

Personal Information Laws

China SCC Filing Guidelines Released

On May 30, 2023, the Cyberspace Administration of China (“CAC”) officially released the *Guidelines for the Filing of Standard Contracts for Cross-border Transfer of Personal Information (Version 1)* (“**China SCC Guidelines**”) ¹ to provide guidelines for personal information processors who intend to file the Standard Contract released by the CAC (“**China SCC**”) with the competent authorities. The release of the China SCC Guidelines indicates that the filing of China SCC has officially commenced. We have analyzed and interpreted the main content of the China SCC Guidelines for your reference.

We have also compared and analyzed the relevant contents of the China SCC Guidelines with the *Guidelines for the Application for Data Export Security Assessment (Version 1)* (“**Security Assessment Application Guidelines**”) previously issued by the CAC.

I. Entities Subject to China SCC Filing

An enterprise engaged in personal information export without triggering a data export security assessment is subject to the filing of China SCC with the competent authority, unless it chooses to conduct personal information protection certification.

The provisions of the China SCC Guidelines on the scope of the application of China SCC are consistent with Article 4 of the *Measures for the Standard Contract for Cross-border Transfer of Personal Information* (“**China SCC Measures**”). Both state that in order to provide personal information to an overseas recipient by concluding a China SCC, a personal information processor shall meet the following conditions: (i) it is not a critical information infrastructure operator; (ii) it processes the personal information of less than one million individuals; (iii) it has provided the personal information of less than 100,000 individuals in aggregate to overseas recipients as of January 1 of the previous year; and (iv) it has provided sensitive personal information of less

¹ The *Guidelines for the Filing of Standard Contract for Personal Information Export (Version 1)*, are available at http://www.cac.gov.cn/2023-05/30/c_1687090906222927.htm

than 10,000 individuals in aggregate to overseas recipients as of January 1 of the previous year. In comparison, the circumstances triggering the filing of a China SCC complements the circumstances triggering a security assessment. This means that the filing of a China SCC could apply to any cross-border transfer of personal information that does not trigger a security assessment unless the transferor chooses to adopt certification mechanism.

The China SCC Guidelines again emphasizes that no personal information processor shall take measures, such as splitting the quantity of personal information, to circumvent a data export security assessment merely by concluding a China SCC. Whether the quantity of personal information provided to an overseas recipient triggers the filing of a China SCC needs to be determined according to the actual situation on a case-by-case basis.

II. What Circumstance Constitutes Cross-border Transfer of Personal Information

Enterprises will need to sort all scenarios where personal information is or to be transferred to overseas recipients directly or where such information can be accessed, queried, downloaded or exported from overseas, and on such basis, conduct a personal information protection impact assessment and conclude a China SCC.

The China SCC Guidelines continue to use the criteria provided in the Security Assessment Application Guidelines to determine cross-border transfer activities, which includes the following circumstances: (i) a personal information

processor that transfers and stores outside the PRC the personal information that is collected and generated in its operations within the PRC; and (ii) the personal information collected and generated by a personal information processor is stored in the PRC and is available to overseas institutions, organizations or individuals for access, query, downloading or export. Also, the China SCC Guidelines retains the expression “other personal information export activities specified by the CAC”, allowing a flexible interpretation of any personal information export that may be more complex in future regulatory practice.

