Cybersecurity Law and Data Protection Compliance for the China Market 2019

Survey & Report
Foreword

With the rapid evolution of the information technology environment, businesses and governments around the world are confronting digital risk. Security threats such as network attacks, network intrusions and malware are growing in sophistication. On the other hand, widespread privacy concerns emphasise the importance of personal data protection. As governments develop national regulatory frameworks to cope with these new challenges, companies are adapting their data management systems across multiple jurisdictions.

Against this backdrop, China adopted its first comprehensive legislation governing the area in the Cybersecurity Law of the People’s Republic of China in 2017. The law affects organisations that deal with consumers and businesses in mainland China and will transform the way that data is collected, stored, used, disclosed and disposed of.

Although the precise applications of some provisions of the Cybersecurity Law are still subject to further clarification, it has drawn significant attention from the business community. Some enterprises are looking to best practice to set up internal safety management systems for data protection; others are concerned with the restrictions imposed on companies’ China operations that have been ushered in by the new law.

In order to better understand the British business community’s reaction to China’s cybersecurity regime, the UK’s Department for International Trade (DIT), LexisNexis, Zhong Lun Law Firm and the China-Britain Business Council (CBBC), carried out a survey in the first half of 2019. Nearly 80 British companies provided responses to an online survey, while leading cybersecurity experts were interviewed face to face.

The data collected from the survey was used to identify and assess, from the perspective of British business, 1) the key challenges; 2) current understanding of the law’s key components; and 3) the measures taken in response. It is hoped that this will identify the law’s key areas of impact and concern to UK business.

With these perspectives in mind, the survey is followed by an overview of China’s cybersecurity regime, exploring the following key areas:

- Overview of the regulatory framework;
- Key compliance recommendations for British companies;
- Best practice of Chinese companies.

Put together, the survey and subsequent analysis aims to take stock of the Cybersecurity Law’s impact on British business. It is hoped that this information will also help the British business community to greater understand its key provisions, manage risks and ensure compliance.

Michael [Signature]
RELX Group Chief Privacy Officer
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Part 1 Survey Result Analysis

The “Market Access Survey - Cybersecurity Law and Data Protection Compliance for the Chinese Market” took the form of an online questionnaire consisting of multiple-choice questions. The survey was launched on March 12th 2019 and was publicly available until May 31st 2019. Numerous channels were used to reach out to over 800 UK companies, receiving a total of 78 responses from British companies of various sizes and industries operating across China.

Executive summary

1.1 Profile of the Respondents

The survey gathered the views of a large cross-section of British business. Nearly half (44%) of the respondents were members of the C-suite (CEO, CIO, Chairman, CTO, etc.). Our interviewees covered both small- and medium-sized enterprises (SMEs) and multi-national corporations (MNCs). The majority (76%) of the respondents were already established in the China market, whilst 24% of them were exploring the possibility. Just under half (45%) of the respondents were from the ICT (Information and Communication Technology) sector.

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<th>Category</th>
<th>Percent</th>
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<tr>
<td>Technology, media, and telecommunications</td>
<td>44%</td>
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<tr>
<td>Financial and professional services</td>
<td>12%</td>
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<tr>
<td>Manufacturing and transportation</td>
<td>16%</td>
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<tr>
<td>Healthcare and life sciences</td>
<td>10%</td>
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<tr>
<td>Energy and construction</td>
<td>0%</td>
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<tr>
<td>Education</td>
<td>8%</td>
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<tr>
<td>Consumer goods/Retail/Cross-border E-commerce</td>
<td>4%</td>
</tr>
<tr>
<td>Other</td>
<td>8%</td>
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Communications devices, electronics, IT hardware, and other hardware

- Communications devices, electronics, IT hardware: 50%
- Software and the IT service industry: 24%
- The Internet and relevant service industries: 3%
- Other: 3%
1.2 Major Challenges
With respect to the major challenges for UK Business, the top four major challenges are data localisation (21%), cross-border data transfer (24%), implementation of China’s multi-level protection scheme (15%) and legitimate use of VPN (15%). Moreover, we cross-analyse the data against the factor of whether a business has already entered the China market, and according to our result, UK companies which operate in China consider data localisation to be the biggest challenge, while UK companies which sell to Chinese customers from overseas and/or sell via local partners believe that cross-border data transfer is the major challenge.

Regarding the collection of Personal Information, 45% of UK companies operating in China collect Personal Information directly or indirectly, while 50% of those considering entering the China market believe they would engage in the collection of Personal information. This demonstrates the pervasiveness of data collection as a business activity, and the extent of the CSL’s application.

Regarding Important Data, the survey revealed that a larger percentage of companies were unsure of the scope of its application, reflecting uncertainties with its current legal definition.

On the issue of cross-border data transfer, 41% of the respondents with China-incorporated operations believe that it will be a game-changer if they are unable to access or collect data in China in a compliant manner, while 35% of the respondents believe that it will be a game-changer if they are unable to transfer data cross-border in a compliant manner. The survey also revealed that multinationals were more concerned about cross-border data transfer, while SMEs were focused primarily on data access and collection.

In regard to Critical Information Infrastructure Operators (CIOs), of those respondents who have already set up operations in China, only 33% have assessed the possibility of itself or its customers being designated as a CIO. As CIO designation entails greater compliance burdens and scrutiny, this suggests the need for greater awareness.

1.3 Data Collection and Cross-border Transfer
As the Cybersecurity law centers on the governance of data, the survey probed industry perspectives on some of its key requirements. The collection of personal information and important data requires compliance with security measures, while data collection and cross-border data transfer are subject to security reviews.

