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Network Data Management Bureau

Cyberspace Administration of China

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To the CAC

致：国家互联网信息办公室

Consultation Draft of the First Review of the Rules on the Standard Contract for Outbound Transfer of Personal Information and the clauses of the Standard Contract for Outbound Transfer of Personal Information

《个人信息出境标准合同规定（征求意见稿）》及《个人信息出境标准合同》条款审阅意见和建议

On behalf of its members, the Asia Securities Industry & Financial Markets Association ("**ASIFMA**") [1] ("**we**", "**our**" or "**us**") are pleased to submit to the Cyberspace

[1] ASIFMA is an independent, regional trade association with over 160 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

ASIFMA 是一个独立的区域性行业协会，会员基础广泛，由银行、资产管理公司、律师事务所和市场基建服务供应商等 160 多家来自买方和卖方市场的领先金融机构和专业机构组成。我们在金融行业拥有共同的利益，即促进在亚洲建立发展一个流动性强并具有深度和广度的资本市场。ASIFMA 认为拥有一个稳定、创新、竞争和高效的亚洲资本市场对于支持亚洲地区的经济增长是十分关键的。我们通过汇聚集体力量和统一行业发声，围绕关键问题推动形成共识、提出解决方案建议并促成变革。我们采取的努力包括与监管机构和交易所进行磋商、制定统一的行业标准、通过政策文件推动改善市场，并降低在地区内开展业务的成本。ASIFMA 通过全球金融市场协会（GFMA）与美国的证券业与金融市场协会（SIFMA）及欧洲的金融市场协会（AFME）形成联盟，共同提供全球最佳行业实践及标准，为区域发展作贡献。

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Administration of China ("**CAC**") our comments and suggestions on the Consultation Draft of the First Review of Rules on the Standard Contract for Outbound Transfer of Personal Information ("**Draft SCC Rules**") and the clauses of the Standard Contract for Outbound Transfer of Personal Information ("**Standard Contract**") of the People's Republic of China ("**PRC**" or "**China**") published on the CAC's website[2].

亚洲证券业与金融市场协会（"**ASIFMA**"）[1]（统称"**协会**"或"**我们**"）谨代表协会全体成员表示，很荣幸有机会就国家互联网信息办公室（"**网信办**"）网站发布的中华人民共和国（"**中国**"）《个人信息出境标准合同规定（征求意见稿）》（"**《规定》（草案）**"）及《个人信息出境标准合同》（"**《标准合同》**"）条款向网信办提出意见和建议[2]。

This letter sets out the views of ASIFMA's members on the Draft SCC Rules and the Standard Contract, the practical difficulties financial institutions may face in applying them and our recommendations for further clarification of certain provisions of the Draft SCC Rules and the Standard Contract.

本函件载列协会会员关于《规定》（草案）和《标准合同》的意见、金融机构在适用该规定和合同时可能面临的实际困难以及我们对《规定》（草案）和《标准合同》若干条文进一步明晰化的建议。

We understand the need for jurisdictions to develop regulatory framework protecting personal information and promoting safe and free movement of personal information across borders. Personal information is pivotal to the business of our members and thus protection on the processing of such information, including safe and free movement of personal information across borders, are essential to the integrity of financial markets and customer and business confidence more broadly. As one of the key mechanisms facilitating cross-border transfer of personal information in a lawful manner, the Draft SCC Rules and the Standard Contract, once implemented, will be an important part in the regulatory regime of personal information protection.

我们了解各司法管辖区建立监管框架以保护个人信息和推动个人信息安全自由跨境流动的需要。个人信息不仅是本协会成员进行业务经营的关键，在处理此类信息的同时提供相应保护（包括个人信息安全与自由跨境流动），对健全金融市场及稳定消费者和经营者信心也至关重要。作为协助个人信息合法跨境传输的关键机制之一，《规定》（草案）以及《标准合同》一经实施，将成为个人信息保护监管制度的重要组成部分。

Since we commend CAC efforts to create a comprehensive and flexible legal framework for the treatment and cross border movement of personal information, we would like to draw your attention to certain areas, which we believe need further consideration:

我们赞赏网信办为个人信息处理和跨境流动创造全面且灵活的法律框架所付出的努力，同时希望提请网信办注意我们认为需要进一步考虑的以下若干领域：

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[2] Available at: http://www.cac.gov.cn/2022-06/30/c_1658205969531631.htm.
可于以下网址查阅：http://www.cac.gov.cn/2022-06/30/c_1658205969531631.htm。

(i) Certain elements of the proposed legal framework remain unclear and could be open to interpretation, which might lead to diverging practices. Examples include:
拟议法律框架中的某些要件仍不明确，可能会被作出不同解释，从而会导致实践中出现分歧。例如：

- **scope of covered entities** and **jurisdictions** (e.g. whether transfers to Hong Kong SAR and Macau SAR are regarded as "offshoring");
所涵盖实体和**司法管辖区的范围**（例如，向香港特别行政区和澳门特别行政区传输信息是否视为"出境"）；
- **other transfer scenarios that are seemingly not covered** (e.g. transfers from an entrusted party to another entrusted party, from an entrusted party to its appointing offshore personal information processor, from an offshore personal information processor to another offshore personal information processor) due to the current "one-size-fits-all" structure of the Standard Contract;
因为当前《标准合同》采用通用而未作细分的结构，导致存在的**其他似乎未被涵盖的信息传输情形**（例如，从某一受托人传输至另一受托人，从某一受托人传输至委托该受托人的境外个人信息处理者，从境外个人信息处理者转移至另一境外个人信息处理者）；
- **content**, **format**, **language** and **level of flexibility** for contracting parties to revise the clauses of the Standard Contract, where we believe further implementation guidelines might be needed;
我们认为在《标准合同》的**内容**、**形式**、**语言**和缔约方可修订条款的**可变通性**方面，可能需要发布进一步实施指引；
- **calculation methods for thresholds** determining the need to adopt the Standard Contract might need further precision;
用以确定是否可以采用《标准合同》的**门槛计算方法**可能需要细化；
- **transfer impact assessment** requirements might also require further guidelines; and
传输影响评估的要求可能也需要进一步指引；及
- a better understanding of **authorities'** involvement in the filing and supervision processes.
更深入地解读**有关监管机构**对备案和监督流程的参与程度。

(ii) Some requirements might create considerable burden on entities whose daily business involves cross-border transfers of personal information. For example:
某些要求可能对日常业务涉及个人信息跨境传输的实体造成沉重负担。例如：

- the **thresholds** restricting the adoption of the Standard Contract are relatively low and would render the Standard Contract unapplicable to a substantial number of financial institutions and other businesses;
限制采用《标准合同》的**门槛**相对较低，可能导致大量金融机构和其他企业无法使用《标准合同》；
- the **filing and re-filing** requirements of the Standard Contract and reports on personal information protection impact assessment appear to be quite

onerous and will place substantial burden on organisations to maintain compliance with the filing procedure;
对《标准合同》以及个人信息保护影响评估报告的**备案和重新备案**要求显得非常繁琐，遵守备案程序将使各组织面临沉重负担；

- some **obligations on offshore recipients** under the Standard Contract seem burdensome when compared to international precedents.
与国际先例相比，在《标准合同》项下的某些针对**境外接收方的义务**似乎较为沉重。

(III) We believe that a reasonable **implementation timeline** would be needed to allow financial institutions to fully understand the implications of the new requirements and to formulate and implement the necessary compliance measures.
我们认为需要制定合理的**实施时间**，以使金融机构充分了解新规的影响，并制定和落实必要的合规措施。

(IV) And finally we would like to recommend a further examination of the mechanisms to resolve the **potential conflicts** between the Standard Contract and the applicable laws and regulations in other jurisdictions to be undertaken.
最后，我们建议进一步审察《标准合同》与其他司法管辖区适用法律法规之间的**潜在冲突**的解决机制。

Our detailed comments are provided in the two **Appendixes** for your consideration.

我们的详细意见载于两份**附件**，供网信办参考。

Next steps

下一步行动

As we understand the importance of such regulation for the business and economic environment, we would be pleased to engage in further discussions with the CAC. ASIFMA and our members stand ready to provide further details and to engage in constructive dialogue on the possible ways of implementation and further development of the proposed legal framework. Shall you have any questions in relation to this submission or would like to obtain further industry input, please contact Diana Parusheva, Executive Director at ASIFMA, Head of Public Policy and Sustainable Finance at dparusheva@asifma.org.

由于我们了解上述规定对业务和经济环境的重要性，我们很乐意与网信办进一步探讨我们的意见。协会及会员随时准备就拟议法律框架实施及后续制定的可能方式提供更多详情并参与建设性对话。若您对本函件有任何疑问或者希望获取更多行业意见，敬请通过邮箱 dparusheva@asifma.org 联系 ASIFMA 协会执行董事、公共政策与可持续金融负责人 Diana Parusheva。

We will also share a copy of our submission with the People's Bank of China ("**PBOC**"), the China Banking and Insurance Regulatory Commission ("**CBIRC**"), and the China

Securities and Regulatory Commission ("**CSRC**"), given the potential overlapping areas of regulation.

鉴于监管领域可能存在重叠，本函件会抄送中国人民银行（"**人行**"）、中国银行业保险监督管理委员会（"**银保监会**"）和中国证券监督管理委员会（"**证监会**"）。

This submission was prepared with the assistance of the law firm Zhao Sheng Linklaters (FTZ) Joint Operations Office, based on feedback from the wider ASIFMA membership.

本函件是在昭胜年利达（上海自由贸易试验区）联营办公室的协助下，根据 ASIFMA 会员的广泛反馈意见撰写。

Yours faithfully

敬颂商祺

Diana Parusheva

Executive Director, Head of Public Policy and Sustainable Finance at

Asia Securities Industry and Financial Markets Association (ASIFMA)

亚洲证券业和金融市场协会

Appendix – Detailed comments

附件 – 具体意见

Introduction

绪言

This Appendix is structured as follows:

本附件由以下部分构成：

Part A 甲部	General and overarching comments 一般和整体意见
Part B 乙部	Specific comments on each article 有关各条款的具体意见

Unless otherwise specified, terms used in this appendix have the meaning and construction given to them in the letter or the Draft SCC Rules and the Standard Contract; any reference to the "**Draft SCC Rules"** or the **"Standard Contract**" is a reference respectively to the draft of the Rules on the Standard Contract for Outbound Transfer of Personal Information and the clauses of the Standard Contract for Outbound Transfer of Personal Information published on the CAC's website as at the date of this submission; and any reference to an Article is to an Article of the Draft SCC Rules or the Standard Contract.

除非另有说明，本附件所用词汇具有本函件或《规定》（草案）和《标准合同》所赋予的涵义，并应根据本函件或《规定》（草案）和《标准合同》解释；"**《规定》（草案）**"或"**《标准合同》**"指截至本函件日期在网信办网站所登载的《个人信息出境标准合同规定（征求意见稿）》以及《个人信息出境标准合同》条款；某一条款是指《规定》（草案）或《标准合同》中的条款。

Part A Overarching comments

甲部 整体意见

1. Implementation timeline and grace period

实施时间与宽限期

The implementation timeline and details remain unclear. We recommend the CAC grant an implementation period of no less than 12 months for new outbound data transfers, in order for PI processors to amend and adapt their existing data transfer and contractual processes.

《规定》（草案）及《标准合同》的实施时间要求和细节仍不明晰。我们建议网信办为新的数据出境活动提供不少于 12 个月的实施期，以便个人信息处理者修改和调整其现有的数据出境和合同流程。

We recommend that the CAC clarifies whether the requirements under the final SCC Rules will apply retrospectively to existing outbound data transfers; and, if so, what grace period would be permitted for re-executing existing contracts with offshore recipients.

我们建议网信办明确《规定》终稿下的要求是否溯及现有数据出境活动；如果溯及，允许在多长的宽限期内与境外接收方重新签署现有合同。

We propose that final SCC Rules are not applied retrospectively. If this proposal is not accepted, we suggest a reasonably long implementation timeline for existing outbound data transfer, of at least 18 months to enable financial institutions to fully understand the implications and formulate and implement the necessary compliance measures. This would be consistent with the implementation period granted by the European Commission for the Standard Contractual Clauses of the European Union ("**EU**"), and would be more a realistic timeframe for multinational organisations to meet compliance and complete a project of this scale.

我们提议《规定》终稿应不溯及既往。如果这一提议不被接受，我们建议针对现有的数据出境活动，安排合理充足的实施过渡期（至少 18 个月），从而使金融机构充分了解其所受影响，并制定和实施必要的合规措施。这也与欧盟委员会批准的欧盟标准合同条款的实施期限相一致，也是跨国组织就满足合规性和完成该类规模的项目而言一个更为现实的期限。

Recommendations are specified under **Article 13** of the Draft SCC Rules in Part B.

具体建议参见乙部所载《规定》（草案）**第十三条**。

2. Application scope

适用范围

The Draft SCC Rules require a personal information ("**PI**") processor and its offshore recipient to execute the Standard Contract, if the PI processor makes a contract with the offshore recipient for the provision of PI outside the PRC under Article 38(3) of the PRC Personal Information Protection Law ("**PIPL**"). However, the Draft SCC Rules offer little guidance on the scope of application of the Draft SCC Rules and the Standard Contract in practice.

如果个人信息处理者与境外接收方按照《个人信息保护法》第三十八条第（三）项订立合同以向中国境外提供个人信息，《规定》（草案）要求个人信息处理者及其境外接收方签署《标准合同》。然而，对于《规定》（草案）以及《标准合同》在实践中的适用范围，《规定》（草案）几乎未提出任何指导意见。

We recommend that the CAC clarifies the covered entities (e.g. whether PI exports between onshore branches and their corresponding offshore parent entities are captured) and jurisdictions (e.g. whether Hong Kong SAR and Macau SAR are regarded as "offshoring").

我们建议网信办明确所涵盖的实体（例如，境内分支机构及其相应境外母机构之间的个人信息出境是否在涵盖范围之内）和司法管辖区（例如，香港特别行政区和澳门特别行政区是否视为“境外”）。

For further details, please refer to our recommendations on **Article 1** of the Draft SCC Rules and **Premises** of the Standard Contract in Part B.

详见我们在乙部中对《规定》（草案）**第一条**和《标准合同》**引言**提出的建议。

3. Clarification in respect of content, format, language, flexibility and conflicts

明确内容、形式、语言、可变通性和冲突等相关问题

The Draft SCC Rules mandate that a PI processor and its offshore recipient must execute the Standard Contract to follow Article 38(3) of the PIPL for its cross-border transfers of PI, while the Standard Contract includes an Appendix II where parties to the Standard Contract may agree on additional terms. The Draft SCC Rules further mandate that any other contracts signed must not contradict with the Standard Contract.

《规定》（草案）要求个人信息处理者及其境外接收方必须签署《标准合同》以使其个人信息跨境传输符合《个人信息保护法》第三十八条第（三）项要求，但《标准合同》当事方可在该合同附录二中约定补充条款。《规定》（草案）进一步要求，所签署的任何其他合同不得与《标准合同》相冲突。

We recommend that the CAC clarifies the content, format, language requirements and flexibility in the use of the Standard Contract (e.g. clarifying and granting the contracting parties flexibility to choose the prevailing language and ability to revise the clauses of the Standard Contract).

我们建议网信办明确《标准合同》的内容、格式、语言要求和灵活变通适用程度（例如，澄清并赋予缔约方选择《标准合同》语言、修改《标准合同》条款的可变通性）。

We also recommend that the CAC considers and formulates mechanisms to solve potential conflicts between the Standard Contract and applicable laws and regulations in other jurisdictions (e.g., the GDPR, which various domestic and international financial institutions are subject to by law or contract obligation).

我们还建议网信办考虑和制定相关机制以解决《标准合同》与其他司法管辖区的适用法律法规（例如，国内外各金融机构须依法或依合同义务遵守的《欧盟通用数据保护条例》）之间可能存在的冲突。

Recommendations are specified under **Article 2** and **Article 3** of the Draft SCC Rules in Part B.

具体建议参见乙部所载《规定》（草案）**第二条**和**第三条**。

4. PI thresholds for adopting the Standard Contracts

可适用《标准合同》的个人信息门槛

The Draft SCC Rules seem to lack sufficient detail on how the calculation operates for the prescribed thresholds under Article 4 of the Draft SCC Rules. It also lacks a mechanism for a situation where the quantities of PI exceed the prescribed thresholds during the term of the Standard Contract. We recommend that the CAC at least specifies the calculation methods for these instances which could regularly occur.

《规定》（草案）在如何计算其第四条规定的个人信息门槛方面似乎不够详细。若个人信息数量在《标准合同》有效期内超过规定的门槛，《规定》（草案）也并无应对机制。我们建议网信办应至少对如该类常见情形下的门槛计算方式作出规定。

In addition, given the growth of the Chinese population and data flows in a successful digital economy, the current thresholds are rather low and would result in unnecessary burden to a substantial number of financial institutions and other businesses. We suggest that the CAC takes a risk-based approach and explicitly excludes certain scenarios from the calculation of the quantity of PI in question (to the extent that these thresholds are to be retained) and consider neither special notification nor separate consent to be required for the cross-border sharing of such PI.

此外，鉴于中国人口和数据流动背靠繁荣的数字经济持续增长，目前第四条下设置的门槛过低，会对大量金融机构和其他企业带来不必要的负担。若网信办意欲保留该门槛要求，我们建议网信办采取风险导向方法，在相关门槛计算中明确排除特定情形，并考虑该特定情形下的个人信息出境既不需要特别通知，也不需要取得单独同意。

Recommendations are specified under **Article 4** of the Draft SCC Rules in Part B.

具体建议参见乙部所载《规定》（草案）**第四条**。

5. Filing and re-filing requirements

备案和重新备案要求

The Draft SCC Rules provide for a regulatory approach combining autonomous contracting and filing management. There seems, however, to be inconsistency between the “autonomous contracting” and the mandatory filing requirements under **Article 7** of the Draft SCC Rules.

《规定》（草案）规定了自主缔约和备案管理相结合的监管方式，但“自主缔约”与《规定》（草案）**第七条**项下的强制备案要求之间似乎相互矛盾。

Financial institutions are concerned that the filing and re-filing requirements place unnecessary burden on PI processors and on the CAC’s resources for a

largely administrative process, especially when the filing timeline is short and the re-filing criteria are ambiguous. In addition, as the filing requirements do not specify the legal effects and consequences associated with the filing, financial institutions are concerned as to how the filing might affect outbound transfers of PI in practice.

金融机构担心，备案与重新备案要求会由于需要完成大规模行政流程，为个人信息处理者和网信办带来不必要的资源负担，特别是在备案时间过短而重新备案标准含混不清的情况下。此外，由于相关条款未明确备案的相关法律效力和后果，金融机构也颇为关注备案在实践中会如何影响个人信息出境。

We recommend that the CAC aligns with international practices and removes the filing and re-filing requirements. If the requirements are to be retained, we suggest that the CAC adopts a compromise approach (e.g. reducing the scope of entities required for the filing), and clarifies the major issues relating to the filing and re-filing processes and the associated timelines, as further specified in our recommendations on **Article 7** and **Article 8** in Part B.

