August 10, 2021

On April 29, 2021, China released the second draft of Personal Information Protection Law (hereinafter the “PIPL” or “Draft”) for public comments, which replaced the first draft issued in October 2020. The PIPL is regarded as the “Chinese GDPR” and widely believed to have significant influence on the development of many industries especially the digital business. To help multinational corporations better understand the PIPL and be well prepared for the coming new era of data protection in China, we will prepare 15 thematic articles on various topics to guide the compliance under the PIPL from a practical perspective.

The Draft provides protection for children’s personal information, as Article 15 clearly stipulates that the consent of the parents or other guardians of minors shall be obtained before processing the personal information of minors under the age of 14. In conjunction with the Provisions on the Cyber Protection of Children’s Personal Information which came into effect on 1st Oct, 2019, we summarize the following 4 major highlights on the future protection for children’s personal information in China.

I. Extended Applicable Scope

In contrast with Article 3 of the Provisions on the Cyber Protection of Children’s Personal Information, which only applies to the collection, storage, use, transfer and disclosure of children’s personal information via the network within the territory of China, the Draft is more far-reaching, as it also applies to those who carry out activities outside the territory of China under any of the following circumstances:

I. where the purpose is to provide products or services to domestic natural persons;
II. where the purpose is to analyze and evaluate the activities of domestic natural persons; and
III. other circumstances provided by laws and administrative regulations.

II. Strengthened Protection for Sensitive Personal Information of Children

The PIPL also augments protection for children’s sensitive personal information, which Article 29 defines as the personal information that may lead to discrimination or serious harm to personal or property safety once disclosed or illegally used, including such information as race, ethnicity, religious belief, personal biological characteristics, medical health, financial accounts and personal whereabouts. Where the processing of sensitive personal information of an individual is based on consent, a separate consent (rather than a package consent) shall be obtained. Therefore, in cases where consent is made by children’s guardians, a separate consent from such guardians shall be obtained for any processing of sensitive personal information of children.
III. Tightened Regulation on Cross-border Transfer of Children’s Personal Information

In principle, children’s personal information collected in China shall be stored within the territory of China. According to Article 39 of the PIPL, where a cross-border transfer occurs, data subject shall be informed of identity and contact information of the overseas recipient, purpose and method of processing, type of personal information and the way for the data subject to exercise the rights against the overseas recipient, and shall obtain a separate consent. Besides, the personal information controller shall also conduct a risk assessment and make record; and fulfil one of the three conditions provided under Article 38 of the PIPL, namely security assessment, personal information certification and conclusion of a contract. (Please refer to Topic Ten for a more specific introduction of the provisions on cross-border transfer of personal information under the PIPL.)

IV. Other Observations

In general, the rules for protecting children’s personal information are similar to those for adults’, except that when collecting and using children’s personal information, the consent shall be obtained from their parents or guardians.

It is worth noting that the first draft of the PIPL stipulates that when the controller know or should know that it is processing children’s personal information, it should obtain the consent of their parents or guardians, while the second draft of the PIPL deletes the wording of “know or should know”. That means, as long as the children’s personal information is processed objectively, the consent of the parents or guardians is required (unless otherwise provided by law). The personal information controller could not use “not knowing that the personal information is children’s personal information” as a defense to claim the legality of its processing activities.

Next Topic: Rights of Data Subject

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