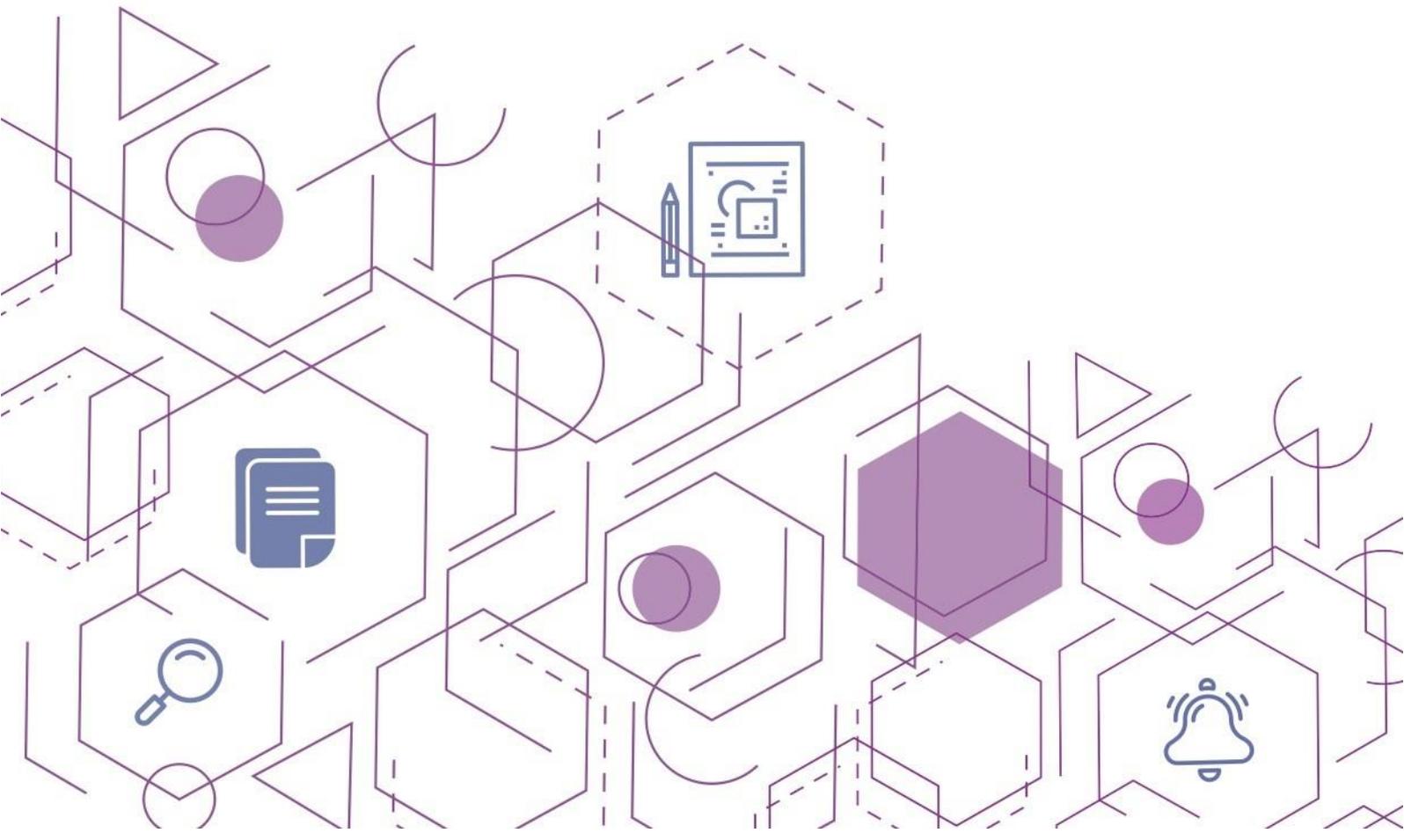


# ADVISORY GUIDELINES ON THE DO NOT CALL PROVISIONS

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## PART I: INTRODUCTION

### 1 Introduction

- 1.1 The Personal Data Protection Act 2012 (the “PDPA”) establishes a general data protection law in Singapore which governs the collection, use and disclosure of individuals’ personal data by organisations. The Personal Data Protection Commission (the “Commission”) is established under the PDPA with the key functions, amongst others, of promoting awareness of data protection in Singapore and administering and enforcing the PDPA.
- 1.2 These advisory guidelines (these “Guidelines”) are issued by the Commission pursuant to section 49(1) of the PDPA to provide guidance on the manner in which the Commission will interpret provisions of the PDPA. Where relevant, reference is made to the provisions of the regulations under the PDPA (“Regulations”).
- 1.3 These Guidelines should be read in conjunction with the Advisory Guidelines on Key Concepts in the PDPA (“Key Concepts Guidelines”) and other relevant guidelines issued by the Commission<sup>1</sup>.
- 1.4 These Guidelines are advisory in nature and are not legally binding on the Commission or any other party. They do not modify or supplement in any way the legal effect and interpretation of any laws cited including, but not limited to, the PDPA and any subsidiary legislation (such as regulations and rules) issued under the PDPA. Accordingly, these Guidelines shall not be construed to limit or restrict the Commission’s administration and enforcement of the PDPA. The provisions of the PDPA and any regulations or rules issued thereunder will prevail over these Guidelines in the event of any inconsistency. The Guidelines do not constitute legal advice.
- 1.5 These Guidelines provide more elaboration on selected issues relating to the Do Not Call provisions in the PDPA, which are set out in Part 9 and 9A of the PDPA (“DNC Provisions”). The DNC Provisions operate in conjunction with the Data Protection Provisions (“DP Provisions”) of the PDPA, which are set out in Parts 3 to 6A of the PDPA. The DNC Provisions came into effect from 2<sup>nd</sup> January 2014 and the DP Provisions came into effect from 2<sup>nd</sup> July 2014. Organisations are required to comply with both sets of provisions.

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<sup>1</sup> Guidelines issued by the Commission are available at [www.pdpc.gov.sg/ag](http://www.pdpc.gov.sg/ag).

1.6 In brief, the DP Provisions deal with the following matters:

- a) Having reasonable purposes, notifying purposes and obtaining consent for the collection, use or disclosure of personal data;
- b) Allowing individuals to access and correct their personal data;
- c) Taking care of personal data (which relates to ensuring accuracy), protecting personal data (including protection in the case of international transfers) and not retaining personal data if no longer needed;
- d) Notifying the Commission and affected individuals of data breaches; and
- e) Having policies and practices to comply with the PDPA.

Please refer to the Key Concepts Guidelines for details on the DP Provisions.

1.7 The DNC Provisions apply to persons including individuals as well as companies, associations and other bodies of persons, corporate or unincorporated<sup>2</sup>. The DNC Provisions contain a number of obligations that apply in relation to persons sending specified messages to Singapore telephone numbers<sup>3</sup>. In brief, such persons are required to comply with the following obligations:

- a) Duty to check the DNC Register – before a person sends a specified message to a Singapore telephone number, the person must check with the DNC Registry established by the Commission under the PDPA (the “DNC Registry”) to confirm that the number is not listed on the DNC Register established by the Commission as part of the DNC Registry, unless the person has obtained clear and unambiguous consent in evidential form from the user or subscriber of the number<sup>4</sup> (section 43 of the PDPA); and

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<sup>2</sup> As drafted, the DNC Provisions impose obligations on a “person” sending specified messages. However, as may be seen from the definitions of “person” in section 2(1) of the Interpretation Act, the term includes natural persons as well as companies, associations and other bodies of persons, corporate or unincorporated. For the avoidance of doubt, the term “person” as used in these Guidelines shall be construed as including individuals as well as companies, associations and other bodies of person, corporate or unincorporate.

<sup>3</sup> The term “Singapore telephone number” is defined in section 36(1) of the PDPA to mean (a) a telephone number, with eight (8) digits beginning with the digit 3, 6, 8 or 9, that is in accordance with the National Numbering Plan referred to in regulation 12A of the Telecommunications (Class Licence) Regulations (Cap. 323, Rg 3); or (b) any other telephone numbers as may be prescribed. There are no other numbers prescribed at the moment.

<sup>4</sup> The term “subscriber” is defined in section 36(1) as the subscriber of the telecommunications service to which the Singapore telephone number in question is allocated.

- b) Duty to identify the sender of a message – when sending a specified message to a Singapore telephone number, the person must:
  - i. include information identifying the sender and how the recipient can contact the sender (section 44 of the PDPA); and
  - ii. for voice calls, the sender must not conceal or withhold from the recipient the sender’s calling line identity<sup>5</sup> (section 45 of the PDPA).