我们建议网信办与国际惯例接轨，删除备案和重新备案要求。如果保留该要求，我们建议网信办采取折衷的方案（例如，缩小须备案实体的范围）并明确与备案和重新备案流程以及相关时间安排有关的主要问题，详见我们在乙部**第七条**和**第八条**提出的建议。

6. Impact assessment requirements

影响评估要求

We are of the view that the scope, the legal effects, and the implementation procedures of the personal information protection impact assessment ("**PIPIA**") on a PI export under Article 5 the Draft SCC Rules and Article 4 of the Standard Contract remain vague and would invite uncertainty in practice.

我们认为，《规定》（草案）第五条和《标准合同》第四条关于个人信息出境的个人信息保护影响评估在范围、法律效力和实施程序方面仍模糊不清，在实践中会造成不确定性。

Existing guidelines are arguably insufficient for financial institutions to smoothly navigate all parallel impact assessment requirements imposed on them and, as such, financial institutions may struggle to reduce the documentary requirements and in turn costs incurred by them to comply with these assessments, ultimately leading to higher charges to end-customers. We recommend that the CAC incorporates further details in the final SCC Rules. Alternatively, the CAC may release guidance on the PIPIA which includes reporting metrics of acceptable risk, as well as on the implementation of the various assessment requirements under different laws and regulations.

现有指引可能仍不足以使金融机构顺利应对其所有需要遵守的并存的影响评估要求，金融机构可能因此难以降低准备文件要求以及为符合这些评估标准而产生的成本，最终导致终端客户承担更高的费用。我们建议网信办在《规定》终

稿中作出更为详细的规定。或者，网信办可就个人信息保护影响评估发布指南，其中包括可接受风险的报告指标，并就实施不同法律法规项下的各种评估要求发布指南。

In addition, one of the current assessment factors is whether laws and policies of the recipient's jurisdiction will impact the performance of the Standard Contract. However, it is not clear whether local counsels' opinions are necessary for a PI export. If that is the case, it would be burdensome for financial institutions (and other organisations) and thus increase the costs of end-customers. The CAC might consider adopting certain standardised data protection assessments in a publicly available format to ensure market consistency.[3] We also recommend the CAC to adopt an adequacy decision mechanism and publish "white-list" or similar that reduces burden for individual institutions of jurisdictions where a transfer impact assessment can be exempted.[4]

此外，目前的评估因素之一是接收方所在司法管辖区的适用法律和政策是否会影响《标准合同》的履行。但尚不清楚个人信息出境是否需获得当地法律顾问的意见。如果需要，金融机构（和其他组织）将面临沉重负担，终端客户的费用也会因此增加。网信办可考虑公示某些标准化数据保护评估的格式模板。[3] 我们还建议网信办采取充分认定机制，公布"白名单"或类似文件，降低可豁免个人信息保护影响评估的司法管辖区内各机构的负担。[4]

Recommendations are specified under **Article 5** the Draft SCC Rules and **Article 4** of the Standard Contract in Part B.

具体建议参见乙部所载《规定》（草案）**第五条**和《标准合同》**第四条**。

7. Repetition of the PI processor's legal obligations through the Standard Contract

《标准合同》重复规定个人信息处理者的法律义务

Article 2 of the Standard Contract prescribes various obligations applicable to PI processors.

《标准合同》**第二条**规定了适用于个人信息处理者的各种义务。

We suggest that the Standard Contract removes these obligations and instead focuses on the principles and contractual obligations to be imposed on the

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[3] This is an approach similar to that adopted by Japanese Personal Information Protection Commission. See https://www.ppc.go.jp/personalinfo/legal/kaiseihogohou/#gaikoku.
这种方法类似于日本个人信息保护委员会采用的方法。参见 https://www.ppc.go.jp/personalinfo/legal/kaiseihogohou/#gaikoku。

[4] EU's European Commission has adopted a list of the countries recognised as adequate for EU GDPR purposes. See https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en/.
欧盟委员会已就欧盟《通用数据保护条例》发布其认可的具备充分性保护的国家/地区名录。参见：https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en/.

offshore recipient. As the obligations on the PI processor have already been addressed in the SCC Rules and the principles of the PIPL, such obligations should be regulated by the PRC authorities instead of being agreed upon between contractual parties.

我们建议从《标准合同》中删除这些义务，转而关注对境外接收方提出的原则和合同性义务。由于《规定》（草案）和《个人信息保护法》的原则性条款中已规定了个人信息处理者的义务，因此这些义务应由中国监管机构予以规范，而非在缔约方之间约定。

Recommendations are specified under **Article 2** of the Standard Contract in Part B.

具体建议参见乙部所载《标准合同》**第二条**。

8. Offshore recipients' obligations under the Standard Contract

境外接收方在《标准合同》项下的义务

In line with our comments under section 3 above, we recommend that the CAC formulates mechanisms to solve potential conflicts between obligations on offshore recipients under the Standard Contract and laws and regulations in other jurisdictions that offshore recipients are subject to. In addition, as an offshore recipient is required to cooperate with the PRC authorities, we invite the CAC to clarify to what extent authorities would request cooperation from and enforce the law against offshore recipients.

结合上文第 3 节中的意见，我们建议网信办出台机制，解决境外接收方在《标准合同》项下的义务与其受约束的其他司法管辖区法律法规之间可能存在的冲突。此外，由于《标准合同》约定境外接收方须配合中国有关监管机构，我们希望网信办明确有关机构要求境外接收方配合以及对境外接收方采取执法措施的具体范围。

In respect of data breach notification obligations for offshore recipients, we recommend that the CAC aligns these obligations with international practices and explicitly sets out a threshold for a data leak to be reportable and a practical timeline and procedure to address ambiguity in the current law. For the obligation to report to the PRC authorities, we recommend that the CAC considers whether this obligation can also be discharged by the data exporter, as ultimately it is the data exporter that is subject to the jurisdiction of the local authorities.

就境外接收方的数据违规通知义务方面，我们建议网信办制定符合国际惯例的义务，并明确设定须报告数据泄露的门槛以及可行的时间要求和程序，以解决现有法律规定不清的问题。关于向中国有关机关报告的义务，我们建议网信办考虑是否应由个人信息处理者履行该义务，因为最终接受当地机关管辖的是个人信息处理者。

Recommendations are specified under **Article 3** of the Standard Contract in Part B.

具体建议参见乙部所载《标准合同》**第三条**。

9. Joint and several liability of parties to the Standard Contract

《标准合同》当事方的连带责任

Financial institutions are concerned that the joint and several liability requirements under the Standard Contract would likely contradict with applicable laws and regulations in other jurisdictions (e.g., the US "Regulation W"). We recommend that intra-group cross-border transfers of PI be exempted from taking joint and several liability, or that CAC formulates alternative mechanisms to solve potential conflicts with laws and regulations in other jurisdictions.

金融机构担心《标准合同》项下的连带责任要求很可能与其他司法管辖区的适用法律法规（例如，美国 W 条例）相矛盾。我们建议个人信息的集团内部跨境传输免于承担连带责任，或者网信办制定其他机制，解决与其他司法管辖区法律法规可能存在的冲突。

Recommendations are specified under **Article 8** of the Standard Contract in Part B.

具体建议参见乙部所载《标准合同》**第八条**。

10. Governing law and dispute resolution mechanism

管辖法律和争议解决机制

We understand that, as a general principle, the governing law of a contract is subject to the contractual parties' agreement. We recommend that, to the extent permitted by the PRC laws, the CAC allows parties to the Standard Contract to freely agree upon its governing law, or at least qualifies the mandatory requirements of the governing law to actions taken in the PRC with exceptions provided.

按照我们的理解，作为一项普遍原则，合同的管辖法律取决于合同双方的约定。我们建议网信办在中国法律允许的范围内，允许《标准合同》双方自由约定管辖法律，或者至少将管辖法律的强制性要求限定于在中国境内提起的诉讼，并规定某些例外情形。

We also suggest that the CAC clarifies that the contracting parties may freely agree upon dispute resolution mechanisms other than the ones provided by the Standard Contract.

我们还建议网信办明确缔约方可在《标准合同》规定之外自由约定其他争议解决机制。

Recommendations are specified under **Article 9** of the Standard Contract in Part B.

具体建议参见乙部所载《标准合同》**第九条**。

11. Alignment with international standards and supplementary sectoral rules and implementation guidance

与国际标准和补充性行业规则及实施指南保持一致

We understand that provisions under the Draft SCC Rules and the Standard Contract have taken into consideration existing practices in other jurisdictions, in particular, the EU General Data Protection Regulation ("**EU GDPR**"). However, new obligations and requirements without detailed explanations proposed under the Draft SCC Rules, as mentioned above, would likely bring legal uncertainty to financial institutions that have daily business needs involving the cross-border transfer of PI.

我们理解，《规定》（草案）以及《标准合同》的内容已考虑其他司法管辖区的惯例，特别是《欧盟通用数据保护条例》。但是，如上文所述，《规定》（草案）所提出的未经详细解释的新义务和新要求很可能对日常业务需求中涉及个人信息跨境传输的金融机构带来法律上的不确定性。

This may discourage the entry and/or continued operation of international financial institutions, as they can no longer reliably leverage the benefits of global expertise and centralised infrastructure, risk and control functions. It is also likely to cause confusion for financial institutions using the services of onshore data partners.

这可能会打消国际金融机构进入市场和/或持续经营的积极性，因为它们将无法发挥全球业务专长和统一的基础设施、风险和控制职能所带来的优势；这还可能给那些使用境内数据合作伙伴服务的金融机构造成困惑。

We submit that, if the CAC aims to create a framework that makes the PRC competitive with other financial markets, it is crucial to allow financial institutions and other businesses operating in the PRC to comply with, and streamline processes in alignment with international standards.

我们认为，如果网信办旨在建立一套使中国面对其他金融市场富有竞争力的框架，关键是要允许在中国经营的金融机构和其他企业遵守国际标准并按照国际标准简化流程。

In addition to the principle of strengthening the competitiveness of the national financial sector by following international standards and further clarifying key issues under this Part A (and as further specified under Part B), we recommend

that the CAC considers coordinating with key financial industry regulators i.e., PBOC, CSRC, and CBIRC.[5]

除通过遵循国际标准和进一步明确本甲部所述的关键问题（以及我们将在乙部进一步说明这些问题）来加强国内金融行业竞争力外，我们建议网信办考虑与人行、证监会、银保监会等金融行业主要监管者进行协调。[5]

We commend CAC's transparent approach during this consultation process as well as the considerations of international practises and would encourage further engagement with financial sector industry participants based on open and inclusive process which will ensure that guidelines are ultimately practicable and workable.

我们赞赏网信办公开透明地开展本次征求意见过程并将国际惯例纳入考量，我们鼓励网信办继续公开、包容地与金融业参与者进一步沟通，这将确保相关指引最终的切实可行性。

We believe that a collaborative approach between authorities will ensure that the major national legislations, in particular, the PIPL, the PRC Data Security Law and the PRC Cybersecurity Law, are consistently implemented by each sector with will reduce the likelihood of regulatory arbitrage.

我们认为，有关监管机关之间开展合作将确保全国主要立法（特别是《个人信息保护法》《中华人民共和国数据安全法》和《中华人民共和国网络安全法》）在各行业得以统一施行，减少监管套利的可能性。

Similarly, any guidelines for PI protection and cross-border data transfers should take into consideration existing international practices. Guidance in this regard should be developed with financial regulators for financial institutions, including whether any exceptions may apply in PI processing and data transfers (e.g. whether a PI export out of the contractual necessity can be exempted from signing the Standard Contract, as proposed under the draft Network Data Security Management Regulations) for effective risk management and meeting existing regulatory obligations.

与之类似，任何个人信息保护和数据出境指导规范应考虑现有国际惯例。金融监管者应为金融机构制定这方面的指南，包括是否个人信息处理和数据传输可能存在任何例外情形（例如，是否如《网络数据安全管理条例（草案）》拟规定的，基于合同必要性进行的个人信息出境可能成为订立标准合同的豁免情形），以帮助金融机构进行有效风险管理和满足现有监管义务。

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[5] In the past few years banking regulators have performed industry surveys to collect information on banks' cross-border transfer needs (including information on why cross-border transfers are necessary, the type and volume of data that would be transferred and details of the offshore recipients including their location and the security measures that would be put in place to protect data transferred offshore).

在过去的几年里，银行监管机构开展了行业调研，就银行出境需求收集相关信息（包括出境原因，拟出境的数据类型和数量，以及境外接收者的详细信息，包括其所在位置和为保护出境数据拟采取的安全措施）。

Part B Specific comments on each Article

乙部　有关各条款的具体意见

In addition to the comments raised in **Part A**, we summarise in the table below our comments and recommendations with respect to each Article in the Rules on the Standard Contract for Outbound Transfer of Personal Information ("**Draft SCC Rules**") and the clauses of the Standard Contract for Outbound Transfer of Personal Information ("**Standard Contract**").

除**甲部**的意见外，下表概述了我们有关《个人信息出境标准合同规定（征求意见稿）》（"**《规定》（草案）**"）及《个人信息出境标准合同》（"**《标准合同》**"）各条款的意见和建议。

Article 条款	**Comments** 意见	**Recommendations** 建议
Rules on the Standard Contract for Outbound Transfer of Personal Information (Request for comments draft) **个人信息出境标准合同规定 (征求意见稿)**		
Article 1 In order to regulate outbound transfer of personal information, protect the rights and interests of personal information and promote safe and free movement of personal information across borders, these Rules are formulated in accordance with the Personal Information Protection Law of the People's Republic of China.	The jurisdictional scope of application of the Draft SCC Rules is not explicitly set out other than by reference to the Personal Information Protection Law of the People's Republic of China ("**PIPL**").	We request that CAC clarifies the following issues and revises the provisions as suggested: (i) whether the Standard Contract can be used by offshore PI processors that are subject to the PIPL's extra-territorial application for the cross-border transfer of personal information from one offshore location to another;

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Admiralty, Hong Kong

Article 条款	Comments 意见	Recommendations 建议
		We understand an offshore PI processor that is subject to the PIPL's extra-territorial application should be able to rely on the Standard Contract for its in-scope transfer of PI to offshore recipients, but it would be appreciated if the CAC can confirm this position. (ii) to facilitate financial institutions involved in schemes such as the Greater Bay Area Wealth Management Connect to transfer personal information ("**PI**") among the different territories within the People's Republic of China ("**PRC**" or "**China**"), whether transfers of PI to Hong Kong SAR or Macau SAR would be regarded as "offshoring" for the purpose of the Draft SCC Rules. We recommend that the CAC clarifies that transfers to Hong Kong SAR and Macau SAR are explicitly excluded from the scope of "offshoring", or alternatively, subject to fast-tracked or streamlined requirements that are endorsed by the PRC authorities and their counterparts in the Hong Kong

Article 条款	Comments 意见	Recommendations 建议
		and Macau SARs, pending confirmation from the CAC on: • which local authorities the Standard Contracts are to be filed with; and • whether such PI processors can rely upon the CAC-guided Standard Contract or will additional assurances be required from offshore PI processors to meet compliance under Article 38 PIPL; and (iii) whether the Draft SCC Rules are applicable to data transfer between an onshore branch and offshore affiliated entities. If yes, we seek clarification from the CAC as to the legal status and relationship between the onshore branch (which cannot be individually held liable from a corporate law perspective) and the offshore entities.
第一条	本条仅援引了《中华人民共和国个人信息保护法》（“**《个人信息保护法》**”），并未对适用	我们请求网信办对下列问题作出澄清，并参考我们的建议对规定作出相应修改：

Article 条款	**Comments** 意见	**Recommendations** 建议
为了规范个人信息出境活动，保护个人信息权益，促进个人信息跨境安全、自由流动，根据《中华人民共和国个人信息保护法》，制定本规定。	《规定》（草案）和《标准合同》的司法辖区范围作出明确规定。	(i) 受《个人信息保护法》域外管辖的境外个人信息处理者能否将《标准合同》用于境外两地间的个人信息传输； (ii) 为促进参与大湾区“跨境理财通”等计划的金融机构在中华人民共和国（“**中国**”）不同地区间传输个人信息，从中国内地向香港特别行政区或澳门特别行政区传输个人信息是否会被视为《规定》（草案）下的“出境”。 我们建议网信办将向香港和澳门特别行政区传输个人信息明确排除在“出境”范围之外，或者规定根据中国内地有关部门及香港和澳门特别行政区相关机构均认可的快速通道或简化对此类个人信息传输的要求。若该建议被采纳，我们请求网信办就下列问题作出进一步确认： • 该等情况下，负责《标准合同》备案的当地机构；以及 • 该等个人信息处理者是否可以直接使用网信办发布的《标准合同》，

Article 条款	Comments 意见	Recommendations 建议
		或者仍需境外个人信息处理者提供额外的保证，以满足《个人信息保护法》第三十八条关于个人信息出境的条件；以及 (iii) 《规定》（草案）是否适用于境内分支机构和其境外关联实体之间的数据传输。 如适用，考虑到从公司法层面而言，境内分支机构无法独立承担法律责任，我们请求网信办明确境内分支机构和境外实体的法律地位和法律关系。
Article 2 Where a personal information processor makes a contract with an offshore recipient for the provision of personal information outside the People's Republic of China in accordance with Article 38(3) of the Personal Information Protection Law of the People's Republic of China, a standard contract for outbound transfer of personal information (hereinafter referred to as the "Standard	**(a) First paragraph of Article 2** The first paragraph of this Article provides that a PI processor and the offshore recipient must execute the Standard Contract. However, this paragraph offers little guidance on the scope of application of the Standard Contract or how the Standard Contract is to be implemented in practice. **(b) Second paragraph of Article 2**	**(a) First paragraph of Article 2** We recommend that the CAC clarifies the scope of application, roles, formats, language requirements and flexibilities of the Standard Contract. Key questions from financial institutions for the CAC's consideration include: (i) From the perspective of the scope of application the Standard Contract:

Article 条款	Comments 意见	Recommendations 建议
Contract") shall be entered into in accordance with these Rules. Where the personal information processor enters into other contracts with the offshore recipient in connection with the outbound transfer of the personal information, such contract shall not conflict with the Standard Contract.	The second paragraph mandates that any other contracts signed must not contradict with the Standard Contract. Financial institutions have the major concern as to how to address potential conflicts between the Standard Contract and the laws and regulations in other jurisdictions (e.g., the General Data Protection Regulation ("**EU GDPR**") of the European Union ("**EU**"), which various domestic and international financial institutions are subject to (or have imposed on them through data transfer requirements contractual terms from other export countries) in an ever-connected digital economy). In addition, since the Standard Contract does not markedly differentiate among the obligations of a PI processor and entrusted party under the PIPL (or a controller and processor to use the terms under the EU GDPR), the possibility of conflicts of law, or at least contractual obligations imposed by different laws, are inevitable. This is a key concern of financial institutions which have to navigate multiple jurisdictions' regimes to offer financial products and services to	• Could the CAC clarify how the terms of the Draft SCC Rules and the Standard Contract apply to outsourcing arrangements (e.g., transfers of clients' personal information to third-party correspondent banks to enable domestic and cross border payments, or the exchange of information between executing and clearing brokers) since the narrower scope of these arrangements do not necessarily fit with the scope of the Draft SCC Rules in particular, which applies only to the relationship between a PI processor and an offshore recipient? • Do the Draft SCC Rules only apply to data gathered from individuals in China? In particular, we urge CAC to clarify whether personal data collected outside of the PRC and imported and processed in the PRC and re-exported abroad will be covered by the Draft SCC Rules? In certain scenarios (as encouraged in special zones such as Hainan Free Trade Port), foreign companies may

Article 条款	Comments 意见	Recommendations 建议
	domestic and international customers with a similar work or life footprint.	send overseas data to China for centralised operations and return to the original source locations for downstream processing. • Are data hosted in systems outside of China in-scope where employees in the PRC access these systems and perform the processing there without ever storing the data locally? (ii) From the perspective of the content of the Standard Contract, can the parties to it only cover the required content under Article 6 of the Draft SCC Rules, or must the whole form of Standard Contact be followed as it is? Namely, from the perspective of the legal effect of the Standard Contract, is the Standard Contract mandatory in its entirety or are some or all the terms for reference only? (iii) From the perspective of the format of the Standard Contract, can the parties to it just incorporate the Standard Contract into the master or other contracts between the two parties (e.g., as an appendix), or must the parties sign this Standard Contract separately?

