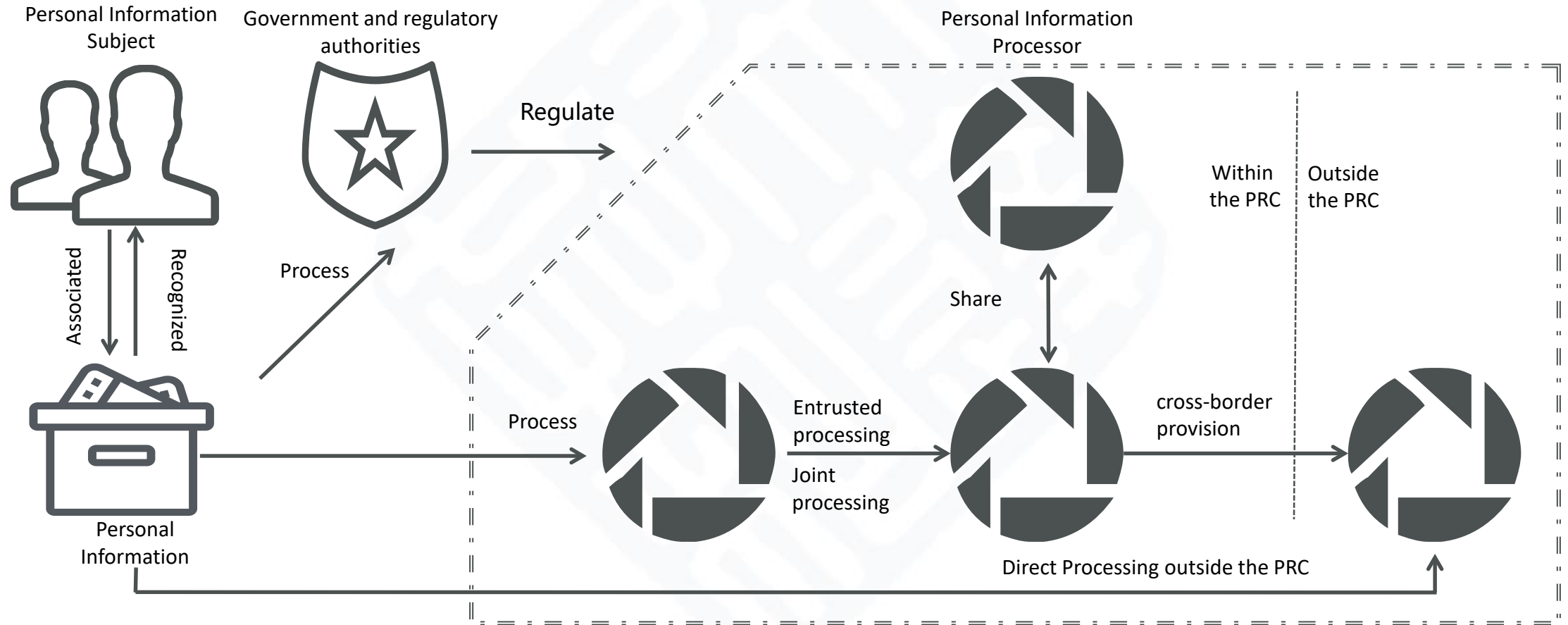
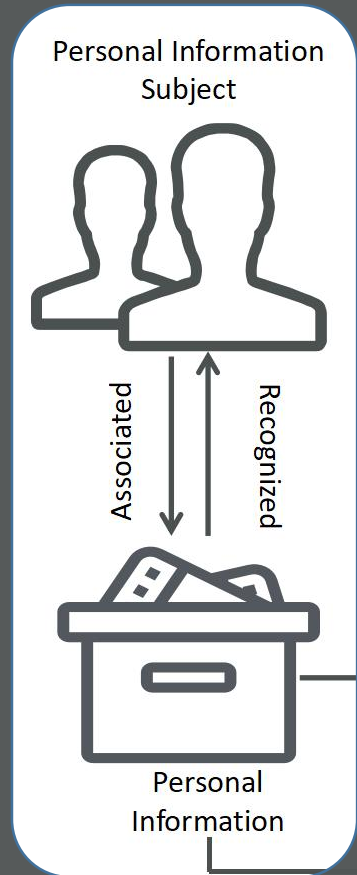


# Illustration of the Personal Information Protection Law of the PRC (Draft)



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## Definition of Personal Information

“Personal information” means all kinds of information relating to identified or identifiable natural persons recorded by electronic or other means, excluding anonymized information.

\* Anonymization refers to the process in which personal information cannot be identified and cannot be restored after processing.