1.8 There are three (3) DNC Registers which individuals may choose to opt out of receiving specified messages:

- a) No Voice Call Register, to opt out of receiving specified messages via voice calls (i.e. voice or video calls sent by a telephone service, data service or any other electronic means);
- b) No Text Message Register, to opt out of receiving specified text messages (including any text, sound or visual message that is not a specified call or fax, e.g. SMS/MMS); and
- c) No Fax Message Register, to opt out of receiving specified fax messages.

1.9 In order to understand how the DNC Provisions apply, it is important to take note of what is a “specified message”, what constitutes sending a message to a Singapore telephone number, and who is a “sender” under the PDPA. These questions, as well as the scope of the above obligations, are addressed in these Guidelines.

1.10 Further, persons are prohibited from sending any messages to any telephone number that is generated or obtained through the use of address-harvesting software, or to use dictionary attacks or similar automated means to send messages indiscriminately (section 48B of the PDPA).

1.11 It should be noted that the examples in these Guidelines serve to illustrate certain aspects of the DNC Provisions, and are not meant to exhaustively address every obligation in the PDPA that would apply in the example.

1.12 For the purposes of illustration, these Guidelines will use “12345678” to refer to an operational Singapore telephone number which can receive incoming calls or text messages and [abc@abc.org](mailto:abc@abc.org) as a valid email address which can receive incoming emails.

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<sup>5</sup> The term “calling line identity” is defined in section 36(1) as the telephone number or information identifying the sender.

## PART II: DEFINITION OF A SPECIFIED MESSAGE

### 2 Overview of Part II

2.1 Part II relates to what constitutes a “specified message” for the purposes of the DNC Provisions, as defined in section 37 of the PDPA, including the exclusions from the meaning of “specified message” as provided under section 37(5).

### 3 Meaning of “specified message”

3.1 Section 37 of the PDPA defines what constitutes a “specified message” for the purposes of the DNC Provisions. In brief, under section 37(6) and the Tenth Schedule, a message is a specified message if the purpose of the message, or one of its purposes, is –

- a) to advertise, promote, or offer to supply or provide any of the following:
  - i. goods or services<sup>6</sup>;
  - ii. land or an interest in land; or
  - iii. a business opportunity or an investment opportunity;
- b) to advertise or promote a supplier/provider (or a prospective supplier/provider) of the items listed in sub-paragraphs (i) to (iii) above; or
- c) any other prescribed purpose related to obtaining or providing information<sup>7</sup>.

3.2 In most instances, a marketing message of a commercial nature would be a specified message within the meaning of the PDPA. Messages sent for a purpose which is not specified in section 37(6) and the Tenth Schedule would not be a specified message for the purposes of the PDPA.

3.3 Section 37(1) and the Tenth Schedule is subject to the exclusions under section 37(5). Section 37(5) provides that the messages referred to in the Eighth Schedule will not

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<sup>6</sup> The terms “goods” and “services” are defined in section 36(1) of the PDPA, as follows:

“goods” means any personal property, whether tangible or intangible, and shall be deemed to include (a) chattels that are attached or intended to be attached to real property on or after delivery; (b) financial products and credit, including credit extended solely on the security of land; (c) any residential property; or (d) a voucher.

“services” includes (a) a service offered or provided that involves the addition to or maintenance, repair or alteration of goods or any residential property; (b) a membership in any club or organisation if the club or organisation is a business formed to make a profit for its owners; (c) the right to use time share accommodation (as defined in section 36(1)) under a time share contract (as defined in section 36(1)); and (d) financial services (as defined in section 2 of the Consumer Protection (Fair Trading) Act (Cap. 52A)).

<sup>7</sup> There are presently no such other prescribed purposes.

be considered specified messages for the purpose of the DNC Provisions and are not subject to the application of those provisions.

- 3.4 In order to determine whether the purpose (or one of the purposes) of a message falls within the meaning of a specified message, section 37(1) specifies that the following would be taken into consideration:
- a) the content and presentation aspects of the message; and
  - b) the content that may be obtained through the message, that is, by using the numbers, URLs or contact information (if any) included in the message or by calling the telephone number from which the message was sent.
- 3.5 Matters such as the quality of the goods, the terms and conditions under which the items would be supplied or whether the items are offered to the recipient at an attractive price or free of charge would not affect whether a message is a specified message.
- 3.6 It should be noted that under section 37(2), it is immaterial whether the goods, services, land, interest or opportunity exist, or if it is lawful to acquire the goods, services, land or interest or take up the opportunity. Hence a person cannot cite as a defence the fact that, for example, the goods it had offered in a specified message were actually not available for purchase.
- 3.7 The following section provides illustrative examples of messages which would fall within or out of the definition of a “specified message”.

#### Offers to send specified messages

- 3.8 Generally speaking, a message sent to a Singapore telephone number where the purpose, or one of the purposes, is to offer to send specified messages, would be considered a specified message as it relates to a supplier of goods or services or generally to the goods or services the supplier would like to offer or advertise.

	<b>Example</b>	<b>Treatment</b>
3.9	<p>ABC organisation sends the following message via voice call, SMS, or fax to John’s Singapore telephone number:</p> <p>“ABC would like to send you information about special offers from time to time.”</p>	<p>ABC would be considered to have sent a specified message to a Singapore telephone number.</p>

	<b>Example</b>	<b>Treatment</b>
3.10	<p>ABC organisation sends the following message via voice call, SMS, or fax to John’s Singapore telephone number:</p> <p>“ABC would like to send you information about special offers from time to time. Are you registered on any of the DNC Registers? Please reply [Y] or [N].”</p>	ABC would be considered to have sent a specified message to a Singapore telephone number.
3.11	<p>ABC organisation sends the following message to John’s email address:</p> <p>“ABC would like to send you information about special offers from time to time.”</p>	ABC would not be considered to have sent a specified message to a Singapore telephone number.

3.12 Similarly, a message sent to a Singapore telephone number where the purpose, or one of the purposes, is to obtain clear and unambiguous consent for the sending of specified messages, would be considered a specified message.

3.13 Persons who wish to contact individuals to obtain clear and unambiguous consent for the sending of specified messages should do so in a manner which does not involve the sending of a specified message to a Singapore telephone number, unless such persons comply with the DNC Provisions. Such persons will also have to comply with the DP Provisions.

	<b>Example</b>	<b>Treatment</b>
3.14	<p>ABC organisation sends the following message via voice call, SMS, or fax to John’s Singapore telephone number:</p> <p>“ABC would like to send you information about special offers from time to time. Please reply [Y] if you agree.”</p>	ABC would be considered to have sent a specified message to a Singapore telephone number.

	Example	Treatment
3.15	<p>ABC organisation sends the following message to John’s email address:</p> <p>“ABC would like to send you information about special offers from time to time by SMS to your Singapore telephone number. Please reply [Y] to this email if you agree.”</p>	<p>ABC would not be considered to have sent a specified message to a Singapore telephone number.</p> <p>If John replies Y to the email, ABC would likely be considered to have obtained clear and unambiguous consent from John to send him specified messages by SMS to his Singapore telephone number if they are able to reproduce the consent given when required to do so subsequently.</p>

#### Responding to requests for information about a good or service

- 3.16 Generally speaking, a person who sends a message to a Singapore telephone number for the sole purpose of responding to a request from an individual for information about a good or service would not be considered to be sending a specified message.
- 3.17 When a person receives such a request for information through a third party, as good practice, the person should exercise the appropriate due diligence to confirm that the individual had in fact made such a request for information. For example, the third party provides written confirmation from the individual supporting the request or the person can reasonably conclude that the circumstances are such that the individual is aware of and does not object to the request. In case of doubt, the person may wish to perform a check with the individual to confirm that the individual had indeed requested for information on the good or service, before sending the information to the individual. If the person is unable to confirm whether the individual had indeed made a request for information and does not have clear and unambiguous consent to send specified messages to the Singapore telephone number, the person must comply with the DNC Registry provisions if it wishes to send specified messages to the Singapore telephone number<sup>8</sup>.
- 3.18 In addition, the DP Provisions in the PDPA require organisations to obtain the individual’s consent before collecting, using or disclosing personal data of the individual<sup>9</sup>.

<sup>8</sup> Please also refer to the section below on “Sending specified messages to Singapore telephone numbers obtained through third party sources”.

<sup>9</sup> Please refer to the chapter on the “Consent Obligation” in the Key Concepts Guidelines for more information.