Article 条款	Comments 意见	Recommendations 建议
		(iv) From the perspective of the language requirements for the Standard Contract, considering the counterparty of the Standard Contract is an offshore entity, will the CAC publish an official English version agreement (or even other commonly used languages in key markets for cross-border commerce with the PRC), and can parties agree that the English or other foreign language version prevails in case of conflicts between the languages? We recommend giving the contractual parties flexibility in terms of the language arrangements of the standard contract. (v) Is Appendix II of the Standard Contract only for adding any further arrangements based on the Standard Contract (namely, with no revisions being permitted to the Standard Contract) or can the parties to the Standard Contract revise some of the clauses or contents in the Standard Contract and set these out in Appendix II? We propose that the Standard Contract should be a guiding template, and organisations may modify the wording of

Article 条款	Comments 意见	Recommendations 建议
		the clauses provided that the contract contains the key data privacy safeguards prescribed in Article 6 and maintains the spirit of the text set set in the Standard Contract. Such flexibilities would (1) accelerate the adoption of the Standard Contract by domestic organisations and their recipient counterparties which may already have international data transfer agreements in place; (2) facilitate the adaption to prevailing practices in global transfers and of offshore recipients; (3) keep consistency with other measures like the Assessment Measures (Art. 9) which do not prescribe exact contractual wording but merely the broad elements for the required legally binding contracts; and (4) alleviate potential risk of direct conflict of law. **(b) Second paragraph of Article 2** Since the Standard Contract does not markedly differentiate among the obligations of a PI processor and entrusted party under the PIPL (or a controller and processor to use the terms under the EU GDPR),

Article 条款	Comments 意见	Recommendations 建议
		variances in law are inevitable. For example, an offshore entrusted party will take more burdensome obligations under the Standard Contract, compared with an offshore processor under the standard contractual clauses under the EU GDPR ("**EU SCCs**"). To reduce potential conflict of law issues, we suggest that the CAC, following a risk assessment, publish a white list of overseas markets whose regulatory regimes pertaining to personal information handling and cross-border transfers the CAC accepts as having acceptable standards to the PRC and therefore the regulations and/or contractual terms set out in those regulations are deemed not to conflict with the Standard Contract, if followed. In addition, we urge the CAC to formulate other mechanisms (unilaterally or on a bi- or multi-lateral basis) to solve potential conflicts between the Standard Contract and laws and regulations in other jurisdictions, or to revise the current requirement that the Standard Contract must always prevail.

Article 条款	Comments 意见	Recommendations 建议
第二条 个人信息处理者依据《中华人民共和国个人信息保护法》第三十八条第一款第（三）项，与境外接收方订立合同向中华人民共和国境外提供个人信息的，应当按照本规定签订个人信息出境标准合同（以下简称“标准合同”）。 个人信息处理者与境外接收方签订与个人信息出境活动相关的其他合同，不得与标准合同相冲突。	**(a) 第二条第一款** 本条第一款规定，个人信息处理者和境外接收方必须签署《标准合同》。但该款并未对《标准合同》的适用范围及实际执行方式提供具体的指引。 **(b) 第二条第二款** 本条第二款要求个人信息处理者和境外接收方之间所签署的任何其他合同不得与《标准合同》相冲突。 对此，金融机构的主要关切在于，如何解决《标准合同》与其他司法管辖区的法律法规之间可能存在的冲突，例如，在日益互联的数字经济时代，国内外许多金融机构须遵守或通过其他数据输出国合同条款中的数据传输要求适用的《欧盟通用数据保护条例》。 此外，由于《标准合同》并未显著区分个人信息处理者和《个人信息保护法》中提及的受托人（即《欧盟通用数据保护条例》下的“控制者”和“处理者”）的义务，因此实践中法律规定或至少不同法律要求下的合同义务导致的冲突几乎不可避免。对于那些必须周旋在多个司法	**(a) 第二条第一款** 我们建议网信办明确《标准合同》的适用范围、作用、格式、语言要求和条款可变通性。我们希望网信办考虑的主要问题包括： (i) 就《标准合同》的适用范围而言： • 鉴于外包安排（例如，向第三方代理行传输客户的个人信息以进行国内和跨境支付，或在执行清算经纪人之间交换信息）的适用范围较窄，并不一定符合《规定》（草案）限制的仅适用于个人信息处理者与境外接收方之范围，请网信办说明《规定》（草案）和《标准合同》的条款如何适用于外包安排？ • 《规定》（草案）是否仅适用于向位于中国境内的个人收集的数据？特别是，我们敦请网信办明确，《规则》（草案）是否适用于在中国境外收集后传输回境内，在境内处理后重新传输到境外的个人信息？这是因为在某些情况下（例如海南自由贸易港等特殊区域所鼓励的做法），外国公司可

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	管辖区内向，为有着相似工作或生活轨迹的国内和国际客户提供金融产品和服务的金融机构而言，这是他们所关心的关键问题。	以将海外数据发送到中国境内进行集中处理，然后再将数据发回至原始数据源所在地进行后续处理。 • 若数据储存在境外的系统中而非中国境内，中国境内员工在未在本地存储数据的情况下访问该系统并对该等数据进行处理的活动是否也在《规定》（草案）及《标准合同》的适用范围内？ (ii) 就《标准合同》的内容而言，签约方所签署的合同是否仅包含《规定》（草案）第六条要求的内容即可，还是必须完全遵守《标准合同》的完整格式？换言之，从《标准合同》的法律效力而言，《标准合同》的全部条款是具有强制性的，还是其中部分条款或全部条款是仅供参考？ (iii) 就《标准合同》的格式而言，《标准合同》的签约方是否可仅将《标准合同》纳入双方签订的主合同或其他合同（例如，作为主合同或其他合同的附件），还是必须单独签署本《标准合同》？

Article 条款	Comments 意见	Recommendations 建议
		(iv) 就《标准合同》的语言而言，考虑到《标准合同》的签署相对方是境外实体，网信办是否会发布一份官方的英文版协议（或者甚至是同中国有跨境贸易往来的主要市场的其他常用语言版本）？如果不同语言版本之间存在冲突，各方是否可约定以英文或其他外语版本为准？我们建议网信办授予合同各方自主约定《标准合同》适用语言的权利。 (v) 《标准合同》的附录二是否仅供合同各方加入除《标准合同》既有条款以外的任何其他安排（换言之，不允许对《标准合同》既有条款作出任何修改），抑或《标准合同》的各方可对《标准合同》的任何既有条款或内容进行修改，并在附录二中列明这些修改内容？ 我们建议仅将《标准合同》作为一个指导性的模板，合同各方可修改各项条款的措辞，只要最终签署合同中包含《规定》（草案）第六条中规定数据隐私保护的关键内容以及遵循《标准合同》文本精神即可。

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		赋予合同各方上述灵活变通合同条款的权利，可以（1）加速国内组织及其可能已拥有国际数据传输协议境外数据接收方采用《标准合同》；（2）促进《标准合同》与全球数据出境及境外接收方的通行做法接轨；（3）与其他未限制合同措辞、仅宽泛要求合同所需要件的规定保持一致（例如《数据出境安全评估办法》第九条）及（4）缓解法律直接冲突的潜在风险。 **(b) 第二条第二款** 鉴于《标准合同》并未显著区分个人信息处理者和《个人信息保护法》提及的受托人（即《欧盟通用数据保护条例》下的“控制者”和“处理者”）的义务，因此法律分歧是不可避免的。例如，与《欧盟通用数据保护条例》的标准合同条款（“**欧盟标准合同**”）中的境外处理者相比，境外受托方将在《标准合同》下承担更繁重的义务。 为减少可能出现的法律冲突，我们建议网信办通过进行风险评估，公布一份海外市场正面清单，认定正面清单所列的海外市场在个人信息处理和跨境传输方面的监管制度与中国具有可

Article 条款	Comments 意见	Recommendations 建议
		接受标准，因此只要遵守该等市场的相关规定和/或相关规定中列明的合同条款，则应被视为符合《标准合同》的要求。 另外，我们促请网信办出台解决《标准合同》与其他司法管辖区法律法规之间潜在冲突的机制（无论是单边、双边还是多变），或者对当前必须以《标准合同》为准的要求进行修改。
Article 3 The outbound transfer of personal information in accordance with the Standard Contract shall adhere to the combination of autonomous contracting and filing management, prevent the security risks of outbound transfer of personal information, and guarantee the orderly and free movement of personal information in accordance with the law.	This Article provides for a regulatory approach of the combination of autonomous contracting and filing management. It seems, however, somewhat contradictory between the “autonomous contracting” and the mandatory filing requirements under Article 7. In particular, it is not clear to what extent the parties to the Standard Contract have autonomy to contract as they wish, and whether this principle means financial institutions are allowed to draft their own standard contracts as long as they do not contradict the Standard Contract. In addition, international financial institutions which tend to have complex internal structures are concerned that it may not be the best use of the CAC’s resources to	We recommend that the CAC clarifies the following: (i) The rationale behind the Standard Contract being filed with the CAC and whether and to what level of authority and/or oversight the CAC intends to have through this filing mechanism. (ii) To what extent parties to the Standard Contract have autonomy to contract as they wish, and whether this principle means financial institutions are allowed to draft their own standard contracts as long as they do not contradict the Standard Contract, so as to facilitate cross-border finance and trade generally and in line with the EU SCCs, or must

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	collect and maintain a large volume of standard contracts that will inevitably need to be filed with provincial CACs, as these financial institutions and other multinational companies have significant number of global systems and overseas recipients in different countries involved in internal management processes (such as human resources management, anti-money laundering checks, etc.). What is more, financial institutions have concerns about the security and the retention period of submitted data in the contract handled by provincial CACs (notwithstanding the welcome obligation under Article 9 that officials will maintain confidentiality and trade secrets).	they use the Standard Contract if they intend to rely on Article 38.1(3) of the PIPL for their data exports. In addition, we strongly recommend that CAC applies a risk-based approach in certain low-risk scenarios, such as intra-group sharing, either: (i) excludes the need to enter into and file Standard Contracts in such scenarios; or (ii) makes it clear that organisations do not need to enter into Standard Contracts and can wait to deploy their binding corporate rules once the implementation rules on the certification regime under Article 38(2) of the PIPL has force of law and is operational.
第三条 依据标准合同开展个人信息出境活动，应坚持自主缔约与备案管理相结合，防范个人信息出境安全风险，保障个人信息依法有序自由流动。	本条规定了自主缔约和备案管理相结合的监管方式。 但是“自主缔约”同第七条项下的强制性备案要求似乎存在冲突。特别地，我们不清楚《标准合同》的签署方在多大程度上拥有按其意愿订立合同的自主权，以及该自主缔约原则是否意	我们建议网信办明确下列内容： (i) 要求将《标准合同》进行备案的理由，以及网信办是否拟通过该等备案机制行使何种程度的监管权力和/或监督功能。

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	味着只要与《标准合同》不冲突，金融机构就可以自行起草其合同。 此外，拥有复杂内部组织架构的国际金融机构及其他跨国公司担心，由于其拥有庞大的全球系统，其内部管理流程（如人力资源管理、反洗钱检查等）涉及不同国家的海外接收方，这必然导致有大量的《标准合同》需要向省级网信办进行备案，而网信办收集并保存这些《标准合同》可能会对自身的行政资源造成浪费。金融机构也对向省级网信部门合同备案过程中可能涉及的数据安全和数据保存期限等问题存有疑虑（但是金融机构对《规则》（草案）第九条规定的工作人员保密义务表示赞赏）。	(ii) 《标准合同》的签署方可以在多大程度上按照自己的意愿签订合同？该自主缔约原则是否意味着只要与《标准合同》不冲突，金融机构就可以自行起草合同，从而在促进跨境融资和贸易的同时，也遵守欧盟标准合同？还是说，如果金融机构希望援引《个人信息保护法》第三十八条第一款第三项办理数据出境，必须原封照搬《标准合同》？ 此外，我们强烈建议网信办对某些低风险情形（例如集团内部共享个人信息），采用如下基于风险的监管路径： (i) 在低风险情形下无需签订《标准合同》，也无需备案；或 **(ii)** 明确规定各企业无需签署《标准合同》，可以选择等待《个人信息保护法》第三十八条第二款认证制度的实施细则出台且具有法律效力和可操作性后，采用该认证制度使个人信息出境。

Article 条款	Comments 意见	Recommendations 建议
Article 4 A personal information processor which satisfies all the following circumstances may provide personal information to offshore recipients by entering into the Standard Contract: (1) it is not a critical information infrastructure operator; (2) it processes personal information of not more than 1 million persons; (3) it has provided personal information of not more than 100,000 persons in aggregate to offshore recipients since January 1 of the previous year; and (4) it has provided sensitive personal information of not more than 10,000 persons in aggregate to offshore recipients since January 1 of the previous year.	We are of the view that the PI thresholds in this Article are redundant and should be deleted, considering the following: (i) The purposes of ensuring national security can be fulfilled by screening only the exports of "important data"; (ii) These requirements would encroach on the CAC's administrative resources that may be better allocated to more critical areas for national security purposes, and potentially impose unnecessary burdens on market entities and result in discriminatory regulatory discretions; (iii) Given the growth of the Chinese population and data flows in the successful digital economy, the current thresholds are extremely low and would result in unnecessary burdens to a substantial number of financial institutions and other businesses. It would also seem impractical, for instance, to force a mainland China-based organisation with one million individuals' PI stored in mainland China to undertake a security assessment before transferring the personal	**(a) Revisions to the current thresholds** We suggest that the CAC delete the PI thresholds specified in (ii), (iii), and (iv) of this Article. If the requirements are to be retained, we recommend that the CAC at least specifies the calculation methods for these thresholds in accordance with (b) below. **(b) Clarifications to the calculation methods** We urge that the CAC specifies the calculation methods for the PI thresholds. Specific examples for consideration include: (i) What is the effective calculation starting date for "not more than 1 million persons" (e.g., after the date of implementation of the SCC Rules)? (ii) Will the calculation be conducted on an enterprise-level regardless of the context, PI subjects,

Article 条款	Comments 意见	Recommendations 建议
	information of one additional individual on an *ad hoc* basis. (iv) As a comparative reference, the cross-border transfers of PI globally take place under various mechanisms. For example, the EU GDPR provides different tools for data transfers from the EU to a third country, including the EU SCCs, Binding Corporate Rules, adherence to a code of conduct or certification and others. Those mechanisms could be leveraged in all types of cross-border transfers of PI. As long as proper safeguards are in place, financial institutions and other organisations can transfer data out of the EU to facilitate business. In particular, privacy laws (such as the GDPR) which incorporate SCCs as the transfer mechanism do not have any such thresholds (including any numerical limits). Further, we understand that this Article lacks sufficient details on how the calculation operates for these prescribed thresholds. To give a specific example common to international financial institutions, if an	systems or sources of PI (such as cloud services that act as entrusted parties under the terms of the PIPL)? (iii) Will the calculation be conducted per entity or on a groupwide basis? We recommend that the CAC takes PI-processor-based approach, instead of on a groupwide or enterprise-level basis, since this better aligns with the need to allocate rights and responsibilities between sender and recipient. (iv) Will the CAC aggregate all PI transferred outside of mainland China in the various filings made by one entity? Is there any double counting to the thresholds when the personal information of the same individual is transferred to two separate offshore recipients? In addition to different accessing entities, sharing the same copy of data to different destination countries is

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	onshore organisation stores the PI of 100,000 persons offshore with entrusted party A, and some of that PI is accessed outside of China by entrusted party B, will that exceed the 100,000 threshold, or will the PI only be counted once? (i.e. storage by A and access by B counts as '1' or as '2' for the purpose of the threshold?) While the PI may remain the same, the level of risk can vary significantly between scenarios, however we would like to avoid a calculation based on multiple access of the PI of the same person by differing offshore recipients being counted multiple times as it will have the effect of reducing the thresholds. This Article also provides no mechanism for a situation where the quantities of PI exceed the prescribed thresholds during the term of the Standard Contract.	also a considering factor, but it is to be clarified whether that should be counted multiple times or just once. In particular, we recommend clarifying at the end of this Article that "each individual whose personal information, albeit different, is provided by the same processor to the same offshore recipient more than once will be treated as one count." (v) During the term of the Standard Contract or the two-year cumulative period set out in this Article, if the PI to be processed or exported exceeds the thresholds on an accumulative basis, will the switch from the Standard Contract to the CAC-led security assessments under Data Export Security Assessment Measures be necessary (the "**Assessment Measures**")? If so, how specifically could the switch be conducted? Will this requirement to switch have

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		retroactive effect, affecting PI that has been exported on the basis of an executed Standard Contract and needs to continue to be exported on an on-going basis? On account of our concerns mentioned in the comments to the left, we suggest that the CAC explicitly exclude the following from the calculation of the quantity of PI in question (to the extent that these thresholds are to be retained) and neither special notification nor separate consent is required for the cross-border sharing of such PI: (i) PI provided to a financial institution by its institutional clients and/or business counterparties relating to individual representatives of such institutions (e.g., beneficial owners, directors, staff and representatives), and other PI generated or collected in a scenario in which the financial institution has not contracted directly with the underlying individuals;

Article 条款	Comments 意见	Recommendations 建议
		(ii) PI that is not identifiable to any specific individual based on the information the financial institution and its affiliates possess; (iii) PI made available to financial investors for investment in packaged portfolios; (iv) publicly available PI; (v) PI that is mere store or in use in system and other back-up offshore in a situation where no offshore personnel have access to the contents; (vi) intra-group transfers for human resources management; and (vii) transfers to Hong Kong SAR and Macau SAR.
第四条 个人信息处理者同时符合下列情形的，可以通过签订标准合同的方式向境外提供个人信息： (i) 仅对“重要数据”的出境进行审查即可实现确保国家安全的目的；	我们认为本条规定中的个人信息数量门槛较为冗余、并非必要，应可予删除，理由如下：	**(a) 修改当前的数量门槛** 我们建议网信办删除本条第（二）、（三）和（四）款中的个人信息数量门槛。

