

Client Alert

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Japan telecom law amendments to expand its application to overseas IT companies

Upcoming amendments to the Japanese Telecommunications Business Act are intended to bring more foreign companies within the scope of the Act. This will lead to more foreign entities in the telecommunications space having to take measures with the competent Japanese authorities, and have certain new specific obligations imposed upon them, such as the obligation to report serious incidents, and keep user communications secret.

Application of the Telecommunications Business Act to foreign corporations

On February 28, 2020, a bill to amend the Telecommunications Business Act ("Amendment Bill") was submitted to the Japanese Diet. The Amendment Bill aims to ensure effective enforcement of the Act against foreign corporations that provide telecommunications services to Japanese users. As "telecommunications services" is broadly defined to include providing communication tools such as private messaging services and cloud-based telephone services, these amendments will affect IT companies headquartered in overseas countries, as well as their Japanese affiliates who assist in the operation of those services.

The current Act has been interpreted to only apply to service providers who have an office or facility in Japan. However, the Amendment Bill is intended to give more protection to Japanese users and make competition fairer by applying to certain foreign entities. Such foreign entities will include overseas IT companies that provide communication tools such as messaging services to Japanese users.

Registration and notification obligations and representative or agent in Japan

Under the current Act, any person who operates in the telecommunications business needs to register or file a notification with the Ministry of Internal Affairs and Communications ("MIAC"). The formalities to be completed depend upon the size of the facilities the company uses for its telecommunications business. Under the Amendment Bill, similar foreign entities will also need to do the same and also appoint a representative or an agent located in Japan.

Application of existing obligations

Under the Amendment Bill, foreign entities will also be subject to various obligations under the Act, which include the obligations to:

- protect secrecy of communications
- report on suspension of services and serious incidents to MIAC
- treat users in a non-discriminatory manner





- recording changes to registration or notification details
- report termination or suspension of business operation or dissolution of the foreign entity
- respond to inspections by MIAC

As a result of the obligation to protect the secrecy of communication, foreign entities will not be able to disclose the contents of users' communications (including the contents of messages) without the users' permission.

Under the Amendment Bill, the competent authority may issue a formal administrative order to remedy violation of the Act or for a foreign entity to improve business operations.

Publication of name of violators

The Amendment Bill will introduce a system where violators will be publicized. If the Amendment Bill passes the Diet and comes into force, MIAC may publicize the name and other details of businesses that violate the Act.

Possible impact on businesses

Foreign entities which provides services to Japanese users but have not completed a registration or notification will need to ensure to take necessary steps to do so. In addition, they will need to comply with obligations under the Act, such as secrecy of communication or reporting obligations.

If foreign entities file a registration or notification, their Japanese subsidiaries will be expected to be the domestic representative in many cases. As MAC will most likely contact the domestic representative for correspondence, including administrative orders, it will be important for there to be clear processes in place between parent companies and their subsidiaries.

Foreign entities will also be subject to administrative orders to remedy violations and improve business activities, and to the publication of their business name, and criminal penalties including fines should they violate obligations under Act.