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Data Protection Update January 2019

As of 23 January 2019, Japan and the EU have formally adopted their reciprocal adequacy decision on each other's data protection framework. The mutual recognition creates the world's largest area of safe data flow and further business opportunities between Japan and the EU. We would like to highlight some aspects of the reciprocal adequacy decision which companies should be aware of as set forth below.

Data Transfer Japan to EU

- Additional safeguards for a transfer of personal data from Japan to a recipient in the EU, such as the consent of the data subject whose personal information is to be transferred or contractual agreements between the data exporter in Japan and the data recipient in the EU to ensure compliance with the data protection standards in Japan, are no longer required as the EU has been "whitelisted".
- Companies should however note that a transfer of personal data to a third party – whether located in Japan or abroad – still requires the consent of the data subject concerned, unless the entity to which personal information is being transferred is deemed as a so-called "joint user" of the data.
- For Japanese affiliates of European companies, it may therefore be advisable to include the European entities with which personal data from Japan, e.g. employee or customer data, shall be shared in the "purpose of use" to be informed to the data subject. The "purpose of use" may, in principle, only be amended for the future collection of information. With regard to already collected personal information the new "purpose of use" must be disclosed to the persons whose data was already collected, and their consent to the new "purpose of use" must be obtained.

Data Transfer EU to Japan

- Likewise, a transfer of personal data from the EU to a recipient in Japan will no longer require additional safeguards, such as the implementation of Standard Contractual Clauses (SCCs) or Binding Corporate Rules (BCRs), or the consent of the data subject. Whether existing SCCs should continue to be in effect in addition to the adequacy decision has to be assessed on a case by case basis depending on the contractual framework.
- Companies should nevertheless keep in mind that despite the adequacy decision any data transfer from the EU to a third party is still subject to the general requirements for a data transfer under the GDPR. As a consequence, companies will need to continue assessing whether a legal ground for the data transfer from the EU to Japan exists.
- Companies in Japan handling the data from the EU will be subject to the newly established Supplementary Rules applicable only to personal data transferred from the EU. Such Supplementary Rules obligate the recipient to fulfill certain guarantees in respect to the data received from the EU, e.g. regarding the purpose limitation of the processing and potential onward transfers of the data to a location outside of Japan. The Japanese Personal Information Protection Commission (PPC) will monitor the compliance with the Supplementary Rules and take appropriate enforcement actions, if necessary.

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