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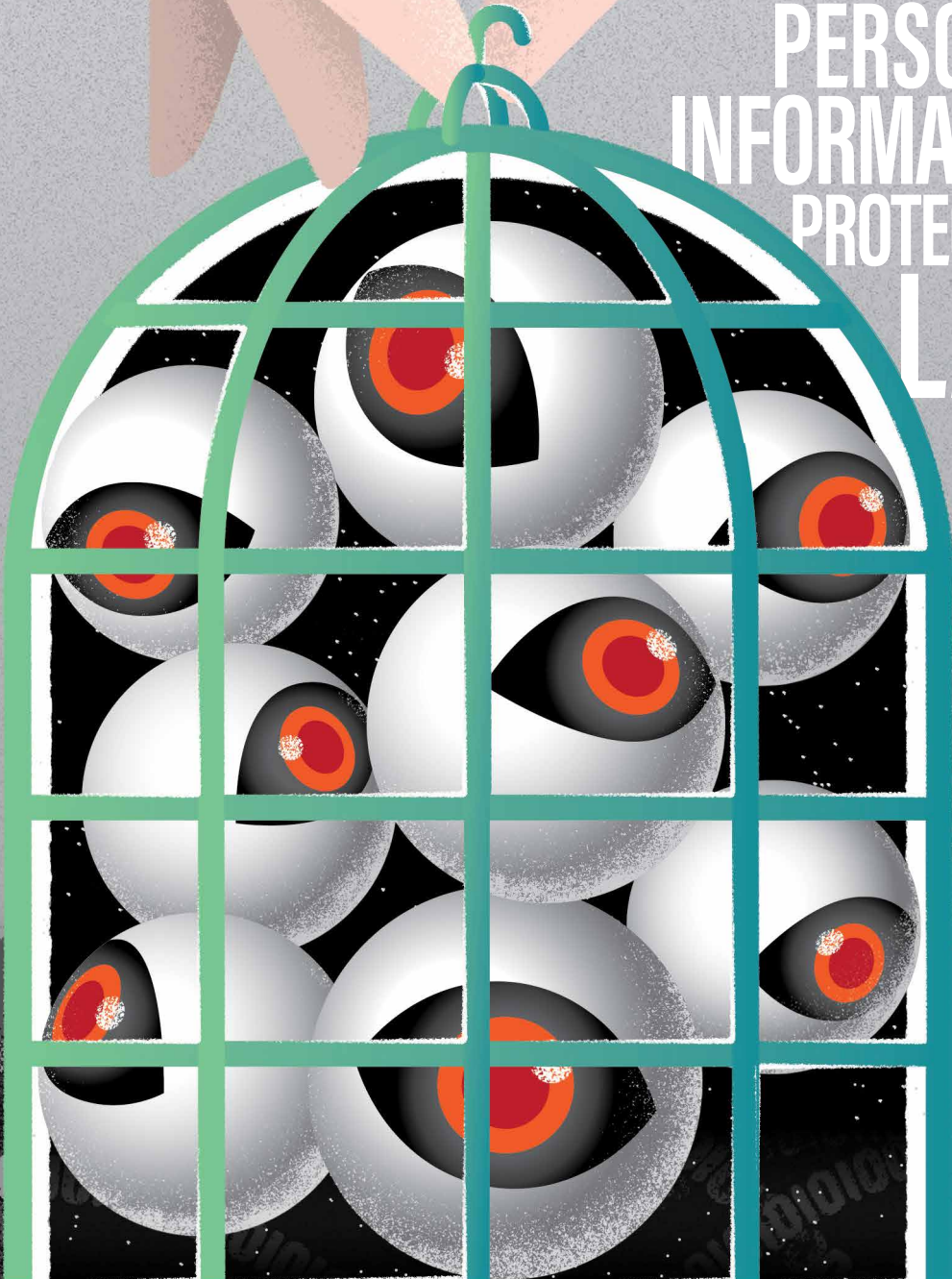
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PERSONAL INFORMATION PROTECTION LAW



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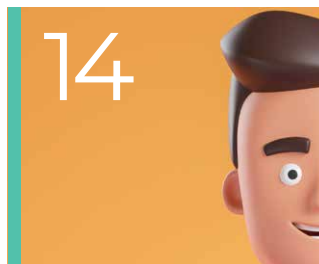
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President's Foreword

Data: the harsh realities of controlling the world's newest commodity

The importance of data today cannot be overstated. In the 14th Five-year Plan, data—to some, the 'oil of the 21st century'—is now defined as a fifth factor of production, alongside land, labour, capital and technology. While data must circulate fluidly to maximise value, the flow must also be regulated to varying degrees, depending on the source. For this reason, China is attempting to structure its data market to allow for careful control of the selling, buying, sharing and usage of data.

Personal data is one of the most valuable but challenging forms of data to protect. This factor informed the development and implementation of the European Union's General Data Protection Regulation (GDPR), which sets standards on the collection and processing of data from a privacy protection perspective. China, meanwhile, is creating a categorisation system to protect all data that affects, or might affect, national security and public safety, with privacy just one aspect of this mechanism.


Personal data provide deeper insights into consumer behaviour, trends and preferences, which enhances companies' ability to meet demand. This is particularly the case for those that accumulate personal data for research and development into applications and services for autonomous vehicles, healthcare solutions and financial tools, among others. However, big data pooling and collaborative analytics also has the potential to infringe upon individuals' privacy rights. To avoid this, in today's globalised economy, any framework that allows for the commercial exchange of data must harmonise with other international legal frameworks.

One competitive advantage that many European companies hold in China is their ability to leverage their global systems. However, this is increasingly being challenged by vague definitions of what constitutes transferable data in China, in tandem with the government's push for localisation as its definition of 'national security' develops.

These invisible market access barriers not only cause many Chamber members to take a more conservative approach to ensure compliance, they also prove costly. Potential tangible costs include having to switch from foreign data centre, cloud, network and communication services partners to Chinese providers to avoid future issues. Then come the less tangible costs – too much network localisation can lead to interoperability issues. Coupled with data governance rules, this hampers the transfer of data overseas, which could negate many foreign companies' competitive edge.

This is compelling many European companies to create 'island solutions', effectively decoupling their China operations from their global ones in order to comply with domestic rules. To achieve this, complex operational changes are required, not only moving data but also mapping how applications are connected and secured locally, and adapting business plans to the new requirements.

As data processing technologies proliferate, so do companies' and governments' abilities to contextualise and draw new insights from that data. China's Corporate Social Credit System will require companies to transmit data to the government, including personal data, more frequently and in greater volume. Information technology (IT) infrastructure will be subject to rigorous audits to verify the quality of data for 'national security' purposes. This raises a concern for companies that have given assurances to customers regarding personal information protection globally. European companies would therefore be advised to ensure that their IT systems in China do not contain more data than is strictly required to do business here.

The Chamber stands ready to facilitate constructive discussion between Chinese and European authorities and our members on this complex and rapidly changing situation. We need to not only mitigate costs and reduce disruptions, but also prevent European companies from being forced to exit the market altogether. 



Jörg Wuttke

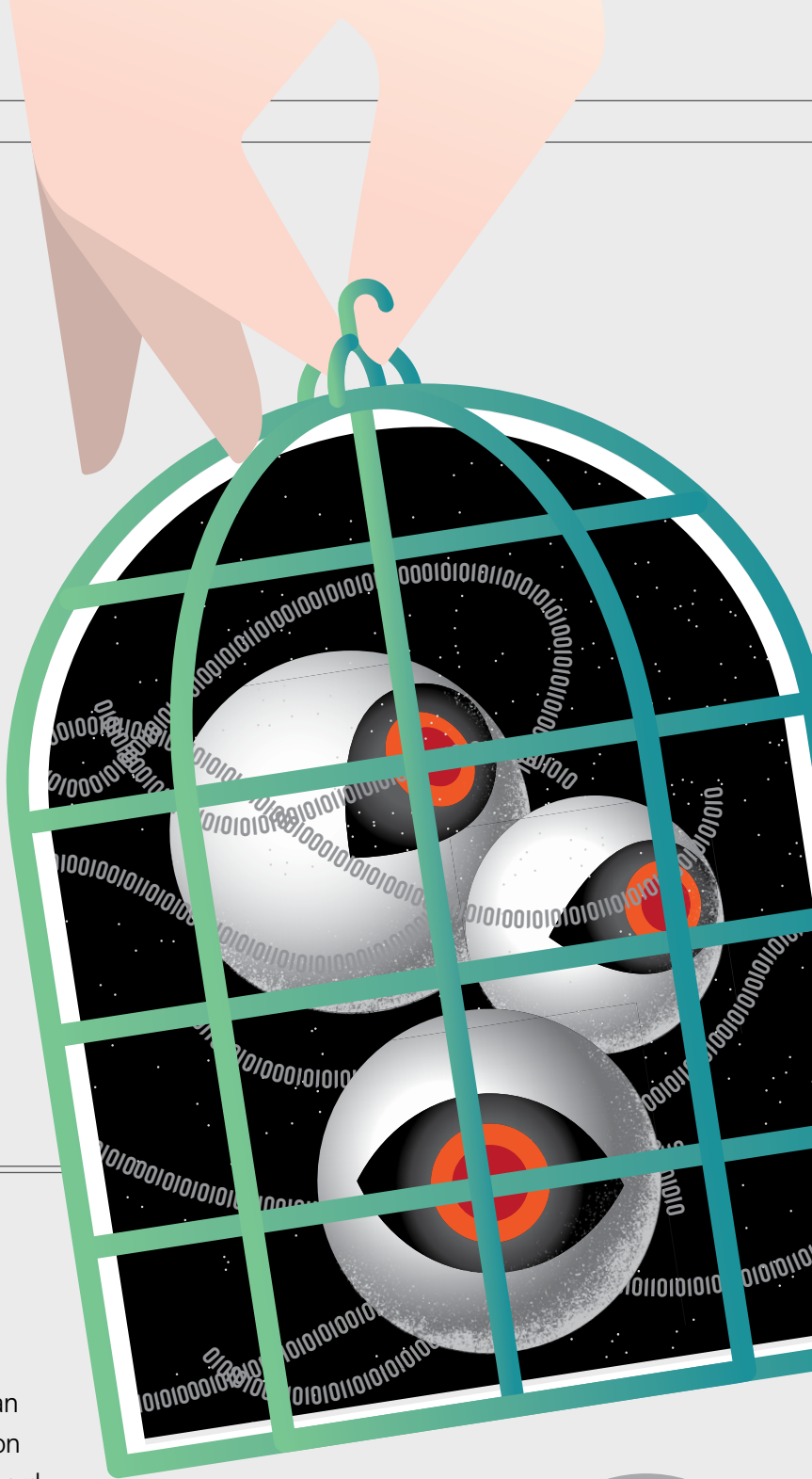
President

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CHINA'S PERSONAL INFORMATION PROTECTION LAW IS ON THE WAY

Is your organisation ready?
by **Mark Parsons** and
Sherry Gong

On 29th April 2021, China's National People's Congress released the second consultation draft of the Personal Information Protection Law (PIPL), with public comments closing on 28th May 2021. Drawing extensively from the European Union's (EU's) General Data Protection Regulation (GDPR), the PIPL will represent a huge leap forward for data protection in China, being the country's first comprehensive personal data protection law. For multinationals, the PIPL will significantly affect personal data processing activities in China, and impact all businesses that either offer goods and services in China or monitor data subjects in China from offshore. This article by **Mark Parsons** and **Sherry Gong** of **Hogan Lovells** presents a list of 'must-do' items for multinationals to deal with the new requirements if the final PIPL is promulgated 'as is' in the latest draft.



Data mapping and review of the lawful basis for processing

For multinationals that process personal information within the scope of the PIPL, it is time to conduct a ‘data mapping’ exercise, a task that may be familiar from GDPR implementation planning. Data mapping involves surveying the organisation’s personal data holdings to understand what personal information it collects and how the data is used, stored, processed, transferred and disclosed. Analysis to determine which regulatory requirements apply is then carried out. One critical part of this exercise is to review the legal basis for personal-data processing activities.

The draft PIPL takes consent as the principal basis for processing personal data, but with specific limited exemptions for:

- the conclusion or performance of contracts with data subjects;
- compliance with applicable laws;
- public health and public-interest processing;
- use of publicly-available information “within a reasonable scope”;¹
- conducting news reports, public opinion supervision and other acts in the public interest within a reasonable scope; and
- other circumstances stipulated by laws and regulations.

Practicalities of obtaining consent

The PIPL defines consent in very general terms as being fully informed and voluntary. Clarification through

more detailed language in the PIPL and/or implementing measures would greatly assist in understanding specific requirements. As discussed in more detail below, a number of provisions in the PIPL call for a separate (“unbundled”) consent for specific types of processing, making the mechanics of obtaining consent especially critical.

Disclosure and informed consent

Personal information processors (‘PI processors’, roughly equivalent to ‘data controllers’ under EU law) are required to inform people of contemplated data processing activities in full and comprehensive terms before collecting their personal data. This is normally done by publishing a privacy policy on official platforms, such as official websites and mobile applications. The PIPL stipulates that privacy policies should be written in plain language and presented in an easily-accessible and reader-friendly manner, which strongly implies that simplified Chinese should be used. As reference, regulations applicable to mobile applications in China require a simplified Chinese version of the privacy policies.

Form of consent

As noted, further clarification on the standard of consent is needed. The non-binding national standard *Information Security Technology – Personal Information Security Specification* (National Standard GB/T 35273-2020), for instance, provides examples of “explicit consent” that could also be applied to the PIPL. In addition, the PIPL requires “separate consent” for

the processing of sensitive personal data. Due to the broad scope of sensitive personal data under the PIPL, there is a risk that a proliferation of separate, ‘unbundled’ consents may be required. Significantly, existing Chinese mobile apps regulations require prior explicit consent irrespective of whether sensitive personal data is processed.

Drawing from *National Standard GB/T 35273-2020*, a valid explicit consent would be considered to have been obtained if data subjects explicitly authorise it by clicking an empty box to indicate affirmation of a statement such as “I agree”, “register”, “continue” or “send”, or submitting information by online form.

The draft PIPL requires separate/unbundled consent in the following situations:

- transfer of personal data by data controllers to third parties (Article 24);
- publication of personal data (Article 26);
- publication or provision of personal data collected by equipment installed in the public places for security purposes, such as personal images (Article 27);
- processing of sensitive personal data (Article 30); or
- cross-border transfers of personal data (Article 39).

Under the draft PIPL, consent would apparently be revocable. In addition, PI processors would not be permitted to refuse to provide products or services if the data subject withholds or withdraws his or her consent to non-essential processing. This will pose significant challenges to China’s internet economy, which—as is the case in the rest of the world—thrives on the monetisation of personal data through targeted advertising networks, data analytics and data-sharing arrangements.

