Establishment of the Personal Information Protection Commission and International Cooperation

【Tentative Translation】

November 1 2016
Personal Information Protection Commission
JAPAN
1. What is the Act on the Protection of Personal Information (APPI)?

2. Key issues addressed in the amended APPI

3. Personal data provision to a foreign third party

4. International cooperation

5. Actions taken hitherto and planned schedule hereafter
1. What is the Act on the Protection of Personal Information (APPI)?

○ The APPI aims to seek the balance between the protection of an individual’s rights and interests and the utility of personal information.
○ Besides the overall vision for the proper handling of personal information by private-sector businesses, this Act establishes obligations, etc. that a personal information handling business operator is required to fulfil.

(Purpose of the Act)
Article 1 This Act aims to protect an individual’s rights and interests while considering the utility of personal information including that proper and effective application of personal information contributes to the creation of new industries and the realization of a vibrant economic society and an enriched quality of life for the people of Japan; by setting forth the overall vision for the proper handling of personal information, creating government’s basic policy with regard to this, and establishing other particulars to serve as a basis for measures to protect personal information, as well as by clarifying the responsibilities, etc. of the central and local governments and establishing obligations, etc. that a personal information handling business operator is required to fulfill, in light of significantly expanded utilization of personal information as our advanced information- and communication-based society evolves.
2. Key issues addressed in the amended APPI

The Act on the Protection of Personal Information was amended in September 2015 (To be fully enforced in Spring 2017.)

1. Establishment of the PPC
   - Establishment of a provision for extraterritorial application of the APPI and enforcement cooperation between the PPC and its foreign counterparts.
   - Aggregation of the supervising authorities to the PPC, which are currently held by the business jurisdictional ministers toward personal information handling business operators under their respective supervision.

2. Clarifying the definition of personal information
   ① Clarifying the definition of personal information by stating partial bodily features etc. of a specific individual as personal information so that gray areas would be removed thus contributing to active and applied use of information.
   ② A principal’s advance consent shall be obtained in principle in cases of acquiring or providing to a third party special care-required personal information (i.e., race, creed, medical record and other personal information defined by a cabinet order as requiring special care so as not to cause unfair discrimination or prejudice against a principal).

3. Establishment of a legal framework within which personal information can be put to active or applied use
   Establishment of regulations concerning “anonymously processed information” (meaning information that has been produced by processing personal information in a way to make a specific individual unidentifiable and thus disallowing reconstruction of the personal information).

4. Measures to Respond to a so-called “Name List Trader”
   (1) Imposing new obligations to keep and confirm a record relating to a third-party personal data provision. (When receiving the provision of personal data from a third party, a new obligation has been imposed to confirm the provider’s name and the personal data’s acquisitional circumstances, to keep a record on the confirmed items, and to maintain such a record for a certain period of time; and when providing personal data to a third party, another new duty has been assigned to keep and maintain a record on the date of the provision, the name of the recipient, etc.
   (2) An act of providing a third party with or stealing personal information database etc. for the purpose of earning illicit gains has become subject to criminal punishment as “the offense of providing personal information database”.

5. Others
   (1) Abolition of a system wherein to exclude a business operator handling personal information of 5,000 individuals or less from the regulated subjects.
   (2) A personal information handling business operator utilizing an opt-out procedure has become obligated to notify the Personal Information Protection Commission of certain legally required items. (A personal information handling business operator may provide personal data to a third party without obtaining a principal’s consent in cases where it will, at the request of the principal, cease a third-party provision of personal data that can identify the principal.)
2. Key issues addressed in the amended APPI

The PPC was established after partial enforcement of the amended Act on Jan 1, 2016.

**Missions**

The missions of the Commission are to ensure the proper handling of personal information in order to protect an individual’s rights and interests while considering the utility of personal information including making certain that the proper and effective application of personal information contributes to the creation of new industries and the realization of a vibrant economic society and an enriched quality of life for the people of Japan pursuant to the Act on the Protection of Personal Information.

