Data. Protection. Adding Value.

Data Protection Laws - Japan

Legislation

The Act on the Protection of Personal Information (Act No. 57 of 2003) (the "**APPI**") is the principal legislation that governs the treatment of personal information, which came into force on 1 April 2005 (followed by several amendments). The APPI sets out, among others, the rights of individuals whose personal information are being processed and the obligations of business operators and administrative entities that process personal information.

* The handling of a particular individual ID Number (also known as "My Number") allocated to every individual by the national government for social security and tax purposes is subject to more stringent regulations under a special law of the APPI, which is the Act on Use of Numbers to Identify Specific Individual in Administrative Procedures (Act No. 27 of 2013).

Risk Level: High

Scope: The APPI applies to:

- **Within the Japanese Territory**: Processing of personal information by business operators that handle personal information (the "Handling Operators"); and
- **Outside the Japanese Territory**: Processing of personal information by the Handling Operators outside Japan, without regard to where they were established, if they process personal information of individuals based in Japan in connection with provision of goods or services to individuals in Japan.

Exemptions:

- The APPI also applies to government entities, but generally, the rules applicable are different from that of private entities.
- Some of the provisions under the APPI do not apply to broadcasting organizations, journalists, creator of literary works, religious organizations or political organizations when all or part of their processing of personal information are being conducted for specific purposes.

Supervisory Authority

Supervisory Authority: The Personal Information Protection Committee (the "PPC") is the main supervisory authority that enforces the APPI. The PPC issues general guidelines for the implementation of APPI. In addition, the PPC jointly issues guidelines that apply to certain industries (e.g., financial, healthcare, and telecommunication industries) with the competent government authorities which supervise the relevant industries.

Registration/Approval Requirements: No, Handling Operators are not required to register or notify the PPC for processing of personal information. However, when the Handling Operators share personal data with third parties without the prior consent of data subject using an opt-out method, they must notify the PPC of certain matters as stipulated in the APPI.

Individual Rights

Under the APPI, data subjects have the right to request the following to the Handling Operators in relation to the processing of their personal data:

- **Right to request notification of the purpose of use**: to notify the purpose of use of personal data that the Handling Operators hold.
- **Right to request disclosure**: to disclose personal data that the Handling Operators hold.
- **Right to request correction**: to rectify, include, or remove personal data that the Handling Operators hold if such personal data are not factual.
- **Right to request ceasing to use or deleting**: to halt the usage or deletion of personal data that the Handling Operators hold and to cease sharing such data with third parties in the cases below:
  (i) where utilization or disclosure of personal data in question breaches the APPI; or
  (ii) where the particular personal data that the Handling Operators hold in question was obtained in violation of the APPI.

Enforcement

Enforcement (Fines, Criminal Penalties):
In order to enforce the APPI, the PPC is empowered with several authorities, including the ability to request the submission of a report regarding handling of personal information, conduct on-site inspections, provision of guidance and advice to the relevant Handling Operator, and authority to issue recommendations or orders.
The following offences and penalties are prescribed in relation to Handling Operators under the APPI. Except in exceptional cases such as misappropriation of personal information, penalties are not imposed just because obligations under the APPI are breached. The PPC will first provide a relevant order for improvement regarding the particular violation of obligations, and if the Handling Operators violate such order, they will be subjected to criminal penalties.

Offence	Persons Liable	Penalty
Breach of orders by PPC requiring certain measures to be taken	Body Corporate	Fine of up to JPY 100 million
	Individuals (including employees of the Body Corporate)	Imprisonment of up to 1 year or a fine of up to JPY 500,000
Misappropriation of personal information for the purpose of seeking their own or a third party's illegal profit	Body Corporate	Fine of up to JPY 100 million
	Individuals (including employees of the Body Corporate)	Imprisonment of up to 1 year or a fine of up to JPY 500,000
Failure to submit relevant reports, submission of false information to PPC, etc.	Body Corporate	Fine of up to JPY 500,000
	Individuals (including employees of the Body Corporate)	Fine of up to JPY 500,000

In relation to the breach of order by the PPC, in addition to the penalties mentioned above, the PPC may also make a public announcement regarding such breach.