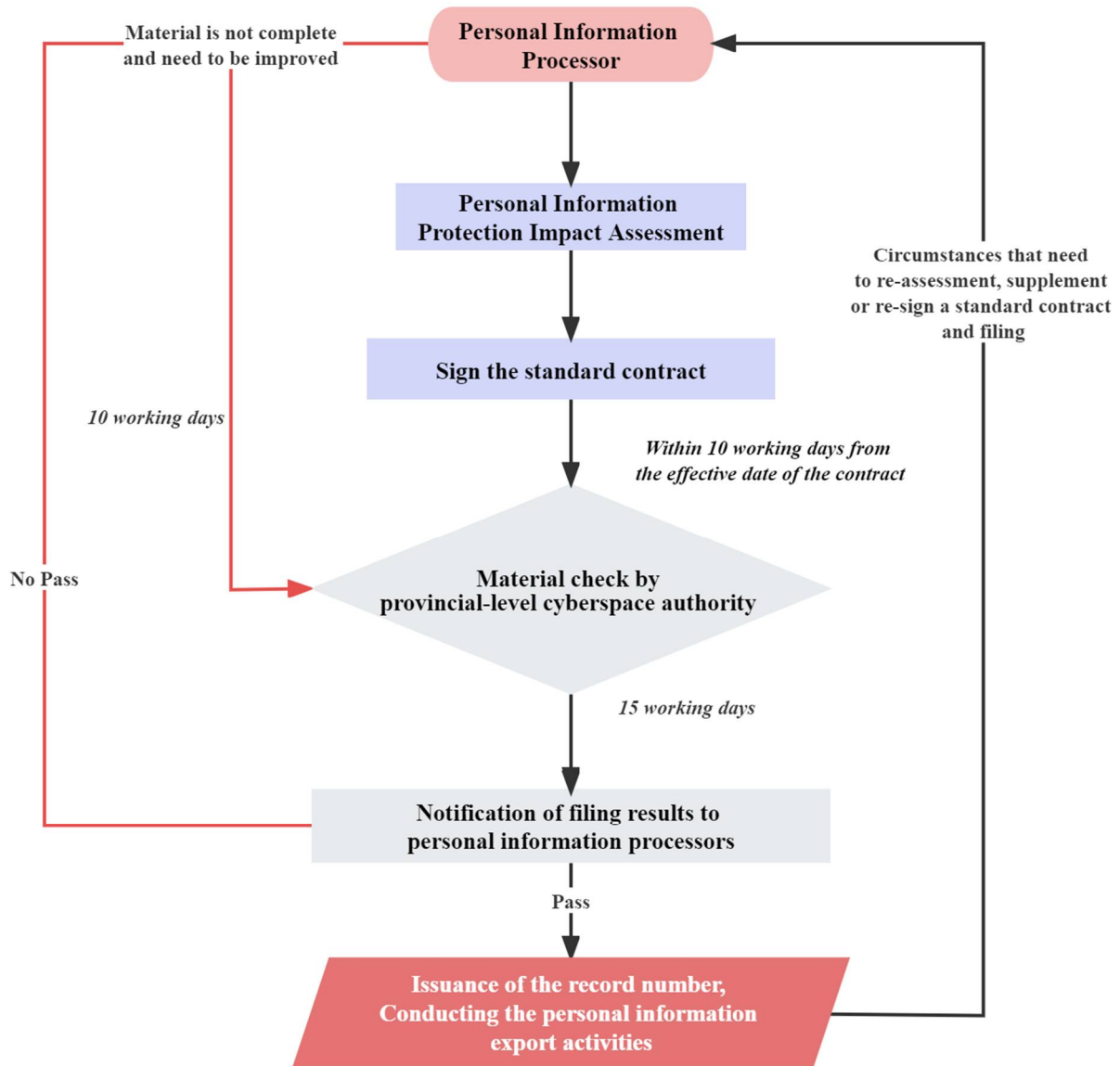
Although having described the circumstances that constitute cross-border transfer of personal information, the China SCC Guidelines do not clarify how to sign a China SCC under different data export scenarios or with different roles in data processing, such as how to sign a China SCC when an entrusted processor provides personal information to an overseas recipient as the data exporter.

III. Methods and Procedures for the Filing of China SCC

The China SCC Guidelines state that a personal information processor shall file a China SCC with the competent authority within 10 business days after the effectiveness of such China SCC.

An enterprise needs to file written materials accompanied by electronic versions to the cyberspace administration at the provincial level. The whole process includes material submissions, a material review, feedback on the result of the filing, and the provision of additional materials or

re-filing, if applicable. The specific filing processes are described in the below flow chart.



In the China SCC Guidelines, it is mentioned that:

- i. The filing needs to be completed by sending written materials accompanied by the electronic versions, but it does not expressly require the electronic filing materials to be submitted in CD form, therefore it still needs to wait and see if online submissions will be accepted in the near future.
- ii. The time period for materials review by

- cyberspace administration at the provincial level (including when additional materials or re-filing is required) shall be 15 business days.
- iii. The CAC published telephone and e-mail contacts for queries and reporting to facilitate any prior enquiries by enterprises on issues relating to the filing of China SCC.