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（一）非关键信息基础设施运营者； （二）处理个人信息不满 100 万人的； （三）自上年 1 月 1 日起累计向境外提供未达到 10 万人个人信息的； （四）自上年 1 月 1 日起累计向境外提供未达到 1 万人敏感个人信息的。	(ii) 设置本条个人信息数量门槛会浪费网信办本应用于对国家安全更为重要领域的行政资源，并可能给市场主体带来不必要的负担，导致歧视性监管； (iii) 鉴于中国人口和数据流动背靠繁荣发展的数字经济不断增长，目前设置的个人信息数量门槛过低，会对大量金融机构和其他企业带来不必要的负担。同时，所设门槛也缺乏可操作性；例如，根据当前规定，位于中国并在中国已存储 100 万人个人信息的主体在临时出境一名新增个人的个人信息前，必须开展安全评估，而不能继续采用标准合同。 (iv) 作为比较法下的参考，个人信息跨境传输在全球范围内所采用的机制不尽相同。例如，《欧盟通用数据保护条例》对从欧盟向第三国传输数据提供了不同的工具，包括欧盟标准合同规定、约束性公司规则、坚持行为守则或认证等。这些工具适用于所有类型的个人信息跨境传输活动。只要具备适当的保障措施，金融机构和其他组织就可以向欧盟外传输数据以开展业务。特别是，纳入标准合同作为数据传输机制的隐私权相关法律（例如《欧盟通用数据	如果保留这些门槛要求，我们建议网信办参考下文(b)段，澄清计算这些数量门槛的方法。 **(b) 详细说明计算方法** 我们促请网信办详细说明个人信息数量门槛的计算方法。以下具体问题供网信办参考： (i) “不满 100 万人”的有效起算时间是何时（例如，《规定》（草案）实施日起）？ (ii) 门槛的计算是否以企业为单位，而不考虑个人信息传输背景、个人信息主体、系统或个人信息的来源（例如，来源于作为《个人信息保护法》下受托人的云服务商）？ (iii) 门槛的计算以每一实体还是整个集团为单位？我们建议网信办以每一个人信息处理者为单位进行计算，而不是以集团或各企业为单位，因为这样可以更好地在发送方和接收方之间进行权利和责任的分配。

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	保护条例》）未设有包含任何数量限制的此类门槛。 此外，我们认为本条规定缺少足够详细的关于这些规定门槛计算方式的信息。一个对于国际金融机构常见的具体例子是，一个境内主体将10万人的个人信息存储在境外受托人甲处，另一境外受托人乙同时也在境外访问上述个人信息中的部分个人信息。这种情况下，境内主体向境外提供的个人信息是否超过了10万的门槛？（换言之，甲存储信息、乙访问信息的情况对于门槛计算而言，是会被视为提供一次还是两次信息？）尽管个人信息的总量保持不变，但是在这两种计算情况下的风险水平可能存在巨大差异。我们希望避免通过区分境外接收方将多次访问同一人士的个人信息被计算为多次访问，因为这将产生降低门槛的效果。 本条也未规定个人信息数量在《标准合同》有效期内超过规定门槛时的处理机制。	(iv) 网信办是否会对同一个实体多次备案中向中国境外传输的所有个人信息进行加总计算？ 当同一个人的个人信息被传输给两个不同的境外接收方时，是否会重复计入数量门槛？除了不同接收信息的主体以外，向不同的目的地国家传输相同的个人信息是否会被重复计算？ 除上述信息供考虑以外，我们特别建议在本条规定末附详细说明：“尽管同一个人的信息不尽相同，但由同一处理者向同一境外接收方提供一次以上个人信息的，该名个人将被视为一人。” (v) 在《标准合同》有效期内或在本条规定的累计两年期间内，如果处理或出境的个人信息超过数量门槛，是否需要从签署《标准合同》转为开展《数据出境安全评估办法》（“**评估办法**”）下的安全评估？如果是，具体如何进行转换？该转换要求是否具有回溯性（即是否对根

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		据已签署的《标准合同》已出境并将持续出境的个人信息产生影响）？ 鉴于我们在左侧意见中提出的担忧，若网信办坚持保留这些门槛，我们建议网信办考虑在相关个人信息数量门槛计算中明确排除下列个人信息，该等个人信息出境时既不需要特别通知，也不需要取得单独同意： (i) 金融机构的机构客户和/或业务对手方向金融机构提供的与该机构的个人代表（例如受益所有人、董事、员工和代表）有关的个人信息，以及金融机构在未与相关个人直接签约的情况下生成或收集的其他个人信息； (ii) 根据金融机构及其关联方掌握的信息无法确认任何特定个人的个人信息； (iii) 提供给金融机构用于开展一揽子投资组合投资的个人信息；

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		(iv) 可从公开渠道获取的个人信息； (v) 仅在系统中存储或使用的个人信息以及境外人员无法接触到其内容的其他境外备份信息； (vi) 为了人力资源管理在集团内部转移的个人信息；及 (vii) 向香港特别行政区和澳门特别行政区提供的个人信息。
Article 5 Before providing personal information to the offshore recipient, the personal information processor shall make an impact assessment on personal information protection in advance, focusing on: (1) the legality, legitimacy and necessity of the purpose, scope, and method of personal information processing by the personal information processor and the offshore recipient; (2) the quantity, scope, type and sensitivity of the outbound personal information,	We are of the view that the scope, the legal effects, and the implementation procedures of the impact assessment under this Article 5 remain vague and would invite uncertainties in practice. In particular, various assessment regimes have been introduced in different regulations, including: (i) the personal information protection impact assessment ("**PIPIA**") under the PIPL; (ii) a PIPIA on data export in this Article;	We urge that the CAC: (i) define what constitutes "providing personal data" to the offshore recipient under this Article; (ii) clarify how situations under sub-paragraph (4), if occurring, may impact PI processors' ability to engage in PI export activities; (iii) clarify, in the event the PIPIA identifies a medium-high risk to the personal information:

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and the risks that outbound transfer of personal information may pose to the interests in personal information; (3) the responsibilities and obligations assumed by the offshore recipient, and whether the organisational and technical measures and capabilities that fulfill those responsibilities and obligations can guarantee the security of the outbound personal information; (4) the leakage, destruction, alteration, misuse and other risks to the personal information after the outbound transfer, and whether the channels through which individuals can safeguard their interests in personal information are unobstructed; (5) the effect of the policies and regulations on personal information protection in the country or territory where the offshore recipient is located on the performance of the Standard Contract; (6) other matters which may affect the security of the outbound transfer of personal information.	(iii) a transfer impact assessment under Article 2(VII) of the Standard Contract; (iv) a data export risk self-assessment under Article 5 of the Assessment Measures; (v) a CAC-led data export security assessment under Article 8 of the Assessment Measures; and (vi) a security assessment recommended under Article 7.1.3(d) of the Personal Financial Information Protection Technical Specification. Notwithstanding the best practice requirements recommendations for risk assessments under the Information Security Technology – Guidance for Personal Information Security Impact Assessments, these existing guidelines are not sufficient for financial institutions to smoothly navigate all these other requirements imposed on them, if financial institutions are to operate to the benefit of end-customers from the perspective of reducing documentary requests and ultimately costs. Alternatively, it	• what is the expectation and/or guidance from the CAC; • whether the CAC is empowered to intervene in data export activities in these circumstances; • whether PI processors may continue to export data; and • what is expected in respect of risk mitigation and whether minimisation measures must be recorded in the PIPIA. We recommend that the CAC releases a guidance note on the PIPIA which includes reporting metrics about what is an acceptable risk and/or a points system in the PIPIA to assess the level of risk associated with the relevant data export; (iv) release more guidance on the implementation of these assessments, including their relationships, e.g. whether this Article 5 still applies when the PI processor

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	would seem better to consolidate these assessments and provide guidelines for their completion.	does not meet the criteria set out in Articles 40 and 55 of the PIPL or Article 5 of Assessment Measures, whether a PIPIA under this Article is part of implementation of the PIPIA requirements under Article 55 of the PIPL, whether a data export risk self-assessment under the Assessment Measures is an assessment requirement that will apply only when applying for a CAC-led security assessment under the Assessment Measures, thus is different from and independent of a PIPIA on data export under this Article; (v) formulate, as guiding references instead of compulsory requirements, the guidelines or sample industry-specific or standardised templates separately for these assessments, or incorporate relevant details in the final SCC Rules; (vi) clarify whether financial institutions and other organisations should use a unified template for the PIPIA, and whether “business need” must be a criterion for the assessment, and, if

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		so, please further clarify what is the expected evidence of business justification.
第五条 个人信息处理者向境外提供个人信息前，应当事前开展个人信息保护影响评估，重点评估以下内容： （一）个人信息处理者和境外接收方处理个人信息的目的、范围、方式等的合法性、正当性、必要性； （二）出境个人信息的数量、范围、类型、敏感程度，个人信息出境可能对个人信息权益带来的风险； （三）境外接收方承诺承担的责任义务，以及履行责任义务的管理和技术措施、能力等能否保障出境个人信息的安全； （四）个人信息出境后泄露、损毁、篡改、滥用等的风险，个人维护个人信息权益的渠道是否通畅等；	我们认为，本第 5 条下个人信息保护影响的范围、法律效力和实施程序仍然是模糊的，在实践中可能有较大的不确定性。 具体而言，当前不同法规引入了不同的评估制度，包括： (i) 《个人信息保护法》下的个人信息保护影响评估； (ii) 本条对数据出境进行的个人信息保护影响评估； (iii) 《标准合同》第二条第（七）款下的个人信息保护影响评估； (iv) 《评估办法》第五条下的数据出境风险自评估； (v) 《评估办法》第八条下由网信办牵头开展的数据出境安全评估；及	我们促请网信办： (i) 界定何种情况构成本条规定下的向境外接收方“提供个人信息”； (ii) 明确若发生第（四）款下的情况，将对个人信息处理者开展个人信息出境活动产生何种影响； (iii) 说明若个人信息保护影响评估确认个人信息存在中高风险，： • 网信办有何种预期应对方式和/或指引； • 网信办是否有权在此情况下干预数据出境活动； • 个人信息处理者是否仍可继续开展数据出境；及

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（五）境外接收方所在国家或者地区的个人信息保护政策法规对标准合同履行的影响； （六）其他可能影响个人信息出境安全的事项。	(vi) 《个人金融信息保护技术规范》第7.1.3(d)条中建议开展的个人金融信息出境安全评估。 尽管《信息安全技术 – 个人信息安全影响评估指南》提出了风险评估的最佳实践要求建议，但是对于希望减少文件要求和成本、为客户最终利益服务的金融机构而言，现有的指引仍不足以使金融机构顺利应对其需要遵守的所有要求。我们认为更好的方式是将这些评估合并，提供相应的具体指引。	• 预期如何要求相关主体降低风险；风险降低措施是否必须记录在个人信息保护影响评估中。 我们建议网信办就个人信息保护影响评估发布一份指导说明，就个人信息保护影响评制定可接受风险和/或分数系统报告指标，以评估与相关个人信息出境相关的风险水平； (iv) 发布更多包括各评估间关系在内的评估实施指导；例如，当个人信息处理者不符合《个人信息保护法》第四十条和第五十五条或《评估办法》第五条规定的标准时，本《规定》（草案）的第五条是否仍然适用；本条规定的个人信息保护影响评估是否是《个人信息保护法》第五十五条下个人信息保护影响评估的一部分；《评估办法》下的数据出境风险自评估是否仅在根据《评估办法》申请由网信办开展的“数据出境安全评估”时需要实施，因此不同并独立于本条下关于数据出境的个人信息保护影响评估；

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		(v) 为这些评估单独制定指南或行业特定或标准化模板样本作为指导参考（而非强制性要求），或将相关细节规定直接纳入本《规定》的终稿； (vi) 明确金融机构和其他组织是否应使用统一的个人信息保护影响评估模板，以及存在数据出境业务需求是否必须是评估的标准之一；如果是，请进一步明确预期何种材料可以作为证明业务合理性的依据。
Article 6 The Standard Contract shall include the following main elements: (1) the basic information of the personal information processor and the offshore recipient, including but not limited to their names, addresses, contact persons' names, contact details, etc.; (2) the purpose, scope, type, sensitivity, quantity, method, retention period, storage location, etc., of the outbound transfer of personal information;	Aligned with our comments on Article 2, it is not clear whether this Article 6 means parties to the Standard Contract have contract autonomy to formulate their own standard contracts to the extent such contracts contain clauses reflecting this required content.	Aligned with our recommendation on **Article 2** , we urge the CAC to clarify the level of flexibility that the parties have in the use of Standard Contract.

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(3) the responsibilities and obligations of the personal information processor and the offshore recipient to protect the personal information, as well as the technical and administrative measures adopted to prevent the potential security risks caused by the outbound transfer of personal information; (4) the effect of the policies and regulations on personal information protection in the country or territory where the offshore recipient is located on compliance with the terms of this Contract; (5) the rights of personal information subjects, and the ways and means of protecting their rights; and (6) remedies, contract termination, liability for breach of contract, dispute resolution, etc.		
第六条 标准合同包括以下主要内容：	与我们对第二条的意见一样，我们不确定合同中是否仅需实质包含本第六条规定的内容，而对于合同其余部分各签署方拥有制定合同的自主权。	根据我们对**第二条**的建议，我们促请网信办明确说明各方就标准合同的使用而言拥有用多少灵活变通的空间。

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（一）个人信息处理者和境外接收方的基本信息，包括但不限于名称、地址、联系人姓名、联系方式等； （二）个人信息出境的目的、范围、类型、敏感程度、数量、方式、保存期限、存储地点等； （三）个人信息处理者和境外接收方保护个人信息的责任与义务，以及为防范个人信息出境可能带来安全风险所采取的技术和管理措施等； （四）境外接收方所在国家或者地区的个人信息保护政策法规对遵守本合同条款的影响； （五）个人信息主体的权利，以及保障个人信息主体权利的途径和方式； （六）救济、合同解除、违约责任、争议解决等。		
Article 7 The personal information processor shall, within 10 working days of the effective date of the Standard Contract, file the Standard	This Article mandates that a PI processor shall file the Standard Contract and the PIPIA report with the provincial CAC.	**(a) Deletion of the filing requirement**

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Contract with the provincial cybersecurity administration in the place where it is located. The following materials shall be submitted for the filing: (1) the Standard Contract; and (2) the impact assessment report on personal information protection. The personal information processor shall be responsible for the authenticity of the materials to be filed and may conduct the outbound transfer of personal information upon the effectiveness of the Standard Contract.	Three general comments are set out below from the perspective of financial institutions operating in or with the PRC: **(a) The filing requirement seems redundant** The filing requirement places unnecessary burden to PI processors and would seem to use the CAC's resources for a largely administrative process. The examples of EU GDPR may serve as a comparative reference, where no filing of the EU SCCs with data protection authorities is required. **(b) The filing requirement lacks clarity** The PRC authorities that would regulate the filings are not entirely clear from the current form of the Article. We understand that some industry regulators (e.g., CBIRC for the financial industry) may be in the process of formulating rules or contract templates regulating outbound data transfers. It is yet to be confirmed whether CAC or the competent industry regulators will regulate the filings by organisations in specific	We recommend that the CAC align with international practices and remove the entire filing requirement in this Article 7. If the requirements are to be retained, we suggest that the CAC clarify the major issues relating to the filing requirements in accordance with (b), (c), and (d) below. **(b) Compromise option and clarifications to the filing requirement** If the CAC decides that it requires visibility on the Standard Contracts signed, we propose alternative solutions might be adopted in this Article as follows: (i) granting the CAC a 'soft' audit right to request, where necessary, the Standard Contracts and the PIPIA from the contracting parties within a clearly stipulated reasonable amount of time (e.g., 30 days), instead of providing a mandatory filing requirement; or (ii) reducing the scope of the filing obligation except in exceptional circumstances. For example,

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	industries. Similarly, the responsible PRC authorities for the filing by offshore PI processors (if applicable) also need to be further clarified. In addition, as this Article does not specify the legal effects and consequences associated with the filing, financial institutions are concerned as to how the filing might affect outbound transfers of PI in practice. **(c) The filing requirements are not feasible** Submission to the provincial CAC of the executed standard contract within ten days after it takes effect, together with a PIPIA, are administratively challenging, especially for international financial institutions and other multinational companies.	requiring filing only of contracts (a) which are themselves used to transfer the PI of a significant number of individuals as designated by the relevant industry regulator (not each contract used by a PI processor); or (b) the PIPIA concludes the transfer risk is high. We also recommend that the CAC clarifies in the final SCC Rules the following issues: **(i) Filing process** • What is the level of scrutiny that the CAC may exercise when receiving the filing documents? For example, would the CAC comment on and/or even intervene in the contractual arrangements beyond the Standard Contract? • Does the CAC intend to regulate filings made by organisations governed by industry regulators, e.g., would financial institutions be required to file with the CAC, or with the People's Bank of

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		China/ CBIRC/ China Securities Regulatory Commission? • Will the CAC publish its own sample PIPIA or standardised template applicable across industries; and if so, how will such a template work in parallel with industry regulators' templates? • To the extent that the Standard Contract may be used by offshore PI processors under Article 38 of the PIPL, which local authority will be responsible for receiving filings of the Standard Contracts and PIPIA reports and how? For example, will the filings be conducted through an onshore representative appointed in accordance with Article 53 of the PIPL? **(ii) Legal effects and consequences** Based on Article 7, we understand that completion of the filing is not a pre-requisite for the effectiveness of the

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		Standard Contract or for the commencement of cross-border data sharing, but it is suggested that the CAC clarifies this position. We also urge CAC to clarify whether vendor engagements can be signed independently from the completion of the filing requirements. Assuming that the Standard Contract has taken effect and the outbound data transfers have been conducted, would any penalties or blocks on transfers of PI ensue if the PIPIA report fails to meet relevant requirements? **(c) Revisions to the filing timelines** We recommend (i) including a transitory provision for existing contracts; and (ii) extending the filing timelines to accommodate the reasonable business operation needs of international financial institutions and other multinational companies. We urge CAC to clarify the implication and means of rectification in the scenario that the filing process is delayed due to unforeseen factors beyond the control of the PI

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		processor or due to potential conflict with the requirements in an overseas jurisdiction. Considering such scenario, we would suggest the CAC to allow a grace period of at least 12 months before full implementation of the filing requirement. **(d) Clarification to the filing deadline** We request the CAC to clarify how the term "effectiveness of the Standard Contract" is to be interpreted in Article 7. For many organisations, including international financial institutions, the procurement process captures three different contract stages/milestones: (i) approval date from which point the contract can then be signed (i.e. agreed date); (ii) effective date from when the contract is fully executed; and (iii) commencement date (in this case, when the data export commences). Given the above three milestones are not always captured in commercial agreements, we recommend the CAC specifying the definition of the term "effectiveness of the Standard Contract" in order for PI processors to meeting filing deadlines accordingly.

