

Guideline Concerning the Application of the Telecommunications Business Act to Foreign Corporations, etc. that Operate Telecommunications Businesses

The Act Partially Amending the Telecommunications Business Act and the Act on Nippon Telegraph and Telephone Corporation, etc. (Act No. 30 of 2020; hereafter referred to as the “2020 Amendment Act of the TBA”), when enforced, will strengthen the effectiveness of law enforcement of the Telecommunications Business Act (Act No. 86 of 1984; hereafter referred to as the “TBA”) for foreign corporations, etc. (i.e., corporations and organizations based abroad, and individuals with an address abroad; the same applies hereafter) that operate telecommunications businesses.

Considering the above, the Ministry of Internal Affairs and Communications (MIC) has established *the guideline concerning the application of the TBA to foreign corporations, etc. that operate telecommunications businesses* as specified below on and after the effective date of the 2020 Amendment Act of the TBA.

1. Cases where the TBA applies to foreign corporations, etc. that operate telecommunications businesses

- The TBA applies to cases where foreign corporations, etc. operate telecommunications businesses¹ to provide telecommunications services² in Japan. Furthermore, the TBA also applies to cases where foreign corporations, etc. operate telecommunications businesses to provide telecommunications services from abroad with persons in Japan.
- If it is apparent that a foreign corporation, etc. envisages providing telecommunications services from abroad with persons in Japan (including foreign visitors to Japan), the business operations of the foreign corporation, etc. fall under “cases where foreign corporations, etc. operate telecommunications businesses to provide telecommunications services from abroad with persons in Japan.” For example, in any of the following cases, it can be judged that the foreign corporation, etc. apparently envisages providing telecommunication services from abroad with persons in Japan.
 - i. A case where its service is provided in Japanese.
 - ii. A case where the payment currencies for its paid services include the Japanese yen.
 - iii. A case where advertisement, sales promotion, etc. regarding the use of its services in Japan are conducted.

¹ The term “telecommunications business” means the business involved in providing telecommunications services in order to meet the demands of other persons. (Article 2 (iv))

² The term “telecommunications service” means intermediating other persons’ communications through the use of telecommunications facilities, or other acts of providing telecommunications facilities for use in other persons’ communications. (Article 2 (iii))

2. Registration or Notification of Telecommunications Business

- If a foreign corporation, etc. intends to operate a telecommunications business described in 1., registration (Article 9) or notification (Article 16, Paragraph 1) is required pursuant to the provisions of the TBA; provided, however, excluding cases where a telecommunications business falls under the items listed in Article 164, Paragraph 1 of the TBA.
- The basic idea of the necessity for registration or notification is as shown in *Manual for Market Entry into Japanese Telecommunications Business*³. Specific examples where the registration or notification of the telecommunications business is required are shown in *Manual for Market Entry into Japanese Telecommunications Business [Supplementary Edition]*⁴.
- If a foreign corporation, etc. operates a telecommunications business without installing telecommunications line facilities in Japan, it will be a telecommunications business that requires not registration but notification.
- If it is considered that the telecommunications services provided by a foreign corporation, etc. are substantially profitable even though no fee is nominally collected for the provision of telecommunications services, the foreign corporation, etc. is deemed to be operating a telecommunications business that requires registration or notification.

3. Designation of Domestic Representative, etc.

- If a foreign corporation, etc. applies for the registration of telecommunications businesses or files notification for the same, the foreign corporation, etc. shall designate the domestic representative or the domestic agent (hereafter referred to as the “domestic representative, etc.”) and shall file its domestic representative, etc. with the Minister for Internal Affairs and Communications. If a foreign corporation, etc. replaces its domestic representative, etc., the foreign corporation, etc. shall file its new domestic representative, etc. with the Minister for Internal Affairs and Communications.
- The domestic representative, etc. shall, on behalf of the foreign corporation, etc., be required to have the authority to receive (i) notifications regarding administrative dispositions to be imposed by the Minister for Internal Affairs and Communications under the TBA, and (ii) notifications from the Minister for Internal Affairs and Communications in allowing a person who has committed an act in violation of the TBA to express its opinion before publishing its names, etc. pursuant to the provisions of Article 167-2 of the TBA.
- The domestic representative, etc. is expected to become contact points for various communications between MIC and the foreign corporation, etc. related to the provisions of the TBA.

³ https://www.soumu.go.jp/joho_tsusin/eidsystem/law01_03.html (only in Japanese)

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4. Specific Provisions of the Applicable TBA

- In principle, the specific provisions of the TBA applicable to the foreign corporation, etc. shall be the same as those applicable to the domestic corporation, etc. operating telecommunications businesses to provide the same type of telecommunications services, except for the designation of the domestic representative, etc. described in 3. For example, the main provisions specified below shall apply when providing telecommunications services that intermediate other person's communications such as e-mail service or message service from abroad without installing telecommunications line facilities in Japan.
 - Protection of Secrecy (Article 4)
For specific standards, refer to *the Guidelines for Protection of Personal Information in Telecommunications Business (MIC Notice No. 152 of 2017 with a final revision per MIC Notice No. 297 of 2017)* and the *Draft Reference Document on How to Obtain Consent*⁵.
 - Fairness in Use (Article 6)
 - Notification of Telecommunications Business (Article 16)
 - Suspension and Discontinuation of Business and the Dissolution of Corporations (Article 18)
 - Dissemination of Suspension and Discontinuation of Telecommunications Operations (Article 26-4)
For specific standards, refer to the *Guidelines for Consumer Protection Rules for the Telecommunications Business Act*.
 - Reporting on the Suspension of Telecommunications Operations and on Serious Accidents (Article 28)
For specific standards, refer to the *Guidelines for the Application of the Telecommunications Business Act and Related Regulations on Telecommunications Accidents*
 - Order to Improve Business Activities (Article 29)
For specific standards, refer to the *Draft Guidelines for Issuance of a Business Improvement Order to Prevent Hindrance in Ensuring the Secrecy of Communications*⁶.
 - Reports and Inspections (Article 166)
 - Publication of Name, Etc. of a Person Who Has Committed an Act in Violation of a Law or Regulation, Etc. (Article 167-2)

(In case of any inconsistency between the Japanese and English versions, the Japanese version shall prevail.)

⁵ The draft is in the process of being formulated, and when it is formulated, refer to the formulated document.

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