



Data Security Law: Effective 1 September 2021

practical fact-sheet

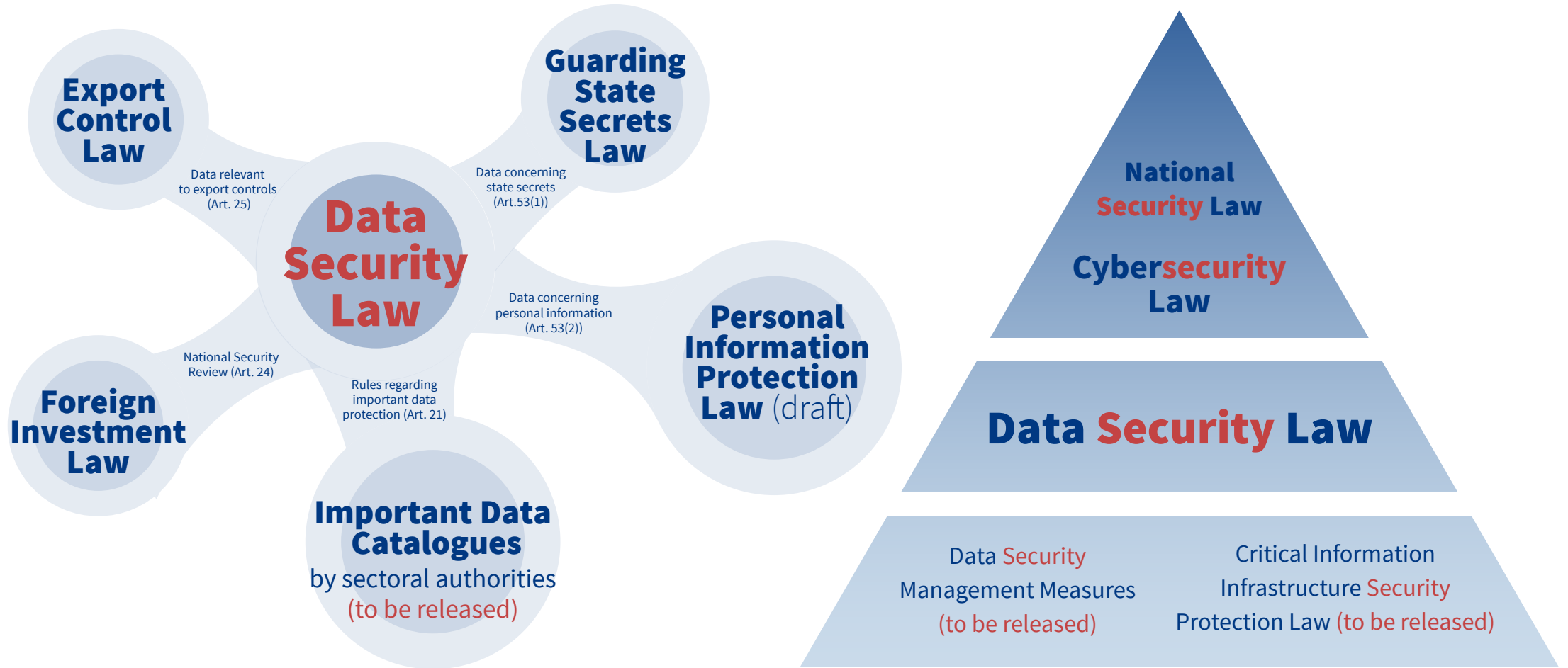
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Data Security Law: Effective 1 September 2021

- Passed by the National People's Congress on 10 June, the **Data Security Law (DSL)** will take effect from 1 September 2021.
- As the DSL governs two highly **consequential** topics of data and security, amid **extensive data growth** and **increasing security concerns**, the legal system is **complex** and **intertwined** (Page 2)
- With the term “data” broadly defined as electronic or non-electronic records of information, the DSL would impact corporate production, management, and other operations alike (Page 3).
- The DSL sets up multiple authorities for enterprises to navigate (Page 4), and various obligations to fulfill (Page 5). As China aims to safeguard economic interests and national **sovereignty**, violations of the DSL could lead to serious **penalties** for both **enterprises** and **representatives** (Page 6).
- While watching out for government clarification on terms like “important data”, “state core data” and corresponding compliance requirements, it is imperative for businesses to comply with the Law's requirements by following some recommendations (page 7).
- Some content may not directly affect business operations, however, companies should be aware of (page 8).

