

## Privacy Legal Update

## Main Points of the Amendment Bill

### Consolidation of Regulations on Personal Information Processing

- The Amendment Bill requires that Article 15 of the PIPA concerning the collection and use of personal information and Article 17 on providing personal information to third parties be consolidated and together establish a principle on “processing” of personal information.
- The Amendment Bill intends to expand the scope of exemptions to the consent requirement and extend such exemptions to cases where personal information is provided to third parties: (i) if it is necessary to execute and perform an agreement with the data subject; (ii) if it is deemed necessary to urgently protect the life, body, or property interests of the data subject or a third party, but it is not possible to obtain prior consent of the data subject or his/her legal representative because he/she cannot express his/her intention or because the address is unknown; or (iii) if it is necessary to achieve the legitimate interests of the data controller, and such interests prevails over the rights of the data subject. The Amendment Bill also removes the condition that such processing of personal information without consent be "inevitably" or "clearly" required under the current law.
- The Amendment Bill requires that when personal information is processed without the consent of the data subject, the items of personal information to be processed and the grounds for processing such personal information be disclosed in the privacy policy.

### New Obligation to Notify Possibility of Disclosing Sensitive Information

- The Amendment Bill stipulates that if any information disclosed in the course of providing goods or services includes "sensitive information", and hence, is likely to infringe on the data subject's privacy, the data subject must be informed of the possibility of his/her sensitive information being disclosed and how to choose not to have such information disclosed through the privacy policy before the goods or services are provided. Violation of such disclosure requirement can be subject to an administrative fine of up to KRW 30 million.

### Others

- Overseas Transfer of Pseudonymized Information: The Amendment Bill provides that if a data controller provides pseudonymized data to a third party outside Korea, special provisions on overseas transfer will apply, such as (1) the requirement for consent of the data subject and (2) the prohibition on executing an overseas transfer agreement that contains a provision that is in violation of the PIPA.

- Downward Adjustment of the Maximum Criminal Penalty: The Amendment Bill lowers the upper limit of the current criminal sanction provisions. For example, the criminal sanction for a person who provides personal information to a third party without the consent of the data subject and a person who knowingly receives such personal information would change from "imprisonment for up to 5 years or criminal fine of up to KRW 50 million" to "imprisonment for up to 3 years or criminal fine of up to KRW 30 million".
- Strengthened Sanctions for Interference with Investigation: Acts such as refusing to submit materials, submitting false materials and refusing to conduct inspection, which are subject to administrative fines under the current PIPA, will be subject to criminal punishment.