

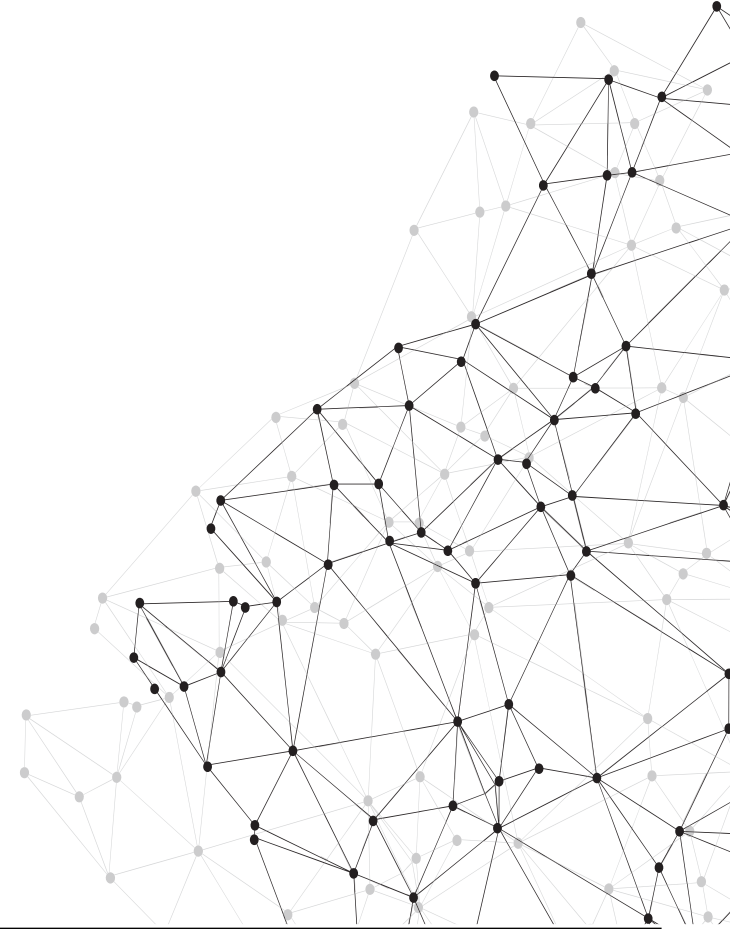


Introduction to PIPL

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01. Scope of PIPL



Scope of PIPL

Subject of Protection – Personal Information (PI)

Criterion for PI: Identification + Relation

Any information relating to an identified or identifiable natural person which has been recorded in electronic or other form, excluding anonymized information

What is sensitive PI?

PI that, once leaked or illegally used, is likely to infringe upon an individual's human dignity or endanger their health or property, including but not limited to PI related to the following content:

- Biometric recognition
- Religious belief
- Specially-designated status
- Medical and health
- Financial accounts
- Location tracking
- Minors under the age of 14



Identification

From information to individuals - a specific individual is identified based on the particularity of the information itself, and the information shall be helpful to identify a specific individual



Relation

From individuals to information - for a known specific individual, the information generated by such individual in his or her activities

Scope of PIPL

Regulatory Subjects—PI Handlers and Entrusted Handlers



PI Handlers

Similar to “data controller” under GDPR

An organization or natural person that independently determines the purposes for which and the means by which PI is processed

Extensive compliance obligations under the PIPL



Entrusted Handlers

Similar to “data processor” under GDPR

An organization or natural person that processes PI following the PI handler’s instructions

