

HAYABUSA ASUKA LAW OFFICES NEWS LETTER

Vol.6
October, 2018



CONTENTS

- ▶▶ P.1...Amended Act on the Protection of Personal Information ~Notes on providing personal information to third parties in a foreign country~
- ▶▶ P.3...IR Law (Act on Development of Specified Complex Tourist Facilities Areas)
- ▶▶ P.4...Amendment to the Consumer Contract Act
- ▶▶ P.5...Monthly Seminar Activity Report

Amended Act on the Protection of Personal Information ~Notes on providing personal information to third parties in a foreign country~

by Koki Tada (Attorney-at-Law)

The Amended Act on the Protection of Personal Information came into force on May 30th last year. In accordance with the General Data Protection Regulation in the EU (which came into force on May 25, 2018), and in order to meet the requirements of the so-called "sufficiency" of the state and for Japan to more thoroughly protect personal data, strict regulations have been established in Article 24 of the Personal Information Protection Law regarding the provision of third parties of personal data from Japan to foreign countries.

In summary, there is a general principle that consent must be obtained from all individuals

who provide their personal information. However, this is practically difficult for personal information handling business operators holding a large amount of personal data.

Therefore, to fit within one of the exceptions to the above general principle, it is necessary to consider whether a business has a system which meets the standards set by the rules of the Personal Information Protection Commission as necessary for continuously taking measures equivalent to the measures deemed to be handled by businesses handling personal information. In order to be recognized as establishing a system that meets this standard, the Guidelines on Personal Information Protection Committee Regulations and Personal Information Protection (provided to third parties in a foreign country) require considerable detail on standards and regulations, and it is necessary to comply with these requirements.

In practice, in order for a system to be compliant with the standards, in the information provision contract between the parties, there will be many provisions with various obligations to be borne by each of the parties to one another

Accordingly, at the time of drafting, reviewing and negotiating a Data Transfer Agreement, the person in charge of negotiating the contract for a party needs to understand the point at which such party can avoid owing responsibility to the other party, or the necessity to impose additional rules regarding responsibility separately on the other party, and furthermore, to proceed to the final agreement through negotiations utilizing legal logic.

The following legal points on each of the various obligatory provisions should be confirmed at the time of negotiations:

- (i) Whether such provisions are needed for the system to meet the standards of the Guidelines so as to fall within the exception in Article 24 of the Act on the Protection of Personal Information, and the scope of the content and responsibility stipulated in such provisions.
- (ii) Whether such provisions need to be stipulated for the personal information handling business operator to comply with the Act on the Protection of Personal Information.
- (iii) Whether such provisions are stipulated in order that each party does not violate creditor obligations to third parties of customers or person who are the subjects of the personal information that must be separately complied with.
- (iv) Whether the matter concerns a person who provides a service from a foreign country into Japanese to which Article 75 of the Act on the Protection of Personal Information, Act on the Protection of Personal Information applies.

IR Law (Act on Development of Specified Complex Tourist Facilities Areas)
by Ryoji Sakashita (Attorney-at-Law)

On July 28th 2018, the Act on Development of Specified Complex Tourist Facilities Areas (referred to as the IR Law below), which provides for the development of Integrated Resorts including the establishment of Casino Facilities, was promulgated.

Specified complex tourist facilities, also generally called "Integrated Resorts", refers to a group of complex facilities integrating "resort" tourism facilities (entertainment facilities such as hotels, shopping malls and aquariums) and casino facilities. Examples that could be listed include the giant complex entertainment facilities of Las Vegas in America and the Marina Bay Sands of Singapore and the Resort World Sentosa of San Francisco.

In relation to the development of Integrated Resorts, the Act on Promotion of Development of Specified Complex Tourist Facilities Areas was enacted in 2016. The aforesaid Act sets out the basic framework, and now specific development details have been stipulated in the IR Law.

Gradual steps are taken for the development of an integrated area in which a specific complex tourist facility (integrated resort facility) is established. The process begins with the drawing up of the basic policy by the Minister of Land, Infrastructure, Transport and Tourism (IR Law, Article 5), followed by the selection of a private business operator by the Prefecture, etc. through a public offering (IR Law, Article 8). The Prefecture, etc. and private business operators apply to the Minister of Land, Infrastructure, Transport and Tourism, (IR Law, Article 9 paragraph 1) who then examines the application and carries out the certification of the Area Development Plan.

