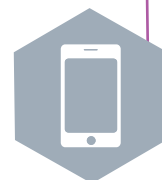


Guide on Designating a Domestic Representative in Korea

March 2019



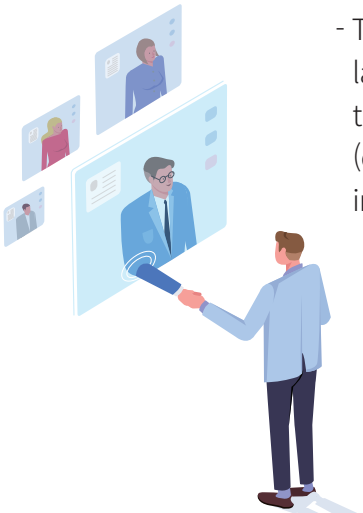
Korea Communications
Commission

KISA KOREA INTERNET &
SECURITY AGENCY

I

Background

- As the use of global online services has become more common, foreign (overseas) online service providers often process Koreans' personal information.
- Regarding foreign (or overseas) business entities engaged in providing information and communications services without an address or business office (commercial residence) in Korea :
 - Online service providers need to communicate with their Korean users without any language barriers or other difficulties in order to address their complaints related to personal information. It has also become necessary for regulators to strengthen enforcement of online service providers for infringement of personal information.
 - Therefore, the foreign (or overseas) business entities mentioned above are required by law to designate representatives residing in Korea to act on their behalf to perform the duties of a person responsible for management of personal information (commonly known as Chief Privacy Officer, or CPO), such as submitting necessary information and materials.



II

Who must designate a representative?

1. Providers of information and communications services or similar without an address or business office in Korea

- “Providers of information and communications services or similar*” (as defined in the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc., hereinafter known as the “Network Act.”) without an address or business office in Korea that process the personal information of users of their services

* Also includes persons who are provided with the personal information of users by information and communications service providers but have no address or business office in Korea

- The term “providers of information and communications services” means the telecommunications business operators prescribed in Article 2 of the Telecommunications Business and other persons who provide information or intermediate to provide information commercially by utilizing services provided by a telecommunications business operator.

※ For example, Internet shopping malls, online games, social media platforms, among others

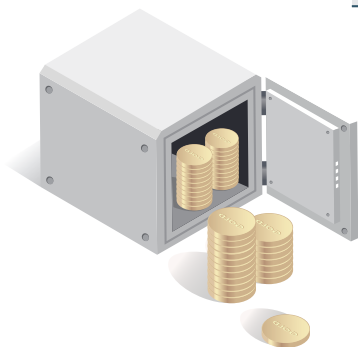
- However, the online service provider (and such a person) does not have an address or business office in Korea while providing such information and communications services in the country.

※The presence of a qualifying business office (commercial residence) is decided by whether the established office addresses user complaints related to personal information, and whether it is subject to regulatory enforcement for personal information infringement according to the purpose of the Network Act. In addition, even when the online service provider (or such a person) in question has established a separate entity in Korea, it is deemed to have “no address or business office in Korea” if the separate legal entity is not engaged in providing any information and communications services.

- The provision of information and communications services in Korea shall be determined by a number of factors, including: ▲the provision of Korean language service ▲the provision of services targeted to Korean users, and ▲the service provider in question is established in Korea as a business operator.

Example

- An online service provider may be subject to the Network Act if it has collected the personal information of a considerable number of domestic users while providing information and communications services in the Korean language, and does business by receiving advertising orders from enterprises based in Korea. The Network Act applies even if the online service provider’s server is located in another country and no separate legal entity with a similar trade name exists in Korea, nor is it registered in Korea as a value-added telecommunications business operator or similar.



2. A online service provider falling under one of the following categories:

- ① The annual revenue for the previous year (or for the previous business year, in case of a corporation) is not less than KRW 1 trillion;
 - “Revenue” shall not be limited to sales in the sector of information and telecommunications services nor sales only in Korea, but shall include the online service provider’s global revenue.
- ② The annual revenue earned in the sector of information and communications services for the previous year (or for the previous business year, in case of a corporation) is not less than KRW 10 billion
 - The annual revenue is determined by the total revenue earned by providing information and communications services in Korea. In case a number of information and communications services are provided, the sales from the respective services are added together to calculate the annual revenue.

