

REFORM OF THE DATA PROTECTION LAW: WHAT TO EXPECT

Ksenia Andreeva
Dmitry Simbirtsev

26 May 2022
American Chamber of Commerce in Russia

Morgan Lewis



Presenters



Ksenia Andreeva,
Partner, Commercial
Business Transactions
& Intellectual Property



Dmitry Simbirtsev,
Associate, Commercial
Business Transactions
& Intellectual Property

Morgan Lewis

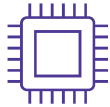
Core Changes in the PD Law



Extraterritorial effect of the PD Law



Registration with RKN



Role of a “data processor”



Data breach notifications



New rules on processing of biometric and sensitive data



Deadlines for handling data subjects' requests



New rules on cross-border data transfers



Technical and organizational measures of compliance

Extraterritorial Effect of the PD Law

The PD Law applies extraterritorially, if either:

1

Personal data of the Russian citizens is processed **under agreements between Russian and foreign legal entities / individuals / governmental authorities**

OR

2

Foreign legal entities / individuals/ governmental authorities perform any operations in relation to the personal data of the Russian citizens

Entity Processing Personal Data (Data Processor?)

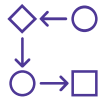
Data Operator	Data Processor
Has discretion to define the terms of processing (core decision maker)	Processes personal data under an operator's instruction
Defines scope of personal data, processing purposes and operations	<u>Does not</u> define scope of personal data, processing purposes or operations
Directly subject to all requirements of the PD Law	Guided by an operator's instruction + is <u>directly subject to data accuracy and confidentiality requirements</u>
Responsible to data subjects, including for the processor's operations	Contractually responsible to an operator

Processing Instruction

Existing regulation:



Processing purpose



Processing operations to be performed by a processor



Processor's obligation to ensure security and preserve confidentiality of the PD



Set of security measures to be implemented by a processor

New (additional) elements:



List of processed personal data



Compliance with the data localization requirement (part 5 Art.18)



Organizational measures to be implemented by a processor (Art. 18.1)



Data breach notification obligation (as a part of security obligations)

Processing of Biometric and Sensitive Data

- Processing of special categories of personal data – consent to be provided either by data subject or his/her representative
- Potential **prohibition** to process biometric data of minors under the age of 18
- Provision of services by an operator cannot be conditional on the provision of biometric data **and (or)** a consent to its processing (unless consent is mandatory in accordance with PD Law)



New Rules of Cross-border Data Transfers (1)



As before, RKN qualifies countries as "adequate" and makes a list



Legal basis for cross-border data transfers **do no longer depend on an adequacy** of a recipient country (general rules apply)

