

China Expands Access to Scientific Data Domestically, Imposes Restrictions on Export of Scientific Data

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China has issued a new regulation which imposes potentially severe restrictions on the export of scientific data while at the same time calling for wider access to such data within the country.

The General Office of the State Council issued the Measures for the Administration of Scientific Data (科学数据管理办法, the “[Measures](#)”) on March 17, 2018 with immediate effect. The Measures were officially issued to spur the dissemination of scientific data to accelerate technological innovation:

... “in order to further strengthen and regulate scientific data management, protect the security of scientific data, promote the opening and sharing of scientific data, and improve support for national innovation, economic and social development and national security in accordance with the Law on Progress of Science and Technology, the Law on Promoting the Transformation of Scientific and Technological Achievements, and the Interim Measures on the Management of the Sharing of Government Affairs Information and Resources.”

The Measures are also consonant, however, with the heightened restrictions on the cross-border transfer of data under the Cybersecurity Law and intellectual property rights (read more [here](#) and [here](#)) and will act in particular to restrict overseas access by foreign investors in China and joint research by Chinese and foreign partners by imposing vague and broadly defined grounds for restricting cross-border transfers.

The Measures apply to the collection, creation, processing and sorting out, openness and sharing, and management and use of “Scientific Data” that is funded through a government budget, and under specified circumstances may also apply to Scientific Data activity by any entity or individual inside China that is not funded by the government. The Measures do not address the complexities of hybrid government-non-government funding, such as the minimum percentage of funding that determines whether an activity is government-funded.

Scientific Data as defined consists mainly of data generated through basic research, applied research and experimentation and development in such fields as natural science and engineering and technological science, and raw data and its derivative data obtained through observation and

monitoring, surveys, testing and other means and used in scientific research activity (Article 2). All entities and individuals engaged in scientific research in China are subject to the Measures (Article 3), which would include foreign scientists and foreign-invested enterprises. The collection and creation, processing and organization, opening up, common sharing, management and utilization of Scientific Data funded by a government budget are governed by the Measures; and the Measures are enforced with respect to activity by entities and individuals in connection with Scientific Data (Article 4). No entity or individual engaged in scientific research activity may use Scientific Data to engage in activity that harms national security, societal and public interests, or the legal rights of other persons (Article 5).

Note that Scientific Data generated from science and technology programs funded by government budgets is required to be collected and submitted to the applicable Scientific Data Center by the lead program entity (Article 13). When Scientific Data is to be transmitted outside China in connection with a document submitted for publication, such Scientific Data is to be submitted first for review by the Legal Person Entity and its Supervising Authority which are to establish systems for such purpose. Scientific Data generated through societal funding also must be collected and submitted to the applicable Scientific Data Center if it involves state secrets, national security or societal and public interests. Other Scientific Data generated through societal funding is also encouraged to be collected and submitted to the applicable Scientific Data Center (Article 15).

Scientific Data required for government decision making, public security, national defense construction, environmental protection, disaster prevention or nonprofit scientific research is to be provided by Legal Person Entities for a reasonable charge in accordance with the non-profit principle (Article 24). Scientific Data involving state secrets, national security, societal and public interests, trade secrets or personal privacy may not be made public for sharing, however, unless truly necessary and subject to prior review and strictly restricted access (Article 25). The provision of Scientific Data involving state secrets that is required to be provided in accordance with foreign interchange or cooperation is subject to approval by the Legal Person Entity's supervising authority and the execution of an NDA (Article 26).

Authors



Lester Ross

PARTNER

Partner-in-Charge, Beijing
Office

✉ lester.ross@wilmerhale.com

☎ +86 10 5901 6588



Kenneth Zhou

PARTNER

✉ kenneth.zhou@wilmerhale.com

☎ +86 10 5901 6588



Tao Xu

SENIOR STAFF ATTORNEY



tao.xu@wilmerhale.com



+86 10 5901 6588