¹ There is as yet no guidance on the meaning of “reasonable scope”, other than the stipulation that processing of publicly-available personal information should not substantially deviate from the primary purpose of publication of the information.

Cross-border transfer review process

The draft PIPL regulates international transfers of personal data on the basis that those which are either: (i) made by an CIIO; or (ii) involve a volume of data that meets or exceeds materiality thresholds yet to be set by the CAC, would require an official security assessment. Transfers that do not meet these thresholds could either obtain certification by an accredited third-party institution or enter into standard contractual clauses (SCCs) to be formulated by the CAC. If a PI processor needs to transfer personal data outside of China, it should:

- evaluate if it is a CIIO. If yes, it should follow the security assessment requirements yet to be promulgated; and
- evaluate if its data processing activities involve a volume of data that meets or exceeds the CAC's materiality thresholds. If yes, it should follow the security assessment requirements.

If neither apply, the PI processor should consider certification or the use of SCCs.

Review data breach reporting policy and practice

The draft PIPL would require organisations to notify relevant authorities and impacted individuals of data leakage incidents. Organisations would not be required to notify of breaches for which remedial measures may be taken without harm to individuals. However, the thresholds that will trigger reporting obligations and the report requirements are still not clear.

Extraterritorial application

Existing Chinese data protection and cybersecurity legislation has typically applied on a territorial basis, applying only to business operations within Mainland China. The draft PIPL would track the GDPR's extraterritorial application in cases where offshore data collection and processing activities are for the purpose of: (i) providing services or products to individuals resident in China; or (ii) analysing or evaluating the behaviour of individuals resident in China. It also allows for further extensions of extra-territoriality, where laws or administrative regulations stipulate that this is the case.

Multinationals conducting the aforementioned offshore data processing activities must establish an agency or appoint a representative in Mainland China responsible for administering the applicable requirements under the law.

Enhanced requirements applicable to "basic internet platform operators"

The PIPL proposes to introduce a set of enhanced obligations for PI processors that operate "basic internet platform services" that have "complex business models" serving "massive" numbers of users. No materiality threshold or criteria as to "complexity" have been set in the draft law. The obligations on these platform operators include: (i) establishing an independent steering committee to oversee personal information processing activities; (ii) suspending services to product/service providers in serious violation of data protection laws; and (iii) issuing regular social responsibility reports on the processing of personal information.

Accountability under the PIPL

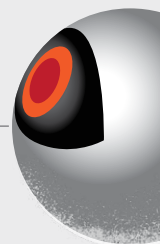
The draft PIPL would introduce a number of accountability measures similar to those introduced under the GDPR. PI processors would be required to:

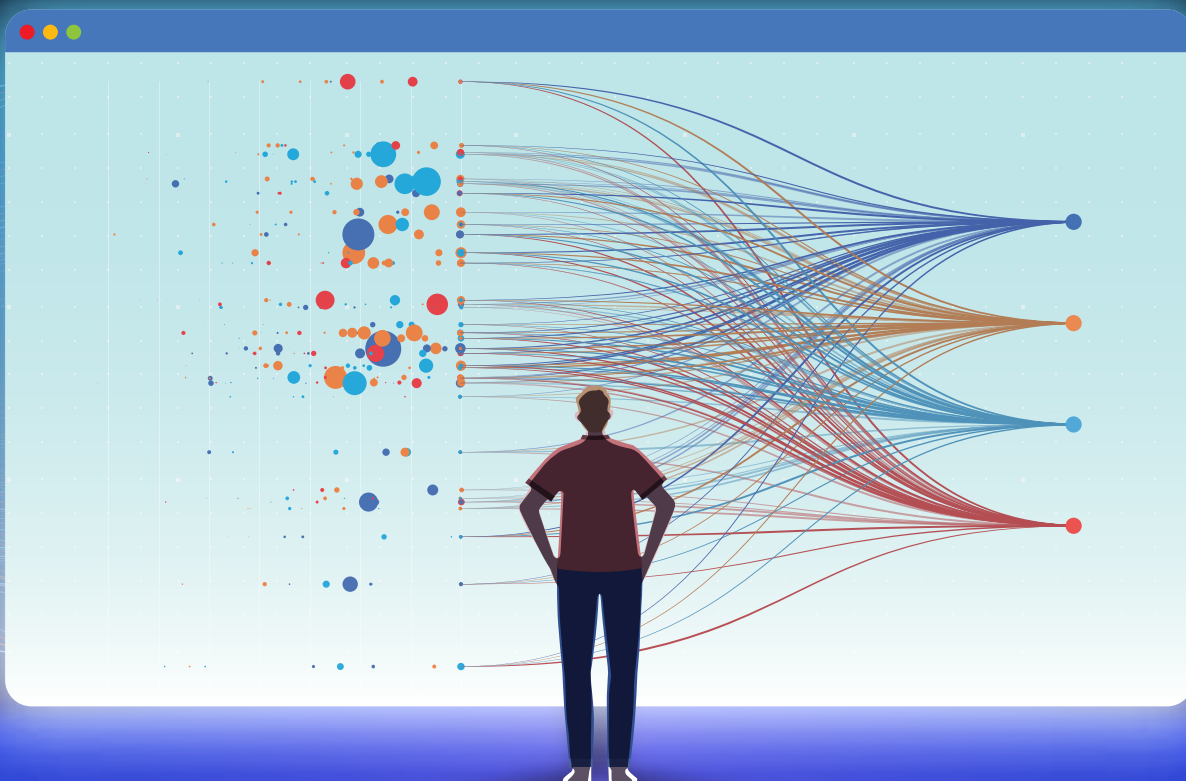
- adopt necessary security measures in accordance with internal policies and procedures to safeguard the personal data they process;
- designate a data protection officer to take charge of personal data processing activities if the volume of data being processed reaches a certain threshold;
- conduct regular audits on data processing activities; and
- carry out risk assessments before conducting high risk data processing activities, such as the processing of sensitive personal data and cross-border transfer of personal data.

What should organisations do now?

Multinationals are recommended to engage closely with their industry regulators, as well as with the CAC and other relevant regulators, to ensure that they are on top of requirements. Organisations should also commence data-mapping exercises immediately if they have not done so already. Whatever the specific requirements of the PIPL, the clear general direction is towards introducing data accountability as an organisational practice in China. In many respects, then, the journey has only just begun. **EB**

Being one of the largest foreign law firms on the ground in China, **Hogan Lovells** understands the country's complex and evolving cultural and regulatory environment. From Shanghai to Beijing and beyond, their market-leading corporate; intellectual property; regulatory; and litigation, arbitration, and employment teams are ready to assist.





Data Governance

Paving the way for the future

By **Isabelle Hajjar**

From 2010 to 2020, the amount of data worldwide increased from a mere two zettabytes¹ to 64.2 zettabytes,² representing a growth of over 3,000 per cent. It is expected to grow to 175 zettabytes by 2025.³ The data economy represented 2.6 per cent of European Union (EU) gross domestic product (GDP) in 2019. Estimates predict that it will increase to four to six per cent of the EU's overall GDP by 2025 (circa euro (EUR) 829 billion).⁴ As for China, estimates are that the data economy will reach 55 per cent of its GDP by 2025.⁵ Of course, these numbers are to be taken with a pinch of salt, and, as the valuation methods and basis are different, face-value comparison would make no sense. Still, as **Isabelle Hajjar** of **TekID** explains, they are representative of the growing—if not crucial—importance of the data economy.

As coined by the digital community, 'the age of data is here'.

¹ One zettabyte is approximately equal to a billion terabytes, or a trillion gigabytes.

² Statista, subscription service, <<https://www.statista.com/statistics/871513/worldwide-data-created/>>

³ Data Age 2025, IDC report, sponsored by Seagate Technology

⁴ The European Data Market Monitoring Tool, datalandscap, <<https://datalandscape.eu/european-data-market-monitoring-tool-2018>>

⁵ Kendra Schaefer, Data factors, China's new thinking on data policy, Trivium China, presentation at EU SME Centre and European Chamber policy meeting on data governance, 28 June 2021.

The datacracy, or running wild with data

With the 'all digital' drive charging full speed ahead, the global data market has shown itself to be a classic case of asymmetric data collection and use, as well as moral hazards, emphasised by the data-hoarding habits of organisations, public and private alike.

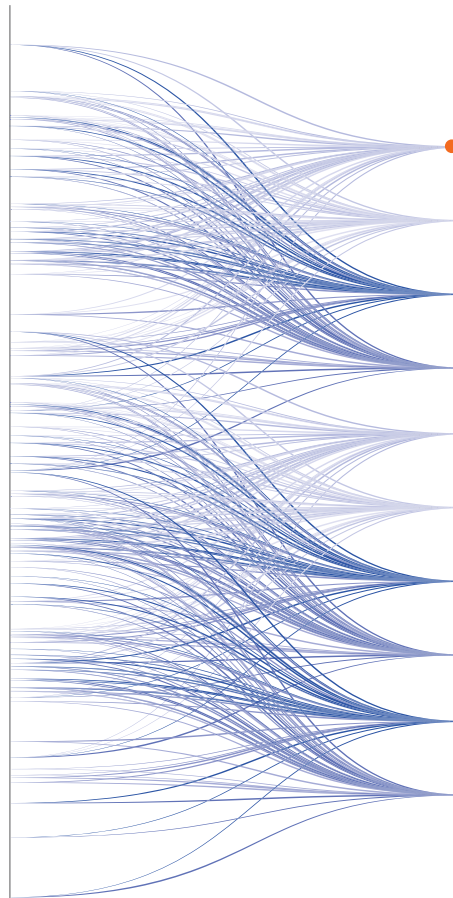
To cite only a few of the most publicised scandals and controversies: the Facebook-Cambridge Analytica scandal affecting millions of the platform's users in the midst of a political campaign; IKEA spying on its employees; IBM's photo-scraping to enhance face recognition; Google's Nightingale project with extraction of real-time health data without consent; Waymo vs. Uber artificial intelligence (AI) trade-secret lawsuit relating to self-driving cars; Uber spying on everyone; Target's pregnancy predictions through buying habits; Microsoft's 'Tay' bot tweeting hateful and racist content; COVID-19-related tracing apps – the list is endless.

While digitisation and data can present chilling dangers, they also are the lifeblood of economic and societal development. In this respect, China and the EU came to the same conclusion: there is an urgent need for foundational data governance for the years to come, which will be pivotal to ensuring a digital dividend to everyone in a healthy data environment.

The rise of data governance

After decades of unbridled data hoarding and use, how does one ensure that everyone will reap the benefits of the data market, while also curbing its unhealthy and unethical aspects?

⁶ A European strategy for data, COM (2020) No. 66, 19th February 2020.



While digitisation and data can present chilling dangers, they also are the lifeblood of economic and societal development.



Well...through data governance. The pressure to regulate how data is used is only increasing and data-related regulations continue to gain traction, showing no signs of slowing down across the globe, with the EU and China leading the charge.

Data governance is not a new concept, but designing and enforcing rules that will resist the test of time in a world of digital transformation, while ensuring that economic growth and the protection of society and individuals will not be at odds, is understandably difficult.

The difficulties ahead for data governance

- Data must flow: the value of data lies in its mobility. It must

be made available across the board (government-to-business, business-to-business, business-to-government, government-to-government);

- Data hoarding without sharing, data monopolies (such as large online platforms), further creating power imbalances between players and market distortions;
- Data interoperability and quality: poor quality and classification differences create significant interoperability issues, impeding combination of data from different sources;
- Data infrastructures and technologies: digital transformation depends on secure, efficient, affordable and high-quality data processing capacities;

- Individual rights: securing the rights of individuals on their personal data and providing them with easy ways to exercise those rights proves difficult (lack of tools, burdensome procedures, and so on);
- Data value and ownership: determining ownership and modelling data value are a real headache;
- Skills and data literacy: no secret here, there is a critical skills shortage in the information and communication technology (ICT) sector at large, digital literacy in the general population is still low;
- Cybersecurity: the power of data cannot be unleashed without security;
- Fragmentation: countries or regions have historically had very different approaches to regulating data, ICT, cybersecurity, among others.

The European way

The EU has devised strategies to tackle the data challenges. One of them is the EU data strategy,⁶ which is part of the larger Digital Single Market Strategy. Indeed, making Europe fit for the digital age is one of the European Commission's six political priorities.⁷

The EU data strategy requires a strong, common data governance that will ensure Europe's global competitiveness and data sovereignty, i.e., moving from individual national markets to one single EU-wide data rulebook. Without common data governance, there will be no single data market, but instead stunted EU economic growth and competitiveness.

The grounding principle is that data is no longer just a by-product of technology: it is about "a society empowered by data to make better decisions, and it must place the interests of the individual first, in accordance with European values, fundamental rights and rules".^{8&9}

How does this translate in concrete measures?

Well, the EU Data Strategy is built on four pillars, with the welfare of humans at the centre.

The first pillar consists of horizontal governance: a cross-sectoral governance framework for data access, use and security. A flurry of regulations has already been enacted (such as the famed General Data Protection Regulation, the regulation on the free flow of non-personal data, the Open Data Directive, the Cybersecurity Act, the Network and Infrastructure Directive) and with more in the works (the proposed Data Governance Act).


The second pillar concerns 'enablers': EUR 2 billion-worth of investments in data and strengthening capabilities and infrastructure for hosting, processing, use of data and interoperability.

The third pillar consists in empowering individuals, investing in skills and in small and medium-sized enterprises.

The fourth pillar aims to create 'common European data spaces' in strategic sectors and domains of public interests,¹⁰ thereby boosting data mobility. The aim is to enable pooling of data from public bodies, business and citizens for safe and fair use for the common good, with structures set up to enable data sharing, supported by the concept of 'data altruism'.

As to AI, the EU is also progressing fast, with the recent and first-ever legal framework proposal on AI—again, human-centric, aligned with EU rules, values and fundamental rights—aiming at giving citizens confidence in AI systems.¹¹

The framework takes a risk-based approach, with four different levels: (1) AI or use of AI considered unacceptable, which shall be banned; (2) high-risk AI systems subject to strict obligations before they can be put on the market; (3) limited risk AI systems with specific transparency obligations; and finally (4) minimal risk systems, which can be used freely.

Data governance is indeed on the rise, paving the way for the coming decades and trying to balance the need to support economic growth and the protection of individuals and society at large. Hopefully, it will succeed, though we will all need to be watchful participants. 



