

个人信息出境安全评估办法
(征求意见稿)

**Measures on Security Assessment of the
Cross-border Transfer of Personal Information
(Draft for comments)**

第一条 为保障数据跨境流动中的个人信息安全，根据《中华人民共和国网络安全法》等相关法律法规，制定本办法。

Article 1 These Measures are developed in accordance with the Cybersecurity Law of the People's Republic of China and other laws and regulations, for the purpose of protecting the cross-border transfer of personal information.

第二条 网络运营者向境外提供在中华人民共和国境内运营中收集的个人信息（以下简称个人信息出境），应当按照本办法进行安全评估。经安全评估认定个人信息出境可能影响国家安全、损害公共利益，或者难以有效保障个人信息安全的，不得出境。

国家关于个人信息出境另有规定的，从其规定。

Article 2 Network operators who transfer personal information collected in the course of operation within the territory of the People's Republic of China to another country (hereinafter referred to as a “cross-border transfer of personal information”) shall conduct a security assessment in accordance with these Measures. If the security assessment finds that the cross-border transfer of personal information may endanger national security, damage public interest, or does not adequately protect personal information security, then the information shall not be transferred abroad.

If other laws or regulations have specified other rules regulating the cross-border transfer of personal information, those rules shall apply.

第三条 个人信息出境前，网络运营者应当向所在地省级网信部门申报个人信息出境安全评估。

向不同的接收者提供个人信息应当分别申报安全评估，向同一接收者多次或连续提供个人信息无需多次评估。

每2年或者个人信息出境目的、类型和境外保存时间发生变化时应当重新评估。

Article 3 Network operators shall report to the provincial cybersecurity administration for the completion of the personal information security assessment before any cross-border transfer of personal information.

The transfer of personal information to different recipients shall require a separate security assessment for each recipient. Multiple or continuous transfers of personal information to the same recipient does not require multiple assessments.

The assessment shall be re-conducted every two years or whenever the purpose, types or extraterritorial retention period of the cross-border transfer of personal information has changed.

第四条 网络运营者申报个人信息出境安全评估应当提供以下材料，并对材料的真实性、准确性负责：

- (一) 申报书。
- (二) 网络运营者与接收者签订的合同。
- (三) 个人信息出境安全风险及安全保障措施分析报告。
- (四) 国家网信部门要求提供的其他材料。

Article 4 Network operators shall provide the following materials when applying for the personal information security assessment and are responsible for the authenticity and accuracy of such materials:

- (1) The Declaration Form;
- (2) The contract between the network operator and the recipient;
- (3) A report including the security risks and security measures of the cross-border transfer of personal information; and
- (4) Other materials required by the national cyberspace administration.

第五条 省级网信部门在收到个人信息出境安全评估申报材料并核查其完备性后，应当组织专家或技术力量进行安全评估。安全评估应当在 15 个工作日内完成，情况复杂的可以适当延长。

Article 5 The provincial cybersecurity administration shall, upon receiving the materials for the security assessment of the cross-border transfer of personal information and verifying their completeness, shall organize experts or technical professionals to conduct the security assessment. The security assessment shall be completed within 15 working days. In complicated circumstances, the prescribed period may be extended as appropriate.

第六条 个人信息出境安全评估重点评估以下内容：

- (一) 是否符合国家有关法律法规和政策规定。
- (二) 合同条款是否能够充分保障个人信息主体合法权益。
- (三) 合同能否得到有效执行。
- (四) 网络运营者或接收者是否有损害个人信息主体合法权益的历史、是否发生过重大网络安全事件。
- (五) 网络运营者获得个人信息是否合法、正当。
- (六) 其他应当评估的内容。

Article 6 The security assessment of the cross-border transfer of personal information shall focus on the following aspects:

- (1) Whether the transfer complies with relevant laws and administrative regulations;

- (2) Whether the contractual terms with the recipient can fully protect the legal rights and interests of the personal information subject;
- (3) Whether the contract can be carried out effectively;
- (4) Whether the network operator or the recipient has a history of abusing the legal rights and interests of the personal information subject, and whether any significant network security incident has previously occurred;
- (5) Whether the network operator obtained the personal information in a lawful and legitimate way; and
- (6) Other aspects that shall be evaluated.

