

# China – Cross-Border Transfer Rules

This template sets out the rules for transferring personal information (PI) outside of the People’s Republic of China.

## Table of Contents

How to use this document .....	1
General privacy rules .....	1
Data transfer mechanisms .....	2
Exemptions to data transfer mechanisms .....	2
How to apply cross-border transfer rules .....	3
Cross-border transfer rules – data flow .....	3

## How to use this document

Read through the requirements to determine how the data transfer rules apply to you. Which rule to follow will depend on the type of organization and type of data involved in the transfer.

The template includes a data flow diagram as a visual aid.

## General privacy rules

The Regulations on Promoting and Regulating Cross-Border Data Flows (Cross-Border Regulation) is the authoritative legal text on cross-border transfer rules. The Cross-Border Regulation requires PI Processors who transfer PI outside of China to meet specific privacy conditions, such as:

- informing individuals of the transfer of their PI
- obtaining individual consent
- conducting a PI protection impact assessment.

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## Data transfer mechanisms

Additionally, the Cross-Border Regulation generally requires transfers of PI outside of China to be based on one of the following data transfer mechanisms:

- Data export security assessment
- Standard contract
- PI protection certification.

The transfer of important data<sup>1</sup> outside of China will always trigger the need for a data export security assessment. PI Processors will be notified by relevant government departments if the data they handle is "important data", or a public list will be released identifying which data constitutes "important data". If the PI Processor has not been notified that they handle important data through one of these two methods, then the PI Processor does not need to apply for a data export security assessment.

The requirement to implement a data transfer mechanism for the transfer of PI and sensitive PI is based on the volume and type of PI being transferred and is only triggered where certain thresholds are met, and no applicable exemption applies.

## Exemptions to data transfer mechanisms

The Cross-Border Regulation includes certain situations where the transfer of PI outside of China does not need to rely on a data transfer mechanism:

- Data collected and generated for international trade, cross-border transportation, academic cooperation, cross-border manufacturing, and marketing are transferred outside of China and do not contain PI or important data<sup>2</sup>
- PI collected and generated by a third-party data processor abroad is transferred to China for processing and then is subsequently transferred abroad and no PI or important data is introduced during the processing<sup>3</sup>
- The transfer of PI (excluding important data) outside of China is necessary for one of the following purposes<sup>4</sup>
  - the conclusion or fulfillment of a contract to which the individual is a party, such as:
    - cross-border shopping
    - cross-border mailing
    - cross-border remittance
    - cross-border payment
    - cross-border account opening
    - air ticket and hotel booking
    - visa application
    - examination services.
  - there is a genuine need to provide employee PI outside of China to implement cross-border human resources management in accordance with labor rules and regulations and collective contracts
  - to protect the life, health and property of individuals in an emergency
  - the PI (excluding sensitive PI) of less than 100,000 individuals is transferred overseas by a non-CII operator since January 1 of the current year.
- The transfer originates from a PI Processor in the free trade pilot zone and the PI is not included on the free trade pilot zone's negative list.<sup>5</sup>

