



Han Kun Newsletter

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Legal Updates

- 1. Brief Review of the Notice of the Ministry of Natural Resources on Strengthening the Administration of Surveying, Mapping and Geoinformation Security of Intelligent Connected Vehicles**
- 2. Implications of New QFI Funds Management Rules**

1. Brief Review of the Notice of the Ministry of Natural Resources on Strengthening the Administration of Surveying, Mapping and Geoinformation Security of Intelligent Connected Vehicles

Authors: Kevin DUAN | Yuting WANG | Jin ZUO

On July 26, 2024, the Ministry of Natural Resources (“MNR”) promulgated the Notice of the Ministry of Natural Resources on Strengthening the Administration of Surveying, Mapping and Geoinformation Security of Intelligent Connected Vehicles (“**Notice 139**”), reiterating the importance of the security of surveying, mapping and geoinformation. This is the second time within a two-year period for the MNR to clarify certain difficulties in the monitoring of surveying and mapping compliance of intelligent connected vehicles (“**ICV**”) and the compliance focus in relation to geographic information data processing following the issuance of the Notice on Promoting the Development of Intelligent Connected Vehicles and Maintaining the Security of Surveying, Mapping and Geoinformation (“**Notice 1**”).

In summary, we believe that Notice 139 does not impose compliance obligations beyond the existing regulatory framework. Compared with Notice 1, Notice 139 puts forward more detailed requirements in terms of the scope of geoinformation data, types of surveying and mapping licenses, and whole-process supervision. However, the compliance obligations are traceable under the existing surveying and mapping laws and regulations.

In this article, we interpret the key compliance points that are closely related to surveying and mapping license holders (“**License Holders**”), vehicle companies, autopilot companies, and other industry players.

Exterior images of vehicles and road topological data

Article 1 of Notice 139 restates the definition of surveying and mapping activities relating to ICV, i.e., surveying and mapping activities are “the collection, storage, transmission and processing of ICV’s spatial coordinates, real sense images (including video, image and other environment perception data), point clouds and their attribute information and other geographic information data (including road topological data) of vehicles and their surrounding road facilities in the course of their operation, service and testing”. This definition is basically the same as in Notice 1, indicating that the two documents maintain the same regulatory approach. Meanwhile, based on the types of data that would be collected in the surveying and mapping activities conducted by vehicle companies, Notice 139 further refines the meaning of ICV-related surveying and mapping geoinformation.

Specifically, on the basis of Notice 1, Notice 139 clarifies that real sense images, including environment perception data such as videos and images, and road topological data are also geoinformation in surveying and mapping activities. With the wide use of various types of vehicle-mounted cameras, image data has become the most common type of geoinformation data second only to GPS coordinates in some vehicle companies. To clarify the meaning of image data of surveying and mapping activities, Notice 139 reiterates “real sense images” as a general term in the field of surveying and mapping, and further clarifies that all environmental perception data such as exterior video and images may also fall within the scope of

geoinformation data. Similarly, Article 1 of Notice 139 also specifies that road topological data is a type of geographic information data. For subsequent identification of geographic information data, enterprises should follow Notice 139 to avoid omission of any image or road topological data.

Surveying and mapping qualification for digital navigation maps

Articles 2 to 4 of Notice 139 emphasize the requirements for obtaining the proper surveying and mapping licenses for data processing activities related to the production of ICV navigation electronic maps, processing requirements regarding confidential and sensitive data, and map review requirements. Among them, Article 2 specifies the category of digital navigation maps; that is, digital navigation maps include “basic maps, advanced driving assistance maps, high precision maps, autonomous driving maps”. Notice 139 also requires that activities such as the collection, storage, transmission, and processing of geographic information data transmitted back by intelligent connected vehicles and the production of maps must be conducted by entities that have the licenses for producing navigation electronic maps or other surveying and mapping licenses.

We note that the Regulations of Beijing Municipality on Autopilot Cars (Draft for Comment), released in June 2024, also set out similar requirements, which stipulate in Article 34 that “entities that use autopilot cars to carry out map surveying and mapping activities shall obtain the corresponding grade of qualification for producing navigation electronic maps in accordance with the law”.

Before the issuance of Notice 139, because Notice 1 did not specify the types of surveying and mapping licenses and only mentioned the license for producing navigation electronic maps when the data was transmitted overseas, there were still many enterprises that relied on license for geographic information system engineering or other surveying and mapping licenses to process geographic information data collected by ICVs for use in navigation activities. However, since ICVs feature wide driving range, large amount of data with high precision and sensitive types of data, such business activities usually fall beyond the licensed scope of the geographic information system engineering license and such license holders may not be capable of ensuring data security. We believe that after the issuance of Notice 139, it will become more common knowledge in the industry that ICVs which carry out navigation-related activities should obtain the license for producing navigation electronic maps.

