

DATA PROTECTION/PRIVACY LEGAL UPDATE

CONTENTS

- 1 Overview of the "My Number Act"
- 2 Main circumstances where Individual Numbers are used
- 3 Regulations of the My Number Act
- 4 Conclusion

Overview of the My Number Act

1 Overview of the "My Number Act"

On May 24, 2013, "the Act on the Use of Numbers to Identify a Specific Individual in the Administrative Procedure" (the "My Number Act") and relevant three acts were enacted in the Diet, and these acts were promulgated on May 31. The purposes of these acts are to implement so-called "My Number system" and assign to an individual citizen one "Individual Number" which should be used in the fields related to tax, social security and disaster control measures, thereby aiming to improve the efficiency of administrative procedures in the afore-mentioned fields.

Although Individual Numbers themselves will be assigned to individual citizens, private business operators, in some ways, will be involved in these Individual Numbers. Examples of typical circumstances are where they process tax related affairs and social insurance/labor insurance affairs. Business operators are naturally required to obtain Individual Numbers from their employees, and manage the same when they are in process of office procedures, e.g., withholding income tax from wage payments and applying for health insurance for the employees.

The My Number system is scheduled to commence operations in January, 2016, but before that Individual Numbers will be notified to citizens after October 5, 2015. Business operators will be allowed to obtain Individual Numbers from its employees after October 5, 2015. Business operators are required to obtain Individual Numbers from their employees and develop a system to manage the Individual Numbers so obtained no later than the end of 2015.

2 Main circumstances where Individual Numbers are used

While the fields in which Individual Numbers are used are related to tax, social security and disaster control measures, there are two main circumstances where business operators are involved in the use of Individual Numbers:

(1) Affairs related to withholding income tax

When paying dividends to shareholders or paying wages to employees, a business operator needs to withhold income tax and submit a payment record / withholding record to the relevant tax office. In such record, the business operator is obliged to state the Individual Numbers of the relevant taxpayers.

Besides, a salaried employee must submit a Return for Deduction for Dependents, etc. to the relevant tax office through his/her employer. In such Return, his/her own Individual Number must be provided.

In order to meet these requirements, business operators are required to obtain Individual Numbers from their shareholders and employees and store the Individual Numbers so obtained.

(2) Affairs related to applying for Employees' health insurance, etc.

Business operators need to submit to a competent administrative agency or health insurance union various applications regarding their employees' health insurance, employees' pension insurance and other similar insurances. In such applications, business operators are required to state the employees' Individual Numbers.

Here again, business operators are required to obtain Individual Numbers from their employees and store the Individual Numbers so obtained.

3 Regulations of the My Number Act

Given that an Individual Number is the number assigned to each individual citizen, any matching of information using this might cause a serious violation of privacy. Accordingly, the My Number Act imposes strict restrictions on obtaining, providing or using Individual Numbers, and specifies measures to be taken by business operators holding Individual Numbers.

In addition, "Specific Personal Information Protection Commission" formed under the My Number Act has established several guidelines including "Guidelines for proper handling of Specific Personal Information (for private entities)" (<http://www.ppc.go.jp/files/pdf/261211guideline2.pdf>), and made them available at (<http://www.cas.go.jp/jp/seisaku/bangoseido/>).

The My Number Act provides for the circumstances, based on a positive list approach, where Individual Numbers can be legally handled. Therefore, business operators are allowed to collect, store and use Individual Numbers only in the circumstances listed in the My Number Act.

In addition, the My Number Act provides for penalties for certain acts, including imprisonment, to prevent leakage of personal information including Individual Numbers.

(1) Relationship with the Personal Information Protection Act

Individual Numbers are expected to be used in conjunction with certain personal information when tax related affairs and social insurance/labor insurance affairs are processed, and constitute personal information under the Personal Information Protection Act. Under the My Number Act, personal information including Individual Numbers is defined as "Specific Personal Information" and the My Number Act contains special provisions of the Personal Information Protection Act

relating to Specific Personal Information. Therefore, as regards Specific Personal Information, the My Number Act shall apply to the extent that it provides for special provisions, while the Personal Information Protection Act shall apply in other respects.

(2) Restrictions relating to provision and collection

a Limitation of collection

The My Number Act prohibits any person from collecting or making a request for provision of Specific Personal Information except in the circumstances listed in the items of Article 19 of the My Number Act, such as where it is necessary to process tax related and social insurance/labor insurance related affairs (Articles 14, 15 and 20 of the My Number Act). Therefore, business operators are allowed to request that their employees provide Specific Personal Information for the purpose of processing tax related and social insurance/labor insurance related affairs and collect the same; however, they are not allowed to do so for purposes not permitted by the My Number Act, such as that of managing employees' performance.

b Identity confirmation

If a business operator duly receives provision of Specific Personal Information from a person, it is required to verify the identity of that person with his/her driver's license or other identity verification documents to prevent spoofing (Article 16 of the My Number Act). The My Number Act, the Order for Enforcement thereon and the Ordinance for Enforcement thereof contain elaborate provisions regarding the necessary identity confirmation process, according to whether the Specific Personal Information is provided either by the person or his/her agent or either by hand, in writing or by electronic means.

c Specification and clear indication of the purpose of use

Under the Personal Information Protection Act, "business operators handling personal information" are required to specify the purpose of use of personal information as well as notify the person of or publicly announce the same when having obtained personal information from a person. Since Individual Numbers constitute personal information, a business operator who falls under a "business operator handling personal information" will be required to specify the purpose of use of an Individual Number (e.g., "affairs preparing withholding records") as well as notify the person of or publicly announce the same when receiving provision of the Individual Number.

