

NAVIGATING CHINA'S CROSS-BORDER DATA TRANSFER POLICIES

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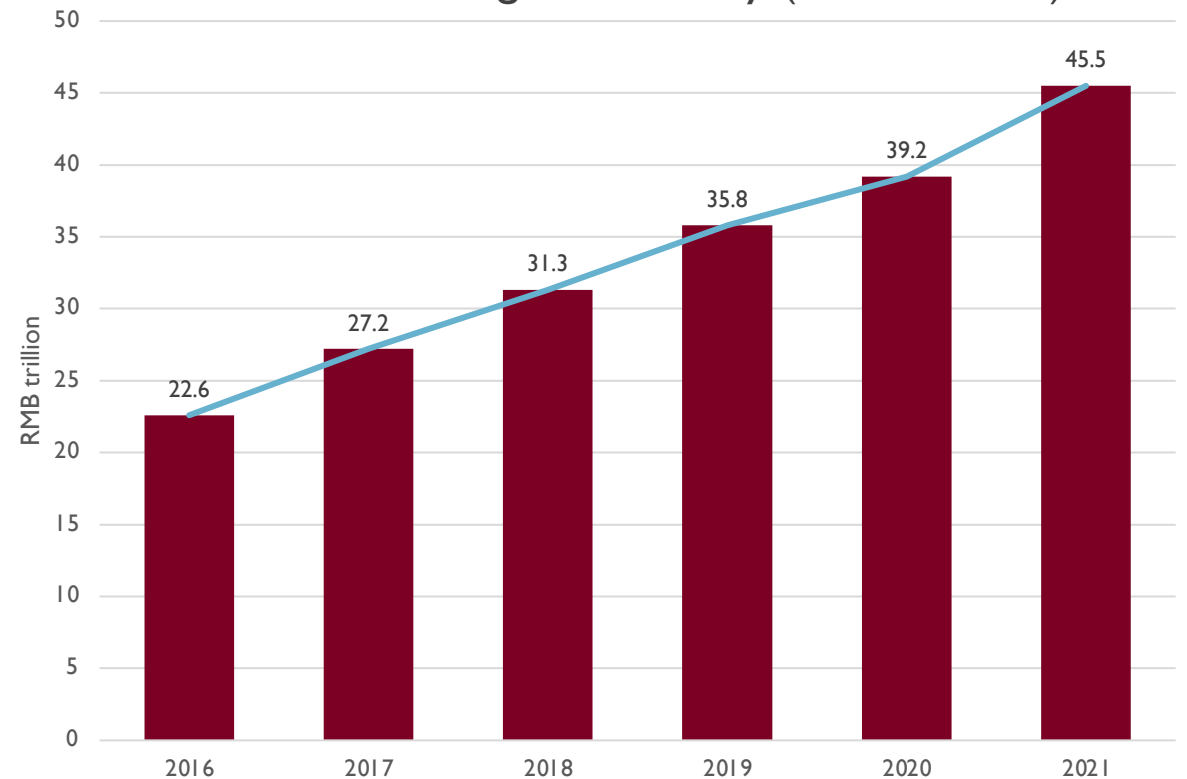


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CHINA'S GROWING DIGITAL ECONOMY

- Doubled in size since 2016, reaching a value of **45 trillion RMB** or **39.8%** of the country's GDP in 2021
- Complexity: balancing economic connectivity and national security concerns

Size of China's Digital Economy (RMB Trillions)



Source: Report on the Development of China's Digital Economy (2022), China Academy of Information and Communications Technology (CAICT)

THE REGULATORY FRAMEWORK

Cybersecurity Law (CSL)

Effective June 1, 2017

Data localization required for **critical information infrastructure operators**

Data Security Law (DSL)

Effective September 1, 2021

Data localization required for **“important” data handlers**

Personal Information Protection Law (PIPL)

Effective November 1, 2021

Data localization required for entities processing data **above the threshold**

Recent Updates

September 1, 2022

- Measures for Data Export Security Assessment (Finalized)

March 16, 2023

- Certification Requirements for Cross-Border Transfer of Personal Information (Draft)

February 22, 2023

- Standard Contract Provisions on the Export of Personal Information (Finalized)

CROSS-BORDER DATA TRANSFER MECHANISMS (I)

Standard Contract

Key Documents



- Standard Contract Measures for the Export of Personal Information
- Standard contract

Applicable Scenario



Smaller firms, or firms with small volumes of cross-border data transfers and do not handle important data

Requirements



Conduct personal information protection impact assessment (PIPIA) (Art. 55, PIPL)



