

CHINA'S GDPR:

*(Personal
Information
Protection
Law)*

*What you need to know to be prepared
and become compliant*

**Therese Trulsen
Xiaomin Qu**

Wikborg Rein Shanghai,
14 October 2021



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— Only ***Nordic*** law firm in China



A new way of thinking and a willingness to look at all angles of attack

— Legal 500

345

Employees

23

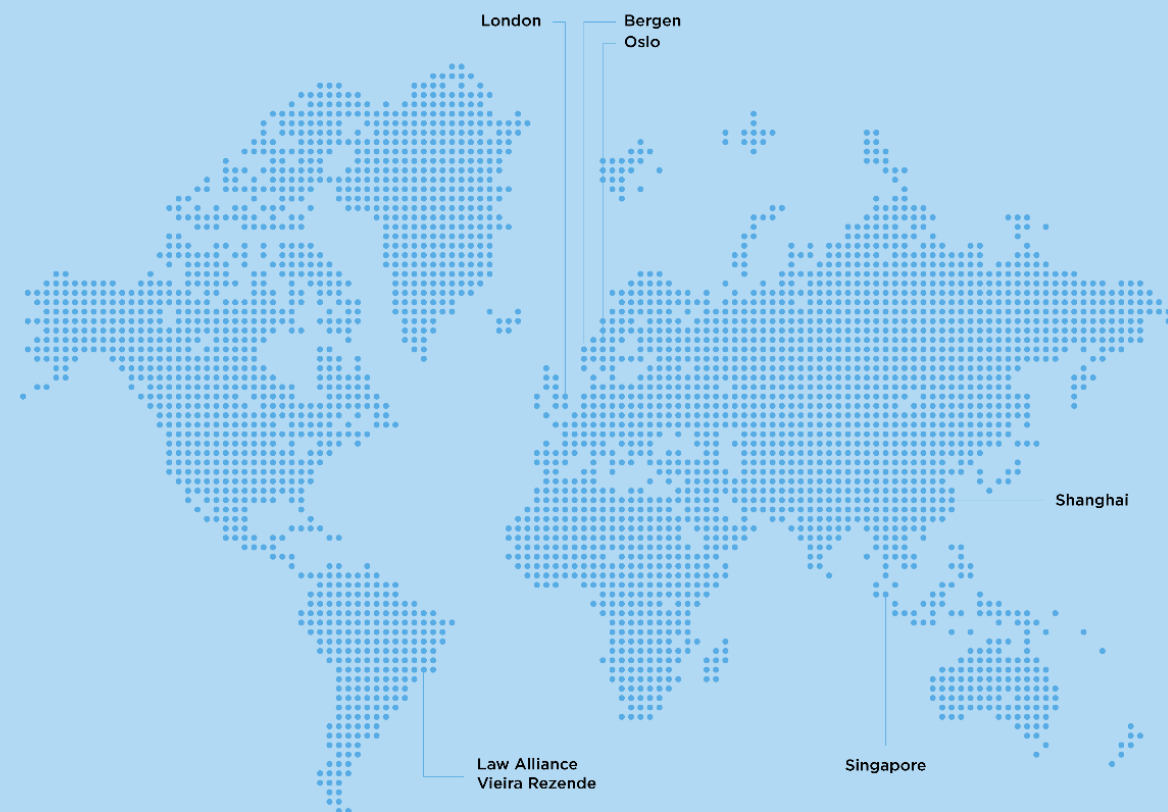
Nationalities

2002

Established in
China

12

Chinese
lawyers



Agenda

- 1. GDPR & PIPL video from our colleagues in Norway**
- 2. PIPL: Overview**
- 3. PIPL: Key issues**
 - Consent
 - Cross-border transfer
- 4. PIPL: Practical implementation**

1.

GDPR & PIPL video
from our colleagues in
Norway





2.