Isabelle Hajjar is the head of Compliance Cybersecurity and Privacy for **TekID**, a digital security consulting firm, focussing on identifying and tackling the risks an organisation faces in the digital sphere. With a tri-expertise in legal and compliance, information security and operation, and with a forensics lab, TekID provides a holistic approach to digital security with applicable and comprehensive solutions.

⁷ The other political priorities of the EU being 'A European Green Deal', 'An economy that works for people', 'A stronger Europe in the world', 'Promoting the European way of life' and 'A new push for European democracy'.

⁸ A European strategy for data, COM (2020) No. 66, 19th February 2020.

⁹ These values and fundamental rights being respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, Article 2 of the Treaty of the European Union (TEU), and additionally, non-discrimination, the right to the protection of personal data, and the right to get access to justice, Charter of Fundamental Rights.

¹⁰ Nine initial Common European data spaces have been identified: industrial, green deal, mobility, health, financial, energy, agriculture, public administrations and skills.

¹¹ Proposal of regulation for 'harmonised rules on AI' (Artificial Intelligence Act), 21st April 2021.

Are data exports from China about to get easier?

Chinese standard contractual clauses and their potential impact on your business

By **Linklaters Zhao Sheng**

Concerns about data localisation and restrictions on cross-border data transfers remain some of the most pressing for international organisations operating in Mainland China. **Linklaters Zhao Sheng** explores whether data transfers are poised to get easier under imminent reforms to the domestic privacy regime.

European angle

The European Union's (EU's) standard contractual clauses (SCCs) have proved to be the most practical solution for multinationals conducting cross-border transfers of personal information from the EU in compliance with the bloc's General Data Protection Regulation (GDPR). New versions of the EU SCCs came into effect on 25th June 2021 to reflect refinements needed following the Schrems-II case in the European Court of Justice in 2020.

This overhaul of the EU SCCs is timely. Mainland China's legislature has long looked to the EU for reference in reforming its data protection regime, and the first comprehensive data privacy law for the world's second largest economy, the Personal Information Protection Law (PIPL), is expected to be finalised in August and become effective by year-end. One of the key mechanisms for cross-border transfers of personal information

in accordance with the PIPL is set to be a contract based on a standard form prepared by the Cyberspace Administration of China (CAC).

A little history

The GDPR recently celebrated its third birthday, having come into effect on 25th May 2018. However, borrowing its so-called 'model contracts' as a means of exporting personal information is an idea Mainland Chinese legislators have had since the GDPR's infancy. Back in June 2019, the CAC released the draft *Measures on Security Assessment of Cross-border Transfer of Personal Information*, which prescribed certain obligations and other terms that must be clearly provided for in a legally-binding document signed between the onshore sender and the offshore recipient of personal information.

These requirements, which remain very similar to the key terms in the new EU SCCs, include:

- the purpose of the transfer, type



and retention period of the relevant personal information;

- that the data subject be the beneficiary of the terms of the contract, including its stated rights and interests;
- the data subject's right to claim compensation from the data sender or the recipient, or both, for a breach of those rights and interests;
- that the contract will be terminated if a change in law in the transferee country makes performance of the contract "difficult";
- that the responsibilities of the data sender and recipient will not cease on termination of the contract unless the personal information is deleted or anonymised;
- various obligations of the data sender, such as forwarding claims from a data subject to the data recipient but remaining liable to pay compensation to the data subject where loss has been suffered; and
- various obligations of the data recipient, such as warranting compliance of the contract with local laws in the recipient's jurisdiction.

This legislative history and comments from industry suggest that the forthcoming Chinese SCCs will be modelled on that of the EU. Multinationals and other businesses operating in and with Mainland China will be pleased to see this direction, in anticipation of being able to leverage their EU SCCs to facilitate cross-border data transfers from the EU's largest trading partner.

Open questions

Even if this prediction on the content of the Chinese SCCs is correct, a number of important issues remain uncertain:

- **Different modules:** The new EU SCCs have four modules to allow transfers: from controller

to controller (Module 1); from controller to processor (Module 2); from processor to sub-processor (Module 3); and from processor to controller (Module 4). However, under the draft PIPL, the concept of 'data processor' basically equates to that of a 'data controller' under the GDPR, while the most similar concept to the EU's 'data processor' is an 'entrusted party', but its role and obligations are not as fully formed under the PIPL. As such, will drafters scrap the modular structure of EU SCCs and solely focus on the substance of Module 1?

- **Processors:** It follows that the Chinese SCCs might impose overly onerous obligations on an overseas data processor, such as a data centre in Europe, requiring it to sign up to terms better suited to a data controller. Will overseas data processors accept such terms where they do not themselves decide how to process the personal information being transferred?
- **Chinese binding corporate rules (BCRs):** The GDPR's BCRs are another method for cross-border data transfers among group companies. BCRs require stringent regulatory review and approval, but provide a transfer mechanism trusted by individuals whose personal information is handled by the group in question. So far, Mainland China has no equivalent of the BCRs. Will this be addressed separately to provide corporate groups an alternative?
- **Adequacy:** The Schrems-II decision re-emphasises the question of whether the legal system of the data recipient's jurisdiction provides adequate protection for the personal information being transferred from the EU. Will Mainland China formulate a list of countries providing "adequate protection" of personal information? Would the GDPR allow the EU to be

considered sufficiently robust for "adequacy"?

- **Security assessments:** Under the draft PIPL, critical information infrastructure (CII) operators, and other organisations that handle personal information up to a threshold to be set by the CAC, must go through a mandatory security assessment before completing a cross-border data transfer out of Mainland China. European businesses continue to request urgent clarification on the scope of CII and this key threshold amount of personal information. Will the answers to these issues be given before the PIPL is launched?

What's next?

As the promulgation of the PIPL is around the corner, the draft Chinese SCCs may be circulated for public comments soon. They should be a welcome reform for European businesses operating in China. In the meantime, legal, compliance and IT teams of multinational companies should monitor developments relating to the PIPL and prepare to implement changes to their practices where needed. 

Linklaters in China

Linklaters is a well-known global law firm, supporting clients in achieving their strategies wherever they do business around the world. It has more than 40 years' experience of advising Chinese and international corporates, Chinese state-owned enterprises and financial institutions on their cross-border strategic deals. Their rich experience in China and strong track records have provided Linklaters' team an exceptional understanding of the local legal and economic landscape. They are able to not only call on the expertise of lawyers from the firm's 31 offices globally, but also get support for PRC legal advice through Linklaters Zhao Sheng, its joint operation office with Zhao Sheng Law Firm in the Shanghai Free Trade Zone. This joint operation brings together Linklaters' long-standing international experience and Zhao Sheng's PRC-law capabilities, offering a 'one-stop shop' service of both international and PRC legal advice seamlessly to clients.

SENSITIVE INFORMATION

Obligations under the Personal Information Protection Law

By **Shane Farrelly** and **Divya Hazra**

The second version of the draft Personal Information Protection Law (PIPL or the Draft) period for public consultation is now closed. With personal information data increasingly a hot button topic globally amid cybersecurity investigations into popular apps' illegal collection and use of users' personal information, all eyes are fixed on the upcoming third (and final) draft, which will govern the personal data of China's 989 million internet users.

Shane Farrelly and **Divya Hazra** of **D'Andrea & Partners Legal Counsel** examine how the draft (and the eventual final version of the legislation) balances the protection of personal information of users with an ever-changing digital landscape and the collection and usage of the "new gold", as companies' future will depend on using data effectively.

<p>a=information</p> <ul style="list-style-type: none"> • Father is a government employee • Mother works in a big company • 3 houses • Pudong • Fengxian District • Jiefang Road • 2 cars • BMW car interior • Audi car interior • Driving recorder • 3 violations this month • Father's Driver's License*****European Car***** • Four times a year to and from Paris and clothing 	<p>a=information</p> <ul style="list-style-type: none"> • White sneakers • Play three times a week • The venue has been booked twice in the last week/on site • Fitness video • Basketball teaching • Badminton teaching • Sports video • European Car***** • Souvenir • People's Square Basketball Court • Pudong Basketball Court • Community Fitness Center 	<p>examples</p> <ul style="list-style-type: none"> • male • 29 years old • Shanghai • 7th floor of Building 16 • Order a takeaway once a day • Love fitness • Girlfriend love afternoon tea • Want to buy a new phone recently 	<p>a=information</p> <ul style="list-style-type: none"> • Renting • One bedroom and one living room • Can be shared • Like quiet • Have big windows • Want a balcony • Can dry clothes • washing machine • Small dryer • Electric iron • Drying rack • Single chair • Water cup • Drink coffee • 3 cups a day 	<p>a=information</p> <ul style="list-style-type: none"> • Recent neck pain • Going to see Dr. Li • Shanghai Central Hospital • Make an appointment 4 days in advance • Appointment time 9 o'clock • 30 minutes by car • rain • May need an umbrella • Don't like black • Like blue • Like folding umbrellas • Price 20-30 yuan 	<p>b=others</p> <ul style="list-style-type: none"> • Calcium supplements • Protein powder • Egg vegetable • Vitamins • multi-vitamins • New chair • Reminder to stand software • Fitness watch • Fitness tracelet • Pair Reller Cream • Human skeleton model • High stool • pillow
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China's thorough and ever-evolving data protection framework

Over the past decade, China's legislation on personal information protection has undergone a myriad of updates, through either smaller pieces of legislation or components of other national legislation, as outlined through the two revisions to the Advertising Law in 2015 and 2018, the 2016 Cyber Security Law, the 2017 General Rules of Civil Law, the 2019 E-commerce Law and, of course, the 'Civil Code' promulgated in 2020 (effective in 2021).

A recent reminder of the changing agenda of the Chinese authorities in the area of personal information protection came in the form of the allegations levelled at DiDi Chuxing of illegally collecting users' personal data. On 4th July 2021, the Cyberspace Administration of China (CAC) ordered app stores to suspend downloads of the popular ride-hailing app while DiDi made changes in order to comply with Chinese data protection rules.

Therefore, alongside the release of the first two iterations of the Draft PIPL this year, the deliberation of both Chinese legislature and regulators on how personal information is utilised and protected within the jurisdiction has been significant.

Sensitive information and how it should be protected

The latest Draft still carries forward the spirit of the previous versions in providing a checks-and-balances approach for both domestic and foreign Internet giants, and strengthening supervision over the usage and processing of users' personal information. In terms of definitions, Article 29 of the Draft Law clearly distinguishes general personal information from sensitive personal information, the latter of which is deemed to be inclusive of information that, if leaked or illegally used, may cause discrimination against individuals or grave harm to personal or property security. Information covered may include data on race, ethnicity, religious beliefs, individual biometric features, medical health, financial accounts, individual location tracking, among others. In simple terms, a vast array of private and intimate information with the potential to damage someone's livelihood and identity if utilised improperly will fall under this more specific categorisation.

An initial reading of this definition ascertains that it is quite broad in certain areas in comparison to the European Union's (EU's) comprehensive General Data Protection Regulation (GDPR) (the data protection and privacy behemoth within the EU's legal system), and extends to financial and location-based information. However, notable exclusions at the current drafting stage include personal information regarding

trade union membership, political opinions, genetic data and sexual orientation.

All in all, a higher level of scrutiny and protection is afforded to information deemed sensitive as per the abovementioned definition. In the draft PIPL, personal data holders/processors have to justify “a specific purpose and sufficient necessity” prior to collecting sensitive personal information and must obtain separate written consent from users in order for the processing of sensitive personal information to be allowed.

This is of course in stark contrast to PIPL provisions on general personal information, which in certain circumstances—such as relating to public interest, contract performance or situations involving public health—allow for the handling of personal information of data subjects without any consent whatsoever.

Therefore, we can see that personal information handlers will have to take intricate measures to ensure compliance with the PIPL in relation to data deemed sensitive.

Protection of the personal information of minors

Prior to the release of the Draft, the CAC had already issued legislation dedicated to protecting child privacy online with the *Regulation on Protection of Children's Personal Information Online* (PCPIO) promulgated on 1st October 2019.

Under the PCPIO, in order for personal information handlers to engage in the collection, storage, use, transfer, and disclosure of personal information of children under the age of 14 conducted within the territory of the PRC, they must obtain prior parental or guardian consent. This was stipulated alongside the option of refusal and the obligation to provide numerous points of information regarding

the means, safeguard/s, location/s, purpose/s, reporting mechanisms and retention periods, among others, connected to the obtained data.

The first draft of the PIPL went a step further regarding the responsibility afforded to personal information handlers, as the then draft Article 15 provided that, regardless of whether the data processor knows or should know that it processes personal information of an individual under 14 years old, it must obtain the consent of the minor's parents or other guardian. However, the second draft reverted back to the initial standard set out in the PCPIO, so we'll have to await the outcome of the public call for comments and its effect on the finality of this provision in the soon-to-be promulgated PIPL.



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Concluding thoughts

As the legal landscape relating to data in China (and extra-territorially) enters a watershed moment, the future provision of personal information stored within the Middle Kingdom for a variety of different purposes will see a dramatic shift for both domestic and foreign entities.

Compliance and indeed the utilisation of such personal information will require a new level of engagement by businesses; not only with the cyberspace authorities, but also through initial security assessments, approvals and supervision to be undertaken throughout a company's data-processing activities.

For internet giants—the larger personal information handlers with complex business models—under the PIPL, they may have to bear more onerous obligations on their activities moving forward, such as establishing an independent supervisory body to monitor PIPL compliance, ceasing services to products or service providers on their platform that seriously violate laws or administrative regulations in handling personal information, and compiling personal information protection social responsibility reports.

Personal information handlers, whether large or small, should therefore be aware of the consequences of violating PIPL provisions or the absence of adopting adequate measures of compliance. This may result in fines of up to Chinese yuan (CNY) 50 million or up to five per cent of annual turnover in grave circumstances (comparable to penalties found in the GDPR), suspension of related business activities, cessation of business for rectification, and the cancellation of licences/business permits.

The grand concept of course is a more ironclad form of protection for one of the most valuable assets of the Digital Age – data. As numerous questions remain open at the draft stage of the PIPL, we await further clarifications in the coming months as to the future of data processing for the world's largest internet population. 

D'Andrea & Partners Legal Counsel (DP Group) was founded in 2013 by Carlo Diego D'Andrea and Matteo Hanbin Zhi, both of whom have extensive backgrounds in Chinese and EU law. DP Group currently has four service entities: D'Andrea & Partners Legal Counsel; PHC Tax & Accounting Advisory; EASTANT Communication and Events; and Chance & Better Education Consulting. DP Group has branches around the world, with locations in several major developing economies.

Cookies, Algorithms and Location Trackers

How to make marketing in China PIPL-compliant

China's second draft of the Personal Information Protection Law (PIPL)¹ regulates how organisations may collect, use, store and transfer personal information of residents in the People's Republic of China (PRC). **Patric Sawada**, head of growth at **Silkdrive**, explores the potential impact of the PIPL on personal information processing, and what it means for international organisations and their marketing activities.