1.4 Reactions from the British Business Community
In regard to the compliance measures that UK companies have undertaken thus far in response to the cybersecurity law, the survey indicates that companies remain in early stages. While 48% of the respondents have appointed a specific person to oversee cybersecurity and data compliance work for its China operations, only 27% of the respondents have set up internal safety management systems and

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1. Critical information infrastructure refers to information facilities that directly concern national security and stability and may seriously endanger national security and public interest. While further implementing regulations are expected, the sectors that have been explicitly named include energy, finance, transportation, education, scientific research, water conservancy, industrial manufacturing, healthcare, social security and public utilities.
operating procedures. Furthermore, less than half have adjusted, or considered adjusting, their IT architecture in China to the requirements of data localisation. While this may indicate lack of preparation on the side of UK companies, it also reflects that many of the measures remain in draft form.

- In regard to professional advice, the top three external parties that UK companies consulted regarding cybersecurity issues are the Department for International Trade (DIT) (22%), professional service providers (22%) and the British Chamber of Commerce in China (BCCC)(13%). It shows that a large number of enterprises have begun to take stock of data compliance obligations. However, responses indicate that compliance efforts are mixed and companies have yet to implement a robust compliance mechanism.

- Regarding the impact on business operations of the Cybersecurity Law, 76% of the respondents believe that China’s current legislation and policies on cybersecurity will affect operations in China, 16% of the respondents believe that it will restrict product innovation, 12% of the respondents think that it will cause delays in accessing the China market and 22% of the respondents believe that it will restrict marketing activities. Despite the challenges and restrictions, 49% of the respondents believe that the Cybersecurity Law and its implementation will promote a healthier business environment and help to protect personal privacy.

- Recommendations - 71% of the respondents believe that bilateral or multilateral data flow mechanisms between countries will benefit UK enterprises. Up to 74% of the respondents called for greater exchange and communication between companies and government agencies from the UK and China.

Overall, the survey has provided a useful overview of the British Business Community’s views and reactions to the Cybersecurity Law in China, as well as revealing the key areas of impact and concern. Although the law’s implementing measures are still under review, this information will help the DIT to provide targeted case-by-case support to companies, and secure a more optimal business environment for British business in China.
Part II
Overview of China’s Cybersecurity Regulatory System

Coming into effect on June 1st 2017, the Cybersecurity Law forms the basic legal framework for cybersecurity and data protection in China. It categorises cyberspace resources and activities according to their risk and sensitivity, as well as establishes corresponding compliance requirements. The law systemised a number of pre-existing regulatory measures and acts as an umbrella document which will be continually supported by a series of implementing regulations, rules and guidance. Its key components consist of:

- Generic cybersecurity requirements for “Network Operators”;
- Regulations on Personal Information and Important Data protection;
- Special requirements for Critical Information Infrastructure Operators (CIIOs);
- Regulations on data localisation and cross-border data transfer;
- Compulsory certification and security reviews on network products and services;
- Internet content management;
- Multi-level Protection Scheme (MLPS).

Various regulatory authorities play different and sometimes overlapping roles in the field of cybersecurity. These authorities include the Cyberspace Administration of China (CAC), State Council, Ministry of Industry and Information Technology (MIIT), Ministry of Public Security (MPS), the National Information Security Standardisation Technical Committee (TC260), among others.

The CAC was established in 2014 and has been central to the development of China’s cybersecurity framework, having released some of the key laws and regulations over the last few years. The MIIT has played a key role in developing industrial policies and standards in China’s ICT sector. While the MPS, China’s main security and intelligence agency, is responsible for protecting the country from security attacks, as well as overseeing the Multi-Level Protection System (more information below). TC260 is jointly run by CAC and MIIT, and has issued the majority of technical standards in the cybersecurity field.
The regulatory system of cybersecurity in China is as follows:

**Cybersecurity Landscape**

- **The Communist Party of China**
  中国共产党
  The party leads the legislative body in the enactment of the law and the enforcement agencies in the implementation of the law.

- **Standing Committee of the National People’s Congress**
  全国人民代表大会常务委员会
  Enacts laws; Supervises work related to law implementation; Promotes the comprehensive and effective implementation of the law through law enforcement inspections.

- **Office of the Central Cyberspace Affairs Commission (Cyberspace Administration of China)**
  中央网络安全和信息化委员会办公室（中华人民共和国互联网信息办公室）
  Coordinates cybersecurity regulation and related supervisory and administrative tasks; Security protection of critical information infrastructure; Coordinates the establishment of cybersecurity risk assessments and emergency work mechanisms, formulates contingency plans for cybersecurity incidents.

**State Council**

- **Develops administrative regulations related to cybersecurity.**

- **Ministry of Industry and Information Technology of the People’s Republic of China**
  中华人民共和国工业和信息化部
  Formulates plans, policies and guidelines for telecommunication networks, the internet and its applications, industrial control systems and the (interconnected) industry and organizes their implementation.
  - Manages the approval of telecommunication service business licenses (e.g., VPN).
  - Supervises and manages information and communication services, including telecommunication and the internet.

- **The Ministry of Public Security of the People’s Republic of China**
  中华人民共和国公安部
  Multi-level protection scheme (MLPS).
  - Public and national security-related cybersecurity issues and criminal cases.

- **National Administration of State Secrets Protection**
  国家保密局
  Supervises, inspects and guides multi-level protection related to confidentiality.
  - Supervision and management of cybersecurity multi-level protection related to cryptography management.

