

What MNCs must know about China's SCCs – A comprehensive Q&A

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On February 24, 2023, the Cyberspace Administration of China (“CAC”) issued the official version of the Standard Contract for Export of Personal Data Measures (the “SCC Measures”), which will take effect on June 1, 2023. With the SCC Measures, the CAC also issued the official text of the Standard Contract Clauses (the “SCCs”). Ever since the draft of the SCCs was issued in June 2022, we have received queries from a large number of multinational company (“MNC”) clients, and the questions surround a variety of issues about the SCCs, including the SCCs’ application, contents, execution, validity, and filing.

In this article, we will set out questions in relation to the China SCCs frequently asked by our MNC clients as well as derived from our experience assisting MNC clients in the Security Assessment (as the Security Assessment and the SCC share a number of key factors and considerations), so that MNCs can have a holistic view of their tasks and obligations in preparing and completing the SCCs.

Due to the word limit, below we provide the outline of our article for your reference. Please follow our official account and send the keyword “**SCCs**” for the full article.

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1. Grace period

- 1) When must we execute and file the SCCs?
- 2) Is cross-border transfer still lawful during the grace period?

2. Eligibility of the SCCs

- 1) How do we assess whether we are subject to the Security Assessment?
- 2) Do the SCCs apply to foreign entities that do not have a physical presence in the PRC?
- 3) Do the SCCs apply to data processors?
- 4) Is the Certification an equal alternative?

3. Execution of the SCCs

- 1) Do we need the Chinese SCCs if we have executed SCCs under the GDPR?
- 2) What if the overseas recipient refuses to execute the SCCs?
- 3) Can we amend or supplement the SCCs?
- 4) What if the overseas recipient objects to terms in the SCCs?
- 5) Which entities shall be the parties to the SCCs?
- 6) Can we change the data flow for the purpose of the SCCs?

4. Know your data export activities

- 1) What data export scenarios shall be covered in the SCCs?
- 2) Can we have the one set of SCCs for multiple data export activities?

5. Conduct DPIA

- 1) What is the scope of DPIA?
- 2) Is there a specific form of the DPIA report?
- 3) Can we use global DPIA templates?
- 4) Must we engage a third-party auditor to conduct DPIA?
- 5) Any other obligations regarding DPIA?

6. Filing with the CAC

- 1) When shall we file with the CAC?
- 2) How do we file with the CAC and what needs to be submitted?
- 3) Will the SCCs be made public?
- 4) In what language shall we file the SCCs?

7. On-going obligations

- 1) How long is the SCC filing valid for?
- 2) Do we need to refile if we have new parties involved in data export?
- 3) Do we need to refile if we have new data export activities?

8. Dispute Resolution

- 1) Can we agree on the governing law of SCCs?
- 2) How should we resolve disputes with overseas recipients?

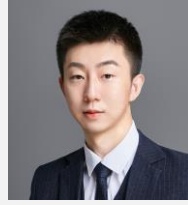
9. Liabilities

- 1) Will our data export be illegal if the SCCs are not executed and filed before the grace period ends?
- 2) What are the liabilities?

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