

**Global Data Alliance Comments on the
Personal Information Protection Act Draft Enforcement Decree**

Submitted Electronically to the Personal Information Protection Commission

The Global Data Alliance¹ (GDA) welcomes the opportunity to provide our comments on the Draft Enforcement Decree to the recently amended Personal Information Protection Act (**Draft Decree** and **PIPA** respectively).

I. Introduction

The Global Data Alliance is a cross-industry coalition of companies that are committed to high standards of data privacy and security and that rely on the ability to transfer data responsibly around the world.

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. The seamless transfer of data across international borders enables the deployment of modern and emerging technologies and services that underpin the economy, across all sectors and at the local, national, and international level. This includes technologies and services enabled by data transfers, such as AI-related data analytics and machine learning technologies, as well as cloud computing, blockchain, and new privacy-enhancing technologies.

These technologies and services, which are often accessed across borders or rely on data transferred across borders (or both), support many important economic activities and priorities, including remote work and virtual collaboration, distance education, telemedicine, cybersecurity, fraud monitoring and prevention, anti-money laundering, investigation of dangerous counterfeit products, and a broad range of other activities relating to the protection of health, privacy, security, and intellectual property.

II. Recommendations regarding facilitation of cross-border data transfers

Our comments are focused on the cross-border data transfers aspect of the PIPA amendments and the Draft Decree. The GDA appreciates that the PIPA amendments have established additional legal bases for the overseas transfer of personal information. Notably, under Article 28-8 of the amended PIPA, cross-border transfers of personal information without consent are permitted if the overseas recipient to whom the data is transferred has obtained a data protection certification by the PIPC OR if the overseas recipient is a country recognised by the PIPC as having an appropriate level of personal data protection. To implement this obligation, Article 29-12 of the Draft Decree sets out that a “Specialized Committee for Overseas Transfer of Personal Information” (**Committee**) will review policies for the overseas transfer of personal information.

GDA recommends that the Committee be allowed under the Draft Decree to recommend the use of other third-party certification processes and data transfer mechanisms, such as intra-corporate binding rules, international trustmarks and regional certifications, which can help create more flexibility in supporting cross-border data transfers. These mechanisms are incorporated in other global data protection frameworks to promote cross-border data flows, including the Global and APEC Cross Border Privacy Rules (**CBPR**) of which Korea is a participant, the European Union’s General Data Protection Regulation (**GDPR**), and Japan’s Act on the Protection of Personal Information. For example, the Draft Decree could allow the Committee to recommend the use of the Global CBPR certification as a certification that would allow the transfer of personal information across borders without the need to obtain consent from the data subject.

Enabling personal information controllers to use different mechanisms to transfer personal information across international borders affords businesses the flexibility to determine the mechanisms that will be most optimal and relevant for them. In contrast, requiring multiple certifications or certifications that are market-specific will create significant burdens for both Korean and non-Korean businesses delivering global services.

Relatedly, the GDA notes that the PIPA amendments grant the PIPC authority to order a suspension of the transfer of personal information (**suspension order**) if: (i) such transfer takes place or is expected to take place in a manner that violates the PIPA; or (ii) the recipient, country or international organisation receiving the personal data does not provide adequate protection vis-à-vis what is required under the PIPA.

The GDA appreciates that the Draft Decree has set out the factors that PIPC should consider before issuing a suspension order. These factors set out clear guidelines for when such a power can be invoked. However, while the suspension order may be effective in preventing *future* transfers of personal information when there is a PIPA violation, it is difficult to see how it would work in respect of an *ongoing* transfer, given the speed of data transfers. **We would be grateful for further details on how the suspension of an *ongoing* transfer would work in practice.**

III. Conclusion

GDA recommends that the Committee be allowed under the Draft Decree to recommend the use of other third-party certification processes and data transfer mechanisms. A forward-leaning policy on cross-border data transfers is a particularly effective tool to aid policymaker efforts to drive innovation, increase employment, and create other economic and societal benefits for Korean government agencies, as well as Korean businesses, workers, and consumers.

Sincerely,

Joseph P. Whitlock
Executive Director
Global Data Alliance
josephw@bsa.org

¹ The Global Data Alliance 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 are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, consumer goods, electronics, financial services, health, media and entertainment, natural resources, supply chain, and telecommunications sectors, among others. BSA | The Software Alliance administers the Global Data Alliance. For more information on the Global Data Alliance, please see: <https://www.globaldataalliance.org>