One of the central points of the IR Law is casino regulation. In particular, a license system (effective term of 3 years, renewable) has been introduced for every business in the casino industry by the Casino Administration Committee (an external office of the Cabinet Office) (IR Law, Article 39) and provisions such as an obligation for casino business operators to prepare a statement of duties, casino facility usage conditions, dependence prevention regulations and criminal income transfer prevention regulations have been stipulated.

In addition, casino facility entrance fees for visitors to casino facilities (6,000 yen) (IR Law, Article 176), and payments to the government by casino facility business operators (1. payment to the National Treasury: 15% of casino facility gross income (GGR) and all of the expenses borne by the Casino Administration Committee and 2. payment to the Prefecture, etc.: 15% of casino facility gross income (GGR), have been stipulated.

Furthermore, it has been stipulated that the Government or Prefecture, etc. will use the payments to cover the necessary expenses of the policy concerning the advancement of tourism and regional economies (IR Law, Articles 231 and 232).

Amendment to the Consumer Contract Act

by Naoto Habano (Attorney-at-Law)

A partial amendment to the Consumer Contract Act was passed by the House of Councilors on June 7, 2018 and it will be put into force as of June 15, 2019.

It is necessary for business operators contracting with consumers to pay attention to and understand this amendment given that it aims to strengthen consumer protection.

First, the amendment states that an unjust solicitation may be revoked. At the time of a solicitation with respect to the completion of a contract by a consumer, if, for example, a business operator confuses a consumer by utilizing methods such as stoking anxiety (Article 4, Paragraph 3, Item 3), manipulating human relations by taking advantage of romantic feelings (Article 4, Paragraph 3, Item 4) or unfairly using the impaired decision-making of an elderly consumer (Article 4, Paragraph 3, Item 5), etc., even if a consumer has signed a contract or expressed an intention to accept the terms of a contract, the consumer may now be able to rescind the contract or revoke the manifestation of his/her intention.

Second, the amendment states that unjust contract clauses are void. In other words, clauses such as a cancellation clause in favor of a business operator on the basis of a consumer's guardianship (Article 8.3), a clause permitting a business operator to determine responsibility completely on its own (Article 8, Paragraph 1), etc. are now void even if they are stated in the contract.

Third, the amendment states that business operators are obligated to make efforts in various

ways for the benefit of consumers. The amendment specifies that business operators shall endeavor to (i) draft contractual provisions that do not cause misunderstandings, (ii) make it easier for consumers to understand the content of the contract (Article 3, Paragraph 1, Item 1), and (iii) provide necessary information to consumers upon taking into account the individual consumer's knowledge and experience. (Article 3, Paragraph 1, Item 2).

Monthly Seminar Activity Report

Regional Data Protection EU General Data Protection Regulation and Compliance

by Yasuyuki Suzuki (Attorney-at-Law)

A seminar was held in Meeting Room F of our office on how Japanese businesses should understand and consider taking measures with respect to the EU General Data Protection Regulation (the "GDPR") that has been in force since March of 2018.

In addition to the main points of the GDPR and matters to be dealt with requiring prioritization, the speaker commented on how businesses should analyze the new regulation and evaluate the extent of the related risks.

Elderly Employment Seminar based on Commercial Gerontology

by Mariko Shibata (Attorney-at-Law)

A seminar on how to both extend the work-life of and make use of 60 year old newly-hired employees was held in a meeting room of our office on July 24, 2018 from 6:00 pm to 8:00 pm together with Ms. Miyuki Sakiyama of Jibungaku Co., Ltd. and the General Japan Industrial Gerontology Association and Professor Miyuki Kurihara of the Miyuki Social Insurance and Labor Consultant Office.

We introduced ways of utilizing senior generations based on actual cases and proposed employment methods for taking advantage of new hires or employment extensions beyond the retirement age, solving worker shortages, and handing down know-how. In addition, legal troubles that might arise with employment extensions beyond the retirement age were specifically examined with reference to court case precedents.

UNSUBSCRIBE

To our customers who do not wish to receive our newsletters:

Please send a blank message to: newsletter@halaw.jp. Thank you.

CONTACT US

HAYABUSA ASUKA LAW OFFICES

4th Floor, Kasumigaseki Bld., 3-2-5 Kasumigaseki, Chiyoda-ku, Tokyo 100-6004

TEL: +81-3-3595-7070 FAX: +81-3-3595-7105

E-mail: info@halaw.jp / URL: <http://www.halaw.jp/>

The information contained herein is of a general nature based on our investigation as of the date prepared, and may change from time to time. All rights are reserved to Hayabusa Asuka Law Offices.