

Introduction to the Revised Personal Information Protection Act – (1) Partial Amendment of the Personal Information Protection Act, dated July 24, 2015

The Personal Information Protection Act was adopted in 2011 to protect the privacy and personal secrets from unlawful gathering, leakage, misuse and abuse of personal information. However, even after its adoption, large-scale personal information leaks continue to occur, notwithstanding the introduction of this Act. For this reason, there has been a constant call for related regulations to raise awareness of the significance of personal data protection.

Headline amendments.

Against this backdrop, a partial amendment to the Personal Information Protection Act (the “Act”) was passed by the National Assembly on July 6, 2015, and was promulgated as a law on July 24, 2015. The main features of the amended version of the Act (the “Amended Act”) are:

- extension of stronger protection measures for individuals affected by data breaches by adopting punitive damages and statutory damages;
- imposing heavier sanctions on personal information violations; and
- reinforcement of functions of the Personal Information Protection Committee.

The following is a summary of these main features.

1. Adoption of a Stronger Scheme for Recovery of Damages

A. Statutory Damage Provisions

Although it was possible for the victim to claim damages against the data handler for violation of

law under the existing Personal Information Protection Act (Article 39 of the Personal Information Protection Act), the victim was required to specifically establish damages to get an award of damages.

To address this, the Amended Act provides that if a person suffers damages due to his/her personal information being stolen, lost, leaked, fabricated, falsified, or damaged due to the data handler's willful misconduct or gross negligence, such person may claim damages, and if such claim for damages is filed by the victim, the court may award him/her statutory damages of up to KRW 3,000,000 after a review of all the arguments (Article 39-2; date of enforcement: July 25, 2016).

B. Punitive Damage Provisions

Under the Amended Act, if a person suffers damages due to his/her personal information being stolen, lost, leaked, fabricated, falsified, or damaged due to the data handler's willful misconduct or gross negligence, the court may award the victim punitive damages of up to three times actual damages (Articles 39(3) and (4); date of enforcement: July 25, 2016).

2. Heavier Sanctions on Leakage of Personal Information

A person who falsely or by other fraudulent means or methods acquires personal information processed by another person and then provides such personal information to third party for profit-seeking or other illegitimate purpose will be subject to imprisonment of up to 10 years or fine of up to KRW 100,000,000 (Article 70(2) of the Amended Act). Meanwhile, if personal information is stolen, lost, leaked, falsified, fabricated, or damaged because the data handler failed to implement the necessary security measures for the protection of personal information, then he/she will be subject to a fine of up to KRW 20,000,000 (whereas so far under the Act, the maximum fine amount is KRW 10,000,000) (Article 73(1)). The Amended Act now also allows for any criminal proceeds that a person acquires from the illegal distribution or the like of personal information to be confiscated (Article 74-2).

3. Stronger Functions of Personal Information Protection Committee

With the enforcement of the Amended Act, certain functions performed by the Ministry of Government Administration and Home Affairs (i.e., establishment of basic plans for protection of personal information, mediation of disputes involving personal information, etc.) have been transferred to the Personal Information Protection Committee (Articles 9 and 40 of the Amended Act; date of enforcement: July 25, 2016). In addition, under the Amended Act, the Personal Information Protection Committee is entitled to (i) recommend to related authorities on improvements of policies

and systems relating to personal information, (ii) inspect whether the recommendations are being implemented properly (Articles 8(4) and 8(5) of the Amended Act), (iii) analyze and assess the causes of personal information infringement, and (iv) recommend to government agencies the regulatory improvements when they establish or amend laws and regulations involving the processing of personal information (Article 8-2 of the Amended Act; enforcement date: July 25, 2016).

With much extended authority to coordinate and mediate personal information protection issues, the Personal Information Protection Committee is expected to play a more active role in the area of personal information protection.

4. Conclusion

The Amended Act provides a much stronger regulatory basis for damages and sanctions with respect to personal information leaks.

The amendment was made in the context of a series of amendments to personal information laws and regulations (e.g., the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. and the Act on Use and Protection of Credit Information) that followed serious data breaches by industry. We will provide more detailed information in this respect in the next issue.

As the adoption of new systems statutory damages and punitive damages is expected to bring an increase in the number of lawsuits seeking damages from personal information leakage, organizations and enterprises handling personal information should be acutely aware of this recent amendment.

Should you have any questions regarding any of the foregoing, please feel free to contact us at any time.

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