



Data Privacy Compliance in China – A Time to Act

**R&P China Lawyers
www.rplawyers.com**

A black and white photograph of a person's hands writing on a document with a pen. The word "CONTENTS" is overlaid in large white letters on the left side of the image.

CONTENTS

- 1 **Brief intro to R&P, Maarten, Connie, Alice**
- 2 **Intro to the Pers Inf. Prot. Law (PIPL)**
- 3 **Who will be affected by the PIPL?**
- 4 **What are the obligations of a data handler?**
- 5 **Legal consequences of incompliance**
- 6 **Data privacy enforcement in China**
- 7 **Compliance Advice**



/01

Introduction to the PIPL

- Background
- Key Definitions

01 Background

The PIPL came into force on 1 November 2021, and forms backbone of China's data regulatory framework – together with the *PRC Data Security Law* and the *PRC Cybersecurity Law*.



In the past 2 years, numerous rules, regulations and technical standards have been released to support implementation of the PIPL. The regulations focusing on cross-border data transfer are the most eye-catching for multinational companies.



01 Key Definitions under the PIPL

Personal Information (“PI”)

- *Information related to identified or identifiable natural persons*
- *Anonymous information ≠ pseudonymized information*
- *Sensitive personal information*

PI Handler

- *The one that independently determines the handling purpose and method*
- *Personal information handler vs. entrusted party*



The amount of PI handled does **not** affect PIPL applicability.



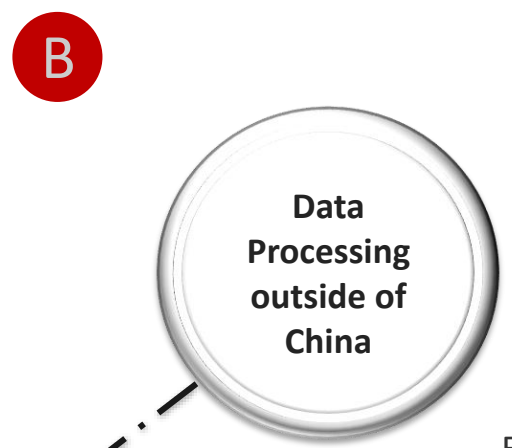
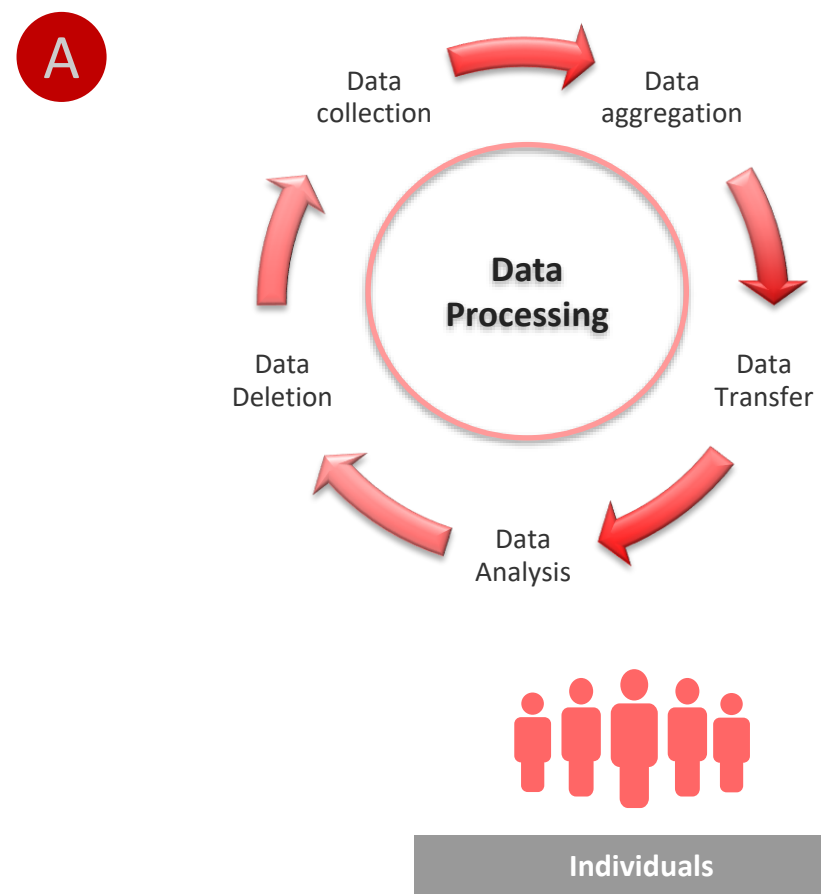
/02