	Example	Treatment
3.19	<p>John contacts Organisation ABC to enquire about its products. As the sales representative of ABC is busy, John leaves his contact number for the sales representative to call him back later.</p> <p>Sales representative of ABC, Mary, calls John back later to provide more information about the products.</p>	<p>ABC would not be considered to have sent a specified message.</p>
3.20	<p>John informs Organisation ABC that his mother, Janice, is interested to find out more about ABC's products and provides ABC with Janice's mobile telephone number.</p> <p>Sales representative of ABC, Mary, calls Janice and informs her that her mobile telephone number was provided by John, and checks whether Janice had requested for information on ABC's products. Janice confirms that she had indeed requested for the information. Mary then proceeds to provide information on ABC's products to Janice.</p>	<p>ABC would not be considered to have sent a specified message.</p> <p>If, however, Janice indicates that she had not made such a request for information, ABC should not proceed to provide information about its products to Janice.</p>

#### Invitation to events, seminars or courses

- 3.21 An invitation to an event, seminar or course (or similar function) could be considered to be a purpose which falls within the definition of a specified message. Depending on the nature of the event, seminar or course (or similar function), an invitation to attend could fall within the meaning of a specified message, e.g. an event could offer to supply a good or service, or a seminar could promote or advertise a supplier.
- 3.22 For example, an invitation to an event that is a sale would likely fall within the definition of a specified message as an offer to supply goods. Similarly, an invitation to a course or seminar which purports to impart certain skills (e.g. business presentation skills) could also fall within the definition of a specified message as an offer to supply services.

## 4 Messages excluded from the definition of a specified message

### Exclusions from the meaning of “specified message” in the Eighth Schedule

4.1 Section 37(5) provides that a specified message will not include any of the messages referred to in the Eighth Schedule to the PDPA. The messages referred to in the Eighth Schedule are therefore not specified messages for the purpose of the DNC Provisions and are not subject to the application of those provisions. In particular, a specified message does not include any of the following:

- a) any message sent by a public agency under, or to promote, any programme carried out by any public agency which is not for a commercial purpose<sup>10</sup>;
- b) any message sent by an individual acting in a personal or domestic capacity;
- c) any message which is necessary to respond to an emergency that threatens the life, health or safety of any individual;
- d) any message the sole purpose of which is –
  - i. to facilitate, complete or confirm a transaction that the recipient of the message has previously agreed to enter into with the sender; or
  - ii. to provide warranty information, product recall information, or safety or security information with respect to a product or service purchased or used by the recipient of the message; or
  - iii. to deliver goods or services, including product updates or upgrades, that the recipient of the message is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender;
- e) any message, other than a message mentioned in sub-paragraph (d) –
  - i. that is sent while the sender is in an ongoing relationship with the recipient of the message; and
  - ii. the sole purpose of which relates to the subject matter of the ongoing relationship;
- f) any message the sole purpose of which is to conduct market research or

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<sup>10</sup> The term “public agency” is defined in section 2(1) of the PDPA.

market survey; or

- g) any message sent to an organisation other than an individual acting in a personal or domestic capacity, for any purpose of the receiving organisation.

*Definition of ongoing relationship*

4.2 In sub-paragraph (e), “ongoing relationship” means a relationship, on an ongoing basis, between the sender and the recipient of the message, arising from the carrying on or conduct of a business or an activity (commercial or otherwise) by the sender. Sub-paragraph (e) includes any message the sole purpose of which is to provide –

- a) notification concerning a change in the terms or features of;
- b) notification of a change in the standing or status of the recipient of the message with respect to; or
- c) at regular periodic intervals, account balance information or other type of account statement with respect to,

a subscription, membership, account, loan or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of goods or services offered by the sender.

4.3 The term ‘business’, as used in the definition of ‘ongoing relationship’, is defined in section 2 of the PDPA and is not limited to “for profit” business. Instead, it includes the activities of any organisation, whether or not carried on for purposes of gain.

4.4 As such, ongoing relationships between the individual and the sender could be in the form of commercial or non-commercial relationships. These may include, for example, an existing subscription, membership, account, loan or similar relationships involving the ongoing purchase or use of goods and services supplied by the sender (e.g. retail membership, media subscription, insurance policy, bank account/loan). Relationships which may arise from regular participation in the activities of an organisation, such as current students of a school or a donor who regularly donates to a charity, may also be considered to be an ongoing relationship between the individual and the sender.

4.5 In determining whether an ongoing relationship with the individual exists, the Commission considers factors including continuity, regularity and frequency, for instance repeated visits/transactions and whether the individual has signed up for a package (e.g. a course of medical or dental treatment that requires follow-up visits to a clinic, annual check-ups or health screening). It should be noted that once-off

transactions are insufficient to establish an ongoing relationship. Examples of what the Commission considers related to the subject of the ongoing relationship are provided below in the table.

	<b>Subject of the ongoing relationship between the sender and the subscriber or user of the Singapore telephone number</b>	<b>Message which purpose is related to the subject of the ongoing relationship</b>
4.6	Recipient is an existing holder of ABC credit card	<p>“Sign up for a new credit card XYZ and receive an introductory gift.”</p> <p>“Sign up for ABC cardholder’s rewards programme and receive information about rewards redemption offers!”</p>
4.7	Recipient holds a life insurance policy	<p>“Sign up for an investment-linked life insurance plan.”</p> <p>“Sign up for critical illness coverage on your existing policy.”</p>
4.8	Recipient is an existing subscriber to ABC Magazine	<p>(XYZ Magazine and ABC Magazine are fashion magazines.)</p> <p>“Enjoy 20% off subscription rates to XYZ Magazine.”</p> <p>“Get the ABC 2015 calendar, featuring the most popular cover pages of ABC Magazine.”</p>
4.9	Recipient has an existing home loan	<p>“Re-finance your home loan now and receive free fire insurance for one year.”</p> <p>“Attractive interest rates for home renovation loans!”</p>

	<b>Subject of the ongoing relationship between the sender and the subscriber or user of the Singapore telephone number</b>	<b>Message which purpose is related to the subject of the ongoing relationship</b>
4.10	Recipient is an existing home fixed-line broadband service subscriber	"Enjoy faster speeds with fibre broadband at only \$X a month."
4.11	Recipient is an existing member of a rewards programme	"All rewards programme members get 10% off Service ABC."  "Use your membership rewards points to redeem vouchers at organisation ABC."  "ABC celebrates your birthday month! Show this SMS to enjoy 10% discount for your purchases at ABC's stores this month."
4.12	Recipient is an existing member of a club or society	"Course for all society members on improving interview and communication skills. Sign up now."  "Members enjoy 10% discount at all F&B outlets in the club. Sign up now."
4.13	Recipient has an existing arrangement to regularly donate to a charity	"Buy tickets to our charity's fund raising event."

4.14 A person sending a message that falls within one of the excluded purposes specified in the Eighth Schedule (or which is not listed in section 37(1)) must not use that message for any of the purposes listed in section 37(1) of the PDPA and which is not excluded under the Eighth Schedule. Otherwise, the message will still be a specified message and the sender will be required to comply with the DNC Provisions in relation to the sending of that message. An example of such a message is provided below.

	<b>Example Message</b>	<b>Treatment</b>
4.15	“Members enjoy additional 5% on top of membership privileges in the month of June. Visit our stores to check out our new Summer arrivals.”	This message does not fall within paragraph 1(e) as its purpose is not solely to provide notification on a change in the terms or features of an ongoing commercial relationship.

4.16 Examples of messages which fall within the Eighth Schedule and are not considered specified messages are provided below in the table. Paragraph references in the table are references to the provisions of the Eighth Schedule.

	<b>Example Message</b>	<b>Treatment</b>
4.17	“The [transaction] you requested has been completed.” <sup>11</sup>	This message falls within paragraph 1(d)(i) as its sole purpose is to confirm a transaction that the recipient of the message has previously agreed to enter into with the sender.
4.18	“We are upgrading Service ABC to Service ABC Plus. The original Service ABC will be phased out in two (2) months.  Please sign in to your account to find out about the new benefits and accept the upgrade.”	This message falls within paragraph 1(d)(iii) as its sole purpose is to deliver a product update or upgrade which the recipient of the message is entitled to receive under the terms of a transaction which the recipient has previously agreed to enter into with the sender.
4.19	“[New features] are available for your [service] in the month of July. Don’t miss out!” <sup>12</sup>  “Your annual fee will be waived if you accumulate \$1000 worth of purchases by 31 Dec 2014.”	These messages fall within paragraph 1(e) if each message’s sole purpose is to provide notification concerning a change in the terms or features of an ongoing commercial relationship involving the ongoing purchase or use by the recipient of goods or services offered by the sender.

