



香港信託人公會
Hong Kong Trustees' Association

HONG KONG TRUSTEES' ASSOCIATION WEBINAR ON

New China Cross-border Data

Transfer Requirements

11 April 2024

5:00pm-6:00pm

New China Cross-border Data Transfer Rules

Tiang & Partners
程偉賓律師事務所



Speaker



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** included matters handled prior
to joining Tiang & Partners.*

Profile

Chiang Ling Li's practice has focused on Data and Intellectual Property law since 1994. She has been in the forefront of the law, having obtained approvals for outbound transfer of data as well as handled data breaches for multinational companies..

Chiang recently assisted a Asian government authority with the data issues relating to the establishment of a data stock exchange, advised a Middle Eastern government on putting in place a cybersecurity and data regulatory framework for that country, assisted with the legal analysis relating to possible free flow of data within the Greater Bay Area (GBA), defended a major Hong Kong health group before the Hong Kong data regulator, proceeded with security assessment by China data regulator for outbound transfer of data for multinational companies, advised a global law firm on data protection issues, advised a US alliance that brings the global community one of the world's most valued communications technologies on data vulnerability issues, and assisted a quasi government authority and an university to put in place data governance frameworks for the data from multiple jurisdictions (including the UK, Germany, France, China, Taiwan, Korea, Singapore, Australia, Japan, Canada and the US).

Chiang is author of China Executive Report: Intellectual Property, the China IP chapters of LexisNexis's Intellectual Property Rights, the "Anticounterfeiting and Enforcement" chapter in China's Participation in the WTO, and the China chapters in PLC Cross-border Life Sciences (2007-2012 editions), Trade Secrets Throughout the World Treatise, Patents Throughout the World, and Designs and Utility Models Throughout the World. She is also author of many articles on China IP and pharmaceutical law and practice.

Chiang was among the "A-List" of the top 100 lawyers for China (China Business Law Journal). She is also a PLC recommended lawyer in all three categories of life sciences: intellectual property, corporate and commercial (China), and corporate and commercial. Chiang also has been recognized by The International Who's Who of Life Sciences Lawyers, World Trademark Review (WTR 1000), Chambers Asia-Pacific and Chambers Global, The International Who's Who of Life Sciences Lawyers, The International Who's Who of Business Lawyers, IAM 1000 — The World's Leading Patent Professionals, WTR 1000 — The World's Leading Trademark Professionals, and IAM Licensing 250: The World's Leading Patent and Technology Licensing Practitioners.

Areas of expertise

- Data
- Pharmaceutical and medical devices
- Technology
- Intellectual property
- Litigation and arbitration

Some 2023 Legal Accolades



Chiang Ling Li is ranked as a leading lawyer in Intellectual Property (International Firms) in China

*Chambers Greater China Region, 2023;
Chambers Global, 2023*



Tiang & Partners is ranked as a Firm to Watch in Intellectual Property in Hong Kong

Legal 500 Asia Pacific, 2023



Chiang Ling Li is ranked as a Leading Individual in Enforcement & Litigation, Prosecution & Strategy, and Transactions

World Trademark Review 1000, 2023



Tiang & Partners is ranked as a leading firm in both Patents and Copyright/Trademark lists

Asian Legal Business (ALB) Asia IP Rankings, 2023



Chiang Ling Li wins Client Choice Award for Data Privacy & Protection in China

Lexology Client Choice Awards 2024



Tiang & Partners is ranked in Litigation and Transactions categories. Chiang Ling Li is also ranked as a Leading Individual in both categories.

IAM Patent 1000, 2023



Chiang Ling Li is recommended in "IP Star" in both Patent and Trade Mark

Managing IP, 2023



Chiang Ling Li is recognised as a IP Expert in Patents, Trademarks and IP Litigation

Asia IP, 2023



Chiang Ling Li is recognised as a Top 10 Most Influential Intellectual Property Lawyers in China 2023

Business Today, 2023



Tiang & Partners is recognised as an Award Winning Law Firm 2023

The Patent Lawyer Magazine, 2023

Some 2024 Legal Accolades



Chiang Ling Li is ranked as a leading lawyer in Intellectual Property (International Firms) in China.