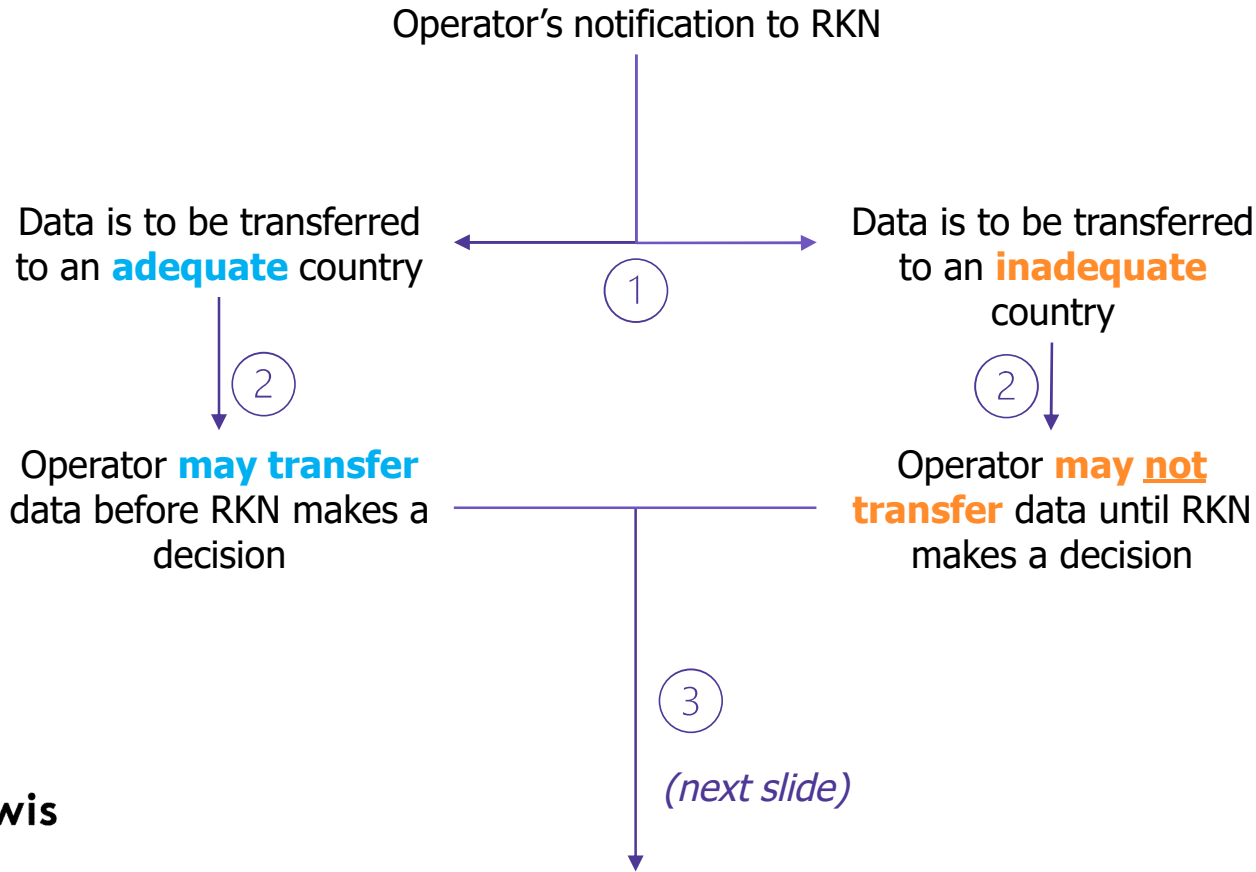


RKN **may restrict or fully ban cross-border data transfer** either to an adequate or inadequate country – each time an operator has to **submit a notification** on the prospective cross-border transfer

Contents of the Data Transfer Notification

- 1 Details of the operator
- 2 Sources of data
- 3 Legal basis for and purpose of cross-border data transfer **and onward processing**
- 4 Categories and list of transferred data
- 5 Details of data recipient
- 6 Categories of affected data subjects
- 7 **Security measures applied by data recipient and conditions to terminate data processing**
- 8 **If transfer to an inadequate country, legal assessment of scope of privacy rights protection in the recipient's jurisdiction (!!!)**

New Rules of Cross-border Data Transfers (2)



3

(previous slide)



RKN makes a decision
(30 calendar days), considering requests from
other authorities (if need be)

4

RKN **allows** cross-border
data transfer

5

Personal data **may be
transferred** outside Russia
under the terms reported
in the notification

RKN **bans/ restricts**
cross-border data transfer

5

Operator shall ensure
**destruction of already
transferred data** by a
data recipient

Data **may not be
transferred** outside Russia

Data Breach Notification Requirements (1)

- ① Data operator shall connect to the GosSOPKA
- ② Data operator shall notify GosSOPKA of any computer incidents that caused unlawful access, transmittal, dissemination, or transfer of data
- ③ FSB shall implement the procedure for connectivity to and notification of GosSOPKA of computer incidents
- ④ RKN will maintain records of incidents, approve the procedure for the communication with data operators on the related issues, and share information on such incidents with FSB

Data Breach Notification Requirements (2)

Were there any unlawful
or accidental access, transmittal,
dissemination, transfer of PD?

↓ YES

Did it cause violation
of any data subjects' rights?

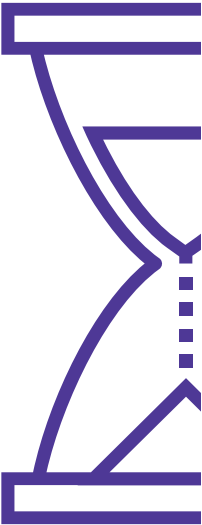
↓ NO

Notification not required

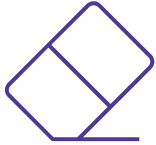
→ YES

24h

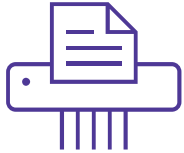
following **occurrence**
of the incident to notify
RKN



Rules and Deadlines for Handling of the DSRR



Data operator **may reject a request for data correction or data destruction** in case its processing is justified by any legal basis other than necessity to preserve a data operator's legitimate interest and on other grounds (not practical for the majority of companies)



Data operator has **30 calendar days to handle a data correction or data destruction** requirement and respond to a data subject (extensions not allowed)



Data operator has **10 working days to handle a data access request** and respond to a data subject

Technical and Organizational Measures

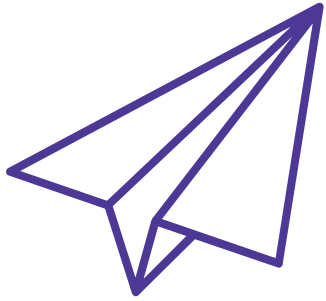
1

RKN to develop the **methodology on assessment of damage** caused to data subjects by operators violating the PD Law

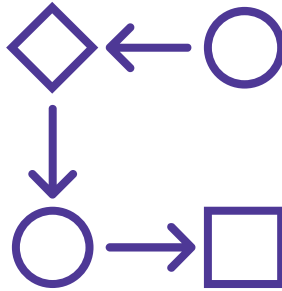
2

RKN to **develop requirements** to data destruction

Registration with RKN



Almost no exceptions
from the notification
requirement



Detailed information
regarding **each** processing
activity and **each** third-party
data recipient



RKN to approve new
templates of notifications

Biography



Ksenia Andreeva

ksenia.andreeva@morganlewis.com

Ksenia Andreeva specializes in intellectual property (IP) matters. She advises on a wide range of transactional, regulatory, and commercial IP matters as well as disputes and enforcement of IP rights. Her clients include companies in media, technology, telecommunications, and many other industries. Ksenia has experience with licensing, franchising, and handling commercial transactions that involve IP, including complex outsourcing matters. She also assists with the IP aspects of mergers, acquisitions, and joint ventures and advises on personal data protection and related regulatory matters.

