

China Enacts New National Security Law

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Aerospace, Defense & National Security

On July 1, 2015, the Standing Committee of the National People's Congress (NPC), China's top legislative body, adopted a new National Security Law (Law), which took effect the same day.

This alert summarizes the key features of the new Law, which is China's most comprehensive national security legislation to date. However, as the main function of the Law is to provide an overarching framework for safeguarding China's security interests, the Law's full impact on individuals and corporations in the private sector will not be completely visible until implementing regulations are issued by the relevant agencies in the coming months. For this reason, multinationals operating in China should continue to monitor these developments.

Legislative History

China issued its original National Security Law in 1993. After more than 20 years, Chinese leaders reportedly became increasingly concerned that the existing security apparatus could not meet existing and non-traditional challenges brought about by rapid pace of globalization and developments in information technology, both at home and abroad.

The original Law, which focused narrowly on counter-espionage, was repealed by the Counter-espionage Law enacted in November 2014 (notwithstanding the fact that these two laws have completely different titles). This newly enacted Law is not merely an updated version of the repealed original Law; rather, it creates an enabling legal infrastructure broadly covering China's modern security apparatus, in contrast to earlier legislative initiatives in this field, such as the draft Counter-terrorism Law, which focused specifically on the issue of terrorism.

Overview of Structure

With 84 articles, divided into seven chapters, the new Law is comprehensive in scope. Chapter 1 sets forth the guiding principle for protecting national security. Chapter 2 then defines national security broadly and across multiple dimensions (e.g., economic security, cultural security, etc.). Chapter 3 describes the functions and responsibilities of the NPC and different branches of the government. Chapter 4 articulates the key elements of the national security regime (such as intelligence collection, risk assessment, national security review, and responding to states of emergency). Chapter 5 outlines the mechanism for allocating resources to national security work. Chapter 6 defines the obligations of citizens and corporations to assist in protecting national security, and Chapter 7 includes supplementary provisions.

Broad Concept of "National Security"

The new Law introduces a sweeping concept of national security into Chinese law for the first time. Article 2 defines national security broadly as "the relative absence of international or domestic threats to the state's power to govern and the capacity to protect security in a sustainable manner," and includes "sovereignty, unity and territorial integrity, the welfare of the

people, sustainable economic and social development, and other major national interests.” Article 3, in turn, draws a direct link between national security and economic, cultural, and social security.

Articles 15 through 32 apply this broad concept of national security to distinct areas. The types of “security” covered by the Law include political security (Articles 15 and 16), homeland security (Article 17), military security (Article 18), economic security (Article 19), financial infrastructure security (Article 20), energy security (Article 21), food security (Article 22), cultural security (Article 23), scientific and technological security (Article 24), information security (Article 25), ethnic security (Article 26), religious security (Article 27), security against terrorism (Article 28), societal security (Article 29), ecological security (Article 30), nuclear security (Article 31), and security of outer space, deep sea, and polar regions (Article 32).

Using broad language to describe the goals of the government, these articles provide high-level guidance to agencies in a manner that, to a certain extent, is comparable to the role played by the Five-Year Plans in setting out objectives and goals for China’s national economy. Government agencies responsible for policymaking in the respective sectors will view these articles as directing them to draft more detailed implementing measures, many of which are likely to apply directly to the private sector.

Obligations of Citizens and Corporations

The new Law imposes broad obligations on citizens and corporations to assist and cooperate with the government in protecting national security. The principal obligations are set forth in Article 80 and include, for example, reporting information on activities that may damage national security, protecting and providing (to the authorities) evidence on activities that may damage national security, protecting national secrets, and providing data, information, and technological support or assistance to security agencies, law enforcement agencies, and the military. Citizens and corporations providing such assistance and cooperation enjoy legal and other protections.

Article 80 also prohibits providing financial assistance or other assistance to individuals and organizations that pose a threat to national security. Citizens and corporations also have an obligation to cooperate with security agencies when such agencies are carrying out national security work.

Emphasis on Scientific Innovation and Cybersecurity

The new Law puts significant emphasis on China’s capacity to strengthen scientific innovation (with an express reference to indigenous innovation) and protect the security of its cyberspace.

For example, Article 24 provides that the State shall, among other things, “accelerate the development of autonomous and controllable strategic advanced technology and core key technologies in important areas” and “strengthen its capability to keep technical secrets confidential, and to safeguard the security of important technologies and projects.” The requirement that the strategic advanced technology consist of “self-owned intellectual property” in an earlier draft has been replaced with the condition that such technology should be “autonomous and controllable.” It remains to be seen how “autonomous and controllable” will be defined in the implementing regulations.

Article 25 discusses the need for establishing “a national network and system security safeguard system,” with goals such as “elevating the capability to protect network and

information security,” “achieving the security and controllability of core network and information techniques, key infrastructure, information systems in important fields and data,” “preventing and punishing unlawful and criminal activity on networks,” and “maintaining cyberspace sovereignty, security, and the development interests of the State.” This mandate raises the question of how China will be able to assert cyberspace sovereignty without sacrificing the universal benefits of global collaboration that are made possible by the borderless nature of the Internet.

National Security Review and Monitoring

Article 59 of the Law contains an explicit reference to the national security review and monitoring process and mandates the security review of “foreign investment that infringes upon, or may infringe upon, national security,” “key materials and technologies,” “internet or information technology products and services,” “construction projects that implicate national security,” and “other major projects or events.” The provision further provides that “each central state organ” should take responsibility for “national security reviews” and “supervise the implementation of national security review decisions” for matters falling within its portfolio, according to relevant laws and regulations.

At the moment, apart from the national security review of foreign investment (where the government has issued multiple regulations), it is unclear how security reviews for all of the items described above will be implemented and which central government departments will execute these reviews.

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With the new Law providing a legal foundation for Chinese regulators to impose new national security-related measures, it is likely that various Chinese regulators will accelerate their work in this field and roll out implementing measures in the near future. Foreign-invested companies should closely track these developments.

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