

China's Personal Information Protection Law and its impacts on businesses

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Barbara Li is the Head of Corporate of Rui Bai Law Firm based in Beijing and also leads the Data, TMT and FinTech practices of our firm. With almost three-decades' solid experience working at the Beijing and London offices of leading international law firms as well as in-house role, Barbara brings a wealth of enormous expertise in advising international companies, financial institutions and Chinese businesses on doing business in China and globally. She focuses her practice on foreign direct investment, M&As, joint ventures and strategic alliances in a wide range of industries including high-tech, telecom, energy, infrastructure, automotive and high-end manufacturing. She also counsels Chinese companies on their outbound strategies and infrastructure projects.

Barbara has a particular interest in TMT and FinTech sectors, with extensive experience advising international and Chinese companies, financial institutions, tech companies and PE funds on structuring investment, achieving data and cybersecurity compliance and managing risks related to digital transformation and deployment of emerging technologies such as AI, big data, cloud and blockchain. She is well recognized as an expert in this field in the China market and is described as "having extensive experience in complex TMT regulatory issues" by Legal 500. Barbara is widely recognized in Corporate, M&A, TMT and FinTech categories and is ranked as a leading individual by various legal directories including Chambers, Legal 500, Asian Legal Business (ALB), IFLR1000 and WhichLawyer. She won the China Top TMT Lawyer Award 2020 ranked by Asian Legal Business.

Benefiting from her in-house experience, Barbara works closely with the industry and she is frequently invited to write and speak at international and regional professional and industry conferences and events to share her insights. She served as the ex-vice chair of the Cybersecurity Sub-Working Group and the Construction Working Group of the EU Chamber of Commerce in China for several years.

Barbara is dual-qualified in England & Wales and China. She obtained her LLM degrees from both King's College, University of London and the China University of Law and Political Science, where she got her LLB degree as well. She completed the CPE and LPC courses in London for pursuing her UK bar qualification.

Barbara is a native Chinese speaker and has proficiency in writing and speaking English.

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Rui Bai Law Firm – Tier 2 in
Other Notable Firms In
Beijing

Legal 500, 2020

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Rui Bai Law Firm – Leading firm
in Data Protection and TMT

Legal 500, 2021

Barbara Li – Highly regarded
practitioner

IFLR, 2011-2021

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Barbara Li – China 15 Top
TMT Lawyers

Asia Legal Business, 2020

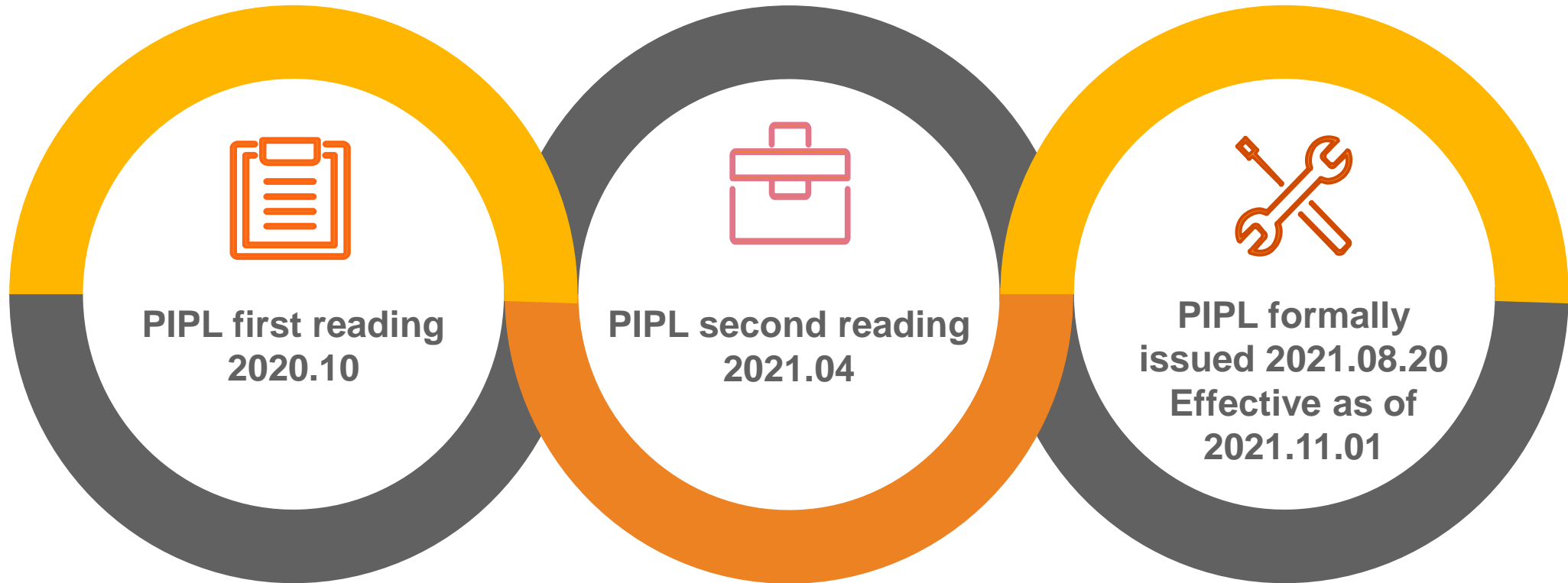
Barbara Li – Leading
Individual in TMT / FinTech