<sup>11</sup> Examples of such transactions could include: request for a change of mailing address, funds transfer, bill payment or request for a new service.

<sup>12</sup> Examples of such new features for a service could include complimentary channels on a paid TV subscription, lower transaction fees on a brokerage platform, or bonus credit granted to prepaid card top-ups.

	<b>Example Message</b>	<b>Treatment</b>
4.20	“Congratulations! You have accumulated enough purchases and have been upgraded from a Silver member to a Gold member.”	This message falls within paragraph 1(e) as its sole purpose is to provide notification of a change in the status of the recipient with respect to a subscription involving the ongoing purchase by the recipient of goods or services offered by the sender.
4.21	“You have an outstanding balance with Organisation ABC. Please pay your bill by 25 June 2014.”	This message falls within paragraph 1(e) as its sole purpose is to provide, at regular periodic intervals, account balance information.
4.22	“Your service contract / subscription will cease on 24 <sup>th</sup> July 2014. Renew now and get 10% off.”	This message falls within paragraph 1(e).
4.23	“Your account balance is low. Top up now to enjoy \$5 free credits for every top up of \$20.”	This message falls within paragraph 1(e).

#### *Surveys and market research*

- 4.24 The Eighth Schedule excludes any message which has the sole purpose of conducting market research or market survey from the definition of a specified message<sup>13</sup>.
- 4.25 The Commission notes that persons who conduct market research or market survey may wish to provide some form of gift for individuals participating in the survey. Generally speaking, the Commission is prepared to accept that the offer or provision of a gift as a form of reward or expression of thanks for survey participants does not constitute an offer to supply goods or services.
- 4.26 However, persons should act in good faith and not attempt to disguise a specified message in the form of the provision of a “gift”.

<sup>13</sup> This is set out in paragraph 1(f) of the Eighth Schedule.

	Example	Treatment
4.27	<p>An organisation, ABC, is a market research firm that has been engaged to produce a report which illustrates the correlation between investment habits and income, profession and marital status of working Singaporeans aged 25-40. ABC calls Sarah on her Singapore telephone number for the purpose of gathering information for the report.</p> <p>After Sarah finishes answering all the questions related to the report, ABC informs Sarah that she would be entitled to a gift as a token of appreciation for her participation in the form of one of the following:</p> <ul style="list-style-type: none"> <li>a) a stationery set worth \$15; or</li> <li>b) a gift voucher that can be redeemed at 123 Bakery.</li> </ul>	<p>As the sole purpose of ABC's call is to conduct market research or a market survey, ABC is not considered to have sent a specified message.</p>
4.28	<p>Organisation XYZ is a market research firm who calls Sarah on her Singapore telephone number for the purpose of a market survey.</p> <p>After Sarah finishes answering all the questions related to the report, XYZ conveys this message:</p> <p>"Did you know that our survey results reveal that 123 Bakery is the most popular bakery in your neighbourhood? You should consider trying their signature products."</p>	<p>XYZ would be considered to have advertised or promoted a supplier and/or goods.</p> <p>Hence, XYZ would be considered to have sent a specified message to a Singapore telephone number.</p>

*Business to Business ("B2B") marketing messages*

- 4.29 As noted above, one of the excluded messages specified in the Eighth Schedule relates to messages sent to an organisation other than an individual acting in a personal or domestic capacity, for any purpose of the receiving organisation<sup>14</sup>. This exclusion addresses B2B marketing messages and purposes, for example, where company A wishes to market its goods or services to company B, for the purposes of company B.

<sup>14</sup> This is set out in paragraph 1(g) of the Eighth Schedule.

	Example
4.30	<p>John calls the Human Resource Manager of ABCD Childcare Pte Ltd (“ABCD”), Mary, through her business contact number (which John obtained from ABCD’s website) to promote a product which he thinks ABCD would purchase for use at its childcare centres. Such a call is not a specified message for the purposes of the DNC Provisions.</p> <p>However, while talking to Mary, John asks her if she has children and whether she would be interested to buy another product for her personal use. In such a situation, John would not be able to rely on this exception, and will need to ensure that he complies with the DNC Provisions.</p>

#### Other messages which are not specified messages

- 4.31 A message sent solely to promote an employment opportunity, to solicit donations for a charitable<sup>15</sup> cause or to promote a political cause, and without any marketing elements (such as an offer to supply a good or service), would not fall within the definition of a specified message.

	Example Message	Treatment
4.32	“Would you like to become an insurance agent with Organisation ABC?”	These messages would not be considered specified messages as they do not offer to supply a good or service or fall within any other part of the definition of specified messages.
4.33	“Apply to be a cleaner with Organisation ABC.”	
4.34	“Do a good deed and donate to Charity ABC.”	
4.35	“Spare a dollar for a Charity ABC’s building redevelopment project.”	
4.36	“Charity ABC is looking for volunteers. Sign up to help!”	

<sup>15</sup> Charitable causes may include religious causes.

- 4.37 Persons should note that other relevant laws may apply in relation to the sending of messages for commercial, charitable or other purposes and these Guidelines do not address them.

## **PART III: DUTY TO CHECK THE DNC REGISTER AND THE REQUIREMENT TO OBTAIN CLEAR AND UNAMBIGUOUS CONSENT IN EVIDENTIAL FORM**

### **5 Overview of Part III**

5.1 This Part relates to the obligation in section 43 of the PDPA that a person who intends to send a specified message to a Singapore telephone number must check (either personally or through a checker) with the DNC Registry established by the Commission under the PDPA to confirm that the number is not listed on a DNC Register as part of the DNC Registry, unless the person has obtained clear and unambiguous consent to the sending of the specified message that is evidenced in written or other form so as to be accessible for subsequent reference (referred to as “evidential form” in these Guidelines) from the user or subscriber of the number<sup>16</sup>.

### **6 Duty to check the DNC Register**

6.1 The obligation of persons to check with the DNC Registry is set out in section 43 of the PDPA. In particular, under section 43(1) and (2), a person must not send a specified message addressed to a Singapore telephone number unless they had valid confirmation that the Singapore telephone number is not listed in the DNC Register. In order to ascertain this, they must:

- a) Have made an application to the Commission within 21 days, before sending the specified message, under section 40(2) to confirm whether the Singapore telephone numbers is listed in the DNC Register; and received confirmation from the Commission that the Singapore telephone number is not listed in the relevant register; or
- b) have obtained from a checker information that the Singapore telephone number is not listed in the relevant register (“relevant information”) and has no reason to believe that –
  - i. the relevant information was obtained more than 21 days ago; or
  - ii. the relevant information is false or inaccurate.

6.2 The “prescribed duration” within which a person must check with the DNC Registry before sending a specified message to a Singapore telephone number has been prescribed as 21 days.

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<sup>16</sup> The term “subscriber” is defined in section 36(1) as the subscriber of the telecommunications service to which the Singapore telephone number in question is allocated.

- 6.3 The validity period of the results returned from the DNC Registry reflects the requirement for persons to check with the DNC Registry within the “prescribed duration”:

<u>Validity period of results returned from the DNC Registry</u>		
Receipt of Results	Validity Period	Remarks
From 1 February 2021 onwards	<b>21 days</b> from receipt of results	E.g., If an organisation submits telephone numbers for checking against the DNC Registry and receives the results on 2 February 2021, the results will be valid until 23 February 2021.

If consent obtained by a person for the purposes of the DNC Provisions is withdrawn, the person will need to check with the DNC Registry as noted above. The requirements of the PDPA relating to obtaining consent for the purposes of the DNC Provisions are discussed below. The “prescribed period” (as set out in section 47(3)) within which persons must effect a withdrawal of consent is 21 days.

- 6.4 A person would be considered to have complied with the duty to check with DNC Registry if the person has been informed by a checker that the Singapore telephone number is not listed in the DNC Registry, and has no reason to believe that the information has expired or that the information provided by the checker is false or inaccurate.

#### Obligation on third-party checkers

- 6.5 Under section 43A(1), a “checker” is a person who checks the DNC Register for a sender and provides the sender information on whether a Singapore telephone number is listed in the relevant register (“the applicable information”). A checker does not include an individual who is an employee of the sender, or an employee or a contractor of the checker.
- 6.6 Under section 43A(2), the checker must:
- a) Ensure that the applicable information provided to the sender is accurate in accordance with the results from the DNC Registry; and

- b) When communicating the applicable information to the sender, provide him with the date the checker received the results from the DNC Registry, and the validity period of the applicable information.