*Chambers Greater China Region Guide 2024;
Chambers Global Guide 2024*



Tiang & Partners is ranked in Enforcement and litigation as well as Prosecution and strategy categories.

Chiang Ling Li is ranked in all three categories, including Enforcement & Litigation, Prosecution & Strategy, and Transactions.

World Trademark Review 1000, 2024



Chiang Ling Li is recognised as a IP Expert in Patents, Trademarks and IP Litigation

Asia IP, 2024



Chiang Ling Li wins Client Choice Award for Data Privacy & Protection in China.

*Lexology
Client Choice Awards 2024*

1. Old Law



Outbound Data From China	Legal Requirements
Outbound transfer of personal data from China needed to use certain mechanisms	<p>Outbound transfer of personal data from China needed to use 1 of the 3 mechanisms (“3 Mechanism”):</p> <ul style="list-style-type: none"> ○ Pass security assessment (obtain Chinese government approval) ○ Obtain certification ○ Enter into standard contract prescribed by Chinese regulator with overseas recipient
Chinese government approval is needed for certain outbound transfers	<p>Chinese government approval is needed for following outbound transfers:</p> <ul style="list-style-type: none"> ○ Transfer of personal data collected or generated in China by a CII Operator ○ Transfer of Important Data ○ Transfer of data by a Chinese organization or individual to a foreign law enforcement or judicial body ○ Transfer of personal data by data controller who processes personal data of ≥ 1 million people ○ Transfer of personal data by data controller who has since 1 January of the preceding year cumulatively provided personal data of 100,000 individuals or sensitive personal data of 10,000 individuals outside of China
Outbound transfer when government approval is not needed	<p>If government approval is not needed, outbound transfer of personal data may proceed using 1 of the below mechanisms:</p> <ul style="list-style-type: none"> ○ Obtaining certification ○ Entering into standard contract prescribed by Chinese regulator with overseas recipient

2. New Law



Outbound Data From China	Legal Requirements
Important Data	<ul style="list-style-type: none"> ○ Prior Chinese government approval (security assessment) is still required for outbound transfer of Important Data. ○ Important Data are data that may endanger national security, economic operation, social stability, public health, and safety once they are tampered with, destroyed, leaked, or illegally obtained or used illegally. If companies have not been notified by the Chinese government that the data are Important Data or if the data have not been publicly announced as Important Data, companies do not need to obtain government approval for the outbound transfer. ○ Chinese industry regulators have been preparing lists of Important Data.
Personal Information Transferred by Critical Information Infrastructure operators (CIIOs)	<ul style="list-style-type: none"> ○ Prior Chinese government approval (security assessment) is still required for outbound transfer of personal information by CIIOs. ○ Critical Information Infrastructure (CII) are important network facilities and information systems in the industries of public communication and information services, energy, transportation, water conservancy, finance, public services, e-government, national defence, science and technology as well as those that may seriously endanger national security, national economy and the people's livelihood, and public interests in case of damage, loss of function or data leakage.
Employees' Personal Information	<ul style="list-style-type: none"> ○ Necessary outbound transfer of the employees' personal information for implementing cross-border human resources management in accordance with the labor rules and regulations formulated in accordance with China law and the collective contract signed in accordance with China law is allowed without needing to proceed with the 3 Mechanisms.
Personal Information involved in Contract Performance	<ul style="list-style-type: none"> ○ Necessary outbound transfer of personal information for entering into and performing a contract to which the individual is a party, such as those involved in cross-border shopping, cross-border delivery, cross-border remittance, cross-border payment, cross-border account opening, air ticket and hotel booking, processing of visa applications for entering a specific country, and examination services, no longer requires to proceed with the 3 Mechanisms.