**Organizational structure**

- A collegial decision-making body comprising one chairperson and eight commissioners
- Each commission member exercises his or her official authorities independently

---

(*1) The Act on the Use of Numbers to Identify a Specific Individual in the Administrative Procedure

(*2) The Act on the Protection of Personal Information

(*3) These will start from the full enforcement of the amended APPI within two years from its promulgation

(*4) Act on the Protection of Personal Information Held by Administrative Organs and the Act on Access to Information Held by Incorporated Administrative Agencies

(*5) This will start from the full enforcement of the amended two acts in (*4) above within one and half years from their promulgation
All the supervising authorities will be integrated into the PPC after full implementation of the amended APPI, whereas they are currently divided among multiple competent ministers who oversee personal information handling business operators under their respective supervision.

Supervisory system over business operators

Before full enforcement (Competent ministers)

- X Ministry
- Y Ministry
- Z Ministry

Supervision
A business operators
B business operators
C business operators

Laden with overlapping supervision, unclear jurisdictional demarcations, etc.

After full enforcement

The PPC

Supervision
A business operators
B business operators
C business operators

Integrated supervisory system

Supervisory system over administrative organs

- The Act on the Protection of Personal Information Held by Administrative Organs (Regulated subjects: Administrative organizations)
- The Act on the Protection of Personal Information Held by Incorporated Administrative Agencies (Regulated subjects: Incorporated administrative agencies, etc.)
- The Ordinance on the Protection of Personal Information (Regulated subjects: Local governments, etc.)

※The supervisory system over public-sector organizations will be the same before and after the amendment to the APPI.
3. Personal data provision to a foreign third party

○ Pertinent provisions of the APPI

In any of the following cases, personal data may be provided to a third party in a foreign country in the same way as in-country;

① Cases in which there is a principal’s consent to the provision to a third party in a foreign country;

② Cases in which a third party in a foreign country has established and maintained a system that conforms to the standards prescribed by the PPC rules;

③ Cases in which a third party is located in a foreign country designated by the PPC rules.
3. Personal data provision to a foreign third party

○ Pertinent provisions of PPC rules

Concerning the standards in the system to be established and maintained by a third party in a foreign country, which are to be prescribed by the PPC rules, those falling under the following items are deemed as satisfying such standards while paying due regard to general business practices.

① A personal information handling business operator and a person who receives the provision of the personal data ensure the implementation of measures in line with the purport of the APPI using an appropriate and reasonable method in relation to handling personal data.

② A third party in a foreign country who receives personal data has obtained a certification based on an international framework concerning the handling of personal information.

Proposed guidelines elucidate the standards prescribed by the PPC rules including specific case examples.

● Examples of “an appropriate and reasonable method”: exchanging an outsourcing contract or establishing bylaws or privacy policy within a group of companies.

● Examples of “measures in line with the purport of the APPI”: those following such standards set by international frameworks as the ones adopted by the OECD and the APEC.

● Examples of an “International framework concerning the handling of personal information”: the APEC Cross-Border Privacy Rules (CBPR) system.
### 3. Personal data provision to a foreign third party

- Measures in line with the purport of the provisions under Chapter 4, Section 1 of the APPI, adopted by considering their consistency with relevant standards established under the international frameworks. (※1)

<table>
<thead>
<tr>
<th>Measures in line with the purport of the provisions under Chapter 4, Section 1 of the APPI</th>
<th>OECD Privacy Guideline</th>
<th>APEC Privacy Framework</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 15 Specifying a Utilization Purpose</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Article 16 Restriction due to a Utilization Purpose</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Article 17 Proper Acquisition</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Article 18 Notification etc. of a Utilization Purpose when Acquiring</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Article 19 Ensuring etc. the Accuracy of Data Items</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Article 20 Security Control Action</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Article 21 Supervision over Employees</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Article 22 Supervision over a Trustee</td>
<td>○</td>
<td>(※2)</td>
</tr>
<tr>
<td>Article 23 Restriction on Third Party Provision</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Article 24 Restriction on Provision to a Third Party in a Foreign Country</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Article 27 Public Disclosure etc. on the Subjects relating to Retained Personal Data</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Article 28 Disclosure</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Article 29 Correction etc.</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Article 30 Utilization Cease etc.</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Article 31 Explanation of Reason</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Article 32 Procedure for Responding to Demand etc. for Disclosure etc.</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Article 33 Fees</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Article 35 Personal Information Handling Business Operator’s Dealing with a Complaint</td>
<td>○</td>
<td>(※3)</td>
</tr>
</tbody>
</table>

