

Privacy Culture and Data Protection Laws in Japan

Introduction

- Thank you chairman. I am Masao HORIBE, Chairman of the Personal Information Protection Commission, Japan.
- First of all, I would like to express my sincere gratitude to the PDPC (Hong Kong DPA, Commissioner Stephen Kai-yi Wong) as the host, and to all other people for giving us this excellent opportunity. The PPC, as an official member of the ICDPPC, is honored to introduce the Japanese privacy culture and data protection system before distinguished guests and participants of this conference.
- I have been involved in studying the legislation on the protection of personal information in Japan for more than a half century. Looking back on legislative measures taken until today, none of them had been an easy one.

History of legislation on the protection of personal information in Japan

- The first incident that accelerated discussion of

privacy in Japan was a lawsuit against a popular novel titled “After the Banquet” , which was written by Yukio Mishima in 1960. In the ruling on the case in 1964, the Tokyo District Court recognized privacy as a right to be protected under the Japanese law for the first time in history.

- Due to this court decision and many other backgrounds, the Japanese term of “puraibashii” , which is a phonetic spelling of an English word “privacy” , has been widely used in our society. I could say that such dissemination of the term “puraibashii” was a starting point in connecting the East and the West in relation to privacy issues.

- In the 1970s, Western countries started developing the legislation on the protection of personal information. As one jurist, I have been contributing to connecting the East and the West by researching and introducing the European legislation to Japan. In 1980, the OECD adopted the OECD Privacy Guidelines with a view to harmonizing regulations enforced in various

countries. In addition to that, in 1981, the Council of Europe put forward the CoE Convention 108 for ratification by member states.

- These developments led countries to considering the legislation for personal data protection measures. The advent of information technology also encouraged Japan to develop a system for the protection of personal information.

The Japanese Corporate Culture and Establishment of the Act on the Protection of Personal Information

- In Japan, consumers have traditionally held a very critical view of business conducts. If a business were not fulfilling their social expectation, it would lose trust and could get serious impact on its management. As such, a strong trust-based corporate culture has been long rooted in the Japanese society.
- In the private sector, a range of voluntary activities have been carried out in relation to the protection of personal information, including those in which business industry organizations have stipulated guidelines for their respective

business areas, and companies have developed and implemented self-regulatory privacy protection practices and policies.

- Moreover, a “PrivacyMark System” has been set up since 1998 to accredit a business operator that is considered to be handling personal information properly. I was personally involved in founding this system.

- While voluntary measures in the private sector had been developed in the context of the corporate culture as I described previously, the legislation for personal information protection in the public sector was first adopted as the “Act on the Protection of Computer-processed Personal Data Held by Administrative Organs” , which was promulgated in 1988.

- Considering the development of information and communication technology as well as the globalization of business activities, Japan started drafting the Act on the Protection of Personal Information, which targeted the private

sector, with a view to establishing a legislation which could be harmonized with international standards.

- After nationwide discussion on the protection of personal information, the “Act on the Protection of Personal Information (APPI)” was promulgated in 2003 and enforced in 2005. This Act stipulated the basic idea of protecting personal information and provided for obligations that business operators have to comply with. I took substantial part in the legislative process of the Act as Chairman of the Legislative Council set up by the government.

- Furthermore, the private sector’s voluntary activities, as I described before, were given a solid legal basis under this 2003 Act. Then, ‘the System for Accredited Personal Information Protection Organizations’ has been established on the basis of this Act. Under this system, each personal information protection organization lays down its self-regulatory rules applied in the respective private business sectors, and these rules should be adhered to by business operators

belonging to the organizations. As of today, there are more than 40 Accredited Personal Information Protection Organizations, which cover a range of business fields such as finance.

Legislation of the New Act on the Protection of Personal Information

- More than ten years had passed since 2003, when the Act on the Protection of Personal Information was enforced. A new system design was called for with the globalization of economic society and the rapid development of advanced information and communication technology. Such a new system was also needed to strike a balance between protection and utilization of personal information and attain global harmonization.

- With this background, the amended Act on the Protection of Personal Information was promulgated in 2015 and has fully enforced since May this year. Let me explain the main five points of the amended Act.

- First, the Personal Information Protection Commission (PPC) has been established as an

independent authority to administrate and oversee the protection of personal information. Second, specific regulations on cross-border transfer of personal data have been introduced. Third, the PPC has been authorized to develop enforcement cooperation with the foreign enforcement authorities. Fourth, penalties against unlawful provision of a personal information database etc. have been instituted. Lastly, the Act applies to all business operators including small and medium-sized enterprises (SMEs).

The PPC' s Activities

- Now, I would like to introduce the PPC, which has been established based on the amended Act. The PPC consists of myself, as Chairman, eight Commissioners, and three Special Commissioners. The commission membership includes such experts as a specialist in law systems, a specialist in consumer protection, a specialist in Information Technology and a specialist in international affairs. The PPC Secretariat consists of about 130 officials including lawyers, accountants, IT specialists, and auditors.

- The PPC has been issuing rules and guidelines. The PPC held 27 public consultations and received over 2,600 comments in 2016. The PPC has been promoting campaign on the rules, and organized 320 seminars with a total attendance of approximately 40,000 people. Moreover, it provides roughly 100–200 consultation services per day to business operators and individuals. It also gives guidance and advice to companies.

- As such, the PPC, which consists of Commissioners and the Secretariat, has been engaging in efficient and effective supervising activities as the Japan' s single independent authority.

- In addition to supervision of business operators, the PPC promotes activities aimed at ensuring smooth transfer of personal data and promoting international enforcement cooperation.

- The PPC has been engaging in successive consultations with the EU with a view to establishing a framework to pursue mutual smooth transfer of personal information. Both sides have agreed to intensify their efforts towards

achieving this goal by early next year.

- Moreover, the PPC has been promoting in Japan and abroad the APEC Cross-Border Privacy Rule (CBPR) system, which is a multilateral framework. We also look toward finding possible interoperability between the CBPR system and EU' s system for cross-border transfer of personal data.
- Through these activities aimed at ensuring smooth transfer of personal data and promoting international enforcement cooperation, I would like to further contribute to connecting the East and the West.

Conclusion

- The PPC will support various spontaneous activities being undertaken in the private sector, and engage in efficient and effective enforcement action as the independent data protection authority in Japan. Further, taking into account a balance between protection and utilization of personal information, we will continuously contribute to international society.

➤ Thank you very much for your attention.