It is worth noting that not all geographic information processing activities relating to ICVs are related to navigation or map production, and some business activities may fall within the scope of Internet map services. In this scenario, the surveying and mapping licenses of all participants will be determined comprehensively based on overall data collection and processing.

Whole-process compliance of geographic information data

Article 5 of Notice 139 requires all regions to strengthen the whole-process supervision of geographic information data, and clearly states that “geographic information data collected by ICVs and used in navigation-related activities, map production, and updating shall be directly transmitted to and managed by entities that are qualified for producing navigation electronic maps, and shall not be accessed by other entities or individuals”.

We understand that Article 5 is intended to solve the phenomenon where after the issuance of Notice 1, some enterprises cooperated with License Holders in name only. Notice 1 only generally requires that enterprises without surveying and mapping licenses entrust License Holders to carry out the relevant surveying and mapping activities, and License Holders were required to undertake the business of geographic information processing and provide geographic information services and support. However, Notice 1 does not set out specific requirements on the scope of entrustment or the details of cooperation; thus, in practice, an enterprise without surveying and mapping licenses could still have access to geographic information even after entering into a cooperation agreement with a License Holder. Article 5 of Notice 139 expressly prohibits this phenomenon and requires that geographic information data be directly transmitted from the vehicle terminal to the License Holder for handling.

Cross-border transfer of geographic information data

With regard to the cross-border transfer of geographic information data, Article 5 of Notice 139 reiterates the requirement of Notice 1 that enterprises must, prior to transmitting geographic information data to overseas parties, “strictly comply with all procedures for data export approval or map review”. We understand that relevant detailed requirements may apply as set out in the Surveying and Mapping Law of the People’s Republic of China, the Regulations on the Administration of Surveying and Mapping Results, the Circular on Strengthening the Administration of Production, Testing and Application of Autopilot Maps, and the Regulations on the Administration of Maps.

In addition to the requirement that surveying and mapping results be examined and approved, Notice 139 further emphasizes that the cross-border transfer of geographic information data must “comply with relevant provisions on security assessment for data cross-border transfer”. In other words, even if geographic information that has gone through the map review procedure, the security assessment for cross-border data transfer may still be conducted before such data is provided to overseas parties. Given that the Provisions on Promoting and Regulating the Cross-border Flow of Data allow pilot free trade zones to formulate their own data lists to facilitate the cross-border data flows, enterprises may be able to carry out relevant data cross-border activities through local pilot free trade zone policies.

Application pilot projects

Article 7 of Notice 139 calls for encouraging the exploration of geographic information security applications within the framework of “pilot application projects”. It provides that “relevant regions shall, based on the high-precision maps application pilot projects and the application projects of vehicle, road and cloud integration of ICVs, support the efforts of vehicle enterprises and service providers to explore safety and compliance technical routes including data collection, real-time updating, online distribution and safe transmission of the geographic information data of ICVs, speed up the development of standards and specifications, organize and carry out geographic information services and tests needed for high-level autonomous driving, and promote the development of new business forms and new applications of geographic information on the premise of ensuring safety and compliance”. It is thus clear that Notice 139 and Notice 1 have the same purpose. Both of them essentially aim to encourage and promote the orderly development of ICVs on the basis of security.

Due to the absence of relevant laws, regulations and technical standards, some of the business activities of interest to enterprises are likely to have compliance deficiencies to some extent, such as crowdsourced collection, real-time map updating, and geographic information data transfer via public cloud. For example, Article 4 of Notice 139 reiterates that “maps shall only be available for use after they pass map review. New geographic information added to maps shall be subject to security review and record-filing in a timely manner”.

According to Notice 139, relevant enterprises may consider participating in local pilot projects and carry out relevant technology R&D and application activities within a secure and controllable scope. It is worth noting that enterprises may still be subject to regulatory penalties if they illegally conduct relevant geographic information data processing beyond the scope of the pilot programs.

Regulatory trends

In general, Notice 139 clarifies issues arising in the practical surveying and mapping activities relating to ICVs, emphasizes the need to tighten the administration of red-line issues that affect national security, such as the qualification for ICV surveying and mapping, confidential and sensitive information and cross-border data transmission, and also gives consideration to the rapid development of the automobile industry, and proposes opinions such as encouraging exploration, optimizing services, and creating a favorable atmosphere

With respect to tightening administration, Article 6 of Notice 139 points out the need to tighten the supervision of geographic information security, requiring that “local authorities make more effort to improve the risk prevention and control system for geographic information security of ICVs, organize the R&D of technologies such as confidential handling, timely warning and handling of geographic information, and establish and improve management systems such as classification and grading, and security risk assessment, as well as the monitoring and early warning system for geographic information security. Specifically, local authorities are to monitor and follow up geographic information security risks and investigate and handle relevant cases in a timely manner”.

