



TMI Associates

A decorative graphic element consisting of a bright blue light source at the top left, with a glowing arc that curves downwards and to the right, ending in a small blue dot.

Data Protection in Japan in a post GDPR World

ARQIS Foreign Law Office
Foreign Law Joint Enterprise with TMI Associates

DÜSSELDORF – MÜNCHEN – TOKIO

Agenda

- I. Introduction
- II. Application of the Japanese Data Protection Act
- III. Data Processing (Collection, Use and Transfer)
 - a) Purpose of Use
 - b) Transfer of Data
- IV. Compliance Obligations
- V. Legal Consequences of Data Breaches and Violations

I. Introduction



- **Issue: Which data protection law is applicable?**
 - **Japan:** The Act on Protection of Personal Information (APPI) (last amendment effective since 30 May 2017) applies to operators **in Japan** and to operators **located outside of Japan** which provide goods or services to individuals and entities in Japan and which process their personal information
 - **EU:** The General Data Protection Regulation 2016/679 (since 25 May 2018) and in addition the respective national data protection laws

II. Application – Data Processors

▪ Data Processor – Scope of Application:

➤ No Threshold

- ✓ If any personal information is handled by a business, the APPI will be applicable!

Measures to Take

- Confirm whether personal information is handled and if a privacy policy on the handling has been enacted.
- If not yet implemented, establish a privacy policy, including the purpose of use.

II. Application – Data Definition

▪ General Personal Information:

- Any information (containing numbers, symbols and codes) about a living individual which can identify the specific individual by name, date of birth or other description contained in such information

▪ Sensitive Personal Information:

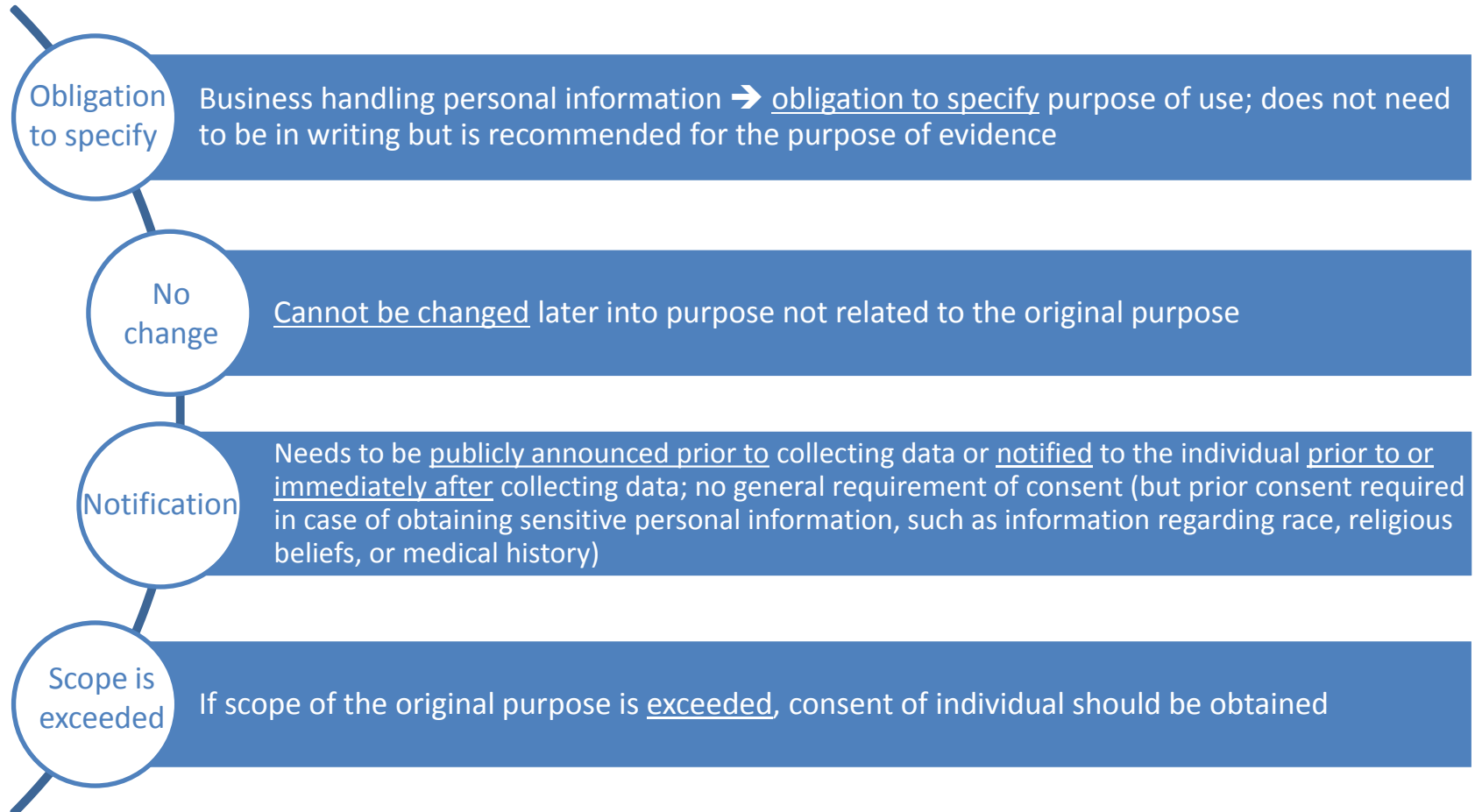
- Any information that might cause the person to be discriminated against, e.g. medical history, criminal record, race, social status, beliefs, crimes a person has been a victim of, etc.
- Stricter standards for handling, such as express consent for handling

