

Cross-Border Data Transfer Piloting – Hainan Free Trade Port

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Recently, a number of local governments have been releasing different implementation plans relating to cross-border data transfer. The exploration of facilitating the safe and orderly flow of data across borders has been put on the agenda and is progressing step by step.

Current regulatory framework

China's regulations and standards on data cross-border transfer are still in the process of being developed. Although China has formulated laws and regulations on cyber security and data flows, specific regulations on cross-border data flow are still not in place.

Relevant Articles in Released Documents:

- ◆ A security assessment system for data cross-border transfer was first specified in *the Cybersecurity Law* in 2017: “Critical information infrastructure operators that gather or produce **personal information or important data** during operations within the mainland territory of the People’s Republic of China, shall store it within mainland China. Where due to business requirements it is truly necessary to provide it outside the mainland, they shall follow the measures jointly formulated by the state cybersecurity and informatization departments and the relevant departments of the State Council to conduct a security assessment; where laws and administrative regulations provide otherwise, follow those provisions.” (Article 37)¹
- ◆ Based on the Cybersecurity Law, several regulations and guidance on the security assessment of **cross-border transfer of personal information or important data** have been published, including *Security Assessment Method on Personal Information and Important Data Cross-Border Transfer (Draft)* and *Information Security Technology-Guidelines for Data Cross-Border Transfer Security Assessment (Draft)*. Though, **the definition/catalogue** of personal information and important data is not yet defined.
- ◆ The *Data Security Law (Draft)* released in June 2020 points out that “the state should actively engage **in international exchange and cooperation in the data area**, participate in the **formulation of international regulation and standard-setting** related to data security, and **promote the secure and free flow of data across borders.**” (Article 10)² Also see our Policy Briefing [here](#).

¹ The Cybersecurity Law (CHN): http://www.cac.gov.cn/2016-11/07/c_1119867116.htm

English translation version as reference: <https://www.newamerica.org/cybersecurity-initiative/digichina/blog/translation-cybersecurity-law-peoples-republic-china/>

² The Data Security Law (Draft) (CHN, pdf):

<https://baike.baidu.com/item/%E4%B8%AD%E5%8D%8E%E4%BA%BA%E6%B0%91%E5%85%B1%E5%92%8C%E5%9B%BD%E6%95%B0%E6%8D%AE%E5%AE%89%E5%85%A8%E6%B3%95/22861124?fr=aladdin>

English translation version as reference:

<https://www.newamerica.org/cybersecurity-initiative/digichina/blog/translation-chinas-data-security-law-draft/>

Bottom-Up – piloting as a supportive tool in several provinces

On **14 August 2020**, the Ministry of Commerce of the People's Republic of China (**MOFCOM**) issued a **notice for stimulating innovative development of trade in services in pilot areas**, with a **trial period of three years**. The pilot areas consist of 28 provinces and cities/areas including Beijing, Shanghai, Guangzhou, Shenzhen, Hainan, Xiong'an New District, Hebei Province, etc. (*a Policy Briefing on this can be found on the project [website](#)*).

Already in January 2020, China's **Hainan provincial legislature** has planned to review the regulatory proposal "**Administrative Rules for International Internet Access for Enterprises and Individuals**"³ and to elaborate on other aspects of cross-border data flow this year. On 1 June, the Central Committee of the Chinese Communist Party (CCP) and the State Council jointly released a master plan on the Hainan Free Trade Port (FTP), which includes a pilot project for secure cross-border data flow and measures to facilitate more convenient personal data outbound flow.

In parallel with the Hainan effort, a number of local governments released their own plan. The Lingang area of the Shanghai Free Trade Zone has released a plan for a global digital harbor and established the Shanghai Lingang Special Area Cross-Border Data Technology Company, as a data and exchange service platform for a future global data harbor⁴. In September, the Beijing government published the "1+3" policies with *the Implementation Plan for the Establishment of an International Big Data Exchange* (*a Policy Briefing on this can be found on the project [website](#)*). On 25 November, the Zhejiang government released the plan of Free Trade Zone with initiative of piloting securing evaluation of cross-border data transfer.