IV. Possible Outcomes of Filings

In accordance with the China SCC Guidelines, the filing outcome is either “pass” or “fail”. If the filing fails, the personal information processor will receive a notice indicating the failure of the filing and why it failed, request the provision of additional materials, and allow re-filing after the provision of the additional materials.

If the filing fails, (i) the personal information export may be considered as baseless in law, and it is unclear whether an enterprise must stop the export activities; and (ii) the period for the provision of additional materials is 10 business days, which is a relatively tight schedule.

Therefore, it is advisable for enterprises to prepare a complete set of materials at the first-round filing and make best effort to pass in the first instance.

V. Application Materials and Key Considerations

The China SCC Guidelines set out seven pieces of documents required for the filing. This includes copies of the social credit code certification of the personal information processor, the ID documents of the responsible person for the China SCC filing and the legal representative of the personal information processor. Most importantly, the executed version of China SCC and the report on Personal Information Protection Impact Assessment (“PIPIA”) must be submitted.

Below is a summary of some key issues to be considered when preparing the application documents required for filing.

- i. The template for the undertaking letter specifically provides that the PIPIA must be completed within three months prior of the

filing date and that there have been no material changes to the PIPIA as of the filing date.

- ii. In the template for the undertaking letter, the personal information processor is required to provide a covenant that it has not engaged in any split-up of the quantity of personal information, and it will not provide overseas recipients with the personal information that is subject to a data export security assessment merely by concluding a China SCC. However, with regard to the “split-up of the quantity of personal information”, it is noteworthy that whether the quantity of personal information transferred among different affiliates under the same group should be calculated on an aggregate basis, which is also pending to be clarified from the regulators.
- iii. In the template for the power of attorney in respect of the responsible person of the China SCC filing, such person should be granted full power to act on behalf of the personal information processor to take all actions and communicate with the regulators as necessary for the completion of the China SCC filing. Therefore, such power of attorney must remain in effect throughout the whole filing process.

VI. Preparing the PIPIA Report

A template for the PIPIA was released together with the China SCC Guidelines, and it provides important guidance for personal information processors to prepare PIPIA.

The PIPIA template is consistent with the Data Export Risk Self-Assessment Report (template) enclosed in the Security Assessment Application Guidelines in terms of assessment elements and considerations. It reflects that the regulator has

similar concerns for security assessment and filing in respect to data export. Outlined below are some key items to be included in the report.

- i. **Composition of the PIPIA report:** the PIPIA report consists of four sections, i.e., a description of the PIPIA process, a description of the data export, a detailed assessment of the impact of the proposed data export, and an assessment of the proposed conclusion of the data export.
- ii. **Basic information of personal information processors:** in addition to general information relating to the business registration of the personal information processor and its business and information systems involved in the export of personal information, the information about its actual controller, the establishment of a personal information protection department, and the general business and personal information and domestic and foreign investments in respect to the personal information processor must also be included.
- iii. **Details of personal information to be exported:** the purpose, scope and method of personal information processing, and its legality, legitimacy and necessity, as well as information regarding the processing of sensitive personal information and the use of personal information in automated decision-making should be included.
- iv. **Assessment of the capabilities of the personal information processor to ensure data security:** the establishment of governance structures and management rules, the deployment and implementation of systems for whole process data management, emergency response, and the protection of personal information rights and interests, as

well as technical security measures implemented throughout the entire process of the collection, storage, use, processing, transmission, provision, disclosure and deletion of personal information should be included.

- v. **Assessment of the overseas recipient:** the basic information of the overseas recipient, its capabilities to ensure data security, the cybersecurity and data security legislation of the country/region where the overseas recipient is located, and the entire process of personal information processing by the overseas recipient should be included.
- vi. **Assessment of the impact of the proposed data export:** an item-by-item description of the elements assessed in the PIPIA in accordance with Article 5 of the China SCC Measures should be included, with focuses on the issues and potential risks discovered in the PIPIA, as well as the corresponding rectification measures taken and the effect of rectification.
- vii. **Conclusion of the PIPIA report:** the personal information processor must draw an objective conclusion of the PIPIA report for the proposed personal information export, and fully describe the reasons and arguments to support such conclusion, on the basis of the PIPIA process and related rectifications.