Territorial Jurisdiction – Who is subject to the PIPL

- **Principles**
- **Application of the principles**

02 Principle

Territory of Mainland China



For one of two purposes::

- To provide products or services to natural persons in Mainland China
- or
- To analyze or assess the behaviors of natural persons in Mainland China

02 Application of the principles

Scenario A:
Data Processing
within China

- *Chinese subsidiary of a multinational company*
- *Chinese representative office of a foreign airline*

Scenario B:
Data Processing
outside China

- *US E-commerce platform that has Chinese-language option on its website, and payment can be made through Alipay*
- *French market survey company entrusted by a French wine chateau to conduct surveys on Chinese consumer wine-drinking habit*
- *Famous Chinese food restaurant in Peru that uses its website for online reservation*



/03

What are obligations of PI Handler

- **PI Collection**
- **PI Transfer**



Informed consent

- General consent vs. separate consent



Other legitimate grounds for data collection:

- HR management
- Public health emergencies
- Statutory duties, or statutory obligations or other legitimate grounds



Minimization & necessity principles

03 PI Transfer



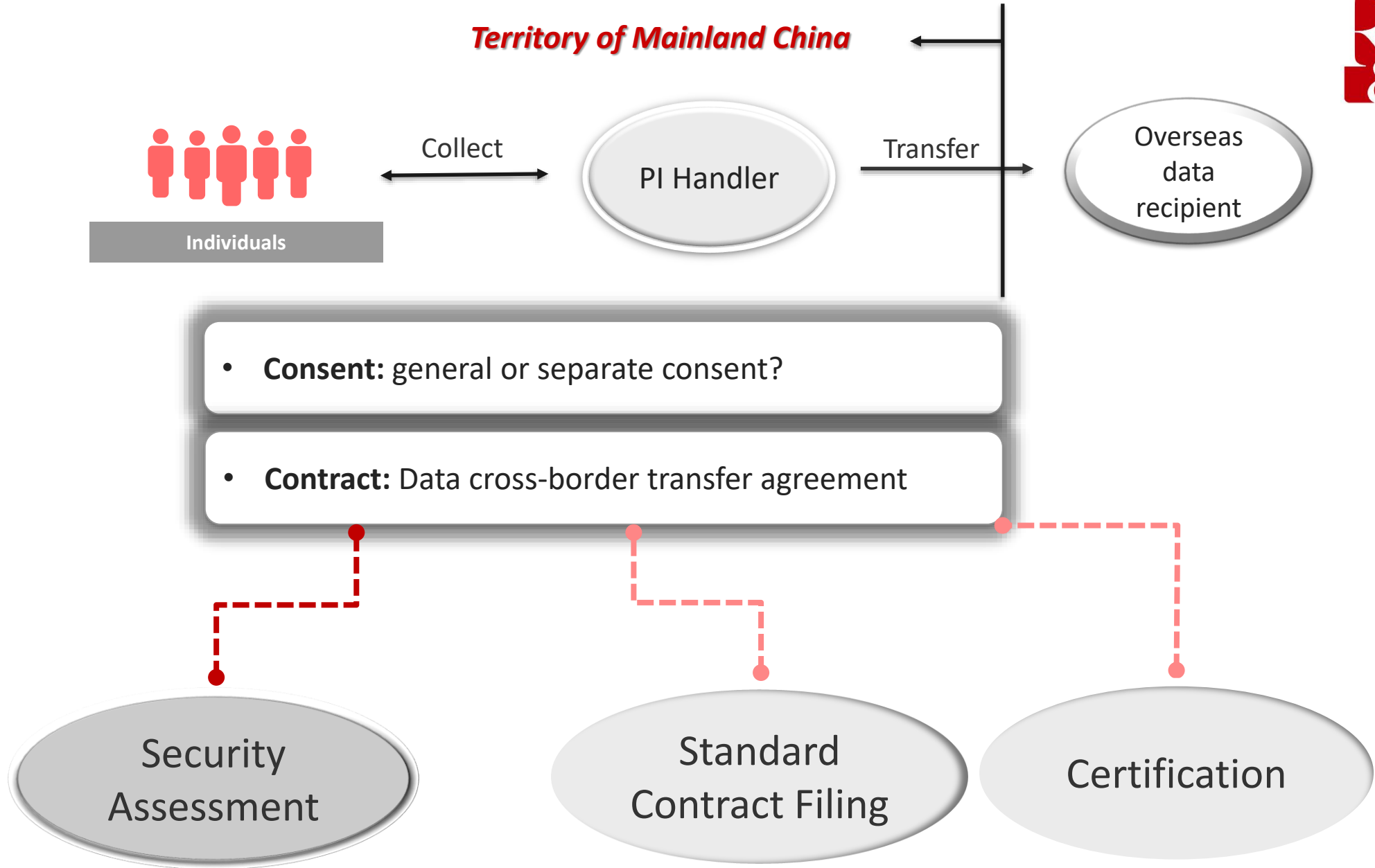
- **Consent**

- notification: who's the 3rd party? How does the 3rd party process PI
- general consent: entrusted 3rd party
- separate consent: co-handler