## 7 Obtaining clear and unambiguous consent

- 7.1 As noted in the previous section, a person is not required to check with the DNC Registry before sending a specified message to a Singapore telephone number if the person has obtained a clear and unambiguous consent evidenced in written or other form from the subscriber or user of the number for the sending of the message to that number.
- 7.2 The PDPA does not define the terms ‘clear’ and ‘unambiguous’ as the determination of whether consent was clear and unambiguous will depend on the specific facts in question.
- 7.3 Facts that would determine if consent was clear and unambiguous would include:
- a) whether the person had notified the user or subscriber clearly and specifically that specified messages would be sent to his or her Singapore telephone number; and
  - b) whether the user or subscriber gave consent to receive specified messages through some form of positive action. Clear and unambiguous consent is unlikely to be construed to have been obtained from a mere failure to opt out through inaction on the part of the user or subscriber. Please refer to the section on “Failure to opt out” in the Key Concepts Guidelines for more information.
- 7.4 Examples of when persons would be considered to have obtained clear and unambiguous consent are provided below.

	<b>Example</b>	<b>Treatment</b>
7.5	Example Clause A: “you consent to receive information about special offers we may have from time to time, by SMS”.	Clause A clearly and specifically notifies the user or subscriber that specified messages would be sent to his or her Singapore telephone number.
7.6	Example Clause B: “you consent to the use of your personal data for marketing purposes”.	Clause B is not sufficiently specific as “marketing purposes” may or

	Example	Treatment
		may not include the sending of specified messages.
7.7	<p>Sarah signs up for a spa membership over the Internet. She is directed to the terms and conditions page.</p> <p>There is a check box on the first page next to Example Clause A above (“you consent to receive information about special offers we may have from time to time, by SMS”). Sarah checks the box.</p>	Sarah would be considered to have given clear and unambiguous consent.
7.8	<p>Sally fills up an online form. The following clause is directly above the “Submit” button.</p> <p>I would like to receive information about promotions and offers by:</p> <ul style="list-style-type: none"> <li>a) Phone <input type="checkbox"/></li> <li>b) SMS <input type="checkbox"/></li> <li>c) Email <input type="checkbox"/></li> <li>d) Mail <input type="checkbox"/></li> </ul> <p>Sally checks the boxes SMS and Email and submits the online form.</p>	Sally would be considered to have given clear and unambiguous consent.
7.9	<p>Mary fills out a form with a clause with a check box next to it that says “please send me special offers about Organisation ABC’s products by SMS”.</p> <p>This clause is clearly printed directly above where Mary has to sign the application form.</p> <p>Mary ticks the check box and signs the form.</p>	Mary would be considered to have given clear and unambiguous consent.
7.10	<p>Joyce fills out a form. At the end of the form, right before the signature line, this clause is printed: “We would like to send you information about new products and sales</p>	Joyce would be considered to have given clear and unambiguous consent.

	Example	Treatment
	<p>promotions. We would call you or send SMSes to your Singapore telephone number.” Following this clause there are two (2) options with accompanying check boxes for individuals to tick, as follows:</p> <ul style="list-style-type: none"> <li>a) I do not agree to receive such information.</li> <li>b) I agree to receive such information. (regardless of any current or future registration on any DNC Register)</li> </ul> <p>Joyce places a tick in the check box next to option b.</p>	
7.11	<p>Retailer A has collected personal data from its customers for the purpose of delivering products purchased by the customers. The retailer subsequently sends an email to all its customers informing them that unless they reply to the email to indicate otherwise, they would be considered to have consented to receive information about special offers the retailer may have from time to time, by SMS.</p>	<p>Retailer A’s customer, Jane, did not reply to the email. Jane would <u>not</u> be considered to have given clear and unambiguous consent.</p>

	Example	Treatment
7.12	<p>Retailer B has collected personal data from its customers for the purpose of delivering services purchased by the customers.</p> <p>Retailer B subsequently amends its standard terms and conditions (in the manner that it is allowed to under the contract) to include a clause stating that it would have the right to send information on special offers and promotions to all its customers' Singapore telephone numbers by voice call, text message, or fax unless the customer opts out of receiving such information.</p> <p>a) Retailer B sends a letter to Susan to inform her of the above amendment and that she may contact Retailer B to opt out. Retailer B's customer, Susan, did not contact Retailer B. It is not known whether Susan received or read the letter or is aware of the amendment to Retailer B's standard terms and conditions.</p>	<p>Susan is unlikely to be considered to have given clear and unambiguous consent to receive specified messages through her Singapore telephone number.</p>
	<p>b) Retailer B sends a letter to Susan to inform her of the above amendment and a means for Susan to opt out including an acknowledgement form. Susan signs and returns the acknowledgment form.</p>	<p>Susan is likely to be considered to have given clear and unambiguous consent to receive specified messages through her Singapore telephone number.</p>

	Example	Treatment
7.13	<p>Retailer C has obtained Joan’s Singapore telephone number and wishes to send specified messages to her.</p> <p>Retailer C checks the DNC Registry and finds out that Joan’s Singapore telephone number is <u>not</u> registered on the No Text Message register. Retailer C sends an SMS to Joan asking if she would like to receive information on its special offers and promotions via her Singapore telephone number (which will be considered a specified message in itself). The SMS asks Joan to reply “yes” if she agrees.</p> <p>Joan replies “yes” to Retailer C’s SMS message.</p>	<p>Joan would be considered to have provided clear and unambiguous consent in evidential form if Retailer C retains and can produce (if subsequently required) the record of the SMS they sent to Joan and Joan’s reply.</p>

- 7.14 Persons who wish to contact individuals to obtain clear and unambiguous consent for the sending of specified messages should do so in a manner which does not involve the sending of a specified message to a Singapore telephone number, unless such persons comply with the DNC Provisions. Such persons will also have to comply with the DP Provisions. Please refer to the section on “Offers to send specified messages” in Chapter 3 for more details.

Sending specified messages to Singapore telephone numbers obtained through third party sources

- 7.15 In some instances, a person A may obtain the Singapore telephone number of an individual C through third party source B (e.g. third party referrer) for the purpose of sending specified messages to C. To be clear, under such circumstances, person A is still required to comply with the DNC provisions when sending C specified messages to the Singapore telephone number, unless person A has obtained clear and unambiguous consent from C for person A to send specified messages to that number. In such circumstances, person A could obtain from B evidence of clear and unambiguous consent given by C for the sending of specified messages by A, or obtain such consent from C directly. (Refer to paragraphs 3.12 and 3.13 above.) For instance, a direct marketing firm that wishes to obtain a list of Singapore telephone numbers of individuals from a third party source for the sending of marketing messages, could obtain a copy of the consent form documenting clear and

unambiguous consent from the individuals for the direct marketing firm to send specified messages to their telephone numbers.

- 7.16 In addition, the DP Provisions in the PDPA require organisations to obtain the individual’s consent before collecting, using or disclosing personal data of the individual<sup>17</sup>.

	Example	Treatment
7.17	Joshua provides the Singapore telephone number of his wife, Alice, to Retailer A as part of Retailer A’s member referral programme. Retailer A obtains from Joshua written evidence of Alice’s clear and unambiguous consent for Retailer A to send her specified messages.	Retailer A is not required to check with the DNC Registry before sending a specified message to the Singapore telephone number.
7.18	<p>Emily provides the Singapore telephone number of her friend, Laura, to Retailer B as part of Retailer B’s member referral programme. Emily did not provide evidence of Laura’s clear and unambiguous consent to send specified messages to her Singapore telephone number.</p> <p>Retailer B wishes to send a text message to ask if Laura would like to receive information on its special offers and promotions via her Singapore telephone number (which is a specified message). Retailer B checks the DNC Registry and finds out that Laura’s Singapore telephone number is <u>not</u> registered on the No Text Message register.</p>	<p>Retailer B may send a specified text message to Laura’s Singapore telephone number.</p> <p>If, however, Laura’s Singapore telephone number is registered with the No Text Message register, Retailer B may not send any specified text messages to Laura’s Singapore telephone number.</p>

Recycled numbers

- 7.19 The Commission notes that in certain circumstances, persons may obtain clear and unambiguous consent from a subscriber (“original subscriber”) of a particular telephone number, which is subsequently terminated by the original subscriber and allocated to a new individual. Similarly, a user (“original user”) of a telephone number may cease to use the number (without any change in the subscriber) and the subscriber may permit a new user to use the number. In these circumstances,

<sup>17</sup> Please refer to the chapter on the “Consent Obligation” in the Key Concepts Guidelines for more information.

the termination of the number or change in the user of the number does not automatically or on its own invalidate the consent provided by the original subscriber or original user<sup>18</sup>.