Outbound Data From China	Legal Requirements
Small Volume of Non-sensitive Personal Information	<ul style="list-style-type: none"> Outbound transfer of personal information (excluding sensitive personal information) of less than 100,000 individuals each year is allowed without needing to proceed with the 3 Mechanisms.
Sensitive Personal Information	<ul style="list-style-type: none"> Sensitive personal information is personal information that, once leaked or illegally used, can easily lead to the infringement of personal dignity of natural persons or the harm on personal and property safety, including biometrics, religious beliefs, specific identities, medical health, financial accounts, whereabouts, and other information, as well as the personal information of minors under the age of 14. Outbound transfer of over 10,000 individuals' sensitive personal information each year still requires government approval (security assessment). Outbound transfer of less than 10,000 individuals' sensitive personal information each year still requires signing Chinese SCCs or obtaining certification.
Non-Personal Data	<ul style="list-style-type: none"> The outbound transfer of data collected and generated in activities such as international trade, cross-border transportation, academic cooperation, cross-border manufacturing, or marketing which do not contain personal information or Important Data is exempted from the 3 Mechanisms.
Personal Information Originated Outside China	<ul style="list-style-type: none"> If the personal information was originally generated or collected outside of China and was subsequently transferred into China for handling, without introducing personal information or Important Data from China, its outbound transfer from China is exempt from the 3 Mechanisms.
Personal Information of > 100,000 but < 1 Million Individuals	<ul style="list-style-type: none"> Signing Chinese SCCs or obtaining certification is needed for the outbound transfer of personal information (excluding sensitive personal information) of over 100,000 individuals but less than 1 million individuals each year.

Outbound Data From China	Legal Requirements
Personal Information of > 1 Million Individuals	<ul style="list-style-type: none"> ○ Prior government approval (security assessment) is needed for the outbound transfer of personal information of more than 1 million individuals each year.
Personal Information Transferred from South of Chinese Mainland to Hong Kong	<ul style="list-style-type: none"> ○ Companies may enter into the government prepared and issued standard contract (“GBA standard contract”) for the data flow between certain places in the south of Chinese Mainland and Hong Kong. ○ This GBA standard contract can be used regardless of the volume of the outbound data and regardless of whether the outbound data include sensitive personal information. ○ The GBA standard contract does not allow the transfer of Important Data. ○ The GBA standard contract does not allow onward transfer outside Hong Kong. ○ If there is a data breach, the Hong Kong recipient must report the breach (whereas there is no mandatory data breach reporting under current Hong Kong law.)
Data from FTZs	<ul style="list-style-type: none"> ○ The Shanghai, Tianjin and Beijing Free Trade Zone regulators are preparing lists of data that companies operating in the FTZs can transfer outside of China.
Transfer of Data by a Chinese Organization or Individual to a Foreign Law Enforcement or Judicial Body	<ul style="list-style-type: none"> ○ Prior Chinese government approval is needed for a transfer of personal or other data by a Chinese organization or individual to a law enforcement or judicial body outside China.

Any outbound transfer of personal information or sensitive personal information must still meet the following legal requirements:

- The outbound transfer must be necessary
- Proper notice having been given to the individual, and informed, unbundled, proper consents (Separate Consents) having been obtained from the individual
- Data transfer impact assessments having been conducted and records of the assessments being kept for at least three years