Relatively limited compliance obligations under the PIPL

Scope of PIPL

Extraterritorial Effect



Not applicable to
personal affairs



Applicable to
domestic entities



Applicable to
government organs



Limited application to
overseas entities

Application Scenarios

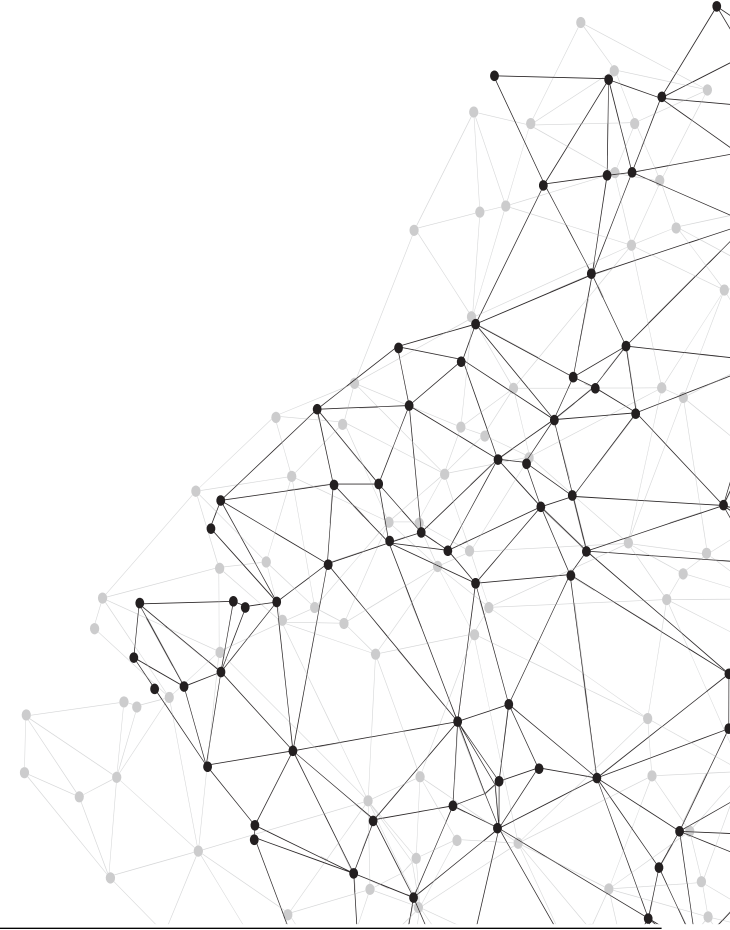
PIPL applies to processing activities that occur within China and outside the country, when:

- PI is processed in China
- The goal is to offer products or services to individuals within China
- Analysing or assessing behaviour of individuals taking place within China

Notable Requirements for Offshore PI Handlers

- Set up a dedicated entity or appoint a representative in China to be responsible for PI protection matters
- Report name and contact information of such entity or representative to supervisory authorities

02. PI Processing Rules



Lawfulness and Honesty

Satisfy lawful basis, prohibit misleading, swindling, coercive, or such other manner

Purpose Limitation

Must have explicit and proper purposes, and processing must be directly related to the purpose

Necessity and Minimisation

PI must be relevant and limited to what is the minimum extent necessary to achieve purposes

Transparency

Publish processing rules, specify the purpose, method and scope of processing



Data Quality

Ensure accuracy and integrity of PI

Data Security

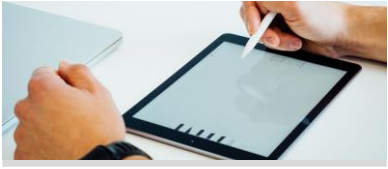
Adopt necessary safeguard measures to ensure data security

Accountability

Be responsible for PI processing and demonstrate compliance through processing records

Basic Rules for PI Processing

Transparency & Legal Bases



Transparency



Legal Bases

Transparency

Information to notify subjects of

- Name and contact information of PI handler
- Category, purposes, methods, storage term of PI that are processed
- Methods and procedure for exercising PI rights
- Additional notification requirements

Legal Bases

Consent

Contractual necessity

Legal necessity

Necessity due to emergency

Necessity due to HR management

Necessity due to public interest

Publicly disclosed PI

Basic Rules for PI Processing

Legal Bases under PIPL and GDPR

PIPL	GDPR
Individuals' consent; separate consent will be required in certain cases (consent)	Individuals' consent
Necessary for the conclusion or performance of a contract with the PI subject (contractual necessity)	Necessary for conclusion or performance of a contract with the data subject
Necessary for compliance with a legal obligation (legal necessity)	Necessary for compliance with a legal obligation
Necessary to respond to sudden public health crises or to protect individuals' lives and health, or the security of their property, under emergency conditions (necessity due to emergency)	Necessary to protect the vital interests of individuals
Necessary to undertake news reporting, public opinion supervision, and the performance of other tasks carried out in the public interest (necessity due to Public Interest)	Necessary for the performance of a task carried out in the public interest
Necessary to conduct HR management according to lawfully formulated labor rules and regulations and lawfully concluded collective contracts (necessity due to HR Management)	Necessary for the purpose of legitimate interests of the data controller or of a third party
Processing PI already disclosed by individuals themselves or otherwise lawfully disclosed, within a reasonable scope (publicly disclosed PI)	/

Data localization: PI must be stored or processed locally in China and can only be transferred cross-border upon completion of a security assessment. PIPL imposes data localization requirements on large PI handlers and CII operators.



