New Chinese Civil Code Introduces Greater Protection of Privacy Rights and Personal Information

9 June 2020
By: Sammy Fang | Carolyn Bigg | John Zhang

China’s top legislature, the National People’s Congress, recently enacted the PRC Civil Code (the Civil Code), which will come into force on 1 January 2021. This first ever “codified” legislation covers a wide spectrum of rights and issues ranging from property rights, contracts, matrimonial and family law, to tort liability and personal and personal dignity rights.

In addition to the systematic codification of provisions from existing legislation, the Civil Code has also introduced new provisions and definitions on the right to privacy and the protection of personal information. Aside from those specific data privacy and cybersecurity related provisions set out in existing legislations (e.g., those provided in the PRC Cybersecurity Law, the PRC Consumer Rights Protection Law, and the Information Security Technology - Personal Information Security Specification etc.), the Civil Code details more generally applicable provisions as well as introducing additional personal information protection requirements.

Further, the Civil Code provides clearer legal basis for civil actions against broader privacy and personal information related breaches. Organizations/entities that are involved in the collection and processing of data containing personal information will in the event of any non-compliant conduct, now be facing the prospect of not only potential administrative investigation and related penalties, but also the risk of civil action by affected data owners depending on how such collection and processing is being carried out.

New privacy rights and personal information protection provisions at a glance

Provisions on privacy rights and personal information protection in the Civil Code are detailed in three parts: (i) general declaration of rights provisions, (ii) specific provisions that fall under the umbrella of personal and personal dignity rights, and (iii) standalone provisions that are issue or industry specific.
Some key takeaways

Potential dual-risks of administrative penalties plus civil liability for non-compliance

Administrative sanctions are already available under current legislation (such as the Cybersecurity Law, the Consumer Rights Protection Law) to address certain personal information related infringements, e.g., misconduct by network operators, or infringement of consumers’ rights. The Civil Code however will also impose any potential civil liabilities for violation of privacy and personal information protection provisions going forward. For example, a claim under the Consumer Rights Protection Law requires that the data subject must be a “consumer”. A civil liability claim under the Civil Code will now be expanded to cover a wide category of infringements regardless the data subject’s designated standing.

Such civil liabilities will depend on nature and seriousness of the infringement and any financial consequences that result from it. They include a requirement to cease any infringement, making official apologies, as well as being liable to pay compensation to the victim.

Grounds for exemption of liability introduced for the first time

The Civil Code has introduced three general grounds for the exemption of liability (Article 1036) for anyone/party that handles/processes another party’s personal information:

1. The conduct in question is within the consent of the data owner or that person’s guardian (such as in the case of children).
2. The reasonable handling/processing of that person’s information which that person has publicly disclosed or

<table>
<thead>
<tr>
<th>General Provisions</th>
<th>Specific Provisions</th>
<th>Provisions that are issue or industry specific</th>
</tr>
</thead>
</table>
| Article 110: a person’s general right to privacy.  
Article 111: a general right to protection of personal information.  
Articles 994 to 1000: various general rights to seek civil liability claims against privacy and personal information related infringements. | Definitions of privacy rights and privacy (Article 1032).  
Specific actions/conduct that will constitute infringement of privacy rights (Article 1033).  
General principle and definition of personal information protection (Article 1034).  
Conditions under which processing/handling of personal information are permitted (Article 1035).  
Rights of data subjects and obligations of data processors (including obligations of special bodies and persons) (Articles 1037 to 1039).  
Grounds for exemption of liability (Article 1036). | For example:  
Article 1030: handling of information by credit agencies.  
Article 1226: provisions governing the protection of patients’ privacy rights and personal information by medical institutions and their medical personnel.  
The inclusion of these provisions in the Civil Code will give a party an avenue to seek civil claim remedies against such agencies and medical institutions (such as hospitals) for privacy or personal information infringements, instead of simply relying on local regulators to pursue the offenders by way of administrative enforcement actions. |
that has been lawfully disclosed, except where that person explicitly refuses to the handling/processing of
or where the handling/processing of such information would be contrary to his/her vital interests.
3. Other acts reasonably carried out to safeguard public interests or that person’s legitimate rights and
interests.

Information security obligations emphasized

Article 1038 of the Civil Code imposes information security obligations on parties responsible for
handling/processing the relevant personal information. It requires that “the [information] processor shall take
technical and other necessary measures to ensure that the personal information it collects and stores are secure,
preventing them from being leaked, being tampered or prevent their loss...”. The Civil Code does not detail what
such “technical and other necessary measures” should be. For now, companies which handle and process personal
information should seek guidance from existing provisions under the Cybersecurity Law (and related rules).

It is worth noting that the National People's Congress also mentioned in its working report that the next step in
China’s reform on personal privacy and data protection legislation is to enact a personal information protection law
and also a data security law. It is therefore anticipated that these privacy and personal information protection
provisions in the Civil Code will in the future form an important part of an overall privacy and data protection
regime. Further, guidance on how these provisions in the Civil Code shall work in practice in the form of
implementation rules and judicial interpretations are likely to follow sooner rather than later.

To discuss any questions or what this could mean for your organization, please contact the authors.

AUTHORS

Sammy Fang
Partner
Hong Kong | T: +852 2103 0808
sammy.fang@dlapiper.com

Carolyn Bigg
Partner
Hong Kong | T: +852 2103 0808
carolyn.bigg@dlapiper.com