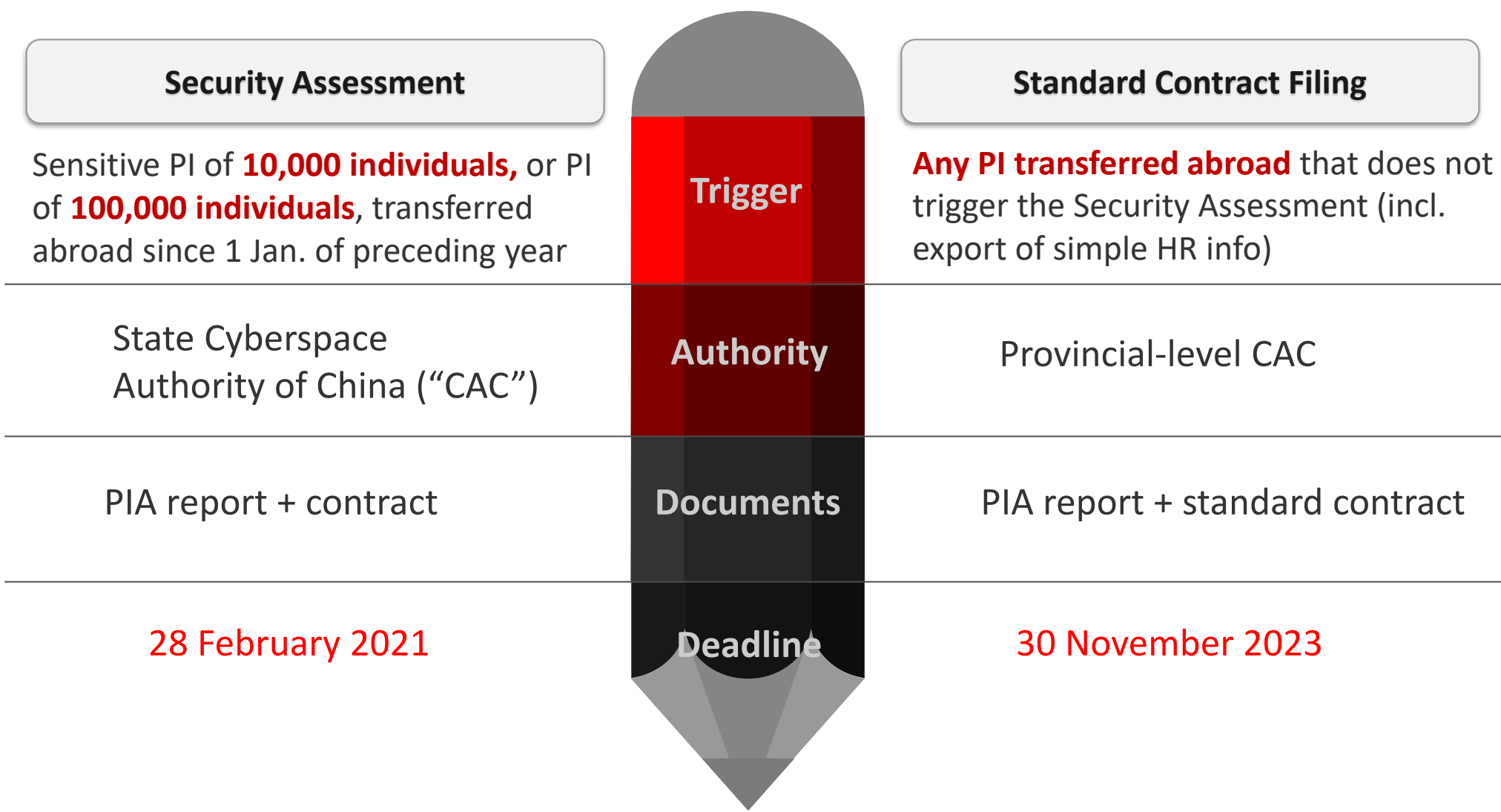
- **Contract**

- scope, purpose, method of data processing
- onward transfer restriction

03 Data Transfer



03 Data Transfer





/04

**Legal consequences for
incompliance**

04 Legal Consequences

Administrative Penalty:

Company

- Suspension of Business
- Fine of up to CNY50 million or 5% of previous year's turnover
- Foreign entity – blacklisted, prohibited to transfer PI

Person in Charge

- Fine of up to CNY 1 million
- Prohibition from holding positions of director, supervisor, manager and DOP for certain period

Civil Liability:

Cease of the infringing act, compensation for damages (tort) etc.

Criminal Liability:

The crime of *infringing on the PI of citizens* (fixed-term imprisonment of **3-7 years**).

/05

Enforcement in China



05 Enforcement Trends in China

- Campaign-style enforcement on specific sectors
- Increased supervision on data security and data protection
 - > More investigations
 - > Higher fines
 - > More / higher fines against individuals
- Emphasis on filing requirements of PI processing activities
- Mandatory internal audits on PI processing activities
- Whistleblower risk as key trigger for government audits

05 Administrative cases

01

Didi

2022.7



- 16 volitions, includes accessibly collated sensitive PI, didn't inform data subject the purpose of processing data, etc.
- **A fine of CNY 8.026 billion** on the Company; a fine of **CNY1 million on chairman and CEO respectively.**

02

CNKI.net

2023.9



- It's smart phone applications collected unnecessary PI, collected PI without obtain consent, didn't delete PI timely, etc.
- **A fine of CNY 50 million** imposed to Company.

