

# Rechtsprechung

CRI0079358

## China: Cross-Border Data Transfer Without Consent

Personal Information Protection Law (PIPL)

*Collecting and sharing customer information with affiliates in other jurisdictions for marketing purposes without consent, may incur damages to the tune of around 2,600 Euro for a hotel group because such data processing is not necessary for the performance of the contracted services.*

Guangzhou Internet Court decision v. 8.September.2023 – Yue 0192 Min Chu No. 6486

### Summary & Comment

#### Facts

The Plaintiff, Zuo, raised concerns about the cross-border transfer of his personal information outside of China and it being shared globally. The Defendants are a French multinational hotel group and its wholly owned Shanghai-based subsidiary. The Plaintiff purchased a membership card from the Shanghai company to enjoy discounted hotel services provided by the French hotel group. He later used the hotel group's app to book a hotel room in Myanmar, providing his personal information to the French hotel group and agreeing to the „Customer Personal Data Protection Charter“ within the app.

Subsequently, the Plaintiff filed a complaint alleging his personal information had been transferred overseas and shared globally without his explicit knowledge and separate consent. The Defendants argued that processing his personal information was necessary to fulfill their contractual obligations and a common practice in global hotel operations.

#### Held

In this case, only the French hotel group was held liable and ordered to compensate the Plaintiff for collecting his information from its app and sharing it for marketing purposes without proper notice and consent. The Court's decision<sup>1</sup> interpreted several provisions of China's Personal Information Protection Law<sup>2</sup> (PIPL) concerning (1) standing, (2) legal bases for processing personal information, such as consent and necessity, disclosure requirements and localization policies, and (3) criteria for determining damages.

#### 1. The Plaintiff's Standing

The Court considered whether the Plaintiff's case was actionable. Despite the Defendants' contention that the Plaintiff had not exercised his rights directly against them before taking legal action, the Court allowed the case to proceed. The decision distinguished between an infringement of basic rights and a data subject's right to access, clarifying when judicial remedies can be sought without the prior exercise of rights against a data controller.

#### 2. Legal Bases for Processing Personal Information

The Court highlighted that PIPL provides multiple legal bases for processing personal information, with consent and contractual necessity being among them and both standing on equal footing. It recognized that the Defendants' collection and processing of the Plaintiff's personal information was primarily done to complete his booking. When it is necessary to process a data subject's information to perform contracted services, consent is not required. However, the Court found that all personal infor-

mation collected and processed by the hotel group was not contractually necessary, as it not only used the Plaintiff's information for booking purposes but also collected and shared his information with affiliates in other jurisdictions for marketing purposes. The Court found the hotel group's general privacy policy disclosures inadequate to inform users and obtain consent. Instead, the hotel group was required to provide more explicit and separate consent for different cross-border data usages.

#### 3. Criteria for Determining Damages

The Court emphasized that under PIPL and the relevant judicial interpretations, damages are assessed based on expenses incurred to prohibit an existing infringement. Damages include financial losses, such as reasonable expenses for investigation or evidence collection, and legal fees. In this case, the Court awarded the Plaintiff RMB20,000 (around €2,600), considering the reasonableness of expenses, the Defendants' fault, and the impact on the Plaintiff's personal information (including how the information was handled and the volume and extent of information involved).

#### Comments on Implications for International Companies

This judgment is China's first judicial decision specifically addressing cross-border transfers of personal information since PIPL was enacted. This landmark judgment highlights the importance for international companies with onshore or offshore operations in China to understand PIPL and the rights it provides to individuals in China. Multinational companies should consider the following:

##### 1. Privacy Frameworks

International companies must align their global privacy frameworks with Chinese data protection requirements. European companies, in particular, should consider localizing their privacy policies with a China-specific addendum or a separate China customer privacy notice and consent mechanisms to comply with PIPL requirements.