In terms of encouraging development, Article 9 of Notice 139 advocates the creation of a good atmosphere for secure development and requires that “all regions timely revise local regulations and policies on the management of surveying, mapping and geographic information relating to intelligent connected vehicles, further effectively interpret policies, enhance the awareness of the policies, and stabilize all parties’ expectations. Strengthen publicity and education, and further raise the awareness of geographic information security of practitioners”.

We believe that the release of Notice 139 does not necessarily imply that regulatory authorities will launch large-scale law enforcement activities, but industry practitioners should be aware that the red line of geographic information data security will not be relaxed, and any compliance flaws in the processing of geographic information data may at any time become a compliance hazard that triggers regulatory investigations and punishment.

Conclusion

Based on our observations, a portion of industry players had taken stricter measures to interpret and fulfill enterprise compliance obligations under the Surveying and Mapping Law and other relevant laws and regulations, even before the promulgation of Notice 1. However, a portion of enterprises remained indifferent to the principle requirements set out in Notice 1. With the release of Notice 139, we recommend that enterprises conduct self-inspections on their compliance of geographic information data, including:

- Make an inventory of data assets and identify geographic information data, identify data that may fall within the scope of geographic information data, and check whether geographic information data has been transmitted overseas;
- Examine the collaborative projects between License Holders and non-License Holders, sort out data flows, and make sure the business arrangements and technical measures for data collection, transmission, storage, and use meet the whole-process regulatory requirements for geographic information data;
- Prepare or amend relevant agreements or other legal documents related to geographic information data processing, and clarify the relationship of rights and obligations with cooperating parties.

2. Implications of New QFI Funds Management Rules

Authors: Ting ZHENG | Raymond YAN | Eryin YING | Lin ZHU | Shirley LIANG

Background

On 26 July 2024, the People’s Bank of China (PBOC) and the State Administration of Foreign Exchange (SAFE) released the revised *Provisions on the Administration of Funds of Foreign Institutional Investors for Domestic Securities and Futures Investment* (《境外机构投资者境内证券期货投资资金管理规定》, the “**Revised Provisions**”), which will come into effect on 26 August 2024 and supersede the current version issued on 7 May 2020 (the “**Current Provisions**”).

To facilitate your understanding of the implications of the Revised Provisions on the qualified foreign investors (QFIs) and QFI custodian banks, we set out below the key changes of the Revised Provisions against the Current Provisions, covering (1) SAFE registration, (2) foreign exchange risk management, (3) account management and (4) repatriation.

SAFE registration

	Current Provisions	Revised Provisions	Implications
Initial registration	<p>Article 6</p> <p>A QFI shall, after obtaining the QFI license from the China Securities Regulatory Commission (CSRC), entrust the principal reporter/main custodian to submit the following materials to the SAFE for the application for business registration:</p> <ul style="list-style-type: none"> ■ Registration Form for Foreign Institutional Investor; and ■ A copy of QFI license issued by the CSRC. 	<p>Article 6</p> <p>A QFI shall provide the principal reporter/main custodian with the following materials for business registration with SAFE through the principal reporter/main custodian on the SAFE’s digital platform:</p> <ul style="list-style-type: none"> ■ A copy of QFI license issued by the CSRC; ■ An undertaking letter on complying with QFI tax payment related rules under PRC laws. 	<ul style="list-style-type: none"> ■ The initial registration process has been simplified under the Revised Provisions. The registration form is no longer required from QFI’s end, but the principal reporter/main custodian shall input the relevant information for the QFI on SAFE’s platform. ■ QFI is newly required upon the initial registration to submit an undertaking letter on complying with QFI tax payment related rules under PRC laws. Pursuant to Article 15 of the Revised Provisions, such one-off undertaking letter will take the place of and eliminate the

	Current Provisions	Revised Provisions	Implications
			<p>requirement of the undertaking letter for full payment of tax required for each repatriation of profits by the QFI under the Current Provisions, i.e., QFI custodian banks can proceed with the repatriation upon QFI's written orders without a separate undertaking letter.</p>
Change registration	<p>Article 21 Upon the change to the QFI license, other important information of the QFI such as the custodian, or the change to the principal reporter/main custodian, the QFI shall make the change registration within 10 business days after the receipt of the new QFI license or occurrence of relevant change.</p>	<p>Article 7 The timeframe for change registration is extended to 30 business days.</p>	<ul style="list-style-type: none"> ■ The extension of the timeframe for change registration will give the QFI and principal reporter/main custodian more time for preparation of the change registration and relieve their operational burden.
Deregistration	<p>Article 21 In the event that the CSRC deregisters the QFI license of a QFI due to dissolution, entry into bankruptcy procedures, or personal reasons of the QFI or takeover by a receiver, the QFI shall promptly report to the PBOC and the SAFE through its principal reporter/main custodian, and in principle shall realize its assets and close its special account</p>	<p>Article 22 The timeline for reporting to and deregistration with the PBOC and SAFE is postponed to 30 business days after the realization of assets and closure of special account.</p>	<ul style="list-style-type: none"> ■ The Revised Provisions have removed the time restraint on the realization of assets and closure of special accounts in consideration of the practical difficulty for compliance with such requirement under the Current Provisions.