# Illustration of the Personal Information PRC (draft)

- Principle of being lawful and proper
- Principle of data minimization for the purpose(s)
- Principle of accuracy
- Principle of openness and transparency
- Principle of consistency of rights and responsibilities
- Principle of ensuring security



## Principles of Processing Personal Information

- ❑ Personal information subject's consent
- ❑ Necessary for conclusion of a contract
- ❑ Necessary to fulfill statutory duties or statutory obligations

- ❑ Necessary to respond to public health emergencies
- ❑ Reasonable scope for protecting public interests
- ❑ Other statutory circumstances



## Legal Basis for Processing Personal Information

### 【Contents of notification】

- ❑ The identity and contact information of the personal information processor
- ❑ Purposes of the processing of personal information, processing methods, the types of Personal Information, and the preservation periods.
- ❑ Methods and procedures for personal information subject to exercise the rights
- ❑ Other statutory contents requiring notification

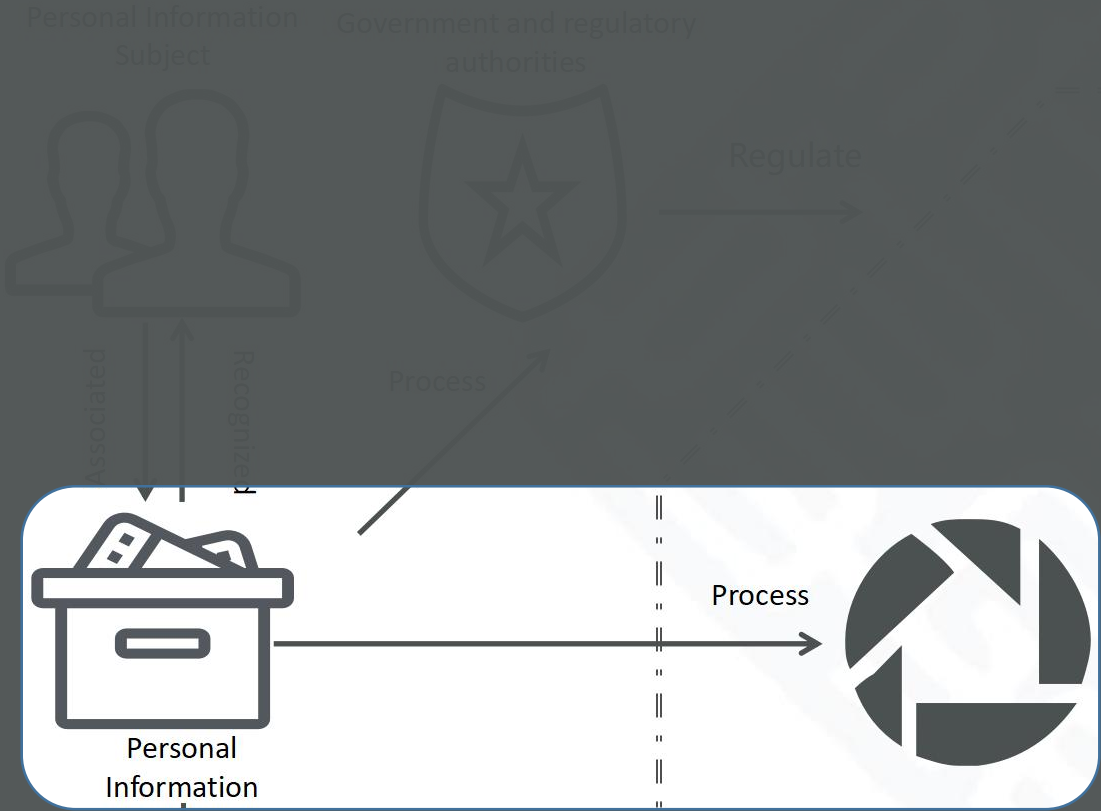
\* Exception: statutory notification exemption and notification delay in case of emergency



