China’s Personal Information Protection Law and its impacts on businesses

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28 October 2021
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Barbara Li is the Head of Corporate of Rui Bai Law Firm based in Beijing and also leads the Data, TMT and FinTech practices of our firm. With almost three-decades’ solid experience working at the Beijing and London offices of leading international law firms as well as in-house role, Barbara brings a wealth of enormous expertise in advising international companies, financial institutions and Chinese businesses on doing business in China and globally. She focuses her practice on foreign direct investment, M&As, joint ventures and strategic alliances in a wide range of industries including high-tech, telecom, energy, infrastructure, automotive and high-end manufacturing. She also counsels Chinese companies on their outbound strategies and infrastructure projects.

Barbara has a particular interest in TMT and FinTech sectors, with extensive experience advising international and Chinese companies, financial institutions, tech companies and PE funds on structuring investment, achieving data and cybersecurity compliance and managing risks related to digital transformation and deployment of emerging technologies such as AI, big data, cloud and blockchain. She is well recognized as an expert in this field in the China market and is described as “having extensive experience in complex TMT regulatory issues” by Legal 500. Barbara is widely recognized in Corporate, M&A, TMT and FinTech categories and is ranked as a leading individual by various legal directories including Chambers, Legal 500, Asian Legal Business (ALB), IFLR1000 and WhichLawyer. She won the China Top TMT Lawyer Award 2020 ranked by Asian Legal Business.

Benefiting from her in-house experience, Barbara works closely with the industry and she is frequently invited to write and speak at international and regional professional and industry conferences and events to share her insights. She served as the ex-vice chair of the Cybersecurity Sub-Working Group and the Construction Working Group of the EU Chamber of Commerce in China for several years.

Barbara is dual-qualified in England & Wales and China. She obtained her LLM degrees from both King’s College, University of London and the China University of Law and Political Science, where she got her LLB degree as well. She completed the CPE and LPC courses in London for pursuing her UK bar qualification.

Barbara is a native Chinese speaker and has proficiency in writing and speaking English.
China Data Regulatory Regime

- PIPL first reading: 2020.10
- PIPL second reading: 2021.04
- PIPL formally issued: 2021.08.20
  Effective as of: 2021.11.01
Who Are Covered?

- Companies in all industries
  - Chinese domestic companies
  - Chinese subsidiaries set up by international companies
  - Foreign companies without business presence in China
    - Selling products and services to China market and collecting data and PI from China
    - Assessing and analysing behaviours of individuals in China
Who Are the Regulators?

- MIIT
- CAC
- Provincial Govt
- MPS
- Industry specific regulators, eg, PBOC
Personal Information

- **Wide range**
  - Any kind of information
  - Related to an identified or identifiable natural person
  - Name, address, tel number, financial, health, geolocational info, biometric, etc.
  - Sensitive personal information – wider scope than GDPR
What Activities Are Covered?

Collection  Use  Transmission  Disclosure

Processing  Storage  Provision  Deletion
Legal Principles and Basis – Legality, Necessity, Fairness, Transparency and Minimisation

Necessity for signing/ performance of contracts or HR management

Emergency response

Publicly disclosed information

Notification + Consent
• How to define a valid consent?
• Separate consent?

Performance of statutory obligations

News reporting or for public interests

*Legitimate interest is not a recognised legal basis
Data Localisation - High Risk for Specific Industries

- Critical Information Infrastructure (CII):
  - Financial, energy, water, public utilities, telecom and information services, transportation, e-government AND “OTHER KEY INDUSTRIES”

- **Personal Data** and **Important Data** collected/generated during business operation in China should be stored in China

- Cross-border transfer of data is only allowed on the ground of necessary and has passed security assessment

“other key industries or sectors, which can seriously harm national security or public interest, if destroyed or tampered with or if data is leaked”
Cross-border Transfer of Personal Information

- Cross-border data transfer by CII Operators and Non-CII operators processing size of data prescribed by authorities
  - Security assessment by government

- Cross-border data transfer by non-CII operators
  - Security assessment by authorities
  - Security certification by qualified 3rd party institutions
  - Standard contract with overseas recipients
  - Other mechanism allowed by laws
Liabilities for Non-compliance

- Business suspension; revocation of licenses/permits; confiscation of illegal gains
- Fine up to RMB 50 million or 5% of its turnover of previous year
- Personal liability: fine up to RMB 1 million and disqualified from being senior management or DPO
- Court litigation and whistle-blowing
- Criminal liability
Enforcement

• Active actions by regulators
  ➢ Apps
  ➢ investigations and dawn-raids
  ➢ fines

• Stronger public awareness
**PIPL vs GDPR – Key Differences**

- **PIPL:**
  - Different requirements depending on the volume of data processed and whether a CIIO
  - No disclosure to foreign judicial or enforcement authorities w/out prior govt approval
  - Separate consent and DPIA
- **GDPR:**
  - White list; BCR; SCC; approved code of conduct; approved certification, etc.

- PIPL imposes personal liability – up to RMB1 million fines and being barred from undertaking senior/DPO roles.
- Criminal liability?
- GDPR: 4% of “global” revenue max

- Sensitive PI under PIPL vs special category of PD under GDPR
- Automated decision-making
- Application scenarios for DPIA

- Legitimate interests is NOT a lawful basis under PIPL
- PIPL requires “separate consent” for certain special scenarios: e.g. transferring data abroad, sharing data with third parties, processing sensitive personal information, etc.

- PIPL imposes higher compliance requirements for large internet platform companies and companies processing large volume of personal data.
Key Implications for Business Operations

**GDPR Compliant ≠ PIPL Compliant**

- Compliance review for business model
  - User profiling
  - Facial recognition
  - Sensitive PI
  - DPIA

- Expanded scope and enhanced compliance requirements for cross-border data transfer

- Companies outside China
  - Whether to apply?
  - Compliance and administrative cost for appointing an agent or representative

- Organisational and technical measures (appointment of DPO, encryption, data breach response, training, etc)
Time Is Running Out!
Compliance Actions to Take NOW!

- **Health Check and Gap Analysis**
- **Global IT solution and cross-border data transfer**
- **Watch out for further developments**

### Key Remedial Actions
- Draft and review data protection policies, programs, handbook and other documentation
- Organisation and technical measures
- Data breach response
- Training

### Handling employee data
- Employment contract
- Employment handbook
- Managing risk re third party service providers
Publications

- IAPP Exclusion Livestreaming discussion with Barbara Li: China’s new data Privacy Law: PIPL
- China’s First Personal Information Protection Law is about to take effect – are you ready?
- China Lawmakers Passed the Data Security Law
- Second draft of Personal Information Protection Law and Data Security Law issued for public consultation
- China adopts new rules to further regulate e-Commerce
- China issues draft Personal Information Protection Law consultation
- IAPP Exclusive Interview with Barbara Li: Privacy Around the Globe: China
- China: Cybersecurity and privacy enforcement
- China - Enforcement and Breach
- Cybersecurity review of network products and services in China
- Navigating China’s Cybersecurity Regulatory Maze
- China issues draft Data Security Law for public consultation