

A New Chinese National Intelligence Law Is On Its Way

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IN SHORT

The Situation: A first draft of China's new National Intelligence Law, introduced by the Standing Committee of the National People's Congress, was designed for the purpose of "strengthening and guaranteeing national intelligence work, and safeguarding national security and interests."

The Result: The draft is explicit in stating that obstruction of national intelligence work is prohibited, that "foreign institutions, organizations, and individuals" could be subjected to intelligence-related actions, and that individual personal property can be accessed for investigative purposes.

Looking Ahead: Foreign investors and individuals conducting business in China could be targeted by intelligence agencies for the collection of information.

The Standing Committee of the National People's Congress ("SCNPC"), the legislative body of the People's Republic of China ("PRC" or "China"), released a first draft of the National Intelligence Law ("Draft") on May 16, 2017. The Draft was posted on the SCNPC website to solicit comments from the public until June 4, 2017. This is the first systematic legislation in China that explicitly enumerates the functions and powers, as well as some privileges, that Chinese national intelligence agencies possess when carrying out their duties.

The Draft of the New National Intelligence Law

The Draft consists of four chapters: (i) general principles; (ii) division of work, powers, and authorities among National Intelligence Work Agencies (which encompasses the Ministry of State Security and its organs as well as the intelligence agencies of the Ministry of Public Security and of the militaries) ("Agencies"); (iii) state support on national intelligence work; and (iv) legal liabilities. The Draft was promulgated for the purpose of "strengthening and guaranteeing national intelligence work, and safeguarding national security and interests" (Article 1).

Obstruction of National Intelligence Work is Not Allowed

The Draft states that all governmental agencies, military forces, political parties, social groups, enterprises and organizations, as well as citizens, shall provide support, assistance, and cooperation for intelligence work (Article 6), which shall be conducted legitimately, in a manner respecting and safeguarding human rights and protecting the legal rights and interests of citizens and organizations (Article 7). The Draft states that in the event that any person obstructs the intelligence work performed by the Agencies or their staff, or leaks relevant state secrets in relation to intelligence work, an administrative detention of up to 15 days may be imposed. The Draft provides that criminal liability will be further imposed in the event that such obstruction also constitutes a criminal offense (Article 25 and 26).

Intelligence Work Can Be Conducted Outside China and Towards Foreigners

According to the Draft, Agencies can conduct intelligence work both within and outside PRC (Article 9). In particular, "foreign institutions, organizations, and individuals may be subject to legal liabilities if their conduct within PRC is detrimental to the national security and interests of PRC (Article 11)." This empowers Chinese intelligence agencies to exercise their functions in situations concerning Chinese citizens, enterprises, and organizations, but also in situations concerning foreign individuals and entities whose conduct is considered harmful to China's national security and interests.



Agencies can conduct intelligence work both within and outside the People's Republic of China.



Powers and Privileges of Agencies

The Draft allows the Agencies to access and use private parties' materials and facilities to carry out their function.

For instance, the Draft states that the Agencies may "consult or acquire relevant files, materials and goods with approval and after presenting relevant credentials as required when executing their duties (Article 15)," and may also "have access to restricted area or have the privilege in transportation (as needed in emergency) with approval and after presenting relevant credentials as required by regulation (Article 16)." That is to say, the Agencies may have access to individuals' personal belongings and items for the purpose of investigation.

The Draft further provides that Agencies may adopt "technological reconnaissance measures" as necessary upon "strict approval procedures (Article 14)," although the Draft does not specify those procedures. In addition, and subject to related regulations, the staff of Agencies may "have the privilege to use or commandeer vehicles, telecommunication tools, spaces and buildings owned by agencies, organizations, enterprises or individuals as needed for intelligence operations." The Draft states that the Agencies, when necessary, may "set up work premises, equipment, facilities and shall return or reinstate the premises they have occupied after completion of work, and provide compensation as necessary." In the event of loss or damage, Agencies are liable for the compensation (Article 16).

The Draft also provides certain protections to affected parties. For instance, the Draft includes guidelines on supervision and discipline for the staff working for Agencies. It also provides that individuals and organizations have the right to report unlawful behavior by the Agencies to superior authorities (Article 24).

Conclusion and Looking Forward

The Draft was published after a series of other national security related laws were introduced in the past few years, including the National Security Law, the Anti-espionage Law, and the Anti-Terrorism Law of the People's Republic of China. This is the first effort of the Chinese government to specify the constituent organs of the Agencies and their duties and authority.

The Draft indicates that foreign investors and individuals doing business in PRC may be subject to the intelligence collection work of Chinese intelligence agencies in the name of national security. Such parties should watch for the final version of this legislation, which may include more specific guidance on its procedures.

THREE KEY TAKEAWAYS

1. Divided into four chapters, a draft of China's new National Intelligence Law explicitly defines the functions and powers granted to Chinese intelligence agencies.
2. Foreign investors, corporations, and individuals could be subject to the intelligence-collection work of Chinese agencies in the name of national security.
3. A final version of the legislation has not yet been released, but could include more details and guidance on the Law's provisions.

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