# How to apply cross-border transfer rules

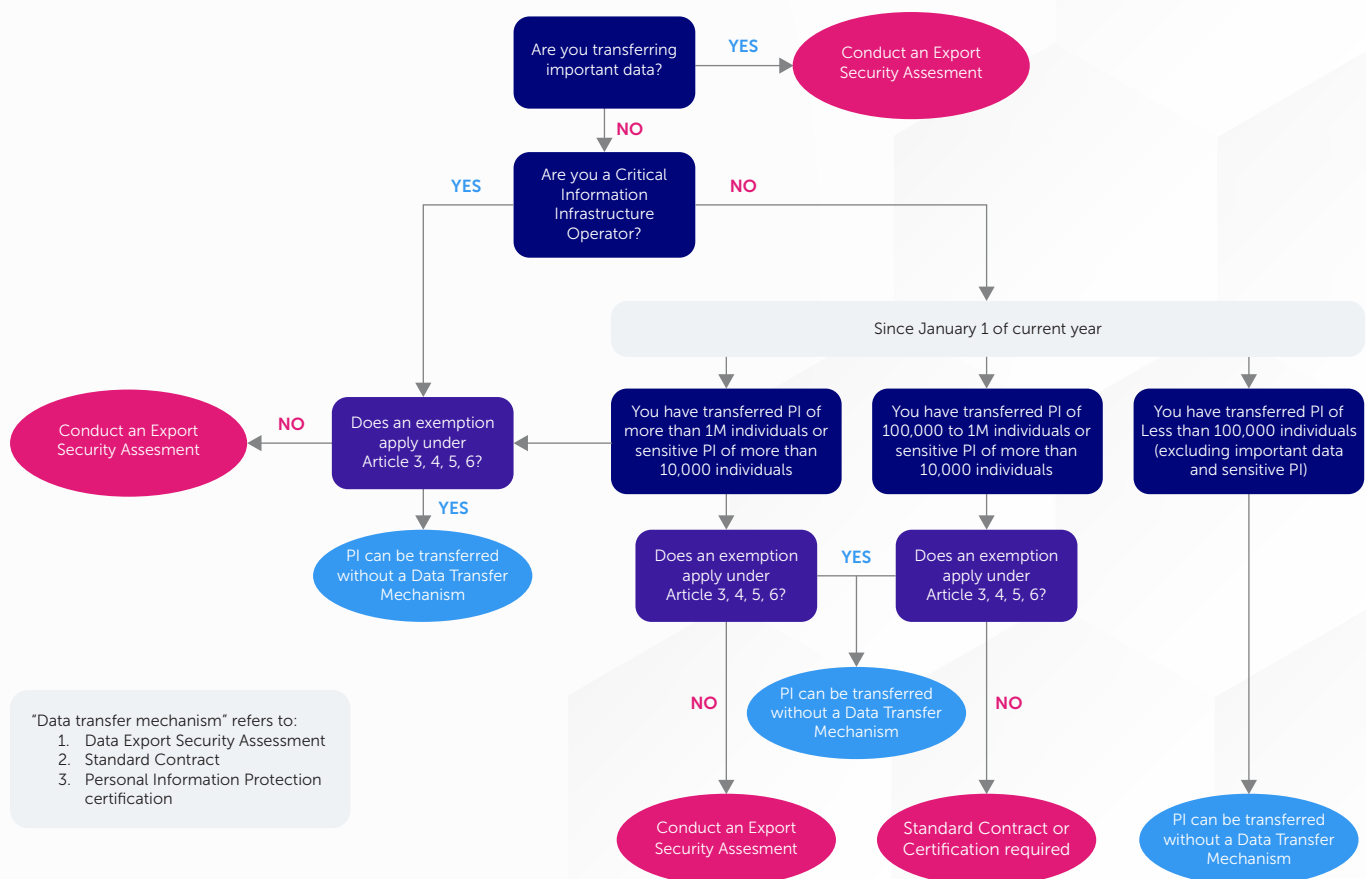
## Critical information infrastructure (CII) operators:

- that transfer important data outside of China must conduct a data export security assessment
- that transfer PI outside of China must conduct a security assessment, unless an exemption applies.

## Non-CII operators:

- that transfer important data outside of China must conduct a data export security assessment
- since January 1 of the current year:
  - that transfer the PI (excluding important data and sensitive PI) of less than 100,000 individuals, are exempt from implementing a data transfer mechanism
  - that transfer the PI of more than 1 million individuals or the sensitive PI of more than 10,000 individuals must complete a data export security assessment, unless an exemption applies
  - that transfer the PI of 100,000 to 1 million individuals or the sensitive PI of less than 10,000 individuals must sign a standard contract or obtain a PI protection certification, unless an exemption applies.

Where an exemption applies, the PI can be transferred outside of China without a data transfer mechanism.



<sup>1</sup> GB/T 43697-2024 Data Security Technology – Rules for Data Classification and Grading defines “important data” as data related to a specific field, group, or region, or reaching a certain degree of precision and scale, the leakage, falsification, or destruction of which may directly endanger national security, economic operations, social stability, or public health and safety.

<sup>2</sup> Cross-Border Regulation, Article 3

<sup>3</sup> Cross-Border Regulation, Article 4

<sup>4</sup> Cross-Border Regulation, Article 5

<sup>5</sup> Cross-Border Regulation, Article 6