Establishing comprehensive personal information protection management system

Personal Information Protection Law of the People’s Republic of China (PIPL) Challenges and Strategies
Recap of Personal Information Protection Law (PIPL)

Personal Information Protection Law of the People’s Republic of China (hereinafter referred to as “PIPL”) was approved at the 30th meeting of the Standing Committee of the 13th National People’s Congress on August 20, 2021, and would come into effect on November 1, 2021, after nearly two years of preparation and three rounds of review. Compared with the 1st and the 2nd draft, key updates in the approved version are covering legal basis of personal information processing, protection obligations of personal information processors, personal information cross-border transfer, legal liability, etc..

Scope of application

- Personal information processing activities conducted within China
- Certain processing activities conducted outside of China, of domestic natural persons’ personal information

Processor

- Organizations and individuals who independently decide the purpose and method of processing personal information.
- "Special" processors: joint processing, entrust and entrusted processing, third parties, etc.

Legal basis

- Obtain personal consent
- Signing or performing contracts, or conducting human resources management based on legal documentation;
- Processing disclosed personal information within a reasonable scope within PIPL; or
- Performing legal duties or obligations, responding to emergencies, implementing news reports and public opinion supervision for public interests, and other circumstances stipulated by laws and administrative regulations.

Protection obligations

- Protection from organization & people, policy & procedure, and technology enabled etc.
- Additional requirements in processing sensitive personal information, establishment of specific personal information processing rules when processing personal information of children under 14
- Responding and addressing individual’s applications for the exercise of rights, and the right of personal information portability, the exercise of rights when a natural person is deceased, etc.
- Pre-event personal information protection impact assessment and regular compliance audit

Cross-border transfer

- Critical Infrastructure Information Operator (CIIO) and personal information processors who reach the number prescribed by the State Cyberspace Administration shall store the personal information collected and generated within China
- Pre-conditions: Passed the security assessment organized by the authority, achieved personal information protection certification by authorized agencies, signed a standard contract formulated by the authority with the overseas receiver(s) to agree upon the rights and obligations, etc.
- Pre-event personal information protection impact assessment and separate consent, and the personal information protection capabilities of the overseas receiver(s) up to the standards in PIPL

Legal liability

- Ordering rectification, confiscating illegal gains, fines for organizations and people, recording in the credit profiles, compensating for losses, etc.
- Ordering to suspend or terminate the services provided by the applications illegally processing personal information
- The maximum fine is not more than 50 million yuan or not more than 5% of its turnover of the previous year
- The fine to the directly responsible person is 100,000 to 1 million, and the person could be prohibited to be a director, supervisor, senior manager, or personal information protection officer of relevant enterprises within a certain period

When it comes to topic of “personal information protection”, China Personal Information Protection Law shall be followed, which shall be more "comparable" with other data protection laws and regulations across the world like EU GDPR, US CCPA, etc.

Source: KPMG analysis

Notes: The bold part is summarized from key updates in the approved version of PIPL.
Companies basically would be considered as **network operators (CSL)**, **data processors (DSL)** and **personal information processors (PIPL)**.

Some companies may be involved in the processing of important data.

Limited companies may be involved in the processing of state core data and/or operate critical information infrastructure.

To address basic compliance requirements, Companies shall establish and improve the following:

1. Information Security Management System
2. Data Security Management System; and
3. Personal Information Management System