	Current Provisions	Revised Provisions	Implications
	within 30 business days.		

Foreign exchange risk management

The Revised Provisions have synchronized the foreign exchange regulatory regime with that under the CIBM Direct program, and QFIs are permitted under Articles 17 and 18 of the Revised Provisions to choose one of the following models for foreign exchange risk managements (including buying and selling spot foreign exchange, and carrying out foreign exchange derivatives transactions):

- trading with the custodian or other financial institutions as their client — QFIs shall, through their custodian, report the list of counterparty financial institutions and changes thereto to the China Foreign Exchange Trade System & National Interbank Funding Center (“CFETS”);
- becoming a member of the CFETS and directly trading on the inter-bank foreign exchange market — this is only applicable to QFIs that are banking institutions; or
- becoming a member of the CFETS and trading on the inter-bank foreign exchange market via a prime broker.

Under the Current Provisions, QFIs are permitted to carry out foreign exchange derivatives transactions (but not spot foreign exchange buying and selling) with their custodian or other financial institutions, and are not offered the options to enter the inter-bank foreign exchange market for foreign exchange transactions.

Account management

The Revised Provisions have introduced more flexibility regarding the opening and funds transfer in connection with QFI special accounts.

- No separation of accounts for securities and derivatives transactions. Under Articles 11 and 12 of the Revised Provisions, QFIs are no longer required to separately open and maintain special accounts for securities transactions and derivatives transactions.
- Two-way non-trading transfer between QFI and CIBM. Article 14 of the Revised Provisions confirms that the two-way non-trading transfers between the QFI special accounts and CIBM special accounts of a same QFI are permitted.
- Opening of special accounts with other financial institutions. Pursuant to Article 19 of the Revised Provisions, QFIs are permitted to open special accounts with other financial institutions for spot foreign exchange buying and selling, and futures and derivatives trading purposes. Such special accounts can only be used for domestic funds settlement, but the cross-border remittance of investment principals and proceeds by the QFIs should still be conducted via the accounts opened with the QFI custodian as required under Article 9 of the Revised Provisions.

Repatriation

The Revised Provisions for the first time remove the consistency requirement for the currency of funds remitted in and out by the QFIs and remove the cross-currencies arbitrage prohibition, and permit QFIs to repatriate either foreign currencies or RMB funds where the QFIs remit in foreign currencies for investments. However, where the QFIs remit in RMB funds, the QFIs still need to repatriate RMB funds only (but not foreign currencies).

Outlook

In general, the Revised Provisions have simplified or eased time restraints on certain QFI-related SAFE registrations, allowed QFIs more options for foreign exchange risk management, and introduced more flexibility regarding QFI account management and repatriation. QFIs and QFI custodian banks shall pay attention to the changes made to the Current Provisions to align their practices and adjust internal procedures where necessary. After the Revised Provisions, SAFE will, from time to time, release Q&A or other regulatory documents to clarify the requirements under the Revised Provisions. We will keep a close eye on material developments and update you in a timely manner.

Important Announcement

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If you have any questions regarding this publication, please contact:

Beijing	David LI	Attorney-at-law
	Tel:	+86 10 8525 4668
	Email:	david.li@hankunlaw.com
<hr/>		
Shanghai	Kelvin GAO	Attorney-at-law
	Tel:	+86 21 6080 0920
	Email:	kelvin.gao@hankunlaw.com
<hr/>		
Shenzhen	Jason WANG	Attorney-at-law
	Tel:	+86 755 3680 6518
	Email:	jason.wang@hankunlaw.com
<hr/>		
Hong Kong	Dafei CHEN	Attorney-at-law
	Tel:	+852 2820 5616
	Email:	dafei.chen@hankunlaw.com
<hr/>		
Haikou	Jun ZHU	Attorney-at-law
	Tel:	+86 898 3665 5000
	Email:	jun.zhu@hankunlaw.com
<hr/>		
Wuhan	Jiao MA	Attorney-at-law
	Tel:	+86 27 5937 6200
	Email:	jiao.ma@hankunlaw.com
<hr/>		
Singapore	Lan YU	Attorney-at-law
	Tel:	+65 6013 2966
	Email:	lan.yu@hankunlaw.com
<hr/>		
New York	Mike CHIANG	Attorney-at-law
	Tel:	+1 646 849 2888
	Email:	mike.chiang@us.hankunlaw.com