第七条 省级网信部门在将个人信息出境安全评估结论通报网络运营者的同时，将个人信息出境安全评估情况报国家网信部门。

网络运营者对省级网信部门的个人信息出境安全评估结论存在异议的，可以向国家网信部门提出申诉。

Article 7 The provincial cybersecurity administration shall, when informing the network operator of the conclusion of the security assessment, report the security assessment to the national cybersecurity administration.

If the network operator has any objection to the conclusion of the security assessment on the cross-border transfer of personal information, the network operator may lodge a complaint with the national cybersecurity administration.

第八条 网络运营者应当建立个人信息出境记录并且至少保存 5 年，记录包括：

- (一) 向境外提供个人信息的日期时间。
- (二) 接收者的身份，包括但不限于接收者的名称、地址、联系方式等。
- (三) 向境外提供的个人信息的类型及数量、敏感程度。
- (四) 国家网信部门规定的其他内容。

Article 8 Network operators shall create a record of the cross-border transfer of personal information and retain it for at least 5 years. The record shall include:

- (1) The date and time of the cross-border transfer of personal information;
- (2) The identity of the recipient, including but not limited to the name, address, and contact information of the recipient;
- (3) The type, volume and level of sensitivity of the personal information transferred abroad; and
- (4) Other contents as required by the national cybersecurity administrations.

第九条 网络运营者应当每年 12 月 31 日前将本年度个人信息出境情况、合同履行情况等报所在地省级网信部门。

发生较大数据安全事件时，应及时报所在地省级网信部门。

Article 9 Network operators shall report their practices regarding the cross-border transfer of personal information and the status of performance of contracts to the provincial cybersecurity administration before December 31 of each year.

When a major data security incident occurs, it shall be reported to the provincial cybersecurity administration in a timely manner.

第十条 省级网信部门应当定期组织检查运营者的个人信息出境记录等个人信息出境情况，重点检查合同规定义务的履行情况、是否存在违反国家规定或损害个人信息主体合法权益的行为等。

发现损害个人信息主体合法权益、数据泄露安全事件等情况时，应当及时要求网络运营者整改，通过网络运营者督促接收者整改。

Article 10 The provincial cybersecurity administration shall regularly organize inspections to examine the records of cross-border transfers of personal information and other relevant information, focusing on the implementation of contractual obligations with recipients, and whether there is any violation of national rules or any actions damaging the legal rights and interests of personal information subjects.

If the provincial cybersecurity administration finds any damage to the legal rights and interests of personal information subjects or any security incidents where personal information has been divulged, the network operator shall be required to make rectification in a timely manner, and the network operator shall urge the recipient of the personal information to make rectification.

第十一条 出现以下情况之一时，网信部门可以要求网络运营者暂停或终止向境外提供个人信息：

- (一) 网络运营者或接收者发生较大数据泄露、数据滥用等事件。
- (二) 个人信息主体不能或者难以维护个人合法权益。
- (三) 网络运营者或接收者无力保障个人信息安全。

Article 11 If any of the following circumstances occur, the cybersecurity administration may require the network operator to suspend or terminate the cross-border transfer of personal information:

- (1) Major incidents where personal information has been divulged or abused;
- (2) Personal data subjects cannot (or find it unduly difficult) to protect legal rights and interests related to their personal information; or
- (3) The network operator or recipient is incapable of protecting personal information.

第十二条 任何个人和组织有权对违反本办法规定向境外提供个人信息的行为，向省级以上网信部门或者相关部门举报。

Article 12 Any individual or organization shall have the right to report any violation of these Measures to the provincial cybersecurity administration (or to other relevant departments of the cybersecurity administration or government).