Legal 500, 2020-2021

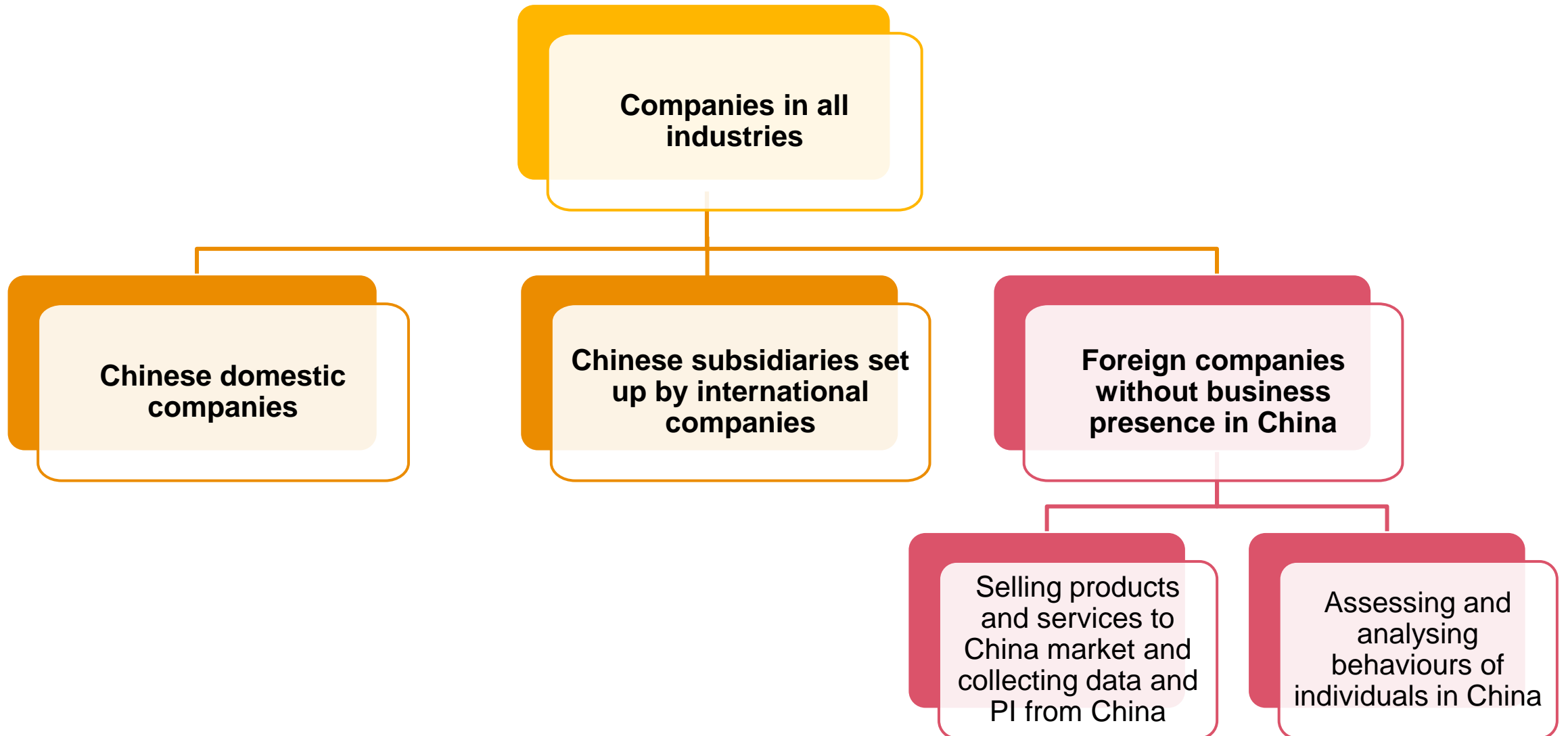
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Barbara Li served as Vice-Chair of the
Cybersecurity and Construction Sub-
Working Groups of the EU Chamber of
Commerce for several years