Source: KPMG analysis
# Quick summary - PIPL vs EU GDPR

<table>
<thead>
<tr>
<th>Scope of application</th>
<th>PIPL focuses on the territory of personal information processing activities, while EU GDPR focuses on data controller / processor setup location</th>
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</table>
| Personal information processor | • “Processor” and special type of “Processor” in PIPL; “Controller” & “Processor” in EU GDPR  
• Minor differences for the definition of sensitive personal information between PIPL and EU GDPR |
| Legal basis | • PIPL includes the processing of disclosed personal Information within a reasonable scope  
• PIPL specifies the processing that necessary to conduct human resources management based on legally formulated labour documentation  
• PIPL requires to obtain separate consent in certain personal information processing scenarios |
| Protection obligations | • Minor differences in privacy notice content between PIPL and EU GDPR  
• PIPL requires to establish specific personal information processing rules when processing personal information of children under 14  
• Minor differences for data subject rights between PIPL and EU GDPR, especially for the request for the explanation of PI processing rules and the exercise of rights when a natural person is deceased in PIPL  
• PIPL requires personal information classified protection  
• PIPL requires personal information protection capabilities of the overseas receiver(s) up to the standards in PIPL  
• PIPL requires to perform pre-event personal information protection impact assessment and obtain separate consent |
| Legal liability | • Pre-conditions of cross-border transfer in PIPL, including: 1) passed the security assessment organized by the authority, 2) achieved personal information protection certification by authorized agencies, 3) signed a standard contract formulated by the authority with the overseas receiver(s) or 4) other conditions stipulated by laws, regulations or the authority  
• PIPL requires the personal information protection capabilities of the overseas receiver(s) up to the standards in PIPL  
• PIPL specifies that CIIO and personal information processors who reach the number prescribed by the State Cyberspace Administration shall store the personal information collected and generated within China  
• PIPL requires personal information classified protection  
• PIPL requires to establish a dedicated organization or assign a representative within China if domestic personal information is processed  
• More severe legal liability in PIPL, including ordering rectification (ordering to suspend or terminate the services provided by the applications), confiscating illegal gains, fines for organizations and people, business banning for the senior management, recording in the credit profiles, compensating for losses, etc. |

Notes: EU GDPR refers to General Data Protection Regulation in EU.
Quick summary - PIPL vs GB/T 35273-2020 ("PISS")

Scope of application

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Personal information processor

- “Processor” and special type of “Processor” in PIPL; “Controller” in PISS

Legal basis

- Minor differences in exceptions to obtaining consent between PIPL and PISS
  PIPL includes the processing of disclosed personal information within a reasonable scope; or necessary to conduct human resources management based on legally formulated labour documentation

Protection obligations

- PIPL requires to establish specific personal information processing rules when processing personal information of children under 14
- Minor differences for data subject rights between PIPL and PISS, especially for the right to know, right to request for the explanation of PI processing rules and the exercise of rights when a natural person is deceased in PIPL
- PIPL requires personal information classified protection
- Minor differences for the trigger conditions on personal information protection impact assessment and the record retention period between PIPL and PISS
- PIPL specifies personal information processing requirements regarding APP, “Big data price discrimination”, image capturing in public places, etc.
- PIPL requires to establish a dedicated organization or assign a representative within China if domestic personal information is processed

Personal information cross-border transfer

- Pre-conditions of cross-border transfer in PIPL, including: 1) passed the security assessment organized by the authority, 2) achieved personal information protection certification by authorized agencies, 3) signed a standard contract formulated by the authority with the overseas receiver(s) or 4) other conditions stipulated by laws, regulations or the authority
- PIPL requires the personal information protection capabilities of the overseas receiver(s) up to the standards in PIPL
- PIPL specifies that CIIO and personal information processors who reach the number prescribed by the State Cyberspace Administration shall store the personal information collected and generated within China
- PIPL requires to perform pre-event personal information protection impact assessment

Legal liability

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Notes: GB/T 35273-2020 refers to Information security technology - Personal information security specification
Understand personal information protection requirements

PIPL Article 28

Others:
• Personal Information Security Specification GB/T 35273-2020
• Measures for the Security Assessment of Personal Information and Important Data to be Transmitted Abroad (Exposure Draft)
• Measures for Security Assessment for Cross-border Transfer of Personal Information (Exposure Draft)
• Guidelines for Data Cross-Border Transfer Security Assessment (Exposure Draft)

PIPL Article 54

Others:
• Personal Information Security Specification GB/T 35273-2020
• Provisions on Protecting the Personal Information of Telecommunications and Internet Users
• Administrative Measures on Data Security (Exposure Draft)
• Guidelines for Data Cross-Border Transfer Security Assessment (Exposure Draft)

PIPL Article 54

Others:
• Civil Code of the People’s Republic of China
• Personal Information Security Specification GB/T 35273-2020
• Provisions on Children’s Online Privacy Protection
• Guidelines for personal information notices and consent (Exposure Draft)

PIPL Article 7, 14–18, 23, 25, 29–31, 39

Others:
• Personal Information Security Specification GB/T 35273-2020
• Provisions on Children’s Online Privacy Protection
• Guidelines for personal information notices and consent (Exposure Draft)

