Business in Japan? Amendments call for a review of handling personal information

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On 30 May 2017, amendments to Japan's Act on the Protection of Personal Information went into full effect, which applies to both Japanese companies and international companies due to its extraterritorial effect. Foreign institutions doing business in Japan should review their existing rules and policies for handling personal information to conform to the requirements under the amendments to the Act on the Protection of Personal Information Act.

Japan significantly amended Japan's Act on the Protection of Personal Information (APPI) on 3 September 2015 to modernize its data protection law, especially in the context of the strict data protection regulation reform under the General Data Protection Regulation in EU. Amendments to APPI sets up detailed rules in connection with the manner by which personal information and personal data may be collected, processed, or transferred outside of Japan. We recommend foreign institutions that have business with Japan review their existing rules and policies for handling personal information to conform to the requirements under the Amendments to APPI.

The new policies of handling personal information in Japan
The Amendments to APPI include mainly the following new policies:

**Extraterritorial effect**

The application of amendments to APPI has extraterritorial effect (particularly relevant for non-Japanese companies). It directly applies to businesses that are domiciled outside of Japan, but obtain personal information in relation to their services in Japan.

**Personal Information**

The term "personal information" means information about a living individual: (i) that can be used to identify that specific individual, such as name, date of birth, or information that can be cross-checked against other information and thereby used to identify that specific individual); or (ii) information that contains individual identification codes.

**Centralized data protection authority**

The new Personal Information Protection Commission was established as the centralized data protection authority. The amendments to APPI establishes the Personal Information Protection Commission, which functions as a centralized regulatory authority to enforce the new requirements under the law and backed by sanctions, that replace the previous sector-specific data protection supervision by different national ministries.

**Sensitive data**

The Amendments to APPI provides in principle that consent is required to use or disclose “special care required personal information”, which corresponds to the concept of “sensitive personal data” receiving enhanced protection such as in the EU. However, no consent is needed to process or transfer anonymously processed information.

**International transfer**

International transfer of personal information of an individual in Japan to a third
party in a foreign country may be done by three permitted approaches: (i) to a country that the Personal Information Protection Commission recognized as having an equivalent level of data protection; (ii) to a foreign country in circumstances where specific actions were taken to ensure the same level of data protection, for instance, by signing a data transfer agreement meeting the requirements under the amendments to APPI; or (iii) transfer with the data subject’s consent.

The European Union is working on finalizing data transfer agreements with Japan to enhance business ties, and removing barriers to free flow of data, but in the absence of an established agreement as of the date of this newsletter, point (i) is still not an option for transferring to the EU countries (including Denmark).

The amendments to Japan's Act on the Protection of Personal Information entered into force on 30 May 2017.

See the Amended Act on the Protection of Personal Information (Tentative Translation)