- **National Information Security Standardisation Technical Committee**
  全国信息安全标准化技术委员会
  Develops national and industry standards for cybersecurity management and network products, services and operational safety.

- **Standardisation Administration of the People’s Republic of China**
  中国国家标准化管理委员会
  Management of rational standardisation work.

- **Certification and Accreditation Administration of the People’s Republic of China**
  中国国家认证认可监督管理委员会
  Management, supervision and coordination of national certification and accreditation.

- **Industry Authorities**
  行业主管部门
  - Guide and supervise critical information infrastructure security protection in specific industries.
  - Organise and conduct the security review of network products and services in specific industries.
  - Manage IT security in specific industries.

- **Subordinate Organisations**
  下属机构
  - The China Academy of Information and Communications Technology
    中国信息通信研究院
    Supports NIOT in the development and implementation of policies on cybersecurity tasks in IOT’s certification body for critical network equipment.
  - China Cyberspace Security Review Technology and Certification Center
    中国信息对抗认证中心
    Implementation of information security certification.

- **Third Party Testing, Inspection and Certification Bodies**
  第三方机构
  - Undertake third party evaluation in the cybersecurity review.
  - Evaluate the information system security level.
A detailed outline of their respective functions and legislative actions are represented in the chart below:

- **Central Authorities**
  - Coordinates cybersecurity work and related supervisory and management tasks
  - Supervises and manages network information security
  - Coordinates the security protection of critical information infrastructure
  - Protects personal information and important data
  - Develops and publishes a catalogue for critical network equipment and special network security products
  - Organises rational security reviews of network products and services
  - Coordinates the security assessment of cross-border data transfers
  - Coordinates the collection, analysis and notification of cybersecurity information
  - Coordinates the establishment of cybersecurity risk assessment and emergency work mechanisms, formulates contingency plans for cybersecurity incidents

- **CAC**
  - Cybersecurity Law, Article 8
  - Regulations on Cybersecurity Multi-level Protection (Call for Comments), Article 5
  - National Cyberspace Security Strategy
  - Cybersecurity Law, Article 50 & 68
  - Regulations on Internet Content Management Administration Law Enforcement Procedures, Article 2&4
  - Provisions for the Administration of Internet Information Services
  - Implementing Rules on the Licensing of Internet News Information Services
  - Administrative Provisions on Internet Post Comments Services
  - Administrative Provisions on Internet Forum Community Services
  - Administrative Provisions on Internet Group Information Services
  - Administrative Provisions on Internet User Public Account Information Services
  - Telecommunications Regulations of the People’s Republic of China, Article 27, 28, 29 & 30
  - Guidelines for the Operation of National Cybersecurity Inspections
  - Critical Information Infrastructure Identification Guidelines (under formulation)
  - Cybersecurity Law, Articles 64, Paragraph 1
  - Data Security Management Measures (Draft)
  - Cybersecurity Law, Article 23
  - Catalogue on Critical Network Equipment and Specialised Network Security Products (First Batch)
  - Notice on the Publication of the Directory of Internet Key Equipment and Cybersecurity-specific Product Safety Certifications and Safety Test Mechanisms (First Batch)
  - Cybersecurity Law, Article 35
  - Security Review Measures for Network Products and Services (trial implementation), Article 5
  - Measures for Cybersecurity Review (Draft)
  - Cybersecurity Law, Article 37
  - Measures on the Security Assessment of Cross-border Transfer of Personal Information and Important Data (Call for Comments)
  - Measures on Security Assessment for Cross-border Transfer of Personal Information (Draft)
  - Data Security management Measures (Draft)
  - Cybersecurity Law, Article 51
  - Cybersecurity Law, Article 53
  - Emergency Plan for National Cybersecurity Incidents
Part III

Compliance Suggestions for British Business

According to our survey, UK companies have confronted challenges in dealing with the law, in particular on 1) Personal information; 2) Important data; 3) Data localisation and cross-border data transfer and 4) the Multi-level protection scheme (MLPS). Below, we provide a brief explanation, as well as some recommendations for UK companies. Owing to the scale and complexity of such requirements, professional services firms are often consulted for specific compliance advice.

3.1 Compliance with Personal Information Protection Requirements

To determine whether a UK company must comply with the Personal Information protection requirements, the first step is to identify whether the data collected or processed by the UK company falls into the scope of Personal Information.

Step I: Data Identification

Personal Information is defined as various types of information recorded in an electronic format or otherwise that can be used separately or in combination with other information to identify a natural person, including but not limited to the name, date of birth, identity certificate number, personal biological identification information, address, telephone numbers, etc. of the natural person (see the CSL article 76).

Coming into effect in May 2018, GB/T 35273-2017 Information Security Techniques - Personal Information Security Specification (the “Personal Information Specification”), published by the National Information Security Optimisation Technical Committee of China (the "ISSC") provides more detailed examples of Personal Information. The key factor to identify whether the data falls into the scope of Personal Information is whether the company has the ability to use such data to identify natural persons (i.e. data subjects).

Step II: Review the Legal Basis of Personal Information Processing Activities

Personal Information processing activities include collection, storage, use, sharing, deletion, transfer, public disclosure, user profiling, personalise display, etc. Unlike the European General Data Protection Regulations (GDPR), the legal basis of Personal Information processing activities under the CSL are entirely consent-based. The Network Operators shall comply with the following requirements:

- Comply with the principles of legality, justification and necessity;
- Publicise the rules for Personal Information processing and clearly indicate the purposes, methods and scope of data collection and use;
- Obtain the consent of those from whom the information is collected (i.e. Personal Information subjects);
- Any processing activities shall be carried out within the scope of the consent;
- A renewed consent is required when the processing exceeds the original scope of consent;
- Seek explicit consent from children’s guardians prior to collecting or using children’s Personal Information in cases where the minors are aged under 14.