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第七条 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，向所在地省级网信部门备案。备案应当提交以下材料： （一）标准合同； （二）个人信息保护影响评估报告。 个人信息处理者对所备案材料的真实性负责。标准合同生效后个人信息处理者即可开展个人信息出境活动。	本条规定要求个人信息处理者应向省级网信部门备案《标准合同》和个人信息保护影响评估报告。 从在中国或与中国开展运营的金融机构的角度考虑，我们有以下三个一般性的意见： **(a) 备案要求似乎是冗余的** 备案要求给个人信息处理者带来不必要的负担，并会由于繁琐的行政流程给网信办的资源造成沉重负担。 《欧盟通用数据保护条例》的实例可作为对比参考，该条例并不要求将欧盟标准合同向数据保护主管机关备案。 **(b) 备案要求不够明确** 从当前条款看，负责备案的中国机关并不是完全清晰的。据我们了解，一些行业监管机构（如金融行业的中国银行保险监督管理委员会（“**银保监会**”））可能正在制定数据出境的监管规则或合同模板。因此，是由网信办还是由行业监管机关负责特定行业的主体的备案尚待确认。同样，尚需进一步明确的还包括负责境	**(a) 删除备案要求** 我们建议网信办与国际惯例保持一致，删除本第七条中的所有备案要求。 如果网信办决定保留备案要求，我们建议网信办参考下文（b）、（c）及（d）段，明确有关备案要求的主要问题。 **(b) 折衷方案和对备案要求的澄清** 如果网信办需要掌握已签署的《标准合同》的情况，我们建议可采用以下替代方案： (i) 授予网信办“软性”的审计权，网信办可在必要时要求签约各方在明确规定的合理时间内（例如30天）提供《标准合同》和个人信息保护影响评估保护，而非强制各方进行备案；或 (ii) 除特殊情况外，缩减备案义务的范围。例如，仅在下列情形要求备案：（a）仅对行业监管机关指定的、本身约定传输大量个人信息的

Article 条款	Comments 意见	Recommendations 建议
	外个人信息处理者备案（如适用）的监管机关。 此外，由于本条规定未明确备案的相关法律效力和后果，金融机构也对实践中备案会如何影响个人信息出境活动表示关切。 **(c) 备案要求缺乏可行性** 标准合同生效之日起十日内，将签署后的标准合同和个人信息保护影响评估向省级网信部门备案。这一时间要求对企业（尤其是国际金融机构和跨国公司）的行政流程要求过于苛刻。	合同进行备案（而非强制个人信息处理者使用的每份合同都需进行备案）；或（b）个人信息保护影响评估的结论为该传输风险较高。 我们还建议网信办在本《规定》终稿中说明下列问题： **(i) 备案程序** • 网信办收到备案文件后的审查程度，例如，网信办是否会对《标准合同》以外的合同安排发表意见和/或甚至进行干预？ • 网信办是否有意对行业监管机构管理的组织提交的备案实施监管；例如，金融机构是否应向网信办备案，还是应向中国人民银行/银保监会/中国证监会备案？ • 网信办是否会发布专属网信办的、适用于各个行业的个人信息保护影响评估范本或标准模板；如果是，这一模板或范本如何同行业监管机构的模板并行使用？

Article 条款	Comments 意见	Recommendations 建议
		• 如境外个人信息处理者根据《个人信息保护法》第三十八条使用《标准合同》，哪一机构将负责接收《标准合同》和个人信息保护影响评估报告的备案？采取何种接收方式？例如，是否将通过根据《个人信息保护法》第五十三条指定的一名境内代表接收备案？ **(ii) 法律效力和后果** 根据第七条，我们理解完成备案并非《标准合同》生效或启动跨境数据传输的先决条件，但我们建议网信办确认这一立场。我们也促请网信办明确说明供应商聘用协议是否可以在完成备案后独立签署。 另外，在《标准合同》已经生效且数据已经出境的情况下，如果个人信息保护影响评估报告不符合要求，是否会受到处罚或被禁止个人信息出境？ **(c) 修改备案时间表**

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		我们建议(i)在现有合同中加入过渡性规定；及(ii)适当延长备案时限，满足国际金融机构和其他跨国公司的合理经营需求。 对于因个人信息处理者无法控制的不可预见因素，或者由于与境外司法管辖区的要求存在潜在冲突而导致备案延迟的情形，我们促请网信办说明影响和解决方案。 考虑到前述情形，我们建议网信办在全面实施备案要求之前，给予至少 12 个月的过渡期。 **(d) 备案截止时间的明确说明** 我们请网信办明确该如何解释第七条中的“标准合同生效”。 对于包括国际金融机构在内的许多主体而言，合同过程分为三个不同的阶段/里程碑日期： (i) 签署合同批准日（即，约定日期）； (ii) 合同完全签署的合同生效日；及

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		(iii) 起始日（在当前语境下，指数据开始出境的日期） 鉴于上述三个里程碑日期并非始终都在商业协议中出现，因此我们建议网信办明确说明“标准合同生效”的定义，以便个人信息处理者满足相应备案截止日期的要求。
Article 8 If any of the following occurs during the term of the Standard Contract, the personal information processor shall re-sign the standard contract and re-submit it for filing: (1) there is any change in the purpose, scope, type, sensitivity, quantity, method, retention period and storage location for the outbound transfer of personal information and the purpose and method of the processing of the personal information by the offshore recipient, or the offshore retention period of the personal information is extended; (2) there is any change in the policies and regulations for personal information protection in the country or territory	This Article lists several situations where a Standard Contract may need to be re-executed and a re-filing would be required. However, the re-filing process and the criteria for the occurrence of the situations listed in the Article are not clear. It is also not clear how the PI processors could reasonably be expected to be aware of all the “trigger events” under Article 8. In practice, this may impose undue burden on financial institutions’ daily operations.	We suggest that the CAC deletes the re-filing requirements. If the re-filing requirements are to be retained, we suggest replacing the current triggering conditions for the need to re-execute Standard Contracts and re-file with an inquiry into whether there has been a material change in risk of transferring the PI overseas (with specific criteria). An approach for consideration is as follows: the contracting parties re-conduct the PIPIA when the contracting situation changes. If the outcome of the re-conducted PIPIA does not present a material change in risk, the re-filing requirement is then exempted. If the re-conducted PIPIA presents a material change in risk (e.g., from “low” to “medium”), a re-filing is then required.

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where the offshore recipient is located, which may affect interests in the personal information; or (3) other circumstances which may affect interests in the personal information.		If the re-filing requirements and the current triggering conditions are both to be retained, we urge the CAC to clarify in this Article: (i) whether the re-filing is limited to the updated Standard Contracts or whether the PIPIA must also be undertaken again; (ii) a quantitative range for a change that would necessitate the re-execution and the re-submission of the Standard Contract, and whether the quantity is determined by the number of people involved or the amount of PI transferred; (iii) the scope of regulatory changes that would be regarded as influencing the interests of PI; (iv) whether the re-execution requirement could be fulfilled by amending the existing agreement; and (v) the time frame in which any re-filings must be completed. We understand cross-border transfers of PI can continue while the re-execution and the

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		re-filing process is completed. We would appreciate if the CAC could confirm whether this understanding is correct.
第八条 在标准合同有效期内出现下列情况之一的，个人信息处理者应当重新签订标准合同并备案： （一）向境外提供个人信息的目的、范围、类型、敏感程度、数量、方式、保存期限、存储地点和境外接收方处理个人信息的用途、方式发生变化，或者延长个人信息境外保存期限的； （二）境外接收方所在国家或者地区的个人信息保护政策法规发生变化等可能影响个人信息权益的； （三）可能影响个人信息权益的其他情况。	本条规定列举了可能需要重新签订《标准合同》和重新备案的几种情形。 但是，重新备案的程序和触发该条所列情形的标准尚不明确。同样尚不清晰的是，个人信息处理者如何能够合理知晓第八条项下的所有“触发事件”。在实践中，这可能会对金融机构的日常运营造成过度负担。	我们建议网信办删除重新备案的要求。 如需保留重新备案的要求，我们建议以考察个人信息出境风险是否发生重大变化（附具体考察标准）的方式取代目前重新签订《标准合同》及重新备案的触发条件。供网信办参考的具体做法如下：当签约情况发生变化时，签约各方重新进行个人信息保护影响评估。如果重新进行个人信息保护影响评估的结果表明未出现重大风险变化，则可免除重新备案的要求；如果重新进行的个人信息保护影响评估表明存在重大风险变化（例如，从“低风险”变更为“中风险”），则需要重新备案。 如果网信办决定将重新备案要求和当前触发条件全部保留，我们强烈建议网信办在本条规定中明确下列问题： (i) 重新备案的要求是否仅限于重新签署的《标准合同》，还是也必须再次进行个人信息保护影响评估；

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		(ii) 必须重新签订和提交《标准合同》的可量化变更范围，其中该可量化范围是根据变更涉及的人数确定，还是根据传输的个人信息的总量确定； (iii) 被视为“影响个人信息权益”的政策法规变化的范围； (iv) 仅对已有合同进行修订（而非重新起草）是否可以满足本条中“重新签订”的要求；及 (v) 完成重新备案的时间限制。 我们理解在未完成重新签订和重新备案之前，仍可继续个人信息出境，请网信办确认我们的理解是否正确。
Article 11 If the cybersecurity administrations at or above provincial level find that the outbound transfer of personal information made through entering into the Standard Contract ceases to meet the security management requirements for the outbound transfer of personal information in the course of actual	This Article is ambiguous on what “security management requirements” refer to. The definition and the scope of this concept are critical to financial institutions, as non-compliance with these requirements could result in an immediate termination of the PI transfers and may thus hamper the PI processors’ daily operations and the PI security, as well as negatively impact the	We suggest that the CAC: (i) formulates clear definition and scope of the “security management requirements” referred to in this Article; (ii) in the case that a PI processor is directed to terminate an arrangement with an offshore recipient, grants the PI

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processing, they shall notify the personal information processor in writing to terminate the outbound transfer of personal information. The personal information processor shall immediately terminate the outbound transfer of personal information after receiving the notice.	benefits otherwise afforded to the individual customers whose data is being transferred. For example, where such transfers relate to outsourcing arrangements, financial institutions may not be able to continue to provide products and services to their customers in the short term while alternative arrangements are to be made. This Article also lacks specific guidance on procedures for PI transfer termination.	processor reasonable time to orderly transfer the PI back to the PRC and/or enter alternative arrangements; (iii) in the same manner that Article 7 of the Assessment Measures provides an appeal mechanism where a data export is denied, provides a mechanism of appeal for a PI processor if the PI processor is ordered to terminate the PI transfers by the CAC; and (iv) where possible, provides a template for PI processors to be used in notification to offshore recipients of terminating the PI processing activities.
第十一条 省级以上网信部门发现通过签订标准合同的个人信息出境活动在实际处理过程中不再符合个人信息出境安全管理要求的，应当书面通知个人信息处理者终止个人信息出境活动。个人信息处理者应当在收到通知后立即终止个人信息出境活动。	本条对何为“安全管理要求”并不明确。 这一概念的定义和范围对金融机构而言至关重要，因为不符合安全管理要求可能导致个人信息转移被立即终止，从而妨碍个人信息处理者的日常运营和个人信息的安全，并可能对数据转移的个人客户的利益产生负面影响。例如，在这种转移涉及外包安排的情况下，金融机构可能无法在短期内继续向其客户提供产品和服务，而必须作出其他安排。	我们建议网信办： (i) 制定本条所提及的“安全管理要求”的明确定义和范围； (ii) 如果个人信息处理者被指示终止与境外接收方的安排，请求给予个人信息处理者合理的时间以将个人信息有序传输回中国境内和/或达成替代性安排；

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	本条规定同样缺少对个人信息转移终止的程序的具体指导。	(iii) 参照《评估办法》第七条，请求网信办在命令个人信息处理者终止个人信息出境活动的情况下，为个人信息处理者提供上诉机制；及 (iv) 如有可能，提供一份供个人信息处理者告知境外接收方终止个人信息处理活动的模板。
Article 13 These Rules shall become effective as from _____.	The implementation timeline and details remain unclear.	We recommend that the CAC considers and/or clarifies: (i) whether the requirements under the final SCC Rules apply retrospectively to existing outbound data transfers; and, if so, what grace period would be permitted for re-executing existing contracts with overseas recipients. However, we propose that final SCC Rules shall not be applied retrospectively to existing transfers of PI, as it could significantly impact or hinder performance of existing contracts and/or data transfers that were consistent with applicable law at the time of agreement/transfer. If this proposal is

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		not accepted, we suggest that the grace period should be formulated as suggested in (ii) below; (ii) the proposed implementation timeline for entering the Standard Contracts for new PI transfers (we propose a period of 12 months as recommended on **Article 7** above), and clarification as to what would constitute such new PI transfers, e.g. each subsequent transfer under an existing arrangement after the effective date of the SCCs Rules and/or PI transfer under a 'new' arrangement' entered into after the effective date of the SCCs Rule, and new data elements or new underlying individuals. In the case where final SCC Rules would apply retrospectively, we suggest a reasonably long implementation timeline of at least 18 months, for the reasons that: (a) it is not uncommon that not all third-party arrangements where organisations share data have contractual agreements, or that the arrangements are where

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		organisations cannot influence the terms; and (b) the turnaround time to complete a privacy and industrial control system assessment of a third party in a single arrangement can takes months (especially for external third parties).
第十三条 本规定自___年___月___日起施行。	本《规定》（草案）实施时间表和细节仍不明确。	我们建议网信办考虑和/或明确说明下列问题： (i) 说明《规定》终稿项下的要求是否追溯适用于现有的数据出境转移；如果适用，与海外接收方重新签署现有合同的宽限期有多长。 但是，我们建议《规定》终稿的规定对于已进行的个人信息出境不应追溯适用，否则它可能会显著影响或阻碍原本符合适用法律的现有合同和/或数据转让的履行。如果该建议未被接受，我们建议宽限期应按下文第(ii)段的建议制定。 (ii) 说明为新的个人信息转移而签订《标准合同》的时间要求（如在**第七条**建议中所

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		述，我们建议施行期限应为 12 个月）；并说明何种情况会构成该等“新的个人信息转移”（例如，在《规定》终稿生效日之后根据现有安排进行的每项个人信息跨境传输和/或在《规定》终稿生效日之后根据签订的“新”《标准合同》进行的个人信息传输，或是包含新的数据要素或新的个人的数据传输）。 如果最终《规定》将追溯适用，我们建议有至少 18 个月的合理充足的《规定》实施宽限时间，原因如下： (a) 一种常见的情形是，并非所有个人信息出境的三方安排都签署了合同，或者即使已签署了合同，签署方也无法影响合同条款；并且 (b) 在单个个人信息出境安排中完成对第三方隐私和行业控制体系评估的时间可能需要数月（尤其是对于外部第三方而言）。 (c)

Article 条款	Comments 意见	Recommendations 建议
Personal Information Export Standard Contract **个人信息出境标准合同**		
Premises In order to ensure that the processing of Personal Information by the Offshore Recipient complies with the standards for Personal Information protection set out in the relevant laws and regulations of the People's Republic of China and to clarify the obligations and responsibilities of the Personal Information Processor and the Offshore Recipient in respect of Personal Information protection, after mutual consultations, the Parties hereby enter into this Contract which is binding upon them.	The Standard Contract only has one form: to be signed between a PI processor and an offshore recipient. This raises a critical issue as to the scope of application of the Standard Contract to different business relationships taken on in the reality of financial services and other industries. For example, if a service provider A acts as an entrusted party processing PI on behalf of bank B, and service provider A needs to transfer PI to its offshore affiliate to further process the PI, it is not clear whether service provider A can use the Standard Contract to enable its transfer.	We suggest that the CAC clarifies the organisations that are covered by the Standard Contract and, in particular: (i) whether the Standard Contract can be used by an "entrusted party" that processes PI on behalf of a PI processor to enable data exports to a subcontractor (including to the benefit of PRC customers through efficiency of services); (ii) as noted in our recommendation to Article 1 of the Draft SCC Rules above, whether an offshore PI processor subject to the extraterritorial application of the PIPL can utilise the Standard Contract, and If yes, whether there are any additional assurances required to be given by such a party to the Standard Contract.
引言	《标准合同》仅有一种格式：由个人信息处理者和境外接收方之间签署。	我们建议网信办明确说明《标准合同》所覆盖的组织机构范围，特别是：

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为了确保境外接收方处理个人信息的活动达到中华人民共和国相关法律法规规定的个人信息保护标准，明确个人信息处理者和境外接收方个人信息保护的义务和责任，双方经协商一致，特签订本合同，以便共同遵守。	这就产生了一个关键问题，即《标准合同》在金融服务业和其他行业中不同业务关系下的具体适用范围。例如，如果服务提供商 A 作为受托人，代表银行 B 处理个人信息，并且服务提供商 A 需要将个人信息转移至其境外关联方以进一步处理个人信息，则服务提供商 A 是否可以使用《标准合同》来实现个人信息出境。	(i) 代表个人信息处理者处理个人信息的“受托人”是否可以使用《标准合同》将个人信息提供给境外分包商（包括通过提高服务效率为中国客户的利益传输数据的情形）； (ii) 正如我们在上文对《规定》（草案）第一条的建议中所述，受《个人信息保护法》域外适用规则管辖的境外个人信息处理者是否可以使用《标准合同》；如果可以，是否需要由《标准合同》的该等签署方提供任何额外保证。
Contracting parties' details **[**Personal Information Processor**]**: Address: Tel: Email: Contact person: Title: Nationality: **[**Offshore Recipient**]:** Address:	On page 1 of the Standard Contract, details of the parties and their contact persons are required. It is, however, not clear why these individuals' nationality information is required in the spirit of data minimisation under the PIPL. From the PRC authorities' perspective, would the location of the contact person be more relevant than his/her nationality?	We suggest that the CAC removes the nationality requirement to adhere to the data minimisation principle. In the event that the CAC replaces "nationality" with "jurisdiction of receiving entity", we request CAC's confirmation regarding: (i) Where the receiving entity will be working out of multiple jurisdictions (i.e. the data export is to data receiver hosting data in multiple countries), whether the receiving

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Tel: Email: Contact person: Title: Nationality:		entity and the data exporter may enter into only one standard contract and list multiple countries/jurisdictions on page one of the Standard Contract? (ii) Whether the affiliates/subsidiaries of both contracting parties may benefit from the Standard Contract, so that a separate Standard Contract for each affiliated entity is not needed?
合同签署方信息 个人信息处理者： 地址： 电话： 邮箱： 联系人： 职务： 国籍： 境外接收方： 地址： 电话： 邮箱：	在《标准合同》第一页需要提供各方及其联系人的详细信息。但是尚待澄清的是，根据《个人信息保护法》下数据收集范围最小化的原则，为何需要联系人提供国籍信息？从中国相关监管机关的角度考虑，联系人的所在地信息是否比其国籍而言更具有相关性？	我们建议网信办秉承数据收集范围最小化的原则，删除提供国籍信息的要求。 如果网信办将“国籍”替换为“接收方的司法管辖区”，我们促请网信办确认： (i) 如果接收方实体在多个司法管辖区有运营活动（即，数据出境的对象是在多个司法辖区托管数据的数据接收方），则接收方实体和数据出境方可否仅签订一份标准合同并在标准合同的第一页上列明多个相关国家/司法管辖区？ (ii) 缔约双方的关联方/子公司是否可以从双方订立的同一份《标准合同》中受益，从

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联系人： 职务： 国籍：		而无需每一关联实体单独签署《标准合同》？
Article 2 Obligations of the Personal Information Processor The Personal Information Processor hereby represents, warrants and undertakes as follows: (I) Personal Information shall be collected, used and otherwise processed in accordance with Relevant Laws and Regulations; the scope of the outbound Personal Information shall be limited to the minimum necessary to achieve the purpose of processing. (II) The Personal Information Subjects have been informed of the name of the Offshore Recipient, the contact details, the relevant information in Appendix 1 – Description of Outbound Transfer of Personal Information, and the methods and procedures for exercising the rights of the Personal Information Subjects, and individual separate consent has	This Article lays out various obligations on PI processors but it is arguable that these obligations could be omitted from here to reduce compliance and administrative burden, if these obligations are covered under other laws and regulations. Aligned with our concerns raised in respect of Article 3 of the Draft SCC Rules, Article 2(VI) is unclear on the level of contracting autonomy and level of oversight from the CAC in practice.	We suggest that the Standard Contract focuses on the principles and contractual obligations to be imposed on the offshore recipient and remove those on the PI processors (e.g., the PIPIA). The obligations on the PI processor have already been addressed in the SCC Rules and generally under the principles of the PIPL. These obligations should thus be regulated by the PRC authorities instead of being agreed upon between contractual parties. Aligned with our concerns regarding the level of contracting autonomy and the level of CAC's oversight, we propose a revision to this Article 2(VI) as follows: "*It shall respond to enquiries from the Regulatory Authorities on the processing of Personal Information by the Offshore Recipient, unless the Parties agree that a response will be made by the Offshore Recipient~~, in which case, if the Offshore Recipient fails to respond within the required time limit, the Personal Information Processor shall still respond within a~~*

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	been obtained, unless such individual separate consent is not required under the Relevant Laws and Regulations. In the case of Sensitive Personal Information, the Personal Information Subjects have been informed of the necessity for transmission of Sensitive Personal Information and the impact on the individuals; in the case of Personal Information concerning a minor under the age of 14, the consent of the minor's parents or other guardians has been obtained; if laws and administrative regulations require written consent to be obtained, such written consent has been obtained, unless not required by the Relevant Laws and Regulations. (III) Each Personal Information Subject has been informed that the Personal Information Processor and Offshore Recipient agree through this Contract that each Personal Information Subject is a third-party beneficiary and, unless a Personal Information Subject expressly declines this status within 30 days, it may enjoy the rights		~~*reasonable time based on information reasonably available to it.*~~" We further suggest a language modification regarding Article 2(II). The last phrase "*. . . unless not required by the Relevant Laws and Regulations" should be deleted, as the sentence starts with "if laws and administrative regulations require written consent . . . "*.