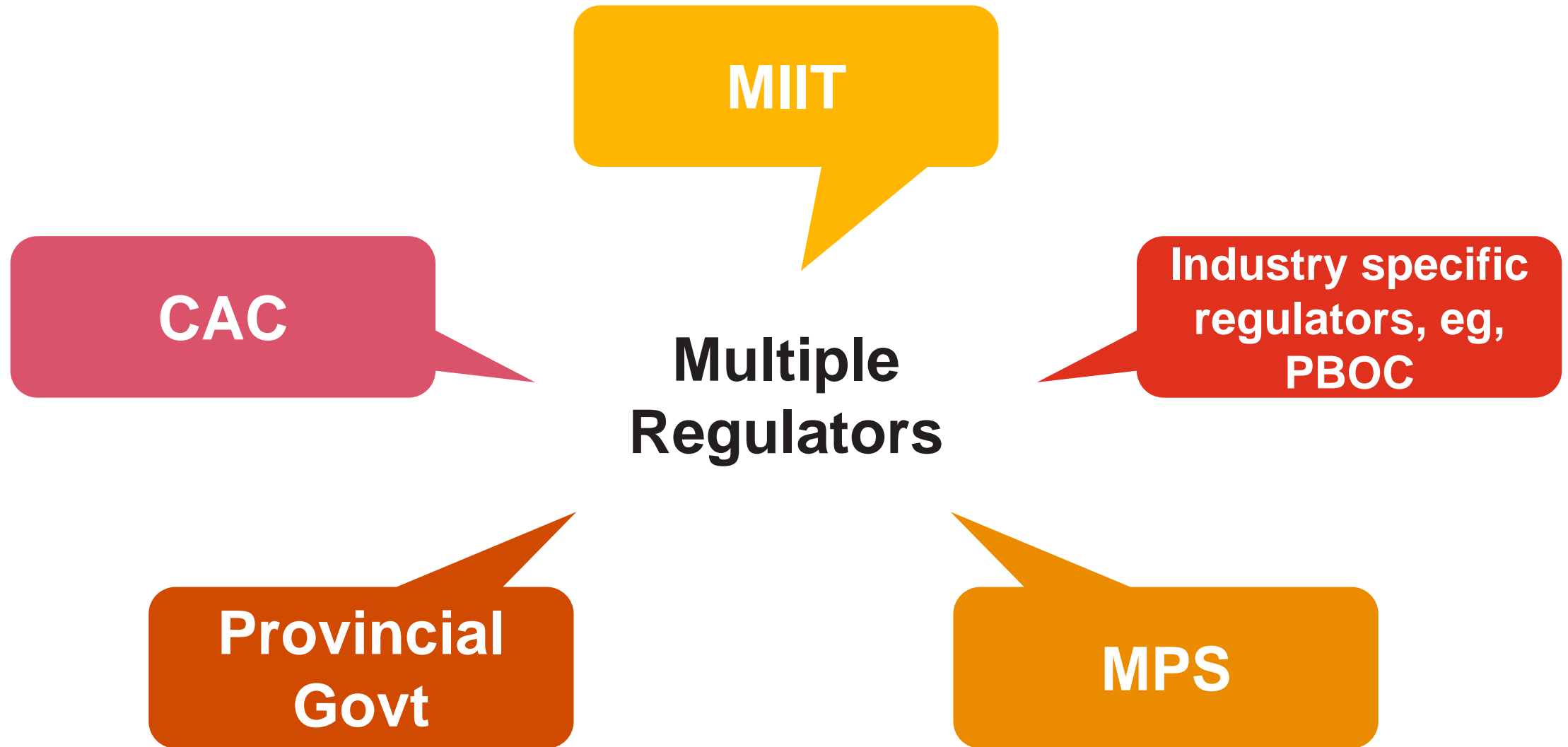
China Data Regulatory Regime



Who Are Covered?



Who Are the Regulators?



Personal Information

- **Wide range**

- Any kind of information
- Related to an identified or identifiable natural person
- Name, address, tel number, financial, health, geolocation info, biometric, etc.
- Sensitive personal information – wider scope than GDPR



What Activities Are Covered?

Collection

Use

Transmission

Disclosure



Processing

Storage

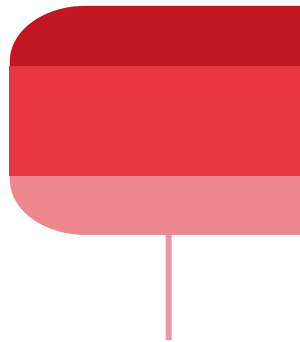
Provision

Deletion

Legal Principles and Basis – Legality, Necessity, Fairness, Transparency and Minimisation



Necessity for signing/ performance of contracts or HR management



Notification + Consent

- How to define a valid consent?
- Separate consent?



