

CY Japan Legal Update

January 2017

Consumer Data Privacy

The Amendment to the Act on the Protection of Personal Information will come into force on May 30, 2017 (Part 2)

Yasuyuki Kuribayashi / Naoki Matsuo

Act on the Protection of Personal Information (the “Law”) was amended and, together with the amendment of the Order for Enforcement of the Act on the Protection of Personal Information (the “Cabinet Order”), it will come into force on May 30, 2017. In the amended laws (the “Amended Laws”), (1) definition of personal information was clarified and several concepts were introduced to strengthen regulations and establish new regulations, and (2) amendments were made concerning the handling, storage and distribution of personal information to deter the unauthorized use of personal information and in response to globalization of data flows. In this article, (2) of those amendments will be introduced.

1. Regulations concerning acquisition and storage of personal information

The Amended Law has relaxed the restrictions on change of the purpose of use of personal information to respond to the needs of wanting to use new businesses and new services which were not initially anticipated for personal information acquired due to breakthrough developments for information and communication technology in recent years.

For the methods for using personal information beyond the purpose of use specified at the time of acquisition, there are the two types of (1) method of obtaining the agreement of the subject person in advance and (2) method of changing of the purpose of use. Previously, the change of purpose of use in (2) was permitted only within “a scope that makes it reasonable to consider the purpose of use after the change to be appreciably related to what it was before the change” and the change was only permitted to an extremely limited extent, however, the Amended Law has eliminated the part of “appreciably” and such restriction has been relaxed.

However, it is understood that the changeable scope is required to be the degree which could normally be anticipated by the subject person in the judgement of an ordinary person. For example, it is understood that change to allow provision to a third party of personal information which did not have the purpose of provision to a third party is not permitted in principle.

2. Regulations concerning distribution of personal information

(1) Tightening of opt-out

Opt-out procedure is a structure of being able to provide to a third party without the prior consent of the subject person on the condition of (i) if requested by the subject person, suspension of third party provision, and (ii) prior notification to the subject person of the items of personal information to be

provided and provision method, etc. or have in place a situation where the subject person can easily know. The Amended Law has added two conditions for this opt-out requirement. Those are, namely, first, the method of receiving requests of the subject person (e.g., telephone, e-mail, and homepage) are included in the matters which should be notified of the above (ii), and secondly, notification to the Personal Information Protection Commission of such notification matters. A Business Operator Handling Personal Information may make the notice to the subject person and notification to the Personal Information Protection Commission from March 1, 2017 (even before the date of enforcement of the Amended Law).

(2) Strengthening of traceability

The Amended Law newly establishes a confirmation obligation and an obligation for preparation and storage of records for certain matters in the provision of personal information for third parties as obligations of a Business Operator Handling Personal Information to protect traceability of personal information and prevent personal information obtained or leaked by wrongful means being acquired or redistributed by the Business Operator Handling Personal Information.

Under the Amended Law, the Business Operator Handling Personal Information shall prepare and store the records for date thereof and the name and address, etc. of counterparty if providing to, or receiving from, a third party, personal data. As well, if personal information is received from a third party, in addition to that, it shall confirm the background of the acquisition of how the provider obtained such personal information and it must prepare and store such records.

(3) Regulations for the third party provision to foreign countries

The Amended Law has newly established provisions applicable to the provision of personal data to third parties in foreign countries to respond to globalization of corporate activities in Japan by preparing a system required for the legal regime for personal information in Japan to receive an adequacy decision in EU Data Protection Directive and facilitating flow of personal data with EU.

Under the Amended Law, a Business Operator Handling Personal Information is required to obtain the prior consent of the subject person in the case of providing personal data to a third party in a foreign country. In such case, it is not possible to use the opt-out procedure. However, a country provided for under the Rules of the Personal Information Protection Commission as a country having standard personal information protection regime equivalent to Japan shall be excluded from this restriction and a person who provides for a system required to take measures, on a continuous basis, equivalent to the measures to be taken by the Business Operator Handling Personal Information under the Law in Japan shall be excluded from this restriction.

(4) Extraterritorial application of the Law

It was decided the Amended Law would apply to the provisions under the Law in the case of providing articles or services to a person within Japan or treatment of personal information in a foreign country by such person for a person who acquired the personal information of such person in relation thereto. Namely, an obligation to protect after the acquisition of the personal information by the business operation handling personal information shall be imposed on such foreign business operator. The Personal Information Protection Commission may provide advice, guidance and recommendation under the Law to such foreign business operator.

(5) Newly established crime of wrongful provision such as personal information database

The Amended Law newly established the crime of wrongful provision of personal information database for strengthening the punishment of wrongful provision or theft of a personal information database. If the Business Operator Handling Personal Information or its employee improperly takes out a personal information database handled in regard to such business by abuse of its position and obtains a profit by providing to a third party, the act will be punished as an act constituting the crime.

3. Abolishment of exclusion rules for a business operator handling personal information on a small scale

With the current law, a business operator handling personal information on a small scale (a business operator handling personal information of only 5,000 persons or less at any time within the last six months) was excluded from the definition of the Business Operator Handling Personal Information, however, the Amended Law has deleted such exclusion rule. Under the Amended Law, a person providing for business use a personal information database shall be subject to the regulations of the Law regardless of the number of specified individuals identified by personal information composing such personal information database, etc.

4. Measures required by business operator

After the enforcement of the Amended Laws, there will be a requirement for a response in accordance with the content of the above 1. and 2. in each aspect of handling, storage and distribution of the personal information. As well, for a business operator excluding from business operators handling personal information as a “business operator handling personal information on a small scale” under the current law, it is necessary to prepare prior to the enforcement of the Amended Laws to be able to take measures for matters that should be observed for a business handling personal information.

For more information, please contact:

Yasuyuki Kuribayashi, Partner
yasuyuki.kuribayashi@city-yuwa.com