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of a third-party beneficiary under this Contract. (IV) It has made reasonable efforts to ensure that the Offshore Recipient can perform its obligations under this Contract and has taken the following technical and administrative measures (taking into account the Personal Information security risks that may arise from the type, quantity, scope and sensitivity of the Personal Information, the amount and frequency of transmission, the transmission period and the period for which the Personal Information is retained by the Offshore Recipient, the purpose of processing Personal Information, etc.): (for example, encryption, anonymisation, de-identification, access control and other technical and administrative measures) (V) Upon request of the Offshore Recipient, it will provide a copy of the relevant legal provisions and		

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technical standards to the Offshore Recipient. (VI) On the processing of Personal Information by the Offshore Recipient, unless the Parties agree that a response will be made by the Offshore Recipient, in which case, if the Offshore Recipient fails to respond within the required time limit, the Personal Information Processor shall still respond within a reasonable time based on information reasonably available to it. (VII) In accordance with the Relevant Laws and Regulations, it has conducted an impact assessment on personal information protection with respect to its proposed provision of Personal Information to the Offshore Recipient. The assessment shall consider: 1. the legality, legitimacy and necessity of the purpose, scope, manner, etc., of the processing of Personal Information by the		

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Personal Information Processor and the Offshore Recipient; 2. the quantity, scope, type and sensitivity of the outbound Personal Information and the risk that the outbound transfer of Personal Information may pose to interests in the Personal Information; 3. the responsibilities and obligations assumed by the Offshore Recipient, and whether the organisational and technical measures and capabilities that fulfill those responsibilities and obligations can guarantee the security of the outbound Personal Information; 4. the leakage, destruction, alteration, misuse and other risks of Personal Information after outbound transfer, and whether the channels through which individuals can safeguard their rights and interests in the		

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Personal Information are unobstructed; 5. assessment of the impact that local personal information protection policies and regulations may have on compliance with the terms of this Contract in accordance with Article 4 of this Contract; and 6. other matters that may affect the security of outbound transfer of Personal Information. The impact assessment report on personal information protection shall be retained for at least 3 years. (VIII) It will provide a copy of this Contract to a Personal Information Subject at the request of the Personal Information Subject. To the extent necessary for the protection of trade secrets or other confidential information (for example, protected intellectual property content), the relevant content of this Contract may		

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be appropriately concealed before a copy is provided, provided that it undertakes to provide a valid summary to the Personal Information Subject to facilitate understanding of this Contract. (IX) It will bear the burden of proof that the obligations under this Contract have been fulfilled. (X) It will provide the information set out in Article 3(10) to the Regulatory Authorities in accordance with the requirements of the Relevant Laws and Regulations, including all audit findings.		
第二条 个人信息处理者的义务 个人信息处理者在此陈述、保证、承诺如下： （一）个人信息系按照相关法律法规进行收集、使用等处理；出境个人信息范围仅限于实现处理目的所需的最小范围。 （二）已向个人信息主体告知境外接收方的名称或姓名、联系方式、附录一“个人信息出境	本条规定了个人信息处理者的各种义务。但我们认为，如果其他法律法规已经涵盖了这些义务，《标准合同》即可省略对这些义务的约定，减少合规和行政负担。 另外，与我们对《规定》（草案）第三条提出的关切相同，《标准合同》第二条第（六）款在实践中关于缔约自主权的程度及网信办的监督力度尚不明确。	我们建议《标准合同》侧重约定对境外接收方的原则性和合同义务，删除对个人信息处理者义务的约定（例如个人信息保护影响评估）。鉴于个人信息处理者的义务已经在《规定》（草案）中以及《个人信息保护法》的原则性条款中予以阐述，该等义务应由中国监管机关进行监管，而不应由合同各方约定。 与我们关于缔约自主权和网信办监督力度的关切一致，我们建议对本《标准合同》第二条第

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说明”中的相关情况，以及行使个人信息主体权利的方式和程序等事项，并已取得个人单独同意，但相关法律法规规定不需要取得个人单独同意的除外。如涉及敏感个人信息，已向个人信息主体告知传输敏感个人信息的必要性及对个人的影响；涉及不满十四周岁未成年人个人信息的，已取得未成年人的父母或者其他监护人的同意；法律、行政法规规定应当取得书面同意的，已取得书面同意，相关法律法规规定无需取得书面同意的除外。 （三）已向个人信息主体告知其与境外接收方通过本合同约定个人信息主体为第三方受益人，如果个人信息主体未在三十天内明确拒绝，则可以依据该合同享有第三方受益人的权利。 （四）已尽合理的努力确保境外接收方能够履行本合同规定的义务并采取如下技术和管理措施（综合考虑个人信息的类型、数量、范围及敏感程度、传输的数量和频率、个人信息传输及境外接收方保存的期限、个人信息处理目的等可能带来的个人信息安全风险）： （如加密、匿名化、去标识化、访问控制等技术和管理措施）		（六）款作出如下修改：“*将答复来自监管机构关于境外接收方的个人信息处理活动的询问，但双方均同意由境外接收方作出答复的除外~~；在此情况下，若境外接收方在要求答复的期限内未答复，个人信息处理者仍将根据其合理掌握的信息在合理期限内作出答复。~~*” 我们进一步建议修改第二条第（二）款的措辞。最后一句“*相关法律法规规定无需取得书面同意的除外*”应予删除，因为该款开头即说明“*法律、行政法规规定应当取得书面同意的，…*”。

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（五）经境外接收方要求，向境外接收方提供相关法律规定和技术标准的副本。 （六）将答复来自监管机构关于境外接收方的个人信息处理活动的询问，但双方均同意由境外接收方作出答复的除外；在此情况下，若境外接收方在要求答复的期限内未答复，个人信息处理者仍将根据其合理掌握的信息在合理期限内作出答复。 （七）已经按照相关法律法规对拟向境外接收方提供个人信息的活动开展了个人信息保护影响评估。评估已考虑： 1.个人信息处理者和境外接收方处理个人信息的目的、范围、方式等的合法性、正当性、必要性； 2.出境个人信息的数量、范围、类型、敏感程度，个人信息出境可能对个人信息权益带来的风险； 3.境外接收方承诺承担的责任义务，以及履行责任义务的管理和技术措施、能力等能否保障出境个人信息的安全；		

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4.个人信息出境后泄露、损毁、篡改、滥用等的风险，个人维护个人信息权益的渠道是否通畅等； 5.按本合同第四条评估当地个人信息保护政策法规对遵守本合同条款可能造成的影响； 6.其他可能影响个人信息出境安全的事项。 保存个人信息保护影响评估报告至少 3 年。 （八）根据个人信息主体要求向个人信息主体提供本合同的副本。在为保护商业秘密或其他机密信息（例如受保护的知识产权内容等）所必需的范围内，可以在提供副本之前对本合同相关内容进行适当遮蔽，但承诺向个人信息主体提供有效摘要以助其理解合同内容。 （九）承担证明本合同义务已履行的举证责任。 （十）根据相关法律法规要求向监管机构提供第三条第（十）款所述的信息，包括所有审计结果。		

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Article 2 Obligations of the Personal Information Processor The Personal Information Processor hereby represents, warrants and undertakes as follows: . . . **(II)** The Personal Information Subjects have been informed of the name of the Offshore Recipient, the contact details, the relevant information in Appendix 1 – Description of Outbound Transfer of Personal Information, and the methods and procedures for exercising the rights of the Personal Information Subjects, and individual separate consent has been obtained, unless such individual separate consent is not required under the Relevant Laws and Regulations. In the case of Sensitive Personal Information, the Personal Information Subjects have been informed of the necessity for transmission of Sensitive Personal Information and the impact on the individuals; in the case of Personal	In line with our comments above, these obligations could be omitted from this Article to reduce compliance and administrative burden, since these obligations are covered under the PIPL.	In line with our recommendation above, we suggest that the Standard Contract focuses on the principles and contractual obligations to be imposed on the offshore recipient and remove those on the PI processors (e.g. export notification and consent obligations) as these have already been addressed in the SCC Rules and generally under the principles of the PIPL.

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Information concerning a minor under the age of 14, the consent of the minor's parents or other guardians has been obtained; if laws and administrative regulations require written consent to be obtained, such written consent has been obtained, unless not required by the Relevant Laws and Regulations.		
第二条 个人信息处理者的义务 个人信息处理者在此陈述、保证、承诺如下： …… （二）已向个人信息主体告知境外接收方的名称或姓名、联系方式、附录一“个人信息出境说明”中的相关情况，以及行使个人信息主体权利的方式和程序等事项，并已取得个人单独同意，但相关法律法规规定不需要取得个人单独同意的除外。如涉及敏感个人信息，已向个人信息主体告知传输敏感个人信息的必要性及对个人的影响；涉及不满十四周岁未成年人个人信息的，已取得未成年人的父母或者其他监护人的同意；法律、行政法规规定应当取得书	根据我们在上文提出的建议，为了减少合规和行政负担，并且由于这些义务已经包含在《个人信息保护法》中了，这些义务可以从本条中省略。	根据我们在上文提出的建议，我们建议《标准合同》侧重约定对境外接收方的原则性和合同义务，删除对个人信息处理者的相关义务（例如本条约定的告知及获取同意的义务），因为这些义务已经在《规定》（草案）中以及《个人信息保护法》的原则予以阐述。

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面同意的，已取得书面同意，相关法律法规规定无需取得书面同意的除外。		
Article 2 Obligations of the Personal Information Processor The Personal Information Processor hereby represents, warrants and undertakes as follows: . . . **(III)** Each Personal Information Subject has been informed that the Personal Information Processor and Offshore Recipient agree through this Contract that each Personal Information Subject is a third-party beneficiary and, unless a Personal Information Subject expressly refuses this status within 30 days, it may enjoy the rights of a third-party beneficiary under this Contract.	This Article requires organisations to notify PI subjects of their being third party beneficiaries, unless they expressly refuse within 30 days. This creates a large administrative burden for financial institutions (particularly those with retail customers) to monitor whether express refusal is given or not.	We recommend that the CAC removes the notification obligations, so long as the PI processor complies with requirements regarding PI processing under applicable laws and regulations (e.g. the various legal bases for PI processing such as consent under Article 13 of PIPL, the transparency obligations under Article 17 of PIPL, etc.). If removal of this provisions is not possible, we recommend that the CAC clarifies situations where “refusal” means the PI subject would not become a third-party beneficiary or his/her PI could not be exported, and what the effect on the contract is if a data subject so refuses. We also recommend that the CAC clarifies how to implement such notification in practice, e.g. could the information required under this Article to be given to the PI subject be integrated into a privacy notice or other types of information notices (or if a processing relies on consent, the consent mechanism), and such notification / consent be deemed to include the enjoyment by the

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		PI subject of the rights of a third-party beneficiary? This will reduce the administrative burden on financial institutions and other organisations, saving on the costs passed to PRC customers.
第二条 个人信息处理者的义务 个人信息处理者在此陈述、保证、承诺如下： …… （三）已向个人信息主体告知其与境外接收方通过本合同约定个人信息主体为第三方受益人，如果个人信息主体未在三十天内明确拒绝，则可以依据该合同享有第三方受益人的权利。	本条规定要求组织告知个人信息主体其为第三方受益人，除非个人信息主体在 30 天内明确拒绝。 对此，金融机构需监测个人信息主体是否明确发出拒绝，这对金融机构而言是较大的行政负担（特别是拥有零售银行客户的金融机构）。	只要个人信息处理者遵守适用法律和法规项下有关个人信息处理的要求（例如处理个人信息的各种法律依据，如《个人信息保护法》第十三条下的取得同意、第十七条下的信息透明义务等）我们建议网信办删除本条中个人信息处理者的告知义务。 如网信办坚持保留此规定，我们建议网信办明确说明：个人信息主体的“拒绝”意味着个人信息主体不成为第三方受益人或其个人信息不得出境的情况，并澄清如果个人信息主体提出拒绝，这将给标准合同带来何种影响。 我们进一步建议，网信办明确在实践中实施该等告知的方式。例如，本条项下要求向个人信息主体提供的信息可否纳入隐私通知或其他类型的信息通知（如果个人信息处理过程以取得同意为前提，则纳入同意机制）？以此前述方式告知/取得同意，可否被视为该等告知/取得同意覆盖了个人信息主体认可其享有第三方受益人的权利？ 明确相关规定将减轻金融机构

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		和其他组织的行政负担，从而减少转嫁给中国客户的成本。
Article 2 Obligations of the Personal Information Processor The Personal Information Processor hereby represents, warrants and undertakes as follows: . . . **(VII)** In accordance with the Relevant Laws and Regulations, it has conducted an impact assessment on personal information protection with respect to its proposed provision of Personal Information to the Offshore Recipient. The assessment shall consider: . . . **5.** assessment of the impact that local personal information protection policies and regulations may have on compliance with the terms of this Contract in accordance with Article 4 of this Contract;	Article 4 is redundant. The lawful bases to transfer are already obligations of law under the PIPL and such obligations should be regulated by the authorities instead of the contracting parties. Moreover, the PIPIA would have already provided an assessment of the lawful basis of transfers to affirm that PI is being transferred lawfully. In addition, the assessment includes various aspects of applicable laws and policies of the recipients' jurisdictions. One of the assessment factors is whether laws and policies of the recipients' jurisdictions will impact the performance of the Standard Contract. It is not clear whether financial institutions must obtain local counsels' opinions to complete the assessments before exporting the data. If that is the case, it would be burdensome for financial institutions (and other organisations), increasing costs that are passed to end-customers.	We recommend that the CAC deletes Article 4 and instead makes the assessment an "internal" exercise by specifying supplementary technical, contractual or organisational safeguards that the recipient could potentially take to provide additional protection. If Article 4 is to be retained, we recommend that the CAC publishes a template for such assessments, and clarifies whether organisations must obtain qualified local counsels' opinions to complete the assessments. We suggest that the CAC could seek that the assessment be undertaken and funded through industry associations, as many scenarios for sharing information and jurisdictions will overlap across financial institutions. Alternatively, the CAC might adopt an approach like that of the Japanese Personal Information Protection Commission, which provides certain data protection assessments required following the recent amendments to the Act on Protection of

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Article 4 Impacts of Local Policies and Laws and Regulations regarding the Protection of Personal Information on Compliance with this Contract (I) The Parties hereby guarantee that with reasonable efforts they still have no knowledge of policies or laws and regulations on the protection of the Personal Information in the country or territory where the Offshore Recipient is located (including any requirements on providing Personal information or any rules authorising a public authority to obtain access to the Personal Information) that will prevent the Offshore Recipient from performing its obligations under this Contract. (II) The Parties hereby declare that they have considered the following factors in providing the guarantees under Article 4(I):	To the extent that an offshore PI processor is subject to the extraterritorial application of the PIPL, it is not clear: (i) whether it can use the Standard Contract; and (ii) how the impact assessment requirement may apply in the context of an onward transfer, in particular within the same country, where the PI subjects provide their PI directly to an offshore PI processor that then outsources to an entrusted party within the same jurisdiction. Generally, the applicable laws will not change as a consequence of such an outsourcing.	Personal Information in a publicly available format to ensure consistency for the market[6]. We recommend the CAC to publish white-list of jurisdictions where a transfer impact assessment can be exempted, in a manner similar to the list of the countries recognised as adequate by the EU's European Commission for EU GDPR purposes[7]. We urge the CAC to confirm, to the extent an offshore PI processor that is subject to the extraterritorial application of the PIPL can utilise the Standard Contract, how the impact assessment requirement may apply in the context of an onward transfer, in particular within the same country, where the PI subjects provide their PI directly to an offshore PI processor, who then outsources to an entrusted party within the same jurisdiction.

