

# **New Japanese Proposed Legislation Regarding Protection of Personal Data**

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# Historical Background

- “Right to Privacy” recognized as a constitutional right under case law
- Public sector:
  - “Act for Protection of Computer Processed Personal Data Held by Administrative Organs” (1988), applied to the administrative organs of the central government
  - “Personal Data Protection Ordinances”, promulgated by many local governments
- Private sector:
  - No comprehensive legislation
  - Self-regulation policy

- (i) “Guidelines for Protection of Personal Data in Telecommunications Business” (1991), “Guidelines for Protection of Subscribers’ Personal Data Regarding Broadcast Viewers” (1996) and “Guidelines for Protection of Communicators’ Personal Data in Utilization of Services of Notifying Communicators’ Data” (1996), issued by the Ministry of Posts and Telecommunications
  - (ii) “Guidelines for Protection of Computer Processed Personal Data in Private Sector” (1997), issued by the Ministry of International Trade and Industry
- Demand for personal data protection legislation applicable to private sector
  - Various cases involving unauthorized disclosure of personal data by individuals or companies in private sector

# Proposal of New Legislation

- Title
  - “Act for Protection of Personal Data” (the “Act”)
- Status
  - Approved by the Cabinet on March 27, 2001
  - Bill submitted to the National Diet and currently pending
  - Expected to be in force from April, 2003

# Outline of the Act

- Basic principles, applicable to anyone who handles personal data without exception (including players in both public and private sectors)
  - The purpose of use should be specified and the use should not go beyond the specified purpose.
  - Collection should be made legally and properly.
  - The data should be kept accurate and updated.
  - Security safeguards should be provided.
  - Proper access by the individual should be given.

- Responsibilities of the central and local governments
  - Both the central and local governments shall bear the responsibility in establishing and implementing measures to secure the proper handling of personal data in accordance with the intent underlying the Act.
- Measures for protection of personal data
  - The central government must establish a “basic policy” in order to promote protection of personal data in an integrated and standardized manner, and assist the local governments and other private parties in their establishment and implementation of measures to secure the proper handling of personal data.
  - The local governments must assist private parties in the local areas in their establishment and implementation of measures to secure the proper handling of personal data.

- Responsibilities of “personal data handling entrepreneur”
  - “Personal data handling entrepreneur” is defined as “anyone who utilizes a personal information database for business” but excludes any organs of the central government, the local governments, semigovernmental corporations, etc.
  - Various responsibilities in principle
    - must specify the purpose of use of personal data in its handling
    - must not use personal data beyond the specified purpose of its use
    - must not collect personal data by unlawful means
    - must notify the individual of, or make public, the purpose of use of personal data at the time of its collection

- must keep personal data in possession accurate and updated
- must provide security safeguards against loss of or damage to personal data
- must not provide personal data to a third party without obtaining the prior consent of the individual, except (i) when the provision is required by law, (ii) when the individual is given advance notice that the provision to a third party will be stopped upon his or her request, or in certain other cases
- must inform the individual of the purpose of use of his or her personal data promptly upon request



- must disclose to the individual his or her personal data in possession promptly upon request
- must make corrections, additions or deletions to personal data of the individual promptly upon demand that it be so corrected, added or deleted
- must cease using personal data of an individual promptly upon his or her request, if the use goes beyond the purpose which is specified or if the data was acquired by unlawful means
- must stop providing personal data of an individual to a third party promptly upon his or her request, when such provisions are made in violation of the rules described above

– Possible actions of Ministers in charge

- may demand report from a “personal data handling entrepreneur”
- may issue advice to a “personal data handling entrepreneur”
- may issue recommendations to a “personal data handling entrepreneur” to rectify its violation
- may issue an order to a “personal data handling entrepreneur” who does not follow recommendations without a justifiable reason or commits a violation which requires immediate rectification
- Failure to obey such an order is subject to criminal sanction of imprisonment of up to six months or a fine of 300,000 yen or less

- Promotion of personal data protection through private entities
  - A private entity which desires to engage in the business for securing proper handling of personal data by certain specific “personal data handling entrepreneurs”, such as resolution of claims regarding their handling of personal data, may obtain an approval from the Minister in charge.
  - Approved entities will be subject to the requirements for reporting to and order from the Minister in charge.

- Exceptions

- The various responsibilities of “personal data handling entrepreneur” as described above will not apply to a “personal data handling entrepreneur”:
  - (i) which is the press, using personal data for news reporting purpose
  - (ii) which is an academic or research institution or entity and its members, using personal data for academic or research purposes
  - (iii) which is a religious entity, using personal data for religious activities
  - (iv) which is a political entity, using personal data for political activities
- Such exempted entrepreneurs shall endeavor to implement measures to secure proper handling of personal data and disclose such measures to the public.

# For Further Information

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