Intertwined & Ongoing Legislations & Regulations



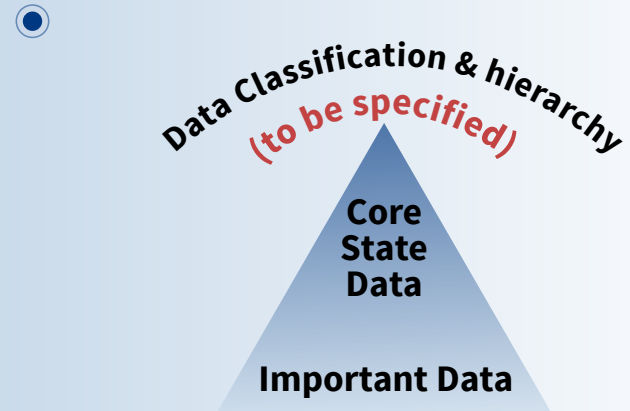
The Essence of Data Security Law

- **Data security** refers to the ability to ensure data under **effective protection** and in **lawful use**, and remain so through taking necessary measures (Art. 3).

- **Data processing** includes activities such as the collection, storage, use, refinery, transfer, provision, or public disclosure (Art. 3).

- **Data** refers to any record of information in electronic or non-electronic form (Art. 3).

- **CCP Directive:** Data is now a production input, equal to labor, capital, land, and technology.



Multi-Agency Supervision

THE
Decisionmaker

**Central
National
Security
Committee**

中央国家安全
领导机构

Responsible for major
decision-making,
strategizing...(Art.5)

National
Security
Ministry

**Security
Organs**

Public
Security
Ministry

**Cyberspace
Administration
of China
(CAC)**

Comprehensive
Coordination
(Art.6)

**Regions/
Departments**

Bearing
primary
responsibility
(Art.6)

**Sectoral/
Industrial
Authorities**

(Industry,
telecoms, finance,
telecoms)

Supervision of
relevant aspects
(Art.6)

Overview of Compliance Requirements

All entities			Entities processing important data	Critical Info Infrastructure Operators (CIIOs)
Risk monitoring, remedy, and incidents reporting	Collaborate with domestic law enforcement effort	Security management system	Management organ with designated personnel	Follow Cybersecurity Law when exporting data
Conduct training and education	Follow the purposes and scope of data collection as stipulated by authorities	Adopt needed technologies and other measures	Regular risk assessment and reporting	
Report to authority and let them handle overseas request for domestically collected data		Carry out MLPS (2.0) & follow-up with classification and hierarchical protection	Follow specific rules for data importing	
			Wait for catalogues for important data	

Art. 21, 27, 29, 39, 31, 32, 34, 35, 36

Penalties

Art. 45, 46, 48

Violations	Administrative Penalties	Fines	
		Company	Representatives
Failure in compliance	Warning	¥ 50K-500K	¥ 10K-100K
Refusal of compliance, causing consequence	Suspension of business, revocation of permits or licenses, reorganization	¥ 500K-2mn	¥ 50K-200K
Refusal of data provision to authority	Warning and rectification	¥ 50K-500K	¥ 10K-100K
Unauthorized provision of data to overseas authority	Warning and rectification	¥ 100K-1mn	¥ 10K-100K
Unauthorized provision of data to overseas authority: causing serious consequence	Suspension of business, revocation of permits or licenses, reorganization	¥ 1mn-5mn	¥ 50K-500K
Unauthorized provision of important data to overseas authority (CIIOs)	Warning and rectification	¥ 100K-1mn	¥ 10K-100K
Unauthorized provision of important data to overseas authority: serious cases (CIIOs)	Suspension of business, revocation of permits or licenses, reorganization	¥ 1mn-10mn	¥ 100K-1mn
Incompliance with core state data rules , damaging national security	Suspension of business, revocation of permits or licenses, reorganization	¥ 2mn-10mn	Criminal charge

What to Do Now? Initial Recommendations

Before more specific compliance requirements regarding important data and state core data are released, all companies processing data should consider the following initial recommendations to implement requirements laid out in the Data Security Law.

- ! Review your corporate bylaws and other related documents, incorporate data security responsibility by breaking it down into actionable tasks, which then should be assigned to personnel, if possible.
- ! Review the terms and responsibilities of the IT department and/or job description for the IT personnel, making sure the IT system security is strictly maintained and needed equipment and technologies in place; given offline data is equally important, make sure the security of any offline data, too.
- ! Set up mechanisms for regular risk monitoring, make contingency plans including reporting procedures and remedial measures, ensure these mechanisms/processes are well documented.
- ! Establish monthly/quarterly meetings and conduct training for personnel, keep good records of these meetings and training sessions.
- ! Scrutinize your business operation related to data collection against competent provisions, ensuring data collection purposes and scopes are strictly followed.

Articles to be aware of

Although some articles may not have direct business impact, companies should be aware of them.



Extraterritoriality :

Data activities outside China but harmful to China will be viable (Art. 2).



Retaliation Clause :

Any country adopting discriminatory restrictive measures against China related to data, China may reciprocate (Art. 25).



Whistle Blowing :

Any individual or organization can report violations to authorities (Art. 12).



Security Review :

China conducts national security review on data of national security interests (Art. 23).



Export Control :

China exercises export controls on related data (Art. 24).



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