Large PI Handlers

PI handlers process PI in an amount reaching a certain quantitative threshold (likely 1 million)



CII Operators

Critical Information Infrastructures (CII) refer to important network facilities and information systems in important industries, e.g., public telecommunications and information services, energy, transportation, etc.

Outbound Data Transfer Mechanism

Definition of “Outbound Data Transfer”

What is Outbound Data Transfer?



Transfer or store outside China the PI collected/generated during PRC operations



PI is stored within China but can be **accessed, retrieved, downloaded and exported** by offshore institutions, organizations or individuals



Other acts deemed to be cross-border data transfers as stipulated by the Cyberspace Administration of China (CAC)

Outbound Data Transfer Mechanism

Three Safeguards



01

Security Assessment

- This safeguard is mandatory for certain data transfers
- Assessments are organized by CAC

02

China SCC Filing

- China SCC template is released by CAC
- Provisions of China SCC cannot be modified
- Executed China SCC should be filed with local CAC

03

Certification

- Certification by a CAC-accredited certifying institution
- This safeguard is rarely used in practice

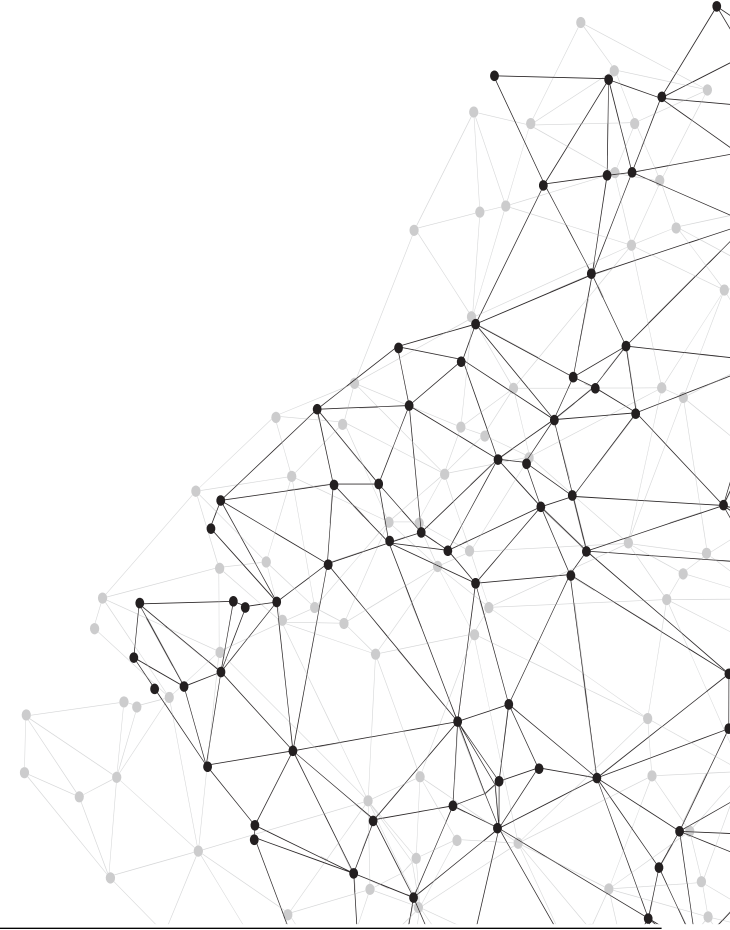
Outbound Data Transfer Mechanism

Three Safeguards

Safeguard	Scope of Application*	Major Procedures
CAC security assessment	• CII operators • Parties who have processed PI of 1 million individuals or more • Parties who have cumulatively exported PI of at least 100,000 individuals or sensitive PI of at least 10,000 individuals since January 1 of the preceding year.	• Conclude a data transfer agreement • Perform self-assessment • Apply for CAC security assessment and obtain approval before transfer
China SCC Filing	Parties who do not subject to CAC security assessment	• Perform PI protection impact assessment (PIA, similar to DPIA under the GDPR) • Conclude the China SCC • Apply for post-execution filing with CAC
Certification	Parties who do not subject to CAC security assessment	• Conclude a data transfer agreement • Perform PIA • Complete certification

**Note: China proposed new rules for cross-border data transfers on September 29, 2023, which could potentially exempt certain scenarios from safeguard requirements. However, these draft rules have not been finalized or released yet.*

03. PI Related Rights



Rights of data subjects under PIPL are generally in line with overseas legislation.

