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Announcement of the Act Partially Amending the Telecommunications Business Act and the Act on Nippon Telegraph and Telephone Corporation, etc.



Announcement of the Act Partially Amending the Telecommunications Business Act and the Act on Nippon Telegraph and Telephone Corporation, etc. - Strengthening of the Effectiveness of Law Enforcement for Foreign Corporations, etc.-

1. Background and Outline of Amendment

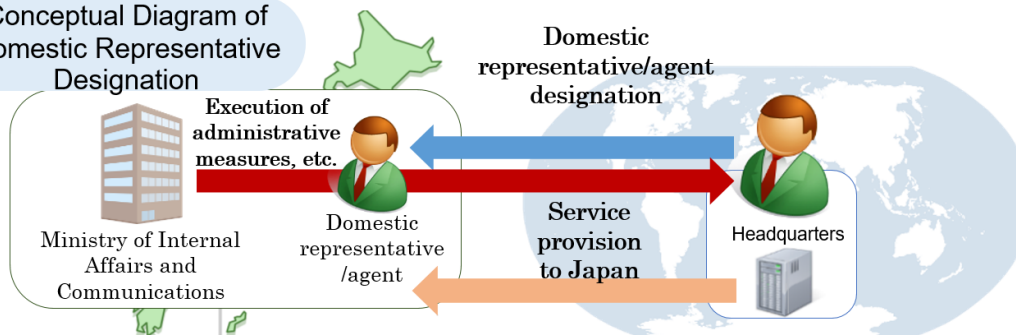
In recent years, the domestic usage of platform services provided by foreign corporations, etc. (i.e. corporations or organizations based abroad, or individuals with an address abroad) has experienced a rapid expansion. However, under the existing Telecommunications Business Act (hereafter referred to as the “TBA”), the enforcement of the Telecommunications Business Act for foreign corporations, etc. is limited. Issues such as insufficient protection of Japanese users and unfair competition among domestic and overseas businesses have become apparent.

In order to strengthen the effectiveness of law enforcement for foreign corporations, etc., MIC prepared a bill for the Act Partially Amending the Telecommunications Business Act and the Act on Nippon Telegraph and Telephone Corporation, etc. and submitted it to the Japanese 201st Diet Session. The bill was approved, and promulgated on May 22, 2020 (hereafter referred to as the “amended Act”). The amended Act will come into effect on 1 April, 2021.

The amended act develops regulations for telecommunications businesses operated by foreign corporations, etc. To be specific, it maintains articles regarding the obligation to designate the domestic representative or the domestic agent (hereafter referred to as the “domestic representative, etc.”), at the time of registration/notification. It also develops regulations in relation to the publication system* in the case of the TBA violations.

* Domestic corporations, etc. are also included in the target.

Conceptual Diagram of Domestic Representative Designation



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2. Guideline

Concerning the amended Act, MIC has established *Guideline concerning the application of the TBA to foreign corporations, etc. that operate telecommunications businesses*. The outline of the guideline is as follows.

- (1) Cases where the TBA applies to foreign corporations, etc. that operate telecommunications businesses
 - Cases where foreign corporations, etc. operate telecommunications businesses to provide telecommunications services in Japan.
 - 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, 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.
- (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.
 - The basic idea of the necessity for registration or notification is as shown in *Manual for Market Entry into Japanese Telecommunications Business*. 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]*.
- (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, etc.
 - 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.

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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.

3. For More Information

- The TBA

<http://www.japaneselawtranslation.go.jp/law/detail/?id=3576&vm=04&re=2&new=1>

- *Guideline concerning the application of the TBA to foreign corporations, etc. that operate telecommunications businesses.*

https://www.soumu.go.jp/joho_tsusin/eidsystem/law01_03_02.html