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Impact on financial institutions of regulatory reforms related to personal data

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Executive Summary



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NOTE

1) Its official name is Strategic Headquarters for the Promotion of an Advanced Information and Telecommunications Network Society.

Japan's Act on Protection of Personal Information is slated to be amended for the first time in more than 10 years to facilitate utilization of personal data while continuing to protect privacy. In addition to imposing tighter restrictions in certain areas, the amendment will also enable utilization of data without the consent of the individual to which the data pertains. The amendment is likely to have a substantial impact on financial institutions.

On June 24, 2014, the Japanese government's IT Strategic Headquarters¹⁾ issued a policy outline of proposed regulatory reforms concerning utilization of personal data (the "Policy Outline"). The Policy Outline was formulated in response to plans to promote creation of new businesses and services through utilization of big data pursuant to the Cabinet's June 2013 Declaration to Be the World's Most Advanced IT Nation. As one component of the Abe Cabinet's growth strategy, the government is focusing on measures to create new businesses and new services by facilitating utilization of personal data without sacrificing privacy protections.

This initiative to promote utilization of personal data suffered a major setback in July 2014 with the news of a large-scale leak of personal information by a list broker. While the government was preparing to implement regulatory reforms to promote utilization of personal data, public opinion ironically shifted in favor of tightening regulations on use of personal data.

Following is a discussion of the prospective regulatory reforms' impact on financial institutions from the standpoint of both business opportunities and stricter regulation.

What will be subject to stricter regulation?

The Policy Outline recommended that certain data hitherto in a gray area in terms of whether they constitute protected personal information should indeed be granted privacy protection. This change will not affect companies that have always defined personal information broadly but it will lead to tighter restrictions on companies that have been treating personal data entitled to privacy protection as non-personal information.

A duty of privacy protection is expected to definitely be imposed on information regarding individuals' physical attributes, such as fingerprints and facial recognition data. Other information that may be granted privacy protection include government-issued ID numbers (e.g., driver license numbers) and information terminal ID numbers (e.g., mobile phone serial numbers). The specific types of data that end up being protected and the type of privacy protection duty that is ultimately imposed will depend on how the amended Act on Protection of Personal Information is drafted. These issues bear continued monitoring until the amendment is enacted.

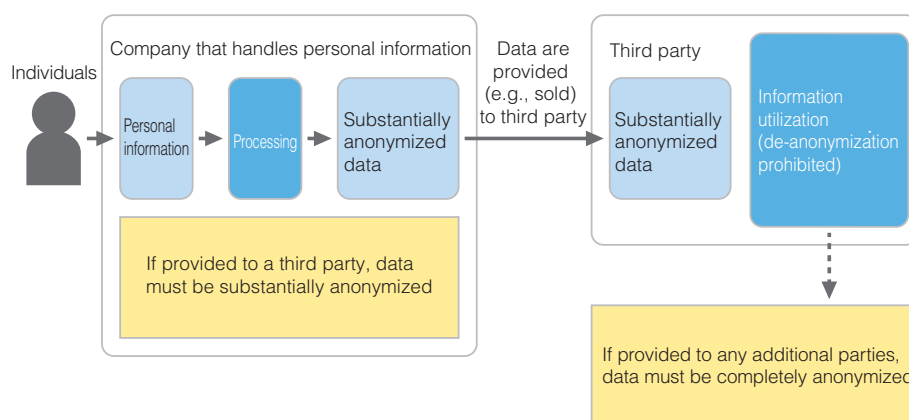
List brokers, whose business practices were designated as a matter warranting further study in the Policy Outline, are expected to be subject to stricter regulation, given the large-scale leak of personal information that came to light shortly after the Policy Outline's release. The Ministry of Economy, Trade and Industry (METI) has already issued a draft of amended guidelines²⁾ that include guidance on determining whether personal data obtained from a third party were properly collected. The forthcoming regulatory reforms are expected to go even further than METI's revised guidelines through such means as imposing penalties. Companies will be required to act with extreme care when purchasing personal information from external vendors.

2) METI solicited public comments on draft revisions to its Guidelines Targeting Economic and Industrial Sectors Pertaining to the Act on Protection of Personal Information from September 26 through October 28, 2014.

Framework enabling utilization of data without the subject's consent

The centerpiece of the forthcoming regulatory reforms is a new framework that will enable data to be utilized without the consent of the individuals to which the data pertain. The framework will enable companies to utilize personal data for various purposes and provide personal data to third parties without the subject's consent. However, as a prerequisite for such data utilization, the data will have to be substantially anonymized to render individuals unidentifiable. Companies will be required to also implement controls over their handling of such data.

Under current law, before providing personal information to a third party, companies generally must obtain the consent of the individuals to which the information pertains and inform them of the purpose for which the information will be used. However, it is currently not possible to obtain individuals' consent to use their personal data for secondary uses such as big-data businesses. Consequently, the government has decided to establish a system that will enable data to be utilized and provided to third parties without individuals' consent by instituting rules for anonymizing and handling the data, including a prohibition against de-anonymization (see Exhibit).

Exhibit: Framework for providing data to third parties without the subject's consent

Source: NRI based on Policy Outline of the Institutional Revision for Utilization of Personal Data (June 24, 2014)

The framework was designed to eliminate the risk of anonymized data being re-processed to identify the individuals to which they pertain. It will provide new opportunities for businesses that have been hesitant to utilize personal data. In particular, with regulation of the aforementioned list brokers likely to be tightened to restrict access to external personal information, this framework that will legalize utilization of external data will be highly significant. At the same time, the framework constitutes a new set of regulations for companies already using independently anonymized data in their businesses. Such companies' businesses could be adversely affected by the framework, depending on the level of anonymization that regulatory authorities decide to require.

Private-sector self-regulatory framework

As one major policy initiative, the Policy Outline recommends utilizing a voluntary private-sector program to supplement the government's basic regulatory framework. In the US, privacy protections predominantly consist of private-sector self-regulation, resulting in an environment in which personal data can be utilized more freely than in Japan. Such an environment has contributed to the rise of big-data businesses in the US. For innovation driven by personal data utilization to become an economic growth driver, it is important to create effective institutional arrangements that capitalize on the benefits of self-regulation.

Information and communication technologies are constantly evolving. Regulation by means of laws that take time to enact cannot always keep up with technological progress. Additionally, because privacy depends on context, case-by-case judgment is often called for, making it difficult to impose uniform privacy rules.

The government therefore plans to limit the content of legislation to general principles and major policies and to flesh out further details with Cabinet and ministerial orders, guidelines and private self-regulation. Such a principle-based approach, often used in the financial sector, requires accountability. For example, companies are audited by specialized independent auditors in exchange for being able to make decisions on accounting standards' applicability themselves. Specific matters likely to be subject to such principle-based treatment include data anonymization methods.

The Act on Protection of Personal Information is slated to be amended during the regular 2015 Diet session at the earliest. Some of the amendment's provisions will take effect immediately. Financial institutions that will be materially affected by the amended law are well-advised to act promptly to comply with it.

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