Zoom-in Hainan FTP

Strategy Overview of Hainan Free Trade Port (FTP)

The Hainan reform measures are directly overseen by President Xi Jinping. The goal is to make the FTP an international gateway via the establishment and piloting of an open, free, internationalised and market-oriented economic system.

Three development phases:

2025: A free trade port policy system with a focus on trade and investment liberalization and facilitation will be "initially established".

2035: The policy system will become "more mature" and become a new "highland" of China's open economy.

Mid-century: The FTP plans to be high-level free trade port of global influence.

Worth notice:

On 2 December 2020, **Mr Feng Fei** was appointed acting governor of Hainan province and will most likely become governor in the near future. Feng is an expert in electronic engineering, he has served as director general of the Industrial Economy Research Department in the Development Research Centre of the State Council (DRC) (2004 – 2014), director of industrial policy division of MIIT (2014 – 2015), vice minister of MIIT (2015 – 2016). He is one of the **leading drafters** of the industrial policy "**Made in China 2025**".

³ News on the plan, China news (CHN): <https://www.chinanews.com/gn/2020/01-18/9063620.shtml>

⁴ New on the development in Shanghai: <https://www.shine.cn/biz/tech/2006019348/>

Specific Implementation Plan on Cross-Border Data⁵

Establish International Data Centre Pilot:

- ◆ **Future Outlook/Goals:** An international (offshore) data centre could directly connect local information with the international internet through a dedicated international channel.
- ◆ **Policies that need to be modified:** There are no existing documents, precedents or clear political guidelines on the establishment of international (offshore) data centres in China yet.
- ◆ In the 2015 published *Classification Catalogue of Telecom Business* there is no clear definition on international data centre business models.
- ◆ **The role of the pilot project:** Considering existing information, business and internet security risks, the pilot will start with low-risk businesses and gradually be expanded to other business areas.
- ◆ **Leading Departments:** Hainan Province, CAC, MIIT

Pilot on Security Management of Cross-border Data Exchange and Transfer

- ◆ **Future outlook/goals:** Draft cross-border data transaction policies, supervision and other issues. Build a positive data transaction ecosystem.
- ◆ **Policies that need to be modified:** Guiyang, Shanghai and other areas have set up regional data exchange institutes, leading internet enterprises are also actively exploring new data flow mechanisms, however cross-border data flow and exchange is still in the blank.
- ◆ **The role of the pilot project:** A thorough regulation system of cross-border data transfer use and products shall be established in pilot areas. Standards, “positive list” mechanisms, security evaluation mechanisms and other support mechanisms shall be developed.
- ◆ **Leading departments:** Hainan Province, CAC, MIIT, MPS, MOFCOM

Recommendations

Opportunity of Engagement



Piloting phases as a starting point for new projects are an important and feasible point for engagement and shaping regulation.

Potential Engagement Perspectives:

- ◆ Supporting the draft of regulatory documents
 - Clarification of the definition and type of data, which could be free transferred or regulated
- ◆ Harmonisation with the international environment
 - Recommendations for streamlining the security evaluation process for foreign companies
 - Harmonisation with international standards, shaping of favourable regulatory conditions for German industry in Hainan
 - Support of replication of this environment and nation-wide adaptation
- ◆ Opening the market for German telecom service providers
- ◆ Exchange with industry representatives and assess the full potential of a possible cooperation

⁵ Master Plan of “Smart Hainan” (CNH): http://www.hnftp.gov.cn/zcfg/zcwj/bwzc/202008/t20200814_3288192.html

Crucial details need to be clarified before further steps can be taken:

1. A timeframe for the nationwide adoption of Hainan FTP pilot regulations has not been defined, yet.
2. Specific industry areas of the different pilots have still not been selected.
3. Government incentives and companies' willingness to settle in Hainan are unclear.
4. Early engagement in the pilot zone might be beneficial for German enterprises. However, this assessment needs to be done by the industry. For this, further information should be collected and shared with associations and industry partners.
5. Criteria for companies to join a pilot zone/port are not yet defined.