Sign a standard contract that strictly follows the template provided

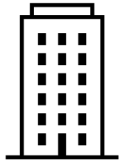


File the standard contract and the PIPIA to provincial-level cybersecurity authority

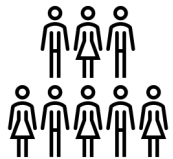
CROSS-BORDER DATA TRANSFER MECHANISMS (II)

Personal Information Protection Certification

Applicable Scenarios



- Cross-border processing of PI within multinational companies or within the same economic or business entity



- Cross-border processing of PI in other scenarios

Authorized Agency



China Cybersecurity Review Technology and Certification Center (CCRC)

Requirements



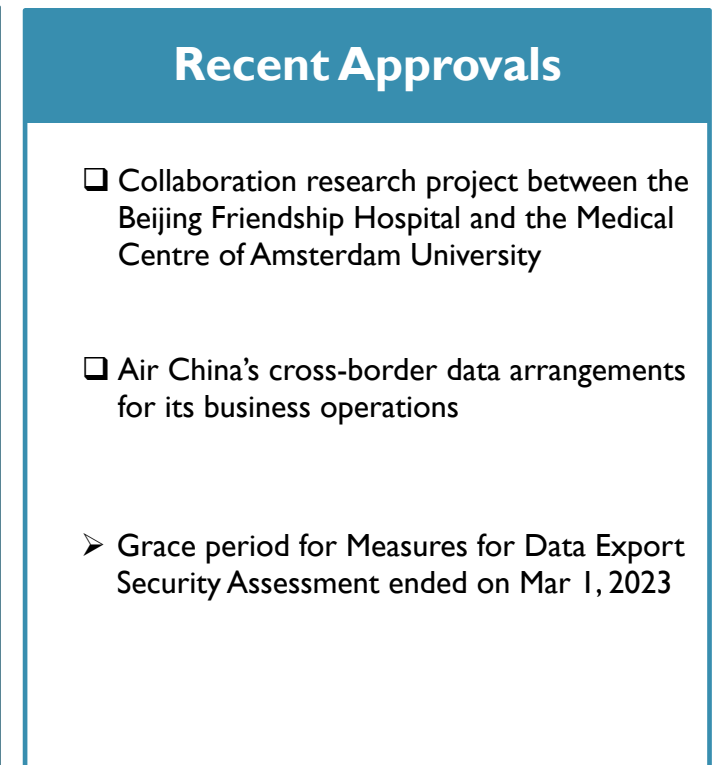
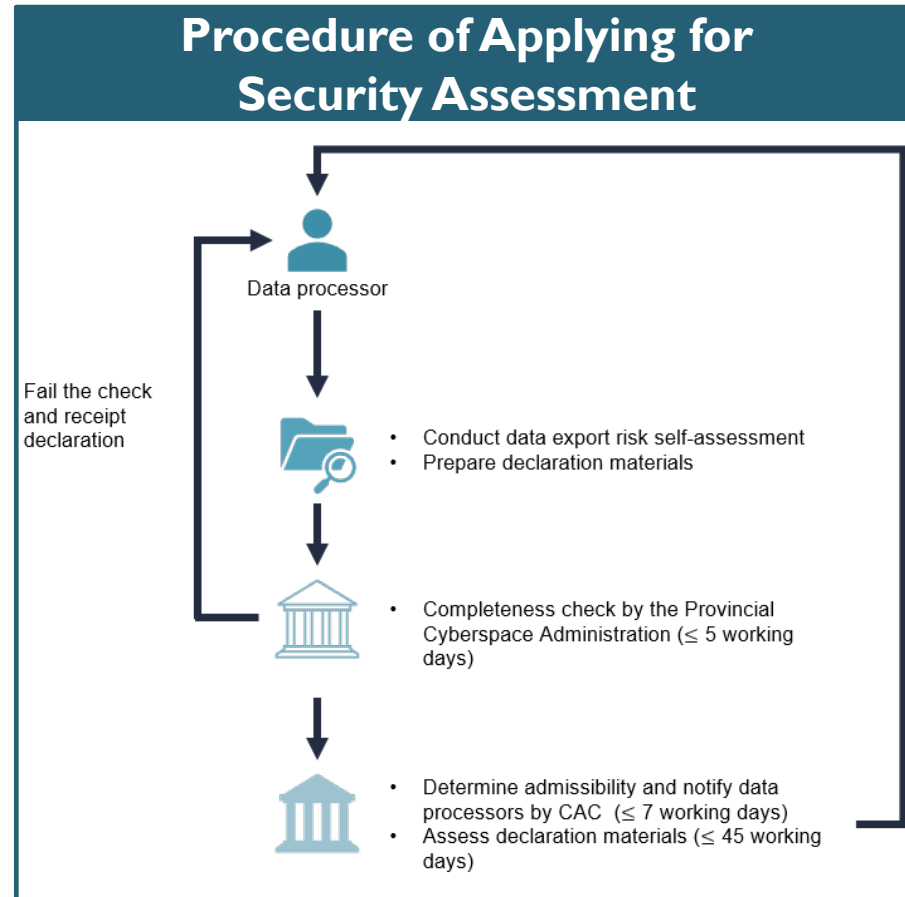
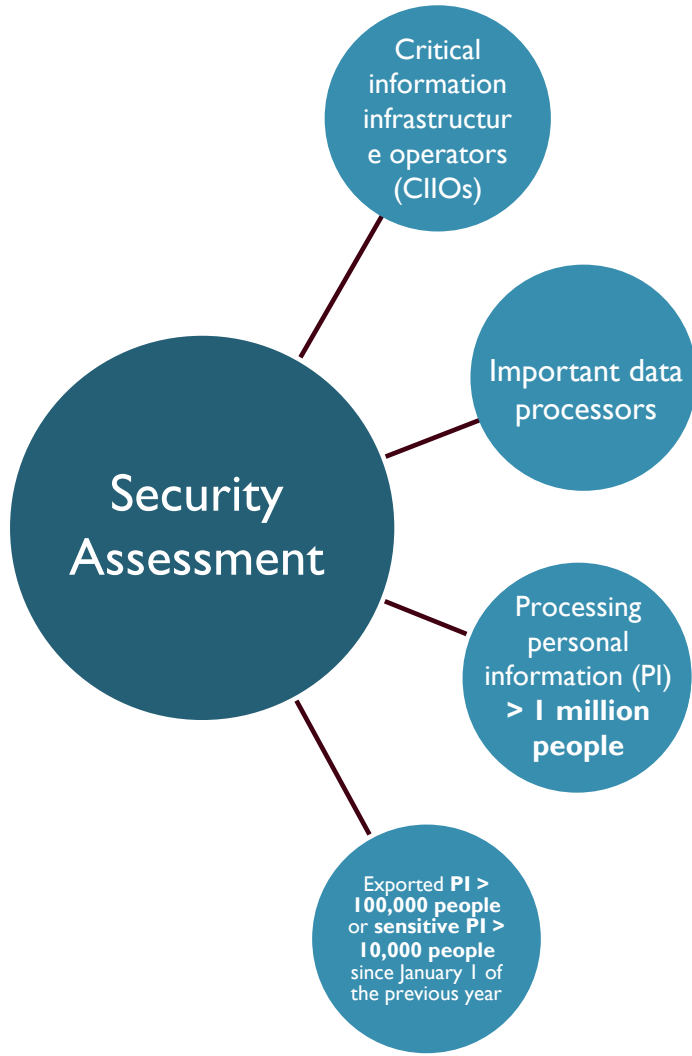
Conduct personal information protection impact assessment (Art. 55, PIPL)



