

DATA PROTECTION/PRIVACY LEGAL UPDATE

CONTENTS

- 1 Outline of the “My Number Act”
- 2 Outline of the Practical Measures to Be Taken by Private Business Operators
- 3 Organization of the Affairs Requiring the Use of Individual Numbers
- 4 Development of the System for Identification Confirmation
- 5 Security Control Measures
- 6 Compliance with the Personal Information Protection Act
- 7 Other points to note - prevention of unintended acquisition, storage or provision of Individual Numbers
- 8 Conclusion

Practical Measures towards the Introduction of the “My Number System”

1 Overview of the “My Number Act”

The “Act on the Use of Numbers to Identify a Specific Individual in the Administrative Procedure” (My Number Act) and 3 related acts were enacted in the Diet on May 24, 2013 and were promulgated on May 31, 2013.

The My Number system will come into effect in January 2016, but prior to this, the above acts will be enforced on October 5, 2015 on which the notification of Individual Numbers to citizens will start. After the acts come into force, business operators will be able to obtain the Individual Numbers from their employees and the dependents thereof (hereinafter referred to as “Employees”) and store them. Business operators need to develop a system to obtain and manage the Individual Numbers by the end of 2015 at the latest.

In regard to the My Number Act, the “Specific Personal Information Protection Commission” established pursuant to the My Number Act has published the guidelines including the “Guidelines for proper handling of Specific Personal Information (for private entities)” (in Japanese) which provide for the various measures to be taken by business operators holding Individual Numbers. The outline of the measures to be taken by business operators is as follows.

2 Outline of the Practical Measures to Be Taken by Private Business Operators

Under the My Number system, a private business operator is required to specify the Individual Number on the documents to be submitted, such as the payment records of employment income and dividend income, withholding record, Return for Deduction for Dependents and various notification documents relating to social insurance and employees' pension insurance.

The following are the 4 main measures that are necessary for business operators to be prepared in order to deal with the introduction of the My Number system, in particular when they handle the Individual Numbers of the Employees.

- (1) Identification of affairs requiring the use of Individual Numbers and establishment and confirmation of workflow;
- (2) Development of a system to appropriately verify the identities when obtaining Individual Numbers;
- (3) Establishment of the security control measures to appropriately handle the Individual Numbers obtained; and
- (4) Taking measures to abide by the Personal Information Protection Act (Specification and clear indication of the purpose of use)

3 Organization of the Affairs Requiring the Use of Individual Numbers

- (1) Identification of the affairs requiring the use of Individual Numbers

First of all, the affairs requiring the use of Individual Numbers need to be identified. In January 2016, the forms of the documents submitted by business operators to the authorities or agencies such as the tax office, health insurance society and pension office will be changed to require the specification of the Individual Number . Therefore, it is necessary to sort out the documents subject to this change of form from the documents currently used and submitted by business operators.

In some cases, even though an act or regulation provides that a document shall be submitted by an employee, in practice the document is prepared by a business operator. In such cases as well, the business operator will need to sort out the documents in advance, as mentioned above, since it will not be able to avoid handling the Individual Numbers as long as they continue the same practice.

Business operators need to specify on the documents the Individual Numbers not only of permanent employees but also of contract employees and temporary employees as long as the business operators handle documents which are required to bear Individual Numbers. Therefore, they need to remember to be provided with the Individual Numbers by contract employees and temporary employees as well.

- (2) Establishment and confirmation of workflow

As mentioned above, business operators are required to verify the identities when obtaining the Individual Numbers of the Employees and take the security control measures in storing and using them. It would be helpful if business operators, as a

preliminary step, sort out who prepares such documents as described in (1) above and how such documents are prepared, reviewed and submitted.

In addition, in order to conform to the strict regulations of the My Number Act and the guidelines, business operators need to establish a workflow that has less risk of confusion of numbers or divulgence of information, in conjunction with the development of the identity verification method and security control measures.

4 Development of the System for Identification Confirmation

(1) Clarification of the department in charge and education therefor

Under the My Number Act, business operators are required to verify the identities when obtaining the Individual Numbers of the Employees. The documents including the “Notification Card” to be sent to each citizen in or after October 2015, “Individual Number Card” that each citizen will be able to obtain upon application in or after January 2016 and the resident record on which the Individual Number is specified suffice as identity verification documents, but the Order and Ordinance for Enforcement of the My Number Act prescribe in detail which specific document is necessary in which situation. In fact, the necessary process for identity verification differs depending on whether the person himself/herself provides the Individual Number or his/her agent provides the Individual Number (e.g. the Employee provides the Individual Number of his/her dependent on behalf of the dependent) or whether the Individual Number is provided in person or delivered in writing. Business operators need to sort out which process of identity verification is necessary while confirming the workflow mentioned in 3(2) above.

The My Number Act does not regulate which person within a business operator shall conduct identity verification, but it is desirable to determine a person or department in charge, prepare a manual and provide sufficient education in advance to the persons or department in charge in order to carry out identity verification smoothly and without error or omission.

(2) Development of the identification confirmation system

The Individual Number can be provided by electronic means, for example by inputting the Individual Number on the computer connected to the company intranet. This means is effective for business operators having a large number of employees or those intending to manage the Individual Numbers of the employees at branch offices in remote locations collectively at the principal office.

In such cases as well, identity verification is required, so the business operators need to establish a system, for example by preparing a window to upload the identity verification document together with the Individual Number on the intranet.

5 Security Control Measures

Business operators handling the Specific Personal Information are required to take “measures necessary to prevent divulgence or loss of, or damage to the Individual Numbers and to otherwise appropriately manage the Individual Numbers.” The

“Guidelines for proper handling of Specific Personal Information (for private entities)” specify the measures that business operators should take.