As can be seen from the above summary of the requirements in the PIPIA template, the information required for PIPIA contains some more details which may not be included in the Transfer Impact Assessment (TIA) under GDPR.

VII. Our Observations and Recommendations

Based on the above:

- i. The China SCC Guidelines provide specific guidance on the scope of application, submission method and process, and material requirements, similar to the Security Assessment Application Guidelines in the level of detail and requirements.
- ii. The China SCC Guidelines specify that the filing may result in either approval or disapproval. In case of disapproval, the personal information processor will be notified of the disapproval for its filing and the reasons for it, and they will have a period of 10 business days to prepare and submit additional or amended supporting materials.
- iii. Nevertheless, the China SCC Guidelines leave out specific filing processes in different scenarios, such as whether different entities

within a group are permitted to submit a consolidated filing, and how and to what extent the PIPIA report should be applied, etc., which will need to be further explored when the CAC starts to accept the filing.

As the deadline to prepare and submit the filing is the end of November this year, companies subject to China SCC filing will only have 6 months to complete their submissions and make any necessary remediations. **As data mapping, preparing PIPIA reports, and negotiating and executing China SCCs with overseas recipients could be time consuming, companies are advised to take actions as soon as possible, leave sufficient time and submit the China SCC filing to avoid delays and any uncertainties associated with the cross-border transfer to their business and operation.**

Marissa Dong	Partner	Tel: 86 10 8519 1718	Email: dongx@junhe.com
Yang Liu	Partner	Tel: 86 10 8519 1261	Email: liuyang@junhe.com
Ryo Lu	Partner	Tel: 86 21 2208 6250	Email: lusp@junhe.com
Shuoying Li	Associate	Tel: 86 21 2208 6242	Email: lishuoyin@junhe.com
Xiaoyu Shi	Associate	Tel: 86 21 2283 8301	Email: shixiaoyu@junhe.com

This document is provided for and only for the purposes of information sharing. Nothing contained in this document constitutes any legal advice or opinion of Jun He Law Offices. For more information, please visit our official website at www.junhe.com or our WeChat public account “君合法律评论”/WeChat account “JUNHE_Legal Updates”.



个人信息保护法律热点问题

标准合同备案指南出台 —— 个人信息出境标准合同备案倒计时正式开始

在《个人信息出境标准合同办法》（以下简称“《标准合同办法》”）正式生效前夕，国家互联网信息办公室（以下简称“国家网信办”）于2023年5月30日正式发布了《个人信息出境标准合同备案指南（第一版）》（以下简称“《标准合同备案指南》”）¹，为拟开展个人信息出境标准合同备案的个人信息处理者提供指导。《标准合同备案指南》的发布，意味着个人信息出境标准合同备案的工作正式开始。以下是我们对《标准合同备案指南》主要内容的分析和解读。

同时，我们也与之前国家网信办发布的《数据出境安全评估申报指南（第一版）》（以下简称“《安全评估申报指南》”）相关内容进行了对比分析。

一、哪些主体需进行标准合同备案

总的来说，对于具有数据出境的情形而又未触发出境安全评估的企业，除非另行选择了个人信息保护认证的方式，均需要进行标准合同的备案。

《标准合同备案指南》对个人信息出境标准合同适用范围的规定与《标准合同办法》第四条保持了严格一致，即需要同时满足非关键信息基础设施运营者、处理个人信息不满100万人、以及自上年

1月1日起累计向境外提供个人信息不满10万人或敏感个人信息不满1万人这几种情形，才能通过订立标准合同的方式向境外提供个人信息。较之于《安全评估申报指南》，标准合同备案的触发情形实际上与安全评估申报的范围互为补充，即不触发安全评估申报的个人信息出境，可以选择通过标准合同备案的方式开展出境活动。

同时，《标准合同备案指南》进一步强调了《标准合同办法》中关于个人信息处理者不得采取数量拆分等手段，将依法应当通过出境安全评估的个人信息通过订立标准合同的方式向境外提供的要求。关于标准合同出境触发条件中的数量标准，仍需要根据项目的具体情况进行判断。

