



China's New Personal Information Protection Law

August 26, 2021

* Although we will be providing legal information during this webinar, we will not be providing legal advice.

Scope



- Handling the PI of natural persons inside of China's borders
- Handling the PI of persons inside of China's borders while outside of China if (at least one of) the following:
 - Purpose is to provide goods/services to persons in China
 - Analyzing or assessing activities of persons in China
 - Other circumstances provided in laws or administrative regulations

Personal Information



What is PI?

All kinds of information, recorded by electronic or other means related to identified or identifiable natural persons, *not including* information after anonymization...

Personal Information Handling

includes PI collection, storage, use, processing, transmission, provision, disclosure, deletion, etc.

Principles of PIPL



- Legality
- Propriety
- Necessity
- Sincerity
- Openness & transparency
- Responsibility
- Quality/Correctness
- Prohibited to handle PI in ways that are:
 - Misleading
 - Swindling
 - Coercive

Enforcement Powers Part 1



- Order Correction
- Confiscate unlawful income
- Order suspension of service
- Compensation in the amount of loss to the individual or gain to the company
- May result in criminal liability

Enforcement Powers

Part 2



- Uncorrected Violations
 - A fine of up to 1 million Yuan
 - A fine of 10,000-100,000 Yuan for responsible personnel
- Grave Violations
 - Fine up to 50 million Yuan or
 - Up to 5% of annual revenue
 - Fine of 100,000-1 million Yuan for responsible personnel & prohibition on holding high positions

Data Minimization



PI Handling Must Have:

- Clear & reasonable purpose
- Directly related to handling purpose
 - Collection limited to smallest scope for realizing purpose
 - Excessive PI collection prohibited
- Use method with smallest influence on individual rights & interests

Must Have Legal Basis for Handling

- Individual Consent
- Necessary to fulfill a contract where individual is an interested party
- Necessary for human resources management
- Fulfill statutory duties/obligations
- Respond to public health incidents or protect person's lives, health, or property in emergencies
- News reporting, public opinion supervision, & other public interest activities
- Already disclosed by the individual or otherwise lawfully & reasonable in scope
- Other circumstances as provided by law

Consent

- Given knowingly with full information
- Voluntary
- Explicit
- Must be re-obtained if the purpose, method, or categories of PI change
- Individuals have the right to rescind
- Companies must provide convenient process for rescission
- Can't refuse services if individual refuses consent UNLESS handling of PI is necessary to providing the service