6 https://www.ppc.go.jp/personalinfo/legal/kaiseihogohou/#gaikoku

7 https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en/

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1. the details of the outbound transfer, including the type, quantity, scope and extent of sensitivity of the Personal Information to be transferred, the scale and frequency of transfer, the period of the transfer of the Personal Information and the period for which the Offshore Recipient will retain the Personal Information, the purpose of processing the Personal Information, the relevant experience of the Offshore Recipient in relation to the similar cross-border transfers and management of the Personal Information, whether the Offshore Recipient has ever encountered events relating to data security and whether the issue was promptly and effectively resolved, and whether the Offshore Recipient has ever received any requests from public authorities in the country or territory where the Offshore Recipient is located requiring it to provide Personal		

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Information and how it has responded; 2. the policies and laws and regulations of the country or territory where the Offshore Recipient is located regarding the protection of the Personal Information, including: (1) the current laws and regulations and general standards of the country or territory on the protection of the Personal Information; (2) the regional or global organisations participated in by the country or region in relation to the protection of the Personal Information and the binding international undertakings made by the country or territory; (3) the mechanism implemented by the country or territory regarding the protection of the Personal Information, such as		

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whether there are regulatory and enforcement authorities and relevant judicial authorities related to the protection of the Personal Information. . . .		
第二条 个人信息处理者的义务 个人信息处理者在此陈述、保证、承诺如下： …… （七）已经按照相关法律法规对拟向境外接收方提供个人信息的活动开展了个人信息保护影响评估。评估已考虑： …… 5.按本合同第四条评估当地个人信息保护政策法规对遵守本合同条款可能造成的影响； **第四条 当地个人信息保护政策法规对遵守本合同条款的影响**	第四条较为冗余。个人信息出境的合法依据已经成为《个人信息保护法》下规定的法定义务，该等义务应当由主管部门监管而非由合同各签署方约定。此外，个人信息保护影响评估已经提供了对信息出境合法依据的评估，以确保个人信息的传输是合法的。 更进一步地，本第四条约定的评估包括接收方司法管辖区适用法律和政策的方方面面，接收方所在管辖区的法律和政策是否会影响《标准合同》的履行是评估因素之一。目前尚不清楚金融机构完成个人信息出境前的评估工作是否必须获得当地法律顾问的意见。如果需要，则这种要求将会增加金融机构（及其他组织）的负担，并最终由于成本被转嫁给终端客户导致其成本增加。	我们建议网信办删除本第四条，通过具体规定境外接收方可能采用以提供额外保护的、在技术、合同或组织方面的补充性保障措施，从而将评估作为合同签署方的一项“内部”工作。 如果网信办最终保留本第四条，我们建议网信办发布评估模板，并明确组织完成评估是否必须取得有资质的当地法律顾问的法律意见。鉴于金融机构之间存在许多信息共享场景和司法管辖区重叠的情况，我们建议网信办可以寻求由行业协会承担评估工作并为评估提供经费。 或者，网信办可考虑采取类似于日本个人信息保护委员会所采用的方式，该委员会公开了日本《个人信息保护法》近期修订后要求的某些

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（一）双方在此保证，经过合理努力仍不知晓境外接收方所在国家或者地区的个人信息保护政策法规（包括任何提供个人信息的要求或授权公共机关访问个人信息的规定）,会阻止境外接收方履行本合同规定的义务。 （二）双方在此声明，在提供第四条第（一）款中的保证时，已经考虑了以下要素： 1.出境的具体情况，包括涉及传输的个人信息的类型、数量、范围及敏感程度、传输的规模和频率、个人信息传输及境外接收方保存的期限、个人信息处理目的、境外接收方此前类似的个人信息跨境传输和处理相关经验、境外接收方是否曾发生数据安全相关事件及是否进行了及时有效地处置、境外接收方是否曾收到其所在国家或者地区公共机关要求其提供个人信息请求及境外接收方应对的情况； 2.境外接收方所在国家或者地区的个人信息保护政策法规，包括以下要素：	此外，如果境外个人信息处理者受到《个人信息保护法》域外适用规则的管辖，则尚待澄清的问题包括： (i) 境外个人信息处理者是否可以使用《标准合同》；以及 (ii) 在个人信息主体将其个人信息直接提供给境外个人信息处理者，然后由境外个人信息处理者将信息外包给同一司法管辖区内的受托人的情况下，本第四条下影响评估的要求应如何适用于后续的信息传输（尤其是在同一国家内的传输）。一般情况下，该等情况下的外包处理并未导致适用法律的变化。	数据保护评估模板，确保市场实践的一致性[8]。 我们同时建议网信办公布司法管辖区白名单，当个人信息传输至该白名单上所述的司法辖区时，豁免进行信息出境影响评估的要求。该方式类似于欧盟委员会的实践：欧盟委员会已经发布了其认为符合《欧盟通用数据保护条例要求》具备充分性保护的国家/地区名单。[9] 此外，我们促请网信办确认，在受《个人信息保护法》域外适用规则管辖的境外个人信息处理者能够使用《标准合同》的情况下，若个人信息主体直接向境外个人信息处理者提供个人信息且境外个人信息处理者将上述信息外包给同一司法管辖区内的受托人，影响评估的要求将如何适用于后续的信息传输（尤其是在同一国家内的传输）。

[8] 请参见：https://www.ppc.go.jp/personalinfo/legal/kaiseihogohou/#gaikoku

[9] 请参见：https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en/

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（1）该国家或地区现行的个人信息保护法律法规及普遍适用的标准情况； （2）该国家或地区加入的区域或全球性的个人信息保护方面的组织，以及所做出的具有约束力的国际承诺； （3）该国家或地区落实个人信息保护的机制，如是否具备个人信息保护的监督执法机构和相关司法机构等。		
Article 2 Obligations of the Personal Information Processor The Personal Information Processor hereby represents, warrants and undertakes as follows: . . . **(IX)** It will bear the burden of proof that the obligations under this Contract have been fulfilled.	The wording regarding the burden of proof is unclear in this Article and would invite legal uncertainties in practice.	We suggest that the CAC revises this Article and clarifies that the PI processor and the offshore recipient would bear the burden of proof for the fulfilment of their respective obligations.
第二条 个人信息处理者的义务 个人信息处理者在此陈述、保证、承诺如下：	本条中有关举证责任的措辞不甚清晰，实践中将导致法律适用的不确定。	我们建议网信办修改该条规定，说明个人信息处理者和境外接收方对其各自合同义务的履行完成承担举证责任。

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…… （九）承担证明本合同义务已履行的举证责任。		
Article 3 Obligations of the Offshore Recipient The Offshore Recipient hereby represents, warrants and undertakes as follows: **(I)** Personal Information shall be processed as agreed in Appendix 1 – Description of Outbound Transfer of Personal Information unless prior consent is obtained from Personal Information Subjects.	Article 13 of the PIPL provides multiple legal bases for processing PI in addition to consent, while this Article 3(I) of the Standard Contract only allows for processing on the basis of agreed purposes unless individuals' consent.	We recommend that the CAC revises this Article and clarifies whether: (i) overseas recipients can rely on legal bases under the PIPL other than consent for further processing of PI; and (ii) in the case that applicable laws and regulations in other jurisdictions require an offshore recipient to process PI beyond what has been agreed in the Appendix I, the overseas recipient is permitted to do so in compliance with the applicable laws and regulations that apply to it.
第三条 境外接收方的义务 境外接收方在此陈述、保证、承诺如下：	《个人信息保护法》第十三条为个人信息处理规定了除取得同意以外的多项法律依据，但《标准合同》的本第三条第（一）项约定，只有在取得个人同意的情况下，才可以按照约定以外的目的处理个人信息。	我们建议网信办修改本第三条并确认： (i) 境外接收方若进一步处理个人信息，还可倚赖《个人信息保护法》项下除“取得同意”以外的其它法律依据；及

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（一）按照附录一“个人信息出境说明”所列约定处理个人信息，除非取得个人信息主体的事先同意。		(ii) 如果其他司法管辖区的法律法规要求境外接收方在附录一约定的范围之外处理个人信息，允许境外接收方在符合所适用的法律法规的情况下按辖区法律法规的要求处理该等个人信息。
Article 3 Obligations of the Offshore Recipient The Offshore Recipient hereby represents, warrants and undertakes as follows: . . . **(IV)** The period for which Personal Information shall be stored is the shortest time necessary for the purpose of processing; beyond this storage period, the Personal Information (including all backups) shall be deleted or anonymised, unless a separate consent to the storage period is obtained from Personal Information Subjects. When it is entrusted by the Personal Information Processor to process Personal Information, it shall provide the relevant audit report with deletion	There could be applicable laws and regulations in the jurisdiction where an offshore recipient is located that require the transferred PI to be retained longer than permitted under the Standard Contract.	We recommend that the CAC revises this Article and clarifies that, in the case that the applicable laws and regulations in another jurisdiction prohibits the return or deletion of the PI, the offshore recipients may retain the PI, so long as it warrants that it will continue to ensure compliance with the Standard Contract and will only process the PI to the extent required to fulfil that commitment and otherwise by applicable laws and regulations.

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or anonymisation to the Personal Information Processor.		
第三条 境外接收方的义务 境外接收方在此陈述、保证、承诺如下： …… （四）存储个人信息的期限为实现处理目的所必要的最短时间；超出上述存储期限后，对个人信息（包括所有备份）进行删除或匿名化处理，除非取得个人信息主体关于存储期限的单独同意。受个人信息处理者委托处理个人信息时，在删除或匿名化后，向个人信息处理者提供相关审计报告。	境外接收方所在司法管辖区适用的法律法规可能要求所传输的个人信息的保留时间长于《标准合同》允许的保留期限。	我们建议网信办修改本条并确认：如果其他司法管辖区的适用法律法规禁止返还或删除个人信息，境外接收方可保留该个人信息，只要其保证继续遵守《标准合同》，并仅在践行该保证及适用法律法规要求的必要范围内处理该个人信息。
Article 3 Obligations of the Offshore Recipient The Offshore Recipient hereby represents, warrants and undertakes as follows: . . . **(VI)** If the Data Leakage occurs to the processed Personal Information, it will:	This Article mandates that offshore recipients notify PI processors and report to the Regulatory Authorities immediately in the case of any data leakage. Unlike the EU GDPR, the equivalent obligations do not provide an express threshold for a data leakage to become reportable nor a timeline for such reporting. In the experience of financial institutions, such a reporting obligation may result in	(i) We recommend that the CAC aligns these obligations with international practices and explicitly sets out a threshold for a data leakage to be reportable. (ii) In terms of reporting timeline, while the PIPL does not provide a specific timeline for reporting a data breach, we recommend that the CAC considers whether that ambiguity in the law can be

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. . . 2. Immediately notify the Personal Information Processor and report to the Regulatory Authorities in the People's Republic of China in accordance with Relevant Laws and Regulations. The notice shall contain the following: (1) The reasons for the leakage of Personal Information; (2) The type of Personal Information leaked and any possible harm caused; (3) Any remedial measures already taken; (4) Any measures that can be taken by individuals to mitigate the harm caused; (5) Contact details of the person or team responsible for handling the Data Leakage.	practical uncertainties for business because it takes time to identify and assess data security incidents in a manner that facilitates accurate reporting. In addition, requiring offshore recipients to report to the PRC regulatory authority seems to go beyond the existing data breach reporting legal requirements, and it may be difficult in practice for offshore financial institutions to fulfill this requirement due to language barrier, conflicts with local law obligations, etc.	clarified in the Standard Contract. An immediate notification may not necessarily be useful in practice since the reporting organisation rarely has all the relevant information at that time, especially in cases of complex incidents. In some cases, 'immediate' notification prior to resolution of a security weakness may put further PI at risk if notified too soon, particularly if that notification to the PI processor were intercepted by a bad actor. This Article should allow for an initial notification and follow-up reports when information becomes available, an approach that have been recognised in the EU practice. (iii) For the obligation to report to the PRC authorities, we recommend that the CAC considers whether this obligation can also be discharged by the data exporter/PI processor, as ultimately it is the PI processor that is subject to the jurisdiction of the local authorities. (iv) We urge the CAC to further clarify if there is any residence requirement for the Contact Person who handles data breaches in China.

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3. If it is required by the Relevant Laws and Regulations to notify Personal Information Subjects, the notice shall include the contents of item 2 above;		
第三条 境外接收方的义务 境外接收方在此陈述、保证、承诺如下： …… （六）如果处理的个人信息发生了数据泄露，将： …… 2.立即通知个人信息处理者，并根据相关法律法规要求报告中华人民共和国监管机构。通知包含以下内容： （1）个人信息泄露的原因； （2）泄露的个人信息种类和可能造成的危害； （3）已采取的补救措施；	本条要求境外接收方在发生任何数据泄露时，立即通知数据处理者并报告监管机关。 不同于《欧盟通用数据保护条例》，本条相应的义务下并未明确规定数据泄露的报告门槛，也未规定该等报告的时间要求。而根据金融机构的经验，该等报告义务会导致企业在实践中面临不确定性，因为查明和评估数据安全以保证报告的精确性是颇为耗时的。 此外，要求境外接收方向中国监管机构报告似乎逾越了现有数据违规报告的法律要求；而且由于语言障碍、与当地法律义务相冲突等原因，境外金融机构在实践中难以满足该要求。	(i) 我们建议网信办将本条相关义务规定与国际惯例接轨，并明确规定数据泄露的报告门槛。 (ii) 就报告的时间要求而言，由于《个人信息保护法》并未规定具体的数据违规报告时限，我们建议网信办考虑在《标准合同》中对该法律规定不明之处作进一步解释。 “立即通知”的要求在实践中并不一定具有意义，因为负有报告义务的组织届时基本无法拥有全部的相关信息，在复杂事件中尤为如此。在某些情况下，如果在解决安全漏洞前“立即”通知，可能使更多个人信息面临风险（特别是对个人信息处理者发出的通知被恶意行为者拦截的情形下）。本条应允许“初始通知”及获得信息后提交后续报告相结合的通知模式。这种模式在欧盟实践中已经获得认可。

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（4）个人可以采取的减轻危害的措施； （5）负责处理数据泄露的负责人或负责团队的联系方式。 3.相关法律法规要求通知个人信息主体的，通知的内容包含前述第 2 项的内容；		(iii) 关于向中国机关报告的义务，我们建议网信办考虑该义务是否也由数据出境方/个人信息处理者履行，因为最终接受当地机关管辖的是个人信息处理者。 (iv) 我们敦请网信办进一步明确，在中国负责处理数据违规的组织联系人是否须满足任何居住地要求。
Article 3 Obligations of the Offshore Recipient The Offshore Recipient hereby represents, warrants and undertakes as follows: . . . **(VII)** No Personal Information may be provided to any third party outside the territory of the People's Republic of China unless all the following requirements are satisfied: 1. It is necessary to provide the Personal Information with regard to the business;	This Article would pose practical difficulty where the conditions under this Article for a re-transfer of PI to the third-party are not met, while the applicable laws and regulations in other jurisdictions mandate such a re-transfer. It is not clear if the "written agreement" for an onward transfer must follow or incorporate all the Standard Contract clauses. In addition, we have rarely seen contracts in practice which provide that the offshore recipients and the third party would assume joint and several liabilities for damages caused to the PI subject.	We recommend that the CAC formulates mechanisms to solve potential conflicts between this Article and laws and regulations in other jurisdictions. We recommend that the CAC clarifies, for chains of sub-processors within and outside of an organisation's group of companies (e.g. when an international financial institution exports personal information from the PRC to its overseas head office, which then transfers the personal information to another affiliate within the group or a third-party sub-processor), whether the Standard Contract needs to be put in place for all these individual transfers; and whether organisations need to use the Standard Contract for onward transfers to their

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2. Each Personal Information Subject has been informed of the identity and contact information of the third party, the purpose and method of processing, the type of the Personal Information, the method and procedure for exercising the rights of the Personal Information Subject and other relevant matters and has given separate consent except that no separate consent is required from the individual according to the Relevant Laws and Regulations; the Personal Information Subject has been informed of the necessity of transferring any Sensitive Personal Information and its impact on the individual of the transfer of the Sensitive Personal Information; if the Personal Information of a minor under 14 years old shall be transferred, the consent of the minor's parents or other guardians has been obtained; and any written consent required by laws and administrative regulations has		vendors and sub-processors outside of the organisation as well. We also suggest that the CAC revises the current approach to liability allocation under the contract between the offshore recipients and the third party, and instead provides that the offshore recipients are responsible for any failure by the third party to take adequate safeguards.

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been obtained except that no written consent is required under the Relevant Laws and Regulations. Where it is difficult to inform the Personal Information Subject or to obtain separate consent from the Personal Information Subject, the Personal Information Processor shall be promptly notified and requested to assist in notifying the Personal Information Subject or obtaining separate consent from the Personal Information Subject. 3. A written agreement shall be entered into with the third party to ensure that the third party adopts measures to protect the Personal Information to a level no lower than the personal information protection standards stipulated by the Relevant Laws and Regulations of the People's Republic of China and assume joint and several liability for any possible damage to or losses suffered by a Personal		

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Information Subject where caused due to the onward transfer. 4. The copy of the agreement shall be provided to the Personal Information Processor.		
第三条 境外接收方的义务 境外接收方在此陈述、保证、承诺如下： …… （七）不将个人信息提供给位于中华人民共和国境外的第三方，除非同时符合以下要求： 1.确有业务需要提供个人信息； 2.已告知个人信息主体该第三方身份、联系方式、处理目的、处理方式、个人信息种类以及行使个人信息主体权利的方式和程序等事项，并已取得个人单独同意，相关法律法规规定无需取得个人单独同意的除外；涉及敏感个人信息的，向个人信息主体告知传输敏感个人信息的必要性及对个人的影响；涉及不满十四周岁未成年人个人信息的，取得未成年人的父母或者其他监护人的同意；法律、行政法规规定应当取得书面同意的，取得书面同意，相关法律	如果无法满足本条项下向第三方再提供个人信息的条件，而其他司法管辖区适用的法律法规强制要求该等再提供，本条的实践将存在困境。 本条也未明确规定，为向第三方进一步提供个人信息而签署的“书面协议”是否可以仅参考《标准合同》，还是必须原封不动引用《标准合同》的全部条款。 此外，我们在实践中很少看到有合同约定境外接收方和第三方就个人信息主体受到的损失承担连带责任。	我们建议网信办出台机制解决本条与其他司法管辖区法律法规之间可能存在的冲突。 我们建议网信办明确，对同一组织的公司集团内部和外部次级处理者而言（例如，当某一国际金融机构从中国境内向其境外总部提供个人信息，再由境外总部将个人信息传输至集团内另一关联方或第三方次级处理者），是否需要对每一次相应的信息传输签署《标准合同》。对于向一组织机构之外的供应商和次级处理者提供个人信息，是否也需要使用《标准合同》。 我们还建议网信办修改当前合同项下境外接收方和第三方之间责任分担方式，规定若第三方未能采取充分的安全保障措施，则由境外接收方负责。

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法规规定无需取得书面同意的除外。在难以告知或者难以取得个人信息主体单独同意时，及时告知个人信息处理者，并请求个人信息处理者协助其告知个人信息主体或者取得个人信息主体单独同意； 3.与第三方达成书面协议，以保障第三方对个人信息的保护水平不低于中华人民共和国相关法律法规规定的个人信息保护标准，并承担因再提供而可能导致对个人信息主体造成损害的连带责任； 4.向个人信息处理者提供该协议副本。		
Article 3 Obligations of the Offshore Recipient The Offshore Recipient hereby represents, warrants and undertakes as follows: . . . **(XII)** Consent shall be given to the supervision and management by the Regulatory Authorities in the course of the implementation of this Contract, including but not limited to responding to enquiries raised by the	This Article requires an organisation to submit to the supervision and management of the supervisory authority of China. While an offshore recipient should cooperate with the authorities in China, the cooperation is not equivalent to being subject to the authorities' "supervision and management." It would also be challenging for the offshore recipient to liaise directly with the Regulatory Authorities. Responding to audit/inspection requests and inquiries insofar in respect of the PI transferred under the Standard	(i) We recommend that the CAC considers rewording "supervision and management" to specify • the expected responses by the offshore recipient to the directives of the authorities in China, e.g., that the offshore recipient will provide reasonable cooperation in responding to audit/inspection requests or inquiries, or adopting recommended measures to comply with the Standard Contract and the PIPL; and

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Regulatory Authorities, cooperating with the Regulatory Authorities in any inspection, observing any measures adopted or decisions made by the Regulatory Authorities and providing written evidence of such adoption of the necessary actions.	Contract would be more in line with the obligations in other jurisdictions. A multinational financial institution's China presence will often rely on the global systems that its offshore headquarters operate. Intra-group cross-border transfers of PI would thus be very common in practice. We are therefore of the view that this Article would cause arbitrary conflicts between regulatory regimes for financial institutions operating on a cross-border basis. However, on the one hand, the PRC Data Security Law and the PIPL restrict a PI processor from providing data/PI stored in China to any offshore regulators; on the other hand, the current Article asks the offshore recipient to accept supervision and management by the CAC, which, in essence requires that the offshore recipient provide data to the CAC. The arrangement contradicts with the principle of reciprocity and would likely be unacceptable for an offshore party (including the headquarters of various multinational financial institutions).	• expected level of supervision and management, e.g. whether this is merely contractual drafting or prescriptive in terms of operational compliance. (ii) We recommend that intra-group cross-border transfers of PI are exempted from this Article to facilitate cross-border finance among international financial institutions with robust data security and management protocols in place. (iii) Note that Article 3(XII) of the Standard Contract requires offshore recipients to contractually agree to accept the supervision and management of the CAC. We recommend that CAC clarifies how such supervision would be enforced.
第三条 境外接收方的义务	本条要求有关组织接受中国监管机构的监督管理。我们认同境外接收方应配合中国监管机关	(i) 我们建议网信办考虑调整细化"监督管理"方面的措辞，以明确：