→ The annual revenue is converted into the Korean currency by applying the average exchange rates* for the previous year(or for the previous business year, in case of a corporation).

* The average exchange rates are available at www.smbs.biz

- ③ The daily average number of users whose personal information is stored and managed is not less than one million for the immediately preceding three months, as of the end of the previous year
 - In other words, the aggregate number of users whose personal information is stored on a daily basis from October 1 to December 31 of the previous year, divided by 92 days, is one million or more.

$$\begin{array}{l} \text{The daily average number of users} \\ \text{(the number of domestic users,} \\ \text{not the number of website visitors)} \end{array} = \frac{\begin{array}{l} \text{The aggregate number of users} \\ \text{(whose personal information is stored)} \\ \text{held on a daily basis during October,} \\ \text{November, and December} \end{array}}{92(\text{days})}$$

④ An online service provider that has been required by the Korea Communications Commission (KCC) to submit relevant articles or documents for an incident where infringement of personal information has occurred or is likely to occur.

- Article 64.1 of the Network Act provides that the KCC may require an online service provider to submit relevant articles or documents in case a report or complaint on violations of the Act has been filed against the service provider in question, or the KCC has reason to believe the service provider has violated the Network Act.

III

Role of the Domestic Representative

■ To perform the duties of a person responsible for protection of personal information under Article 27 of the Network Act

▲To address complaints and receive user complaints related to personal information, and ▲to take measures for improvement immediately and submit a report thereof to the business owner or representative of the online service provider when he/she becomes aware of violations of applicable laws

※ The domestic representative is the legal deputy of the CPO, and not CPO his/herself. Thus, the domestic representative's duties may vary according to the terms of the contract between the representative and the information and communications service provider or similar.

■ To notify users and report to the relevant authorities pursuant to Article 27-3.1 of the Network Act, and give an explanation pursuant to Article 27-3.3 of the Network Act

▲To notify the user concerned and submit a report to the KCC or the Korea Internet & Security Agency (KISA) within 24 hours, unless there is a excusable cause not to do so, when he/she becomes aware of a loss, theft, or leakage of any personal information, and ▲to give an explanation of justifiable reasons to the KCC.



- To submit the relevant articles or documents related to the violations of the Network Act

▲If required to submit such articles or documents, the domestic representative in Korea shall promptly give a notice thereof to the online service provider and take the necessary action to follow the procedures required by applicable laws or, otherwise, in a swift manner.

※ The online service provider concerned shall promptly provide the necessary information required to facilitate the performance of duties by its domestic representative

IV

Domestic Representative Qualifications

- A domestic representative shall be a natural person or legal entity having an address or business office in Korea.
- While a domestic representative need not necessarily be a Korean, he/she should be able to communicate in Korean fluently in order to address consumer complaints, including Korean users' complaints related to their personal information, and submit accurate information and documents to the regulatory authorities.
- Single or multiple domestic representatives may be appointed, and a domestic representative may represent multiple overseas service providers.
 - ※ A domestic representative may also be the CPO.



V

Designating a Domestic Representative

- A domestic representative shall be appointed in writing, and the online service provider's privacy policy for users shall clearly describe ①the domestic representative's name (or the trade name and representative's name, in case of a corporation) and ②address (or the address of the place of business, in case of a corporation), phone number, and e-mail address.
- If multiple domestic representatives are appointed, the relevant information on all of the domestic representatives appointed shall be disclosed in the privacy policy.
- ※ The domestic representative's phone number shall be Korean phone number, but need not be his/her personal phone number (such as a mobile phone number). The domestic representative's contact information must be available to users in order to address complaints and provide consultations related to personal information.

VI

Administrative Fines

- If a person who is obliged to designate a domestic representative fails to do so, he/she shall be imposed an administrative fine not exceeding KRW 20 million, regardless of the number of violations.
- Concurrently, with such fine, the person may receive corrective measures to appoint a domestic representative.
- If a domestic representative violates the Network Act in relation to the performance of his/her duties, the information and communications service provider or similar shall be deemed to have violated the Network Act and be held liable.

