



New Japanese Regulation on Telecommunications Businesses Provided by Foreign Business Operators

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July 2021

In brief

The Telecommunications Business Act of Japan (the “**Act**”) provides a regulatory framework for telecommunications businesses. Recently, the number of platform services and other telecommunication services provided by foreign entities has greatly increased in Japan. As the number of these services continues to grow, massive data breaches and communication failures have occurred in the services provided by some foreign entities. Through these cases, it became clear that the domestic users of such services were not being protected appropriately and that a level playing field for domestic and foreign telecommunication business providers was not secured in Japan. The amendment to the Act came into effect on 1 April 2021, aiming to protect domestic users and secure fair competition by enhancing the enforcement of the Act against foreign entities, and the Japanese regulatory authority, the Ministry of Internal Affairs and Communications (the “**MIC**”), published a set of guidelines (the “**MIC Guidelines**”)¹ which are aligned with the purpose of this amendment.

Based on the MIC Guidelines, even foreign entities which have no telecommunication facilities in Japan are subject to regulation if they have certain nexuses with Japan. In this Newsletter, we will provide an outline of the regulations that the amended Act places on foreign entities, and corresponding solutions.

In detail

1. What kind of businesses are regulated?

If an entity operates a business whose services include the ‘intermediation of other persons’ communications’ through the use of telecommunications facilities (including servers or cloud computing technology) for such other persons, such business would fall under the category of ‘telecommunications businesses’ which are regulated under the Act. This ‘intermediation of other persons’ communications’ means the transmission of one person’s information to another person without changing the content.

We expect that the applicability of these regulations to specific business is to be determined on a case by case basis. Typical examples are email services, chat services and transmission services of email newsletters². Even if the ‘intermediation of other persons’ communications’ is not the main

¹ https://www.soumu.go.jp/main_content/000733074.pdf (English)

² For example, sending email newsletters provided by a client company to subscribers without changing the content.

component of the service (for example, for an online shopping or online game service), if the service includes a function that allows messages to be exchanged between its users, it is subject to the regulations under the Act.

2. In what circumstances are foreign entities regulated?

Based on the MIC Guidelines, even if a foreign entity does not have any facilities such as offices or telecommunications equipment in Japan, the Act applies to foreign entities that provide telecommunications services from another country to persons in Japan including, but not limited to, the following cases;

- (i) A case where the entity's service is provided in the Japanese language³,
- (ii) A case where payment currencies for the entity's paid services include the Japanese yen, or
- (iii) A case where the entity conducts advertising or sales promotion services regarding the use of its services in Japan⁴.

3. What are the regulatory requirements for foreign entities?

If a foreign entity is subject to the regulations under the Act, the foreign entity must (i) file a notification with the Minister of Internal Affairs and Communications as a foreign telecommunication business operator⁵ and (ii) designate local representatives or local agents in Japan, as well as being subject to other regulations that are generally applicable to telecommunication business operators.

Foreign telecommunication business operators without an office in Japan might find it difficult to designate local representatives, as the assumption is that these representatives will be directors or employees of the business operator. In such cases, a foreign telecommunication business operator may appoint a Japanese lawyer as its local agent. Based on the MIC Guidelines, these local representatives or local agents are expected to serve as contact points for various communications between the MIC and the foreign telecommunication business operators related to the regulations under the Act.

If a foreign telecommunication business operator violates the regulations under the Act (including the above requirement), administrative actions may be taken, including the publication of the business operator's name along with the fact that the violation occurred.

The takeaway

As described above, the regulations under the Act apply to various types of business. Furthermore, under the amended Act and the MIC Guidelines, the enforcement of these regulations has been strengthened, expanding the scope of situations in which the regulations apply to foreign entities.

We at PwC Legal Japan have the necessary experience and capabilities to support foreign entities in the telecommunications business area, including analysing the applicability of the Act, providing support for the filing of the notification and serving as a local agent for foreign telecommunication business operators. If you need support in these areas, please feel free to contact us.

³ For example, item (i) applies if Japanese is one of the available display languages for the service, if documents, such as contracts and agreements, are provided in Japanese, or if user support is provided in Japanese.

⁴ 'Advertising or sales promotion' as described in item (iii) refers, for example, to cases where a foreign entity promotes its service usage in Japan through media, such as online media, TV commercials, newspapers and magazines, or distributes advertisements (such as flyers or brochures). It also refers to cases where a foreign entity sends direct mail (including email newsletters), including cases where advertising or sales promotion activities are indirectly carried out through advertising agencies.

⁵ For certain businesses such as cellular carrier businesses, telecommunication business operators are required to register with the MIC. However, generally speaking, foreign telecommunication business operators are not required to register with the MIC if they do not have telecommunication facilities in Japan.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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