**Annex:
Overview of the Regional Development on Cross-Border Data Transfer
in Selected Cities⁶**

| Free Trade Area | Relevant Documents and major open policies | Specific Exploration on Data Cross-Border Transfer | Characteristics of the specific Area |
|-----------------|--|---|--|
| Hainan | <p><i>Master Plan for the Hainan Free Trade Port (released on 1 June)</i></p> <ul style="list-style-type: none"> • Promote liberalisation of market access for telecommunications services • Opening up value-added telecoms business, gradually phase out the restriction on foreign shareholding ratio. Potentially fully owned foreign companies with entity registration and service facilities in Hainan FTP will be allowed to carry out online data processing and transaction processing services targeted at the FTP and international markets. Potential gradual development of business nationwide under the premise of security and control ability. | <p>Current status: early in the conceptualisation phase</p> <p>Until 2025: implement pilot on security management of data cross-border transfer</p> <p>Until 2035: Join regional international cross-border mechanisms, actively participating in international rulemaking for data cross-border transfer</p> | <ol style="list-style-type: none"> 1. Clear long-term construction goals 2. Currently main focus on telecommunication services 3. Strong policy support of CPC and State Council 4. Project still in exploration phase and therefore more flexible |
| Shanghai | <p><i>Global Digital Harbour Concept named "The Flying-Fish"</i></p> <ul style="list-style-type: none"> • Explore ways to construct "new data supervision mechanisms", promote pilot on data cross-border transfer | <p>Current status: a plan for a global digital harbor have been published and the Shanghai Lingang Special Area Cross-Border Data Technology Company</p> | <ol style="list-style-type: none"> 1. Many foreign companies already doing business in this area 2. Strong focus on mobility, integrated circuit, artificial |

⁶ Report from Tencent Research Institute (CHN): https://www.sohu.com/a/420197685_455313

| | | | |
|-----------------|--|--|---|
| | <ul style="list-style-type: none"> Implementation Plan on Deepening Innovation in the Service and Trade Industry in Shanghai (released on 5 November)⁷ Carry out pilots on security evaluation of cross-border data transfer in areas such as mobility, industrial internet and medical research. | <p>has been established in June 2020.</p> <p>Until 2025: realise interoperability, connection and interoperation of cross-border data transfer on Exabyte-Level. Become an important platform by joining the global digital economy, information industry developments and international cooperations.</p> | <p>intelligence, biological medicine and economy</p> <p>3. The level of reforms is advanced, especially in telecom and financial area</p> |
| Beijing | <p><i>Master Plan for the Beijing Free Trade Pilot Zone</i></p> <ul style="list-style-type: none"> Encourage development of new digital business models Explore a way to construct an international information industry and digital trade port, piloting software authentication and import and export of digital products | <p>Current status: “1+3” policies have been published in September 2020.</p> <p>In 3- 5 years: explore regulation in the essential areas such as cross-border data flow.</p> | <p>1. Advantage in the area of service and trade</p> |
| Zhejiang | <p><i>Expansion Area Plan for the Zhejiang Free Trade Pilot Zone</i></p> <ul style="list-style-type: none"> Promote standard-making processes and mutual trust and recognition of existing standards Facilitate investment of domestic and overseas top technology companies, build a global research and application base for the Industrial Internet Build a national trade network, a data exchange system and an international digital port | <p>Current status: early in the conceptualisation phase. Plan only published end of September 2020.</p> <p>Until 2025: pilot security assessment on cross-border data flow. Exploration of ways to build security management mechanisms such as data protection certification and risk evaluation.</p> | <p>1. Digitalisation level is advanced</p> <p>2. This area is simultaneously pushing the Electronic World Trade Platform (eWTP) initiative from Alibaba, the Pilot Zone could profit from experiences there</p> |

We hope you enjoyed reading this Policy Update and welcome your comments and suggestions. Your feedback to info@i40-china.org is highly appreciated. More policy products can be found in our [Download Area](#), more information about the Sino-German Industrie 4.0 Cooperation on our [Project Website](#).

⁷ http://www.pudong.gov.cn/shpd/gwh/20201126/023003008_e3b768aa-fd50-407a-bf67-8f973b88aa5a.htm