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Legal Update

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# Introduction to the Revised Personal Information Protection Act – (2) Extended Sanctions under Privacy Legislation

Following the massive leakage of personal information from credit card companies in January 2014, there has been constant demand to overhaul the relevant laws. Relevantly:

- the *Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc.* (the "Information Network Act");
- the *Use and Protection of Credit Information Act* (the "Credit Information Act"); and
- the *Personal Information Protection Act*,

have been subsequently revised.

Noticeable trends in the amendment of these personal information protection legislation include adoption of new concepts such as punitive damages and statutory damages and a sharp increase in the level of sanctions against personal information infringement and remedies for those affected. As a follow-up to our newsletter, dated on August 31, 2015, briefing on the recent amendments to the *Personal Information Protection Act*, the following summarizes the relevant amendments.

## 1. Amendment to the Information Network Act

The *Information Network Act* was amended on May 28, 2014 and came into effect from November 29, 2014. The revised *Information Network Act* adopted statutory damages for the first time for an information protection law. Article 32-2 of the revised *Information Network Act* provides that if a person whose personal information is lost, stolen or leaked by willful misconduct or negligence of a telecommunications service provider, such person is entitled to claim statutory damages of up to KRW 3 million, instead of claiming damages under Article 32 of the same Act.

Meanwhile, the level of administrative penalty for personal information infringement has also been increased significantly. Article 64-3(1) of the revised *Information Network Act* raised the maximum penalty for personal information breach, including the gathering of personal information without the user's consent, from 1% to 3% of the relevant annual turnover.

Further, with the removal of the penalty cap (KRW 100 million) applicable only to the leakage of personal information resulting from the absence of technical/managerial protection measures, this has now been raised to 3% of relevant annual turnover.

## 2. Amendment to the Credit Information Act

The amendment to the *Credit Information Act*, which was promulgated on March 11, 2015 and is scheduled to take effect on September 12, 2015. Under the amendment statutory damages are also to be adopted. Article 43-2 of the revised *Credit Information Act* provides that a person whose personal credit information is stolen, lost, leaked, fabricated, or damaged due to the willful misconduct or gross negligence of credit bureau companies, public credit registry and providers/users of credit information (the "Credit Information Provider/User") or other users of credit information (the "Subject Company") may claim statutory damages of up to KRW 3,000,000 from the Credit Information Provider/User or the Subject Company, instead of claiming damages under Article 43 of the same Act.

Meanwhile, the revised *Credit Information Act* adopts punitive damages for the first time for a personal information protection law. Articles 43(2) and 43(3) of the revised *Credit Information Act* provides that if the principal of credit information suffers damages from its personal credit information being disclosed, lost, stolen, leaked, falsified or damaged as a result of willful misconduct or gross negligence of the Credit Information Provider/User or the Subject Company in violation of the same Act, the relevant Credit Information Provider/User or Subject Company shall be liable for damages of up to three times the actual damages.

In addition, a new administrative penalty provision has been introduced in the revised *Credit Information Act*. Article 42-2 of the revised *Credit Information Act* provides that the Subject Company who discloses or uses an individual's personal confidential information for a non-business purpose, or provide or use personal confidential information which the Subject Company knew was illegally disclosed may be subject to an administrative penalty of up to 3% of the company's revenue generated from the relevant business. Further, the Subject Company whose collected personal credit information is lost, stolen, leaked, fabricated, or damaged due to the its failure to establish a security plan for their credit information data processing system may be subject to an administrative penalty of up to KRW 5 billion.

## 3. Amendments to the Personal Information Protection Act

Article 39-2 of the revised *Personal Information Protection Act* provides for statutory damages, under which those whose personal information is stolen, lost, leaked, fabricated, falsified, or damaged due to the personal information handler's willful misconduct or negligence are allowed to claim damages up to KRW 3 million.

Further, due to the adoption of punitive damages specified in Articles 39(3) and 39(4) of the revised *Personal Information Protection Act*, if personal information is lost, stolen, leaked, fabricated, falsified or otherwise damaged by willful misconduct or gross negligence of the personal information handler, the court may determine punitive damages of up to three times the actual damages.

## 4. Conclusion

As noted above, the recent amendments to personal information protection legislation have:

- significantly raised the amount of damages available to the aggrieved; and
- through the adoption of statutory damages, considerably increased the likelihood of the aggrieved being granted an award of damages.

Up until now, many lawsuits seeking damages for personal information breach ended up awarding victims only KRW 100,000-200,000 per individual as compensation for damages, even if the data handler was at fault.

Reportedly, the Supreme Court will overhaul its standards for calculation of compensation for damages caused by personal information breach and implement them from the next year; such new standards are expected to reflect the trends of the legislative amendments noted above.

Accordingly, companies should take the opportunity to confirm that the relevant privacy compliance with the revised privacy legislation.

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


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