Which organisations have to comply with the PIPL?

Any organisation handling personal information of individuals based within the borders of the PRC will have to comply with the PIPL. And not only local organisations will be affected; international entities outside the PRC that provide products or services to individuals within PRC borders, or analyse and evaluate data on individuals within PRC borders, will also have to comply.

What are the main principles of the PIPL?

Similar to the European Union's (EU's) General Data Protection Regulation (GDPR), the PIPL guarantees individuals' right to know and make decisions about the processing of their personal information, as well as the right to withdraw or refuse consent, and request correction or deletion.

Any gathering of information needs to be on a legal basis, of which the most common is the individual's consent. Additional bases include contractual obligations, legal duties, public health emergencies, and various circumstances stipulated in other laws and administrative regulations. Unlike with the GDPR, legitimate interest is not a legal basis for organisations to collect and process data under the PIPL.

Further important principles include 'explicit purpose', 'minimum necessary' and 'transparency'. 'Explicit purpose' for the collection, storage and processing of the data means personal information can only be used for that purpose. 'Minimum necessary' means data may not be held if not needed or it does not fulfill the explicit purpose stated. Data may not be held for longer

than needed. 'Transparency' means the individual needs to be aware of how their data is handled, stored and processed, and who has access to it.

What are the consequences of violating the PIPL?

In 2020, GDPR-related fines rose by nearly 40 per cent and totaled euro (EUR) 158.5 million.² This shows there can be serious consequences for violating data protection laws, and provides an example of what can be expected from the PIPL in the future.

Upon violation of the PIPL, the authorities may impose correction or confiscation of illegal income, issue warnings and sanction fines of up to CNY 1 million, or in serious cases, up to CNY 50 million or 5 per cent of the previous year's turnover. The authorities can also suspend or cancel the licence of any business that refuses to correct data.

Under the PIPL, the person directly responsible—like managers and data protection officers—can also be fined up to CNY 100,000, or in more serious cases, up to CNY 1 million. There may even be criminal liability, which is not the case under the GDPR.

How does the PIPL affect marketing?

The current draft of the PIPL leaves many aspects open to interpretation, so there is still some uncertainty about how it affects marketing specifically. As with the GDPR, marketing departments should pay special attention to cookies used for profiling or storing personal information, contact forms, newsletters, lead generation campaigns, customer relations and

158.5 million

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CNY 50 million or 5 per cent of the previous year's turnover.

The authorities can also suspend or cancel the licence of any business that refuses to correct data.



Under the PIPL, the location tracking of individuals will be regarded as 'sensitive personal information' and will be strictly limited.



Organisations that process personal information cross-border are required to appoint a dedicated entity or representative in China, sign standard contractual clauses for cross-border transfers, and may be subject to security assessments or certification requirements by the Cyberspace Administration of China.



After the GDPR was introduced, many organisations in the EU struggled to become compliant within the grace period, and some are still not compliant today.

analytics. In addition, the use of algorithms, location tracking, and how to deal with third-party data and cross-border processing of data should be carefully reviewed.

Algorithms

Organisations using algorithms are required to ensure the transparency of the decision-making process. Individuals have the right to request an explanation as to why an algorithm produced a certain result, and can refuse the use of automated decision-making completely.

Marketers that use automatic or programmatic decisions based on the analysis of personal information—like website personalisation, personalised offers or advertising—should be aware that individual consent will be a prerequisite.

Location tracking

Under the PIPL, the location tracking of individuals will be regarded as 'sensitive personal information' and will be strictly limited. This will restrict organisations' ability, for example, to track offline store visits for use in remarketing and retargeting campaigns.

Third parties

Marketers may rely on technology giants to provide access to vast datasets of customer data in order to personalise content and advertising. But organisations should reassess the legal basis under the PIPL of sharing data with third parties and the use of third-party data. Providers of third-party data, platforms and advertising networks will also be under scrutiny as to how they obtain and process personal information.

Cross-border

Organisations that process personal information cross-border are required to appoint a dedicated entity or representative in China, sign standard contractual clauses for cross-border transfers, and may be subject to security assessments or certification requirements by the Cyberspace Administration of China (CAC).

How to become PIPL compliant, step-by-step

- If your organisation is already GDPR-compliant, it is likely that at least some measures are in place. However, there are several differences between the PIPL and the GDPR to consider. Find a specialised legal advisor or law firm to make sense of the PIPL and how it will affect your organisation specifically.
- Put together an internal team and review all personal-information handling in the organisation by data mapping the current processes and software.
- Work with information technology, human resources, marketing, sales and any other departments that handle personal information, to implement policies and procedures according to the PIPL principles. If external agencies or third parties are involved—such as advertising agencies, software-as-a-service, external customer service, platforms and so on—make sure the appropriate agreements are signed.
- Update privacy statements, cookie notifications, and terms and conditions, and inform all contacts. If explicit consent has not been obtained earlier, notify these individuals and request explicit consent for each and every purpose of the intended use.

- Inform and train all employees handling personal information on how to do so properly. Make sure access rights and physical security measures are aligned.
- Document all efforts, policies and procedures that are put in place. Make a plan to audit and review them regularly.

Take action now

To become compliant with the PIPL, it will take dedicated time and resources to implement the changes needed. Currently, it is unknown if there will be a grace period and for how long. After the GDPR was introduced, many organisations in the EU struggled to become compliant within the grace period, and some are still not compliant today. To avoid this situation, organisations that have not yet started preparing for the PIPL should begin to take action now. **3b**

Disclaimer: This article does not represent legal advice. If you need legal advice on these matters, please seek assistance from professional legal counsel.

Silkdrive is an international agency for marketing and localisation across European and Asian markets. We developed the ADAPT Culture Framework to localise marketing assets and advertising based on cross-cultural research, and have worked for more than 50 companies in over 30 different industries. European companies doing business in China hire us for digital marketing services like advertising, e-commerce, and international SEO. Since 2016, we have also supported marketing departments to implement GDPR and cookie banner solutions.

Links:

¹ China Organisation Data Service, 个人信息保护法(草案二次审议稿)》发布, 24th June 2021 <<https://www.cods.org.cn/c/2021-06-24/14270.html>>

² GDPR Enforcement Tracker, <<https://www.enforcementtracker.com/>>

16TH JUNE
NANJING

The European Chamber hosted the Jiangsu Government Dialogue 2021.
Photo: European Chamber

European Chamber hosts the 2021 Jiangsu Government Dialogue in Nanjing



On 16th June, the European Chamber Nanjing Chapter hosted the Jiangsu Government Dialogue 2021. Participants included Tim Harrington, deputy head of the Delegation of the European Union to China, and Sun Jin, deputy director general of the Jiangsu Department of Commerce, as well as representatives of other municipal and district departments. Andreas Risch, chair of the Nanjing Chapter Board, moderated the panel discussion and raised issues shared by European businesses such as environmental compliance and authorities' future strategy to achieve the goal of carbon neutrality, and optimising the Jiangsu business environment.

JUNE
SOUTHWEST CHINA

Between 24th June and 25th June, Massimo Bagnasco, Chamber VP and chair of the Southwest China Chapter, led a delegation on a tour of Yibin, Sichuan.
Photo: Sichuan Provincial Bureau of Economic Cooperation

Chamber delegation visits Yibin, Sichuan



Between 24th June and 25th June, Massimo Bagnasco, Chamber VP and chair of the Southwest China Chapter, led a delegation on a tour of Yibin, Sichuan. VP Bagnasco also met with Li Xuejiao, standing member and head of the United Front Work Department of the Chinese Communist Party Yibin Committee, and director of the Yibin Investment Promotion Committee. More than 40 representatives of member companies attended the event.

16TH JUNE
SHANGHAI

The European Chamber presented the key findings of the BCS 2021 to Zhu Yi, DDG of the Shanghai Municipal Commission of Commerce.
Photo: European Chamber

Key findings of Business Confidence Survey conveyed to Shanghai Commerce officials



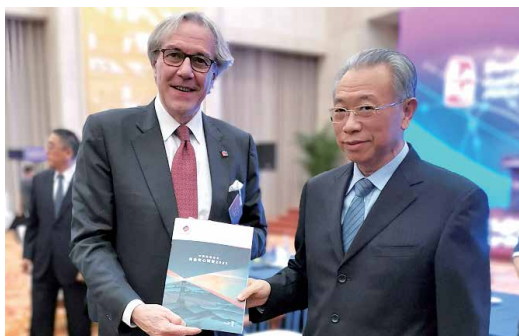
On 16th June 2021, European Chamber vice president (VP) and Shanghai Chapter Board Chair Bettina

Schoen-Behanzin, along with Board Members Holly Lei and Jens Ewert, presented the key findings of the Chamber's *Business Confidence Survey 2021* (BCS) to Zhu Yi, deputy director general (DDG) of the Shanghai Municipal Commission of Commerce. VP Schoen-Behanzin outlined the main national findings of the BCS 2021, but also touched upon the local perspective of Shanghai's decreasing attractiveness for European companies as a regional headquarter base. DDG Zhu Yi said the Commission of Commerce aims to facilitate communication, including policy briefings, between the competent authorities and the European Chamber on these matters.

18TH JUNE
SHANDONG

Chamber VP Guido Giacconi presented the Chamber's recently published BCS 2021 to Liu Jiayi, party secretary of Shandong Province.
Photo: European Chamber

Chamber president, vice president work on deepening Shandong-EU cooperation



On 18th June, European Chamber President Jörg Wuttke delivered a speech via video at the 'Connecting Shandong with Fortune Global 500 and Deepening Shandong-EU Cooperation' conference. Chamber VP Guido Giacconi participated onsite at the main conference in Jinan, where he presented the Chamber's recently published *Business Confidence Survey 2021* to Liu Jiayi, party secretary of Shandong Province. The conference saw 200 participants onsite and over 1,000 joining online.

10TH JUNE
BEIJING

President Wuttke held an exclusive dialogue with Yin Yisheng, executive deputy director from the Office of the Leading Group for Comprehensively Deepening Reform, SASAC.
Photo: European Chamber

European Chamber discusses reform of state-owned assets with government



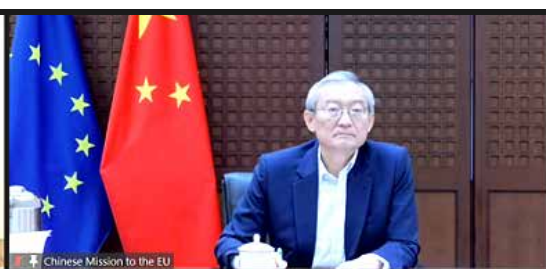
On 10th June, European Chamber President Jörg Wuttke held an exclusive dialogue with Yin Yisheng,

executive deputy director from the Office of the Leading Group for Comprehensively Deepening Reform, State-owned Assets Supervision and Administration Commission of the State Council (SASAC). President Wuttke and Deputy Director Yin exchanged views on China's state-owned enterprise (SOE) reform. European Chamber State's Representative Renata Pavlov also attended the meeting. The discussions concluded with the exchange of publications by the European Chamber and the SASAC.

10TH JUNE
BEIJING

President Wuttke led a group of Advisory Council members to meet with Chinese Ambassador to the EU, HE Zhang Ming.
Photo: European Chamber

President, Advisory Council meet with Chinese Ambassador to EU online



On 10th June, President Wuttke led a group of Advisory Council members in an online meeting with Chinese Ambassador to the EU, HE Zhang Ming. The discussion provided members the opportunity to raise their concerns to the Ambassador, covering a wide variety of topics,

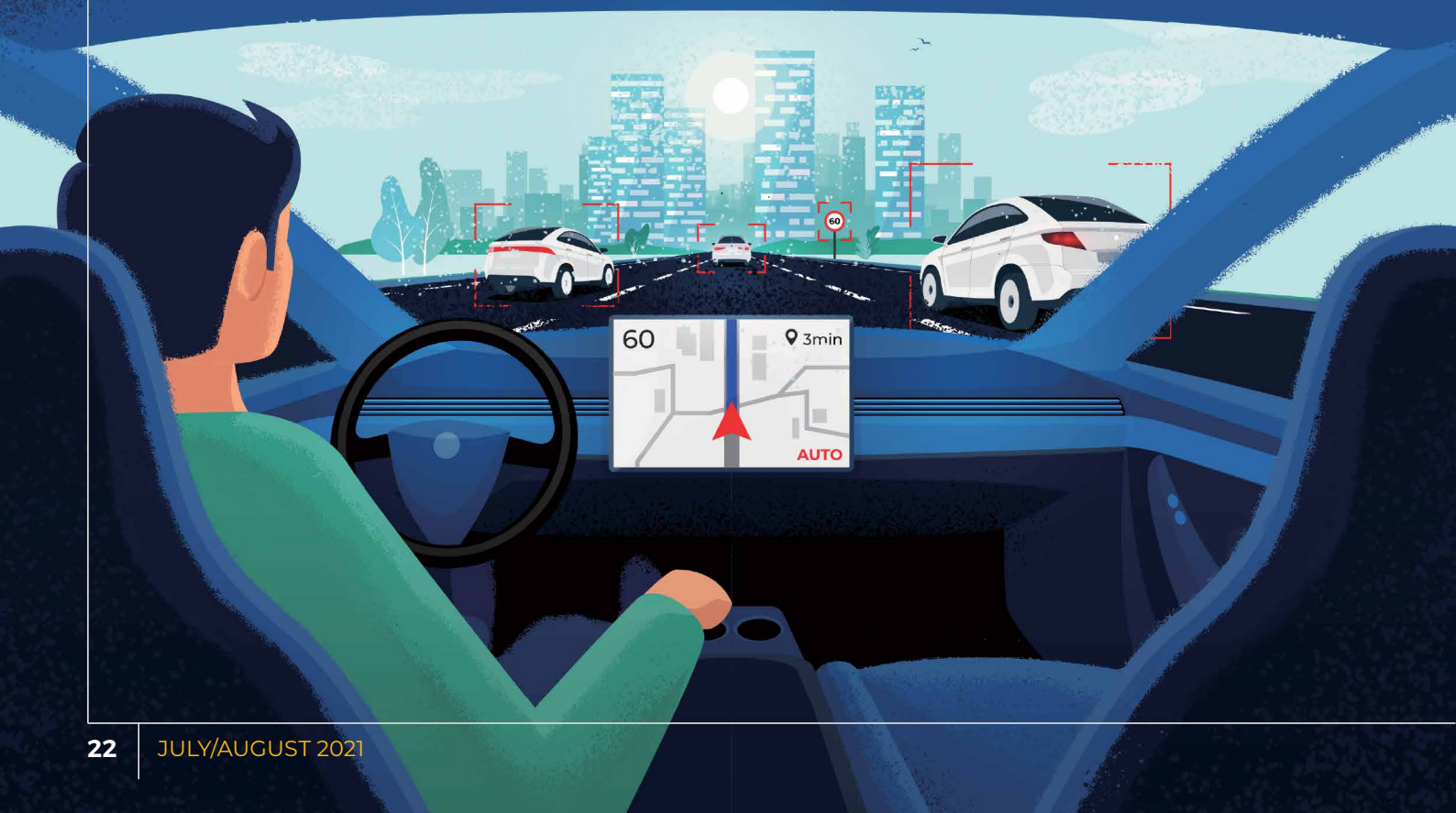
including travel restrictions for foreign employees and their families; the future of EU-China relations in general and of the Comprehensive Agreement on Investment (CAI) in particular; and the potential for EU-China cooperation in areas like climate change, among others.

