

THE IMPACT OF CYBER SECURITY LAW ON ENTERPRISE'S RISK MANAGEMENT

The Cyber Security Law of the People's Republic of China ("the Cyber Security Law"), as adopted at the 24th Session of the Standing Committee of the 12th National People's Congress of the People's Republic of China on November 7, 2016, shall come into force on June 1, 2017. The promulgation of the Cyber Security Law represents both a starting point and a turning point in respect of protection of personal information and cyber security requirements that enterprises should follow. With the enforcement of the Cyber Security Law, what positive impacts will it have on the protection of personal rights and interests? And what should the enterprises do to manage their cyber risks? In response to these questions, Marsh, the world's leading insurance broker and risk advisor, analyses the implications, and offers suggestions to help enterprises prevent and manage their risks.

BACKGROUND OF THE CYBER SECURITY LAW

According to the 2015 Survey Report on Protection of Rights and Interests of Chinese Netizens released by the Internet Society of China, 63.4% netizens were affected by call records and online shopping information leakage, and 78.2% netizens experienced leakage of personal identity information. The total loss incurred due to personal information leakage, spam messages and fraud messages etc. was about RMB 80.5 billion. However, there were no specific laws and regulations before the Cyber Security Law. The Cyber Security Law imposes strict requirements and provides legal basis for the protection of personal information. Moreover, it also defines the security duties and obligations of network product or service providers.

IMPACTS OF THE CYBER SECURITY LAW ON INDIVIDUALS AND ENTERPRISES

Impacts on individuals: Personal information protection is explicit

The Cyber Security Law has more specific provisions for the protection of personal information. For example, network operators must not divulge, falsify or damage the personal information they have collected; any individual or organization must not steal or obtain any personal information without consent, nor sell or illegally provide personal information to others. Going forward, the online chatting logs and e-mail communications can be kept as evidence whereby the cyber security disputes and issues can be easily tracked. The Cyber Security Law provides the legal basis for the protection of personal information, so that any individual affected by his/her information leakage can file a lawsuit against the implicated enterprises to protect his/her own rights.

Impacts on enterprises: Improve and enhance cyber security.

The Cyber Security Law imposes stricter requirements on enterprises. In particular, the law places greater responsibility on the large-scale network companies. As the commonly-used information platforms, they are held accountable for protection users against hacker attacks. Meanwhile, the Cyber Security Law and other applicable legislations also provide the fundamentals in regards to cyber security management for enterprises. Enterprises whose negligence result in losses to users will be held liable in accordance with laws and regulations.

CYBER SECURITY INSURANCE

With the release of the Cyber Security Law and other applicable laws and regulations, enterprises are facing significant increases in operating costs and litigation risk due to data breach in the course of data processing (including data and information of employees, clients, suppliers and business partners).

There are various risks for enterprises in the course of data processing, such as 1) operational risks arising from poorly-designed procedures, improper employee conduct, porous security systems, or external incidents; 2) financial risks resulting from business interruption due to cyberattacks, and 3) risk of company's propriety information leakage including product planning, sales strategies and client list. Cyber risk can be very different for companies in different industries and sectors. Those industries with higher risk include power and utilities, financial services, healthcare, manufacturing, retail and education etc. Cyber Security

Insurance can be used as a tool of risk transfer to help enterprises better manage their cyber security risks.

Cyber Security Insurance provides coverage for 3rd party liability claim against enterprises in the event of a data breach, defense costs in regulatory investigation, costs for post-loss remediation, and data restoration costs and business interruption loss arising as a result of cyberattacks. Cyber Security Insurance aims to reduce the financial effects of data breaches.

CASE STUDY

Ctrip

At about 11:00am on May 28, 2015, the website and app of Ctrip were out of service. Two hours later, Ctrip declared that their server was attacked by unknown entities and both the website and app could not resume operation until 11:29pm later that day. After investigations, Ctrip revealed that the incident took place as a result of an employee failing to adhere to procedures. As a result of the incident which Ctrip took more than 12 hours to recover from, they incurred an estimated loss of about RMB12.78 million. In this case, the first-party loss borne by Ctrip including business interruption loss and data recovery costs was covered by a Cyber Security Insurance policy.

Earlier in March 2014, Wooyun, a well-known local vulnerability monitoring platform, indicated that Ctrip's system contained technical vulnerabilities. Hackers could easily break into the system and acquire personal information of Ctrip's customers, such as name, ID number, type of credit card, card number and CVV code. Shortly after, Ctrip confirmed that the incident in fact took place. In this scenario, the first-party loss such as emergency response costs incurred after a data breach, can be covered if a Cyber Security Insurance policy is in place.¹

Hanting Hotel

In October 2013, Wooyun, a domestic vulnerability monitoring platform, disclosed that Cnwisdom, the largest digital hotel service provider in China was involved in a major data breach where 20,000,000 accommodation records of its hotel partners were leaked due to serious security vulnerability. Several victims sued Hanting, among them, Mr. Wang filed a lawsuit against both Hanting Xingkong (Shanghai) Hotel Management Co., Ltd. and Cnwisdom, requesting them to take remedial measures immediately to eliminate the threats and negative impacts (including but not limited to deletion of accommodation records involved, to prevent the further spread of personal information). Mr. Wang also asked for the judgement of the court that the defendants to apologize to him in writing and pay RMB200,000 for emotional distress.

In a case like this, the third-party liabilities which should be borne by the involved enterprises including the defense costs and the court judgement damages can be covered if the Cyber Security Insurance is purchased.²

Note: The above insurance information is just our analysis based on the policy terms and conditions available in the market. The specific insurance coverage depends on the policy terms and the facts of the case.

CONCLUSION

Cyber risk has evolved into an issue that enterprises cannot ignore. As a basic law, the Cyber Security Law is just a starting point for personal information protection and regulation of cyber security risks. After the Cyber Security Law is implemented, it is expected that a series of rules/regulation will be released to work alongside the Cyber Security Law. The enforcement of the Cyber Security Law will impose more duties and obligations on enterprises in respect of cyber security management and protection of personal information. It will provide the legal basis for any cyber security disputes, and in turn substantially increase litigation risks for the enterprises. Cyber Security Insurance is definitely something an enterprise should consider in managing cyber risk exposures.

For more information about cyber security and other solutions from Marsh, visit marsh.com, or contact your local Marsh representative.

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¹ Sources: <http://tech.sina.com.cn/i/2015-05-29/doc-icczmvup2478458.shtml>
<http://news.sohu.com/20150530/n414109247.shtml>

² Source: <http://finance.sina.com.cn/consume/puguangtai/20140121/133818029205.shtml>