Biography



Dmitry Simbirtsev

dmitry.simbirtsev@morganlewis.com

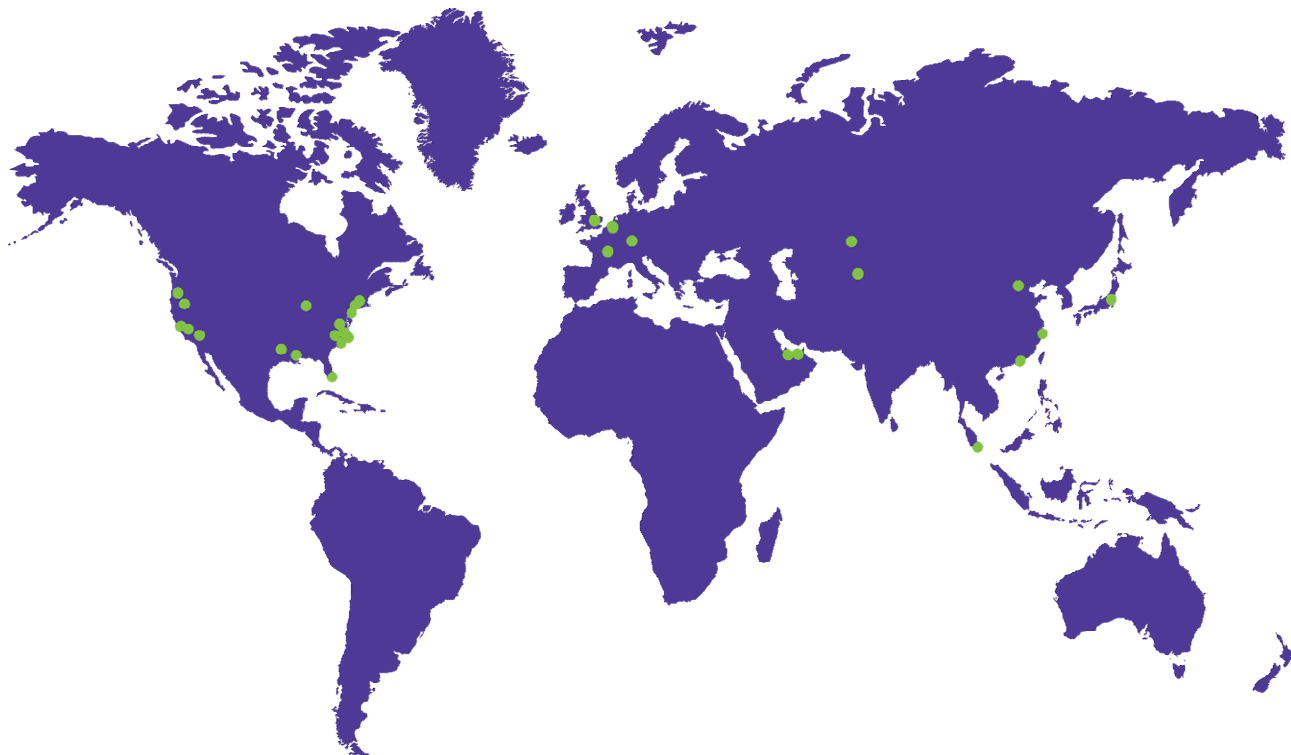
Dmitry Simbirtsev advises clients on general IP, data protection and IT/TMT regulations. His experience encompasses a wide range of projects for international corporations and Russian companies, doing their business in the areas of information technology, information security, financial technologies, gaming industry and other. Dmitry assists clients with legal market readiness assessments of their products and solutions, supports them by negotiating complicated contracts, as well as liaising with local authorities, in connection with information technologies and data protection issues.

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Abu Dhabi
Almaty
Beijing*
Boston
Brussels
Century City
Chicago
Dallas
Dubai
Frankfurt
Hartford
Hong Kong*
Houston
London
Los Angeles
Miami
New York
Nur-Sultan
Orange County
Paris
Philadelphia
Pittsburgh
Princeton
San Francisco
Shanghai*
Silicon Valley
Singapore*
Tokyo
Washington, DC
Wilmington



Morgan Lewis

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong. Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

THANK YOU

© 2022 Morgan, Lewis & Bockius LLP
© 2022 Morgan Lewis Stamford LLC
© 2022 Morgan, Lewis & Bockius UK LLP

Morgan, Lewis & Bockius UK LLP is a limited liability partnership registered in England and Wales under number OC378797 and is a law firm authorised and regulated by the Solicitors Regulation Authority. The SRA authorisation number is 615176.

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong. Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

This material is provided for your convenience and does not constitute legal advice or create an attorney-client relationship. Prior results do not guarantee similar outcomes. Attorney Advertising.