(3) Restrictions relating to storage

a Limitation of storage

The My Number Act imposes the same restrictions on the storage of Specific Personal Information as those imposed on the collection thereof (Articles 19 and 20 of the My Number Act). In other words, business operators are allowed to store the Specific Personal Information collected from their employees only for the purpose of processing affairs permitted by the My Number Act. If a business operator is no longer required to process the affairs and the retention period required by law or regulation expires, it must dispose of or delete Specific Personal Information.

b Security control measures

The My Number Act provides that business operators handling Specific Personal Information must take “measures necessary for appropriate management of Individual Numbers, such as prevention of leakage, loss, or damage of Individual Numbers” (Article 12 of the My Number Act).

In response to this, “Guidelines for proper handling of Specific Personal Information (for private entities)” specifically define the measures to be taken by business operators. For example, business operators must establish the basic policy regarding the handling of Specific Personal Information and the handling rules; define persons responsible for and in charge of handling Specific Personal Information; provide training and supervision to persons in charge; provide an controlled area in which physical access to the information system can be limited; and control access to Specific Personal Information. As described above, business operators are required to put these various measures in place.

(4) Restrictions relating to use

a Limitation of the scope of use

The My Number Act provides for the circumstances, based on a positive list approach, where Specific Personal Information can be used (Article 9 of the My Number Act) and prohibits the use of Specific Personal Information for purposes other than those listed therein. Therefore, unlike usual personal information, no one will be allowed to use Specific Personal Information even with the consent of the person identified by the Specific Personal Information, unless such use is permitted by the My Number Act. It should be noted that this is greatly different from the handling of usual personal information as stipulated in the Personal Information Protection Act.

For example, it is prohibited to use Individual Numbers for the purposes of managing employees' results, performance record or the like even with the consent of the relevant employees.

b Prohibition of use for unspecified purposes

If a business operator handling Personal Information has specified the purpose of use pursuant to the Personal Information Protection Act when obtaining an Individual Number, it will be prohibited from using the Individual Number for unspecified purposes even though such use itself is permitted by the My Number Act (Article 29, paragraph 3 of the My Number Act and Article 16, paragraph 1 of the Personal Information Protection Act). For example, if a business operator obtains an Individual Number and specifies the purpose of use thereof as processing "affairs preparing withholding records" only, it is not allowed to use the Individual Number for the purpose of processing "affairs applying for health insurance." If the business operator intends to use it for other purposes, it must take the procedure to add such purposes.

When business operators obtain an Individual Number, they need to specify all purposes of use thereof including the use under the My Number Act.

(5) Restrictions relating to provision

a Limitation of provision

The My Number Act, in principle, prohibits the provision of Specific Personal Information to a third party, and only permits the provision of Specific Personal Information under certain requirements (Article 19 of the My Number Act). The circumstances where business operators are allowed to provide Specific Personal Information are limited to those permitted by Article 19 of the My Number Act, such as where they submit a payment record or withholding record to the relevant tax office, make an application for their employee's health insurance with the health insurance union, and entrust a third party with clerical affairs.

b Supervision of Entrustees

Under the My Number Act, a business operator handling Specific Personal Information is allowed to entrust a third party with affairs processed with the use of Specific Personal Information and provide Specific Personal Information to such third party (e.g., if a business operator entrusts an external third party with affairs preparing withholding records).

In that case, however, the business operator must "carry out the necessary and appropriate supervision over a person who accepts said entrustment" (Article 11 of the My Number Act). "Guidelines for proper handling of Specific Personal Information (for private entities)" specifically require the business operator to select an appropriate trustee, and understand how the trustee handles Specific Personal Information by concluding an agreement with the trustee to ensure that the security control measures will be implemented.

4 Conclusion

As discussed above, while the My Number Act primarily aims to facilitate administrative affairs, it cannot serve its purpose without cooperation of private business operators and thus provides various obligations and measures for business operators to comply with.

Private business operators are required to develop their own internal system that enables them to comply with the My Number Act in preparation for the commencement of the My Number system, by October 2015 when Individual Numbers will be notified to the citizens or by the end of 2015 at the latest. In particular, if a private business operator does not have appropriate IT systems, it needs to start a discussion involving IT staff soon. This point and other related issues will be covered in the next newsletter.

Edited by

Nobuhito Sawasaki, attorney-at-law

Takashi Nakazaki, attorney-at-law

Ryo Murakami, attorney-at-law

End



This law bulletin is published as a general service to clients and friends of Anderson Mori & Tomotsune and does not constitute legal advice.

For further information, please do not hesitate to contact:

Nobuhito Sawasaki (nobuhito.sawasaki@amt-law.com) or
Takashi Nakazaki (takashi.nakazaki@amt-law.com).



CONTACT INFORMATION

Anderson Mori & Tomotsune

Akasaka K-Tower
2-7, Motoakasaka 1-chome
Minato-ku, Tokyo 107-0051
Japan 107-0051

Tel: +81-3-6888-1000

Email: inquiry@amt-law.com

URL: <http://www.amt-law.com/>