II. Application – Data Definition

What data are personal information?

Type of Information	In principle constitutes Personal Information
Name	✓
Postal address	✓
E-Mail address	✓
IP address	✓
GPS location information	✓
Image	✓
Fingerprint	✓
DNA	✓

III. Data Processing – Purpose of Use



III. Data Processing – Purpose of Use

Sample: Purpose of collecting personal information

Personal information obtained from customers will be used for the following purposes:

- (1) Reservations, ticket sales, check-in, airport services, and in-flight services with regard to air transport services
- (2) Reservations, ticket sales, check-in, and airport services for interline transportation, joint acceptance of carriage, code share, successive and consigned carriage
- (3) Service provisions for ANA Mileage Club members
- (4) Guidance, provision, and management of other services and products offered by ANA
- (5) All operations incidental or related to the above(1)-(4)
- (6) Implementation of questionnaires concerning service and products, etc., offered by ANA
- (7) Development of new services and products
- (8) Guidance, operation, management and information provision for various events and campaigns
- (9) Notification of services and products offered by ANA
- (10) Guidance, operation, management and notification of services, products, events and campaigns of ANA Group companies and partner companies
- (11) Response to inquiries and requests

Source: www.ana.co.jp/www/japan/e/local/common/aboutana/legal

III. Data Processing – Data Transfer



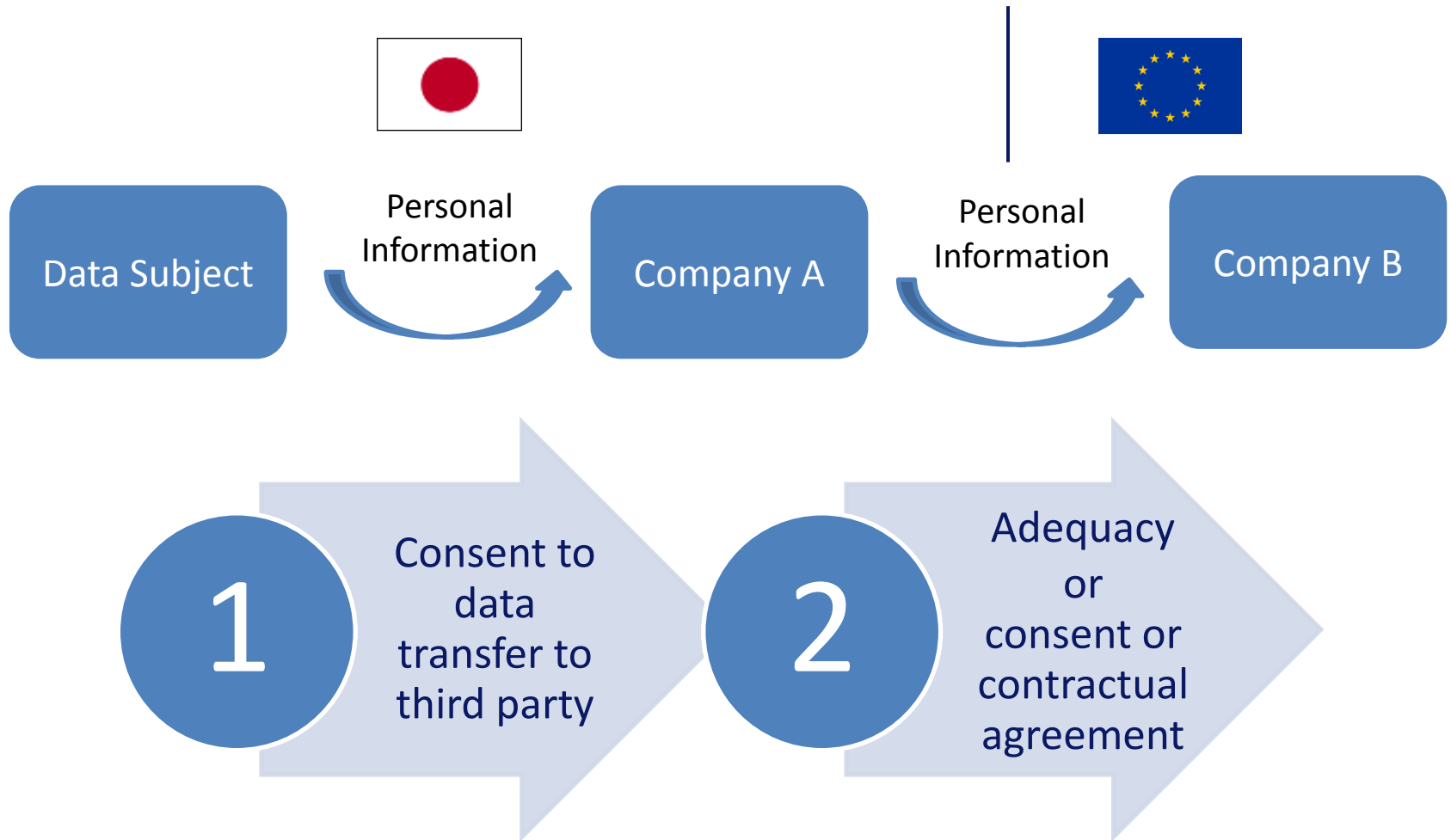
- Any transfer of personal information to third parties requires in principle the consent of the data subject (opt-in) unless an exception applies
 - No specification in the APPI regarding means of consent, but recommended to obtain in writing or as online confirmation (“check the box”)
 - Exceptions e.g. if transfer is required for life or safety of an individual or required by laws or ordinances or transfer of anonymous data
 - The following Parties are not Third Parties:
 - ✓ Outsourced Service Providers, Succeeding Legal Entities, Joint Users