第十三条 网络运营者与个人信息接收者签订的合同或者其他有法律效力的文件（统称合同），应当明确：

（一）个人信息出境的目的、类型、保存时限。

（二）个人信息主体是合同中涉及个人信息主体权益的条款的受益人。

（三）个人信息主体合法权益受到损害时，可以自行或者委托代理人向网络运营者或者接收者或者双方索赔，网络运营者或者接收者应当予以赔偿，除非证明没有责任。

（四）接收者所在国家法律环境发生变化导致合同难以履行时，应当终止合同，或者重新进行安全评估。

（五）合同的终止不能免除合同中涉及个人信息主体合法权益有关条款规定的网络运营者和接收者的责任和义务，除非接收者已经销毁了接收到的个人信息或作了匿名化处理。

（六）双方约定的其他内容。

Article 13 The contract or other legally effective documents (collectively referred to as “the contract”) signed by the network operator and the personal information recipient shall specify the following:

- (1) The purpose, types and retention period of the cross-border transfer of personal information;
- (2) That the personal information subject is the beneficiary of the contractual terms that involve the rights and interests of the personal information subject;
- (3) When the legal rights and interests of the personal information subject are abused, the personal information subject may claim compensation from either the network operator or recipient separately, or from both parties jointly. The personal information subject may seek such compensation on its own behalf or through a designated agent. The network operator or recipient shall compensate the personal information subject unless it is proved that they are not liable;
- (4) If it is difficult to perform the contract due to changes in the legal environment of the recipient's country, the contract shall be terminated or the security assessment shall be conducted again;
- (5) The termination of the contract cannot exempt the network operator and the recipient from the responsibilities and obligations stipulated in the relevant terms concerning the legal rights and interests of the personal information subject in the contract, unless the recipient has destroyed or anonymized the personal information received; and
- (6) Other aspects as agreed by both parties.

第十四条 合同应当明确网络运营者承担以下责任和义务：

(一) 以电子邮件、即时通信、信函、传真等方式告知个人信息主体网络运营者和接收者的基本情况，以及向境外提供个人信息的目的、类型和保存时间。

(二) 应个人信息主体的请求，提供本合同的副本。

(三) 应请求向接收者转达个人信息主体诉求，包括向接收者索赔；个人信息主体不能从接收者获得赔偿时，先行赔付。

Article 14 The contract shall specify that the network operator shall assume the following responsibilities and obligations:

- (1) Inform the personal information subject of the basic information of the network operator and the receiver, as well as the purpose, type and retention period of the cross-border transfer of personal information by means of e-mail, instant messaging, letters, faxes, etc.;
- (2) Provide a copy of this contract at the request of personal information subject;
- (3) Convey any claims of the personal information subject to the recipient upon request, including claims to the recipient; If the personal information subject cannot obtain compensation from the recipient, the network operator shall pay the compensation.

第十五条 合同应当明确接收者承担以下责任和义务：

(一) 为个人信息主体提供访问其个人信息的途径，个人信息主体要求更正或者删除其个人信息时，应在合理的代价和时限内予以响应、更正或者删除。

(二) 按照合同约定的目的使用个人信息，个人信息的境外保存期限不得超出合同约定的时限。

(三) 确认签署合同及履行合同义务不会违背接收者所在国家的法律要求，当接收者所在国家和地区法律环境发生变化可能影响合同执行时，应当及时通知网络运营者，并通过网络运营者报告网络运营者所在地省级网信部门。

Article 15 Contracts shall specify that the recipient shall assume the following responsibilities and obligations:

- (1) Provide access to the personal information for the personal information subject.
When the personal information subject requests to correct or delete its personal information, the recipient shall respond, correct or delete their personal information within a reasonable time and at reasonable cost.
- (2) Use personal information in accordance with the contractual purpose, and the retention of personal information shall not exceed the retention period provided in the contract.
- (3) Confirm that signing the contract and performing the contract obligations will not be in violation of the legal requirements of the recipient's country. When the legal environment of the recipient's country or region changes and may affect the performance of the contract, the network operator shall be notified in a timely manner, and the network operator shall report to the provincial cybersecurity administration where the network operator is located.

