



By: Tomorrow's Affairs Staff

Doing business in China is becoming a minefield because of the new anti-espionage law



Those doing business in China need to be fully aware of and need to examine the new anti-espionage law which comes into force next Saturday, as the risk of being accused of espionage becomes far greater than before.

For example, if a foreign company conducts market research to assess investment in China, it must be careful. Collected data must not include anything that in any way regards national security.

HR services, for example, will have a much more sensitive task if they want to hire former civil servants.

It could be interpreted as "inciting, enticing, coercing, or bribing state personnel to defect", which will be punishable under the new anti-espionage law.

Even if they want to hire a technical expert whose knowledge would increase the technological capacity of a foreign investor, a new employer might face accusations of espionage.

One of the dangers brought about by the new Chinese law is an expansion of interpretation of what China considers espionage activities.

What is the national interest?

While the subject of espionage under the previous law from 2014 was related to the field of "state secrets", control is now extended to everything that could harm "national security" and "national interests".

Whether the employment of a Chinese engineer or a former civil servant is interpreted as an attack on the "national interests" of China and, therefore, as espionage, foreign companies could find out too late when they face the consequences of the new law.

They are not familiar with China's national

interests, and could easily step into the forbidden zone, not defined by law.

Instead, almost everything would be considered espionage - "intelligence and other documents, data, materials, and items related to national security and interests".

Tightening control

The Chinese state and its security services have been given an unlimited field to exercise force under the auspices of legality, for the protection of national security and national interests.

China has been restrictive in this regard until now. Legal amendments from last April, applied from July 1, speak of Beijing's unequivocal intention to tighten control over foreign "subjects".

Anyone could be on the receiving end of investigations, fines and prisons: companies and their managers, but also scientists, student researchers, entrepreneurs, and journalists.

"Any organisation and anyone can be suspect, and anything can be counted as a threat to national security in the arbitrary application of the law. This will definitely cause a chilling effect", said Yasuhiro Matsuda from the University of Tokyo.

China's economic opening after a three-year lockdown at the end of last year has been recognised as a significant security risk in Beijing.

With this law, the communist government demonstrates that it can counter risks only by expanding repressive measures combined with the traditional arbitrariness of the procedure

controlled by the central government.

Imbalance in the system

Therefore, the new anti-espionage law is the only response that the state leadership in Beijing could come up with simultaneously to open up the declining economy and preserve its monopoly of power and control.

But, these two concepts do not go hand in hand. They even exclude each other.

In a desire to achieve a strategic balance, the Chinese leadership is once again showing its long-standing tendency to prioritise strengthening control over economic processes.

"It may seem a paradox, but this is consistent with what we have seen of the current China leadership: they want more control over all facets of society", said Chong Ja Ian, a professor at the National University of Singapore.

A minefield for investors

American and European business associations in China have previously expressed concern over investigations that authorities have launched against some Western companies on suspicion of espionage.

Consulting companies, which performed routine due diligence services or analyses of supply chains on behalf of potential investors, have been under attack.

Their premises have been searched, and

employees arrested even without the new, much more restrictive regulations on espionage.

With the new law coming into effect in a few days, the circle of potentially vulnerable companies and individuals is expanding, making doing business in China similar to a minefield for Western investors.

And not only for them. It will probably be too risky to search for data on the number of people affected by Covid-19, or data on food production, for example.

The researchers will not know whether they are endangering China's national security and interests, and risk being accused of espionage, even though they are convinced they are doing routine work.

The arbitrariness of China's investigative services and courts, combined with unclear and undefined regulations, effectively closes China to the developed world, even though it owes its rapid growth in the last three decades to its opening up to the rest of the world.