2. Chapter 6 of the GDPR requires any organisation processing personal data to have a valid legal basis for that personal data processing activity. The GDPR provides six legal bases for processing, namely 1) Consent; 2) Performance of a Contract; 3) Legitimate Interest; 4) Vital Interest; 5) Legal Requirement; 6) Public Interest
For UK companies which process Personal Information in China, it is important to conduct a full compliance due diligence of the legal basis of data processing and optimise the authorisation documents of the Personal Information subjects.

**Step III: Policy optimisation of the Rights of Personal Information Subjects**

The CSL entitles a series of rights of personal information subjects, supplemented by the national standard “Personal Information Specification”, including rights to deletion, rectification, access, withdrawal of consent, cancelation of accounts, and request for copies.

To comply with these requirements, it is recommended for UK complies to conduct gap analysis on data processing activities to determine if the company has clearly notified Personal Information subjects of their rights, and whether there are effective mechanisms in place so they can exercise these rights in an efficient way.

### 3.2 Compliance with Important Data Protection Requirements

To determine whether a UK company must comply with the Important Data protection requirements, the first step is to identify whether the data collected or processed by the UK company falls into the scope of Important Data.

**Definition of Important Data**

Important Data is generally perceived as data that is closely related to national security, economic development and public interest*. Examples of Important Data include unpublished government information, and a large volume of data relating to population, genetics, healthcare, or geographical and mineral resources*, usually excluding the operational and corporate administration data of businesses and personnel information.

To understand the specific scope of Important Data is critical because onerous requirements such as data localisation and security assessments for cross-border transfer are attached to important Data. However, the implementing regulations and national standards on Important Data are still being drafted and there is no definite scope of Important Data yet.

**Important Data protection requirements are still open to change**

Administrative Measures on Data Security (Draft, 2019) released on 28 May 2019 proposes some new requirements, containing a special focus on the protection of important data.

Risk Assessment- Network Operators shall assess the potential security risks prior to releasing, sharing or selling Important Data or transferring such data abroad.

Filing records- Network Operators are also required to file records with local cyberspace administrations for collecting Important Data within China for business purposes, which shall include the rules for collection and use of such data, purposes, scales, methods, scopes, types and retention periods of the data, but will not include the contents of data. However, the filing process is still unclear and further guidance is expected to be released by the government;

It should be noted that the Administrative Measures on Data Security (Draft, 2019) is still open to change. Once it is finalised, we expect to have clarity on a number of issues such as the methodology of the security assessment and the scope of Important Data.

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* Measures for Security Assessment of Cross-Border Transfer of Personal Information and Important Data (Draft), 2017
* Administrative Measures on Data Security (Draft), 2019
3.3 Internal Management Measures of Data Protection

Taking account of the CSL, related regulations and industry experience, the following measures are recommended for UK companies.

- **Localisation** - The GDPR in the EU and the CSL in China have large differences. Compliance with GDPR requirements does not guarantee compliance with the CSL. Companies should actively localise global data security policies and management measures to ensure that local policies in China meet the legislative gaps between the EU and China.

- **Personnel** - Formulate internal security management systems and operation instructions to determine the person in charge of cyber security (including data security, data protection and other cyber security requirements) and define the corresponding accountabilities;

- **Preparation** - Take technical and other necessary measures to ensure data security and to protect such data from disclosure, damage or loss;

- **Contingency planning** - Formulate a contingency plan for data security incidents and deal with security risks such as system vulnerabilities, computer viruses, cyberattacks and cyber intrusions in a timely manner. In the case of actual or potential disclosure, damage or loss of Personal Information, UK companies shall take remedial measures, notify the Personal Information subjects and report the matter to the competent authorities in accordance with the relevant provisions;

- **Review and update** - Many of the CSL’s implementing measures are still in draft form. Review and improve the data compliance and contingency planning system on a regular basis to ensure that they are up to date;

- **Training** - Conduct routine internal training to ensure security at all levels.

3.4 Data Localisation and Cross-border Data Transfer

As revealed by the online survey, cross-border data transfer and data localisation are key issues for UK companies in China. In its current form, the CSL requires that Personal Information and Important Data collected by critical information infrastructure operators (“CIIOs”) shall be stored within China (“Data Localisation Requirement”). Critical information infrastructure refers to information facilities that directly concern national security and stability and may seriously endanger national security and public interest. While further implementing regulations are expected, the sectors that have been explicitly named include energy, finance, transportation, education, scientific research, water conservancy, industrial manufacturing, healthcare, social security and public utilities. Where it is necessary to export Personal Information and Important Data collected by CIIOs abroad due to business needs, a security assessment shall be carried out.

However, since 2017 the Cyberspace Administration of China (“CAC”) has published a series of draft implementing measures of the CSL including *Measures for Security Assessment of Cross-border Transfer of Personal Information and Important*
Data (Draft, 2017), Administrative Measures on Data Security (Draft, 2019), and Measures on Security Assessment for Cross-border Transfer of Personal Information (Draft, 2019).