7.20 However, persons cannot rely on the consent obtained from the original subscriber or original user to send specified messages to that telephone number, once they are aware that the subscriber or user who consented to the sending of specified messages to that telephone number is no longer the subscriber or user of that telephone number.

	Example	Treatment
7.21	<p>John wishes to receive specified messages from Organisation XYZ at his number, 12345678, and provides clear and unambiguous consent to them.</p> <p>Two months later, John terminates his number 12345678 without informing XYZ. The number is subsequently allocated to Sarah.</p> <p>XYZ continues to rely on the clear and unambiguous consent provided by John to send a specified message to 12345678 without checking the DNC Register.</p> <p>Sarah receives a specified message from XYZ after the number has been allocated to her.</p>	<p>XYZ would be considered to have obtained clear and unambiguous consent to send specified messages to 12345678.</p> <p>The PDPA does not require XYZ to verify that the consent it obtained is still operative before sending the message.</p> <p>However, XYZ should cease to rely on the consent obtained from John once it becomes aware that the number has been allocated to Sarah.</p>

Clear and unambiguous consent obtained for the wrong telephone number

7.22 In certain circumstances, clear and unambiguous consent may be obtained for the sending of specified messages to a wrong telephone number on the part of the person obtaining consent or on the part of the person giving consent.

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<sup>18</sup> Section 42 of the PDPA requires every telecommunication service provider to report to the Commission all terminated Singapore telephone numbers. However, this does not invalidate the consent provided by the original subscriber.

	Example	Treatment
7.23	<p>John wishes to receive specified messages from Organisation XYZ at his number, 12345678 and provides clear and unambiguous consent to XYZ. John informs XYZ that his telephone number is 12345678.</p> <p>XYZ records the number wrongly as 12345679. XYZ sends a specified SMS message to 12345679 without checking the DNC Register.</p>	<p>XYZ would not be considered to have obtained clear and unambiguous consent to send specified messages to 12345679.</p> <p>Since XYZ did not check the DNC Register before sending the message, it is likely that XYZ would be in breach of section 43(1) of the PDPA.</p>

## 8 Consent evidenced in written or other form

- 8.1 Section 43(4) requires consent obtained for the purposes of section 43 to be evidenced in written or other form so as to be accessible for subsequent reference.
- 8.2 Written form may include documents or other form of records in physical or electronic form. A person should note that the requirement to obtain consent in evidential form applies to both online and offline situations.
- 8.3 If the consent required under section 43 is not evidenced in written form, it must be recorded in a form which is accessible for subsequent reference. This means that the consent must be captured in a manner or form which can be retrieved and reproduced at a later time in order to confirm that such consent was obtained. Possible forms include an audio or video recording of the consent given.
- 8.4 The Commission recognises that persons may seek to obtain consent to send specified messages to Singapore telephone numbers in a variety of different ways, and that would consequently affect the form in which the evidence takes.
- 8.5 For example, persons may seek to obtain consent by asking individuals to:
- a) respond to a pop-up on a webpage;
  - b) respond to pop-ups or other form of notifications within mobile applications;
  - c) fill out and submit a web form;
  - d) fill out and submit a physical form;
  - e) indicate their choice by signing or ticking against a check box printed on a letter or service agreement; or

- f) call or send an SMS to the person.
- 8.6 Generally speaking, where consent was obtained by way of a physical document, persons should retain the original document as evidence of the consent.
- 8.7 Where consent was obtained through electronic means, persons should retain documentation or system logs capturing the following information:
- a) the individual's choice (i.e. whether the individual provided consent or not);
  - b) date and time when the individual expressed his choice;
  - c) the webpage / pop-up / online form (or equivalent) which the relevant individual was looking at when providing consent; and
  - d) the clauses which the individual consented to (including the terms and conditions applicable to the consent which the individual provided).

#### How long persons should retain documentary evidence of clear and unambiguous consent

- 8.8 Persons should retain evidence of clear and unambiguous consent from an individual for as long as they intend to rely on such consent to send specified messages to that individual's Singapore telephone number.
- 8.9 In considering how long to retain documentary evidence of consent obtained for the sending of specified messages, persons should have regard to the Retention Limitation Obligation in section 25 of the PDPA. Section 25 requires an organisation to cease to retain its documents containing personal data, or remove the means by which the personal data can be associated with particular individuals, as soon as it is reasonable to assume that the purpose for which that personal data was collected is no longer being served by retention of the personal data, and retention is no longer necessary for legal or business purposes.
- 8.10 Where a complaint in relation to a specified message sent arises and the sender has ceased to retain documentary evidence of the consent, the Commission would assess the strength of the remaining evidence (including consideration of evidence as to whether a specified message was sent) in investigating the complaint.

#### Consent given before the prescribed day

- 8.11 As an individual may have consented to receive specified messages sent to his or her Singapore telephone number before the DNC Provisions took effect, the PDPA recognises such consent for the purposes of the DNC Provisions. In particular, section 47(4) provides that for the purposes of the DNC Provisions, a subscriber or

user of a Singapore telephone number is deemed to have given his or her consent to a person to send a specified message to that number if –

- a) the subscriber or user had consented to the sending of the message before the DNC Provisions came into operation; and
- b) such consent had not been withdrawn on or after the date on which the DNC Provisions came into operation.

8.12 The Commission is of the view that persons obtaining consent from individuals before the prescribed day to receive specified messages should also fulfil the section 43(4) requirements – i.e. that the consent be clear and unambiguous and evidenced in written or other form.

#### Withdrawing clear and unambiguous consent

8.13 Any consent given by the subscriber or user of a Singapore telephone number to a person for the purposes of the DNC Provisions may be withdrawn by the user or subscriber by providing notice to the person<sup>19</sup>. The “prescribed period” (as set out in section 47(3)) within which persons must effect a withdrawal of consent is 21 days.

8.14 Section 47(1) of the PDPA provides that a subscriber or user of a Singapore telephone number may withdraw any consent given to a person for the sending of any specified message to that number by giving notice to the person. Section 47(3) provides that a person that receives such a notice must cease (and cause its agents to cease) sending any specified messages to that number after the expiry of the prescribed period, which are prescribed in Regulations.

8.15 Persons should cease the sending of all specified messages which fall within the scope of a withdrawal notice. In determining the effect of any notice to withdraw consent, the Commission will consider all relevant facts of the situation. This could include but is not limited to matters like:

- a) the actual content of the notice of withdrawal;
- b) whether the intent to withdraw consent was clearly expressed; and
- c) the channel through which the notice was sent.

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<sup>19</sup> For sample clauses for obtaining and withdrawing consent in relation to marketing purposes (as well as other purposes), please refer to the Guide on “Sample Clauses for Obtaining and Withdrawing Consent” on the PDPC’s website. Organisations may wish to adapt these sample clauses to their particular circumstances.

In facilitating any notice to withdraw consent, an organisation should act reasonably and in good faith.

- 8.16 Considerations for determining the scope of a notice to withdraw consent obtained under the DNC Provisions (i.e. consent to send marketing messages to a Singapore telephone number) are similar to that for the DP Provisions. Please refer to Chapter 12 of the Key Concepts Guidelines for more details on withdrawal of consent under the DP Provisions.

*Effect of withdrawal when clear and unambiguous consent was obtained for more than one channel*

- 8.17 The Commission notes that persons may obtain clear and unambiguous consent to send specified messages to a Singapore telephone number for one channel only (e.g. the consent obtained was solely to receive specified messages via fax), or for more than one channel (e.g. the consent was obtained for the sending of specified messages through voice calls, fax and text messages). Where the persons state the availability of a facility for notifying a withdrawal of consent (e.g. “send ‘UNSUB’ to [Singapore telephone number]”), the persons should clearly indicate the scope of withdrawal.
- 8.18 Where the withdrawal notice contains a general withdrawal message, without indicating clearly the scope of the withdrawal, the Commission will consider any withdrawal of consent via a particular channel to only apply to all specified messages sent via that channel. Please see the examples below for more details.

