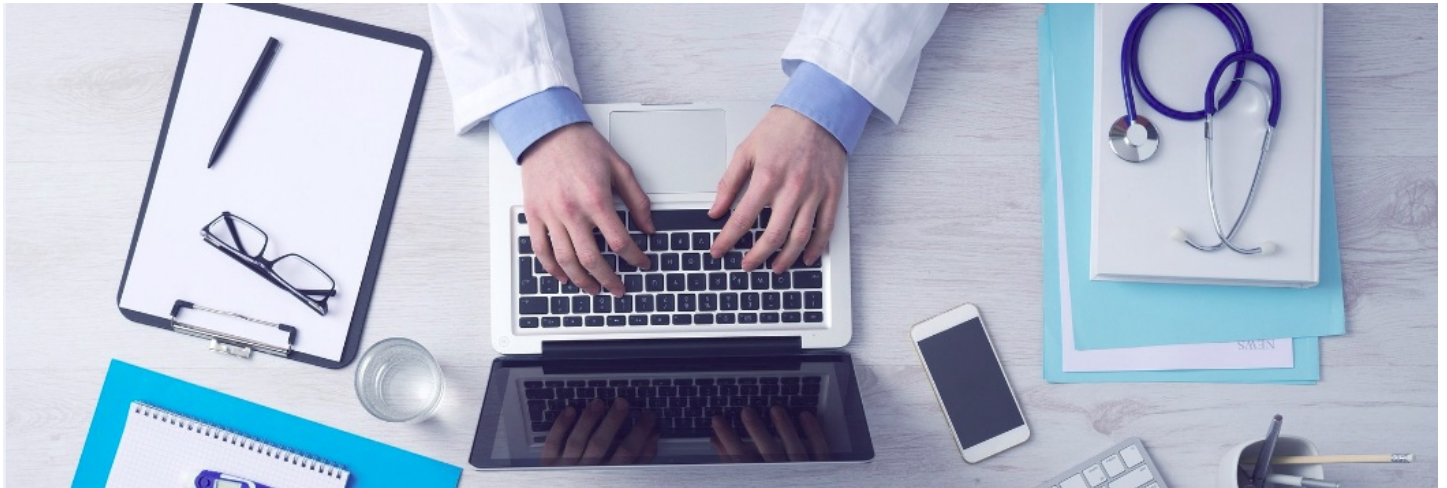


New Version of Personal Information Protection Act and Personal Information Protection & Administration System



I. Summary

In 1995, the Computer-Processed Personal Data Protection Law was implemented in the Republic of China. With the constant development of information technology and the limitations in the application of the legislation, the design of the original legal system is no longer consistent with practical requirements. Considering the increasing number of incidents of personal data leaks, discussions were carried out over a long period of time and the new version of the Personal Information Protection Act was passed after three readings in April, 2010. The title of the law was changed to Personal Information Protection Act. The new system has been officially implemented since 1 October, 2012. The new Act not only revised the provisions of the law in a comprehensive way, but also significantly increased the obligations and responsibilities of enterprises. In terms of civil liability, the maximum amount of compensation for a single incident is 200 Million NTD. For domestic industries, how to effectively respond to the requirements under the Personal Information Protection Act and adopt proper corresponding measures to lower the risk has become a key task for enterprise operation.

II. Main Points

1. Implementation of the Enforcement Rules of the Personal Information Protection Act

Personal information protection can be said the most concerned issue in Taiwan recently. As a matter of fact, the Computer-Processed Personal Data Protection Law was established in Taiwan as early as August 1995. After more than 10 years of development, computer and information technology has evolved significantly, and many emerging business models such as E-commerce are extensively collecting personal data. It has become increasingly important to properly protect personal privacy. However, the previous Computer-Processed Personal Data Protection Law was only applicable to certain industries, i.e. the following 8 specific industries: the credit investigation business, hospital, school, telecommunication business, financial business, securities business, insurance business, and mass media. And other business was designated by the Ministry of Justice and the central government authorities in charge of concerned enterprises. In addition, the law only protected personal information that was processed by "computer or automatic equipment". Personal information that was not computer processed was not included. There were clearly no sufficient regulations for the protection of personal data privacy and interest. There were numerous incidents of personal data leaks. Among the top 10 consumer news issued by the Consumer Protection Committee of the Executive Yuan in 2007, "incidents of personal data leaks through E-commerce and TV shopping" was on the top of the list. This provoked the Ministry of Justice and the Ministry of Economic Affairs to "jointly designate" the retail industry without physical boutique (including 3 transaction models: online shopping, catalogue shopping and TV shopping) to be governed by the Computer-Processed Personal Data Protection Law since 1 July 2010.

To allow the provisions of the personal information protection legal system to meet the environment of rapid change, the Executive Yuan proposed a Draft Amendment to the Computer-Processed Personal Data Protection Law very early and changed the title to the Personal Information Protection Act. The draft was discussed many times in the Legislative Yuan. Personal Information Protection Act was finally passed after three readings in April 2010, which was officially published by the Office of the President on 26 May.