China's New Data Rules

Major takeaways impacting the entire automotive industry

By **Michael-Florian Ranft**, **Michael Tan** and **Johnny Zhao**

International automotive original equipment manufacturers (OEMs) and suppliers have witnessed the rapid development of the People's Republic of China (PRC) data protection regime, including the draft PRC Personal Information Protection Law. While existing rules generally address concerns relating to privacy protection and data export control, rules specific to the automobile industry have been lacking for a long time. This makes it difficult for enterprises to manage their data compliance. Such situation may soon change, as the Cyberspace Administration of China (CAC) presented its new draft *Several Provisions on Car Data Security Administration (Draft Provisions)* on 12th May 2021 to solicit comments. The *Draft Provisions*, if promulgated in their current form, would bring substantial clarification to the whole industry, though not making things easier. **Michael-Florian Ranft**, **Michael Tan** and **Johnny Zhao** of **Taylor Wessing** in this article offer some brief observations and thoughts on the regulation.



Wide coverage involving everyone and everything

By using the very broad term ‘operator’, the *Draft Provisions* would apply to almost all members of the automotive supply chain, including OEMs, components and software suppliers, dealers, repair shops, online car-hailing service providers and insurance companies.

As far as personal information or so-called “important data” are concerned, all data activities—such as collection, analysis, storage, transmission, searching, use, deletion and export—would be captured.

Notably the *Draft Provisions* expand the scope of personal information from “inside a car” (i.e., information of car owners, drivers, passengers) to include “outside a car” (i.e., information on pedestrians), as well as to other information that can identify an individual or that describes personal activities. The “important data” is further clarified by the *Draft Provisions* and would include:

- traffic data in important and sensitive areas (such as military zones and defense/science units that involve state secrets, governmental/party agencies above county level);
- mapping and surveying data more precise than maps published by the State;
- operational data of car charging station/networks;
- data on vehicle types and flows on roads;
- outside-a-car audio and video data that contain information on faces, voices or car plates, among others; and
- other data that concern national security and public interest as

classified by the CAC and other ministries.

Under the *Draft Provisions*, an operator will process the above data for purposes directly relating to the design, manufacturing and service of cars only, and is obliged to comply with cybersecurity requirements, including implementing the latest multiple-level protection scheme. Different to the European Union’s General Data Protection Regulation’s (GDPR’s) focus on protection of personal information, the emphasis on the “important data” (which will be associated with further legal obligations as outlined later) would create a unique challenge for global players in the Chinese automotive industry.

Data processing: in-car requirement by default

OEMs and data-rich suppliers should pay particular attention to the following data processing principles introduced by the *Draft Provisions*:

- **In-car processing:** data shall be processed “in a car” instead of “out of a car” in principle;
- **Anonymised processing:** if it is indeed necessary to provide data out of a car, such data shall be anonymised and desensitised;
- **Minimum retention period:** this shall be determined according to the type of services/functions offered;
- **Precision as necessary:** coverage and resolution of sensors like cameras and radars shall accord with the level demanded by the offered services; and
- **“Non-collection” by default:** no data shall be collected by default, and a driver’s consent shall only apply to one single drive.

The *Draft Provisions* take a “processing in-car by default” approach, which

weighs privacy over the commercial and operational features of a “connected car”.

Processing of sensitive personal data (such as vehicle location, audio/video of drivers and passengers, wrongful or illegal driving behaviour) out of a car shall be prohibited, unless

- it is for the purpose of directly serving the driver or passengers, including enhancing driving safety, assisting driving, navigation and entertainment;
- it defaults to “non-collection”, and consent from the driver is required for each drive, which will automatically become invalid upon end of a drive (i.e., when a driver leaves his/her seat);
- the driver and passengers are informed, via in-car display panel or by voice, that (sensitive) personal information is being collected.

In addition, the driver may stop data collection at any time in a convenient way, and the car owner may review it in a convenient way or enquire what data was collected in a structured way. Moreover, the operator shall be obliged to delete data within two weeks upon request by the driver.

Data collection: transparency principle

The general transparency principle on data collection will also be substantiated under the *Draft Provisions*. An operator will be obliged to disclose a variety of information about the data collection (such as type of data collected, method of and purpose for collection, data storage location and retention period, as well as “right to be forgotten” obligations). The collection of biometric data would

be allowed only for convenience or for security reasons.

Reporting obligations and data export

The *Draft Provisions* set extensive reporting requirements on operators that process “important data” or personal data of more than 100,000 individuals. In reality, this would be quite challenging: for example, an operator cannot prevent a

retention period, method of use and status of sharing with third parties.

The *Draft Provisions* further would require (car-related) personal data and “important data” to be stored within the PRC. Any data export (which will technically also include access to data from overseas), if indeed necessary, shall then:

- undergo data export security assessment as organised by the CAC;
- have effective measures in place

development or commercial partner needs to access its data stored onshore. In this case, effective measures shall be taken to ensure data security and prevent data breach, while access to “important data” and sensitive personal data shall be strictly restricted.

And more...

The *Draft Provisions* take a rather strict approach and regulate data topics in the automotive industry in a quite comprehensive and far-reaching sense. Certain provisions like reporting obligations and data onshore storage requirements will create challenges for internationally active OEMs and suppliers, who otherwise could benefit highly from aggregation of their global data and equal data requirements on a global scale.

Tesla’s recent announcement that it will set up a local data centre in China is surely one response of international OEMs to the intensified data compliance requirements, but most probably not the final and only answer to staying compliant. There are many other aspects to watch out for (such as pedestrian privacy protection, among others). Given the size of the Chinese auto market, all participants in the industry, whether production or service, should start to plan actions to accommodate the new compliance challenges that may be brought by these *Draft Provisions* and further rules likely to come in the near future. 

Effective measures shall be taken to ensure data security and prevent data breach, while access to “important data” and sensitive personal data shall be strictly restricted.



driver from using a smart car in a sensitive area, and the threshold of 100,000 individuals may be easily reached if an operator engages in public transportation or has high sales of smart cars. The reporting requirements include the submission of names and contact details of data security officers and persons responsible for data issues to the CAC and (other) relevant authorities at the provincial level by 15th December every year. In addition, prior reporting of “important data” processing will be required, indicating the type, scale and scope of data, storage location,

to regulate export of data and to ensure data security;

- oblige an operator to deal with data subjects’ complaints and assume legal liabilities for any damages suffered by the subjects or to the “public interest” due to data export; and
- providing plaintext and readable access to allow the CAC (together with other authorities) to conduct audits.

The *Draft Provisions* specifically address the scenario where an operator’s overseas research and

Taylor Wessing LLP is a full-service international law firm with 28 offices internationally, including in Beijing and Shanghai. With more than 300 partners and over 1,000 lawyers based in 15 countries worldwide, the firm provides practical advice and commercial solutions in relation to all issues of international and national business law to clients across Europe, the Middle East and Asia.

The Manufacturing Powerhouse of Southeast Asia



Both proved crucial amid the fallout from COVID-19. Manufacturing led Malaysia's economic recovery late last year, driven by exports from the electrical and electronics (E&E) segment. The sector will continue to fuel the economy in the year ahead, which is forecast to grow 6.5-7.5%. As global businesses get back on track, many see Malaysia as an attractive manufacturing hub. Beyond durability, several other factors make it the ideal location, including the ease of doing business, top talent, the depth of its connectedness, tax and investment incentives, and its commitment to innovation. Likewise, its strategic location creates vital opportunities for supply chain diversification amid the ongoing pandemic and lingering U.S.-China trade uncertainty.

Deep in the heart of Southeast Asia, businesses from around the world are tapping into one of the region's most significant advantages: **Malaysia's**

manufacturing prowess. With its skilled workforce business-friendly government & strategic location, the country has long been a manufacturing hub of choice. Now, it's turning its competitive advantage into comparative advantage.

Central to that transformation is Shared Prosperity Vision 2030—the Government's plan to turbocharge the economy. Therein lies a strategic focus on manufacturing, accounting for roughly a quarter of annual GDP

and 2.2 million jobs. The Government's commitment to helping manufacturers embrace Industry 4.0, bolster their technical know-how and add value promises to propel the economy and deliver significant benefits for businesses.

This emphasis on manufacturing is not new. Malaysia's long track record of investment secured its position in the top quartile of the 2020 Global Manufacturing Risk Index due to its cost competitiveness and ability to bounce back in the face of disruption.

Most notably, Malaysia has the ability to meet the stringent demands of highly regulated industries, showcasing the country's robust and diverse array of supply chains. It is reflected by the high-end FDI projects that Malaysia secured in 2020. While the list of European companies leveraging Malaysia as their operations base to do business in the region and beyond is long, some reputable giants that have been approved in 2020 include:

Smith and Nephew from United Kingdom (UK) to produce high tech pharmaceutical products including knee and hip implants.

Bruker, a Swiss company, establishing its first facility in Asia to manufacture high-tech products, namely optical and stylus profilometers, tribometers, X-ray diffraction tools, X-ray fluorescence instrumentation, optical emissions spectrometers, and combustion gas analysers.

LEM, a leading global Switzerland based company in electrical measurement for industrial and automotive applications, is investing in a new production plant in Malaysia.

Bosch, an existing German company is setting up a manufacturing facility park in Penang for testing of semiconductor components and sensors.

Eppendorf, a leading German life science company, establishing an integrated centre for shared services hub, covering functions such as IT, HR as well as Finance and Controlling, for the Group's operations in the Asia Pacific, Middle East and Africa.

Porsche from Germany announced its flagship new first-of-its-kind Porsche Centre in Malaysia. The centre is the largest 3S Porsche Centre within a single facility in the Asia Pacific.

MIDA is the government's principal investment promotion and development agency under the Ministry of International Trade and Industry (MITI) to oversee and drive investments into the manufacturing and services sectors in Malaysia. Headquartered in Kuala Lumpur Sentral, MIDA has 12 regional and 20 overseas offices. MIDA continues to be the strategic partner to businesses in seizing the opportunities arising from the technology revolution of this era. For more information, please visit www.mida.gov.my and follow us on Twitter, Instagram, Facebook, LinkedIn and YouTube channel.

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Malaysia offers tax exemptions of

10-15

years for foreign companies in the

MANUFACTURING SECTOR



Firm Legal Roots

China's new Judicial Interpretation for Plant Variety Rights Cases

By **Andrew Sim** and **Alanna Rennie**

China's Supreme People's Court has released a new judicial interpretation for plant variety rights (PVR) cases, *The Supreme People's Court Provisions on Several Issues Concerning the Application of Law to Cases Involving Plant Variety Rights Infringements (II) (Judicial Interpretation)*. The *Judicial Interpretation* came into effect on 7th July 2021. It provides further and clearer guidance on the application of law in PVR infringement cases, which will encourage more consistent rulings by the People's Court and grant stronger judicial protection to PVR holders in China. **Andrew Sim** and **Alanna Rennie** of **Baker McKenzie** address some of the major developments arising from the *Judicial Interpretation* in this article.

As those familiar with PVR will know, the subject matter of the right is confined to propagating material. The *Judicial Interpretation* confirms a broad reading of the definition of propagating material, being material that possesses propagating ability and can propagate a plant that possesses the same traits and characteristics as the protected variety (i.e., propagate the variety true-to-type). This means that subject to these pre-conditions being satisfied, the protection can cover seeds through to the fruit and flowers, providing a legal basis for PVR holders to defeat infringers in the context of rapid developments in breeding technologies.

The *Judicial Interpretation* further clarifies that where material can be considered as both propagating and harvested, and an alleged infringer claims that the infringing material is harvested material for use in consumption rather than production or propagation, the alleged infringer will carry the burden of proving this. PVR protection does not


currently extend to harvested material in China; however, it is captured under the draft revision to China's *PVR Regulations* (which was released in early 2019).

Another long-debated issue in China—and in other International Union for the Protection of New Plant Varieties (UPOV) countries—is whether the act of growing (for example, growing a tree to produce fruit) constitutes the infringing act of production of propagating material and falls within the scope of the right. The *Judicial Interpretation* confirms that growing is a protected act, providing much needed clarity for the plant-breeding industry, and hopefully a development that can be followed in other UPOV countries. The infringing act of offering for sale is also given a broad interpretation to include advertising, exhibiting and other means of indicating an intent to sell propagating material of a protected variety.

The new regulation also broadens the base of potential infringers, extending to the whole supply chain (rather than

just a producer, propagator or seller), providing that the People's Court may hold a person jointly or severally liable for PVR infringement if that person knew, or should have known, that another person's acts constituted PVR infringement, and provided services or conditions to assist the infringement, such as acquisition, storage, transportation or processing services, or certification materials.

The interaction between PVR and contracts is addressed in the document; that is, whether a breach of the conditions and limitations in a licence relating to a PVR variety also constitutes infringement, or whether it is simply a matter of contractual breach. The *Judicial Interpretation* stipulates that if a licensee produces, propagates or sells propagating material of a PVR variety beyond the scale or area agreed in the licence, the People's Court is to deem this an infringement. This allows plaintiffs to choose either PVR infringement or breach of contract as their cause of



action, taking into consideration the burden of proof, evidence collected, amount of compensation claimed, among other aspects.

Another key clarification is confirmation that the principle of exhaustion applies to PVR. According to the *Judicial Interpretation*, the People's Court should not hold the production, propagation or sale of the propagating material of a PVR variety that has been sold by the PVR holder or with the holder's permission to constitute infringement. However, the following exceptions apply:

- where material is further reproduced or re-propagated; or
- where it is exported to a country or region that does not offer PVR protection for that plant genera or species, for purposes of production or propagation.

Along with these developments, the *Judicial Interpretation* provides a number of measures to enhance effective PVR enforcement, including the provision for advance judgment where the infringement has been established on the facts. The People's

Court may order the destruction of the infringing material or other measures to prevent the propagation and dispersion of the alleged infringing material. These provisions seem to have greater use and effectiveness for cases involving presumptions of infringement.