##### 2. Informed Consent Mechanisms

The Court's emphasis on separate informed consent for activities beyond contractual necessity imposes practical compliance obligations. International companies must ensure their consent mechanisms clearly distinguish between essential data processing activities and secondary purposes like marketing or analytics. Merely integrating consent clauses into general privacy notices or terms and conditions is insufficient under PIPL.

##### 3. Scrutiny of Cross-Border Data Transfer

International companies should prepare for increased scrutiny of their cross-border data transfer mechanisms. Although the Court did not opine on this issue due to the Plaintiff's withdrawal of his request that the Defendant's compliance program be examined, it serves as a reminder of the importance of complying with PIPL's requirements. This includes proper recordkeeping and conducting thorough impact assessments, among other things.

##### 4. Potential Penalties and Liabilities

International companies should be aware of potential administrative penalties and personal liabilities for officers. For severe violations, fines can be substantial, and companies may face business suspensions or license revocations.

##### 5. Increased Legal Challenges

International companies should anticipate more disputes and legal challenges related to data privacy protection. Data subjects in China are more conscious of their rights and willing to assert them than ever. Establishing robust internal procedures and dedicated teams to handle data-subject requests and complaints is advisable.

## 6. Conclusion

This judgment serves as an important reminder to international companies of the critical need to harmonize global data management practices with the heightened Chinese regulatory landscape. Proactive compliance measures, localization of privacy policies, and close monitoring of legal developments are essential to mitigate risks associated with cross-border data transfers and ensure long-term business sustainability in China.

**Sarah Kwong / Dan Wu / Amigo Lan Xie**

### Sarah Kwong



Associate, K&L Gates (Hong Kong)  
dispute resolution and technology, media, and telecommunications

Bio: <https://www.klgates.com/Sarah-Kwong>

Sarah Kwong is an associate in the firm's Hong Kong office, who focuses her practice on both disputes resolution and technology, media, and telecommunications-related matters. She has experience assisting clients with general commercial disputes, restructuring and insolvency, and contentious and non-contentious TMT matters.

### Dan Wu



Counsel, K&L Gates (Shanghai)  
M&A, data privacy, FDI, general corporate, and food regulation  
Bio: <https://www.klgates.com/Dan-Wu>

Dan Wu is a counsel in the firm's Shanghai office, who focuses her practice on M&A, data privacy, FDI, general corporate, and food regulation. Her experience includes advising multinational corporations on their PRC projects, including acquisitions of PRC companies across key industries as well as the establishment, operation, and dissolution of foreign invested enterprises across major Chinese cities.

## Dr. Amigo L. Xie



Partner, K&L Gates (Hong Kong)  
M&A, data privacy, and pre-merger filing

Bio: <https://www.klgates.com/Amigo-Lan-Xie>

Dr. Amigo Xie is a seasoned M&A, data privacy, and pre-merger filing lawyer with over 23 years of experience in the Greater China market. Having worked at a top international law firm in Hong Kong and leading local firms in Shanghai, Amigo advises multinational corporations and local businesses across diverse industries on comprehensive data privacy and compliance matters. His expertise includes data mapping, crafting employee data privacy policies, establishing non-employee data privacy notices and consent mechanisms, developing privacy and data security compliance programs, drafting data-related agreements, navigating international data transfer challenges, responding to data breaches, and managing routine data protection tasks like records of processing activities and data protection impact assessments. Additionally, Amigo brings extensive hands-on experience representing multinationals, private equity/venture capital funds, and Chinese companies in inbound and outbound investments (including Europe and the U.S.), M&A transactions, and general corporate and commercial matters in Greater China.

- 1 Guangzhou Internet Court, decision of 8 September 2023 in case (2022) Yue 0192 Min Chu No. 6486, available in the original at: <https://mp.weixin.qq.com/s/iAgo-W6qe2-VO-ZpEblKdg>.
- 2 Personal Information Protection Law of the People's Republic of China, available in English at: [http://en.npc.gov.cn.cdurl.cn/2021-12/29/c\\_694559.htm](http://en.npc.gov.cn.cdurl.cn/2021-12/29/c_694559.htm).

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