### Legal Route of Processing Personal Information

**Notification** → Consent → Non-disclosure

# Illustration of the Personal Information PRC (draft)



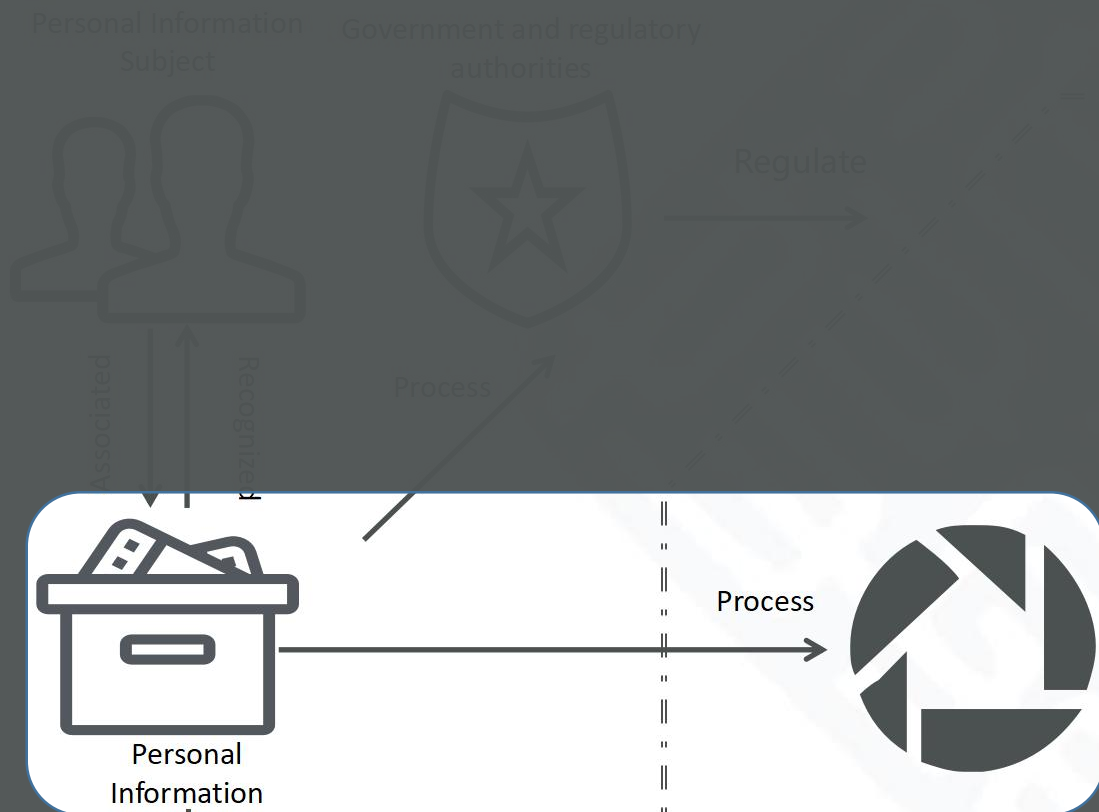
- Being fully informed
- Being voluntary and explicit
- Consent required for change
- Consent allowed to be withdrawn

## Legal Route of Processing Personal Information

Notification → **Consent** → Non-disclosure

## Illustration of the Personal Information

[Separate consent required under the following four circumstances]



- ❑ To provide personal information one party processes to a third party
- ❑ To disclose to the public personal information the party processes
- ❑ To process sensitive personal information based on consent
- ❑ To provide personal information to any party outside the PRC

## Legal Route of Processing Personal Information

Notification → **Consent** → Non-disclosure

# Illustration of the Personal Information PRC (draft)

- ❑ In principle, personal information processors may not disclose to the public the personal information they process, except with the separate consent of subject of personal information.
- ❑ Personal information already disclosed to the public: separate consent is required if the information is to be processed beyond the purposes for the publicizing of personal information; Where the processing purpose is unclear for publicizing personal information, it shall be processed in a reasonable and cautious manner.



## Legal Route of Processing Personal Information

Notification → Consent → **Non-disclosure**



- ❑ There are specific purposes and sufficient necessity
- ❑ To conduct prior risk assessment
- ❑ Individuals' separate consent shall be obtained

- ❑ Where written consent is required in accordance with the law, such written consent shall be obtained.
- ❑ To inform individuals of the necessity of processing sensitive personal information and the impacts on individuals
- ❑ If the processing is subject to relevant administrative license or more stringent restrictions, such provisions shall be applied.