第十六条 合同应当明确接收者不得将接收到的个人信息传输给第三方, 除非满足以下条件:

(一) 网络运营者已经通过电子邮件、即时通信、信函、传真等方式将个人信息传输给第三方的目的、第三方的身份和国别, 以及传输的个人信息类型、第三方保留时限等通知个人信息主体。

(二) 接收者承诺在个人信息主体请求停止向第三方传输时, 停止传输并要求第三方销毁已经接收到的个人信息。

(三) 涉及到个人敏感信息时, 已征得个人信息主体同意。

(四) 因向第三方传输个人信息对个人信息主体合法权益带来损害时, 网络运营者同意先行承担赔付责任。

Article 16 The contract shall specify that the recipient shall not transmit the received personal information to a third party unless the following conditions are met:

- (1) The network operator has notified the personal information subject of the purpose of transmitting the personal information to the third party, the identity and nationality of the third party, as well as the type of personal information transmitted and the retention period of the third party through e-mail, instant messaging, letter, fax, etc.;
- (2) The recipient is required, upon the request of the personal information subject to stop the transmission to the third party, to stop the transmission and require the third party to destroy the received personal information;
- (3) The consent of personal information subject has been obtained where sensitive personal information is involved;
- (4) The network operator agrees to assume the liability for compensation to be paid to the personal information subject where the transmission of personal information to a third party causes abuse to the legal rights and interests of the personal information subject.

第十七条 网络运营者关于个人信息出境安全风险及安全保障措施分析报告应当至少包括:

(一) 网络运营者和接收者的背景、规模、业务、财务、信誉、网络安全能力等。

(二) 个人信息出境计划, 包括持续时间、涉及的个人信息主体数量、向境外提供的个人信息规模、个人信息出境后是否会再向第三方传输等。

(三) 个人信息出境风险分析和保障个人信息安全和个人信息主体合法权益的措施。

Article 17 The report of the network operator on the security risks and security measures shall at least include:

- (1) The background, scale, business, financial details, reputation, and network security capabilities of network operator and recipient;
- (2) The plan for the cross-border transfer of personal information, including the duration, the volume of personal information subjects involved, the scale of the

cross-border transfer of personal information, and whether the personal information will be transmitted to a third party after the cross-border transfer.

第十八条 网络运营者违反本办法规定向境外提供个人信息的，依照有关法律法规进行处理。

Article 18 Network operators who conduct cross-border transfers of personal information in violation of these Measure shall be handled in accordance of relevant laws and regulations.

第十九条 我国参与的或者与其他国家和地区、国际组织缔结的条约、协议等对个人信息出境有明确规定的，适用其规定，我国声明保留的条款除外。

Article 19 Where treaties and agreements that China is party to or has concluded with other countries, regions and international organizations have specific provisions on the cross-border transfer of personal information, those provisions shall apply, except for clauses where China has declared a reservation.

第二十条 境外机构经营活动中，通过互联网等收集境内用户个人信息，应当在境内通过法定代表人或者机构履行本办法中网络运营者的责任和义务。

Article 20 If the business activities of an organization located outside China result in the collection of personal information of domestic users through the Internet and other means, then that organization shall fulfill the responsibilities and obligations of network operators in these Measures through a legal representative or entity within the territory.

第二十一条 本办法下列用语的含义：

- (一) 网络运营者，是指网络的所有者、管理者和网络服务提供者。
- (二) 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。
- (三) 个人敏感信息，是指一旦被泄露、窃取、篡改、非法使用可能危害个人信息主体人身、财产安全，或导致个人信息主体名誉、身心健康受到损害等的个人信息。

Article 21 In these Measures, the following terms shall have the meanings as follows:

- (1) “Network operator” refers to the owners and administrators of a network, as well as network service providers.
- (2) “Personal information” refers to all kinds of information recorded in electronic or other forms, which can be used, independently or in combination with other information, to identify a natural person’s personal identity, including but not limited to the natural person’s name, date of birth, identity certificate number, biometric information, address and telephone number.

- (3) “Sensitive personal information” refers to the personal information that, once it is divulged, stolen, falsified or illegally used, may endanger the person or property of the personal information subject or cause damage to the reputation, physical or mental health of the personal information subject.

第二十二條 本辦法自 年 月 日起實施。

Article 22 This Measures shall take effect on _____.