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China Employment Law Update

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Judicial Interpretation Clarifies Issues Concerning Personal Data Criminal Cases

On May 8, 2017, the PRC Supreme People's Court and the Supreme People's Procuratorate jointly issued the *Interpretation of Various Issues Concerning Application of Law in Handling Crimes of Infringing upon Citizen's Personal Data* ("**Personal Data Crime Interpretation**"), which provides more detailed guidelines for handling criminal cases involving infringement of personal data.

Unlike many other countries, China currently does not have a comprehensive personal data protection law. There have been some regulations issued by various governmental bodies to address data protection issues, which have not been well enforced due to the lack of significant punishment for offences. The PRC Criminal Law, amended in 2015, provided a general definition for the "crime of infringing upon citizen's personal data", but left some issues for the Personal Data Crime Interpretation to clarify.

Under the Personal Data Crime Interpretation, an individual's name, ID card number, telecommunication contact details, address, account password, wealth status, geographic tracking records and other information that can identify the individual or reflects the individual's progress of activity are defined as "personal data".

The Personal Data Crime Interpretation prohibits the illegal obtainment, sale, or provision of personal data. The severity of an offence will be determined by reference to the quantity of personal data that has been illegally obtained, sold or provided. For example, it will be a "crime of infringing personal data" if the offender illegally obtains, sells or provides:

- no less than 50 pieces of personal data relating to an individual's whereabouts, content of telecommunication, credit information or property information; or
- no less than 500 pieces of personal data relating to an individual's lodging, telecommunication record, health status or transaction information which may impact the individual's personal or property security; or
- no less than 5000 other pieces of personal data relating to matters other than the above two categories.

An offender can be sentenced to imprisonment for up to 3 years along with a criminal fine. If a company commits a "personal data infringement crime", the in-charge person (for example, the general manager) can be punished according to the above standards for individual offenders, and the company can face a criminal fine.

Along with the Personal Data Crime Interpretation, the Supreme Court has published a summary of several typical criminal cases involving "personal data infringement" handled by the courts in recent years, in order to provide more general guidance. In one of these cases, the internal IT system of a popular hotel in China was hacked, and more than 20 million pieces of its guests' personal data were disclosed online. The offender in the case

downloaded this disclosed personal data from the internet, uploaded it to his website and provided the personal data to subscribers for a charge. It was found to be a serious offence, and the offender was sentenced to prison for 3 years.

Key take-away points:

Although China currently does not have a comprehensive personal data protection law, the various existing regulations require the personal data owner's consent to be obtained for collection, storage, use and transfer of the data. It can be expected that the existing personal data laws will be further revamped to better protect citizens' personal data.

Employers often collect various personal information from employees for HR management and payroll purposes. Therefore employers should review their current practice and/or policies in this regard to ensure compliance with the law.