	Example	Treatment
8.19	<p>Organisation ABC sends John a specified SMS, which says:</p> <p><i>“&lt;ADV&gt; You are invited to ABC’s workshop. Call us at 12345678 for more details. SMS “UNSUB” to 76543.”</i></p> <p>John sends an SMS which states “UNSUB” to 76543.</p>	<p>John would be considered to have withdrawn consent to receive all specified messages sent by SMS only (but not limited to specified messages relating to ABC’s workshops only).</p> <p>To be clear, ABC must facilitate any withdrawal of consent from John. If ABC receives a notice from John stating his intention to withdraw his consent to receive all specified messages from ABC by voice call, ABC must facilitate the withdrawal of consent.</p>

	Example	Treatment
8.20	<p>Organisation ABC has obtained clear and unambiguous consent from John to send him specified messages by the phone, fax and SMS.</p> <p>ABC sends John a specified message by SMS, with an option to unsubscribe from the SMS distribution list by replying “unsubscribe” to the message.</p> <p>John replies to unsubscribe.</p>	<p>John would be considered to have withdrawn consent to receive specified messages sent by SMS only.</p> <p>If John wishes to withdraw his consent to receive all specified messages from ABC, John should give notice to ABC of that intention.</p>
	<p>a) John subsequently sends an email to ABC saying that he wishes to withdraw consent to receive all specified messages from ABC.</p>	<p>John would be considered to have withdrawn consent to receive all specified messages from ABC by phone, fax and SMS.</p>
8.21	<p>Organisation XYZ is made up of a group of organisations. XYZ has obtained clear and unambiguous consent from John for all the organisations within its group to send him specified messages by SMS.</p> <p>Organisation 1, part of XYZ, sends John a specified SMS, with an option to unsubscribe from the SMS distribution list by replying “unsubscribe” to the message.</p> <p>John replies to unsubscribe.</p>	<p>John would be considered to have withdrawn consent to receive specified messages sent by SMS from Organisation 1 only.</p>

#### No withdrawal by subsequent registration with the DNC Registry

- 8.22 A subscriber or user of a Singapore telephone number who has given consent (which meets the requirements specified in the PDPA) to a person may subsequently register his or her number with the DNC Registry as he or she does not want to receive marketing messages from other persons. In such a situation, the PDPA recognises that the consent given before registration with the DNC Registry will continue to be effective for the purposes of the DNC Provisions.
- 8.23 In particular, section 47(5) of the PDPA provides that where a subscriber or user of a Singapore telephone number consents to a person sending a specified message to that number on or after the commencement of the DNC Provisions and subsequently

adds that number to a DNC Register, the addition of the number shall not be regarded as a withdrawal of consent for the purposes of the DNC Provisions.

- 8.24 Reading section 47 (4) and (5) together, the addition of a Singapore telephone number on a DNC Register does not amount to withdrawal of consent given before the commencement of the DNC Provisions. Individuals wishing to withdraw consent to the sending of specified messages to their Singapore telephone number should withdraw consent by giving reasonable notice to the organisation under section 16 of the PDPA.

## **9 Requiring consent for telemarketing as a condition for providing goods and services**

- 9.1 Section 46(1) of the PDPA provides that a person shall not, as a condition of supplying goods, services, land, interest or opportunity, require a subscriber or user of a Singapore telephone number to consent for the sending of a specified message to that Singapore telephone number or any other Singapore telephone number beyond what is reasonable to provide the goods, services, land, interest or opportunity.
- 9.2 The Commission notes that some organisations may wish to require consent from individuals for the sending of a specified message to their Singapore telephone number (“receive specified messages”), as a condition of providing goods, services, land, interest or opportunity.
- 9.3 Factors that determine whether requiring consent for a particular purpose is reasonable would include the nature of the goods, services, land, interest or opportunity provided.
- 9.4 Generally, consent for the sending of any type of specified messages would not appear to be something that is considered to be reasonably required for the provision of most types of goods, services, land, interest or opportunity.
- 9.5 Hence, organisations should generally give individuals the option to consent to the receiving of specified messages from the organisation, and should not deny the individual the goods, services, land, interest or opportunity simply because he does not consent to the receiving of marketing messages.
- 9.6 For more information on requiring consent for the collection, use or disclosure of personal data for marketing purposes, please refer to the Advisory Guidelines on Requiring Consent for Marketing Purposes.

## **10 Other obligations relating to consent**

- 10.1 The DNC Provisions include a few additional obligations which persons are required to comply with in connection with obtaining consent.
- 10.2 Section 46 prohibits persons from obtaining or attempting to obtain consent for sending a specified message to a Singapore telephone number by providing false or misleading information with respect to the sending of the message or by using deceptive or misleading practices. Section 46 provides that any consent given in such circumstances is not validly given.
- 10.3 Secondly, section 47(2) provides that a person shall not prohibit a subscriber or user of a Singapore telephone number from withdrawing consent to the sending of a specified message to that Singapore telephone number. However, this provision does not affect any legal consequences arising from such withdrawal.
- 10.4 As the requirements of sections 46 and 47(2) are similar to those provided in the DP Provisions please refer to the chapter on the “Consent Obligation” in the Key Concepts Guidelines for more information.

## **PART IV: REQUIREMENT TO INCLUDE IDENTIFICATION AND CONTACT INFORMATION IN SPECIFIED MESSAGES**

### **11 Overview of Part IV**

- 11.1 Section 44 of the PDPA prohibits a person from sending a specified message addressed to a Singapore telephone number unless the message includes clear and accurate information on the following:
- a) information identifying the person who sent or authorised the sending of the specified message (the “sender”); and
  - b) information about how the recipient can readily contact the sender.
- 11.2 The above information must be reasonably likely to be valid for at least 30 days after the message is sent. The message must also include such other information and comply with any conditions specified in regulations made under the PDPA.
- 11.3 The PDPA neither prescribes the form or manner in which this information must be presented, nor the type of information which should be included in a specified message. Persons should determine the best way of providing this information such that there is sufficient and appropriate information provided for individuals who receive specified messages to be able to identify and contact the sender.
- 11.4 Section 45 of the PDPA prohibits a person who makes a voice call containing a specified message (or causes or authorises the making of such a call) addressed to a Singapore telephone number from a telephone number or facsimile number, from concealing or withholding from the recipient the calling line identify of the sender.
- 11.5 These Guidelines provide some examples of how persons may provide such information in compliance with the obligation in section 44.

## 12 Requirement to provide clear and accurate information identifying the sender<sup>20</sup> (“identification information”)

12.1 The policy intent of this requirement is that a recipient of a specified message is able to, using the identification information included in the message, find out who sent or authorised the sending of the message.

### Use of website address as identification information

12.2 Persons may choose to use their website address as identification information if the recipient can identify the sender using the information provided within the text of the website address itself, or within the contents of the landing page which the website address leads to.

	Example Message	Identification information provided?
12.3	ABC Company sends the following message:  “You are invited to an online sale at <a href="http://www.abc.com.sg">www.abc.com.sg</a> ”	Yes. The recipient is able to identify the sender as ABC Company from the text of the website address.
12.4	ABC Electronics sends the following message:  Message: “you are invited to an online sale at <a href="http://www.personalelectronics.com.sg">www.personalelectronics.com.sg</a> ”	Yes, if ABC Electronics can be identified as the sender using the information provided within the contents of the landing page which the website address leads to.
	a) The URL leads to ABC Electronics’ webpage where ABC Electronics’ name and logo is displayed prominently.	In this scenario, ABC Electronics would be considered to have provided identification information.
	b) The URL leads to a webpage which does not contain ABC Electronics’ name or logo and does not identify ABC Electronics as the operator of the webpage in any other manner.	In this scenario, ABC Electronics would not be considered to have provided identification information.

<sup>20</sup> This is set out in section 44(a) of the PDPA.

Using other names as identification information

12.5 The Commission recognises that in certain circumstances, persons who send specified messages may wish to identify themselves using a name other than their own which is more closely related to the goods or services offered (“related names”) or if the related name would be more familiar to the recipient. Examples of such related names could be the names of a person’s brands, retail outlets, buildings or property developments. Persons should not attempt to obscure or conceal their identity by using related names as identification information.