二、哪些情形属于个人信息出境

总的来说，相关的企业需要全面的梳理业务流程之中涉及的所有数据直接出境或境外有相应查询、调取、下载或导出权限的情形，进行相应的个人信息影响评估并签署标准合同。

《标准合同备案指南》对个人信息出境行为的认定延续了《安全评估申报指南》中的标准，只是对一些用语进行调整，例如将“数据处理者”修改

¹国家互联网信息办公室发布《个人信息出境标准合同备案指南（第一版）》，
http://www.cac.gov.cn/2023-05/30/c_1687090906222927.htm

为“个人信息处理者”，“数据出境”修改为“个人信息出境”，对出境情形的描述没有任何实质变化。具体而言，个人信息出境情形包括：（一）个人信息处理者将在境内运营中收集和产生的个人信息传输、存储至境外；（二）个人信息处理者收集和产生的个人信息存储在境内，境外的机构、组织或者个人可以查询、调取、下载、导出。同时，《标准合同备案指南》也保留了“国家网信办规定的其他个人信息出境行为”的表述，为以后监管实践中可能较为复杂的个人信息出境情况预留了解释空间。

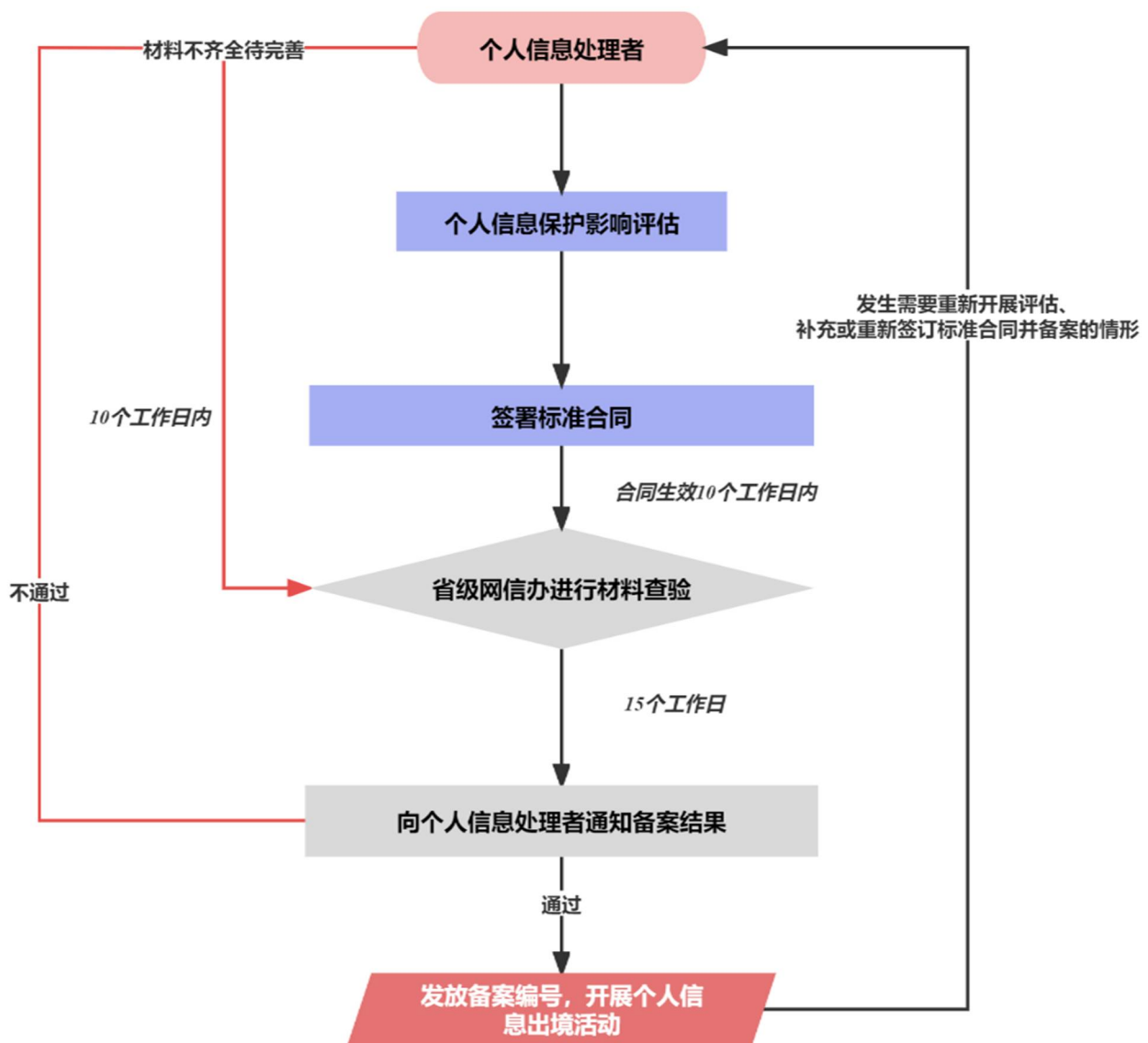
虽然《标准合同备案指南》对于个人信息出境情形进行了描述，但仍然没有明确不同数据出境场