At present, these cross-border data transfer regulations have not come into force. For UK companies, it is nonetheless important to pay close attention to these developments, which reveal a few key shifts in the regulator’s attitude to cross-border data transfer:

- The scope of entities to which data export restrictions may apply has been significantly expanded from CIOs to each Network Operator. Arguably, any entity in China that uses computer systems connected to communication networks would be considered a Network Operator, and therefore would be subject to the security assessment requirements.
- Prior to the cross-border transfer of Personal Information, Network Operators shall apply

Moreover, we set out the procedure for such security assessment of Cross-border Transfer of Personal Information under the current draft measures to show the whole picture of the regulation of cross-border data transfer in China.

Security Assessment Process for Cross-border Transfers of Personal Information

Application materials:
1. the application form
2. the contract executed between the network operator and the receiver
3. a report analyzing security risks of the contemplated transfer and security measures implemented
4. any other materials required by the state cyberspace authority

Focus of the Assessment
1. Does the transfer comply with relevant State laws, regulations and policies
2. Can the contract terms fully protect the rights of the personal information subjects concerned
3. Can the contract be effectively carried out
4. Whether the network operator or receiver has a history of infringing on the rights of personal information subjects or has had a major cybersecurity incident in the past
5. Whether the network operator obtained the personal information at issue in a legal and legitimate manner
6. Any other matters to be assessed

The security assessment is to be completed within 15 working days and may be extended in complicated cases.

6. Administrative Measures on Data Security (Draft) Article 28

At present, the specific scope of important data and the procedure for such security assessment of cross-border data transfer remain unclear. However, UK companies are recommended to review their data flows, segment them into categories, and closely monitor the latest legislative developments.

### 3.5 Multi-level Protection Scheme (MLPS)

The Multi-Level Protection Scheme ("MLPS") for cybersecurity is a tiered information security protection system established within the CSL framework. The draft implementing regulations were published in 2018 and the recent roll-out in May 2019 of national standards, referred to as "MLPS 2.0", implements security management requirements in relation to a company’s cybersecurity protection system. Due to come into force nationwide in December 2019, the MLPS 2.0 is stricter and broader than its predecessor.

#### Subjects

The MLPS is required to be applied society-wide by all regional governments, agencies and departments, enterprises and institutions on networks and systems located within China. These include all networks except for self-built personal or home networks intended for self-use. The MLPS stipulates general technical and institutional requirements for all networks/systems along with some specific requirements for key applications including information network infrastructures, cloud computing platforms/systems, Big Data applications/platforms/resources, the Internet of Things (IoT), industrial control systems, and systems using mobile internet technology.

#### Subject Identifications

All networks/systems are divided into five levels of protection based on the degree of risk and importance, from Level 1 to Level V. For every level, there are different protection identification principles (set out in Appendix III: Identifications of the MLPS and related protection obligations.

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9. Network here includes not only user-oriented websites, platforms, apps, mobile networks, e-commerce platforms and cloud platforms, but also information systems that support corporate services, such as communication facilities, industry control systems, and office and business management systems.
Steps 1 & 2: All Network Operators should conduct a **self-evaluation** to determine the level to which their networks/systems belong.

Step 3: For Level II or above, companies shall organise an **expert review** and file a **record** with the public security organs.

Step 4: The public security organs will examine the materials submitted by the company for record-filing purposes.

Step 5: Where the network/system is graded appropriately and the record-filing materials provided meet the relevant requirements, the public security organ will issue a **record-filing certificate** of the MLPS.

Once the level of network/systems has been determined, Network Operators should comply with the corresponding requirements, as well as additional requirements that pertain to information network infrastructures, cloud computing platforms/systems, Big Data applications/platforms/resources, the Internet of Things (IoT), industrial control systems, and systems using mobile internet technology.

**Obligations of the MLPS**

Under the MLPS, there are different obligations for each level of networks/systems. Except for the general requirements for all levels of networks/systems, there are some specific additional requirements for Level III and above. In particular, it is required that networks/systems at or above Level III shall be technically maintained within the territory of China, and remote technical maintenance from overseas is prohibited. Where it is truly necessary to have networks/systems technically maintained remotely from overseas, it shall be required to conduct the cybersecurity review. However, the details of such review have not been published yet.

To better understand the whole picture of obligations for UK companies as network operators under the MLPS, we set out the general requirements along with the additional requirements for networks at or above Level III in Appendix IV.

Moreover, UK companies in China are recommended to pay close attention to the regulatory requirements of the competent administrative authorities, strengthen mechanisms of communications with administrative and cyberspace administration authorities, and implement multi-level protection on their networks/systems.
Part IV Expert Insights

To better understand the legal framework and relevant practice of cybersecurity and data protection in the Chinese market and provide advice to UK companies on how to deal with potential challenges, we consulted some experts from Chinese authoritative institutions and relevant representatives of Chinese and UK companies.

An Interview with Prof. Ke Xu, Executive Director of UIBE’s Digital Economy and Legal Innovation Research Center

Keywords: Law Enforcement Coordination, CIIO, GDPR

Ke Xu

Prof. Ke Xu is the Executive Director of UIBE’s Digital Economy and Legal Innovation Research Center and the Deputy Director of the Fintech and Cyber Security Research Center of Renmin University. Prof. Xu received his PhD in Law from UIBE and was in the CSC/UC Visiting Researcher Fellowships Program jointly sponsored by the Chinese Ministry of Education and UC Berkeley. Before attending Renmin University, he practiced corporate and banking law in a leading law firm for several years.

In May 2019, we invited Prof. Xu to provide a systematic introduction on the legal framework of cybersecurity in China. The insights he relayed were both based on his own expert observations, as well as conversations with relevant Chinese government officials.