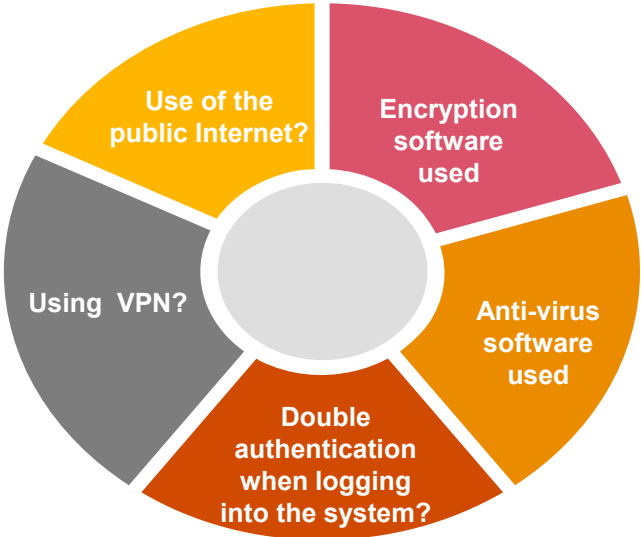
3. Practical Tips

Cross-border Data Transfer Projects

Information Needed

Data	Data Link Provider	Number of Data Links	Data Link IP Address	Data Link Bandwidth
Customer Personal Information	China Telecom (Chinese company providing mobile phone service)	3		100Mb
Employee Personal Information	Data	January 1, 2023 to March 2, 2024	March 3, 2024 to March 2, 2026	
Supplier Personal Information				
Employee Personal Information	Employee Personal Information	About x persons	About x persons	
Customer Personal Information	Customer Personal Information			
Supplier Personal Information	Supplier Personal Information			

Data	Information Technology System in China
Employee Personal Information	[Address]; [IP Address]
Customer Personal Information	
Supplier Personal Information	



Data	Data Center in China
Employee Personal Information	[Address]; [IP Address]
Customer Personal Information	
Supplier Personal Information	

Data	Offshore Information Technology System
Employee Personal Information	[Address]; [IP Address]
Customer Personal Information	
Supplier Personal Information	

Data	Offshore Data Center
Employee Personal Information	[Address]; [IP Address]
Customer Personal Information	
Supplier Personal Information	

Where are the data?

- Data center in China?
- Data directly entered into global systems (with servers outside of China)?
- HR, Sales, etc. departments enter the data?
- Employees enter the data into the systems (e.g. for claiming medical bills and applying for annual leaves)?
- What are the data fields?

How do data flow?

- VPN? Internet?
- Data link IP addresses
- Data link providers
- Number of data links
- Bandwidth
- Names and physical locations of the server rooms and the data centers located inside and outside China
- Which information systems are used for the outbound data inside and outside China?

What is the volume of data?

- Number of employees and GB of data
- Number of customers and GB of data
- Number of other individuals and GB of data
- Expected growth of employees in the next year
- Expected growth of customers in the next year

Necessity requirement met?

- Can customer data be anonymized prior to outbound transfer?
- Is it necessary to transfer bank account details of employees (collected for paying salaries and wages) overseas?
- Is it necessary to transfer employees' health information outside of China?

Separate consents obtained?

- Individuals have been properly informed of the name, contact information, and processing purposes and methods of the overseas recipient; the types of personal information involved; and the methods and procedures for the individuals to exercise their rights to the overseas recipient?
- Separate consents have been obtained?
- Separate consents for onward transfer have been obtained? Onward transfer meets the necessity requirement?

Agreement re cross-border processing activities between China entity and overseas recipient

- Notify the individual of agreement?
- Notify the individual of it being a third party beneficiary?
- Agreement to be provided to the individual?

Impact assessment

- What are the data security technical capabilities, including the security technical measures adopted for the entire process of data collection, storage, use, processing, transmission, provision, disclosure, deletion, etc.?
- What are the data security management capabilities?
- Remediation plan?
- MLPS?

Submission to regulator

- Agreement re cross-border processing activities between China entity and overseas recipient needs to be submitted
- Impact assessment report needs to be submitted (+ kept for at least 3 years)
- Respond to comments from regulators

Approval Documents

Cyberspace Administration of China

Notification of Assessment Results

[Company Name]:

Your company's No. [] application in respect of the security assessment of the proposed outbound transfer of data for human resource management and customer relation management has been received. Upon security assessment based on Cybersecurity Law, Data Security Law, Personal Information Protection Law, Data Outbound Security Assessment Measures and other laws and regulations,

Please strictly implement the responsibilities for data controllers in respect of security for outbound data and the requirements from regulators to ensure the security of the outbound data.

