, and should be done with the consent of the data subject. Cross-border transfers of personal information of a minor should be done with the consent of the guardian of the minor.

第五条 国家网信部门统筹协调数据出境安全评估工作，指导行业主管或监管部门组织开展数据出境安全评估。

Article 5 The national network information departments will make overall preparations for the task of coordinating “security assessments” for cross-border transfers of data, and will provide guidance to agencies having competent regulatory or supervisory authority over industry sectors in the organization and implementation of “security assessments” for cross-border transfers of data.

第六条 行业主管或监管部门负责本行业数据出境安全评估工作，定期组织开展本行业数据出境安全检查。

Article 6 Agencies having competent regulatory or supervisory authority over an industry sector will have responsibility for the “security assessments” for cross-border transfers of data in that industry sector, and will periodically organize and conduct inspections of the security of cross-border transfers of data in that industry sector.

第七条 网络运营者应在数据出境前，自行组织对数据出境进行安全评估，并对评估结果负责。

Article 7 Prior to transferring data across borders, a network operator should of its own accord conduct a “security assessment” for that cross-border transfer of data, and take responsibility for the results of this assessment.

第八条 数据出境安全评估应重点评估以下内容：

Article 8 A “security assessment” of a cross-border transfer of data should emphasize an evaluation of the following matters:

(一) 数据出境的必要性；

(1) the necessity for the cross-border transfer of data;

(二) 涉及个人信息情况，包括个人信息的数量、范围、类型、敏感程度，以及个人信息主体是否同意其个人信息出境等；

(2) circumstances surrounding the personal information involved, such as the quantity, scope, type and sensitivity of the personal information and whether the data subject has consented to the cross-border transfer of his or her personal information;

(三) 涉及重要数据情况，包括重要数据的数量、范围、类型及其敏感程度等；

(3) circumstances surrounding the critical data involved, such as the quantity, scope, type and sensitivity of the critical data;

(四) 数据接收方的安全保护措施、能力和水平，以及所在国家和地区的网络安全环境等；

(4) the security protection measures, capabilities and levels of the data recipient, as well as the cybersecurity environment of the nation and region where the data recipient is located;

(五) 数据出境及再转移后被泄露、毁损、篡改、滥用等风险；

(5) the risk of leakage, loss, falsification or misuse of the data after the cross-border transfer and re-transfer of data;

(六) 数据出境及出境数据汇聚可能对国家安全、社会公共利益、个人合法利益带来的风险；

(6) risks posed by the cross-border transfer of data and the offshore aggregation of data in relation to national security, the societal and public interests and the lawful interests of individuals; and

(七) 其他需要评估的重要事项。

(7) other important matters that have to be evaluated.

第九条 出境数据存在以下情况之一的，网络运营者应报请行业主管或监管部门组织安全评估：

Article 9 A network operator should submit a report to the competent regulatory or supervisory authority over its industry sector to require the authority to conduct the “security assessment” when one of the following circumstances is present in a cross-border transfer of data:

(一) 含有或累计含有 50 万人以上的个人信息；

(1) the personal information of over 500,000 individuals is contained or aggregated;

(二) 数据量超过 1000GB；

(2) the volume of the data exceeds 1,000 GB;

(三) 包含核设施、化学生物、国防军工、人口健康等领域数据，大型工程活动、海洋环境以及敏感地理信息数据等；

(3) data in the fields of nuclear facilities, chemistry and biology, national defense and the military, or population health, or data on megaproject activities, the marine environment or sensitive geographic information, is included;

(四) 包含关键信息基础设施的系统漏洞、安全防护等网络安全信息；

(4) data relating to information about the cybersecurity of key information infrastructure, such as system vulnerabilities and security protection, is included;

(五) 关键信息基础设施运营者向境外提供个人信息和重要数据；

(5) the cross-border transfer of personal information and critical data is conducted by an operator of key information infrastructure; and

(六) 其他可能影响国家安全和社会公共利益，行业主管或监管部门认为应该评估。

(6) the national security or the societal or public interest could otherwise be affected, and the competent regulatory or supervisory authority over its industry sector considers that it should be assessed.

行业主管或监管部门不明确的，由国家网信部门组织评估。

In instances where the competent regulatory or supervisory authority over its industry sector is not clear, the assessment shall be organized by the national network information department.

第十条 行业主管或监管部门组织的安全评估，应当于六十个工作日内完成，及时向网络运营者反馈安全评估情况，并报国家网信部门。

Article 10 “Security assessments” organized by competent regulatory or supervisory authority over the industry sector should be completed within sixty working days, and the said authority shall promptly provide feedback to the network operator on the security assessment, and report to the national network information department.

