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## Recent Amendment to the Network Act (Effective as of March 19, 2019)

On August 30, 2018, the proposed amendments to the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. (the “Network Act”) passed the National Assembly. These amendments to the Network Act were promulgated on September 18, 2018 and will become effective as of March 19, 2019. The following is an overview of the material amendments to the Network Act and their implications.

### **1 Material Amendments to the Network Act**

#### **A. Foreign ICSPs Must Designate a Korean Representative as Chief Information Protection Officer (Article 32-5, etc.)**

Under Article 32-5 etc. of the amendments to the Network Act, ‘information and communication service providers without a domicile or place of business in Korea’ (“Foreign ICSPs”) that fall under the criteria prescribed by the Presidential Decree of the Network Act are required to:

- (1) designate a representative in Korea (a “Korean Representative”); and
- (2) disclose the Korean Representative’s name, address and contact information in the Foreign ICSP’s data privacy policy.

In the event the Foreign ICSP fails to designate a Korean Representative, a fine up to KRW 20 million may be imposed.

Once designated, the Korean Representative must perform, on behalf of the Foreign ICSP, the duties of the Chief Information Protection Officer under the Network Act. Also, upon any leakage of personal information, the Korean Representative must report such leakage to the regulatory authorities, notify the data subjects and handle submission of certain material and documents. Any violation of laws by the Korean Representative shall be deemed a violation by the Foreign ICSP.

The types of Foreign ICSPs that are required to designate a Korean Representative are yet to be determined. The criteria for such Foreign ICSPs are to be included in the Presidential Decree, which is pending amendment. It is expected that a large number of Foreign ICSPs that provide services in Korea from overseas (without going through a Korean entity) will be required to designate a Korean Representative.\*

#### **B. Overseas Re-transfer of Personal Information is Restricted (Article 63(5))**

Under the amendment, the rules that currently apply to overseas transfer of personal information will also apply when personal information that has been transferred overseas is re-transferred to another country (“Overseas Re-transfer”).

Hence, in order for a company to conduct Overseas Re-transfer of personal information of Koreans, such company must obtain the data subject’s consent and ensure personal information protective measures are taken; provided, that, in the event the Overseas Re-transfer is required to perform an agreement related to IT services and to enhance the convenience of the data subject, the details of the Overseas Re-transfer should be disclosed in the data privacy policy instead of obtaining consent.

In the event Overseas Re-transfer of personal information occurs without obtaining the data subject’s consent (or, as the case may be, disclosing in the data privacy policy), a penalty up to 3% of the relevant sales revenue may be imposed. Failure to take necessary measures for protection of personal information may be subject to a fine up to KRW 30 million.

#### **C. The Principle of Reciprocity is Adopted**

The amendments to the Network Act adopt the principle of reciprocity for overseas transfer of personal information. In other words, any Foreign ICSP who is domiciled in a country that restricts overseas transfer of personal information will be subject to the level of restrictions equivalent to those of the country of domicile.

## 2 Implications of the Amendments to the Network Act

In the past, regulatory authorities such as the Korea Communications Commission had difficulty in investigating Foreign ICSPs or even ordering Foreign ICSPs to submit documents or material. Such difficulty in enforcing laws against Foreign ICSPs has long been criticized as reverse discrimination against domestic companies. However, by adopting a system similar to the representative requirement under Article 27 of the EU General Data Protection Regulations (“GDPR”), the amendment to the Network Act is expected to enhance the convenience of data subjects while enabling the regulatory authorities to enforce Korean privacy laws against Foreign ICSPs. Further, the amendments restricting Overseas Re-transfer and adopting the principle of reciprocity will likely reinforce the regulation of Foreign ICSPs.

Jipyong LLC has extensive experience in advising foreign companies in their compliance with Korean privacy laws including representation in government privacy audits and establishment of internal privacy policies. Following these recent amendments, Jipyong LLC will also be providing services as a Korean Representative to Foreign ICSPs. **If you are a Foreign ICSPs previously not governed by Korean privacy laws, it is necessary to check compliance with Korean privacy laws and to prepare for the upcoming enforcement of the amendments to the Network Act.** Foreign ICSPs seeking a Korean Representative or advice on Korean privacy laws, please contact the following attorneys:

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- \* Under the EU GDPR, after which the mandatory Korean Representative system is modeled, where a company is not established in the EU, such company must designate a representative if its data processing activities are related to the offering of goods or services to data subjects in the EU (irrespective of whether a payment of the data subject is required) or related to the monitoring of data subjects' behavior within the EU.

### Main Contact

#### IP · IT Practice Group



**Jeong Kyu CHOE**  
Partner  
Tel: +82-2-6200-1768  
Email: [jkchoc@jipyong.com](mailto:jkchoc@jipyong.com)



**Seungmin Jasmine JUNG**  
Senior Foreign Attorney  
Tel: +82-2-6200-1712  
Email: [smjung@jipyong.com](mailto:smjung@jipyong.com)

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10F, KT&G Seodaemun Tower, 60 Chungjeong-ro, Seodaemun-gu, Seoul 03740, Korea  
Tel 82-2-6200-1600 | Fax 82-2-6200-0800 | Email [master@jipyong.com](mailto:master@jipyong.com)

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