(※1) A circle (○) denotes a case in which, comparing each of those selected articles listed above contained in Chapter 4, Section 1 of the APPI with those standards established by an international framework (i.e., the OECD Privacy Guideline and the APEC Privacy Framework), the purport of the respective articles can be considered as matching the said standards set by the international frameworks.

(※2) As regards supervision over employees, there is no such defined standard in the APEC Privacy Framework but as it is one of the security control action (prescribed under Article 20 of the APPI), a foreign third party is required to take this action.

(※3) As regards complaint dealing, there is no such defined standard in the APEC Privacy Framework but as it is one of the requirements to be satisfied for those business operators who intend to join the APEC Cross Border Privacy Rules (CBPR) system, an international certification scheme wherein the compatibility of such business operators’ action is to be certified vis-à-vis the APEC Privacy Framework, a foreign third party is required to take this action.
4. International Cooperation

Recent Commissionary Decision

① The PPC, since it has been established as a single independent privacy authority in Japan, has been granted official membership of such international enforcement cooperative frameworks as the Global Privacy Enforcement Network (GPEN) and the Asia Pacific Privacy Authorities (APPA) forum.

② The PPC improves an environment where smooth international data flows while ensuring the protection of personal information.

③ The PPC actively drives forward such efforts as establishing cooperative relations with other enforcement authorities.

➢ The Commissioners decided on a policy aimed at ensuring smooth cross-border flow of personal data.

‘New Initiatives for Ensuring Smooth Cross-Border Personal Data Flows’
(Personal Information Protection Commission Decision on July 29, 2016) (excerpt)

The Commission will for the moment, while advocating further cooperation with foreign counterparts to boost smooth cross-border transfer of personal information ensuring the protection thereof, facilitate coordination directed toward setting up a bilateral meeting on a regular basis with its counterparts in the United States and the European Union (the Brexit’s effects will need to keep watching) with both of whom the Commission has held certain dialogues hitherto, with putting into perspective the possibilities of establishing a framework to enhance reciprocal and smooth data transfer.
4. International cooperation

Joining the international cooperative frameworks

- APEC
  - Brunei, China, Indonesia, Malaysia, Papua New Guinea, Philippines, Russia, Thailand, Chinese Taipei, Vietnam
- OECD
  - Austria, Denmark, Finland, Greece, Hungary, Iceland, Latvia, Poland, Portugal, Slovakia, Sweden, Switzerland, Turkey
- APPA
  - Peru, Hong Kong, New Zealand, Australia
- APEC CBPR
  - Canada, Japan, Mexico, The U.S.
- GPEN
  - Columbia, Macao, Albania, Argentina, Armenia, Bulgaria, European Union, Georgia, Ghana, Guernsey, Isle of Man, Jersey, Kosovo, Lithuania, Macedonia, Malta, Mauritius, Moldavia, Monaco, Morocco, Ukraine

As of Oct 2016
4. International cooperation

Promoting the APEC CBPR system

- The CBPR system is a mechanism to certify a business operator’s compatibility with the APEC Privacy Framework in the APEC member economies and an effective instrument to judge the business operator’s level of personal information protection by international standards.

- Proposed guidelines under the amended Act on the Protection of Personal Information stipulate the obtainment of a CBPR certification as an example of conditions to be satisfied when receiving the provision of personal data to a third party in a foreign country.