Please note that a business operator constituting a “business operator handling personal information” under the Personal Information Protection Act is required by this Act to take “necessary and proper measures for the prevention of leakage or loss of, or damage to, personal data, and otherwise for security control of personal data” (Article 20 of the Personal Information Protection Act), and the guidelines of the competent authorities substantiate this requirement. A business operator that has already taken these measures is not required to take entirely distinct actions, but is to refine the currently implemented measures to conform to the requirements of the My Number Act and the guidelines.

(1) Formulation of basic policy and handling rules

Business operators are required to formulate a basic policy to ensure the appropriate handling of personal information including Individual Numbers (“the Specific Personal Information”).

They are also required to formulate the handling rules and other provisions that specify the work flow and the persons in charge and incorporate various security control measures as detailed below.

(2) Development of organizational frameworks (aspect of personnel)

A. Clarification of persons and divisions in charge

Business operators are required to develop organizational frameworks for the affairs of handling Individual Numbers. Specifically, this requirement includes clarification of the persons and the divisions that actually handle such affairs, determination of the scope of work for each division (if multiple divisions are involved), and development of a framework for reporting and investigation in case of information leakage.

It is not a problem for the division receiving the provision of Individual Numbers (if it is distinct from the division managing the Individual Numbers) to see the Individual Numbers for the purpose of identity verification or otherwise. However, the receiving division needs to promptly hand over the Individual Numbers to the managing division and not hold such numbers in hand in order to avoid being censured for having kept the Individual Numbers longer than necessary.

B. Supervision and training of persons in charge

Business operators are required to familiarize the persons in charge with the proper handling of the Specific Personal Information, to provide them with sufficient training and other education on a regular basis, and to develop a framework for supervision of the persons in charge. It is also necessary to take measures for prevention of information leakage and similar damaging events, such as the inclusion of a strict confidentiality provision regarding the Specific Personal Information in the rules of employment or other regulations.

(3) Management of the area where the Specific Personal Information is handled (aspect of physical facilities)

Business operators are required to take physical security measures to prevent leakage of the Specific Personal Information, such as determining the area for the handling of the Specific Personal Information File (this refers to a database of personal information including Individual Numbers), and managing entry and exit to and from the area by means of IC cards.

Business operators are also required to take measures to prevent leakage, loss and theft of information at places where the affairs related to the handling of Individual Numbers are conducted, such as enclosing the area with partitions to prevent any visibility from outside and storing all documents that bear Individual Numbers in lockable cabinets.

(4) Access control and log storage (aspect of technical means)

A. Access authority control and prevention of unauthorized access

In most cases, the Individual Numbers acquired from the Employees would be compiled into a database (“Specific Personal Information File”) with the information regarding their names, posts and divisions, and that database would be almost always created in electronic form. Business operators need to ensure technical security by means of limiting access to the Specific Personal Information File, implementing a system of authentication by ID and passwords, and installing a sufficient firewall for prevention of unauthorized access from outside.

B. Database management and logs of use

Business operators are required to take measures to manage the Specific Personal Information File itself and to track the status of use of the File, such as preparing a ledger listing the division in charge of the handling of the Specific Personal Information File, and the persons having access to the File, and keeping logs on access and use of the Specific Personal Information File.

C. Deletion of data

Business operators are allowed to collect Individual Numbers solely for the purpose of conducting the affairs permitted under the My Number Act. Upon the completion of such affairs (or upon the expiration of the data storage period, if required by law), business operators must promptly delete the relevant data. While data on paper (a hardcopy) can be destroyed by incinerating the paper or other physical methods, in the case of deletion of any data forming part of a database, the use of file deletion software or other appropriate means are required so that they cannot be easily recovered.

(5) Business operators in the financial industry

Please note that business operators in the financial industry are required under “(Separate Volume) Guidelines for proper handling of Specific Personal Information in Financial Industry” to take measures stricter than those described above.

6 Compliance with the Personal Information Protection Act

When acquiring personal information, “business operators handling personal information” under the Personal Information Protection Act are required to specify and clearly indicate the purpose of use of the personal information. When acquiring Individual Numbers, which constitute “personal information”, that operator is required to specify the purpose of use (for example, “affairs preparing withholding records”) and to clearly indicate the purpose by means such as publication on the intranet, presentation of a document describing the purpose, or the description of the purpose in the rules of employment.

7 Other points to note – prevention of unintended acquisition, storage or provision of Individual Numbers

An “Individual Number Card,” which will be issued from January 2016 onward to those who apply for one, is expected to be used as an identification card with a photo. While it is a general practice to keep a copy of an identification card on file, business operators should be careful not to casually take a copy of the reverse side of an Individual Number Card which bears an Individual Number. In addition, given that a holder of Individual Number may request to have his/her Individual Number printed on a copy of his/her residence record, business operators should be careful not to casually receive a copy of a residence record bearing an Individual Number when such a copy is used only for the purpose of personal identification without relevance to the My Number Act.

Furthermore, when issuing a document to an employee for any purpose other than the affairs permitted under the My Number Act (for example, when reissuing a withholding record upon request from an employee for the purpose of loan application), the business operator must not issue a document bearing an Individual Number. Hence, adequate safeguards (such as masking of the Individual Number) will be required.

8 Conclusion

The My Number Act and the guidelines thereunder require private business operators to take various measures. Any business operator that cannot develop its systems in line with the guidelines runs the risk of being considered unlawful.

In preparation for the start of operation of the My Number system, private business operators are required to develop their internal systems to meet the regulations under the My Number Act by October 2015, when the notification of Individual Numbers begins, or by the end of 2015, at the latest.

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