第十一条 存在以下情况之一的，数据不得出境：

Article 11 When one of the following circumstances is present, data must not be transferred outside of China:

(一) 个人信息出境未经个人信息主体同意，或可能侵害个人利益；

(1) a cross-border transfer of personal information would proceed without the consent of the data subject, or may infringe upon the interests of an individual;

(二) 数据出境给国家政治、经济、科技、国防等安全带来风险，可能影响国家安全、损害社会公共利益；

(2) a cross-border transfer of data would bring risks to the security of the national political system, economy, science and technology or national defense, or could affect national security or jeopardize the societal and public interests;

(三) 其他经国家网信部门、公安部门、安全部门等有关部门认定不能出境的。

(3) other situations in which relevant agencies, such as the national network information department, public security department and security department, have determined that no cross-border transfer should take place.

第十二条 网络运营者应根据业务发展和网络运营情况，每年对数据出境至少进行一次安全评估，及时将评估情况报行业主管或监管部门。

Article 12 A network operator should in accordance with the development of its operations and the circumstances of its network operations, conduct a “security assessment” at least one time a year of its cross-border transfers of data, and promptly report the assessment to the competent regulatory or supervisory authority over its industry sector.

当数据接收方出现变更，数据出境目的、范围、数量、类型等发生较大变化，数据接收方或出境数据发生重大安全事件时，应及时重新进行安全评估。

When the data recipient is changed, or there is a relatively significant change in the purpose, scope, volume or type of the data being transferred cross-border, or the data recipient or cross-border data transfer undergo a significant security incident, they should promptly undertake a re-assessment of their security.

第十三条 对违反相关法律法规和本办法向境外提供数据的行为，任何个人和组织有权向国家网信部门、公安部门等有关部门举报。

Article 13 Any individual or organization has the right to report the cross-border provision of data in violation of relevant laws or regulations, or of these Measures, to the relevant agencies such as the national network information departments, and public security agencies.

第十四条 违反本办法规定的，依照有关法律法规进行处罚。

Article 14 Punishment for violations of the provisions of these Measures shall be imposed in accordance with relevant laws and regulations.

第十五条 我国政府与其他国家、地区签署的关于数据出境的协议，按照协议的规定执行。涉及国家秘密信息的按照相关规定执行。

Article 15 When there are agreements executed by the national government with other nations and jurisdictions in relation to cross-border transfers of data, the cross-border transfers of data shall be implemented in accordance with the relevant provisions of the agreements.

Instances involving information about state secrets shall be carried out in accordance with the relevant regulations.

第十六条 其他个人和组织在中华人民共和国境内收集和产生的个人信息和重要数据出境的安全评估工作参照本办法执行。

Article 16 The security assessments for cross-border transfers of personal information or critical data collected or generated within the territory of the People's Republic of China by other individuals or organizations shall proceed analogously in accordance with these Measures.

第十七条 本办法下列用语的含义：

Article 17 The following terms of these Measures have these meanings:

网络运营者，是指网络的所有者、管理者和网络服务提供者。

Network operators refers to those who own or administer a network, and to network service providers.

数据出境，是指网络运营者将在中华人民共和国境内运营中收集和产生的个人信息和重要数据，提供给位于境外的机构、组织、个人。

Cross-border data transfers refers to the provision by a network operator of personal information or critical data which it collects or generates in the course of its operations within the territory of the People's Republic of China to institutions, organizations or individuals which are located outside that territory.

个人信息，是指以电子或者其他方式记录的能够单独或者与其他信息结合识别自然人个人身份的各种信息，包括但不限于自然人的姓名、出生日期、身份证件号码、个人生物识别信息、住址、电话号码等。

Personal information refers to all types of information that is recorded by electronic or other methods and that can, on its own or in combination with other information, distinguish the identity of a natural person, including but not limited to name, date of birth, national identification number, individual biological identification information, residential address, telephone number and so forth.

重要数据，是指与国家安全、经济发展，以及社会公共利益密切相关的数据，具体范围参照国家有关标准和重要数据识别指南。

Critical data refers to data which is very closely related to national security, economic development and the societal and public interests. The concrete scope will follow the relevant national standards and guidance documents for the identification of critical data.

第十八条 本办法自 2017 年 月 日起实施。

Article 18 These Measures will be put into effect starting from [*day and month,*] 2017.