

China and Hong Kong Publish Standard Contract for Transferring Personal Information Within GBA Area

China's CAC and Hong Kong's ITIB jointly released GBA SCCs, which may be adopted to transfer personal information between entities within the GBA.

Key Points:

- **Scope:** The GBA SCCs are applicable to the transfer of personal information between entities registered or individuals located in the Guangdong-Hong Kong-Macau Greater Bay Area (GBA), specifically, Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen and Zhaoqing, and Hong Kong (Macau is excluded, at least for now). Personal information processors (PI Processors) that process important data may not rely on the GBA SCCs.
- **Voluntary adoption:** The adoption of the GBA SCCs is voluntary. For PI Processors in the Mainland cities of the GBA, the GBA SCCs serve as a fourth data export mechanism to the three existing mechanisms under the PRC's Personal Information Protection Law (PIPL), namely, security assessment, personal information protection certification, and standard contractual clauses (China SCCs). PI Processors in Hong Kong can continue to freely transfer personal information outside of Hong Kong under the PDPO, so do not need to implement any data transfer mechanism.
- **No onward transfers:** PI Processors who rely on the GBA SCCs for transferring personal information within the GBA cannot forward such personal information to third parties outside of the GBA.
- **Comparison with China SCCs:** While the structure of and obligations on PI Processors and recipients in the GBA SCCs are largely similar to those of the China SCCs, the filing requirements and procedure for the GBA SCCs are simpler compared to those for the China SCCs.

Background

On December 13, 2023, the People's Republic of China's (PRC's) [Cyberspace Administration of China](#) (CAC) and Hong Kong's [Innovation, Technology and Industry Bureau of Hong Kong](#) (ITIB) jointly formulated and released the Standard Contract for the Cross-boundary Flow of Personal Information within the GBA (GBA SCCs) and its Implementation Guidelines (Implementation Guidelines), both of which became effective immediately.

The Office of the Government Chief Information Officer of Hong Kong (OGCIO) also issued Filing Guidelines to provide guidance to Hong Kong PI Processors (also known as "data users" under Hong

Kong's Personal Data (Privacy) Ordinance (PDPO)) on the filing procedure for the GBA SCCs in Hong Kong. On January 4, 2024, the Guangdong CAC released a Notice on Implementing the Implementation Guidelines (the Guangdong Notice), specifying the filing procedure for Mainland PI Processors relying on the GBA SCCs, including materials to be submitted, the feedback process, and situations in which supplementary materials are needed or contracts must be refiled.

The GBA SCCs are published pursuant to a Memorandum of Understanding signed between the CAC and ITIB in June 2023 to foster cross-boundary data flow in the GBA. Relatedly, on November 1, 2023, the National Information Security Standardisation Technical Committee of China (TC260) published draft Practical Guidelines on Cross-border Personal Information Protection Requirements in the GBA, which proposed a GBA-specific personal information protection certification regime (GBA Certification). However, when the GBA Certification regime will become operative remains unclear.

Scope of Application

The GBA SCCs are applicable to the transfer of personal information between entities registered or individuals located in the GBA, specifically: Dongguan, Zhongshan, Jiangmen and Zhaoqing, and Hong Kong. Based on the current version of the GBA SCCs, Macau is excluded, at least for now.

PI Processors that process "important data" (i.e., data which has been deemed by the PRC authorities as being classified as important data) may not rely on the GBA SCCs. This means that unless the PRC authorities have confirmed that a PI Processor is deemed an important data processor, it may assume that the GBA SCCs are an available option to them.

Apart from this restriction on important data processors, the Implementation Guidelines do not appear to impose other restrictions on the type of PI Processors that may rely on the GBA SCCs. This suggests that Mainland PI Processors that process more than 1 million individuals' personal information or cumulatively transfer more than 100,000 individuals' personal information or 10,000 individuals' sensitive personal information may potentially rely on the GBA SCCs instead of having to apply for a security assessment, which is what they'd typically have to do under the PIPL. It remains to be seen (or to be confirmed by the CAC) whether Mainland PI Processors within the GBA processing above such volume thresholds, and who typically would have to rely on a security assessment in order to transfer personal information outside of the PRC, can indeed rely on the GBA SCCs for transfers of personal information to Hong Kong.

GBA SCCs Are Voluntary

The adoption of the GBA SCCs is voluntary.