03

Nanchang University

2023.8



- More than 30,000 pieces of teachers and students' PI at were sold on the overseas Internet.
- It is found that the university failed to fulfill data security protection obligations, resulting in the database were illegally accessed by hackers.
- **A fine of CNY 800k** on the university; **fine of CNY 50K on the principle responsible person.**

04

Others

2023



- In June, Starbucks and Shake Shack Shanghai stores were investigated by CAC as their mini program frequently ask customers to provide names, phone number and location information.
- In August, Zhejiang Provinces CAC imposed fine to more than 30 companies within 1 month because of their violation of PIPL.

/06

Compliance Advise



05 Challenges for International Companies

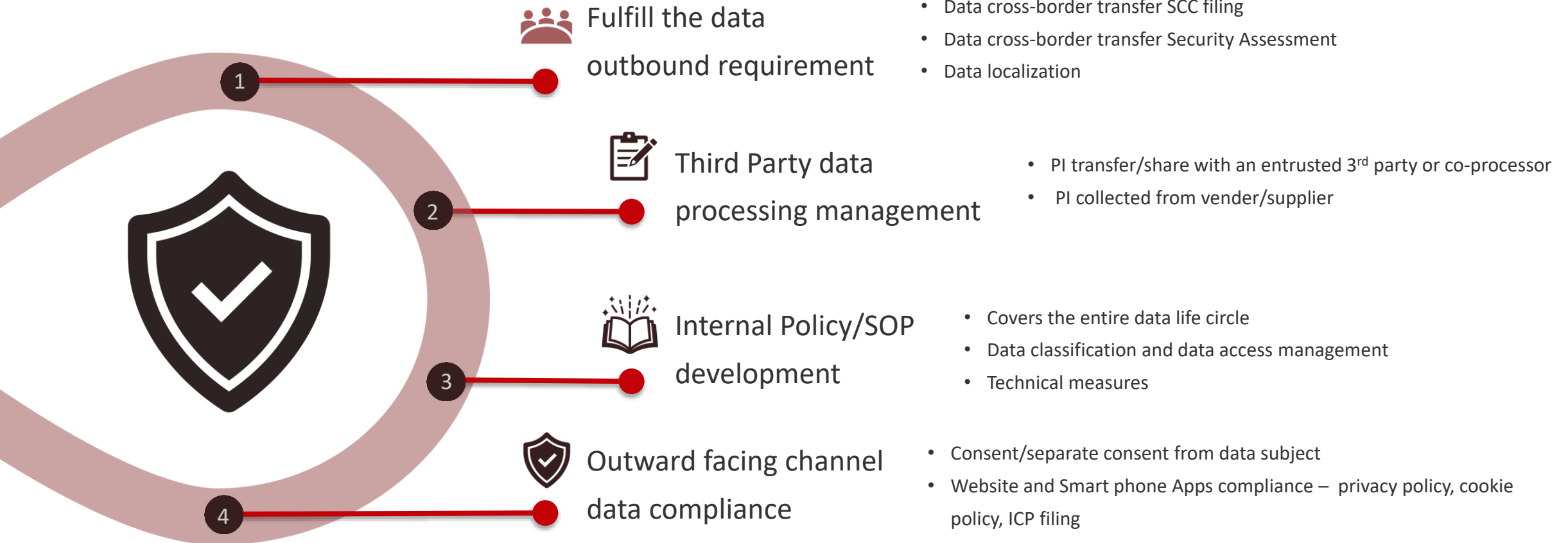
Company with Office in China

- Data localization (as much as you can)
- Fulfill the government filing requirement and audit requirements
- Respond to individuals' requests of exercising their data subject's right

Company without Office in China

- Separate consent mechanism for users from China Mainland
- Data outbound compliance
- Establish an organization or appoint a representative in China for handling PI matter

06 Compliance Advice – Action Plan





方旭 | CHINA
LAWYERS



Connie Chen

✉ chenyan@rplawyers.com



Maarten Roos

✉ roos@rplawyers.com



Alice Peng

✉ pengqiao@rplawyers.com

上海 | 北京
上海方旭律师事务所
R&P China Lawyers
www.rplawyers.com