PIPL: Overview



PIPL: An overview



Applies to

From 1 November 2021 applies to any:

- A. Processing of personal information carried out **in China**
- B. Processing of personal information of any person in China carried out **outside of China** if the purpose is:
 - A. Provide a **product or service** to person in China;
 - B. Analyse or assess the behaviour** of a person located in China; or
 - C. Any other circumstance as provided by law



Key features

- Establishes guiding principles for **protection of personal information**
- Creates **legal rights for the individuals**
- **Consent** is a corner-stone
- **Risk-based approach**, imposing heightened compliance obligations in specified high-risk scenarios:
 - Sensitive personal information
 - Large amount of information
 - Critical information infrastructure operators
 - Cross-border transfer
- **Processors** become responsible

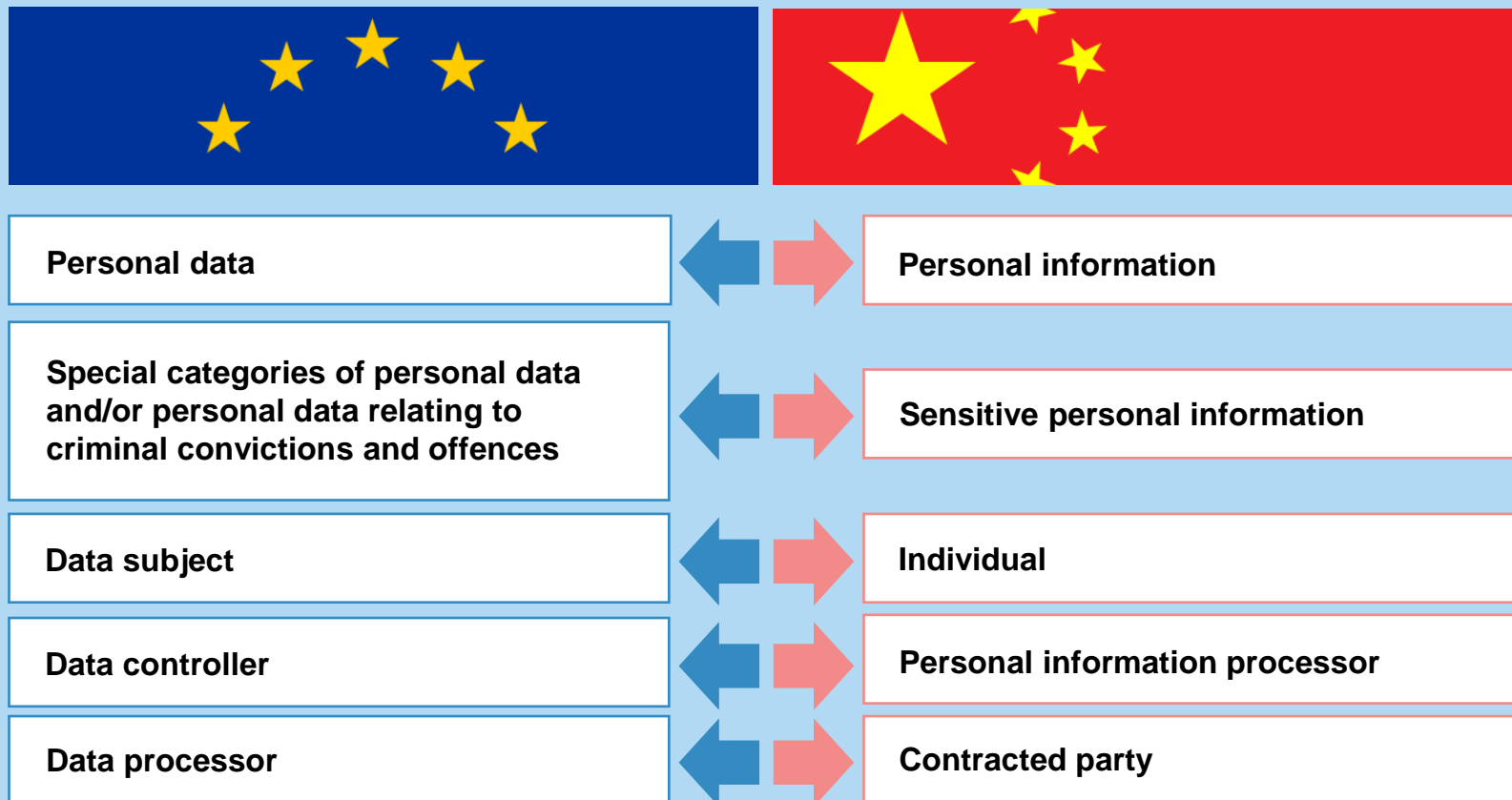


Sanctions

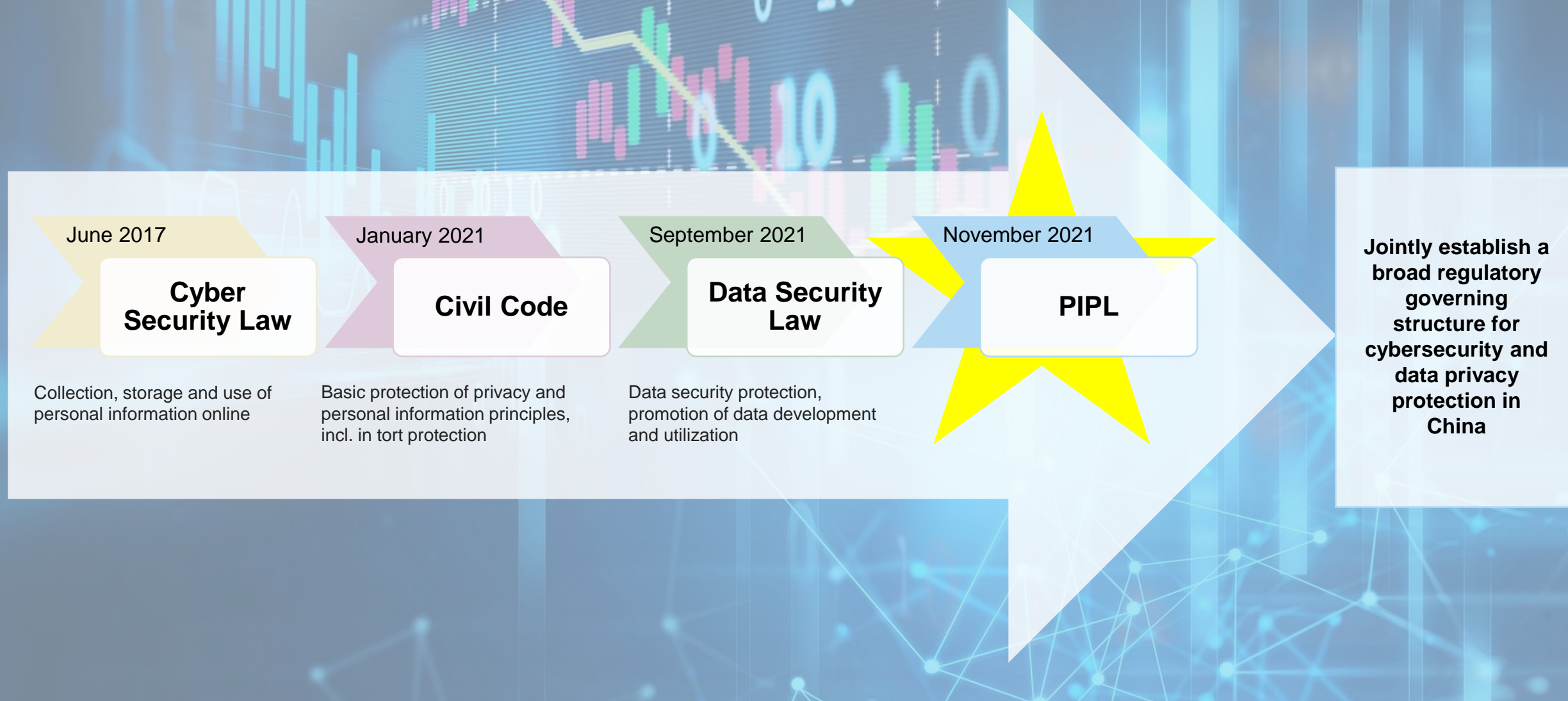
- Breach of PIPL can be sanctioned with:
 - Fines up to **RMB 50 million**; or
 - **5%** of the personal information processor's **turnover** the last year
- Other sanctions include the typical Chinese sanctions for breach of laws:
 - Revoking business license and permits
 - Rectifications
 - Confiscations of gains, and
 - Key personnel being held liable

PIPL: China's GDPR

KEY PRINCIPLES WITH DIFFERENT TERMINOLOGY



"Its all connected": PIPL and other existing Chinese laws



3.