- **Mainland PI Processors within the GBA** still have the option to rely on the GBA Certification regime (once operative) or on other data export measures under the PIPL. For more information on the data export mechanisms under the PIPL, please refer to our previous [Client Alert](#).
- **Hong Kong PI Processors** can likewise continue to freely transfer personal data outside of Hong Kong under the PDPO, since Section 33 of the PDPO, which imposes restrictions on transfers of personal information outside of Hong Kong, is not operative, and it is unclear when it will become effective. Hong Kong therefore does not currently impose any legal restrictions on the outbound transfer of personal information. As such, Hong Kong PI Processors seem to have little incentive to rely on the GBA SCCs. Additionally, from a practical perspective, the GBA SCCs impose additional compliance requirements to the current PDPO, since organizations will need to comply with the more stringent obligations in the GBA SCCs. However, international companies based in Hong Kong that

are already compliant with international data protection standards (e.g., GDPR) may consider this to be a moot point, as they will need minimal uplift apart from complying with the filing requirements.

Comparison of GBA SCCs and China SCCs

The GBA SCCs and China SCCs share many similarities, both in terms of structure and obligations on PI Processors and recipients. For example, similar to the China SCCs, the GBA SCCs must be executed in their exact form and may not be modified, although parties are free to agree on other terms, though such terms must not conflict with the GBA SCCs.

Below is a table which compares the GBA SCCs with the China SCCs.

Obligations	Explanation	GBA SCCs Reference	China SCCs Reference
Key Differences			
Privacy impact assessment	<p>PI Processors must complete a privacy impact assessment (PIA) before entering into the GBA SCCs or the China SCCs. A difference between the two is that the matters to be assessed under the PIA for GBA SCCs are more light-touch compared to the China SCCs.</p> <p>Under both GBA and China SCCs, the PI Processors are required to assess:</p> <ul style="list-style-type: none"> the legality, legitimacy, and necessity of the purposes and means, etc. of processing personal information by the PI Processor and recipient; the impact on and security risks to the rights and interests of personal information subjects; and whether the obligations undertaken by the recipient, as well as its management, technical measures, and capabilities, etc. to perform the obligations, can ensure the security of personal information transferred across the border. <p>Under the China SCCs, PI Processors are <u>also</u> required to assess:</p> <ul style="list-style-type: none"> the impact of the overseas jurisdiction's personal information protection policies and regulations on the performance of China SCCs; the risks of the outbound personal information suffering from a data breach during and after the cross-border transfer; and 	Art. 2 (8) of GBA SCCs	Art. 2 (7) of China SCCs

	<ul style="list-style-type: none"> whether the channels provided to uphold the rights and interests of individuals regarding personal information are clear. 		
Filing	<p>While both the GBA and China SCCs need to be filed with the relevant regulatory authorities within 10 working days of the contract's effective date, there are slight differences in the filing procedure for the GBA and China SCCs, e.g., the PIA does not need to be filed under the filing procedure for the GBA SCCs.</p> <p>Filing parties: Under the Implementation Guidelines, the PI Processor <u>and</u> the recipient need to file the GBA SCCs with the Guangdong CAC or OGCI0 within 10 working days of the contract's effective date. In contrast, only the PI Processor (not the recipient) needs to conduct the filing for the China SCCs. Whether the GBA SCCs will need to be filed by <u>both</u> the PI Processor and recipient with both regulatory authorities, e.g., Mainland PI Processor with the Guangdong CAC and Hong Kong recipient with the OGCI0 and vice versa, remains unclear. Notably, the Filing Guidelines state that the guidelines apply to the contracting parties under the GBA SCCs, regardless of whether they are the PI Processor or recipient.</p> <p>Pass/fail result: Similar to the China SCCs' filing procedure, the Filing Guidelines state that for filings with the OGCI0, the OGCI0 will notify the applicant of a pass/fail result within 10 working days. If a pass result is given, the data transfer may proceed. If a fail result is given, the applicant will need to provide supplementary documents upon request within 10 working days for re-filing.</p> <p>Filing materials: In both cases, the PI Processors need to complete a PIA and keep the results for at least three years. Regarding the filing materials, for the China SCCs, the PI Processor needs to file both the executed China SCCs and the PIA, whereas for the GBA SCCs, the PIA does not need to be filed.</p>	Art. 8 of Implementation Guidelines	Art. 7 of the Measures for the Standard Contract for Outbound Transfer of Personal Information
Onward transfers to third parties	<p>The GBA SCCs do not permit onward transfers of personal information outside the GBA, while the China SCCs permit onward transfers by the overseas recipient to any jurisdiction, provided certain requirements are met.</p> <p>Under the GBA SCCs, the recipient may forward personal information to other third parties (within the GBA) provided</p>	Art. 3 (7), 3 (8) of GBA SCCs	Art. 3 (7) of China SCCs