PIPL Article 5, 6, 8, 13, 19, 25, 46, 47, 51

Others:
• Personal Information Security Specification GB/T 35273-2020
• Provisions on Children’s Online Privacy Protection
• Notice on the special treatment of app’s illegal collection and use of personal information
• Notice on Promulgation of the Rules on the Scope of Necessary Personal Information for Common Types of Mobile Internet Applications
• Guide to the Self-Assessment of Illegal Collection and Use of Personal Information by App
• Identification method for the behaviour of APP to collect and use personal information illegally
• Notice on the Code of Practice for the Security Assessment for Cross-border Transfer of Personal Information
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PIPL Article 51, 52, 53

Others:
• Personal Information Security Specification: GB/T 35273-2020
• Cybersecurity Law of the People’s Republic of China
• Data Security Law of the People’s Republic of China

PIPL Article 51, 57

Others:
• Personal Information Security Specification: GB/T 35273-2020
• Cyber-data Process Security Specification (Exposure Draft)

PIPL Article 24, 26, 27, 58

Others:
• Personal Information Security Specification GB/T 35273-2020
• Provisions on the prohibition of unfair competition on the Internet (Exposure Draft)

PIPL Article 51, 57

Others:
• Personal Information Security Specification GB/T 35273-2020
• Guidelines for the Security Assessment of Information and Important Data to be Transmitted Abroad (Exposure Draft)

PIPL Article 20–22, 59

Others:
• Personal Information Security Specification GB/T 35273-2020
• Provisions on the prohibition of unfair competition on the Internet (Exposure Draft)

Notes: Joint-consideration with CSL and DSL recommended when implementing PIPL

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Establish personal information protection management system

Focus Areas
- Governance and Operating Model
- Personal Information Processing Activity Inventory
- Risk, Control and Monitoring
- Regulatory Management
- Privacy Policy, Notice, and Consent
- Personal Information Lifecycle Management
- Personal Information Management Procedure
- Personal Information Security Technology
- Third Party Management
- Personal Information Protection within Digitization
- Training and Awareness
- Continuous Improvement

Implementation Prioritization
- Governance and Operating Model
- Personal Information Processing Activity Inventory
- Risk, Control and Monitoring
- Regulatory Management
- Privacy Policy, Notice, and Consent
- Personal Information Management Procedure
- Incident Management
- Training and Awareness

General recommendation
- Focus on organization and people readiness
- Start with processing activity inventory and lifecycle management
- Explore technology innovation opportunities

Personal Information Lifecycle Management
- Legality, legitimacy, necessity and sincerity
- Personal information classification
- Personal information collection (data minimization)
- Personal information quality assurance
- Personal information sharing
- Personal information retention
- Children’s personal information processing

Personal Information Management Procedure
- Personal information protection impact assessment
- Personal information security engineering
- Data subject right request response
- Personal information cross-border transfer

Personal Information Security Technology
- Authorization and access control
- Personal information encryption
- Personal Information De-identification

Training and Awareness
- Security education and training

Incident Management
- Emergency response
- Incident investigation and forensic

Third Party Management
- Third party due diligence
- Third party contracts / data processing agreement
- Third party assurance
- Data transfer in special scenarios (e.g. merger, division, dissolution, declared bankrupt, etc.)

Governance and Operating Model
- Personnel and organization
- Governance and operating model
- Policy system and technical roadmap design

Personal Information Processing Activity Inventory
- Processing activity inventory
- Data flow diagram
- Application inventory

Risk, Control and Monitoring
- Risk and control
- Control review and monitoring
- Compliance audit
- Personal information protection social responsibility supervision and reporting (if necessary)

Regulatory Management
- Regulatory change
- Regulatory interpretation and implementation
- Regulatory response and communication

Privacy Policy, Notice, and Consent
- Privacy policy
- Notice and consent
- Legal document template management
Our services along the journey

Discover
- Personal information classification and processing activities discovery
- Preparation, review and update of relevant legal documents including privacy policy, data processing agreement, consent template, etc.

Analyze
- Personal information protection assessment and design (governance, process and technology)
- Personal information protection impact assessment and/or relevant managing framework and procedure design and implementation

Establish
- Personal information management system establishment
- Personal information security engineering design and implementation (access control, data encryption, de-identification, etc.)

Implement
- Cross-border data transfer assessment and management framework and procedure establishment
- Third-party personal information protection management optimization or audit

Optimize
- Mobile application / Mini-program personal information protection assessment and quick-win
- Personal information protection maturity assessment or compliance audit

- Standardized template
- Automated tool
- Structured knowledge database
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