Overarching legal framework

As discussed by Prof. Xu, the legal system of cybersecurity laws in China consists of many levels. Sorted by level of effectiveness, from high to low, we have “laws”, “administrative regulations” and “national standards”.

The ministries and commissions related to cybersecurity legislation at “administrative regulations” level include the Cyberspace Administration of China (CAC), the Ministry of Industry and Information Technology (MIIT) and the Ministry of Public Security (MPS). Currently, many of the CSL’s implementation rules and technical standards remain in draft form. Prof. Xu emphasised the importance for UK companies to establish communication channels with the policy and regulations bureau of the CAC and MIIT by either submitting internal reference documents or attending their seminars.

Regulatory responsibilities

As to the respective powers of these authorities, we have observed that the phenomenon of “Nine Dragons Controlling Water” still exists in the cybersecurity area, indicating the multiple regulatory authorities involved in the cybersecurity realm. For example, the CAC focuses on the control of CII, data localisation, and cross-border data transfer; while the MIIT focuses on the perspective of industrial development and the MPS overseas the Multi-level Protection Scheme (MLPS) and advocates that this system is the basis for protecting the CII, and therefore the MPS has the power to regulate the CIIO. Prof. Xu believes that what the CAC can do is probably act as a policy coordinator and issuer.

“The current trend is that the CAC is tending to position itself as the leading authority for personal information protection, but this positioning is not yet agreed upon by the other authorities. So, which
of the authorities will be in charge of personal information protection in the future is yet to be determined by the Personal Information Protection Law (a draft of which will be released this year according to the current legislative plan)."

Regarding the “national standards”, they are very significant to guiding national regulatory criteria and corporate compliance. UK companies are encouraged to comply with these standards, even those that are not yet mandatory from being cited in laws or regulations.

Moreover, on the CIIO front, Prof. Xu said that the detailed implementation rules of the CII are still missing at the legislative level. The Chinese legislature conducted field research in “BAT” (i.e., Baidu, Alibaba and Tencent) and other big internet companies, but it has never explicitly said which companies are CIIOs.

An Interview with Prof. Shenkuo Wu, Senior Advisor of the United Nations Network Security and Cybercrime

**Keywords:** Administrative Measures on Data Security (Draft), Measures for Cybersecurity Censorship (Draft), GDPR Enforcement, Good Compliance Practices

![Shenkuo Wu](image)

**Shenkuo Wu**

Professor Shenkuo Wu is Director of the International Centre of Cyber Law of Beijing Normal University.

He is a leading expert on Chinese cybersecurity law, data protection and the law of cybercrime. He acts as a senior consultant of the United Nations as well as of the Supreme People’s Court of the People’s Republic of China. Prof. Wu also heads the Research Centre of the Internet Society of China.

In June 2019, the Cyberspace Administration of China (CAC) released three Exposure Drafts within 10 days of each other. With this in mind, we invited Prof. Wu to share his insights into these latest developments.

According to Professor Wu, legislative work will be divided into two main categories:

- The construction of top-level design, including personal information protection and data security laws;
- The development of specific rules around cross-border data transfer, and adapting the law to
specific industry sectors, such as medical, tax, customs, as well as new technologies such as facial recognition.

In short, there will be some new rules in macro top-level design, micro-sectors, industries, and even specific technology application scenarios.

Since there are still some policies yet to be released, the gap between legislation and enforcement will pose certain challenges to companies. Professor Wu also gives some suggestions in terms of best practices for British companies in China.

Supply chain transparency

The first is the issue of system operation security, which means a voluntary display of supply chain transparency, instead of waiting for regulators to come and carry out their own investigations. Now what regulators want to see is not how good your firewall or your antivirus program is, but whether you can reliably demonstrate every stage of your supply chain from beginning to end for your network products and services.

The need to adjust to China’s specific requirements

The other “red-line” issue concerns where you stand when it comes to data security. In this respect, many foreign companies tend to still go by a global strategy for the Chinese part of their business, and are slow to adapt to the local environment. China is currently at the early stage of creating a data security regime and is undergoing drastic changes in this respect, so foreign companies should keep track of the relevant regulatory developments on data security. Since many other authorities will publish regulations in their respective fields, UK companies in China should pay attention to keeping track of and understanding these regulations in a timely and systematic way.

The last suggestion is to avoid such misconception that “I have met certain overseas standards and the Chinese standards can’t be stricter, so naturally I should also be in compliance with the Chinese standards”. Companies will still need to check their compliance in China frequently. This is not asking UK companies in China to instantly change their way of management. It’s just suggesting that they should express their way of management in a more local, Chinese way.

An Interview with Mr. Donald Wang, Senior Legal Counsel of Sina Corporation

Keywords: Privacy by Design, GDPR and China’s Cybersecurity Law

Industry: Internet

Donald Wang

Mr. Donald Wang is senior legal counsel from Sina.com technology (China) Co., LTD.

He created Sina’s policy research team and serves as an expert member in various industry associations, such as the United Nations Committee of E-commerce, the Beijing Association of Investment Expert and the Legal Work Committee of the Internet Society Network Information Office. He has good relationships with government agencies and various regulators, such as the MOFCOM, etc.

