



Global Data Alliance Comments on Draft Partial Amendment of Commission Rules for the Act on the Protection of Personal Information

January 25, 2021

The Global Data Alliance¹ welcomes the opportunity to provide comments to the Personal Information Protection Committee (**PPC**) regarding the draft partial amendment of Commission Rules (**Draft Commission Rules**) for the Amended Act on the Protection of Personal Information (**APPI**), which was promulgated in June 2020.

The Global Data Alliance is a cross-industry coalition of companies, headquartered in different regions of the world, that are committed to high standards of data privacy and security. Alliance member companies rely on the ability to transfer data responsibly around the world to create jobs and make local industries more competitive.

Cross-border data transfers power innovation and growth across the globe and all sectors of the economy — from manufacturing and farming to local start-ups and service providers. Data transfers enable the digital tools and insights that are critical to enabling entrepreneurs and companies of all sizes, in every country, to create new kinds of jobs, boost efficiency, drive quality, and improve output. In fact, the importance of cross-border data flows has taken on increased importance amid the COVID19 pandemic, which has spurred individuals and companies in all industries and of all sizes to increasingly rely on technologies enabled by cross-border data flows to meet various needs including working and learning from home, remotely communicating with family and friends, and better serving customers globally. Cross-border data flows are also key for the research, development, and delivery of COVID-19 treatments and are playing a key role in vaccination efforts.

Members of the Global Data Alliance share a deep and long-standing commitment to protecting data across technologies and business models, as they recognize that today's cross-border economy depends on the trust of customers and the general public. The Global Data Alliance, therefore, supports policies that protect privacy and personal data while enabling data to move across borders. We offer the comments below to support PPC's efforts to achieve this goal.

Cross-Border Data Transfer / Commission Rules Article 11-3

It is our understanding that a business operator must provide the following information to an individual in cases where the data transfer requires obtaining the individual's consent: 1) the name of the country to which the data will be transferred; 2) information on the legal framework applicable to protect personal information in the country to which the information

¹ The Global Data Alliance (globaldataalliance.org) is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. The Alliance supports policies that help instill trust in the digital economy while safeguarding the ability to transfer data across borders and refraining from imposing data localization requirements that restrict trade. Alliance members include BSA members and American Express, Amgen, AT&T, Citi, ITB360, LEGO, Mastercard, Medtronic, Panasonic, Pfizer, Roche, United Airlines, Verizon, Visa, UDS Technology, and WD-40 Company. These companies are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, consumer goods, electronics, energy, financial services, health, supply chain, and telecommunications sectors, among others. BSA | The Software Alliance administers the Global Data Alliance.

will be transferred; and 3) the measures taken by the overseas third-party recipient to protect personal information.

These requirements may not achieve the PPC's goals of increasing an individual's understanding of how his or her personal information will be handled. The effectiveness of data security and personal information protection has less to do with where data is physically stored or processed; instead, it depends on the quality of the technologies, systems, and procedures put in place by the business operator handling the personal information and any third-party receiving the data, including the provision of robust security measures. The business operator should remain accountable over all personal data transferred, whether domestically or internationally. For example, even though a third-party recipient is headquartered in a country outside of the EU, it may have chosen to apply the EU's data protection laws – which Japan has recognized as adequate – to all data it processes, regardless of where the data has come from or where the data is stored or processed. As such, it matters less where the personal information is stored and processed, or even where a third-party processor is headquartered, than the policies and procedures the processor adopts and implements to protect the data. Therefore, we urge the PPC to guide individuals to understand the importance of how companies, including overseas companies, protect personal information to avoid the misconception that higher security risks are associated with third-party recipients located in foreign countries compared to domestic handling of personal information.

However, given the PPC's decision to impose this requirement on cross-border data transfer, we respectfully request that the definition of "foreign country" for the purpose of Article 11-3 be clarified to refer to the country in which the third-party receiving the data is headquartered. This is based on previous discussions with PPC, where we understand that, for the purposes of these Draft Commission Rules, "foreign country" is the country in which the third-party receiving the data is headquartered, and not the country in which data centers used to physically store or process data are located. We therefore recommend the Draft Commission Rules clearly define "foreign country" in this way to avoid confusion.

Cross-Border Data Transfer / Commission Rules Article 11-4

Based on Article 24 (3) of the amended APPI, for the cross-border transfer of personal data based on the establishment of a system conforming to standards prescribed by rules of the PPC, Article 11-4 of the Draft Commission Rules stipulates that business operators should periodically confirm that the overseas third-party recipient continues to take measures equivalent to those taken by business operators in Japan and the data protection system in the "foreign country" does not unduly impact the implementation of such data protection measures. This will ensure that the transferred personal information continues to be protected by equivalent measures by a third-party recipient in a foreign country.

It is our understanding, based on discussions with the PPC, that this requirement must be satisfied once a year. We support the PPC taking into consideration this reasonable approach and would further recommend that the Draft Commission Rules clarify this point in the upcoming Guidelines concerning the Act on the Protection of Personal Information ("**Guidelines**"). We also recommend the upcoming Guidelines clearly specify what type of reporting will be considered appropriate for compliance with this requirement.

Conclusion

The Global Data Alliance appreciates the opportunity to comment on the draft Commission Rules. We hope that our recommendation will be useful as you continue to refine the Rules and prepare Guidelines to provide further clarity on the new requirements. We appreciate PPC's taking steps to update and involve a wide range of stakeholders during the development of implementation rules and look forward to continuing the conversation in the

future on the topic. Please let us know if you have any questions or would like to discuss comments in more details.