Emergency response



Publicly disclosed information



Performance of statutory obligations



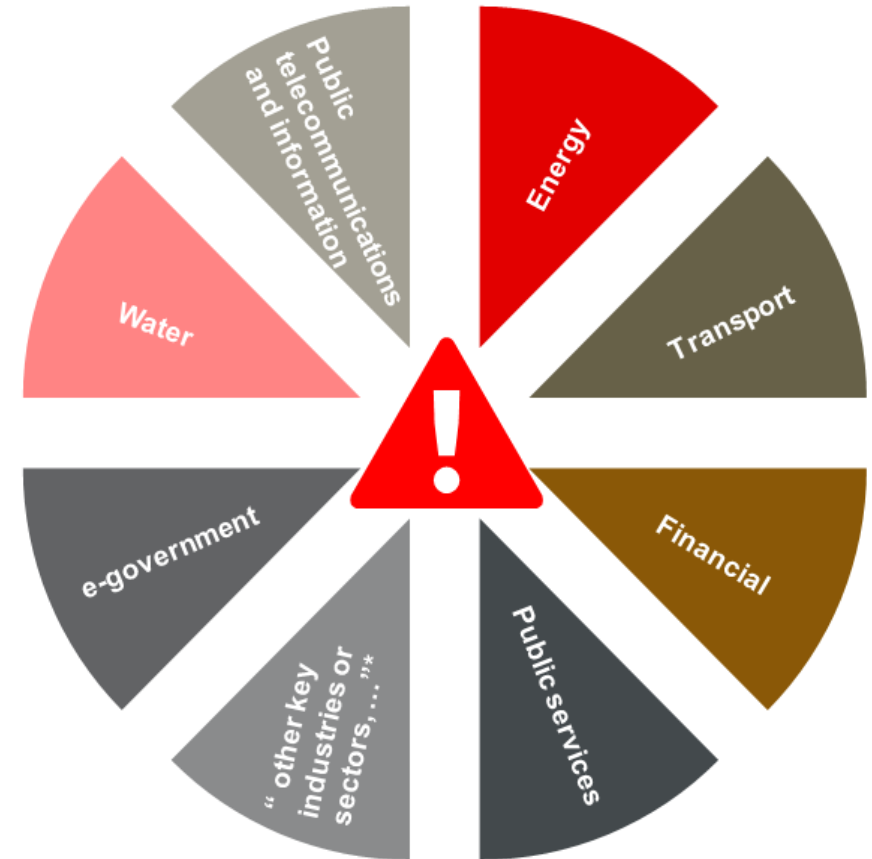
News reporting or for public interests



** Legitimate interest is not a recognised legal basis*

Data Localisation - High Risk for Specific Industries

- Critical Information Infrastructure (CII):
 - Financial, energy, water, public utilities, telecom and information services, transportation, e-government AND “OTHER KEY INDUSTRIES”
- **Personal Data** and **Important Data** collected/generated during business operation in China should be stored in China