Although the new law was passed in April 2010, to allow sufficient time for enterprises and the public to understand and comply the new law, the new version of the personal information protection law was not implemented on the date of publication. In accordance with Article 56 of the Act, the date of implementation was to be further established by the Executive Yuan. After discussions over a long period of time, the Executive Yuan decided for the Personal Information Protection Act to be officially implemented on 1 October 2012. However, the implementation of two articles is withheld: Article 6 of the Act about the principal prohibition against the collection, processing and use of special personal information and Article 54 about the obligation to notice the Party within one year for personal information indirectly acquired before the implementation of the new law.

In terms of the personal data protection legal system, other than the most important Personal Data Protection Act, the enforcement rules established in accordance with the main law also play a key role. The previous Enforcement Rules of the Computer-Processed Personal Data Protection Law were published and implemented on 1 May, 1996. Considering that the Computer-Processed Personal Data Protection Law was amended in 2010 and that its title has been changed to the Personal Data Protection Act, the Ministry of Justice also followed the

amended provisions under the new law and actively studied the Draft Amendment to the Enforcement Rules of the Computer-Processed Personal Data Protection Act. After it was confirmed that the new version of the Personal Data Protection Act would be officially launched on 1 October 2012, the Ministry of Justice announced officially the amended enforcement rules on 26 September, 2012. The title of the enforcement rules was also amended to the Enforcement Rules of the Personal Data Protection Act. The new version of personal data protection law and enforcement rules was thus officially launched, creating a brand new era for the promotion of personal data protection in Taiwan.

II. Personal Data Administration System and Information Privacy Protection Charter

Before the amendment to the Personal Data Protection Act was passed, the Legislative Yuan made a proposal to the government in June 2008 to promote a privacy administration and protection certification system in Taiwan, in reference to foreign practices. In August of the following year, the Strategic Review Board of the Executive Yuan passed a resolution to promote the E-Commerce Personal Data Administration and Information Security Action Plan. In December of the same year, approval was granted for the plan to be included in the key government promotion plans from 2010 to 2013.

Based on this action plan, since October 2010, the Ministry of Economic Affairs has asked the Institution for Information Industry to execute an E-Commerce Personal Data Administration System Setup Plan. Since 2012, the E-Commerce Personal Data Administration System Promotion Plan and the Taiwan Personal Information Protection and Administration System (TPIPAS) have been established and promoted, with the objective of procuring enterprises to, while complying with the personal data protection legal system, properly protect consumers' personal information through the establishment of an internal administration mechanism and ensuring that the introducing enterprises meet the requirements of the system. The issuance of the Data Privacy Protection Mark (dp.mark) was also used as an objective benchmark for consumers to judge the enterprise's ability to maintain privacy.

Regarding the introduction of the personal data administration system, enterprises should establish a content administration mechanism step by step in accordance with the Regulations for Taiwan Personal Information Protection and Administration System. Such system also serves as the review benchmark to decide whether domestic enterprises can acquire the Data Privacy Protection Mark (dp.mark). Since domestic enterprises did not have experience in establishing internal personal data administration system in the past, starting 2011, under the Taiwan Personal Information Protection and Administration System, enterprises received assistance in the training of system professionals such as Personal Data Administrators and Personal Data Internal Appraisers. Quality personal data administrators can help enterprises establish complete internal systems. Internal appraisers play the role of confirming whether the systems established by the enterprises are consistent with the system requirements. As of 2012, there are almost 100 enterprises in Taiwan that participate in the training of system staff and a total of 426 administrators and 131 internal appraisers. In terms of the introduction of TPIPAS, in addition to the establishment and introduction of administration systems by qualified administrators, enterprises can also seek assistance from external professional consulting institutions. Under the Taiwan Personal Information Protection and Administration System, applications for registration of consulting institutions became available in 2012. Qualified system consulting institutions are published on the system website. Today 9 qualified consulting institutions have completed their registrations, providing enterprises with personal data consulting services.

After an enterprise completes the establishment of its internal administration system, it may file an application for certification under the Taiwan Personal Information Protection and Administration System. The certification process includes two steps: "written review" and "site review". After the enterprise passing certification, it is qualified to use the Data Privacy Protection Mark (dp.mark). Today 7 domestic companies have passed TPIPAS certification and acquired the dp.mark: 7net, FamiPort, books.com.tw, LOTTE, GOHAPPY, PAYEASY and Sinya Digital, reinforcing the maintenance of consumer privacy information through the introduction of personal data administration system.

III. Event Analysis

The Taiwan Personal Information Protection and Administration System (TPIPAS) is a professional personal data administration system established based on the provisions of the latest version of the domestic Personal Data Protection Act, in reference to the latest requirements of personal data protection by international organizations and the experience of main countries in promoting personal data administration system. In accordance with the practical requirements to protect personal data by industries, TPIPAS converted professional legal conditions into an internal personal data administration procedure to effectively assist industries to establish a complete and proper personal data administration system and to comply with the requirements of personal data legislations. With the launch of the new version of the Personal Data Protection Act, introducing TPIPAS and acquiring dp.mark are the best strategies for enterprises to lower the risk from the personal data protection law and to upgrade internal personal data administration capability.

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