PIPL: Key issues

- "**PERSONAL INFORMATION** refers to any kind of information **related to an identified or identifiable natural person** as electronically or otherwise recorded, excluding information that has been anonymized"
- "**PROCESSING** of personal information includes the **collection, storage, use, processing, transmission, provision, disclosure, and deletion** of personal information."

- PIPL, article 4



Key issues to be aware of



GENERAL PRINCIPLES FOR PROCESSING (Art. 5)

- Must adhere to the principles of
 - **lawfulness**
 - **legitimacy**
 - **necessity**
 - **good faith**
- Not to be misleading, fraudulent or coercive



PURPOSE AND SCOPE OF PROCESSING (Art. 6)

- For a **specified, reasonable and direct purpose**
- To be conducted in a way that has the **least impact** on personal rights and interests
- Minimum scope and not excessive of collection



PROCESSOR'S RESPONSIBILITIES AND STRUCTURE (Art. 9, 20, 21)

- **Responsible** for processing activities
- Must take **necessary measures to ensure the security** of the personal information
- **Joint processors** to agree on purpose and method as they are joint and several liable
- **Entrusted processor** requires supervising and compliance



LEGAL BASIS FOR PROCESSING PERSONAL INFORMATION (Art. 13)

- Personal consent unless:
 - Needed to conclude or **perform contractual obligations**; or
 - **HR management** employment policy, collective employment contract;
 - Personal information already **disclosed by the individual** or otherwise legally disclosed within a reasonable scope; or
 - Performance of **legal duties**, etc.



SEPARATE / EXPLICIT CONSENT REQUIRED FROM INDIVIDUALS (Art. 23, 25, 29, 39)

- Providing **to a third party**
- Disclosure **to the public**
- Use any personal image/identification information other than maintaining public security
- Processing of **sensitive personal information**
- **Cross-border transfer**