	<p>that a business need exists for the transfer, the data subjects have been informed of the details relating to the third-party transfer, and their consent has been obtained (if the legal basis for the processing is based on consent). However, the parties to the GBA SCCs must not provide data to individuals or organizations outside of the GBA.</p> <p>The China SCCs permit onward transfers to third parties, but impose stringent restrictions on the overseas recipient. The overseas recipient must enter into written agreements with the third parties, ensure that the third party complies with the personal information protection standards under the PRC laws, and provide copies of written agreements to data subjects upon request.</p>		
Contractual obligations for PI recipients	<p>Compared to the China SCCs, the recipient faces fewer obligations under the GBA SCCs.</p> <p>For example, the China SCCs require the recipient to allow the PI Processor to review the “necessary data documents and files” to demonstrate compliance with the China SCCs and to allow the regulatory authorities to review the record of processing. The GBA SCCs impose no such requirement.</p>	Art. 2 (8) of GBA SCCs	Art. 2 (8) of China SCCs
Common Obligations on PI Processors Under the GBA SCCs and the China SCCs			
Notice	<p>Inform data subjects of the recipient’s name and contact information, purposes of processing, means of processing, categories of personal information, retention period(s) and the transfer of personal information to a third party in the same jurisdiction, and the methods and procedures for exercising data subject rights. If such notice is not required (like in the case of the PDPO), this requirement will prevail.</p>	Art. 2 (2) of GBA SCCs	Art. 2 (2) of China SCCs
Consent	<p>Obtain the consent of the data subject prior to the cross-border transfer, in accordance with the laws and regulations of the jurisdiction concerned. As consent is not required for transfer of personal information out of Hong Kong, this consent requirement seems inapplicable if a Hong Kong PI Processor is exporting personal information using the GBA SCCs.</p>	Art. 2 (3) of GBA SCCs	Art. 2 (3) of China SCCs
Third-party beneficiary	<p>Inform the data subject that they will be a third-party beneficiary under the GBA SCCs/China SCCs and may enjoy the rights of a third-party beneficiary in accordance with the GBA SCCs/China SCCs if they do not explicitly reject within 30 days. As a third-party beneficiary, the</p>	Art. 2 (4) of GBA SCCs	Art. 2 (4) of China SCCs

	data subject has the right to claim against either or both or the PI Processor and the recipient.		
Technical and management measures	Make reasonable efforts to ensure the recipient adopts technical and management measures such as encryption, anonymization, de-identification, and access control to protect personal information.	Art. 2 (8) of GBA SCCs	Art. 2 (8) of China SCCs
PIA retention	Complete a PIA prior to the cross-border data transfer (see above) and retain such PIA for at least three years.	Art. 2 (8) of GBA SCCs	Art. 2 (8) of China SCCs
Copy of the SCCs	Provide the data subject with a copy of the GBA SCCs/China SCCs upon their request.	Art. 2 (9) of GBA SCCs	Art. 2 (9) of China SCCs
Termination of the SCCs	<p>PI Processors have the right to terminate the GBA SCCs/China SCCs in any one of the following circumstances:</p> <ul style="list-style-type: none"> • The PI Processor has suspended the transfer of personal information to the recipient for over one month in accordance with this article • The recipient seriously or continuously violates the obligations and responsibilities stipulated in this contract • According to the final decision made by the competent court or regulatory authorities, either the recipient or PI Processor has violated the obligations stipulated in the contract. <p>The PI Processor must also notify the regulatory authorities in the PI Processor's jurisdiction of the termination where required.</p> <p>The China SCCs provides the PI Processor with one additional ground for termination which is not available under the GBA SCCs, namely, if the recipient's compliance with the China SCCs will breach the laws of the jurisdiction in which it is located.</p>	Art. 6 (2) of GBA SCCs and Art. 9 (3) of the Implementation Guidelines	Art. 7 of China SCCs
Supervision and management by regulatory authorities	<p>The PI Processor and recipient accept the regulatory authorities' continuous supervision of their cross-border personal information processing activities, i.e., responding to regulator's inquiries, and complying with regulator's decisions and taking necessary actions.</p> <p>In the GBA SCCs, regulatory authorities refer to the CAC and Guangdong CAC (for PRC) and the ITIB, OGCIO,</p>	<p>Art. 9 of Implementation Guidelines</p> <p>Art. 2 (7) and (10) and Art. 3 (12) of GBA SCCs</p>	Art. 3 (13) of China SCCs

