Updates to the China Civil Code Concerning Privacy and Personal Information

FUTURE OF PRIVACY FORUM

1. Background

On May 28, 2020, the National People's Congress (NPC) of China approved the Civil Code of China, the first legislation with the generic name "Code" of the People's Republic of China since the country's establishment. Other civil laws currently in effect will be repealed once the Civil Code goes into effect on January 1, 2021. The text of the new Civil Code is final.

Part 4 of the Civil Code explicitly recognizes the "Right to Privacy" as one of the "Rights of Personality" and includes a chapter on "Privacy and Personal Information Protection." Other categories of rights of personality recognized are life, body and health rights, portrait rights (rights to one's own image), rights of reputation and honor. Read more about the new Chinese Civil Code HERE, HERE and HERE.

In addition, the State Administration for Market Regulation (SAMR) and Standardization Administration of China (SAC) jointly published the Information Security Technology – Personal Information Security Specification (GB/T 35273-2020) (PI Specification) on March 6, 2020 to amend the November 2017 version. The PI Specification will become effective on October 1, 2020.

The PI Specification stipulates a list of voluntary expectations for companies of all sizes to adopt in order to better comply with the Cybersecurity Law (effective June 1, 2017). Notably, the PI Specification explicitly defines "Personal Sensitive Information" and "consent" as well as specifying business functions, conditions of processing information,

and the rights of natural persons with respect to how processors handle personal information.[1]

2. Key Points

2.1.   Overview

The provisions related to the right to privacy and to processing personal information from the Chinese Civil Code seem to have been influenced to a certain extent by the content of the GDPR, considering the broad definition of personal information, the introduction of rights of the data subject such as access, correction and erasure, as well as the introduction of "lawfulness, fairness and necessity" as principles of processing personal information.

The fact that the new rules related to processing personal information are included in a Civil Code means that **they will apply across industries, and in all civil and commercial matters**[2]**.** It also means that breaching them will be a matter of general civil liability, all individuals having a private right of action subject to the liability rules in the Code, that Courts will be called to enforce.

The rules proposed by the new Chinese Civil Code rely heavily on consent. They are a hybrid between "privacy" and "data protection" as understood in European law, in the sense that some of the definitions and the overreliance on consent show a focus on confidentiality and one's intimacy/private life, while other definitions and some of the rights and obligations are inspired by data protection/GDPR/fair information practice principles.

Chapter Six of the Civil Code Part 4 defines privacy as "a natural person's peace of life and the private space, private activities and private information which he/she is unwilling to let others know" (Art. 1032) and lists activities that require consent from data subjects including:

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[1] Personal Sensitive Information (个人敏感信息) means "personal information, once leaked illegally provided, or abused, can threaten personal and property security and/or easily cause personal reputational damage, physical and mental health damage, or discrimination." A note to the definition includes examples such as identity card numbers, biometric information, bank account numbers, communication records and contents, property information, credit information, location data, accommodation information, health and physiological information, transaction data, and the PI of children 14 years of age or under." See. Mingli Shi et al. *Translation: China's Personal Information Security Specification,* New America (2019), https://www.newamerica.org/cybersecurity-initiative/digichina/blog/translation-chinas-personal-information-security-specification/

[2] Generally, in all "Civil Law" legal systems (e.g. France, Germany, Romania, Italy, The Netherlands, the Canadian Region of Quebec), the rights laid out in a Civil Code belong to individuals as "natural persons" regardless of whether they are consumers, employees, tax payers, or minors, and they apply as the default general law, unless there are special laws that take precedence. They are also enforceable against any natural or legal person that infringes them.

- Disturbing people's private lives through telephone, text message, instant messaging tools, email, leaflets (Art. 1033);
- Entering, peeping or recording other people's private space such as houses and hotel rooms (Art. 1033);
- Eavesdropping and publicizing other people's private activities (Art. 1033);
- Processing private information of other people (Art. 1033).

2.2. *Personal Information – Definition and Processing Obligations*

Personal Information

➢ The Civil Code extends provisions in the Cybersecurity Law with respect to personal information by expanding its definition and adding principles and obligations for data processing.

1. **Definition:** Chapter Six defines Personal Information broadly: "all types of information recorded electronically or in other ways that can identify a specific natural person alone or in combination with other information," including the natural person's name, date of birth, ID number, biometric information, address, telephone number, email address, and health information, geolocational information, etc. (Art. 1034).