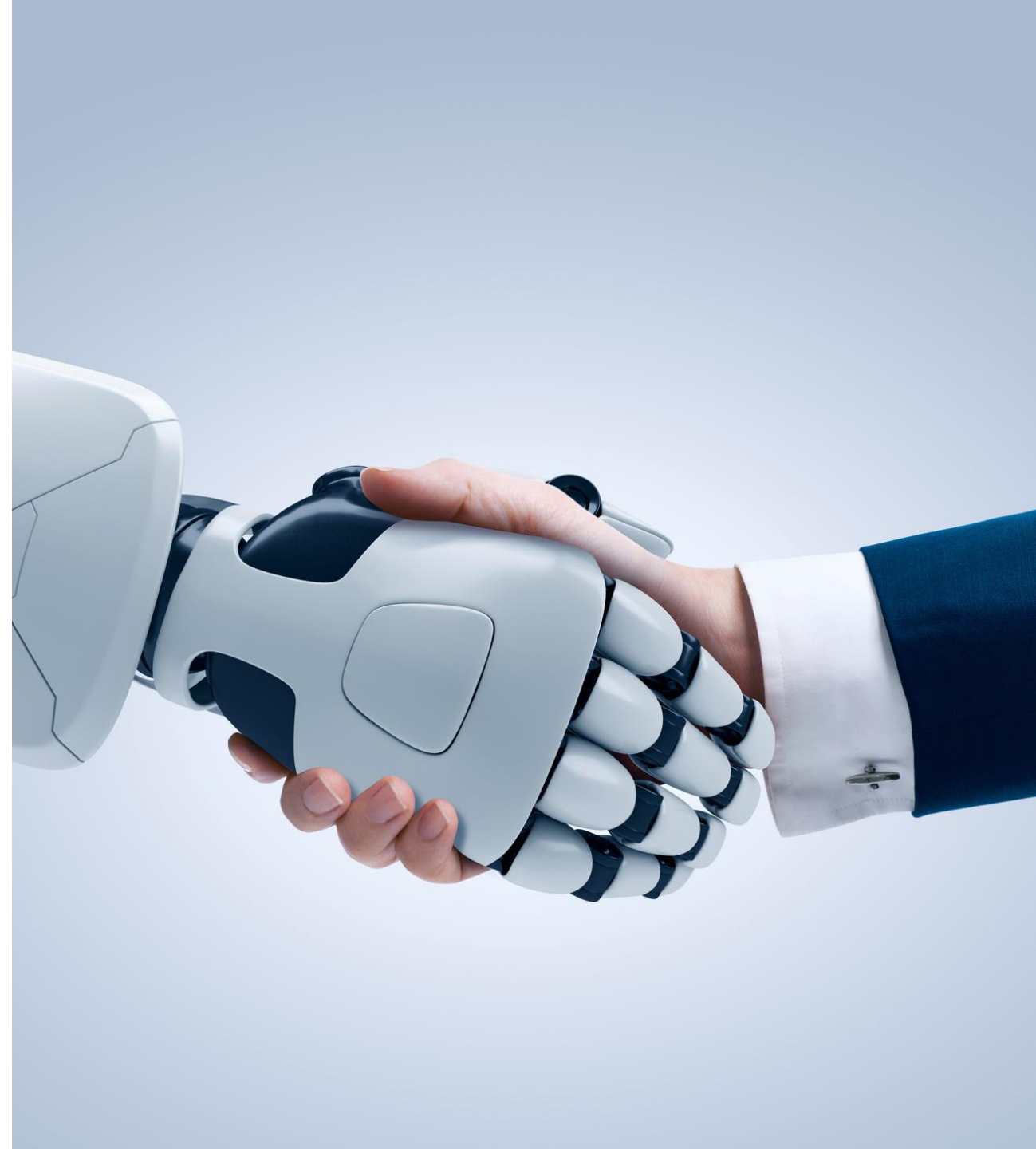


INDIVIDUALS' REQUEST TO EXERCISE THEIR RIGHTS (Art. 50)