- Cross-border transfer of data is only allowed on the ground of necessary and has passed security assessment



*“other key industries or sectors, which can seriously harm national security or public interest, if destroyed or tampered with or if data is leaked”

Cross-border Transfer of Personal Information

Cross-border data transfer by CII Operators and Non-CII operators processing size of data prescribed by authorities

- Security assessment by government

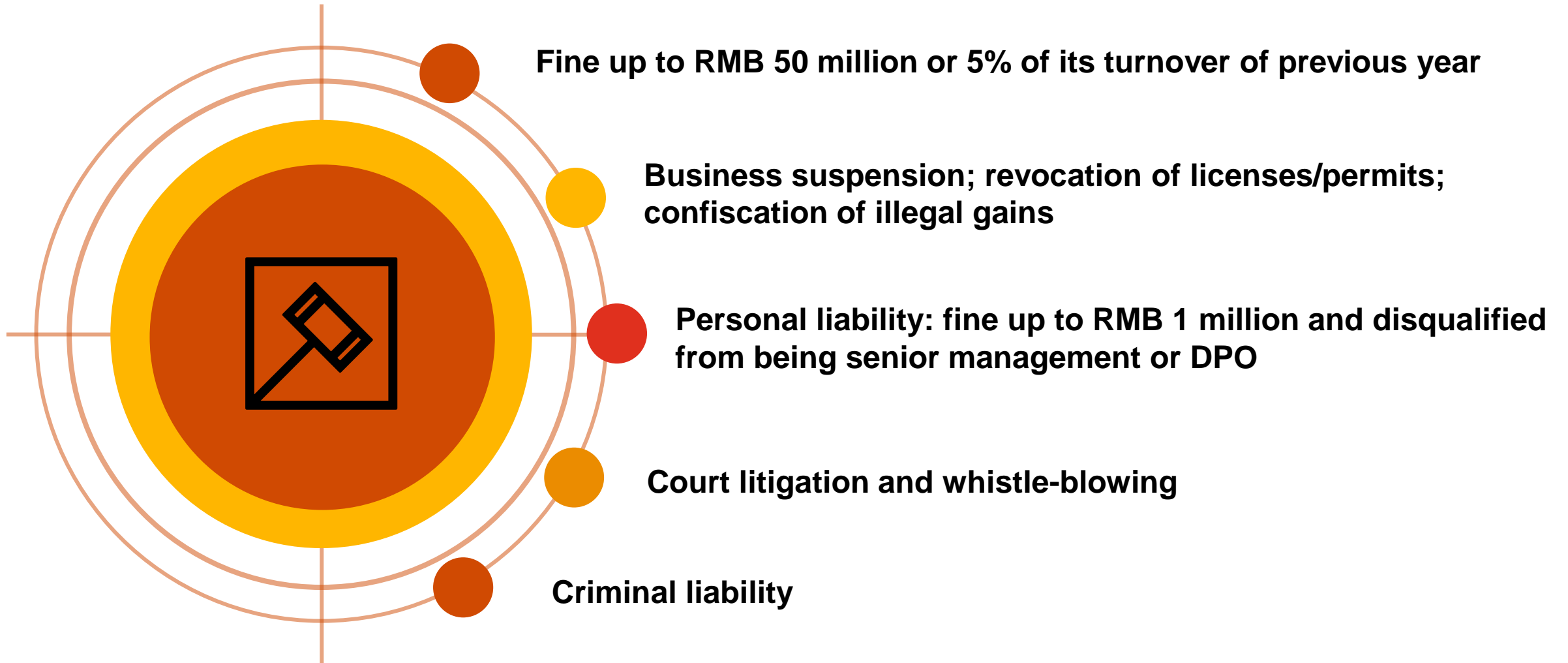


- Security assessment by authorities
- Security certification by qualified 3rd party institutions
- Standard contract with overseas recipients
- Other mechanism allowed by laws