III. Data Processing – Data Transfer (Sample Joint Use)

Scope of Data Sharing	ANA HOLDINGS INC.	Air Japan Co., Ltd ANA WINGS Co., Ltd.	ANA Sales Co., Ltd. companies
Purpose of use by the user	(1) For development of new services and products, etc. (2) For notification of new products and services by direct mail, etc. (3) For delivery and transfer to relevant company in the event of an inquiry, application for use or other request from a customer regarding products and services provided by ANA Group companies. (4) For appropriate and smooth fulfillment of other transactions with customers, etc.	Provision of air transportation services	Provision of information required for tours, hotels, and other air travel services and related operations
Personal information items to be shared	ANA Mileage Club membership number, customer name, address, telephone and fax numbers, email address, business contact (name of company, department, title, address, telephone and fax numbers), mailing address, member card type, member service qualification, membership area, mileage status, credit card number and expiration date, need for wheelchair and other special arrangements, flight reservation and cancelation information, boarding status, etc.		ANA Mileage Club membership number, customer name, address, telephone and fax numbers, email address, business contact (name of company, department, title, address, telephone and fax numbers), mailing address, member card type, member service qualification, membership area, mileage status, credit card number and expiration date, need for wheelchair and other special arrangements, etc.
Party responsible for management of personal information	All Nippon Airways Co., Ltd.		

Source: www.ana.co.jp/www/japan/e/local/common/aboutana/legal

III. Data Processing – International Transfer



III. Data Processing – International Transfer

Transfers between EU and Japan: Status quo

- The EU and Japan successfully concluded their talks on reciprocal adequacy concerning each other's level of data protection on 17 July 2018.
- The EU Commission launched the adoption of its adequacy decision on 5 September 2018.
- Expected to be adopted sometime in the last quarter of 2018.
- In parallel, Japan will finalize the adequacy finding on their side.

III. Data Processing – International Transfer



The GDPR may be applicable in addition to the Japanese APPI!

Application of the GDPR for entities outside the EU if data processing takes place:

- in the context of an establishment of a controller or a processor in the EU;
- relates to the offering of goods or services to individuals in the EU;
- relates to the monitoring of the behavior of individuals in the EU.

III. Data Processing – Rights of Data Subject

- a) Disclosure of stored personal information concerning: (on request)
 - Name of business handling personal information
 - Purpose of use
 - Procedure of gaining access to, correction of and suspension of the personal information
 - Contact information for complaints concerning handling of personal information
 - Charge for expenses of disclosure allowed
- b) Correction or deletion of incorrect personal information (on request)
- c) Suspension of use or deletion of personal information, only if: (on request)
 - Personal information was used exceeding the purpose of use or transferred without prior consent or
 - Personal information was acquired by fraud or other unfair means
- d) Right to sue after two weeks if company does not comply with above requests

Measures to Take

Establish structures, processes and responsibilities to deal with requests of data subjects in order to react in time

IV. Compliance Obligations

Systematic, Physical and Technical Data Security Control

- ✓ Designate a person who protects and controls personal information (Chief Privacy Officer, not mandatory but recommended!)
- ✓ Maintain records of access to personal information, limit access etc.

Supervision of Employees

- ✓ Increase awareness and knowledge by providing education and training regarding personal Information, etc.

Supervision of Service Providers

- ✓ Conclude agreement on handling personal information or include such provisions in distribution agreement, etc.

V. Consequences in Case of Violation

- Data Protection Law Penal Provisions
 - Administrative order to submit report („*hōkoku*“)
 - Administrative advice (“*shido*” and „*jogen*“)
 - Administrative recommendation („*kankoku*“)
 - Administrative order („*meirei*“)

 - Direct enforcement by Commission: Imprisonment for up to 1 year or a fine of up to JPY 500,000 for data theft or for providing the data for illicit gain (wrongful) (under GDPR up to 4% of the total worldwide annual turnover or up to 20 million Euro, whichever is higher)

 - If the disclosing party is a legal entity, the relevant officers, representatives, or managers responsible for the disclosure are subject to the penalty, and the legal entity is subject to a fine.

- Damage claims pursuant to civil law

- Practical consequences regarding loss of credibility and reputation

V. Consequences in Case of Violation

Liability for Damages

- In case of leakage of personal information, precedents indicate:

	per data
❑ TBC Case (2002)	JPY 30,000
❑ Mitsubishi UFJ Securities Case (2009)	JPY 10,000
❑ Resident Register Information of Uji City Case (1999)	JPY 10,000
❑ Benesse Case (2014)	JPY 500
➤ However, for 35 million persons	
❑ Yahoo BB Case (2004)	JPY 500
➤ However, for 4.5 million persons	

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