

## JAPAN ENCOURAGES BUSINESS COMPLIANCE WITH PRIVACY PRINCIPLES

Japan's approach to data protection has more in common with Australia, New Zealand, the USA and Canada than European countries. The government has set up studies and encourages private sector industry associations to establish their own guidelines. So far, there have been some sectoral privacy provisions in different laws but no comprehensive statute to regulate private companies' handling of personal data. Professor Masao Horibe of Hitotsubashi University, explains the data protection scene in Japan.

Japan's signature of the OECD Guidelines in 1980 encouraged the government to establish a Study Committee on the Protection of Privacy the following year. This process culminated in the Data Protection Act which came into force on October 1st 1989. Although there have been bye-laws on data protection in municipal government, with one dating back to 1975, there are none at the prefectural (regional) government level.

### Data protection for the national government

A Bill to Protect Computer Processed Personal Data held by Administrative Organs was issued in the form of a cabinet decision on April 28, 1988. It was enacted on December 16th 1988 and came into force on October 1st 1989. The Act (the text has been distributed with this newsletter) covers automated data in national government departments. The Act incorporates several data protection principles but is subject to a number of exceptions and a veto on access by the heads of the government agencies to which it applies. A central co-ordinating body has been established as part of the Prime Minister's office but it does not have independent status.

### Data protection policy for business

During the Diet's debate on data protection for national government departments, there was discussion of implications for the private sector. The Committee of the Cabinet of both the Lower and Upper Houses passed resolutions calling on the government to deal with the private sector. The cabinet instructed ministries and agencies to make investigations and devise measures as necessary.

The Ministry of International Trade and Industry (MITI) responded by issuing a document on April 18th 1989: "Concerning the Protection of Computer Processed Personal Data in the Private Sector." The document referred to the MITI's previous directives on consumer credit information and the work of a Personal Data Protection Committee which had held hearings on the issue. The Committee had produced an explanatory report and private sector guidelines. As a result, MITI decided on a policy programme of urging companies to make progress in this area. In particular:

1. Business groups are directed to foster thorough knowledge of this report and guidelines among concerned companies and to conduct the investigations necessary for the establishment of concrete guidelines according to the nature of each business.
2. In order to actively promote systematic action by business groups

in this area, they are directed to take action to establish organizations to address this issue, and to respond to outside enquiries.

3. Business groups should establish a register of measures taken in the area of personal data protection summarizing their efforts and publish a regular update on their activities.

The leading and influential example of this approach is the Centre for Financial Industry Information Systems (FISC) which formed a Special Committee on Personal Data. Its Guidelines on the Protection of Personal Data for Financial Institutions were adopted in March 1987 (PL&B Aug '88 p.22). These Guidelines attracted the attention of the regulatory authorities and have been regarded as a model by the Ministry of Finance's Commission of Enquiry on Insurance in its report of May 19th 1987. Later, in March 1988, the Japan Information Processing Development Centre published its Guidelines on the Protection of Personal Data for the Private Sector.

MITI has publicized its interest and concern for data protection issues by circularizing business groups on June 28th 1989 and promulgating the "Rule on the Register Concerning the Measures....for the Protection of Computer Processed Personal Data" in the Official Gazette on July 7th 1989.

#### Private sector coverage through other statutes

Laws which include some provisions for data protection include The Installment Sales Act and the Act on the Regulation of Moneylending. The Telecommunications Business Act provides that "the secrecy of communications being handled by a telecommunications carrier shall not be violated."

In addition, there are also bye-laws enacted by municipal governments which apply to the private sector as well as to the public sector. By April 1st 1989, 23 municipalities had such bye-laws. An example is the Kawasaki City Personal Data Protection Bye-law of 1985. It includes provisions which provide that:

\* "Companies, when handling personal data in the performance of their business, shall act with awareness of the importance of protecting personal data, and together with taking measures to prevent infringements of fundamental human rights relating to personal data, shall cooperate with city policy concerning the protection of personal data." (section 4)

\* Companies will be subject to on the spot inspections (section 28)

At the prefectural (regional government) level, Nagano and Kanagawa Prefectures are currently studying personal data protection bye-laws which will include coverage of the private sector.

Professor Masao Horibe is Professor of Law at Hitotsubashi University, Japan and is currently at The University of Sheffield's Centre for Japanese Studies, in the UK. He has written books and numerous articles on data protection and other issues, and has been chairman of some of the committees referred to in this report. This report is an edited version of his presentation at the PL&B conference last year. His comprehensive paper is available from our office.