## Additional Requirements for Processing Sensitive Personal Information

# Illustration of the Personal Information PRC (draft)

## [Automated decision making]

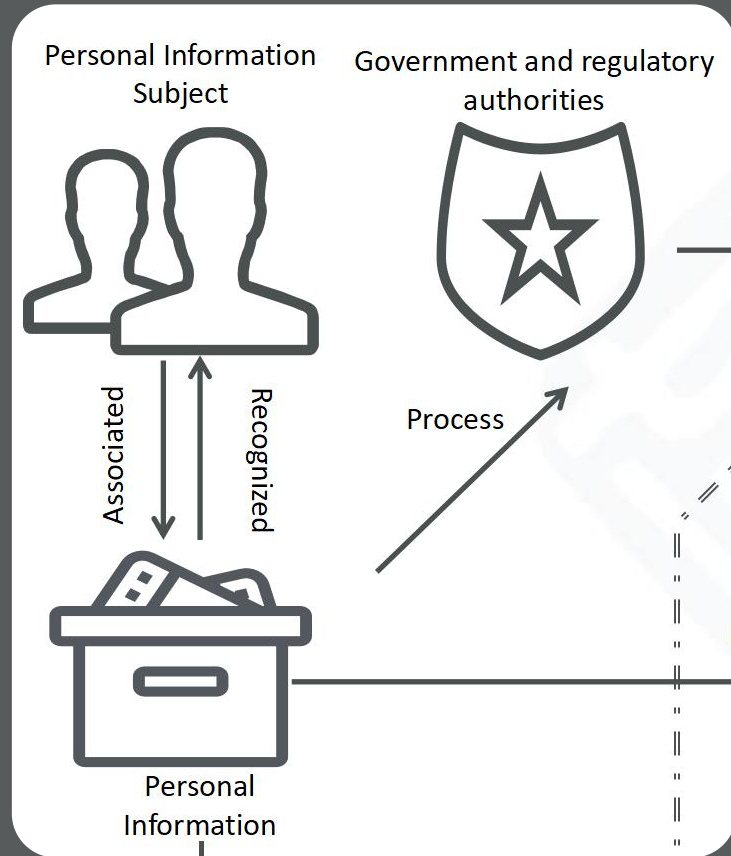
- ❑ Personal information subject: right to require explanations or to refuse
- ❑ Personal information processor: prior risk assessment; options not specific to individuals' characteristics shall be provided simultaneously.

## [Image collection in public places]

- ❑ The relevant provisions issued by the state shall be followed, and conspicuous signs shall be erected
- ❑ It shall be used for the purpose of maintaining public security
- ❑ It shall not be disclosed to the public or provided to others



## Principles of Processing Personal Information under Special Circumstances



## Specific Provisions on the Processing of Personal Information by State Organs

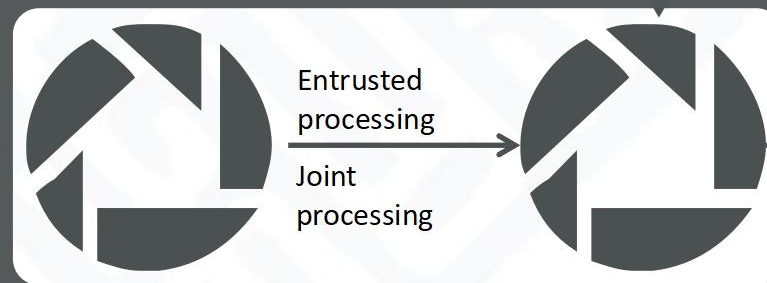
- ❑ Statutory authority and lawful procedures
- ❑ Within the scope and the limits necessary for fulfilling their statutory functions
- ❑ Notification and obtaining the consent, non-disclosure
- ❑ Storage of personal information within the PRC
- ❑ Assessment is needed before providing personal information to any party outside the PRC

[Entrusting party]

- ❑ Prior risk assessment
- ❑ The purposes of the entrusted processing, processing methods, categories of personal information, protection measures, as well as the rights and obligations of both parties, etc.
- ❑ To conduct supervision of the personal information processing activities of the entrusted party

[Entrusted party]

- ❑ To process personal information as agreed
- ❑ To return/delete personal information after the performance of the contract is completed
- ❑ Without the consent of the entrusting party, the entrusted party may not sub-entrust the processing of personal information to any other party.

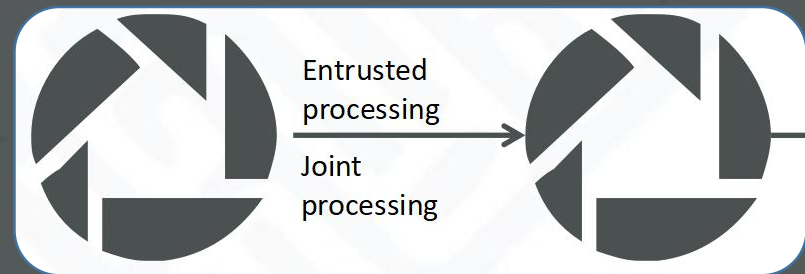


**Entrusted Processing**

# Illustration of the Personal Information PRC (draft)

## [Joint processors of personal information]

- ❑ Joint processors shall agree on their respective rights and obligations
- ❑ An individual may claim rights against any of the information processors
- ❑ They shall bear joint and several liability for infringing the rights and interests relating to personal information