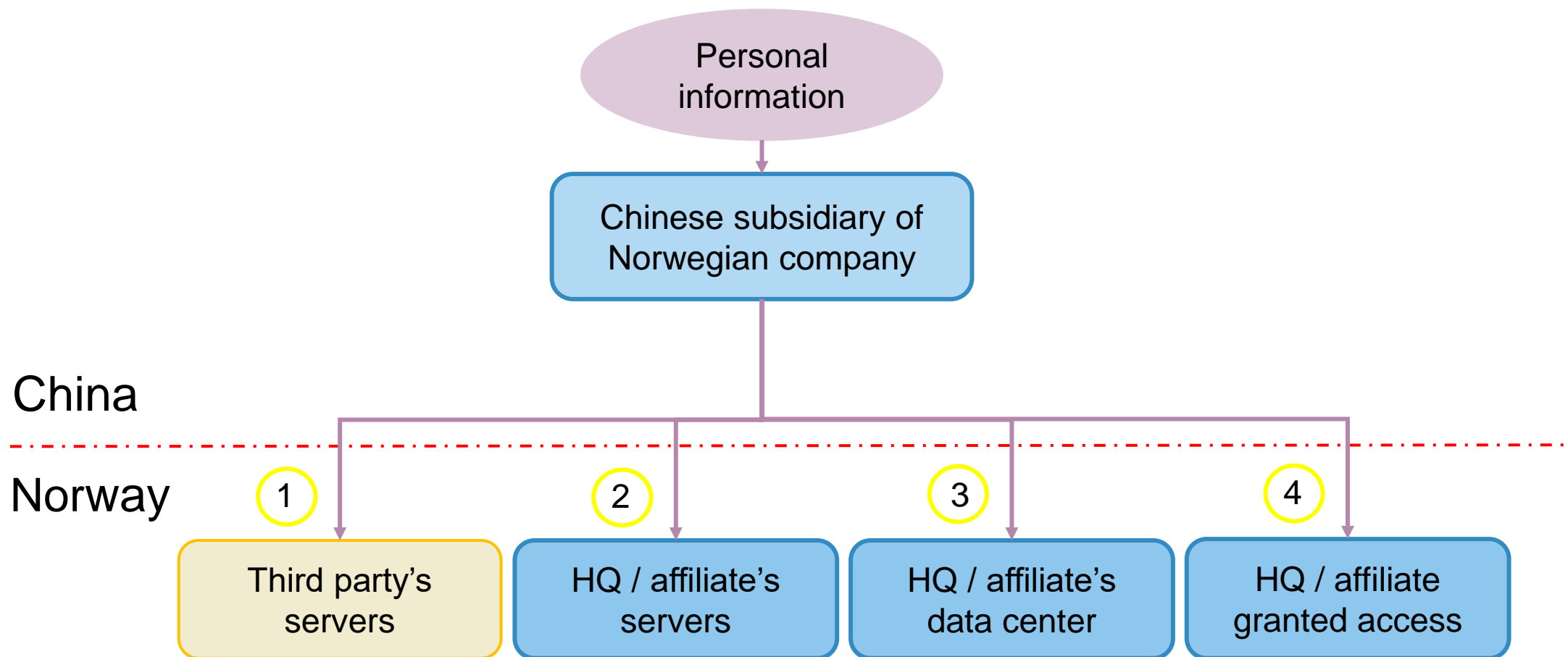
- The individuals have the right to request the processor to **explain the processing of personal information rules** to them
- The individuals can initiate **lawsuit** against processor if their request to exercise their rights is denied

Consent from the individual

- When consent from an individual is required as legal basis, the personal consent must be:
 1. Voluntary and explicit indication of intent; and
 2. Given by such individual on a fully informed basis
- Personal consent must be obtained ***again*** if there is any change to;
 - Purpose or method of processing; or
 - Type of personal information to be processed
- Unless the processing of personal information is necessary to provide the product/service, processors cannot refuse to provide the product/service to the individual if consent is not obtained (or later withdrawn)



Cross-border transfer: Possible scenarios



Cross-border transfer: Legal basis

- **Most processors** must:
 - Perform personal information protection authentication by authorized agency; **or**
 - Enter into a standard contract with the overseas recipient to establish the rights and obligations of both parties
 - **CIIO** (a special type of processor) and large platform processors must ensure:
 - Personal information collected or generated must be stored within China; **unless**
 - It is necessary to provide such information to an overseas recipient and a security assessment organized by the national cyberspace authority is approved
- All processors must **always** inform the individual of:
 1. Overseas recipient's name and contact information;
 2. Purpose and method for processing;
 3. Type of personal information involved; **and**
 4. The individual's way to exercise his/her rights provided for by law against the overseas recipient
 - A separate consent must be obtained from the individual for cross-boarder transfer
 - Overseas recipient must ensure to process personal information in compliance with PIPL

