

The Amended Counter-Espionage Law

Key Takeaways of the Amended Counter-Espionage Law

The amended *Counter-Espionage Law of the People's Republic of China* (the "Counter-Espionage Law", or the "New Law") will come into effect on July 1, 2023. Compared with the 2014 version, the following amendments are noteworthy:

I. Expanding the Application Scope of the Counter-Espionage Law

1. The New Law expands the definition of espionage activities. (1) Apart from joining a spy organization or taking an assignment from a spy organization or its agent, the New Law categorizes "seeking refuge with a spy organization or its agent" as espionage activity. (2) All documents, data, materials, and items related to national security and interests are under the same protection as state secrets and intelligence following the revisions. Stealing, spying on, purchasing, and illegally providing the foregoing documents, data, materials, or items, as well as coercing state functionaries to defect, are all acts of espionage according to the New Law. (3) The New Law also expands the definition of espionage to include cyber-attacks, intrusions, interference, control, and destruction against state organs, confidential-related units, or critical

information infrastructures.

2. The New Law shall apply to the activity of spying on a third-party country by a spy organization and its agents, either within the territory of the People's Republic of China, or by taking advantage of the nationals, organizations, or other conditions of the People's Republic of China, if such an activity is considered harmful to the national security of the People's Republic of China.

II. Strengthening the Support of Anti-espionage Work

1. The New Law provides system support for anti-espionage work. It stipulates that, "The State shall establish an anti-espionage coordination mechanism to coordinate major matters, and to study and resolve major issues in the anti-espionage work." The State shall also establish and implement a "regime for the management of key anti-espionage security precaution entities", requiring the key anti-espionage security precaution entities to establish and implement an anti-espionage security precaution work mechanism.
2. The New Law requires all nationals and organizations to provide support and

assistance in anti-espionage work.

III. Increasing the Powers of and Guarantee for the National Security Authority

1. The New Law provides that, to construct, rebuild, or expand a project within the security control areas around key state organs, military defense units and other key confidential-related units and key military installations, the national security authority is authorized to grant permissions for construction projects involving national security matters. The security control areas shall be delineated and adjusted from time to time by the national security authority in consultation with the relevant authorities.
2. The New Law refines the investigation and handling powers of the national security authority in anti-espionage work. For example, the national security authority may check the belongings of a person who is unidentified and on suspicion of espionage. Upon the approval of the person-in-charge of the national security authority at or above the level of a city divided into districts, the national security authority may gain access to relevant documents, data, materials, and items, and may also ask for information regarding the property of the person on suspicion of espionage. The national security authority may summon or compulsorily summon the relevant person following legal

procedures and may ban border crossings. If the national security authority finds that network information or cyberattacks involve an espionage risk and the situation is urgent, and it will cause serious harm to national security if measures are not taken immediately, the state security authority shall order the relevant units to repair loopholes, stop relevant transmission, suspend relevant services, and notify the relevant departments.

3. The New Law (1) expands the applicability of administrative penalties, (2) adds a new provision to impose fines for minor espionage violations, (3) adds new types of administrative penalties, including regulatory talks, public criticism, and the temporary seizure or revocation of licenses; and (4) clarifies the legal liabilities for assisting others in conducting espionage activities.

Our Observations

Clients are advised to implement appropriate security precaution mechanisms to guide the behavior of employees, conduct proper due diligence on relevant business partners and counterparties, and pay close attention to the confidentiality and decryption of sensitive materials, data, and information, to mitigate relevant risks.

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反间谍法法律热点问题

证监会就主机交易托管规定征求意见

新修订的《中华人民共和国反间谍法》（以下简称“《反间谍法》”或者“新法”）将于2023年7月1日起正式施行。与2014年《反间谍法》相比，有如下值得注意的变化：

一、扩大《反间谍法》的适用范围

1. 新法拓展间谍行为定义的外延。(1)在参加间谍组织或者接受间谍组织及其代理人的任务之外，新法增加规定投靠间谍组织及其代理人也属于间谍行为；(2)新法将关系国家安全和利益的文件、数据、资料、物品与国家秘密、情报一并保护，增加规定对上述文件、数据、资料或物品实施窃取、刺探、收买、非法提供的行为以及胁迫国家工作人员叛变的活动均为间谍行为；(3)新法增加规定了针对国家机关、涉密单位或者关键信息基础设施等的网络攻击、侵入、干扰、控制、破坏等活动为间谍行为。

2. 新法明确规定间谍组织及其代理人在中华人民共和国领域内，或者利用中华人民共和国的公民、组织或者其他条件，从事针对第三国的间谍活动，危害中华人民共和国国家安全的，也将应适用《反间谍法》。

二、加强对反间谍工作的支持

1. 新法为反间谍工作提供制度支持。新法规定，“国家建立反间谍工作协调机制，统筹协调反间谍工作中的重大事项，研究、解决反间谍工作中的重大问题”，还将建立和落实“反间谍安全防范

重点单位管理制度”，要求反间谍安全防范重点单位建立和落实反间谍安全防范工作制度。

2. 新法规定任何公民和组织都应当依法支持、协助反间谍工作。

三、加大对国家安全机关的赋权与保障

1. 新法要求在重要国家机关、国防军工单位和其他重要涉密单位以及重要军事设施的周边安全控制区域内新建、改建、扩建建设项目的，由国家安全机关实施涉及国家安全事项的建设项目许可；安全控制区域的划定由国家安全机关会同有关部门共同划定并动态调整。

2. 新法细化了国家安全机关在反间谍工作中的调查处置权限。如对于身份不明、有间谍行为嫌疑的人员，可以查看其随身携带物品；经设区的市级以上国家安全机关负责人批准，可以查阅、调取有关的文件、数据、资料、物品，还可以查询涉嫌间谍行为人员的相关财产信息；经过法定程序可以传唤或强制传唤，可以决定相关人员不准出境或入境等；发现涉及间谍行为的网络信息内容或者网络攻击等风险，情况紧急，不立即采取措施将对国家安全造成严重危害的，由国家安全机关责令有关单位修复漏洞、停止相关传输、暂停相关服务，并通报有关部门。

3. 新法扩大了行政处罚的适用情形，增加规定对涉及间谍行为的轻微违法行为可以处以罚款；增加约谈、通报批评、暂扣或者吊销许可证件等处

罚种类；明确帮助他人实施间谍行为的法律责任等。

我们的观察

我们建议客户健全落实安全防范机制，规范本

单位人员的行为，在经营活动中对相关合作方、交易对手方做好尽职调查，注意敏感资料、数据、信息的保密与脱密，避免相关风险。

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