Cross-border data transfer by non-CII operators



Liabilities for Non-compliance



Enforcement

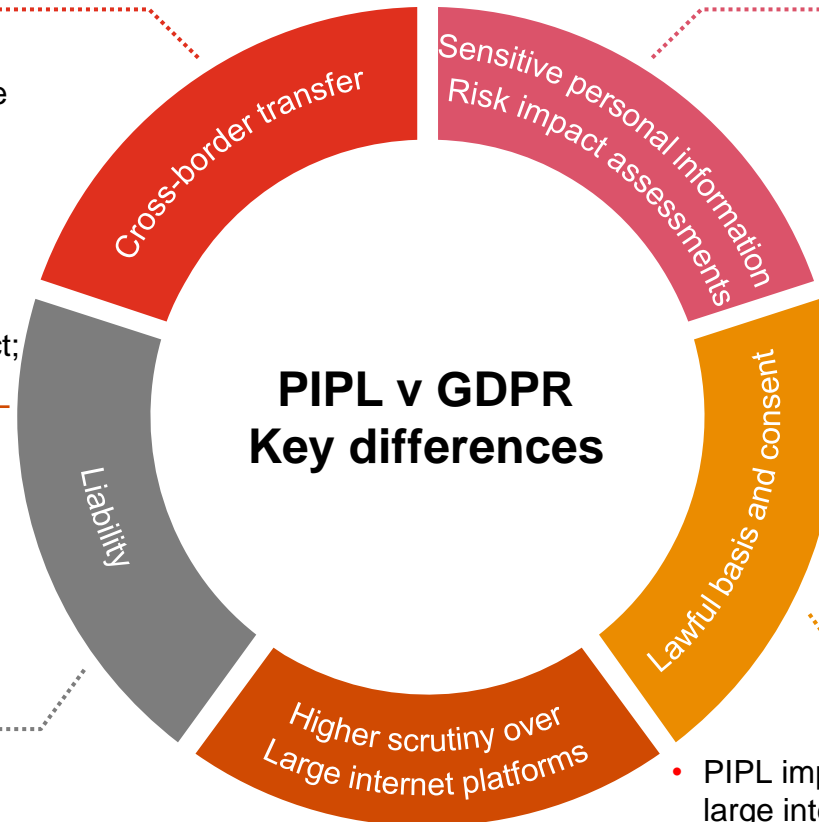
- **Active actions by regulators**
 - Apps
 - investigations and dawn-raids
 - fines
- **Stronger public awareness**



PIPL vs GDPR – Key Differences

- PIPL:
 - Different requirements depending on the volume of data processed and whether a CIIO
 - No disclosure to foreign judicial or enforcement authorities w/out prior govt approval
 - Separate consent and DPIA
- GDPR:
 - White list; BCR; SCC; approved code of conduct; approved certification, etc.

- PIPL imposes personal liability – up to RMB1 million fines and being barred from undertaking senior/DPO roles.
- Criminal liability?
- GDPR: 4% of “global” revenue max



Key Implications for Business Operations

GDPR Compliant ≠ PIPL Compliant

- Compliance review for business model
 - ❖ User profiling
 - ❖ Facial recognition
 - ❖ Sensitive PI
 - ❖ DPIA

- Expanded scope and enhanced compliance requirements for cross-border data transfer



