



Japan's Telecommunications Business Act to be Amended: What to Know

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In May 2020, the text of the most recent amendment (Amendment) to the Japanese Telecommunications Business Act (the Act) was published. This Amendment was passed by the Japanese Diet and is expected to become effective no later than Spring 2021. The primary purpose of the Amendment is to strengthen the effectiveness of enforcement measures under the Act vis-à-vis foreign telecommunications business operators and groups, as well as individuals domiciled in foreign countries (collectively Foreign Operators).

Since the Amendment imposes several new obligations on Foreign Operators which were not previously set forth in the initial version of the Act, the Amendment will have a significant impact on Foreign Operators active in Japan and on Japanese corporations (Domestic Operators) that maintain business relationships with them. Please see below for the background of the Act and the Amendment and how this will affect your business operations.

Background

Currently, the Act broadly defines “telecommunications business” as the provision of telecommunications services¹ in order to satisfy the communications needs of third parties. The Act requires business operators who operate telecommunications businesses (Telecommunication Carriers) in Japan to register or file an advance notification with the Minister of Internal Affairs and Communications (the MIC) prior to commencing operations. The Act also imposes several other obligations including certain disclosure and reporting obligations.

In recent years, the number of Foreign Operators that operate telecommunications businesses without maintaining an establishment in Japan has been rapidly increasing. Under the current Act, there is no clear provision that addresses whether such Foreign Operators are subject to regulation under the Act or by the MIC. This silence and lack of clarity has been construed to mean that Foreign Operators are not subject to regulation unless they have a subsidiary or branch office presence in Japan. As a result, the MIC has not been able to enforce the Act against Foreign Operators.. It has even been noted locally that ,as a result of this enforcement gap, the Act does not provide enough protection to Japanese users utilizing the telecommunications services of Foreign Operators – leading to unfair competition between Domestic Operators and Foreign Operators and limited recourse for harmed Japanese users against these Foreign Operators. In addition, there have been several massive data leaks and large scale communications failures involving telecommunications services provided by Foreign Operators. In response, Japanese lawmakers have drafted the Amendment in order to expand its scope of jurisdiction to expressly include Foreign Operators.

Summary of the Amendment

As discussed above, the Amendment primary purpose is to apply the terms of the Act to Foreign Operators and to

strengthen the Act's enforcement mechanisms in respect of the same. The primary changes make explicit that (i) Foreign Operators which intend to operate telecommunications businesses in Japan must register as Telecommunication Carriers with the MIC or submit an advance notification to the MIC (as is required of Domestic Operators); and (ii) such Foreign Operators are subject to the same obligations as those imposed on Domestic Operators under the current Act. In addition, the Amendment also introduces a system that publicly discloses the names of entities that have violated their obligations under the Act (this applies to both Domestic Operators and Foreign Operators).

Registration/Notification Requirements

Under the current Act, a person that intends to operate a telecommunications business must register as a Telecommunications Carrier with the MIC or file an advance notification of its commencement of telecommunications business with the MIC. Whether full registration or only advance notification is required depends on the scale and the scope of the relevant telecommunications line facilities.

Under the current Act, Foreign Operators operating in Japan are not considered to be subject to the Act if they do not maintain a subsidiary or branch in Japan. The Amendment, however, now makes it clear that Foreign Operators will need to be registered as "Telecommunication Carriers" with the MIC or notify the MIC in advance of operating a telecommunications business in the same manner as Domestic Operators as of Spring 2021 (this specific citation appears in Article 10, paragraph 1, item 2; and Article 16 paragraph 1 item 2 of the amended Act). In addition, Foreign Operators must now appoint a representative or agent in Japan (Representative) when submitting a registration application or advance notification to the MIC. The Representative is not required to have Japanese nationality, but must be domiciled in Japan.

Obligations to be Imposed on Foreign Operators

The Amendment stipulates that Foreign Operators operating telecommunications businesses in Japan must comply with the Act in the same manner as Domestic Operators. Examples of such obligations include the following (among others):

- (i) Must protect the secrecy of communications handled (Article 4 of the amended Act);
- (ii) Must not engage in unfair and discriminatory treatment with regard to the provision of telecommunications services (Article 6 of the amended Act);
- (iii) Must be registered with or file advance notification to the MIC for the operation of a telecommunications business (Article 9 and Article 16 of the amended Act);
- (iv) Must promptly notify the MIC in case of suspension, discontinuation of business or dissolution (Article 18 of the amended Act);
- (v) Must promptly notify the MIC if telecommunications services are suspended due to natural disasters, accidents or if any another emergency occurs which impacts the provision of telecommunications services (Article 28 of the amended Act);
- (vi) Must notify the MIC without delay if the information submitted to the MIC as part of the registration or notification process has changed (Article 13 and 16 of the amended Act); and
- (vii) Must prepare an annual report on its business for each business year and submit the same to the MIC in accordance with the Telecommunications Business Report Ordinance.

In addition to the above, the Amendment stipulates that Foreign Operators will be subject to administrative orders to correct and improve business activities, and that the MIC may impose punishments in case of any violations. The Amendment now also includes language to clarify that Foreign Operators (and Domestic Operators) will also be punished if they violate any part of the Act. For example, if a person (regardless of whether such person is a Foreign Operator or Domestic Operator) operates a telecommunications business without proper registration, it will be punished by imprisonment for a term of not more than three (3) years or a fine of not more than JPY2,000,000 (or both).

In addition, if any representative of a corporation, agent, employee or other worker has committed a violation of the Act in connection with the business' operations, the company running the business may itself be subject to a fine on top of any punishment(s) administered by the authorities on the relevant individuals. For example, where there is a violation in respect of the obligation to register, the non-compliant business can be fined up to JPY2,000,000 in addition to any punishments levied against the relevant individuals who may have been directly responsible for the violation(s).

Publication of Violators' Identification Details

The Amendment also introduces a system that permits the MIC to publish the names of Telecommunication Carriers (both Domestic Operators and Foreign Operators) that have violated the Act or any related orders/amendments.

Implications for Business Operators

Following enactment of the Amendment, Foreign Operators that offer telecommunications services in Japan will be treated identically to Domestic Operators under the Act. This will have a significant impact on Foreign Operators if they have not yet taken measures to comply with the terms of the Amendment.

Once the Amendment becomes effective in Spring 2021, Foreign Operators undertaking telecommunications businesses in Japan will need to appoint a natural person as its Representative and register or submit a notification to the MIC. If a Foreign Operator has a subsidiary or a branch in Japan, the Representative can be one of its employees in Japan. On the other hand, if a Foreign Operator does not have any physical presence in Japan, it will still need to appoint a local Representative who is domiciled in Japan. (Please note that Foreign Operators do not need to establish a branch or subsidiary in Japan in order to satisfy this requirement, but still need a local Representative physically located in Japan for this purpose.)

Conclusion

The Amendment plainly states that Foreign Operators are subject to full regulation under the Act and will now be punished if they violate the Act (along with the relevant individuals directly responsible for any violations). Further, the MIC can also publicly disclose the names and other details of any such violators. Such punishment and publication of information could negatively affect the reputation of a Foreign Operator and will likely have a negative impact on business operations in Japan. Accordingly, Foreign Operators and Domestic Operators should pay careful attention to obligations under the Act and start to prepare themselves now.

Please contact the authors of this article or your usual DLA Piper contact for more information on how this Amendment may affect you and your telecommunications business in Japan.

¹ Pursuant to the Act, the "provision of telecommunications services" means the intermediating of communications of third parties through the use of telecommunication facilities, or other actions related to the provision of telecommunications facilities for use in communications between third parties

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