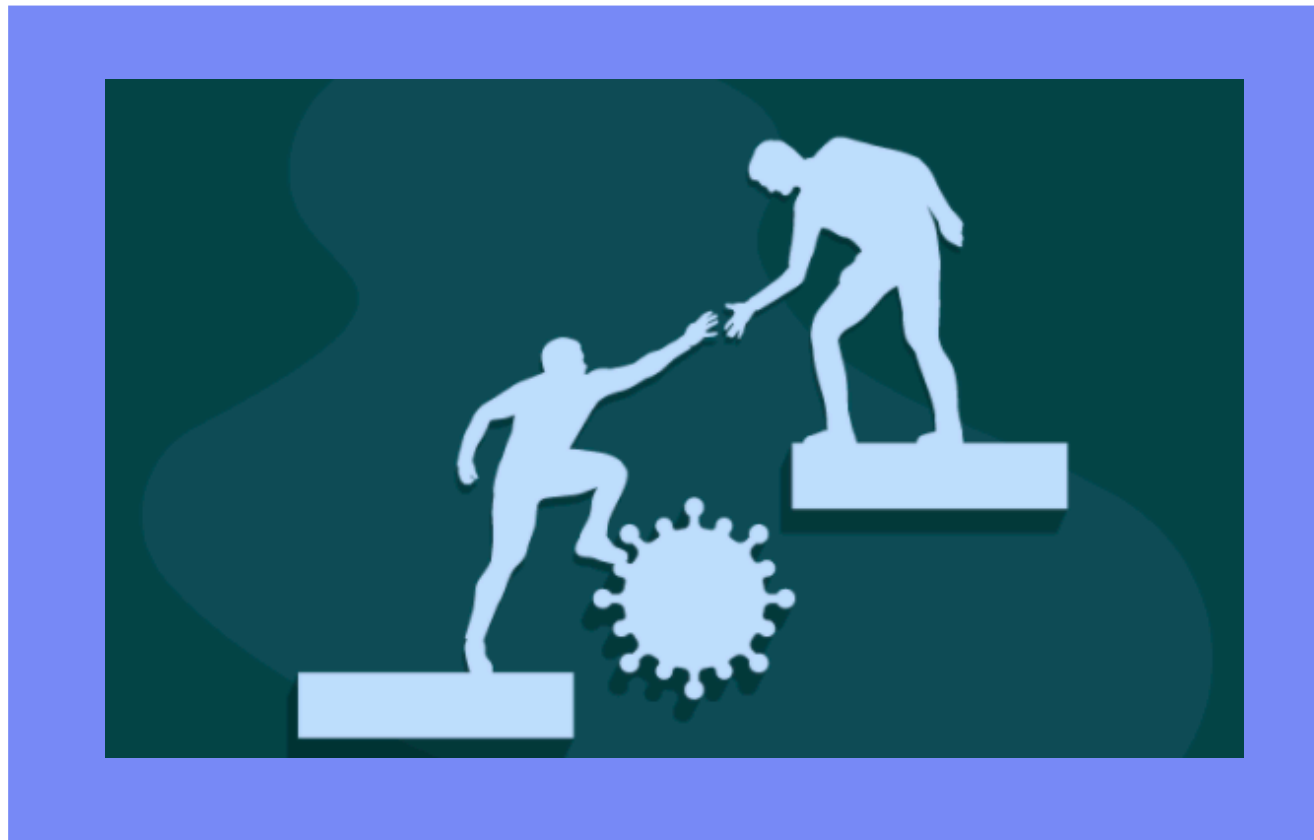
Notice



- Name & contact of the PI Handler
- Purpose of handling
- Handling methods
- Categories of PI
- Retention period
- Procedures for exercising PIPL rights
- Other notifications required by law
- Changes in previous notice
- Disclosures shall be public & convenient to read & store

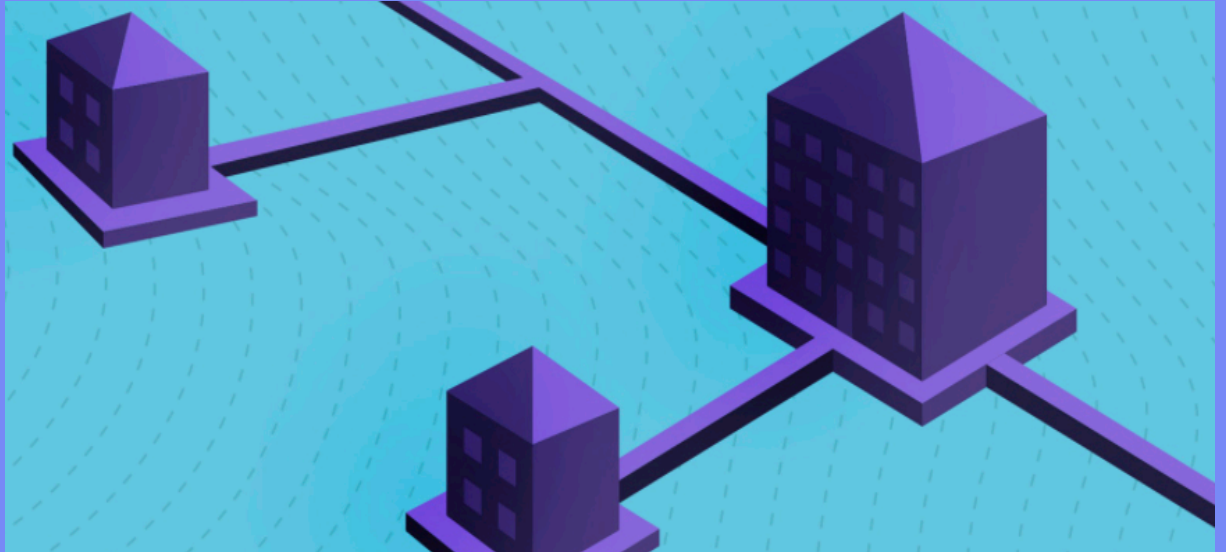
Entrusted Persons (EPs)

- Processors & Subprocessors
- Notice to data subjects
- Must have contracts that include:
 - Purpose of Handling
 - Retention limit
 - Handling method
 - Categories of PI
 - Protection measures
 - Rights & duties of both parties
 - Supervision of EP
 - EP cannot handle in ways/for purposes not specifically allowed in the agreement
 - EP must get consent to further entrust (i.e. get a subprocessor)



Automated Decision-making (ADM)

- Guarantee transparency, fairness, & justice
- No unreasonable differential treatment in things like price
- If conducting push delivery or commercial sales, must simultaneously give option
 - Not to target an individual's characteristics or
 - Give a convenient method to refuse
- If ADM has significant impact on rights & interests:
 - Right to require handler to explain
 - Right to refuse decisions made by solely automated means



Identity Recognition



Image collection/recognition equipment in public venues may be used for public safety, with clear signage.