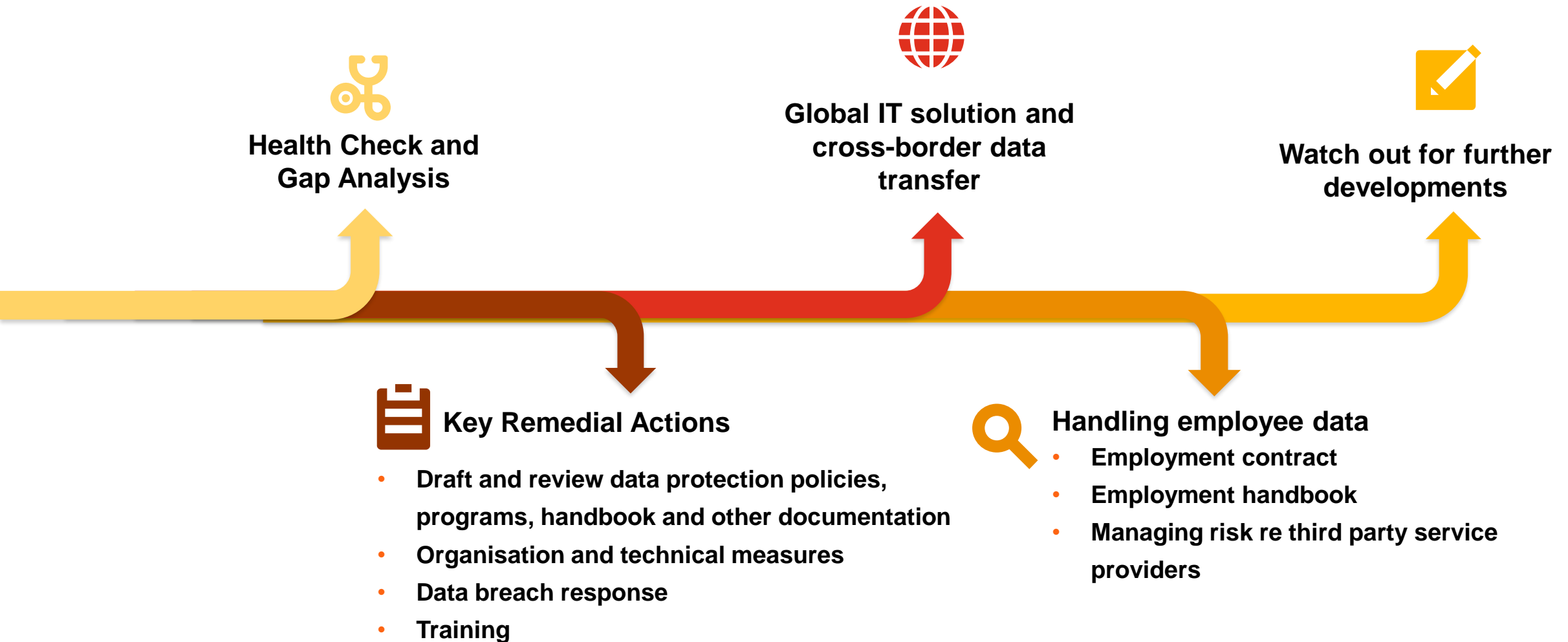
- Companies outside China
 - ❖ Whether to apply?
 - ❖ Compliance and administrative cost for appointing an agent or representative

- Organisational and technical measures (appointment of DPO, encryption, data breach response, training, etc)

Time Is Running Out!



Compliance Actions to Take NOW!





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Publications

- [IAPP Exclusion Livestreaming discussion with Barbara Li: China's new data Privacy Law: PIPL](#)
- [China's First Personal Information Protection Law is about to take effect – are you ready?](#)
- [China Lawmakers Passed the Data Security Law](#)
- [Second draft of Personal Information Protection Law and Data Security Law issued for public consultation](#)
- [China adopts new rules to further regulate e-Commerce](#)
- [China issues draft Personal Information Protection Law consultation](#)
- [IAPP Exclusive Interview with Barbara Li: Privacy Around the Globe: China](#)
- [China: Cybersecurity and privacy enforcement](#)
- [China - Enforcement and Breach](#)
- [Cybersecurity review of network products and services in China](#)
- [Navigating China's Cybersecurity Regulatory Maze](#)
- [China issues draft Data Security Law for public consultation](#)

Q&A



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The materials contained in this presentation were assembled in 2021 and were based on the law enforceable and information available at that time.

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