



Navigating new compliance challenges

in cross-border R&D collaboration

Introduction

As the United States has been escalating its controls on technologies transferred to China, the Chinese government has also introduced its counteractive measures. The new and revised export control laws and regulations of China, which have already taken effect, will restrict the outbound transfer of “sensitive” Chinese technologies to overseas parties.

Multinational corporations that operate R&D centres in China may be impacted by this new regulatory scheme, which has the following complexities:

- The controlled technologies may take the form of source codes, encryption algorithms, drawings or any other technical data, **so that the transfer does not require any physical export.**
- The scope of the “sensitive” technologies is so far vaguely defined, and potentially broad and restrictive, **so the potential business impact could be significant.**
- The control applies regardless of the origin of the technology, so that **a foreign technology further developed in China under a cross-border collaboration model may also be caught by this scheme.**
- MOFCOM and its local agencies are greatly empowered under the new law to investigate companies for potential violations. **Failure to comply with the export restrictions may result in significant financial penalties, social credit downgrade, and denial of export privilege.**
- Given the complex ramifications of the new control measures, Chinese regulators may want to leverage the (intentional) ambiguities in the new rules to exercise more discretion in enforcement.

Industries impacted



Financial services



Biotechnology



Pharmaceutical



Automotive



Chemicals



Specialised equipment and instruments



Telecom



Computer and software

Tiang & Partners
程偉賓律師事務所

信栢律師事務所
Xin Bai Law Firm

Our approaches and solutions

- Develop a **legally valid framework** to assess the applicability of licensing requirements, as well as the relevant risk exposure levels, given the inherent vagueness in the rules.
- The management take a **risk-based commercial position** on whether a license application is required for the R&D collaboration based on the legal analysis.
- Where the licensing requirement is determined to be inapplicable, properly document the analysis, which can be used as **defence documents**, or at least **evidence of due diligence and mitigating factors**, even if the regulator ultimately disagrees with this position.
- Where the licensing requirement is determined to be applicable, assist with the preparation of the license application documents, along with facts and arguments in support of an approval.
- Prepare **internal guidance** which the business team can rely on to implement the firm's compliance strategies.

Representative experience

A U.S. based Fortune 500 manufacturer

Advising on the China export compliance considerations for its China R&D operation in the context of the newly amended technologies control list and assist in developing its internal operation guidance.

A leading German auto parts maker

Advising on the export control compliance risks related to its China operation using controlled encryption technologies and the related internal compliance processes to minimise the regulatory exposure.

An American diversified industrial technology conglomerate

Advising on export compliance issues and internal processes and assist with the customer due diligence investigations to ensure compliance with the export control requirements of both the United States and China.

A Sweden electronics supplier

Assisting with export control "health check" that aims to navigate new challenges arising from the tightened enforcement from US and China authorities and propose practical solutions.

Key contacts



William Marshall

Partner
Tiang & Partners
+852 2833 4977
william.marshall@tiangandpartners.com



Frank Pan

Partner
Xin Bai Law Firm
+86 (21) 5368 4080
frank.ya.pan@xinbailaw.com

www.tiangandpartners.com

www.xinbailaw.com

The information contained in this publication is of a general nature only. It is not meant to be comprehensive and does not constitute the rendering of professional advice or service by Tiang & Partners and Xin Bai Law Firm. Tiang & Partners and Xin Bai Law Firm have no obligation to update the information as law and practices change. The application and impact of laws can vary widely based on the specific facts involved. Before taking any action, please ensure that you obtain advice specific to your circumstances from your usual law firm contact or your other advisers.

The materials contained in this publication were assembled in March 2021 and were based on the law enforceable and information available at that time.

© 2021 Tiang & Partners. All rights reserved. Tiang & Partners is an independent Hong Kong law firm.

© 2021 Xin Bai Law Firm. All rights reserved. Xin Bai Law Firm is an independent law firm and a member of the PwC global network of firms.

Tiang & Partners
程偉賓律師事務所