- Images used only for public security
- Must obtain individual consent to use for any other purpose

Publicly Disclosed



- May handle PI already disclosed by the individual
- May handle PI otherwise lawfully disclosed
- If there is a major influence on rights/interests, handlers should still get consent
- Even if no major influence, handlers must stop handling if individual clearly refuses

Sensitive Information

- PI that if leaked/used illegally could easily cause harm to dignity of persons or to the security of their person or property.
- Can only handle for a specific purpose with strict protection measures



- Biometric Characteristics
- Religious Beliefs
- Specially-designated status
- Medical Health
- Financial Accounts
- Individual Location Tracking
- PI of Minors under the age of 14

Cross-Border Handling



Must meet 1 of the following:

- Pass a security assessment by the Cyberspace Administration of China (CAC)
- Undergo a PI protection certification from a specialized body (under provisions of CAC)
- Enter a contract with the foreign receiving side in accordance with a standard contract formulated by CAC
- In accordance with other laws or regs of the CAC

Individual Rights



Individuals have the right to:

- Know & Decide
- Limit or Refuse
- Consult & Copy Their PI
- Transfer Their PI
- Correction/Completion
- Explanation of PI Handling Rules
- Right to Deletion if:
 - Purpose achieved or impossible,
 - No longer necessary for purpose,
 - Products/services no longer provided,
 - Retention period over,
 - Consent rescinded, or
 - Handlers processed PI in violation of law or agreements
- Next of Kin May Claim Rts for Deceased

Handlers' Duties Part 1



PI Handlers Shall:

- Formulate internal structures and operating procedures to comply
- Implement categorized PI management
- Adopt technical security measures
 - Encryption
 - De-identification
- Conduct security education & training for employees
- Create & implement a PI security incident response plan
- Engage in regular audits

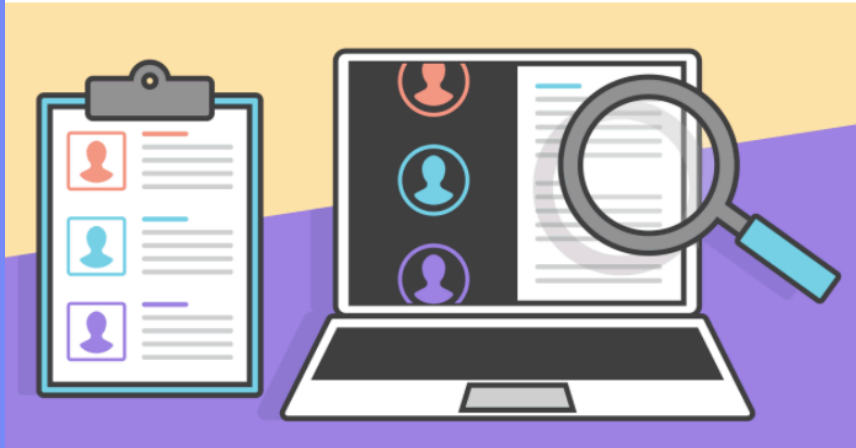
Handlers' Duties

Part 2



- If PI is outside of China:
 - Appoint an entity or representative inside China
 - Representative responsible for matter related to PI handling
 - Report Rep identity and contact info to CAC/relevant departments
- Need a PI Protection Officer if handling PI in quantities identified by CAC
 - PO responsible for supervising PI handling activities
 - PO responsible for adopting data protection measures

Protection Impact Assessment



- Required if:
 - Handling sensitive PI
 - Using PI to conduct automated decision-making
 - Entrusting PI handling to other PI Handlers
 - Providing PI abroad
 - Engaging in other PI handling activities with a major influence on individuals
- Shall Include:
 - Whether the handling purpose, method etc. are lawful, legitimate & necessary
 - Influence on individuals' rights & interests
 - Security risks
 - Whether protective measures are legal, effective, & suitable to the degree of risk

Security Breaches



- Immediately adopt remedial measures
- Notify relevant departments & the individuals
 - Info categories, causes, & possible harms
 - Remedial measure taken
 - Remedial measures the individual can adopt to mitigate harm
 - Contact method for the handler
- Need not notify individuals if handler can effectively avoid harms

Platform Providers



If providing internet platform services and have a large number of users with complex business models:

- Establish & complete PI protection compliance systems/structures that follow State regulations
- Establish an independent body of outside members to supervise PI protection
- Abide by principles of openness, fairness, & justice
- Create platform rules & clarify standards for intra-platform product/service providers handling or PI
- Stop providing products/services on the platform that seriously violate PI handling laws
- Regularly release PI protection social responsibility reports
- Accept supervision

Questions and Answers

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