PIPL	GDPR	CCPA+CPRA
Right to be informed	Right to be informed	Right to be informed
Rights of restriction and refusal	Rights of restricting processing and objection	Opt-out right
Rights of access, copy and portability	Rights of access and portability	Rights of access and request copy of information
Right of correction	Right of correction	Right of correction
Right to erasure	Right to erasure	Right to erasure
Right against automated decision making	Right against automated processing	
Right to request interpretation of processing rules		Opt-in right, right to limit sensitive information, right of equal treatment, right against sale

04. Governance Requirements for PI Protection





PI Protection Officer

Requirement

Appoint a PI protection officer and report the contact information of such person to relevant PRC authority

To be clarified

- The specific threshold that appointment requirement will be triggered
- Establishing standards of qualifications and experience requirements

Compliance Mechanism



PI Protection Impact Assessment (PIA)

Assess the impacts of high-risk PI processing activities on individuals' rights and interests



PI Compliance Audit

Regularly review and evaluate whether PI processing activities comply with effective laws and regulations



Incident Response Plan

Formulate and implement incident response plans for data breach



Compliance Training

Regularly conduct security education and training for employees who assume PI processing-related roles



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Practice Areas

Data protection
Mergers and acquisitions
Foreign direct investment
General corporate
Corporate compliance

Qualifications

Member of the PRC Bar

Working Languages

Chinese, English

■ Professional Experience

Mr. Tang's extensive professional experience includes positions with government authorities and international and local law firms. Prior to joining Han Kun, Mr. Tang was a partner at a leading Chinese firm and had also practiced in the China practice groups of three pre-eminent international law firms. Mr. Tang has been consecutively ranked as one of the leading PRC Corporate and M&A lawyers by legal ranking organizations such as Chambers & Partners, Asialaw Profiles, and The Legal 500. He has also been appointed as an extramural graduate student advisor by Fudan University School of Law and East China University of Political Science and Law.

Mr. Tang's primary practice areas are general corporate and commercial, foreign direct investment, and cross-border mergers and acquisitions. Mr. Tang has been advising numerous Fortune 500 Global and other multinational and foreign companies on their investments, acquisitions and daily business operations since he started his professional career. Mr. Tang advises large and medium sized Chinese companies on doing business in overseas markets, particularly in assisting with Chinese companies' outbound direct investments and mergers and acquisitions.

Mr. Tang also focuses on corporate compliance and data protection. He regularly advises clients on their China operations in connection with compliance policies and guidelines, internal compliance reviews, audits, and government investigations involving commercial bribery and other regulatory compliance matters. He also conducts internal investigations for clients, including those concerning vendors and company employee conflicts of interest, self-dealing, PRC anti-bribery rules, the UK Bribery Act (2010) and the US Foreign Corrupt Practices Act. Mr. Tang regularly counsels clients on compliance matters relating to cybersecurity and data and personal information protection, assists clients in establishing data compliance systems, applying governmental procedure for cross-border data transfer, and investigating and managing data incident crises. The clients which Mr. Tang represents come from a wide variety of industry sectors such as advertisement, aircraft, automotive, clean energy, FMCG, food and beverage, hospitality, life sciences, logistics, petrochemical, power, retail, and TMT.

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Qualifications

Member of the PRC Bar

Working Languages

Chinese, English

■ Education

Mr. Tang received an LL.B. degree and an LL.M. degree from Fudan University School of Law.

■ Honors and Awards

Regulatory and Compliance

Recommended Lawyer in Data protection (The Legal 500 Asia Pacific, 2021-2023)
Recommended Lawyer in Regulatory/Compliance (Legal 500 Asia Pacific, 2019-2023)
Asialaw Leading Lawyer in Financial Services Regulatory (Asialaw Profiles, 2017)
Shortlisted for Regulatory & Compliance Lawyer of the Year (China Law and Practice, 2017-2019)
Leading lawyer in Banking & Finance (China Law & Practice, 2014)

Corporate/M&A

Leading Lawyer in Corporate/M&A (Chambers Global, 2016-2023)
Leading Lawyer in Corporate/M&A (Chambers Greater China Region, 2022-2023)
Leading Lawyer in Corporate/M&A (Chambers Asia-Pacific, 2012-2021)
Hall of fame in Corporate and M&A (The Legal 500 Asia Pacific, 2021-2023)
Distinguished practitioner in Corporate/M&A (Asialaw Profiles, 2020-2023)
Highly Regarded Lawyer in M&A (IFLR1000, 2021-2023)
China Top 15 M&A Lawyer (Asian Legal Business, 2021)
Leading Lawyer in Corporate and M&A (The Legal 500 Asia Pacific, 2016-2020)
Shortlisted as Shanghai M&A Lawyer of the Year (IFLR1000 China Awards, 2021)
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