- As the JIPDEC has been approved as a Japan’s first certification body under the APEC CBPR system (i.e., accountability agent), Japan has been advancing efforts to infiltrate and promote the CBPR system in the APEC region.
4. International cooperation

◆ Meetings with the United States

○ On August 8, 2016, Meeting held with Minister-Counselors of the US Embassy in Japan
  The PPC Secretary General held an exchange of views with two Minister-Counselors in charge of economic and commercial affairs respectively, and agreed to advance further cooperation in shared recognition of maintaining close dialogues and coordinative efforts between Japan and the United States.

○ On September 5, 2016, Meeting held with Senior Staffer of the US Department of Commerce
  The PPC Secretary General held an exchange of views with a Deputy Assistant Secretary during her visit to Japan, and they agreed to cooperate in furthering the interest in and growth of the APEC Cross Border Privacy Rules (CBPR) system by jointly leading adoption of the APEC CBPR in common recognition of the importance of continuing regular meetings and close coordination between the PPC and the Department of Commerce.

○ On October 19, 2016, Meeting held with Senior Staffer of the US Department of Commerce
  The PPC Secretary General held an exchange of views with a Deputy Assistant Secretary during his visit to Japan, and both parties affirmed that the Personal Information Protection Commission and the DOC will meet regularly and work together with stakeholders from both countries to raise awareness of the CBPR and encourage other APEC member economies to participate.

◆ Dialogues with the European Union

○ On April 22, 2016, Cooperative dialogue held with the European Commission (EC)’s Directorate-General for Justice and Consumers
  PPC secretarial staff held an exchange of views with Head of a Directorate-General for Justice and Consumers unit during his visit to Japan, who expressed his welcome to the establishment of the PPC and expectation toward its roles to be performed. Both parties agreed to deepen further their mutual understanding of the Japanese and EU respective personal data protection systems, and to advance closer cooperation.

○ On September 28, 2016, Cooperative dialogue held with the European Commission (EC)’s Directorate-General for Justice and Consumers
  PPC secretarial staff visited the EC to hold a cooperative dialogue with their counterparts of the Directorate-General for Justice and Consumers. Both sides stressed the importance of promoting the cross-border transfer of personal data between Japan and the European Union while promoting personal data protection and expressed their willingness to continue their cooperative dialogue towards this end.

○ On October 20, 2016, Cooperative dialogue held with the European Commission (EC)’s Directorate-General for Justice and Consumers
  PPC secretarial staff held an exchange of views with their EU counterparts of the Directorate-General for Justice and Consumers. Both sides agreed to continue cooperative efforts via various channels to carry out joint work involving private sector players to promote the smooth cross-border transfer of personal data while ensuring the protection thereof between Japan and the European Union.
5. Actions taken hitherto and planned schedule hereafter

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Preparation for Enforcement</strong></td>
<td>July 2015.9.9</td>
<td>Jan Partial Enforcement of the Amended Act (the PPC established)</td>
<td>Dec September 30 : Cabinet order adopted Octoer 4: Guidelines consulted with the public Octoer 5 : Cabinet order and Commissionary rules promulgated</td>
</tr>
<tr>
<td></td>
<td></td>
<td>June Formulating Cabinet Order, PPC Rules, Guidelines, etc.</td>
<td>Dec The Amended Act to be fully enforced (Authorities to be aggregated)</td>
</tr>
<tr>
<td><strong>Law Enforcement</strong></td>
<td></td>
<td>Jan Public relations and enlightenment campaigns</td>
<td>June Monitoring and Supervision by the PPC</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2016.1.1 Business Jurisdictional Ministers supervise personal information handling business operators under their respective jurisdiction</td>
</tr>
</tbody>
</table>
Past trends in the causes of information leak incidents on more than 50,000 individuals
Since Fiscal 2012, “unauthorized access, unauthorized login and cyber attack” have accounted for the largest share in the causes of such large-scale leak incidents.

(Notes) This figure is excerpt from a “Summary of the enforcement status based on the Act on the Protection of Personal Information” (publicized by the Personal Information Protection Commission on October 11, 2016)
Thank You