**Joint Processing**

# Illustration of the Personal Information PRC (draft)

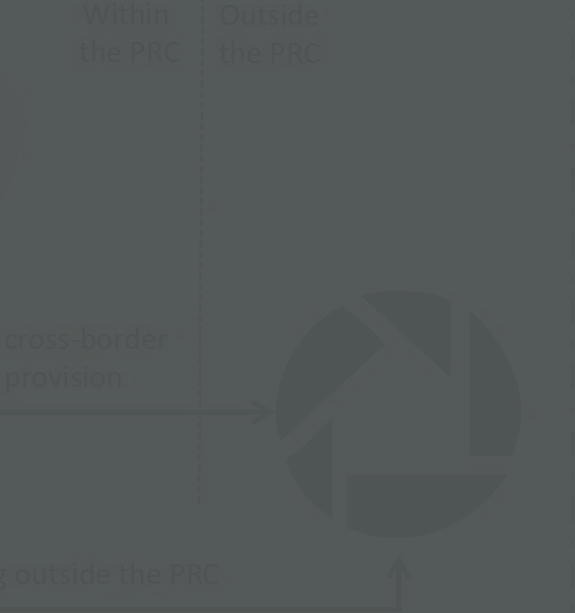
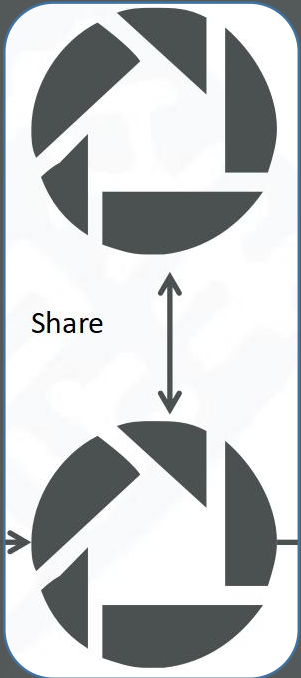
## To Transfer Personal Information due to Merger or Division etc.

### 【Transferring party】

- ❑ To inform individuals of the identity and contact information of the recipient

### 【Recipient】

- ❑ The recipient shall continue to perform the obligations of the personal information processor.
- ❑ If the recipient changes the original processing purposes or processing methods, the recipient shall notify individuals again and obtain the individuals' consent.



## To provide Personal Information to a Third Party

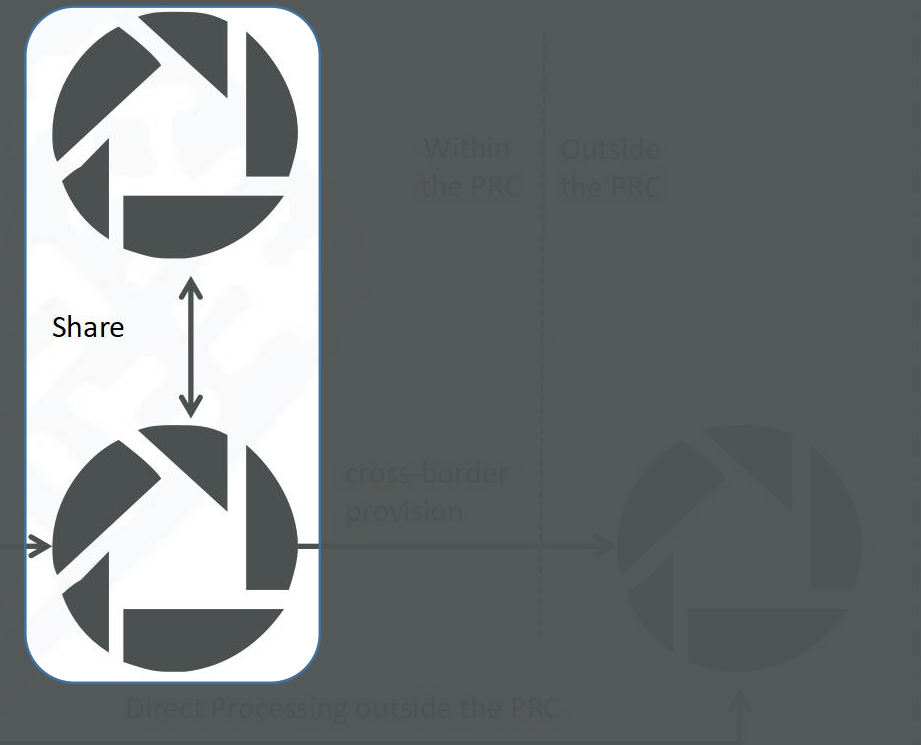
[Provider]

- ❑ The provider shall notify individuals of the third party's identity, contact information, processing purposes, processing methods, and categories of personal information
- ❑ To obtain the individuals' separate consent.