2. **Principles of Processing**: Collecting, storing, using, transmitting, providing and publicizing personal information requires:
   - Obtaining consent from the data subject or his/her guardian, unless other provided by laws and regulations (Art. 1035).
   - Publicizing the rules of processing the information (similar to data security standard currently drafted in the NPC) (Art. 1035).
   - Expressing the purpose, method and scope of processing the information (Art. 1035).
   - Not violating any other laws or regulations or agreements between the parties (Art. 1035).

3. **Rights of the data subject**: Chapter six also stipulates rights of the "information subject" and obligations of the "information handles" including preserving the confidentiality of personal information. Information subjects will have a right to "inquire about" or "copy" their personal information, to correct it and even a right to delete the personal information if it has been processed unlawfully.

4. **Exemptions for civil liability:** The information processor is exempted from civil liability when it:
   - obtains consent (Art. 1036).
   - processes information that is already public unless the data subject explicitly rejects the processing of said information or doing so infringes upon the significant interests of the natural person (Art. 1036).

- processes information that reasonable maintains a public interest or legal interest of the natural person (Art. 1036).

2.3. *Information Security Obligations*

- The Civil Code also imposes information security obligations on information processors. Specifically, it requires that processors take "technical and other necessary measures" to ensure that personal information it collects, and stores are secure.
- The code does not detail what these measures mean but other laws such as the Cybersecurity Law provide some regulatory guidance.
- The Ministry of Industry and Information Technology (MIIT) recently released the *Guidelines for the Development of Data Security Standard System for Telecommunications and Internet Industry* which may further clarify the "technical and other necessary measures" requirement.

3. Translation of the relevant articles

Chinese	English
第一千零三十二条　自然人享有隐私权。任何组织或者个人不得以刺探、侵扰、泄露、公开等方式侵害他人的隐私权。 隐私是自然人的私人生活安宁和不愿为他人知晓的私密空间、私密活动、私密信息。	**Article 1032:** Natural persons have the right to privacy. No organization or individual may infringe the privacy rights of others by spying, harassing, divulging, disclosing, etc. Privacy is the tranquility of a natural person's private life and the private space, private activities, and private information that others do not want to know.
第一千零三十三条　除法律另有规定或者权利人明确同意外，任何组织或者个人不得实施下列行为： （一）以电话、短信、即时通讯工具、电子邮件、传单等方式侵扰他人的私人生活安宁； （二）进入、拍摄、窥视他人的住宅、宾馆房间等私密空间； （三）拍摄、窥视、窃听、公开他人的私密活动； （四）拍摄、窥视他人身体的私密部位； （五）处理他人的私密信息；	**Article 1033:** Unless otherwise provided by law or with the express consent of the right holder, no organization or individual may perform the following actions: (1) Infringe on the peace of other people's private lives by telephone, text messages, instant messaging tools, emails, leaflets, etc.; (2) Entering, filming, and peeping into private spaces such as other people's residences and hotel rooms; (3) Photographing, spying, eavesdropping, and disclosing the private activities of others; (4) Photographing and peeking into the private parts of others' bodies;

（六）以其他方式侵害他人的隐私权。	(5) Handling the private information of others; (6) Infringe on the privacy of others in other ways.
第一千零三十四条 自然人的个人信息受法律保护。个人信息是以电子或者其他方式记录的能够单独或者与其他信息结合识别特定自然人的各种信息，包括自然人的姓名、出生日期、身份证件号码、生物识别信息、住址、电话号码、电子邮箱、健康信息、行踪信息等。 个人信息中的私密信息，适用有关隐私权的规定；没有规定的，适用有关个人信息保护的规定。	**Article 1034:** The personal information of natural persons is protected by law. Personal information is all types of information recorded electronically or in other ways that can identify a specific natural person alone or in combination with other information, including the natural person's name, date of birth, ID number, biometric information, address, telephone number, email address, and health Information, geolocational information, etc. For personal private information, regulations concerning privacy rights shall apply; if there are no regulations, regulations concerning personal information protection shall apply.
第一千零三十五条 处理个人信息的，应当遵循合法、正当、必要原则，不得过度处理，并符合下列条件： （一）征得该自然人或者其监护人同意，但是法律、行政法规另有规定的除外； （二）公开处理信息的规则； （三）明示处理信息的目的、方式和范围； （四）不违反法律、行政法规的规定和双方的约定。 个人信息的处理包括个人信息的收集、存储、使用、加工、传输、提供、公开等。	**Article 1035**: The processing of personal information shall follow the principles of lawfulness, fairness and necessity, shall not be done excessively, and shall meet the following conditions: (1) Be based on the consent of the natural person or his guardian, except as otherwise provided by laws and administrative regulations; (2) Respect the rules for publicly handling information; (3) Clearly state the purpose, method and scope of information processing; (4) Do not violate the provisions of laws, administrative regulations and the agreement between the parties. The processing of personal information includes the collection, storage, use, processing, transmission, provision, and disclosure of personal information.
第一千零三十六条 处理个人信息，有下列情形之一的，行为人不承担民事责任：	**Article 1036**: The perpetrator shall not bear civil liability when handling personal information in any of the following circumstances:

（一）在该自然人或者其监护人同意的范围内合理实施的行为； （二）合理处理该自然人自行公开的或者其他已经合法公开的信息，但是该自然人明确拒绝或者处理该信息侵害其重大利益的除外； （三）为维护公共利益或者该自然人合法权益，合理实施的其他行为。	(1) When [the information is] reasonably processed within the scope of the consent of the natural person or his guardian; (2) When the information is disclosed or has already been publicly disclosed by the natural person on his own, except when the natural person explicitly refuses or when the handling of the information infringes his major interests; (3) When other acts are reasonably performed in order to protect the public interest or the legal rights and interests of the natural person.
第一千零三十七条 自然人可以依法向信息处理者查阅或者复制其个人信息；发现信息有错误的，有权提出异议并请求及时采取更正等必要措施。 自然人发现信息处理者违反法律、行政法规的规定或者双方的约定处理其个人信息的，有权请求信息处理者及时删除。	**Article 1037**: Natural persons may inquire about or obtain a copy of their personal information from information processors in accordance with the law; if they find errors in the information, they have the right to raise objections and request timely corrections and other necessary measures. If a natural person discovers that the information processor violates the provisions of laws, administrative regulations, or the agreement between the parties to process his personal information, he has the right to request the information processor to delete it in time.
第一千零三十八条 信息处理者不得泄露或者篡改其收集、存储的个人信息；未经自然人同意，不得向他人非法提供其个人信息，但是经过加工无法识别特定个人且不能复原的除外。 信息处理者应当采取技术措施和其他必要措施，确保其收集、存储的个人信息安全，防止信息泄露、篡改、丢失；发生或者可能发生个人信息泄露、篡改、丢失的，应当及时采取补救措施，按照规定告知自然人并向有关主管部门报告。	**Article 1038**: "Information handlers"[3] must not disclose or tamper with the personal information they collect and store; they must not illegally provide their personal information to others without the consent of a natural person, except for those that cannot identify a specific individual after processing and cannot be restored. Information processors shall take technical measures and other necessary measures to ensure the safety of the personal information they collect and store, and prevent information leakage, tampering, or loss; where personal information leakage,

[3] While the PI Specification defines "personal data controller" (个人信息控制者), it notably does not recognize the role of information processor as an entity providing a service that processes data on behalf of the controller. In addition, the Civil Code does not anywhere use the term "personal data controller" but instead refers to the "handling" (处理) of information.

	tampering, or loss occurs or may occur, remedial measures shall be taken in a timely manner by following requirements to notify natural persons and report to relevant competent authorities.
第一千零三十九条　国家机关、承担行政职能的法定机构及其工作人员对于履行职责过程中知悉的自然人的隐私和个人信息，应当予以保密，不得泄露或者向他人非法提供。	**Article 1039**: State agencies, statutory bodies undertaking administrative functions, and their staff shall keep confidential the privacy and personal information of natural persons learned in the course of performing their duties and shall not disclose or illegally provide them to others.

Disclaimer: *This translation is made by FPF and should not be used for legal advice. Further knowledge and analysis are needed to understand how the information privacy language and concepts of the Civil Code will be effective in practice and how do they interplay with the Standard Security Specification.*

4. Other Recent Legislative and Regulatory Developments

1. Data Security Law and Standards ([forthcoming](#))
2. Personal Information Protection Law (forthcoming)
3. China's Personal Information Security Specification (amended March 2020) (English translation available: [here](#))
4. Personal Financial Information Protection Technical [Specification](#) (2020)
5. China's Encryption [Law](#) (2020)
6. Personal Information Outbound Transfer Security Assessment Measures [Draft] (2019)
7. Cybersecurity [Law](#) (2017)
8. Consumer Protection [Law](#) (2012)

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