Appendices:

1. List of outbound data for human resource management
2. List of outbound data for customer relation management

Cyberspace Administration of China
Internet Data Administration Bureau
[Date]

Cyberspace Administration of Shanghai

Notification of Outbound Personal Information Standard Contract Recordal

[Company Name]:

The outbound personal information standard contract recordal materials in respect of your company and the overseas recipient [Overseas Recipient Company Name] have been reviewed by our office, have been found to be complete, have passed the review, and are now issued the recordal number [].

Cyberspace Administration of Shanghai
[Date]

4. Liabilities for Non-compliance

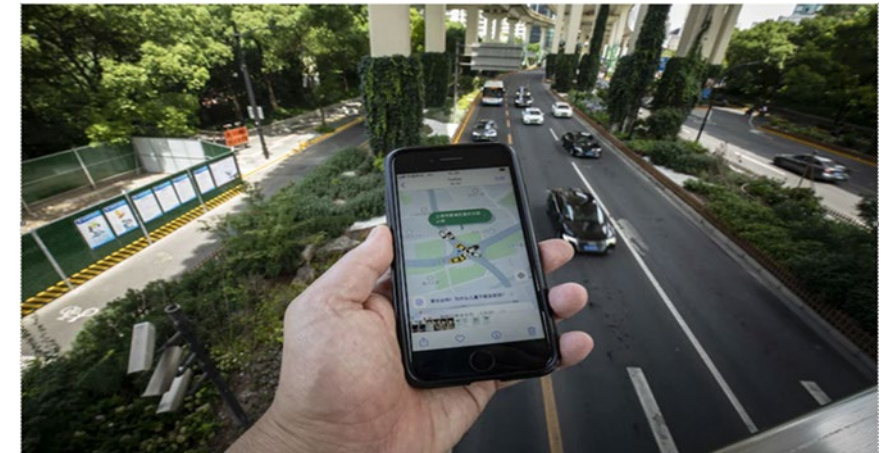
Liabilities for Non-compliance

- Confiscation of income
- Fine up to RMB 50 million or 5% of turnover of the previous year
- Business suspension
- Revocation of business licenses
- Violations recorded into the “credit files”
- Individuals fined up to RMB 1 million + blacklisting
- Damages (reverse burden of proof)
- Criminal prosecution

China Fined Didi USD1.2 Billion for Breaking Data Laws



China fines Didi \$1.2 billion for breaking data-security laws



China's cybersecurity regulator fined ride-hailing juggernaut Didi Global \$1.2 billion after a year-long probe, saying it had violated laws on data security and the protection of personal information.

The Cyberspace Administration of China said Thursday that Didi, a 10-year-old Chinese company based in Beijing, illegally collected 12 million pieces of "screenshot information" from users' mobile photo albums and excessively accumulated 107 million pieces of passenger facial recognition information and 1.4 million pieces of family relationship information, among other violations.

<https://www.washingtonpost.com/world/2022/07/21/china-didi-fine-data-security/>

Many Other Companies Penalized:

Ministry of Public Security: ~ 17,000 criminal suspects arrested in 2021 for violating the PIPL and Data Security Law (7 May 2021)

公安部：2021年共侦办侵犯公民个人信息案9800余起
1.7万名嫌疑人被抓

海报新闻记者 刘璐 北京报道

5月7日，公安部召开新闻发布会，公安部新闻发言人李国忠表示，一年来，维护网络空间安全和网上秩序成效显著。聚焦网上突出违法犯罪和网络乱象，连续组织“净网”专项行动，切实保障数字经济健康发展，维护人民群众合法权益。



Q&A





Thank you !

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