[Third party]

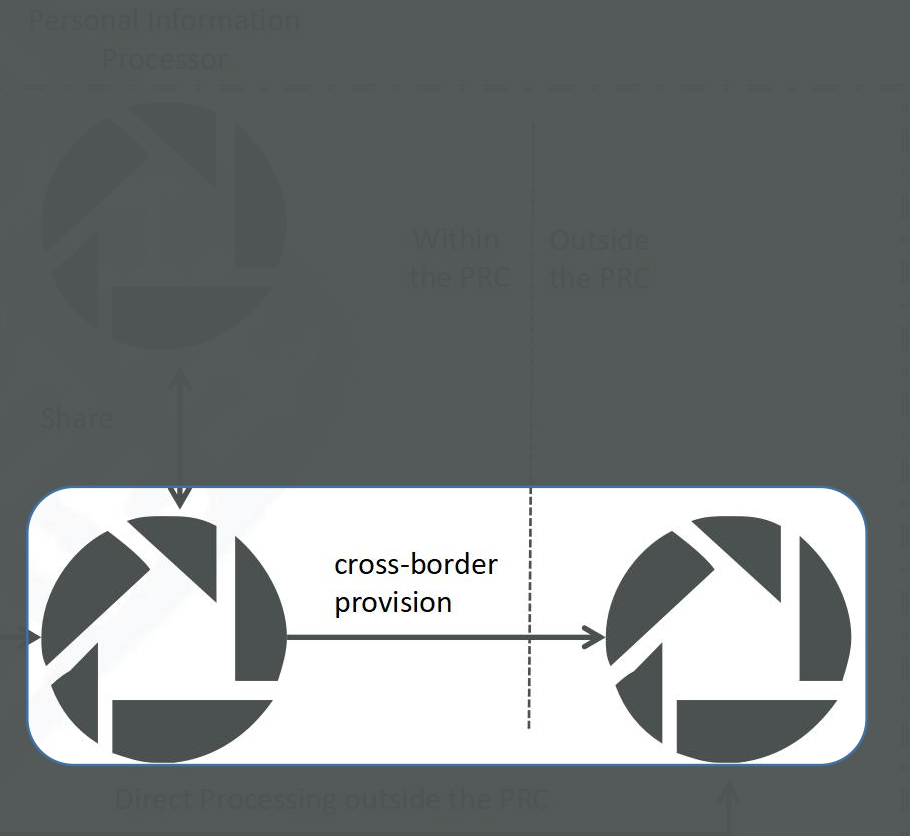
- ❑ The third party shall process personal information within the scope of the afore-mentioned processing purposes, processing methods, and categories of personal information
- ❑ Where the third party changes the original processing purposes or processing methods, notification to the individuals shall be provided and consent shall be obtained.

\* Where the personal information processor provides anonymized information to the third party, the third party shall not re-identify the individuals by technical or other means.



## Conditions on the Cross-border Provision of Personal Information

- ❑ Security assessment organized by the national cyberspace administration has been passed;
- ❑ Personal information protection certification has been conducted by a specialized institution;
- ❑ A contract has been concluded with the overseas recipient, agreeing on both parties' rights and obligations, and supervision shall be conducted to ensure that personal information processing activities of the overseas recipient comply with standards set by the PIPL; or
- ❑ Other conditions provided in laws or administrative regulations or by the national cyberspace administration

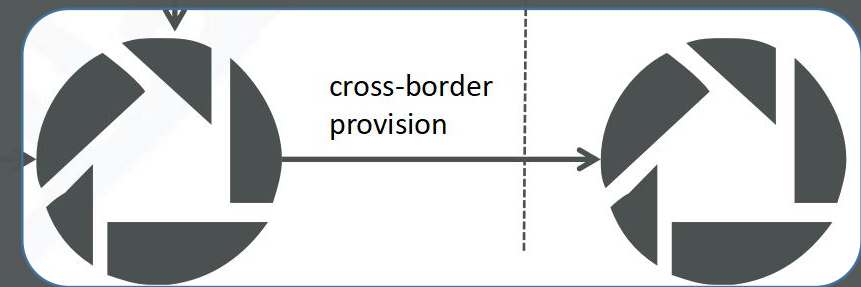




# Illustration of the Personal Information Protection Law (PIPL) PRC (draft)

## Rules on the Cross-border Provision of Personal Information

- ❑ To notify individuals of the third party's identity, contact information, processing purposes, processing methods, and categories of personal information
- ❑ The methods in which individuals exercise the rights against the overseas recipient
- ❑ To obtain individuals' separate consent.