Further, clearer guidance is provided on some of the technical aspects particular to PVR cases, including use of molecular markers. The *Judicial Interpretation* also shifts the burden of proof to the alleged infringer on a number of matters, including where a PVR protected variety denomination is used in relation to the alleged infringing material, and where the alleged infringer claims that the material is harvested material and not propagating material, providing a framework for easier and more streamlined enforcement.

Lastly, the *Judicial Interpretation* highlights circumstances that will be considered serious PVR infringements and clearer standards for calculating punitive damages, including where propagating material is sold in unmarked or unlabelled packaging. [35](#)

Andrew Sim is partner at **Baker McKenzie** and global chair of the Plant Variety Rights Practice, which includes registration and enforcement of plant variety rights. Andrew also heads the Food and Beverage (F&B) Industry Practice Group in the Greater China region and advises on all F&B-related areas, including consumer, regulatory, food safety, advertisements and franchising, as well as internet laws and regulations.

Alanna Rennie is an associate at **Baker McKenzie**, with a focus on plant intellectual property, ag-tech and transactional matters. Alanna plays a central role in the firm's global Plant Variety Practice, and has guided companies on plant variety commercialisation and enforcement strategies in China and Australia. Alanna is admitted in Australia and holds a Bachelor of Laws (Honours) from Bond University and Masters in Chinese Law from Tsinghua University.



MAINTAINING FLOW

How to finance your business in China

By **Francesca Scortichini**

Companies have different financial needs in each phase of their life cycle. During the start-up period in particular, cash flow can be tight as the revenue may be insufficient for covering the initial set-up and daily expenses. Financial planning is, therefore, necessary to avoid cash flow problems. This article by **Francesca Scortichini** of **Hawksford** explains how a company should define its financial needs and how they can be fulfilled.

Running out of cash can have serious consequences for companies, such as missing business opportunities due to not being able to: honour contracts with clients; purchase raw materials; arrange the delivery of goods by an agreed-upon date; or pay wages, custom duties and taxes. Suppliers could also take legal action if a company does not meet its payment obligations, while goods could be stuck at customs, which can damage perishable items in particular, if the import tax is not paid.

Meanwhile, customers may not pay in time, which could also affect the cash flow of a business. Furthermore, due to the strict capital flow controls imposed by the banking authorities, financing a business in China may be slower and more difficult than expected.

It is therefore particularly important for companies to define their financial needs and make cash flow projections before registering in China. This is in order to assess the suitable capital value to register in the first place, and also to understand when additional funds may be needed and how they can be procured. For instance, capital increases and intercompany financing can be alternative tools to a bank loan.

Registered capital

Peculiar to China, when setting up a wholly foreign-owned enterprise, it is necessary to declare a total investment value, which refers to the total amount of funds—including capital and debt—required for the planned business project.

Besides this, companies have to define the registered capital, which refers to the total amount of capital contribution from shareholders for use at the beginning of a company's life cycle. These funds will be used to pay for rent, salaries, goods and so on until



Peculiar to China, when setting up a wholly foreign-owned enterprise, it is necessary to declare a total investment value, which refers to the total amount of funds—including capital and debt—required for the planned business project.

the company is able to generate cash reserves and independently finance its operation.

There is usually no minimum requirement for the registered capital, except for specific sectors such as freight forwarding, fund management, insurance companies and e-commerce, when operating on certain platforms. It is not necessary to inject all the registered capital at the time of incorporation, but this must be done within the terms stated in the company's Articles of Association (which can be up to 20 or 30 years).

This capital is vital for successfully starting and sustaining a business. Therefore, it would be a mistake not to measure it according to the company's financial needs and strategic plans. For a proper assessment of capital, companies should be familiar with Chinese business practices and take into consideration all the expenses that could occur in daily operations, such as rents, salaries, social insurance and housing funds, customs duties, direct and indirect taxes, logistics and marketing costs.

It is common for a company's registered capital to not be sufficient to cover its cash flow needs. Once the registered capital is fully paid and used up, companies need to inject more funds into the business. As obtaining a bank loan

No.	Department	Certificate or Procedure	Tentative Timing
1	Local SAMR (AIC)	Business licence update	10 business days
2	Local SAT	Tax system - update the new registered capital	1 business day
3	Local bank	RMB basic account - update the company information Capital account opening - update the company information	10-15 business days
4	Local MOC	Foreign trade operator licence	5 business days
5	Local GAC	Customs registration filing receipt	5 business days
6	Local GAC	E-port cards - company information update	5 business days

may be difficult for newly-established businesses, capital increases or intercompany loans may be the solution.

Capital increase

Financial needs may change over time for several reasons, such as extraordinary or unforeseen costs; the company not reaching its expected growth; deciding to enter a new market segment; or wanting to attract new clients. On occasion, businesses may have to resort to a capital increase to finance these needs.

To increase its registered capital, a company must procure multiple authorisations from different government departments. This process may take from six to eight weeks to complete, from the beginning of the capital increase process to when the new capital can be injected and used in the bank account. This timeframe is long, especially if the company has a tight cash flow and, for this reason, it is advised to pay attention to cash flow and implement reliable financial controls to avoid having to take this route.

After the company has updated the new registered capital information with the bank, the shareholder(s) can inject new capital into the capital bank account. According to regulations from the State Administration of Foreign Exchange (SAFE)—which supervises overseas funds inflows, outflows and currency exchange—banks need to submit a ‘foreign direct investment (FDI) report’ in order to register the foreign capital inflow. After three to five days, once the registration is completed, the capital can be converted into *renminbi* (RMB) and settled to the company’s basic account to be used for daily business expenses.



6-8 weeks

To increase its registered capital, a company must procure multiple authorisations from different government departments. This process may take from six to eight weeks to complete

20+15 working days

The approval time for loans at the SAFE is around 20 working days, while an additional 10 to 15 working days will be required to open the loan account.

If the company does not need the additional funds in the end, due to a change of business plans or any other unforeseen situation, it is possible to decrease the registered capital, provided that the accumulated cash reserves allow for payback without impacting the company’s cash flow or harming creditors.

Intercompany loans

Intercompany loans can be granted to a Chinese subsidiary from other companies in the corporate group, usually for temporary financial support purposes. In China, the borrowing amount for foreign intercompany loans is limited to the ‘borrowing gap’, which is the difference between the total investment and the registered capital for the foreign-invested enterprise.

To obtain a loan from a company in the same corporate group, it is necessary to sign a loan agreement that specifies the conditions, the interest rate, duration and repayment terms of the loan and to file an application with the SAFE. Once the loan is approved and all necessary documents from the SAFE have been

received, an intercompany loan account can be opened at the bank.

The approval time for loans at the SAFE is around 20 working days, while an additional 10 to 15 working days will be required to open the loan account. Finally, the company headquarters (the lender) can then transfer the funds, which will be subject to FDI registration, to the subsidiary. Specific requirements for the account opening will depend on the bank, but the original passport of the company’s legal representative may be needed.

Conclusion

There are different financing solutions for companies in China, depending on their specific needs, as alternatives to other bank financing tools (such as credit lines, bank guarantees and cash pooling), which can be difficult for foreign companies to obtain.

Moreover, a detailed and accurate financial statement is essential for companies, in order for them to constantly monitor expenses, forecast cash flow movements and plan in advance the most suitable financing structure that can support the smooth and efficient growth of the business. **EF**

Francesca Scortichini is associate director of China Account Management at Hawksford. Francesca has considerable experience in advising Italian and international clients from trading, retail and industrial companies on investments in China and Asia. Francesca joined the Hawksford Shanghai office in June 2014.

Hawksford is a leading provider of corporate, private client and fund administration services. We help clients to make the most of their business decisions and their wealth by taking on the burden of regulatory, financial and tax compliance, corporate governance and reporting obligations. We have helped families to take care of their wealth, entrepreneurs to succeed, multinational companies to operate and transact, and funds to maximise their returns.

The Business Environment in South China

From the perspective of foreign entrepreneurs

By **Guilherme Campos**

Being the owner or manager of a company, regardless of where it operates, is always a challenging endeavour. The process of doing business—setting up the corporate structure, selling, chasing clients, doing marketing, manufacturing—is always hard, even if “the system”, i.e. the business environment, is supportive of your operation. Being a foreign-invested company in China doubles that hardship. Against this backdrop, **Guilherme Campos**, chair of the European Chamber’s Small and Medium-sized Enterprise Forum, spoke to local entrepreneurs in Shenzhen to gauge the outlook for business in South China.

Due to the current state of uncertainty the world is in, and the increasingly fragile diplomatic relations between China and many other countries, many foreign companies operating in the Chinese market wonder if the business environment will get better or worse.

An on-the-ground understanding of China’s business environment is thus revisited every year by foreign chambers of commerce, which perform surveys on these matters. In 2020, the European Chamber’s *Business Confidence Survey* (BCS) stated that European companies were navigating in the darkness, as China was still gravely affected by the pandemic when the survey was conducted. In the first quarter of 2020, 460,000 companies had closed down and registration of new businesses had dropped by 29 per cent. Other matters of concern, such as the impact of political issues, with the United States (US)-China trade war constantly in the news, were a clear reminder that sometimes politics and business collide with disastrous consequences.

Thankfully, the European Chamber’s recently released BCS 2021 claims that the “darkness was navigated” by its member companies, with 75 per cent of respondents either maintaining or increasing their revenue year-on-year (y-o-y). Also, it seems that foreign companies are committed to China more than ever, with a mere nine per cent considering moving completely out of the country (the lowest number on record).

Talking to locally incorporated SMEs

Reading reports and surveys is important, but not enough to acquire a thorough knowledge of the situation on the ground for foreign small and medium-sized enterprises (SMEs) in China. To get a more rounded picture, I spoke with some companies that have been in China for some years, with the conversation going beyond the normal rigid survey questions expected from chambers of commerce. The results were interesting.¹

¹ In order to respect their privacy, the anonymity of the business owners has been maintained.



First was a Shenzhen-incorporated football school owned solely by a foreign individual, who has been in the region for half a decade. The school was set up shortly after the *2015 Foreign Investment Catalogue* labelled parts of the educational sector as an ‘encouraged industry’ for investment. Furthermore, football is now one of the most popular sports in China, making the sector ideal for potential growth.

However, the reality is that no matter how profitable the business may be, loans and financing in general are virtually impossible for a foreign-invested enterprise (FIE) to access. In a business where fixed costs are a major factor, it is important to maintain a healthy cash flow. The school-owner became sharply aware of this during the peak of COVID-19 in China, when the country and the world barely left home, let alone go to football classes. The situation improved, despite occasional setbacks and hardships. He said business is now booming and, if it continues at this trajectory, he expects to open more branches in

the future.

Second was an Italian restaurant, which also has been in the region for more than five years, amassing a clientele that is mostly Chinese. “Successful from the get-go” and “if the product is good, they will come” were some of the phrases thrown around. According to the interviewee, despite the restaurant’s good financial situation and having total control of the management process (this company is also wholly foreign-owned), many challenges still crop up. In the proprietor’s own words: “A restaurant must prove its value every day. Glories of the past don’t excuse a bad dish today.”

This and other problems, such as high rent, deposit fees and higher-than-average salaries (to cultivate employee loyalty and prevent them from changing jobs after a couple of months), are some of the features of the restaurant business. The proprietor also noted the importance of fostering friendships with neighbouring shops and the local authorities. The machine must be

oiled and some of the ways to do it can be unorthodox. As many have said before, in China, relationships are everything.

The third interview was with an entrepreneur that, for the past few years, has been investing in and developed companies in sectors considered key to future Shenzhen and Greater Bay Area growth, namely, medical devices, automation and software. Stating that “the biggest difficulty is not giving up when facing challenges”, this entrepreneur says his business operations are now sustainable without requiring credit or partners, whether local or foreign.

He added that the business environment in China has improved in the past 15 years, although there is still a lack of talent and skills in the high-tech sector within the region (meaning more opportunities for foreign enterprises).

The final question put to him was a classic: “Bearing in mind what you already know, if you started a new company in China today, what would you change and what advice would you give to someone with the same intention?”

The answer was insightful: “Find the real market before investing your money. Create a brand and then the sales will follow. In China, the goodwill that arises from intellectual property may be even more important than in other countries”.

Final takeaways

With the southern region as a window into the business environment in China, the overall impression is good.

It must be kept in mind that Guangdong is the largest province in China by economic size, at Chinese yuan (CNY) 10.77 trillion, or 10.9 per cent of the national total gross domestic product in 2019. Compared to other economic hubs in China, such as the Yangtze River Delta, Guangdong stands out for having:

- the largest external-facing economy, making up 25.2 per cent of national exports in 2019; and
- the largest retail market of consumer goods, at around 10.4 per cent of the total in 2019.

Guangdong also accounted for about 16.2 per cent of China’s total utilised foreign direct investment, of which the

majority engaged in the tertiary sector.

All of the above are important pillars that will render investment easier, but, in the words of the European Chamber’s last South China Chapter Annual General Meeting keynote address: “Business is strong, but for how long?”

The “how long” part is something that needs to be answered day-by-day. It is important for business owners to stay alert to changes, which may come in the form of direct and indirect limitations affecting business plans, or direct and indirect opportunities to expand or diversify business scope.

To conclude, it is important to note that a considerable number of European companies (47 per cent) surveyed in the BCS still believe that foreign companies receive unequal treatment by the Chinese Government in comparison to domestic companies, manifested in market access barriers, licensing acquisitions, communication with the government and access to subsidies. A third of companies surveyed believe there will never be a level playing field. Thus, it seems that companies, chambers and any other institution that can advocate for foreign-invested entities in China must make sure that foreign investment is truly given fair treatment in this country, as has been promised for decades. **SE**

Guilherme Campos is chair of the SME Forum at the European Chamber South China Chapter. The SME Working Group comprises European SMEs operating in various industries in China that strive for improved operating conditions and exchange on practical business issues to foster business success. He is also manager at the South China Greater Bay Area office of **Dezan Shira & Associates**, a pan-Asia, multi-disciplinary professional services firm, providing legal, tax and operational advisory to international corporate investors.



Energy Transition Challenges

Exploring facts and outlook of the power shortages in South China

Guangdong—home to the booming cities of Guangzhou and Shenzhen, and at the centre of the Greater Bay Area (GBA)—is renowned for being the economic powerhouse of China. However, in May and June 2021, the province found itself running short on that power, as local governments mandated electricity cuts. Media headlines blamed hot weather and a boost in business for the shortages but, as outlined in a webinar hosted by the European Chamber South China Chapter, the root causes go far deeper than that.

