

NEWSLETTER

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Data Privacy & Cybersecurity Group

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Amended Enforcement Decree of the Personal Information Protection Act of Korea

The amended Personal Information Protection Act of Korea (**PIPA**), Korea's main legal framework for personal data protection, came into effect on September 15, 2023. On the same date, the amended Enforcement Decree of the PIPA (the **Enforcement Decree**), which purports to provide detailed regulations on the amended PIPA provisions, also came into effect. As with the amended PIPA provisions pertaining to the right to data portability and right to contest automated decision-making, among others, which are scheduled to take effect later than September 15, 2023, the corresponding amended Enforcement Decree provisions are expected to become effective at such later date.

The key changes introduced by the amended Enforcement Decree effective as of September 15 are as follows.

1. Protection of Personal Information of Children under the Age of 14 (Art. 17-2(1) of the amended Enforcement Decree)

- To align with the amended PIPA's newly established provision on the protection of personal information of children under 14, which applies to both online and offline businesses, the amended Enforcement Decree specifies methods applicable for all data controllers - i.e., both online and offline businesses - to obtain consent from a legal representative of children under 14 for processing of personal information.

2. Unified Rules on Online and Offline Businesses

- **Notification and Reporting of Data Breach (Arts. 39 and 40 of the amended Enforcement Decree)**
 - In relation to the amended PIPA provisions, which eliminate the previous varying notification and reporting obligations for online and offline businesses, the amended Enforcement Decree imposes an obligation on both online and offline data controllers to notify affected data subjects, and report to the relevant authority, of a data breach within 72 hours of becoming aware of the breach.

- Also, the amended Enforcement Decree introduces for the first time a “risk-based approach” in assessing conditions that may trigger a reporting obligation, whereas under the pre-amended Enforcement Decree, a report obligation had been triggered regardless of the level of risk arising from the data breach.

3. Cross-border Transfer of Personal Information (Arts. 29-8 to 29-12 of the amended Enforcement Decree)

- The amended Enforcement Decree provides for detailed requirements and procedures for the two newly added legal bases for cross-border transfer of personal information without consent - i.e., (i) if the overseas recipient has a data protection certification as prescribed by the PIPC; and (ii) if the overseas recipient is a country or an international organization recognized by the PIPC as having an appropriate level of protection.
- With respect to the newly granted power to the PIPC to order a data controller to suspend cross-border transfer under the amended PIPA, the amended Enforcement Decree sets out specific factors to be considered in determining whether to issue a suspension order. Any objection to the PIPC’s suspension order must be made within seven days from the date of receipt of the order, and the PIPC has 30 days to respond to the objection. Further details of restrictions on cross-border transfer are expected to be embodied in the forthcoming amendments to the PIPC’s Notification on Management of Overseas Transfer of Personal Information.

4. Mobile Visual Information Processing Devices (Arts. 3(2) and 27-2 of the amended Enforcement Decree)

- The amended Enforcement Decree provides for explicit definitions of “mobile visual information processing devices” to be (i) wearable devices, (ii) portable devices, and (iii) attachable devices. As for the method of indicating the fact that filming/photographing is taking place, it can be done through light, sound, signboards, written guides, announcements, or other similar means. However, in the event that it is difficult to notify the data subject of the filming/photographing due to the nature of the recording method, such as aerial filming using drones, notification can be made through an Internet website to be developed by the PIPC.

5. Administrative Penalties and Fines (Arts. 60-2 and 63 and Tables 1-5 and 2 to the amended Enforcement Decree)

- In relation to the increased upper limit of the administrative penalty for a violation of the PIPA from “3% of the sales revenue related to the violation” to “3% of the total sales revenue” under the amended PIPA (with the possible exclusion of sales revenue unrelated to the violation if successfully proven by the data controller), the amended Enforcement Decree sets forth detailed criteria for determining “sales revenue unrelated to the violation.” In addition, the amended Enforcement Decree has updated the thresholds used to calculate an administrative penalty amount, including the change of fixed base rates (%) to be in ranges, upward adjustments in the base penalty amounts (which become applicable when no sales revenue amount is available), and change of three levels/grades of severity of the violation (which is designed to determine the applicable base rate or the base penalty amount) to four levels/grades. More specific details are expected to be included

- in the forthcoming amendments to the PIPC's Notification on Detailed Standards for Imposition of Administrative Fines.
- It is noteworthy that along with the reduction or exemption of administrative fines provided in the amended PIPA, the amended Enforcement Decree further specifies additional mitigating factors to be considered in reducing or exempting administrative fines.

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For more information on the amended PIPA, please refer to our newsletters at:

[Second Major Amendment to the Personal Information Protection Act Passed by National Assembly \(I\)](#)

[Second Major Amendment to the Personal Information Protection Act Passed by National Assembly \(II\)](#)

[Second Major Amendment to the Personal Information Protection Act Passed by National Assembly \(III\)](#)

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