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境外接收方在此陈述、保证、承诺如下： **……** （十二）同意在监督本合同实施的相关程序中接受监管机构的监督管理，包括但不限于答复监管机构询问，配合监管机构检查，服从监管机构采取的措施或作出的决定，并提供已采取必要行动的书面证明。	的工作，但我们认为配合并不等同于接受其“监督管理”，而且境外接收方与监管机构直接联系也颇有难度。将配合的义务限制在答复与《标准合同》项下所传输个人信息有关的审计/检查要求和询问与其他司法管辖区规定的义务更为吻合。 跨国金融机构的中国办事机构往往依赖其境外总部运行的全球系统。因此，集团内部的个人信息跨境传输在实践中非常常见。所以，我们认为本条使跨境运营的金融机构极其容易面临不同监管制度之间的冲突。 但一方面，中国《数据安全法》和《个人信息保护法》限制个人信息处理者向任何境外监管机构提供存储在中国境内的数据/个人信息；另一方面，本条要求境外接收方接受网信办的监督管理，本质上是要求境外接收方向网信办提供数据/个人信息。这一安排有违互惠原则，很可能令境外一方（包括各跨国金融机构总部）难以接受。	• 预期须境外接收方对中国有关部门作出何种答复（例如，境外接收方应以合理方式配合回复审计/检查要求或询问，或采取推荐性措施以遵守《标准合同》和《个人信息保护法》）；及 • 监管的预期力度（例如，《标准合同》本质是仅为合同双方起草合同的范本，还是视为运营合规方面的规范性要求）。 (ii) 我们建议个人信息的集团内部跨境传输应免受本条约束，从而便于数据安全管理规范健全的国际金融机构之间进行跨境融资。 (iii) 我们注意到，《标准合同》本第三条第（十二）项要求境外接收方以合同方式同意接受网信办的监督管理。我们建议网信办明确执行该等监督的具体方式。
Article 4 Impacts of Local Policies and Laws and Regulations regarding the Protection of Personal Information on Compliance with this Contract	This Article is broad. These obligations should not be on the PI processor, since it is the offshore recipient that possesses the relevant knowledge of the laws/regulations in its jurisdiction of operation. It is unclear how	We suggest that this Article be removed and that the CAC instead specifies supplementary technical, contractual or organisational safeguards that the recipient

Article 条款	Comments 意见	Recommendations 建议
(I) The Parties hereby guarantee that with reasonable efforts they still have no knowledge of policies or laws and regulations on the protection of the Personal Information in the country or territory where the Offshore Recipient is located (including any requirements on providing Personal information or any rules authorising a public authority to obtain access to the Personal Information) that will prevent the Offshore Recipient from performing its obligations under this Contract.	a financial institution can determine what prevents an offshore recipient from performing the obligations under the Standard Contract, and remedies in such case, e.g. unilateral termination. It would make more sense to have parties take additional supplementary safeguards to ensure protection meet levels comparable with the PIPL if the PIPIA reveals that the destination country does not have sufficient protection.[10]	could potentially take to provide additional protection. If the Article is to be retained, we recommend that the CAC clarifies the intention and impact of this Article, e.g., how a financial institution can determine what prevents an offshore recipient from performing its obligations under the Standard Contract and the remedies in such case.
第四条 当地个人信息保护政策法规对遵守本合同条款的影响 （一）双方在此保证，经过合理努力仍不知晓境外接收方所在国家或者地区的个人信息保护政策法规（包括任何提供个人信息的要求或授权公共机关访问个人信息的规定）,会阻止境外接收方履行本合同规定的义务。	本条内容宽泛。这些义务不应由个人信息处理者承担，因为境外接收方才是掌握其经营所在地司法管辖区法律/法规相关情况的一方。金融机构对难以把握如何确定哪些因素会阻碍境外接收方履行《标准合同》项下的义务以及在此情况下可能的救济措施（如单方面终止合同）。 更合理的做法是，如果个人信息保护影响评估显示目的地国不具备充分的保护措施，当事方	我们建议删除本条，由网信办规定可能由接收方采取以提供额外保护的在技术、合同或组织方面的补充性防范措施。 若保留本条，我们建议网信办对本条的意图和影响作出说明，例如，金融机构如何确定哪些因素会阻碍境外接收方履行《标准合同》项下的义务以及在此情况下的救济措施。

[10] Please see the judgment by the Court of Justice of the European Union in *Schrems II* case as a comparative reference.

Article 条款	Comments 意见	Recommendations 建议
	可额外采取防范措施，以确保个人信息保护水平符合《个人信息保护法》的要求。[11]	
Article 4 Impacts of Local Policies and Laws and Regulations regarding the Protection of Personal Information on Compliance with this Contract (I) The Parties hereby guarantee that with reasonable efforts they still have no knowledge of policies or laws and regulations on the protection of the Personal Information in the country or territory where the Offshore Recipient is located (including any requirements on providing Personal information or any rules authorising a public authority to obtain access to the Personal Information) that will prevent the Offshore Recipient from performing its obligations under this Contract. (II) The Parties hereby declare that they have considered the following factors	One of the assessment factors under this Article is whether the offshore recipient has received a request for PI from a public authority in its country or territory and the response of the overseas recipient. However, there is no detail as to the nature of the request that would trigger this obligation, given the range of possible requests that might occur in practice in the ordinary business of a financial institution or other organisation.	We recommend that the CAC specifies the nature of these authorities' requests that are in-scope for triggering this obligation, e.g., whether this should be limited to mass surveillance requests only. For instance, a court order to produce information in relation to a court case, or certain types of production orders or equivalent that are mandatory to be disclosed against in certain jurisdictions, should be out of scope.

[11] 作为对照，请参见欧盟法院在 *Schrems II* 案中作出的判决。

Article 条款	Comments 意见	Recommendations 建议
in providing the guarantees under Article 4(I): 1. the details of the outbound transfer, including the type, quantity, scope and extent of sensitivity of the Personal Information to be transferred, the scale and frequency of transfer, the period of the transfer of the Personal Information and the period for which the Offshore Recipient will retain the Personal Information, the purpose of processing the Personal Information, the relevant experience of the Offshore Recipient in relation to the similar cross-border transfers and management of the Personal Information, whether the Offshore Recipient has ever encountered events relating to data security and whether the issue was promptly and effectively resolved, and whether the Offshore Recipient has ever received any requests from public authorities in the country or territory where the		

Article 条款	Comments 意见	Recommendations 建议
Offshore Recipient is located requiring it to provide Personal Information and how it has responded; 2. the policies and laws and regulations of the country or territory where the Offshore Recipient is located regarding the protection of the Personal Information, including: (1) the current laws and regulations and general standards of the country or territory on the protection of the Personal Information; (2) the regional or global organisations participated in by the country or region in relation to the protection of the Personal Information and the binding international undertakings made by the country or territory; (3) the mechanism implemented by the country or territory		

Article 条款	Comments 意见	Recommendations 建议
regarding the protection of the Personal Information, such as whether there are regulatory and enforcement authorities and relevant judicial authorities related to the protection of the Personal Information. 3. security management rules and technical guarantee capability of the Offshore Recipient		
第四条 当地个人信息保护政策法规对遵守本合同条款的影响 （一）双方在此保证，经过合理努力仍不知晓境外接收方所在国家或者地区的个人信息保护政策法规（包括任何提供个人信息的要求或授权公共机关访问个人信息的规定）,会阻止境外接收方履行本合同规定的义务。 （二）双方在此声明，在提供第四条第（一）款中的保证时，已经考虑了以下要素： 1.出境的具体情况，包括涉及传输的个人信息的类型、数量、范围及敏感程度、传输的规模和频率、个人信息传输及境外接收方保存的期	本条项下的评估因素之一是，境外接收方是否已从其所在国家或地区公共机关收到提供个人信息的要求及境外接收方应对的情况。但是，考虑到在实践中金融机构或其他组织正常业务过程中很可能收到这类要求，本条并未对触发该义务的要求的范围作出详细规定。	我们建议网信办明确可以触发本条义务的来自公共机关的要求的范围。例如，公共机关要求的范围是否仅限于公共机关提出大规模监控要求的情形。如此，类似法院裁定出示庭审案件相关证据或者某些司法管辖区强制要求披露特定类型证据的开示命令或同等命令就应被排除在触发该等义务的范围之外。

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限、个人信息处理目的、境外接收方此前类似的个人信息跨境传输和处理相关经验、境外接收方是否曾发生数据安全相关事件及是否进行了及时有效地处置、境外接收方是否曾收到其所在国家或者地区公共机关要求其提供个人信息请求及境外接收方应对的情况； 2.境外接收方所在国家或者地区的个人信息保护政策法规，包括以下要素： （1）该国家或地区现行的个人信息保护法律法规及普遍适用的标准情况； （2）该国家或地区加入的区域或全球性的个人信息保护方面的组织，以及所做出的具有约束力的国际承诺； （3）该国家或地区落实个人信息保护的机制，如是否具备个人信息保护的监督执法机构和相关司法机构等。 3.境外接收方安全管理制度和技术手段保障能力。		
Article 5 Rights of the Personal Information Subjects	This Article is unclear on the specific methods that the offshore recipient must adopt to notify the PI subject.	We recommend that the CAC clarifies how, in practice, an offshore recipient should issue such a notification to the PI subject, e.g.,

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The Parties acknowledge that, in accordance with the Relevant Laws and Regulations, the Personal Information Subjects are granted the right as the third-party beneficiaries to implement the obligations of the Parities regarding the Personal Information protection in this Contract. …… (III) If the Offshore Recipient intends to reject a request from a Personal Information Subject, it shall notify the Personal Information Subject of the reasons for refusal, and the ways for the Personal Information Subject to file a complaint with the relevant Regulatory Authorities and seek judicial remedies. The Offshore Recipient shall truthfully, accurately and fully inform a Personal Information Subject of the relevant information in a prominent manner and in clear and understandable language.		one-on-one or by disclosure on the website of the offshore recipient.

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第五条 个人信息主体的权利 双方承认，按照相关法律法规赋予个人信息主体作为第三方受益人执行本合同中双方关于个人信息保护义务的权利。 …… （三）境外接收方应当按照个人信息处理者的通知，或根据个人信息主体的请求，在合理时限内实现个人信息主体依照相关法律法规行使的权利。 境外接收方应当以显著方式、清晰易懂的语言真实、准确、完整地告知个人信息主体相关信息。	本条对于境外接收方通知个人信息主体时必须采取的具体方式规定不明。	我们建议网信办明确，在实践中，境外接收方应如何向个人信息主体发出该等通知（例如是采用一对一通知的方式，还是在境外接收方的网站上进行披露）。
Article 8 Liability for Breach of Contract **. . .** **(IV)** If the Personal Information Processor and the Offshore Recipient are jointly responsible for any material or non-material harm to the Personal Information Subjects due to the breach of this Contract, the Personal Information Processor and the	The joint and several liability requirements would likely contradict with applicable laws and regulations in other jurisdictions (e.g., US “Regulation W” which prohibits a US-based banking entity from providing a guarantee with respect to a non-banking affiliate, which would likely conflict with the joint and several liability provision to the extent that the US bank may be required to satisfy liabilities of (or reimburse) a China-	We recommend that intra-group cross-border transfers of PI be exempted from this Article, or that CAC formulates alternative mechanisms to solve potential conflicts with laws and regulations in other jurisdictions. In addition, we recommend excluding from the joint and several liability requirements circumstances where the overseas recipients are PI processors.

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Offshore Recipient shall be jointly and severally liable to the Personal Information Subjects.	based affiliate; foreign laws that restrict cross-guarantees among certain inter-affiliated companies). Further, the joint and several liability requirements may not be reasonable or fair to the onshore PI processor for the circumstances where the overseas recipient is also a PI processor who independently determines the processing purpose and method or where the PI is shared with overseas processors at the request of the onshore PI subject.	
第八条 违约责任 …… （四）个人信息处理者和境外接收方对因违反本合同而共同对个人信息主体造成的任何物质或非物质损害负责的，个人信息处理者和境外接收方应对个人信息主体承担连带责任。	连带责任要求很可能与其他司法管辖区的适用法律法规相矛盾（例如，美国《W 条例》禁止位于美国的银行实体为非银行关联方提供担保；在本条连带责任的约定下，有可能出现美国银行被要求为位于中国境内的关联方担责（或提供赔偿）的情形，此时便与《W 条例》的规定相冲突；亦有外国法律限制特定关联公司之间的交叉担保）。 此外，如果境外接收方也是个人信息处理者，且自主决定信息处理的目的和方法，或者个人信息是经境内个人信息主体要求与境外处理者	我们建议个人信息的集团内部跨境传输免受本条约束，或者网信办制定其他相应机制，解决与其他司法管辖区法律法规可能存在的冲突。 另外，我们建议从连带责任的要求中排除境外接收方为个人信息处理者的情况。

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	分享的，连带责任的约定对境内个人信息处理者可能不公平，也不合理。	
Article 8 Liability for Breach of Contract **. . .** **(VI)** Notwithstanding the provisions of Article 8(3) and Article 8(4), the Personal Information Processor shall be liable to the Personal Information Subjects for any material and non-material damage caused to them as a result of the Offshore Recipient's violation of this contract. The Personal Information Subjects shall be entitled to claim damages from the Personal Information Processor.	This Article is silent on definitions of "material" and "non-material" damages, but these concepts can mean very different things to financial institutions of varying sizes and sub-industries.	We recommend that the CAC provides examples or adds definitions of "material" and "non-material" damages to provide more legal certainty in the Standard Contract. Alternatively, if "material and non-material" are intended to mean "all damage" is covered, the CAC might consider simplifying the drafting of this Article.
第八条 违约责任 **……** （六）尽管有第八条第（三）款和第八条第（四）款的规定，个人信息处理者应就境外接收方因违反本合同而对个人信息主体造成的任何物质和非物质损失向个人信息主体负责，个人信息主体有权向其主张损害赔偿责任。	本条未规定"物质"和"非物质"损失的定义，但对于规模和所属细分行业各不相同的金融机构而言，这些概念的含义可能非常不同。	我们建议网信办举例或者补充"物质"和"非物质"损失的定义，从而提高《标准合同》的法律确定性。如果"物质和非物质"的本意是涵盖"所有损失"，网信办可考虑简化本条的语言。

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Article 9 Miscellaneous Provisions . . . (II) This Contract shall be governed by the Relevant Laws and Regulations of the People's Republic of China. . . . (IV) Where a Personal Information Subject brings an action against the Personal Information Processor or the Offshore Recipient as a third-party beneficiary, the jurisdiction shall be determined in accordance with the provisions of the Civil Procedure Law of the People's Republic of China. (V) Any dispute arising from a contract between the Personal Information Processor and the Offshore Recipient as well as any claim for recovery by a Party against the other Party in respect of liability to first compensate a Personal Information Subject for damages shall be resolved by the Parties through negotiation; if negotiation fails, either Party may	This Article is silent on the potential issues regarding governing laws. For example, to the extent that an offshore PI processor can sign the Standard Contract with an offshore PI recipient, can the laws of the offshore PI processor's home jurisdiction prevail? We understand that, as a general principle, the governing law issue is subject to the contractual parties' agreements. PRC laws permit contractual parties to agree on the governing law of a contract if the contract has foreign elements (e.g., one of the contractual parties is a foreign party). The EU SCCs also permit the parties to choose, in certain circumstances, the laws other than those of an EU member state as the governing law of the EU SCCs. This Article is also unclear on whether the contractual parties may freely select dispute resolution mechanisms other than the ones provided by this Article.	We recommend that, to the extent permitted by the PRC laws, the CAC revises this Article to facilitate that the parties to the Standard Contract may freely agree upon its governing law. If the CAC insists on PRC laws as the governing law, we suggest qualifying the action as brought "within the territory of the People's Republic of China" in this Article 9(IV), as in other cases applicable laws in other jurisdictions would apply. We also suggest that the CAC clarifies that the contractual parties may freely agree upon dispute resolution mechanisms which they deem suitable other than the ones provided by the current Article.

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adopt option _____ below for resolution (if arbitration is selected, please tick to select the arbitral institution): 1. Arbitration. Submit the dispute to □China International Economic and Trade Arbitration Commission □China Maritime Arbitration Commission □Beijing Arbitration Commission (Beijing International Arbitration Centre) □Other arbitration bodies that are members of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards _____ and conducted in _____ (venue of arbitration) in accordance with its arbitration rules then in effect; 2. Litigation. Initiate proceedings in accordance with the law before a		

Article 条款	Comments 意见	Recommendations 建议
competent People's Court of China. . . .		
第九条 其他 …… （二）本合同适用于中华人民共和国相关法律法规。 …… （四）个人信息主体作为第三方受益人向个人信息处理者或境外接收方提起诉讼的，应当根据《中华人民共和国民事诉讼法》的规定确定管辖。 （五）个人信息处理者和境外接收方对于双方因合同产生的纠纷以及任何一方因先行赔偿个人信息主体损害赔偿责任而向另一方的追偿，应由双方协商解决；协商解决不成的，任何一方可以采取下列第　种方式加以解决（如选择仲裁，请勾选仲裁机构）： 1.仲裁。将该争议提交	本条未对管辖法律的潜在问题进行规定。例如，若境外个人信息处理者可以采用本《标准合同》，在境外个人信息处理者与境外接收方签署《标准合同》的情况下，是否优先适用境外个人信息处理者所在司法管辖区的法律？ 我们理解，作为一项普遍原则，管辖法律问题取决于合同双方的约定。如果合同具有涉外因素（例如，其中一方是外国当事方），中国法律允许合同双方约定合同的管辖法律。欧盟标准合同也允许当事方在特定情况下选择欧盟成员国以外的司法辖区的法律作为欧盟标准合同的管辖法律。 而就争议解决机制而言，本条对合同双方能否在本条的规定之外自由选择其他的争议解决机制也不明确。	我们建议网信办在中国法律允许的范围内修改本第九条，以便《标准合同》双方自由约定管辖法律。 如果网信办坚持以中国法律为管辖法律，我们建议将第九条第（四）项的条件限定为“在中华人民共和国境内”提起的诉讼/仲裁，因为其他情形下的诉讼/仲裁应适用其他司法管辖区的适用法律。 我们还建议网信办明确合同双方可在本条规定之外自由约定其认为合适的其他争议解决机制。

Article 条款	Comments 意见	Recommendations 建议
□中国国际经济贸易仲裁委员会 □中国海事仲裁委员会 □北京仲裁委员会（北京国际仲裁中心） □其他《承认及执行外国仲裁裁决公约》成员的仲裁机构 按其届时有效的仲裁规则在　　（仲裁地点）进行仲裁； 2.诉讼。依法向中国有管辖权的人民法院提起诉讼。 ……		