Overview: Act on the Protection of Specially Designated Secrets (SDS)

Designation of SDS

1. The Head of an Administrative Organ shall designate, as SDS, (1) information concerning the matters set forth in the Appended Table, (2) which is publicly undisclosed, and (3) which if disclosed without authorization, has the risk of causing severe damage to Japan’s national security and therefore which is particularly required to be kept secret.

<table>
<thead>
<tr>
<th>Item (i) Defense</th>
<th>Item (ii) Diplomacy</th>
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</thead>
<tbody>
<tr>
<td>(a) operation of the Self-Defense Forces or assessments, plans or studies relevant thereto</td>
<td>(a) policies or contents of negotiations or cooperation with a government of a foreign country or an international organization which are important to national security, such as the protection of the lives and bodies of citizens or maintaining territorial integrity</td>
</tr>
<tr>
<td>(b) signal information, image information and other important information collected in connection with defense</td>
<td>(b) prohibition on the import or export of goods or other measures that Japan implements for national security or the policies thereof</td>
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<tr>
<td>(c) collection and coordination of the information set forth in (b) or the capacity thereof</td>
<td>(c) important information pertaining to the protection of the lives and bodies of the citizens, maintaining territorial integrity or the peace and security of the international community or information that requires protection based on a treaty or other international agreement, which has been collected in connection with national security</td>
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<tr>
<td>(d) assessments, plans or studies relevant to the defense capability build-up</td>
<td>(d) collection and coordination of the information set forth in (c) or the capacity thereof</td>
</tr>
<tr>
<td>(e) type or quantity of weapons, ammunition, aircraft and other goods provided for use in defense</td>
<td>(e) cryptography used in communications between the Ministry of Foreign Affairs and overseas diplomatic establishments and other diplomatic purposes</td>
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<tr>
<td>(f) structure of communications network or means of communications used for defense</td>
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<tr>
<td>(g) cryptography for defense use</td>
<td></td>
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<tr>
<td>(h) specifications, performance or method of use of weapons, ammunition, aircraft and other objects used for defense or of those in the research and development stage</td>
<td></td>
</tr>
<tr>
<td>(i) methods of production, inspection, repair or test of weapons, ammunition, aircraft and other objects used for defense or of those in the research and development stage</td>
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<tr>
<td>(j) design, performance or internal use of facilities used for defense</td>
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</tbody>
</table>

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<tr>
<th>Item (iii) Prevention of Specified Harmful Activities (e.g. Counterintelligence)</th>
<th>Item (iv) Prevention of Terrorism</th>
</tr>
</thead>
<tbody>
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<td>(a) measures for Prevention of Specified Harmful Activities or plans or studies relevant thereto</td>
<td>(a) measures for Prevention of Terrorist Activities or plans or studies relevant thereto</td>
</tr>
<tr>
<td>(b) important information pertaining to the protection of the lives and bodies of citizens or information from a government of a foreign country or an international organization, which has been connection with the Prevention of Specified Harmful Activities</td>
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<td>(c) collection and coordination of the information set forth in (b) or the capacity thereof</td>
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<tr>
<td>(d) cryptography used in the Prevention of Specified Harmful Activities</td>
<td>(d) cryptography used in the Prevention of Terrorist Activities</td>
</tr>
</tbody>
</table>

2. The Head of an Administrative Organ shall specify the effective period of designation not exceeding 5 years (renewable) and terminate the designation promptly even before the expiration of the effective period when the information no longer meets the requirements for designation.

3. The effective period of designation shall not exceed 30 years in total unless the Head of the Administrative Organ obtains the approval of the Cabinet by indicating the reasons for the extension of the term in order to ensure the safety of Japan and its citizens. Even in this case, the Head shall not extend the effective period when it exceeds 60 years in total except for such cases as involving information on cryptography and human intelligence sources.

4. The Head of an Administrative Organ shall take necessary measures to protect SDS including determining the range of officials who handle SDS and making, as a SDS, the document which records SDS.
1. **Restriction on persons who handle SDS**

Handling SDS shall be limited to government personnel, employees of eligible contractors and prefectural police officers who, in the Security Clearance Assessment, have been found to have no risk of unauthorized disclosure of SDS.

* Heads of Administrative Organs, Ministers of State, Deputy Chief Cabinet Secretaries, Special Advisors to the Prime Minister, States Ministers, Parliamentary Vice-Ministers and other persons who are specified by the Cabinet Order in consideration of the nature of their duties, etc. shall not be required to undergo the security clearance process.

** Those receiving SDS for the need of the public interest shall not be required to undergo the security clearance process.

2. **Conductor**

Heads of administrative organs (or Chiefs of Police)

3. **Person subject to Assessment**

Those who are expected to handle SDS in duty among government personnel, employees of eligible contractors or prefectural police officers

4. **Matters for Investigation**

| (1) Relationship with any specified harmful activities and terrorist activities | (5) Mental health |
| (2) Criminal and disciplinary records | (6) Abuse of alcohol |
| (3) Records of improper conduct in connection with the handling of information | (7) Financial records including credit standing |
| (4) Abuse and the influence of drugs | |

* With respect to examinations regarding (1), the scope of examination into examinees’ relatives (spouses, parents, children and siblings, as well as the spouses’ parents and children) and cohabitants shall be limited to name, date of birth, nationality and address.