	and Privacy Commissioner for Personal Data (for Hong Kong).		
Common Obligations on the Recipients Under the GBA SCCs and the China SCCs			
Fair processing	Process personal information in accordance with GBA SCCs/China SCCs and in a way that least impacts individuals' rights and interests, and to store personal information for the minimum time necessary to achieve the purpose of processing.	Art. 3 (3) of GBA SCCs	Art. 3 (4) of China SCCs
Change to processing	Inform PI Processor if changes were made to the purposes and methods of processing, so that the parties can enter into a supplemental agreement or reenter into the GBA SCCs/China SCCs and reconduct the filing procedures.	Art. 3 (4) of GBA SCCs	Art. 3 (5) of China SCCs
Technical and management measures	Adopt appropriate technical and management measures to ensure data security and conduct regular inspections, ensure that personnel authorized to process personal information are subject to confidentiality obligations, and establish access control protocols.	Art. 3 (5) of GBA SCCs	Art. 3 (6) of China SCCs
Respond to data breach	Immediately notify the PI Processor and report to the regulatory authority of the jurisdiction concerned of any data breach and take immediate remediation actions.	Art. 3 (6) of GBA SCCs	Art. 3 (7) of China SCCs
Accountability	Provide the PI Processor with all necessary information to demonstrate compliance with the obligations set forth in the GBA SCCs/China SCCs and allow PI Processor to conduct compliance audits.	Art. 3 (10) of GBA SCCs	Art. 3 (11) of China SCCs
Record of processing	Maintain records of all processing activities for at least three years.	Art. 3 (11) of GBA SCCs	Art. 3 (12) of China SCCs
Respond to government data requests	Immediately inform the PI Processor if the recipient receives a request from the local government or judicial authority.	Art. 3 (12) of GBA SCCs	Art. 3 (13) of China SCCs
Contact person	Designate a contact person for queries or complaints from data subjects, and inform both the PI Processor as well as the data subjects of the contact person's information, e.g., by publishing the contact information online.	Art. 5 (1) of GBA SCCs	Art. 6 (1) of China SCCs
Other Provisions			
Governing law and jurisdiction	Under the GBA SCCs, the governing law shall be the jurisdiction of the PI Processor (i.e., Hong Kong or PRC	Art. 5 (5), Art. 8 (4) of GBA SCCs	Art. 9 (4), Art. 9 (5) of China SCCs

	<p>law) and arbitration can also take place at the HKIAC, in addition to arbitration in the PRC (e.g., CIETAC).</p> <p>Under the China SCCs, governing law shall be the jurisdiction of the PI Processor (i.e., PRC law) and arbitration can also take place at arbitral institutions that are members of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, in addition to arbitration in the PRC (e.g., CIETAC).</p>		
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Takeaways

While the GBA SCCs are a welcome effort to ease compliance burdens of GBA PI Processors when transferring personal information out of the PRC, the question remains how much practical utility they will actually bring given their limited scope of application. As Hong Kong PI Processors currently can freely transfer personal information out of Hong Kong to the PRC, it is unclear what or how much of an incentive they may have to enter into the GBA SCCs with their Mainland counterparts. Additionally, as the GBA SCCs only apply to entities registered in the GBA, PI Processors in the PRC that are not located in the GBA would not be able to benefit from the GBA SCCs and would have to rely on existing data transfer mechanisms under the PIPL, or exemptions, if applicable.

Stakeholders would be interested in observing in the coming months what additional value or comparative advantage the GBA SCCs would offer, along with the three existing data transfer mechanisms under the PIPL.

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