# Illustration of the Personal Information PRC (draft)

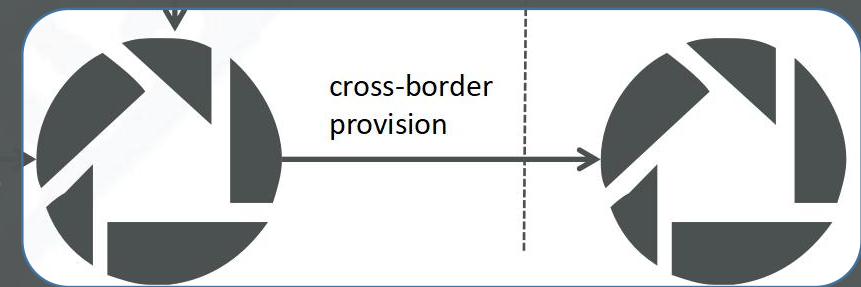
## Cross-border Provision of Special Personal Information Processor

[Special personal information processor]

- ❑ Critical information infrastructure operators
- ❑ Personal information processors that process the personal information reaching the threshold specified by the national cyberspace administration in terms of quantity

[Compliance requirement of cross-border provision]

- ❑ Personal information collected within the PRC shall be stored within the PRC
- ❑ The security assessment organized by the national cyberspace administration shall be passed



## International Cooperation and Competition

### [International assistance]

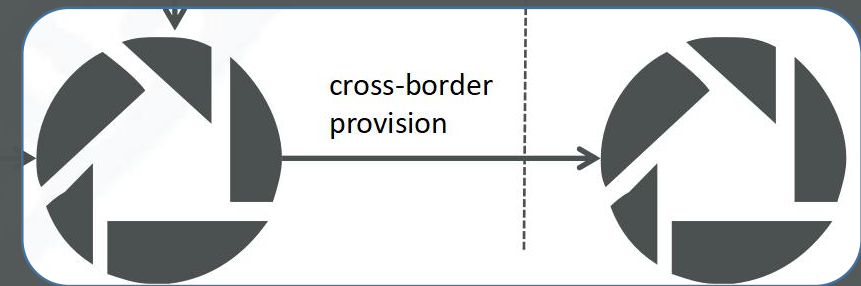
- ❑ International judicial assistance
- ❑ International administrative law enforcement assistance
- ❑ International treaty or agreement

### [Corresponding countermeasures]

Where any country or region adopts discriminatory measures against the PRC in terms of personal information protection, the corresponding countermeasures against the aforesaid country or region may be taken according to the actual circumstances

### [Cross-border cracking down]

- ❑ To include into a list of parties to which the provision of personal information to whom is restricted or prohibited, and make an announcement
- ❑ To take measures such as restricting or prohibiting the provision of personal information to the party concerned

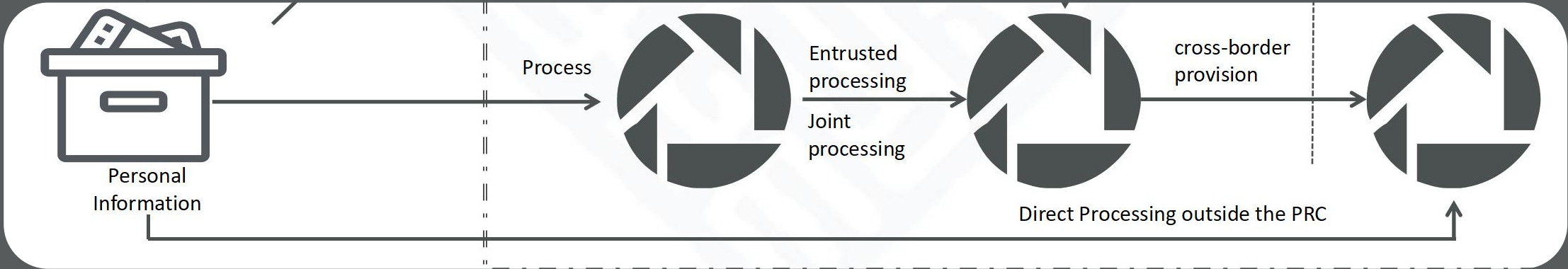


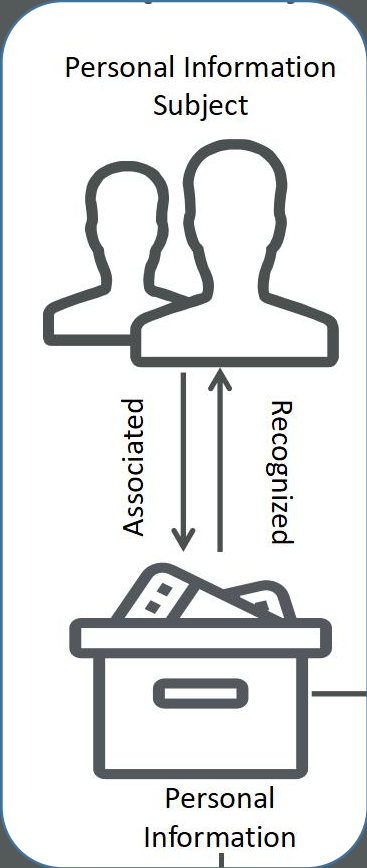
# Illustration of the Personal Information Protection Law (PIPL) PRC (draft)