Webinar moderator Peter M. Drucker, government affairs manager of the South China Chapter, set the scene for attendees, explaining that members of the Manufacturing Forum raised the power shortages issue with the Chamber by describing how their difficulties had been exacerbated by the short notice of the electricity cuts provided by the local government. As staff and board members of the chapter reached out to other member companies based outside Guangzhou, it became apparent that this was an issue across the GBA.

Chamber President Jörg Wuttke gave a brief introduction to the webinar, highlighting the importance of Guangdong to the Chinese economy, demonstrated by articles on the matter in the *Financial Times* and *Bloomberg* that quoted Klaus Zenkel, Chamber vice president (VP) and South China Chapter chair. President

Wuttke also noted that Chamber members across 21 cities in the region been affected by the power shortages. He highlighted the ongoing efforts on transitioning to carbon neutral energy, and the pressure on European companies to source from renewable energies from their headquarters.

Chain of events

The full picture of the Guangdong power shortages was presented by Laura Dong of IHS Markit. She acknowledged that higher business activity coupled with regional weather factors had impacted local power supply. Unexpectedly strong exports saw the demand for power rise by 20 per cent between February and May. Although greater demand than 2020 could be expected, 2021 demand was also higher than 2019 figures. Meanwhile, a drought in South China—precipitation was down 50 per cent on

average levels for that time of year—hit Guangdong hard, as the province relies heavily on hydropower. In addition, a heatwave led to higher usage of air conditioning systems, also putting pressure on the power grid.

Guangdong imports a large proportion of its power; its second largest source of electricity is imports from neighbouring, less developed provinces, Yunnan in particular. Yunnan is naturally blessed in hydropower capacity, but the drought and an increase in energy intensity in the province's own manufacturing industry—the Yunnan provincial government had invested in production of metals such as zinc and silicon to boost the local economy, which are



21 Cities

President Wuttke noted that Chamber members across 21 cities had been affected by the power shortages.



Jörg Wuttke
President of the
European Chamber; Chief
Representative China,
BASF (China) Co., Ltd.



Such blackouts are very likely to become more regular in the coming years as the transition to renewable energy intensifies to meet decarbonisation targets.



Lara Dong
Senior Director, Greater
China Power and
Renewables, IHS Markit



VP Zenkel said that while affected companies have been compensating by working at nighttime or weekends, these are workarounds and not solutions to the problem.



Klaus Zenkel
European Chamber Vice
president and European Chamber
South China Chapter Chair

energy-intensive—reduced the surplus available for export. Yunnan started rationing power from early May, with Guangdong following suit in mid-May. Other provinces also import power from Yunnan; Guanzhou likewise experienced shortages in May, while Hunan had shortages last winter.

Ms Dong emphasised that, while rainfall and the partial opening of the Baihetan Dam on the border of Sichuan and Yunnan alleviated the current power shortages in the region, such blackouts are very likely to become more regular in the coming years as the transition to renewable energy intensifies to meet decarbonisation targets. On the one hand, Guangdong's peak power load will continue to increase, while on the other

hand, the local authorities have released targets for the reduction of carbon emissions for the next five years, with coal-fired power plants to be strictly curtailed.


However, coal is still the baseload source of the province's—and most regions' worldwide—power, with renewables and natural gas-fired power feeding in at times of high demand. To be able to replace coal and guarantee firm capacity availability, wind and solar contributions to the grid will have to increase, as will nuclear and gas production. Such guaranteed capacity with decarbonised energy sources will not be possible in the next few years, which means power shortages at peak demand will occur more often.

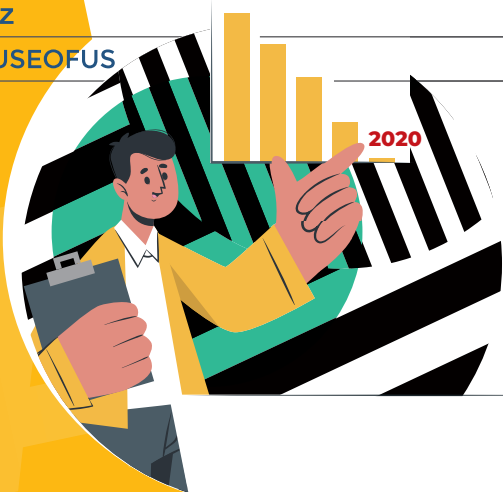
Chamber advocacy actions

VP Zenkel also addressed the webinar, speaking of how almost every industry in Guangdong was affected by the shortages, apart from semi-

conductors and automobiles, both very important sectors for China. He added that Shenzhen—considered a high technology manufacturing area—was also spared the power cuts.

He said that while affected companies have been compensating by working at nighttime or weekends, these are workarounds and not solutions to the problem. In addition, adopting schedules at such short notice is not easy. For instance, some companies need to ship abroad, which is already difficult at the moment due to the shortages in containers. If the power cuts prevent a company from finishing production in time to meet the sailing, this could cause severe delays to delivery to customers.

VP Zenkel said that there should be better ways to control energy consumption than through power cuts. However, he added that the current difficulties may actually be an opportunity, triggering ideas that will deliver a system enabling a smooth transition from coal-based to renewable energy. As the GBA has been promoted as a high-tech area to the world, it is in the government's interest to address the problem. VP Zenkel concluded by saying that as the South China Chapter has been advocating on this issue from the start of the shortages, it will continue to work with local governments on finding long-term solutions. 



#BECAUSE OFUS

Professional claimant cases drop,
more wins for companies

As the independent voice of European business in China since 2000, the European Chamber actively participates in China's legislative process and our advocacy activities are widely recognised by the Chinese authorities.

In 2019, we launched our #becauseofus campaign to show our gratitude for the joint advocacy efforts of all stakeholders: governments, think tanks, member companies and our own working group and desk managers. In *EURObiz* in 2021, we will present four examples of our successful advocacy work.

For this edition, we look at **how the issue of professional claimants was highlighted to the authorities and the courts.**

Background

On 2nd December 2019, the State Administration for Market Regulation (SAMR) issued the *Interim Measures for Handling Complaints and Reports Concerning Market Supervision and Administration*, which state that market supervision and administration agencies should not accept complaints arising from circumstances such as “purchases not made for lifestyle and consumption needs”, a move aimed at ending profiteering through malicious complaints.

With this change in policy, professional claimants cases have dropped sharply due to the clear attitude of the state. Through the continuous efforts of the Fashion and Leather Desk of the European Chamber since its establishment in 2016, more and more companies have won lawsuits against professional claimants. By 2020, many member companies reported that their physical shops now rarely have to deal with professional claimants.

Professional claimants

In 2013, the amended Consumer Protection Law established the punitive ‘treble compensation’ system – three times the original price of the product being complained about. In the same year, the Supreme People’s Court (SPC) affirmed that compensation can be awarded to those “consciously buying counterfeits” in the food and pharmaceutical sectors.

In 2015, the Food Safety Law introduced the ‘ten for one’ provision for fakes. All these legislation updates were aimed at better protecting consumer’s rights; however, professional claimants often utilised the punitive damages system as a tool for personal gain.

Fashion and Leather Desk

Branded apparel and leather products of imported luxury goods often become targets for professional claimants, due to their high value and the fact that these brands attach great importance to their image and reputation. The claimants specifically buy products with defective labels to claim high compensation through a series of tactics, such as blackmailing companies, filing complaints with the authorities, and/or suing in court.

FASHION AND
LEATHER DESK

In 2016, ten high-end European fashion brands that had been targeted by professional claimants approached the Chamber, seeking to jointly appeal to the relevant authorities for a solution to the issue. As a result, the Fashion and Leather Desk was established and worked on setting up communication channels with all relevant stakeholders in order to address companies' concerns.

The desk has actively established contacts with the former State Administration for Industry and Commerce, the SAMR, and local market regulatory authorities in Beijing, Shanghai and Hangzhou; conveyed companies' concerns through meetings and advocacy letters; organised various seminars/workshops; and repeatedly submitted comments to legislators on relevant draft laws. The desk has also elaborated on the issue of professional claimants and provided recommendations on how to improve the situation through its annual *European Business in China Position Paper*, which are submitted to the relevant legislative and regulatory authorities in China and the European Union (EU).

Changes in policy and regulations

- In early 2017, a shift in judgments on professional claimant cases could be observed in Beijing; companies began to win and professional claimants' claims were often not upheld.
- In 2017, the SPC stated in its *Response to Proposal No. 5990 of the Fifth Session of the 12th National People's Congress* that "...an increasing number of professional shoppers and agencies (groups) are not motivated by the desire to purify the market, but to use punitive compensations for their own profit or as an opportunity to extort money from businesses".
- In 2018, Shanghai issued the *Guidance on Effective Response to Professional Claims/ Professional Reporting Behaviour to Maintain Business Environment Order*, listing professional claiming/ reporting as a factor that affects the market environment and business order.
- In 2019, a number of malicious claimants and extortionists in the name of rights protection were severely punished by the law.
- In 2019, the *Opinions on Deepening Reform and Strengthening Food Safety* proposed that "malicious reporting for illegal profit should be cracked down in accordance with the law"; and the *Guiding Opinions on Promoting the Standardised*

and Healthy Development of the Platform Economy called for a crackdown on extortion in the name of "counterfeiting".

- In 2019, the SAMR published the *Interim Measures for Handling Complaints and Reports Concerning Market Supervision and Administration*, stating that market supervision and administration agencies should not accept complaints arising from circumstances such as "purchases not made for lifestyle and consumption needs".

“


The effective deterrence of dishonest behaviour by professional claimants who misrepresent the legislative intent of the Consumer Protection Law for unjust personal gain demonstrates the importance of constructive engagement between business and government to improve the business environment. The law is the benchmark. While establishing a just order, it must also be enforced in a way that discourages the distortion of its purpose for personal gain. ”

XIA YAFANG

Chair of the Fashion and Leather Desk

Outlook

Despite these advancements, opinions on the subject of professional claimants still differ. Therefore, the desk would still like to see a fundamental solution at the legislative level. For instance, whether professional claimants are subject to consumer status under the Consumer Protection Law is still not clear. Excluding professional claimants from the definition of consumer status and providing a precise scope for the application of punitive damages will help to further curb abuse of the law.

In addition, the desk is also actively providing suggestions on the revision of the Product Quality Law, hoping to introduce a distinction between product labelling defects and product quality and safety issues, as well as reasonable penalties for different violations. 

For more details on this campaign and other advocacy successes, please visit the European Chamber website:
<https://www.europeanchamber.com.cn/en/advocacy-success>



Media Watch

European Chamber launches Business Confidence Survey 2021

On 8th June, the European Chamber launched its *European Business in China Business Confidence Survey 2021* in Beijing. A total of 35 original news stories (10 international and 25 domestic) have so far been generated on the survey. Then-Board Member Charlotte Roule presented the key findings and took questions during the official press conference. Chairs from the Chamber's chapters also took part, sharing local findings and insights. Ms Roule was also interviewed live by *Bloomberg* and *Deutsche Welle*, and in a recorded session with *CGTN*. During these interviews, she emphasised that multinationals have no intention of divesting business out of China; instead, they are looking to further separate their China operations from the rest of the world as a solution to disruptions to supply chains.

Chapter chairs' engagement with local media

On 10th June, Southwest Chapter Chair Massimo Bagnasco was interviewed by local media *iChongqing* on the topic of carbon neutrality. He shared Europe's experiences in building energy efficiency. He also said European companies could provide cutting-edge green energy technologies and called on the local government to provide new policies and legislation to facilitate this.

South Chapter Chair Klaus Zenkel conducted an interview with *Guangdong Radio and Television's Radio English Service*, Southern China's leading English radio news provider. He talked about European business in the Greater Bay Area (GBA), which he said is expected to see further economic growth, to which foreign companies will be important contributors. Thus, he called for these enterprises to have equal access to GBA projects and related support from the government.

BUSINESS

EU companies in China now doing better

Charlotte Roule from the European Union Chamber of Commerce in China takes a closer look at how EU firms have been faring lately in the Asian country amid a tangible pickup of Chinese economic activity.



The European Chamber launched its *European Business in China Business Confidence Survey 2021* in Beijing. Ms Roule was interviewed live by *Bloomberg* and *Deutsche Welle*.

Media: *Bloomberg*

Date: 8th June 2021



Southwest China Chapter Chair Massimo Bagnasco was interviewed by local media *iChongqing* on the topic of carbon neutrality.

Media: *iChongqing*

Date: 10th June 2021

Vice President of EUCCC Shared View on China's Carbon Neutrality Target

By: Eiko Cheng ICHONGQING | Jun 16, 2021



South Chapter Chair Klaus Zenkel conducted an interview with *Guangdong Radio and Television's Radio English Service*, Southern China's leading English radio news provider.

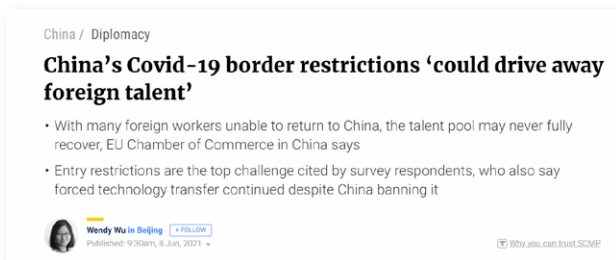
Media: *Guangdong Radio and Television's Radio English Service*

Date: 10th June 2021



In *The Economist's* weekly edition (12th June), David Rennie—who moderated a panel discussion during the launch of the Chamber's BCS 2021—devoted his Chaguan column to one of the central themes of the BCS.

Media: *The Economist*
Date: 12th June 2021



The *South China Morning Post* featured a comprehensive article discussing the travel restriction issue, based on findings from the BCS 2021.

Media: *South China Morning Post*
Date: 8th June 2021



The Nanjing Chapter hosted the 2021 Jiangsu Government Dialogue and Europe Day celebration. Guests and representatives from 60 European companies based in Jiangsu attended the event.

Media: *Xinhua*
Date: 16th June 2021

The Economist examines BCS findings on companies' commitments to China

In *The Economist's* weekly edition (12th June), David Rennie—who moderated a panel discussion during the launch of the Chamber's BCS 2021—devoted his *Chaguan* column to one of the central themes of the BCS; that despite business becoming more politicised, and companies being pessimistic about seeing a level playing field in China, they are committed to investing more in the market. This follows a strong economic recovery in 2020 that saw many companies, and company branches in China, post record revenues. European Chamber President Wuttke was quoted in this article: "Increasingly, firms must build one operation for China and another for the rest of the world".