5. **Procedures**

| Obtain examinees’ consent | Verify whether the examinees have risk of unauthorized disclosure of SDS | Notify the examinees of the results | Respond to the examinees’ complaints on the assessment |
| To the extent necessary for conducting the examination, (i) Ask questions to the examinees and those concerned including their supervisors and colleagues; (ii) Request that examinees submit materials; (iii) Make inquiries to public or private organizations, etc. |

6. **Restriction on Use and Provision of Information Obtained in the Procedures for Any Other Purposes**

(1) Refusal to undergo the security clearance assessment
(2) Results of the security clearance assessment
(3) Any other personal information acquired in the course of conducting the process shall not be used or provided for any other purposes except for cases where the examinees are alleged to warrant a disciplinary punishment under the National Public Service Act, etc.
Overview: Act on the Protection of Specially Designated Secrets (SDS)

Provision of SDS

1 Provision of SDS to Other Administrative Organs due to Necessity for Japan’s National Security

(1) The two ministries shall consult with each other on the scope of officials handling SDS and other necessary measures to protect SDS.

(2) Provision of SDS due to necessity for Japan’s national security

* The Commissioner-General of the National Police Agency shall, when providing prefectural police with SDS, give instructions to the recipient police on necessary measures to protect SDS.

(3) Head of Ministry B shall take necessary measures to protect SDS and assign its officials to handle SDS.

2 Provision of SDS to Eligible Contractors based on Special Necessity for Japan’s National Security

(1) Contracts shall have provisions for the scope of employees handling SDS and other necessary measures to protect SDS.

(2) Provision of SDS due to necessity for Japan’s national security

(3) Contractors shall take necessary measures to protect SDS and assign its authorized employees to handle SDS.

3 Other Cases of SDS Provision for the Sake of the Public Interest, etc.

(1) Provision of SDS to foreign governments or international organizations

→ when measures necessary for ensuring the protection of SDS are taken

(2) Provision of SDS to undisclosed reviews or research by the Diet

→ when ① measures specified by the Diet pursuant to Article 10 of the Supplementary Provisions are taken

② the head of the providing administrative organ confirms such provision would not cause severe damage to Japan’s national security

(3) Criminal investigations and other activities for the sake of special public interests

→ when ① measures necessary for ensuring the protection of SDS are taken

② (same as above ②)

(4) Protection of SDS to courts in accordance with Paragraph 6, Article 223 of the Code of Civil Procedure, or to review boards for examinations in accordance with Paragraph 1, Article 9 of the Act on the Establishment of the Information Disclosure and Personal Information Protection Review Board

→ when SDS are presented under so-called “in-camera” procedure
Penalty for Unauthorized Disclosure of SDS, etc.

1. Unauthorized disclosure of SDS shall be punished when intentionally or negligently committed by:
   (1) Those who are engaged in the duty of handling SDS
       Intentional: Imprisonment for not more than 10 years
       By negligence: Imprisonment for not more than 2 years or fine of not more than 500,000 yen
   (2) Those who have come to know SDS in the course of performing the duty for which the SDS was provided
       Intentional: Imprisonment for not more than 5 years
       By negligence: Imprisonment for not more than 1 year or fine of not more than 300,000 yen

2. Acquisition of SDS through the following acts to promote the interests of a foreign country, etc. shall be punished by imprisonment for not more than 10 years:
   (1) Deceiving, assaulting or intimidating a person
   (2) Theft of destruction of property
   (3) Trespassing on a facility
   (4) Interception of wired communications
   (5) Unauthorized computer access
   (6) Any other act excluding (2) to (5) that undermines control of SDS holders

3. Those who attempt, conspire to effect, induce or incite intentional disclosure or acquisition of SDS through the acts listed above shall be punished.

Interpretation and Application of This Act

1. When this act is applied, its interpretation must not be expanded to unfairly violate the fundamental human rights of citizens, and due consideration must be paid to the freedom of news reporting or news coverage, which contributes to guaranteeing the citizens’ right to know.

2. The act of news coverage by persons engaged in publishing or news reporting shall be treated as an act in the pursuit of lawful business as long as it has the sole aim of furthering the public interest and is not found to have been done in violation of laws or regulations or through the use of extremely unjustifiable means.
**Diet**

Board of Oversight and Review of SDS
[Closed meeting]
(Comprised of 8 members in each Board)

Submit annual report on the implementation of the act with the opinions of the Council for Protection of Information

Monitor continuously government operation of the system for the protection of SDS

**Government**

Prime Minister

Minister in charge of the System for the Protection of SDS

Give opinions

Cabinet Committee for Protection and Oversight

Chair by the Minister in charge of the System of SDS and comprised mainly of Administrative Vice-Ministers, etc. of Administrative Organs

Control and supervise administrative branches based on the Implementation Standards

Minister in charge of the Verification and Oversight for ensuring appropriateness of designation of SDS, etc.

**Council for Protection of Information**

Comprised of experts on information protection, information disclosure and management of public record, etc.

**Cabinet**

⇒ Planning and general coordination regarding basic policy of the act and Implementation Standards

**Cabinet office**

Independent Public Records Management Secretary

Information Security Oversight Office

Verify and oversee designation and termination of SDS as well as management of administrative documents which record SDS

**Administrative Organs**

Hear opinions for formulation or revision of Implementation Standards and annual report on the implementation etc.