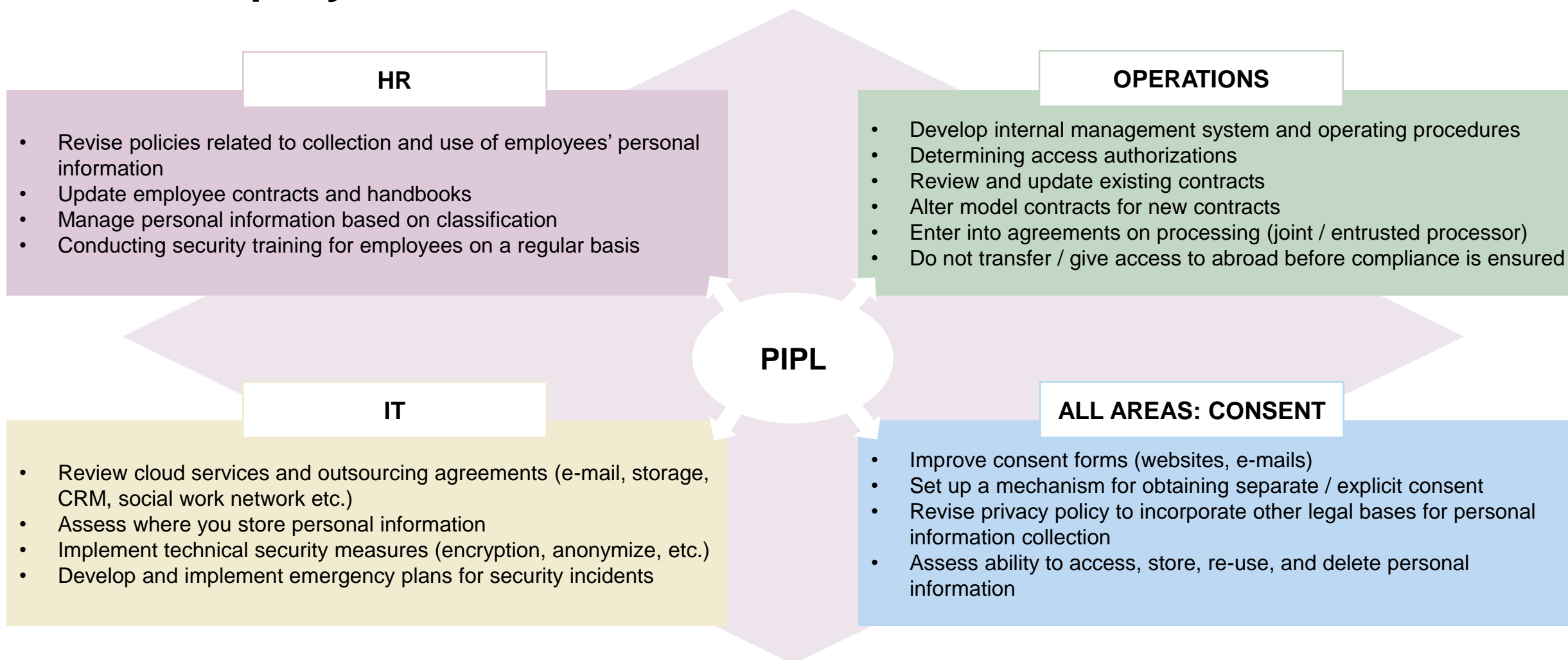
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PIPL: Practical implementation

A processor's obligations within the organisation

STAFFING AND ORGANIZATION	<i>Officer</i>	Appoint personal information protection officer (if the amount of personal information processed reaches a certain threshold)
	<i>Local representative</i>	Dedicated entity appointed as local representative within China responsible for personal information issues (for processor outside China)
INTERNAL ADMINISTRATIVE MEASURES	<i>Internal systems</i>	Develop internal management systems and operating rules for personal information processing
	<i>Audits</i>	Run regular personal information compliance audits
	<i>Assessments</i>	Conduct personal information protection impact assessments
SECURITY MEASURES	<i>Information classification</i>	Classify and implement personal information category management
	<i>Technical measures</i>	Adopt technical security measures, e.g. as encryption and de-identification
	<i>Training</i>	Access control and regular security education and training for employees
	<i>Incident response</i>	Formulate and implement personal information security incident response plans

Main company functions to be reviewed



Thank you!



Therese Trulsen

Senior Lawyer /Chief Rep.
+86 185 2131 2626
ttr@wrco.com.cn



Xiaomin Qu

Specialist Counsel
+86 135 6475 3289
xqu@wrco.com.cn



Line Coll

Partner
+47 900 90 792
lco@wr.no



Wegard Kyoo Bergli

Associate
+47 959 46 858
wkb@wr.no



Sherry (Chen) Qiu

Senior Associate
+86 135 0171 2717
shq@wr.no

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- Chambers and Partners

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