

LEGAL ALERT

DATA ALERT:

**WHAT CHINA'S PERSONAL INFORMATION LAW MEANS FOR
BUSINESSES IN MACAU**

November 12, 2021



Background

Macau companies which process personal information of PRC residents will now need to observe the requirements of China's new Personal Information Protection Law (PIPL) that came into effect this week (1 November 2021).

Similar to the extra-territorial reach of the European GDPR, the China PIPL applies to overseas companies that handle personal information of individuals within the PRC to provide services, or products, or to analyse the behaviour of, those individuals.

Key considerations for Macau businesses. Below we have summarised six key areas for companies to take into consideration in response to the new law in force.

1. Registration requirement

Firstly, there is a registration requirement that obliges non-mainland businesses either to set up an agency or appoint a designated representative within China to handle matters related to personal information protection, and to record it with the Chinese authorities. Although the detailed implementing regulations on this process have yet to be released by the Chinese authorities, the guidance is expected soon which affected Macau businesses will need to follow.

2. Revisit PI policies and procedures

From an operations' perspective, Macau businesses are recommended to revisit current personal information privacy policies and data collection processes, as well as security procedures, cross border transfer protocols, and data breach policies since the requirements under the China PIPL vary from the Macau Personal Information Protection Act.

Collection of PRC individuals' personal information requires the express informed consent of the individuals – there is no provision for deemed or implied consent for businesses' legitimate interests under the law, except for performance of a contract or HR management.

3. Obtain consent from PRC individuals for cross-border transfers

Separate consent from PRC individuals must also be obtained for cross-border transfers of their personal information from mainland China to Macau – including for online access or viewing in

Macau - unless the transfer is for HR management or contract performance purposes. A privacy impact assessment for the transfer is also required. Transfers of HR data in accordance with employment policies or contracts will not necessitate the employees' consent, but a privacy impact assessment and compliance with all other data handling provisions of the China PIPL are mandatory. Collection of sensitive personal information from PRC individuals requires separate, unbundled consent of the individual, and specific handling treatment with advanced security measures appropriate for the sensitivity of the data held.

4. Implement data subject request mechanisms

Macau businesses should also consider mechanisms to implement the right of PRC individuals to request access, correction, deletion and data portability of their personal information. Importantly, PRC individuals have the right to object to their personal information from being used in automated decision-making processes (if the decision significantly affects the interests of the individual), and businesses are prohibited from conducting automated decision-making using personal information that discriminates between individuals. This would preclude sending automated marketing offers for products at different prices to different customers based on their personal information.

5. Mandatory data breach notification

Macau businesses should also consider the mandatory data breach notification requirement that obliges any data incident involving PRC individuals' personal information to be reported to the Chinese authorities and impacted individuals, irrespective of the scale or impact of the incident.

6. Review Personal Information collection procedures

Given the large number of mainland Chinese customers that Macau businesses support, compliance with the new requirements of the China PIPL will be a high priority to address in business operations. In particular, procedures for collection of personal information through in-market apps, WeChat official accounts and mini-programs, websites and the subsequent overseas transfer to Macau are recommended for review.

Consequence of non-compliance

The penalties for infringing the China PIPL include fines of up to RMB 50 million (MOP\$88 million) or 5% of the company's annual turnover for serious offences. Although enforcement of the new law is untested, the Chinese authorities have recently taken an assertive stance on data privacy violations in the technology sector, issuing immediate rectification orders and suspending infringing services from app stores in China. The potential fines and impact on operations are evident for businesses which fail to comply with the personal information law requirements.

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^[1] This legal alert covers the most relevant details and conditions of the relevant economic measures. For further details, please consult the relevant legislation;

^[2] Please refer to Administrative Regulation no. 9/2003 for further details;

^[3] Please refer to Articles 5 and Article 6 of the Decree-law no. 16/96/M for further details; and

^[4] Measures announced; Draft Amendment of the Bill for year 2021 under preparation by the Macau Government.