## Application of the PIPL outside the PRC

This Law shall also apply to the processing of the personal information of natural persons within the PRC by overseas parties if the information is processed:

- ❑ for the purpose of providing products or services to natural persons within the PRC;
- ❑ to analyze or assess the conduct of natural persons within the PRC; or
- ❑ any other circumstance as provided by laws or administrative regulations





## Personal Information Subject's Rights

- Right to know
- Right to decide
- Right to delete
- Right to request explanation
- Right to restrict the processing
- Right to consult and duplicate
- Right to correct and supplement
- Right to refuse the processing

# Illustration of the Personal Information PRC (draft)

## Obligations of Personal Information Processors

- ❑ Management rules and operational procedures
- ❑ hierarchical and classified management of personal information
- ❑ Necessary security measures (encryption)
- ❑ Authority management, training and education
- ❑ Emergency plans
- ❑ Audit on a regular basis
- ❑ Risk assessment
- ❑ To appoint a person in charge of personal information protection, and disclose it to the public and file with the competent authorities
- ❑ Personal information processors outside the PRC shall establish special institutions or designate representatives within the PRC and file with the competent authorities



Within the PRC    Outside the PRC

# Illustration of the Personal Information PRC (draft)

## Obligations of Personal Information Processors – Risk Assessment



### [Applicable circumstances]

- Processing sensitive personal information
- Automated decision making
- Entrusted processing, providing to the third party and disclosing personal information to the public
- Cross-border provision of personal information
- Other personal information processing activities which have significant impacts on individuals

### [Content of assessment]

- whether the processing is lawful justified and necessary
- The impacts on individuals and the degrees of risks
- Whether the security protection measures taken are lawful, effective, and commensurate

## Obligations of Personal Information Processors – Personal Information Leakage

Where the leakage of personal information is discovered, remedial measures shall be taken immediately, and the department performing personal information protection functions and the relevant individuals shall be notified. The notice shall include the following matters:

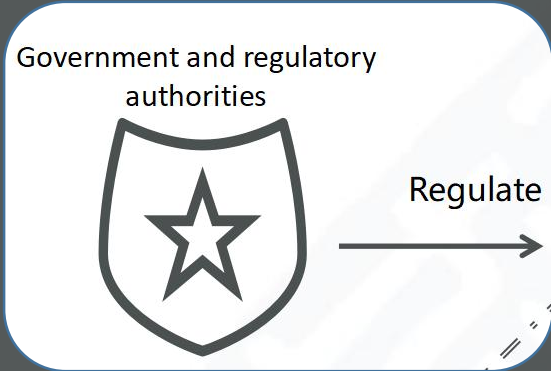
- ❑ Causes of the leakage
- ❑ Categories of leaked personal information and the possible harm
- ❑ Remedial measures that have been taken
- ❑ Measures the individuals may take to mitigate the harm
- ❑ Contact information of the personal information processor



\* Where the measures taken can effectively avoid the harm caused by information leakage, notification to individuals may be exempted. However, where the department performing personal information protection functions considers that the leakage of the personal information may cause harm to individuals, it shall have the right to require the personal information processor to notify individuals.



# Illustration of the Personal Information Protection Law (PIPL) PRC (draft)



## Departments Performing Personal Information Protection Functions

### [Departments]

- ❑ The national cyberspace administration
- ❑ Relevant departments of the State Council
- ❑ The local people's governments at or above the county level

### [Functions]

- ❑ Conducting publicity and education, guiding and supervising
- ❑ Accepting and processing complaints and reports
- ❑ Investigating and taking measures against illegal activities



#### [Administrative Liabilities]

- ❑ In case of violation: to take corrective action, confiscate the illegal income, and give a warning
- ❑ In case of rejection of rectification: to impose fine up to one million RMB
- ❑ Under serious circumstances: a fine of up to 50 million RMB or up to 5% of the turnover in the previous year can be imposed, and the suspension of relevant business and cessation of business operations for rectification can be ordered, and the business permit or business license can be revoked
- ❑ A fine of up to one million RMB can be imposed on each of the directly liable person in charge and other directly liable persons.
- ❑ Disciplinary action can be taken against the directly liable person of the state organ
- ❑ It shall be entered into the relevant credit record and be published in accordance with the relevant laws and administrative regulations.

#### [Civil Liability] Damage compensation liability

\* Where the personal information processor is able to prove that it is not at fault, it may be relieved of or exempted from liability.

[Criminal Liability] If the violation constitutes a crime, criminal liabilities shall be prosecuted.