Remedies for Individuals:
Data subjects may claim compensation for damages including for mental distress, under the Civil Code. Monetary civil liabilities are not stipulated in the APPI.

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Data Acquisition and Processing

- **Identification of purpose of processing**: When a Handling Operator handles personal information, it must specify the purpose of such use as much as possible. Also, in principle, it must not handle personal information beyond the scope necessary to achieve the specified purpose of use without obtaining the prior consent of the data subjects.
- **Means of acquisition**: The Handling Operator must not acquire personal information by deception or other wrongful means.
- **Third party transfer**: The Handling Operator must obtain the data subjects' prior consent when providing personal data to third parties. However, there are some exceptions to this requirement, which are particularly important in practice, for example: (i) the Handling Operator entrusts the handling of personal data to another person within the scope necessary for achieving the purpose of use; and (ii) a joint use with another entity under certain circumstances.
- **Sensitive Personal Data**: Consent of the data subjects are generally required for the acquisition of sensitive personal information, except in certain limited cases.

Other Business Obligations

Handling Operators are required to, among other obligations:

- take necessary and proper measures for the prevention of leakage, loss, or damage, and for other security control of the personal data pursuant to the guidelines issued by the PPC.
- endeavour to keep the content of personal data accurate and up to date, within the scope necessary for achieving the purpose of use.
- delete the personal data without delay if it is no longer required.
- take necessary and appropriate measures for managing the security of personal data.
- exercise necessary and adequate supervision over their employees to ensure the secure management of the personal data.
- exercise necessary and adequate supervision over the person entrusted with the handling of personal data.
- prepare a record pursuant to the APPI enforcement rules and relevant guidelines of the PPC when providing personal data.
- confirm certain matters set out in the APPI and relevant orders, and prepare a record pursuant to the APPI enforcement rules and relevant guidelines when receiving personal data from a third party.

Transparency Requirements

There is no general provision under the APPI that that obligates transparency. Nevertheless, Handling Operators are required to promptly notify the data subjects the purpose of use or disclose this to the public once they have acquired personal information, unless the purpose of use has already been disclosed to the public.

Moreover, under the Fundamental Policy of Data Protection announced by the government, Handling Operators are encouraged to take measures, among others, to establish and publicly disclose their privacy policy or statement, along with details regarding the engagement of service providers for processing collected personal information and the scope of the services provided by them.

Security & Data Breaches

In the event of a personal data leakage that has a significant likelihood to harm an individual's rights and interests (the detailed criteria in determining the significance of likelihood of harm are stipulated in the APPI enforcement rules, such as number of the data subjects whose personal data are leaked), the incident must be promptly reported to the PPC or the relevant authority when delegated by the PPC. The Handling Operator must also inform data subjects about the leakage, unless it is difficult to notify the identifiable persons. In such circumstances, alternative measures such as issuing a public statement should be taken.

Cross-Border Transfers

The transfer of personal data to a third country or region requires prior consent from the individuals. However, consent from the individuals is not required for overseas transfers of their personal data under two conditions:

(i) if the foreign country is listed as countries that have an equivalent level of data protection as Japan (as of April 18, 2023, this includes the UK as well as countries which are contracting parties of the EEA agreement); or

(ii) if the third-party recipient has a data protection system that meet the standards outlined by the PPC.

Other/To Watch

The APPI stipulates that the APPI must be reviewed approximately every three years from the date it was last reviewed, taking into account the international trends regarding the protection of personal information, the progress of information and communications technology, and the associated status of the creation and development of new industries that utilize personal information. As the latest amendment of the APPI came into force in April 2022, the next review and amendment of the law may take place in around 2025.

Let's connect to discuss how we can help:

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