



Brief of Legal Updates on Data in 2024

Chinese data laws and regulations have been evolving and fluctuating in recent years, particularly concerning cross-border transfer rules for different types of data and the proper methods for personal information protection. It was only this year that these rules have been nearly stabilized.

Here, we will briefly introduce the two new national standards on PI protection, and the Provisions on Facilitating and Regulating Cross-border Data Flow released in March 2024.

**We also released a dedicated newsletter (<https://www.dsavocats.com/mailling/Asia%20News/Newsletter%20Asie%201112%20EN.pdf>) to provide FAQs on the Regulation on Network Data Security Management (in Chinese 网络数据安全条例), which was released on September 24, 2024, and will take effect on January 1, 2025.*

On December 28, 2023, *National Standard GB/T 43506-2023 on Telecom and Internet service—User PI Protection Requirements* (in Chinese 电信和互联网服务—用户和个人信息保护技术要求) was released and took effect on April 1, 2024.

It applies to telecom and Internet service providers' processing of PI. In light of the data grading and classification principle set by *the Personal Information Protection Law*, this standard provides practical solutions. It instructs the data controllers to classify the users' PI into three (3) categories and grade users' PI into five (5) grades.

o Three (3) categories of PI:

- user identity and authentication information,
- user data and service content information, and,
- user service-related information.

o Five (5) grades of PI: The higher the grade, the stricter the PI protection requirements for such service. For instance, if an Internet service provider's service needs Grade 5 PI like personal ID Card or biometric PI, this service will be classified as Grade 5 as well, and the service providers should take corresponding protective measures for Grade 5 PI, such as real-time monitoring and security alert.

Telecom and Internet service providers are advised to adjust their current PI protection framework to integrate these requirements as per this standard.

On March 22, 2024, *Provisions on Facilitating and Regulating Cross-border Data Flow* (in Chinese 促进和规范数据跨境流动规定) was released with immediate effect to mainly provide exemptions on cross-border transfer formalities of PI.

These Provisions ease the compliance burden for foreign companies in China by providing some exemptions of transfer formalities on cross-border transfer of PI. The exemptions concern the following situations:

- o data transferred (not containing PI or important data) which are collected and generated in activities such as international trade, cross-border transportation, academic cooperation, cross-border manufacturing and marketing scenarios;
- o PI collected and generated overseas, transferred to China for processing and then provided overseas, without being mixed the domestic PI or important data introduced during the processing in China;
- o PI that necessarily needs to be transferred for the performance of a contract to which the individual is a party (e.g. cross-

- border shopping, cross-border delivery, cross-border remittance, cross-border payment, cross-border account opening, air ticket and hotel booking, visa processing, examination services etc.);
- o necessary transfer of PI of employees for HR management according to labor rules or collective employment contracts;
 - o PI necessarily transferred to face an emergency situation to protect life, health and property of individuals;
 - o the aggregated transfer of non-sensitive PI does not exceed 100k individuals since Jan^{1st} of the current year.

For cross-borders data transfers that do not fall under any of the above scenarios, and/or if it concerns important data and/or Critical Infrastructure Information Operators (CIIO), it is recommended to consult professionals before conducting any transfers.

On April 25, 2024, *National Standard GB/T 43739-2024 on Audit and Management Guide for PI Processing Normativeness of Mobile Internet Applications in App Stores* (in Chinese *应用商店的移动互联网应用程序 (App)个人信息处理规范性审核与管理指南*) was released and took effect on November 1, 2024.

This standard aims to provide an official guide for operators of online application stores on reviewing personal information (PI) processing activities of application operators/owners. It can also serve as a reference baseline for authorities when inspecting PI processing activities.

Operators of application stores are required to review the PI processing activities of both existing and to-be-launched applications. In cases where applications violate PI protection requirements, the application may be removed from the store or required to correct the violation. One of the critical tasks is ensuring that the privacy policy is drafted according to the actual PI processing activities and reviewed by the application store operator. It is also required for app store operators to validate processing activities of PI by “*using not only technical means but also provided information*”, even if there is still uncertainty on how those measures should be operated in practice.

To validate the accuracy of the privacy policy, application operators must respond to several PI processing-related questions. For example:

- o Whether PI of minors under 14 years old will be collected;
- o The scope of the PI to be collected;
- o The specific services associated with the PI;
- o The list of sensitive PI to be collected and the necessity of its collection;
- o Whether the PI will be localized (in the user’s terminal) for processing; and,
- o The list of SDKs provided by third parties and details of their PI processing activities.

This standard has bridged the gap between legal principles and the practical implementation of PI protection in online applications. Although it is primarily designed for application store operators, application owners, developers and operators are also encouraged to familiarize themselves with it. This knowledge will help ensure that their applications are successfully launched and operated in compliance with PI protection requirements.

On September 29, 2024, *National Standard GB/T 44588-2024 on PI Processing Rules of Internet Platforms, Products and Services* (in Chinese *互联网平台及产品服务个人信息处理规则*) was released and to be effective on April 1, 2025.

This standard is formulated to provide a guide for Internet platform, product and services providers in processing PI. The product and services include mobile Internet applications and mini programs. It outlines detailed procedures and tasks for PI controllers

to implement mandatory PI protection obligations in the following aspects:

- o Drafting the Privacy Policy: Guidance on how and what to include in the privacy policy for users.
- o Releasing the Privacy Policy: Instructions on how to properly release the privacy policy to users.
- o Updating and Amending the Privacy Policy: Procedures for updating and amending the privacy policy as necessary.
- o Managing Complaints and Disputes: Methods for handling complaints and resolving disputes related to PI protection.

It is important to note that PI controllers may no longer rely on using an English version or a Chinese translation of the privacy policy provided by overseas headquarters to meet local PI processing legal requirements. While this practice may have served as a temporary solution for some enterprises to comply with the *Personal Information Protection Law (PIPL)* in recent years, it is now necessary to prepare a legally qualified version and update it according to the ever-evolving requirements, such as those outlined in this standard. The current rules require PI controllers not only to have a publicized privacy policy but also to ensure that the privacy policy substantially meets legal requirements.

If you seek FAQs of the Regulation on Network Data Security Management (in Chinese 网络数据安全条例) released on September 24, 2024, and to be effective on January 1, 2025, thanks to see our separate newsletter title "*New Data Regulation: looks familiar, yet impactful*". <https://www.dsavocats.com/mailling/Asia%20News/Newsletter%20Asie%201112%20EN.pdf>



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