ISSUES OF DATA PROTECTION REGULATION IN KOREA

Repeated large-scale personal data leakage cases led to strengthening related laws. Ensuring internal compliance in corporations is getting more crucial.

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Although there have already been a number of special laws governing personal information protection in various special areas and cases, such as the 'Network Act' governing information and communications services, and the 'Credit Information Act' governing personal credit information, the Personal Information Protection Act ("PIPA") was enacted as a general law of personal information in March 2011 to fulfill the need for presiding rules to govern personal information protection.

Despite the overhaul of the legal system, large-scale personal data leakage cases involving large corporations and commercial banks have been reported in increasing numbers. Some personal data leakage cases are the result of external attacks, but many of the data leakages were due to the misconduct or negligence of the employees of the companies in question, or mishandling of information by the third party trustees who were entrusted with business affairs related to personal information. Of particular note, the trustees of personal information have been the most common source of leaks.

According to Article 26 of PIPA, the personal data processor ("Processor") may entrust a third party with the processing of personal data, as long as they publicize or notify the outsourcing contract, unlike the case of provision of personal data in which the provider must obtain the consent of data subjects. Instead, the Processor is vicariously liable for any breach committed by the trustee, unless the Processor succeeds in (i) proving that the processor exercised due care in the appointment of the trustee and the supervision of the undertaking, or (ii) showing that the damage would have resulted even if due care had been exercised. Article 25 of the Network Act has a provision similar to Article 26 of PIPA, whereas relevant articles in Credit Information Act limit the qualification of trustees, and hold Processors jointly responsible for the conduct of their trustees.

Data leaks due to any violation of related laws can lead to a claim for damages by a data subject, as well as criminal punishment if it constitutes a criminal activity. In most cases, however, the damages have been limited to small amounts of compensation for the emotional distress suffered by victims of the data leaks. Furthermore, a data subject is required to prove his or her emotional distress and suffering caused by the leak of personal data to qualify for compensable damages.

But recently, statutory damages have been introduced in the amended Network Act. An affected data subject may claim reasonable damages of up to KRW 3 million for each case instead of proving actual damages. The court may acknowledge a reasonable amount of damages within the statutory limits in consideration of the defenses claimed by the defendant company and the results of the investigation. Several proposed amendments of PIPA and the Credit Information Act calling for introduction of similar provisions is under consideration.

As such it's getting crucial to educate all those that are entrusted to handle personal data, both employees and third party trustees, about the importance of data protection and strict compliance with relevant laws and regulations, stressing the consequences of disregarding the laws.

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