

## Privacy Legal Update

## Key Details of Proposed Partial Amendment to the PIPA

### Merger of Special Provisions on Online Service Providers with General Provisions

- Chapter 6 (Articles 39-3 through 39-15) of the PIPA currently contains special provisions that apply to online service providers only. Therefore, different regulations apply depending on whether the applicable data controller is an online service provider or an offline company.
- The Proposed Amendment intends to merge the special provisions that are similar to the general provisions, such as those which concern collection and use of personal information, notification and reporting of personal information leakage, thereby unifying certain regulatory treatments.
- At the same time, some of the requirements which apply only to online service providers, such as the requirement to provide notice of personal information used and provided to a third party, the requirement to have a system for compensation of damages, and the requirement to designate a domestic agent, are to be expanded to apply to all data controllers.
- The details and scope of certain provisions, including the notification and reporting of personal information leakage and the system of providing a notice on the use and provision of personal information, will be determined in the Enforcement Decree of the PIPA.

### Enhancement of Data Subject's Rights

#### Introduction of Right to Request Transmission of Personal Information

- While the current PIPA provides for the data subject's right to request suspension, deletion, or destruction of personal information, it does not provide for a right to request his/her personal information to be transmitted to the data subject or another data controller.
- The Proposed Amendment allows data subjects to request data controllers to transmit their personal information to either the data subjects themselves, other data controllers, or specialized personal information management institutions in the event that (i) personal information is processed with the consent of data subjects or for the execution and performance of a contract with the data subject or (ii) personal information is processed in an automated manner by an information processing device, such as a computer.
- In such case, the data controller must transmit the personal information in a commonly used structured format, which can be processed through a data processing device, such as a computer, within a reasonable scope.
- Data controllers that are subject to the right to request transmission of personal information are to be determined in the Enforcement Decree, taking into account factors, such as their revenue and the volume of personal information in their possession.

## Introduction of Rights to Exclude from Automated Decision-making

- The Proposed Amendment newly establishes a right for data subjects to refuse, raise an objection to, or request explanation on automated decision-making if such decision (i) has a legal effect or (ii) has a material impact on the life, body, mental state, or property of the data subject (e.g., an automatic credit rating decision or recruitment decision using AI).
- In such case, unless there are special circumstances, the data controller must exclude, re-process, or provide an explanation on the decision-making process, as requested by the data subject.

## **Shift of Focus from Criminal Sanctions to Economic Penalties**

- The PIPA currently stipulates criminal sanctions for various violation of the PIPA and imposes administrative fines mostly on online service providers.
- The Proposed Amendment limits the types of violations that are subject to criminal sanctions to "acts intended to benefit oneself or a third party" and expands the scope of administrative fine to all data controllers.
- Meanwhile, under the current PIPA, the maximum administrative fine is "3% of the sales revenue related to the violation in question", but the Proposed Amendment significantly increases it to "3% of total sales revenue".

## **Introduction of Regulations on Operation of Mobile Visual Data Processing Devices**

- The current PIPA defines "visual data processing devices" as "devices which are continuously installed in a certain space" and regulates only the fixed imaging devices, such as CCTV cameras.
- The Proposed Amendment newly establishes a provision on the operation of mobile visual data processing devices, such as drones and autonomous vehicles, and prohibits taking personal visual data by operating such devices for business purposes in public places. However, the Proposed Amendment stipulates that personal visual data may be filmed in exceptional cases, such as where the data subject does not express his / her objection to the filming even though the device operator indicates by visual or audio means or by a signboard that the data subject is being filmed.

## **Diversification of Overseas Transfer of Personal Information and Introduction of Right to Order Suspension**

- Under the current PIPA, when a data controller transfers personal information overseas, the data controller is required to inform the data subject of relevant matters and obtain consent.
- In addition to the cases where the data controller has obtained consent from the data subject, the Proposed Amendment stipulates that personal information may be transferred outside of Korea (i) if there is a special provision in statutes or treaties, etc., (ii) if delegation of personal information processing to, or storage of personal information with, the overseas entity is necessary for the execution and performance of a contract with the data subject, and the data controller discloses such circumstances in its privacy policy or via email, etc., (iii) if the entity to which the personal information is

transferred obtains a certification designated by the PIPC, or (iv) if the data controller transfers the personal information to a country or an international organization deemed to guarantee an appropriate level of personal information protection by the PIPC.

- In addition, the Proposed Amendment will newly establish the PIPC's right to order suspension of overseas transfer if a data controller violates the PIPA in transferring the personal information or if it is deemed highly likely that the rights of data subjects may be unduly infringed due to the overseas transfer.

## Others

- Expansion of Grounds for Exemption from Consent: "Legitimate interest of data controllers", which is a ground for exemption only for the requirement to obtain data subjects' consent to collect and use their personal information under the current PIPA is to be extended as a ground for exemption from the requirement to obtain data subjects' consent to provide their personal information to third parties.
- Clarification of the Duty to Destroy Pseudonymized Information: The current PIPA provides that the duty to destroy personal information does not apply to pseudonymized information. The Proposed Amendment clarifies that the obligation to destroy also applies to pseudonymized information.
- Prohibition of Sub-delegation without Consent of Delegator: Unlike the current PIPA, the delegatee may sub-delegate the delegated tasks to a third party if it obtains the consent of the delegator.
- Introduction of the Right to Review Privacy Policy: The Proposed Amendment provides that the PIPC may examine the legality of a privacy policy and order corrective measures if the PIPC finds that a privacy policy does not comply with the PIPA's requirements.
- Mandatory Participation in Dispute Mediation: While the current PIPA requires only public institutions to participate in dispute mediation, the Proposed Amendment requires all data controllers to participate in dispute mediation procedures and gives the Dispute Mediation Committee the right to investigate underlying facts.