Sign legally binding and enforceable documents

CROSS-BORDER DATA TRANSFER MECHANISMS (III)

Security Assessment



MAIN CHALLENGE IN COMPLIANCE

Key Terms Pending Clarification

Critical Information
Infrastructure Operator

Important Data

Sensitive Personal
Information

Sensitive PI under PIPL: PI that, once leaked, illegally provided, or misused, may endanger the safety of an individual or their property, damage the individual's personal reputation, physical or mental health, or lead to discriminatory treatment of the individual.



Biometric data



Religious beliefs or
specific identities



Medical history



Financial
accounts

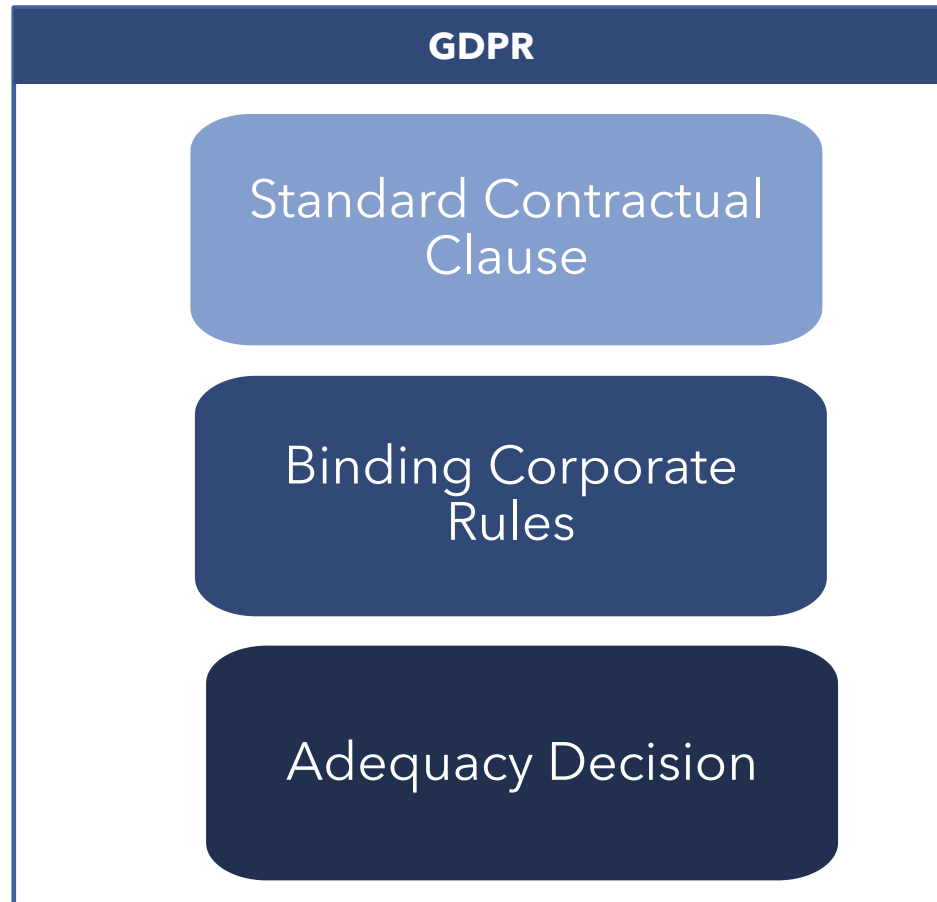


Location and
whereabouts



Any personal
information of minors
under the age of 14

COMPARISON WITH GDPR



IMPACT ON BUSINESSES



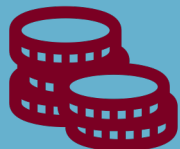
Hospitality

- Rely on membership databases to provide customized services
- The volume of data processed by large hotels may trigger data localization requirements



Healthcare

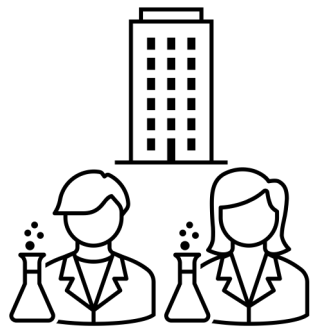
- Health data may be categorised as “sensitive” data and subject to stricter regulations.
- Clinical trial data, remote medical devices



Financial

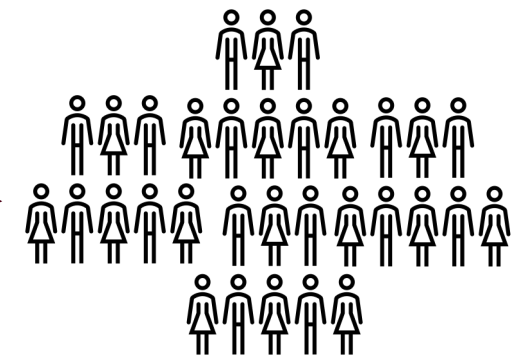
- Due diligence checks involve sensitive personal information
- Financial status, family background, and even health conditions

IMPACT ON R&D ACTIVITIES



R&D centre in Singapore

Clinical trials for consumer product testing



Data stored locally

ECONOMIC IMPLICATIONS

Data as a production factor

- Similar to land and human capital
- Generates business insights & improve product offerings
- Distinct feature: nonrivalry
 - More data sharing across firms \Rightarrow higher production
 - Example: Shenzhen data exchange opened on November 15, 2022

Stringent cross-border data transfer policies

- Short-run impact: raising compliance costs

HIGHER COMPLIANCE COSTS

- New data handling processes required
- Impairs price-competitiveness of multinationals
- Erects entry barriers & encourages exits
- Hinders domestic firms' scaling up and expanding overseas

Example

Yahoo's withdrawal from China in October 2021 citing an "increasingly challenging business and legal environment"

LOOKING AHEAD

- National security still a key concern
- More rigorous implementation of the data regulations
- Leeway exists: exceptions for overseas data transfers based on international agreements
- Extended uncertainty associated with complex global policy landscape