景下、不同数据处理角色如何签署标准合同的问题，例如仍未明确实践中受托处理个人信息的一方作为数据出境方对外提供个人信息的情形如何签署标准合同。

三、标准合同备案的方式及流程是什么？

《标准合同备案指南》规定个人信息处理者应当在标准合同生效之日起**10个工作日内**进行备案。

具体而言，企业需通过送达书面材料并附带材料电子版的方式，向所在地省级网信办备案，具体包括材料提交、材料查验及反馈备案结果、补充或者重新备案等环节。相关备案流程请参见下图。



相较于《标准合同办法》所规定的备案方式和流程，《标准合同》在以下方面进行了细化：

1. 备案方式均为送达书面备案材料并附带材料电子版；《标准合同备案指南》未明确要求电子版备案材料以光盘形式提交，不排除未来通过线上系统接收备案材料的可能性；
2. 明确了省级网信办进行材料查验（包括补充或重新备案情形）的期限均为 15 个工作日；
3. 国家网信办已公布了咨询、举报联系电话和邮箱，方便企业就个人信息出境标准合同备案中的问题进行事先咨询。

四、申报后可能的结果是什么？

根据《标准合同备案指南》，备案后可能存在通过和不通过两种结果。若备案不通过，个人信息处理者将收到备案未成功通知及原因，要求补充完善材料的，可以进一步补充完善资料后再次提交。

但是对于企业而言，若备案未通过，第一，目前的数据出境的状态可能被认为没有适当的法律基础，是否需要停止相应的数据出境行为尚不清楚；第二，补充完善材料再次提交的时间为 10 个工作日，因此，相对而言是较为紧凑的。

在这种情况下，企业最好是在第一次备案之时，即将相关的材料准备完善，争取能够一次性的备案成功。

五、需要准备哪些申报材料？是否有任何关注点？

标准合同备案一共需要准备七份文件，其中除了企业和经办人、法定代表人的相关证明文件，最主要的还是所签署的个人信息出境标准合同和个人信息保护影响评估报告。

《标准合同备案指南》中对于标准合同备案的材料在一定程度上借鉴了安全评估申报的材料要求。主要区别是在标准合同备案中，个人信息处理者不再需要准备类似于数据出境安全评估申报表的申报表格文件。

针对《标准合同备案指南》中规定的申请文件

要求，有以下几点也值得关注：

1. 《承诺书》特别说明要求个人信息保护影响评估工作应为备案之日前 3 个月内完成，且至备案之日未发生重大变化。
2. 《承诺书》要求个人信息处理者承诺其未采取数量拆分等手段，将依法应当通过出境安全评估的个人信息通过订立标准合同的方式向境外提供。其中，对于“数量拆分”的理解，应尤其关注集团公司之间的出境数据是否需要加总计算的情形，同时也有待监管部门对于“数量拆分”做进一步阐释。
3. 《经办人授权委托书》需经办人的角色是在标准合同备案中全方面负责公司的备案工作以及与监管的沟通，因此对于经办人的授权委托期限，应注意设立为足够覆盖标准合同备案工作的委托期限。

六、怎么准备个人信息保护影响评估报告？

针对《标准合同备案指南》颁发之前个人信息处理者普遍关心的个人信息保护影响评估报告如何起草，《标准合同备案指南》本次也提供了《个人信息保护影响评估报告》（模板），为个人信息处理者准备个人信息保护影响评估提供了重要指导和参考。

报告整体要求的评估维度与关注要点与《安全评估申报指南》中所附的《数据出境风险自评估报告》（模板）（以下简称“《出境自评估报告》（模板）”）一脉相承。可以看出，监管部门在关注的信息出境的评估点和关注点是相类似的。以下几点值得关注：

