



Executive Summary

On May 28, 2020, China’s first civil code (“Civil Code”) was passed at the third session of the 13th National People’s Congress (NPC) and the third session of the 13th National Committee of the Chinese People’s Political Consultative Conference (CPPCC) (collectively referred as “Two Sessions”) which were held in Beijing. The PRC Civil Code consists of 1260 articles in seven chapters which include: 1) General Provisions, 2) Property Rights, 3) Contracts, 4) Personality Rights, 5) Marriage and Family, 6) Inheritance, 7) Torts, as well as the Supplementary Provisions. The Civil Code will take effect officially on January 1, 2021.¹

In the Chapter 4 Personality Rights, Civil Code provides the protection on personal information and privacy. This legislation is to meet the urgent needs of protection on personal privacy in the era of internet and information digitization.

The old legal framework spread out in various laws and rules with different definitions and scopes of protection of personal information, for example, the General Rules of the Civil Law, the Cybersecurity Law, the Provisions on Protection of Personal Information of Telecommunication and Internet Users, and the Consumer Rights and Interests Protection Law.

The Civil Code reorganizes the scattered legal protection of personal information and improves the whole framework by unifying the regime and adding new provisions. For example,

- The Civil Code extends the scope of personal information under Cybersecurity Law by covering “email, health information, whereabouts information.”
- The Civil Code broadens the coverage of personal information process under Cybersecurity Law by lining up whole process—collection, storage, use, processing, transmission, provision and disclosure.

We highlight the main content about the protection on personal information and privacy for your reference:

I. Protection on Personal Information Under the Civil Code

Definition of Personal Information²

The Civil Code clearly states the scope of Personal Information by combining definition with enumerations.

- **Definition:** any kind of information recorded electronically or otherwise that can identify a particular natural person, either alone or in combination with other information,
- **Enumerations:** the natural person’s name, date of birth, identity document number, biometric information, address, telephone number, e-mail, health information, whereabouts information, etc.

Definition of Personal Information Process³

The Civil Code embraces the following concepts into the range of “process”: collection, storage, use, processing, transmission, provision and disclosure of personal information.

Protection Framework on Personal Information Process

General Principle⁴	1. The principle of legality, legitimacy and necessity for the process on personal information. 2. The principle of non-disproportionate handling of personal information.
Specific Requirements on the Process of Personal Information⁵	1. Consent or authorization: obtain the consent of the natural person or guardian ⁶ , unless otherwise authorized by laws and administrative regulations. ⁷ 2. Transparency: publicize the process rule on personal information. 3. Due Process: state the purpose, method and scope of process on personal information. 4. Legality: not violate laws, administrative regulations, and agreements between the parties.
Special Requirements for Two Types of Personal Information Process	1. Requirements for medical institutions: Medical institutions and their personnel shall keep the privacy and personal information of patients. If the patients’ privacy and personal information are leaked or disclosed without their consent, the medical institution or their personnel shall be liable for the infringement. ⁸ 2. Requirements for credit information processors: Credit information processors such as credit agencies shall comply with all relevant laws and regulations to protect personal information. ⁹
Rights of Personal Information Owner¹⁰	1. Right of consultation or copy: A person may consult or copy his/her personal information from the information processor in accordance with the law. 2. Right of correction: If any error is found in the information, the person has the right to raise an objection and request timely correction and other necessary measures. 3. Right to request deletion: If a person discovers that the information processor has handled his personal information in violation of laws, administrative regulations or the agreement of both parties, he has the right to request the information processor to delete it in time

Responsibilities on Personal Information Protection

	Specific responsibilities	Exemptions
Responsibilities on Personal Information Processor¹¹	1. No disclose or tamper: The processor shall not disclose or tamper with the personal information collected and stored by him or her; and the processor shall not illegally provide the personal information to others without the consent of a natural person. • One exception: except for the information unable to identify a specific person after being processed and cannot be recovered. 2. Precautionary measures: The processor shall take technical measures and other necessary measures to ensure the safety of the personal information collected and stored by it and prevent the information from leaking, tampering and losing. 3. Remedy & Report obligation: In case of or possible personal information leaking, tampering and losing, the processor shall take remedial measures in time, inform the natural person according to the regulations and report to the relevant competent department.	Exemptions for civil liability^{12:} When handling personal information, the actor shall not bear civil liability for the following acts: 1. acts reasonably performed within the scope of the consent of natural person or his guardian; 2. reasonably deal with the information disclosed by the natural person itself or other information that has been legally disclosed, except that the natural person explicitly refuses or dealing with the information will infringe its major interests; 3. other acts reasonably carried out to safeguard the public interest or the legitimate rights and interests of the natural person. Exemption based on public interests^{13:} Personal information may be reasonably used by press or governmental departments for public interest. For example, security department disclose the personal information of wanted criminal suspects.
Responsibilities on State organs and Public Institutions Undertaking Administrative Functions¹⁴	1. Keep confidential: State organs, public institutions undertaking administrative functions and their staff shall keep the privacy and personal information known in the course of performing their duties confidential. 2. No illegally disclose: State organs, public institutions undertaking administrative functions and their staff shall not disclose or illegally provide them to others.	

II. Protection on Privacy Under the Civil Code

Definition of Privacy ¹⁵

Privacy is a kind of private space, activity and information that the natural person is not willing to let others know.¹⁶

Prohibited Infringements on Privacy¹⁷

No organization or individual may commit any of the following acts, unless otherwise provided by law or with the express consent of the obligee:

1. Harass others’ private life by means of telephone, SMS, instant messaging tools, e-mail, flyers, etc;
2. Enter, photograph and peep into other people’s houses, hotel rooms and other private spaces;
3. Photograph, peep, eavesdrop and publicize other people’s private activities;
4. Photograph and peep at the private parts of others’ bodies;
5. Handle others’ private information;
6. Violate the privacy of others in other ways.

Chinese legislature has lined up the formulation of the Personal Information Protection Law in the next major work plan. Asiallians will keep a close eye on how personal information protection and privacy protection legislation provide individual claims and remedies¹⁸ in the judicial practice, and we also will follow up on implementing legislation promulgated in the future.

(1) http://www.china.com.cn/lianghui/news/2020-05/28/content_76102558.shtml
 (2) Article 1034 of Civil Code
 (3) Article 1035 of Civil Code
 (4) Article 1035 of Civil Code
 (5) Article 1035 of Civil Code
 (6) Under PRC laws, people under age 18 is minor. Civil Code provides that process personal information of minors shall obtain the consent of their guardians.
 (7) For example, During the Novel Coronavirus Pneumonia (“NCP”) period, certain governmental agency collected personal information for precautionary research. In some cases, it is hard to obtain the consent required. In this unusual circumstance, certain laws and administrative regulations are applicable to provide authorization.
 (8) Article 1226 of Civil Code
 (9) Article 1030 of Civil Code
 (10) Article 1037 of Civil Code
 (11) Article 1038 of Civil Code
 (12) Article 1036 of Civil Code
 (13) Article 999 of Civil Code
 (14) Article 1039 of Civil Code
 (15) Article 1032 of Civil Code
 (16) Article 1034 of Civil Code provides that, when there is an overlap between personal information and privacy, the provision on privacy shall regulate the overlap.
 (17) Article 1033 of Civil Code
 (18) For example, a person may claim to stop infringement, remove obstruction, eliminate danger, eliminate influence, restore reputation and claim for apology. See Article 995 of Civil Code.

Should you need more details, please contact us at asiallians@asiallians.com. As always, Asiallians remains at your service and our teams are currently mobilized in all our offices in China, Hong Kong and Taipei.

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