Mr. Wang shared with us that the focus on data is a global consensus at present – data is the new oil. In his communication with experts from the European Union and the United States, it turns out that it is equally difficult for them to determine what specific practices are acceptable from a compliance perspective. Both countries mentioned a concept called “dynamic compliance”, according to which the circumstances of data use may change at any time. Facing these challenges, Mr. Wang provides his perspective on the best practices of data collection and processing.
The first is giving data subjects (i.e. users of platforms) certain rights of choice through some functional designs. This is also called “Privacy by Design”, which allows users to revoke consent and unregister themselves.

The second is informing and obtaining the consent of users when collecting information and being as clear as possible with the purpose of collecting the information. Trying to simplify the functions of apps to inform users before they proceed to the legal terms is a good practice to follow. In the subsequent use of the information collected, some principles must also be followed. Not jeopardising national security and territorial integrity and sovereignty is the first and foremost requirement.

In addition, regarding user consent to collect, process and use personal information, there should be an overall judgment and framework, as well as corresponding remedies.

For some multinational companies that are facing regulation from both the GDPR and China’s Cybersecurity Law, Mr. Wang also shared his opinion about the similarities and differences between the GDPR and China’s Cybersecurity Law.

The provisions of the GDPR are more dynamic and account for exceptions, whilst China’s Cybersecurity Law is relatively static and needs to be supported and supplemented with further efforts. But both the GDPR and China’s Cybersecurity Law share the same objectives, that is, to protect users’ personal information, facilitate efficient flow of data, and fully recognise the value of the relevant data.

An Interview with Mr. Baoqiu Cui, Vice President of Xiaomi Corporation

Keywords: Definition of personal data, Privacy protection committee, Five Principles for Privacy Protection

Industry: Innovative Technology Enterprise

Baoqiu Cui

Mr. Baoqiu Cui, Vice President of Xiaomi Corporation, Chairman of Technical Committee

Mr. Cui is the former Chief Architect of Xiaomi and Vice President of AI and Cloud Platform

To some extent, the value of big data and user privacy is contradictory. From the perspective of maximising the value of big data and without prejudice to the interests of all parties, the more data that is shared, exchanged and mined, the higher the value that will be generated. However, from the perspective of security and privacy, every individual demands privacy and no user wants their privacy compromised. Therefore, we need to find a balance between making the most out of big data whilst respecting the privacy of our users at the same time.

“Currently, there are multiple definitions of ‘Personal Information’. The definition of Singapore’s Personal Data Protection Commission (PDPC) is a relatively strict one. Personal Information is defined as data, whether true or not, about an individual who can be identified from that data and other information to which the organisation has or is likely to have access.”
“Xiaomi were pioneers in privacy protection by setting up a privacy protection committee, carrying out privacy training and conducting privacy certification,” Mr. Cui said. When it comes to privacy protection, Xiaomi put forward five principles.

**The first is to inform and acknowledge.** To collect users’ data, it is necessary to tell the users the nature of the company collecting the data and the reason for doing so. **Privacy is a spectrum and there are no absolute black and white guarantees when it comes to privacy protection. Therefore, when we have uncertainties, what we can do is inform the users and assure them to the largest extent possible.**

The second principle is options and consent, that is, to inform the users and obtain their consent.

**The third principle is the users’ control and participation.** It is possible that the users may forget the names of companies that collect their information and the content of such information over a period of time. Therefore, we need to let the users see what data has been collected and give them the right to modify their privacy options and amend the data itself.

**The fourth principle is data integrity and security.** The data must be encrypted during the uploading and storage process. During data processing, data desensitisation must be conducted if necessary. Meanwhile, access control in regards to both technology and data management should be implemented.

**The fifth principle is mandatory measures and remedies.** It is important to obtain certification from an external privacy certification company. When developing a new product, from the outset it is necessary to think about the issues of respecting user privacy, including what data should or should not be collected, whether it is necessary to inform the user, how to obtain the user’s consent without affecting the user experience, etc.
## Appendix I: Legal Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
<th>Reference</th>
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<tr>
<td>Personal Information</td>
<td>“Personal Information” is defined as various types of information recorded in an electronic format or otherwise that can be used separately or in combination with other information to identify a natural person, including but not limited to the name, date of birth, identity certificate number, personal biological identification information, address, telephone numbers, etc. of the natural person.</td>
<td>Cybersecurity Law of the PRC; Information Security Technology - Personal Information Security Specification (GB/T 35273-2017); Measures for Security Assessment of Cross-border Transfer of Personal Information (Draft)</td>
</tr>
<tr>
<td>Important data</td>
<td>“Important Data” is generally perceived as data that is closely related to national security, economic development and public interest. Examples of Important Data include unpublished government information, and a large volume of data relating to population, genetics, healthcare, or geographical and mineral resources. The implementing regulations and national standards on Important Data are still being drafted and there is no definite scope of important Data yet.</td>
<td>Measures for Data Security Management (Draft, 2019); Measures for Security Assessment of Cross-border Transfer of Personal Information and Important Data (Draft, 2017); GB/T-Information Security Technology - Guidelines for Data Cross-border Transfer Security Assessment (Draft)</td>
</tr>
<tr>
<td>Network Operators</td>
<td>“Network Operators” are defined as owners and managers of networks, as well as network service providers. Network here includes not only user-oriented websites, platforms, apps, mobile networks, e-commerce platforms and cloud platforms, but also information systems that support corporate services, such as communication facilities, industrial control systems, and office and business management systems. Arguably, any entity in China that uses computer systems connected to communications networks could be considered a Network Operator.</td>
<td>Cybersecurity Law of the PRC</td>
</tr>
<tr>
<td>Critical information infrastructure (CII)</td>
<td>Critical information infrastructure refers to information facilities that directly concern national security and stability and may seriously endanger national security and public interests in the case of data breaches, destruction or loss of functions, including but not limited to basic information networks that provide services such as public communications and broadcast transmissions, important information systems in the fields of energy, finance, transportation, education, scientific research, water conservancy, industrial manufacturing, healthcare, social security and public utilities, important information systems in State agencies and important internet application systems, etc. The specific scope of CII or the methodology to identify CII is not officially published yet.</td>
<td>Cybersecurity Law of the PRC; Critical Information Infrastructure Security Protection Regulation (Draft, 2017)</td>
</tr>
</tbody>
</table>
## Appendix II: Chinese Law and Regulations for Cross-border Data Transfer