1. **报告整体包括四大方面：**组织和实施评估工作的基本情况、出境活动的整体情况、拟出境活动的影响评估情况、出境活动影响评估结论。
2. **个人信息处理者的基本情况：**不仅限于一般的登记信息以及个人信息出境涉及的业务和信息系统，也需要披露企业的实际控制人、个人信息保护机构信息、整体业务和个人信息情况、境内外投资情况。

3. **拟出境个人信息情况：**需说明个人信息处理的目的、范围、方式，及其合法性、正当性、必要性，还需说明其处理敏感个人信息和利用个人信息进行自动化决策的情况。
4. **对个人信息处理者的个人信息保护能力的评估：**既包括管理组织体系和制度建设情况，全流程管理、应急处置、个人信息权益保护等制度及落实情况，也包括个人信息收集、存储、使用、加工、传输、提供、公开、删除等全流程所采取的安全技术措施。
5. **针对境外接收方的评估：**包括境外接收方的基本情况、个人信息保护能力及其所在国家和地区和个人信息保护政策法规情况，以及境外接收方处理个人信息的全流程过程。
6. **针对拟出境活动的影响评估情况：**需根据《标准合同办法》第五条中列举的因素逐项说明影响评估情况，重点说明评估发现的问题和风险隐患，以及相应采取的整改措施及整改效果。
7. **个人信息保护影响评估报告的结论：**应结合影响评估情况和相应整改情况，对个人信息出境活动作出客观的影响评估结论，充分说明得出评估结论的理由和论据。

七、我们的观察和建议

以上我们总结了《个人信息保护影响评估报告》（模板）中作出的细化要求，至于企业在实践中如何落实这些内容，我们初步观察如下：

1. 整体而言，《标准合同备案指南》的详细程度和相关要求与《安全评估申报指南》类似，均对适用范围、递交方式及流程、递交材料要求等提供了具体指引。从所需准备文件可以看出，企业需要全面、细致的梳理出境数据流，并进行逐项、清晰的自评估、适当完成整改措施。
2. 《标准合同备案指南》明确了备案的结果分为通过、不通过两种情况。对于不通过备案的情形，个人信息处理者将收到备案未成功的通知及原因，并可以进一步补充完善材料并于 10 个

工作日内再次递交。企业应当预留充足时间，尽早提交备案，避免因未通过备案需补交材料导致的延迟和导致业务运营数据出境的不确定性。

3. 《标准合同备案指南》暂未对不同情形如何进行申报进行说明，例如同一个集团下的不同实体是否可以合并申报、申报的个人信息保护影响评估报告具体如何得以扩展适用等。我们相信，此前在数据出境安全评估工作中的一些处理方式在一定程度上也可以借鉴到个人信息出境标准合同备案的文件准备过程之中。

随着《标准合同办法》于今年 6 月 1 日开始正式实施，关于标准合同备案的更多细节问题后续也会有更多的解释和指引。由于标准合同备案工作的过渡期仅到今年的 11 月底，对于需要完成个人信息出境标准合同备案的企业而言，目前仅余留六个月的时间完成相应的工作。考虑到数据出境信息流摸底、准备个人信息保护影响评估报告、与境外接收方沟通签署标准合同均需有相应的筹备时间，因此相关工作需要尽快开展起来，以可相对妥善的保证个人信息出境有据可依、持续稳定，从而护航相应的业务和运营。

董 潇 合 伙 人 电 话： 86 10 8519 1718 邮 箱 地 址： dongx@junhe.com
刘 洋 合 伙 人 电 话： 86 10 8519 1261 邮 箱 地 址： liuyang@junhe.com
陆 斯 珮 合 伙 人 电 话： 86 21 2208 6250 邮 箱 地 址： lusp@junhe.com
李 硕 颖 律 师 电 话： 86 21 2208 6242 邮 箱 地 址： lishuoying@junhe.com
史 晓 宇 律 师 电 话： 86 21 2283 8301 邮 箱 地 址： shixiaoyu@junhe.com



本文仅为分享信息之目的提供。本文的任何内容均不构成君合律师事务所的任何法律意见或建议。如您想获得更多讯息，敬请关注