Travel restriction hurdle noticed by influential media outlet

On 8th June, the *South China Morning Post* featured a comprehensive article discussing the travel restriction issue, based on findings from the BCS 2021. Reporter Wendy Wu highlighted the fact that entry restrictions topped the list of challenges cited by respondents in attracting and retaining foreign talent. She also quoted the Chamber's concern that the loss of foreign talent could have a long-term impact on China's development because "many of those giving up on returning have deep knowledge of conducting business in China, something that replacements will take years to develop".

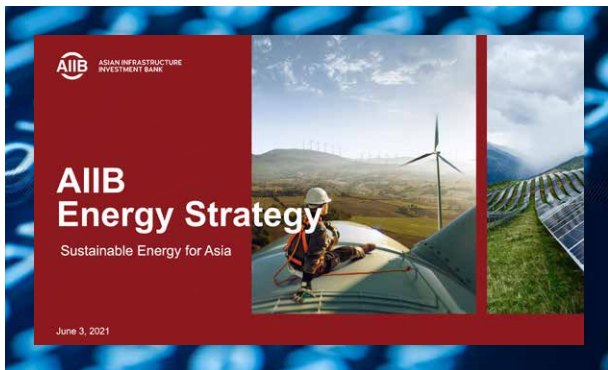
Nanjing Chapter holds annual dialogue with local government

On 16th June, the Nanjing Chapter hosted the 2021 Jiangsu Government Dialogue and Europe Day celebration. Guests and representatives from 60 European companies based in Jiangsu attended the event. Nanjing Chapter Chair Dr Andreas Risch delivered a keynote speech on the BCS 2021 findings. Local media reported on the event, and *Hello Jiangsu* conducted an exclusive interview with Dr Risch, in which the chair said that increasing the number of dialogues between European companies and the Chinese Government could have a positive influence on business operations.

Events Gallery

BEIJING, 3RD JUNE 2021

EUCCC and AIIB Business Engagement Seminar



- Funding through different means can help bridge the digital infrastructure financing gap.
- The AIIB finances an annual average of about 870 megawatts of renewable energy capacity.
- The AIIB has financed about 43,872 kilometres of transmission and distribution lines/pipelines; equivalent to the circumference of the earth.

BEIJING, 29TH JUNE 2021

Europe-China Hydrogen Workshop



- China is already cooperating with the European Union (EU) on climate-related areas, such as clean energy, decarbonisation technologies, green transportation and carbon trading.
- Drawing upon foreign expertise in green energy and world-wide recognised policy will help China achieve its decarbonisation targets and industrial upgrade.
- The 14th Five-year Plan (FYP) featured hydrogen at the national level for the first time, and several provinces have included hydrogen in their provincial FYPs

SHANGHAI, 9TH JUNE 2021

European Business in China - Business Confidence Survey 2021 Shanghai Chapter Launch



- Foreign businesses are reluctant to set up regional headquarters (RHQ) in Shanghai due to administrative difficulties, an uncompetitive tax policy, the high cost of living and difficulties in attracting or retaining talent.
- Two of the most important cost factors, housing and international schools, are also about to become more expensive in January 2022 when non-taxable allowances for foreign employees are due to be scrapped.
- RHQ are per definition unthinkable without foreign staff, while persistent travel restrictions hinder the mobility of HQ employees.

SHANGHAI, 13TH JULY 2021

Beyond Cybersecurity Conference 2021: The State of Cybersecurity Readiness



- Data-centric security and compliance is comprised of three key things: data catalogue, risk awareness and data handling.
- Cyber threat risk calculation depends on vulnerabilities, state-of-the-art attack methodologies, and the expertise and resources of the adversary, among many other variables.
- We should care about cybersecurity because it is an operational threat, and can damage a company's reputation, cause monetary losses and impact customers.

TIANJIN, 29TH MAY 2021

Tianjin Football Game and Spring Family Day



This was Tianjin Chapter's first football championship, held to coincide with the Spring Day celebrations.

- Winner - Schlote Automotive Parts (Tianjin) Co, Ltd (home team)
- Runner-up: Volkswagen Automatic Transmission (Tianjin) Co Ltd
- Third place: Volkswagen Automatic Transmission (Tianjin) Co Ltd Goglio (Tianjin) Packaging Co., Ltd

SOUTH CHINA, 21ST MAY 2021

Seminar: Strengthen Cooperation and Jointly Construct a Win-Win Situation



- The Guangzhou Development District is a pioneer area in Guangdong which introduces many preferential policies for foreign companies in new emerging industries.
- Foreign talent can play a key role in boosting local economic outcomes, but companies need to find safe solutions to bring foreign residents back to Guangdong and to bring new talent in.
- Members in South China are much less likely to have missed out on business opportunities due to market access restrictions or regulatory barriers, while this indicates the relative openness and level playing field found in Guangdong.

SOUTHWEST CHINA, 22ND JUNE 2021

Seminar: Ultimate Guide for Women to Thrive in your Company



- Invest in policies and programmes that will foster women's presence in all lines of business.
- Offer coaching and support to women employees prior to and after maternity leave; provide flexible working to ease the return to the job.
- Meet with women employees who are planning to, or have already, quit to gather information about the reasons; utilise it to develop strategies to prevent women from quitting.

NANJING, 6TH JUNE 2021

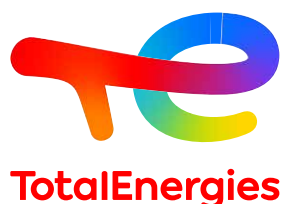
2021 Changzhou Family Day



- A presentation was delivered on upcoming changes to China's tax regime: from 1st January 2022, foreign employees will no longer be eligible for non-taxable allowances on education and housing, among others.
- The cancellation of non-taxable allowances for companies that employ foreign employees is expected to significantly raise human resource costs.
- The loss of non-taxable allowances on education fees will also impact families dependent on private schooling in China.

Advisory Council News

Total is transforming and becoming TotalEnergies



28th May 2021, Paris - At the Ordinary and Extraordinary Shareholders' Meeting, shareholders approved, almost unanimously, the resolution to change the company's name from Total to TotalEnergies, thereby anchoring its strategic transformation into a broad energy company in its identity. In tandem with this name change, TotalEnergies is adopting a new visual identity.

"Energy is life. We all need it and it is a source of progress. So today, to contribute to the sustainable development of the planet facing the climate challenge, we are moving forward, together, towards new energies. Energy is reinventing itself, and this energy journey is ours. Our ambition is to be a world-class player in the energy transition. That is why Total is transforming and becoming TotalEnergies," declared Patrick Pouyanné, chair and chief executive officer of TotalEnergies.

TotalEnergies is a broad energy company that produces and markets energies on a global scale: oil and biofuels, natural

gas and green gases, renewables and electricity. Our 105,000 employees are committed to energy that is ever more affordable, clean, reliable and accessible to as many people as possible. Active in more than 130 countries, TotalEnergies puts sustainable development in all its dimensions at the heart of its projects and operations to contribute to the well-being of people.

L'Oréal creates cosmetic bottle from plastic derived from enzymatic recycling technology

L'Oréal has announced the realisation of the first cosmetic bottle made from plastic entirely recycled using Carbios' enzymatic technology, and said it aims to put the bottles based on this disruptive innovation into production in 2025. Biotherm would be the first

of the Group's brands to launch a product in this bottle of the future. The technology—developed by Carbios, a pioneer in biotech solutions for the recycling of PET plastics—paves the way for manufacturing products made from 100 per cent recycled materials produced using its enzymatic process. It is suitable for all types of PET—clear, coloured, opaque and multilayer—making these plastics infinitely recyclable.

In 2017, to promote the development of innovative plastics recycling solutions and work together to industrialise the technology, L'Oréal set up a consortium with Carbios, which Nestlé Waters, PepsiCo and Suntory Beverage & Food Europe have since joined. In 2019, L'Oréal invested in Carbios via its venture capital fund BOLD – Business Opportunities for L'Oréal Development. With 'L'Oréal for the Future', L'Oréal's new sustainability programme for 2030, the Group has taken a further step towards the fundamental



L'Oréal launches first cosmetic brand to use recycled bottles with enzymes. It aims to use 100 per cent plastic packaging that is refillable, reusable and compostable.

Photo: loreal.com



Photo: Schneider Electric

**Driven the development of 10,000 MW of
renewable electricity**

transformation of its business and has set ambitious new objectives, particularly in the area of packaging:

- by 2025, 100 per cent of its plastic packaging will be refillable, reusable, recyclable or compostable;
- by 2030, 100 per cent of its plastic packaging will be derived from recycled materials or biosourced, and the Group will no longer use any virgin plastics of fossil origin;
- by 2030, 100 per cent of the ingredients used in its formulas and all biosourced materials will be traceable and come from sustainable sources.

Schneider Electric helps clients reach landmark milestone of 10,000 MW advised renewable energy power purchase agreements

24th June 2021, France - Schneider Electric, the leader in the digital transformation of energy management and sustainability, announced that the company has advised its corporate clients on over 10,000 megawatts (MWs)

of renewable energy Power Purchase Agreements (PPAs) globally since 2014. This is equivalent to more than 300 million metric tonnes of carbon emissions, or the amount of carbon annually stored by approximately 367 million acres of forest – equivalent in land mass to three of the United States' four largest states (Texas, California and Montana) combined.

This landmark milestone was achieved through the execution of more than 140 completed PPA transactions by Schneider Electric corporate clients, and is the largest publicly announced advised capacity by any third-party buyer's advisor in the world.

Schneider Electric was one of the first buyer's advisors to market in 2014 when the corporate PPA market began to accelerate, and has since supported some of the largest announced PPA transactions in history. Its global team of experts have collaborated with corporations throughout the US, Mexico, India, Australia and across Europe, and the company is actively engaged in shaping emerging markets in Brazil, Singapore and Vietnam. This geographic reach enables clients to leverage Schneider's extensive market experience, coupled with local expertise, to secure the deals most optimal for their portfolios. More than 26 terawatt-hours of pending

renewable energy purchases are currently under advisement globally by the Schneider Electric team.

Boehringer Ingelheim partners with Lifebit to detect global infectious disease outbreaks

9th June 2021, Ingelheim, Germany - Boehringer Ingelheim, a global leader in animal health, announced the beginning of a long-term partnership with Lifebit Biotech to utilise artificial intelligence (AI) for the detection and early-reporting of global disease outbreaks using real-world data harvested from scientific publications and other open sources. Utilising the Lifebit REAL platform, insights into the latest infectious disease outbreaks allow research and development (R&D) efforts to be prioritised accordingly.

Scientists and researchers from the two organisations will work side-by-side to combine real-world evidence and the latest AI algorithms to identify infectious disease outbreaks and respond accordingly. Lifebit REAL uses advanced analytic capabilities to automatically notify users of relevant outbreaks, such as transboundary disease spread or the emergence of pathogens, such as COVID-19. The system is built around an active learning architecture: the more relevant data ingested, the more the accuracy of the system increases. [3E](#)

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European Chamber members are welcome to add news items on their own activities to our website, and share it with all our other 1,700 members.

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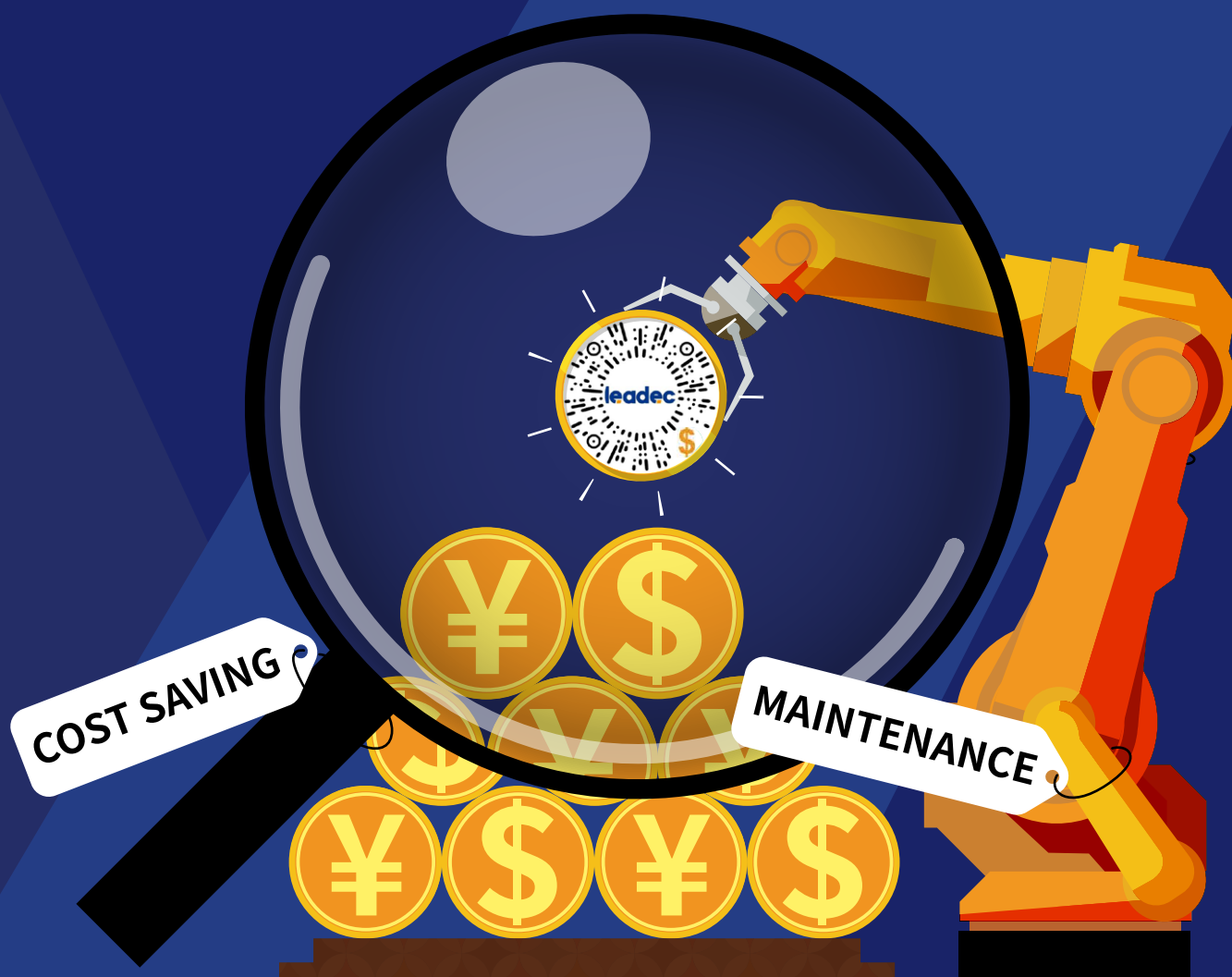
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