<table>
<thead>
<tr>
<th>Date</th>
<th>Type</th>
<th>Authority</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 Nov. 2016</td>
<td>Law</td>
<td>Standing Committee of the National</td>
<td>Cybersecurity Law of the People’s Republic of China Establishing a fundamental framework for cyber security and data protection in China, the Law introduces the basic principle for the protection of personal information.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>People’s Congress</td>
<td></td>
</tr>
<tr>
<td>11 Apr. 2017</td>
<td>Administrative regulation</td>
<td>Cyberspace Administration of China</td>
<td>Measures for the Security Assessment of Cross-border Transfer of Personal Information and Important Data (Draft) The Measures introduce the principle of &quot;informed consent&quot; for the cross-border transfer of personal information, and set out measures for security assessment concerning cross-border transfers of personal information and important data.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Standardization Technical Committee</td>
<td></td>
</tr>
<tr>
<td>1 May, 2018</td>
<td>National standard</td>
<td>National Information Security</td>
<td>Information Security Technology - Personal Information Security Specifications (GB/T 35273-2017) The Specifications provide more detailed guidance for enterprises to improve their internal personal information protection system and practical operating rules. Since it became effective in May 2018, the Specifications have been widely adopted in the compliance practice of various sectors.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Standardization Technical Committee</td>
<td></td>
</tr>
<tr>
<td>28 May, 2019</td>
<td>Administrative regulation</td>
<td>Cyberspace Administration of China</td>
<td>Measures for Data Security Management (Draft) The Measures give emphasis to the network operators’ obligation in the safety administration of personal information and important data.</td>
</tr>
<tr>
<td>13 Jun, 2019</td>
<td>Administrative regulation</td>
<td>Cyberspace Administration of China</td>
<td>Measures for Security Assessment of Cross-border Transfer of Personal Information (Draft) The Measures replace the regulatory framework specified in the Measures for the Security Assessment of Cross-border Transfer of Personal Information and Important Data (Draft), and make clear the management principle under which personal information and important data are subject to separate supervision.</td>
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</tbody>
</table>

*CAC: Cyberspace Administration of China

**TC260: National Information Security Standardization Technical Committee**
### Appendix III: Identifications of the MLPS

<table>
<thead>
<tr>
<th>Level</th>
<th>Identifications</th>
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<tbody>
<tr>
<td>Level I</td>
<td>Ordinary networks whose destruction will cause damage to the legitimate rights and interests of relevant citizens, legal persons and other organisations, but will not cause harm to national security, social order and public interests.</td>
</tr>
<tr>
<td>Level II</td>
<td>Ordinary networks whose destruction will cause serious damage to the legitimate rights and interests of relevant citizens, legal persons and other organisations, or cause harm to social order and public interests, but will not cause harm to national security.</td>
</tr>
<tr>
<td>Level III</td>
<td>Critical networks whose destruction will cause particularly serious damage to the legitimate rights and interests of relevant citizens, legal persons and other organisations, cause serious harm to social order and public interests, or cause serious harm to national security.</td>
</tr>
<tr>
<td>Level IV</td>
<td>Particularly critical networks whose destruction will cause particularly serious harm to social order and public interests or cause serious harm to national security.</td>
</tr>
<tr>
<td>Level V</td>
<td>Extremely critical networks whose destruction will cause particularly serious harm to national security.</td>
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</tbody>
</table>

### Appendix III: Obligations of Network Operators under the MLPS

<table>
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<tr>
<th>Obligations</th>
<th>Identifications</th>
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</table>
| General requirements for all networks/systems                               | 1. Determine an individual responsible for the MLPS, establish a responsibility manage system for the MLPS, and implement the accountability system;  
2. Develop systems for security management and technological protection, and set up systems with respect to personnel management, educational training, system security building, system security maintenance, etc.;  
3. Formulate and implement procedures and workflows of security management of computer room, equipment and medium, etc.;  
4. Prevent the infection and transmission of malware and guard against cyberattacks;  
5. Adopt management and technical measures to monitor and record the cyber operating status, cybersecurity events, unlawful and criminal activities, and save, as required to do so, relevant cyber logs for the past six months or longer to be used to trace online violations and offenses;  
6. Implement measures such as data classification, and back-up and encryption of Important Data;  
7. Collect, use and process personal information according to the law, ensure the protection of Personal Information, and prevent Personal Information from being divulged, destroyed, falsified, stolen, lost or abused;  
8. Implement measures designed to detect, block or eliminate illegal information, and adopt approaches to prevent illegal information from being spread to a wide extent and evidence for violations and offences from being destroyed or lost;  
9. Fulfill duties with respect to network record-filing and identification of users’ real names;  
10. Report any events within 24 hours to the local public security organ with the jurisdiction;  
11. Other cybersecurity protection obligations specified in laws and administrative regulations. |
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Acknowledgements

China-Britain Business Council

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