12.6 In the following examples, “XYZ” is a related name of “ABC company”.

	<b>Example Message</b>	<b>Identification information provided?</b>
12.7	<p>ABC company sends the following specified message:</p> <p>“You are invited to a sale at XYZ Shopping Centre.”</p>	<p>Yes, if ABC is the owner or manager of XYZ Shopping Centre.</p>
12.8	<p>ABC company sends the following specified message:</p> <p>“You are invited to a sale at all the outlets of XYZ retail store.”</p>	<p>Yes, if ABC is the owner or manager of XYZ retail store.</p>
12.9	<p>ABC company sends the following specified message:</p> <p>“XYZ product on sale! For more information, call [mobile number].”</p>	<p>Yes, but only if ABC is the sole or exclusive supplier of XYZ products or the owner of the XYZ brand.</p> <p>The Commission notes that in many cases there would be multiple suppliers for the majority of products or services.</p> <p>In such situations, it would not be sufficient for one of these suppliers to send such a message as it would not be reasonable to assume that the recipient would be able to identify the sender from a message that only identifies the product or service being offered.</p>

	<b>Example Message</b>	<b>Identification information provided?</b>
12.10	ABC company sends the following specified message:  "XYZ product on sale! For more information, call Mark at [mobile number]"	Yes, even if there are multiple suppliers of XYZ product. For this message, the recipient is able to identify Mark as a sender of this message.
12.11	"123 company", a marketing agency for property development XYZ, sends the following specified message:  "Units in XYZ condominium going fast!"	Yes, if this message is being sent on behalf or with the authority of the owner, developer or manager of property development XYZ.  However, if 123 is marketing the development on its own, it must identify itself as the sender.

Generic pronouns generally not considered to identify the sender

12.12 Identification information must be provided in the form of a name or alias that is able to identify the sender. The sender would not be considered to have provided identification information if that information is provided solely in the form of generic pronouns, e.g. "me" or "us", informal nicknames, or fictitious names.

	<b>Example Message</b>	<b>Identification information provided?</b>
12.13	"ABC product is on sale. Contact Mark Tan at [mobile number]."	Yes, the recipient is able to identify Mark Tan as the sender.
12.14	"ABC product is on sale. Contact M.T. at [mobile number]."	Yes, the recipient is able to identify a person with the initials M.T. as the sender.
12.15	"ABC product is on sale. Contact me at [mobile number]."	No, the recipient is unable to identify the sender as there could be multiple suppliers of ABC product.

	<b>Example Message</b>	<b>Identification information provided?</b>
12.16	“ABC product is on sale at ABC department store. Contact us at [mobile number].”	Yes. In this scenario, the recipient is able to identify the sender as ABC department store.

### **13 Requirement to provide clear and accurate information about how the recipient can readily contact the sender<sup>21</sup> (“contact information”)**

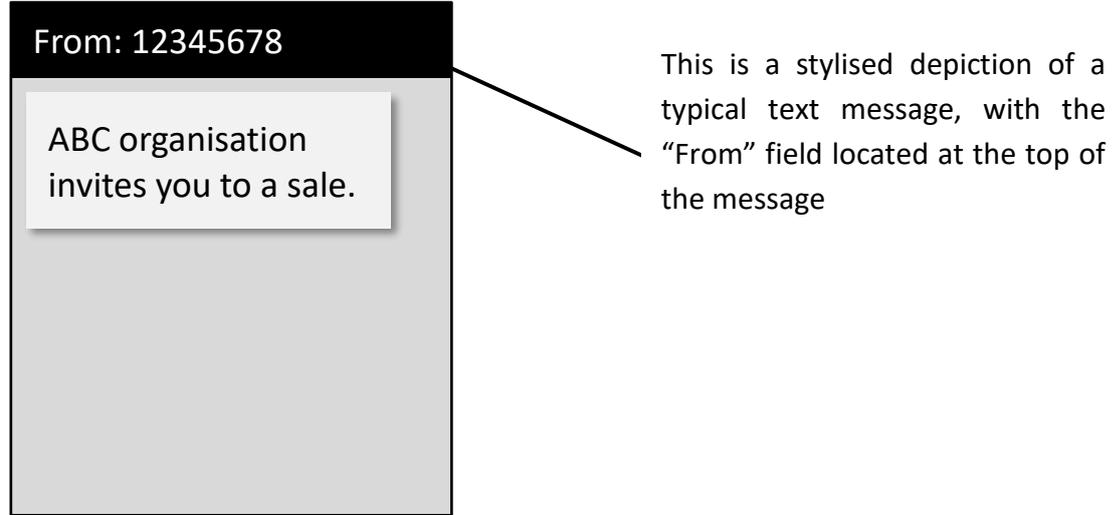
- 13.1 Section 44(b) requires that the contact information must enable the recipient to “readily contact” the sender. The PDPA does not define the terms “readily” or “contact”. These terms would apply as they are commonly understood in relation to the scenario where a recipient of a specified message would like to communicate with the sender directly, in writing or otherwise. The Commission would consider this requirement to be met so long as the contact information enables the recipient to directly contact the sender in a reasonably convenient manner.
- 13.2 The most straightforward way to provide contact information would be to provide an operational Singapore telephone number which can receive incoming calls or text messages, or a valid email address which can receive incoming emails.
- 13.3 Persons should note that short codes and “No-Reply” email addresses would not be considered contact information, as they do not allow the recipient to readily contact the sender.
- 13.4 As good practice, any contact information provided should be readily accessible from Singapore and operational during Singapore business hours. In considering whether the contact information provided enables the recipient to readily contact the sender, the Commission will take into account the actual outcome when the contact information is used.

	<b>Example Message</b>	<b>Contact information provided?</b>
13.5	“ABC organisation invites you to a sale. Contact or SMS ABC at 12345678.”	Yes.

<sup>21</sup> This is set out in section 44(1)(b) of the PDPA.

	Example Message	Contact information provided?
13.6	“ABC organisation invites you to a sale. Contact ABC at abc@abc.org.”	Yes.
13.7	“ABC organisation invites you to a sale. Reply YES to 12345 to get in touch with ABC.”	No. Short codes do not allow the recipient to readily contact the sender <sup>22</sup> .

13.8 Persons may choose to display the identification or contact information outside of the body of message. A typical example would be displaying the contact information in the “From” field, usually located directly above the body of the message.

	Example Message	Contact information provided?
	 <p>This is a stylised depiction of a typical text message, with the “From” field located at the top of the message</p>	
13.9	<p><u>From: 12345678</u></p> <p>“ABC organisation invites you to a sale.”</p>	Yes.
13.10	<p><u>From: abc@abc.org</u></p>	Yes.

<sup>22</sup> In addition, this does not fulfil the requirement that the contact information must be included within the specified message. Please see the section below on the “Requirement to provide identification and contact information within the message”.

	<b>Example Message</b>	<b>Contact information provided?</b>
	“ABC organisation invites you to a sale.”	
13.11	<u>From: ABC organisation</u> “ABC organisation invites you to a sale.”	No. There is no information provided which enables the recipient to directly contact the sender.

Physical address by itself does not allow the recipient to ‘readily contact’ the sender

13.12 As explained above, section 44(b) requires that the contact information must enable the recipient to readily contact the sender.

13.13 Solely providing the address of a physical location does not enable the recipient to directly contact the sender without expending more time and effort to either make a trip to the location or write a letter and send it by post to the sender. Therefore, the Commission would not consider the provision of a physical address by itself to fulfil the requirement to provide contact information that enables the recipient to readily contact the sender.

	<b>Example Message</b>	<b>Contact information provided?</b>
13.14	“ABC organisation invites you to a sale. Contact ABC at 123 Lane, #01-01, Singapore 123456.”	No.
13.15	<u>From: 12345678</u> “ABC organisation invites you to a sale. Contact ABC at 123 Lane, #01-01, Singapore 123456.”	Yes. In this scenario, the recipient is still able to contact the sender using the telephone number 12345678 if ABC organisation can be contacted at that number.

Providing contact information on a website

13.16 Persons who wish to direct recipients to access a website containing their contact information should ensure that the information is easily located on the website. The most straightforward manner of doing so would be to locate the information on the

landing page of the relevant website address, or on the “Contact Us” (or equivalent) page.

- 13.17 When considering if a person had provided contact information on a website, the Commission will consider the relevant website in totality, taking into account all relevant factors. Such factors include but are not limited to: the overall process the recipient has to go through to access the information, where it is located and how it is presented.

	<b>Example Message</b>	<b>Contact information provided?</b>
13.18	<p>“ABC organisation invites you to a sale. Contact ABC at <a href="http://www.abc.org/contactus">www.abc.org/contactus</a>”</p> <p>An individual accessing that website through the URL address sees a webpage containing Organisation ABC’s telephone number and email address<sup>23</sup>.</p>	Yes.
13.19	<p>“ABC organisation invites you to a sale. Contact ABC at <a href="http://www.abc.org">www.abc.org</a>”</p>	It depends on how accessible the contact information is to a reasonable individual who accesses the website with the intention of finding out how to contact ABC.

Combining contact information with information on how to unsubscribe from distribution lists

- 13.20 Persons who provide an unsubscribe facility within their messages may choose to combine that information with the contact information, so long as recipients can use that information to communicate with the sender directly on matters unrelated to unsubscribing from the distribution list.

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<sup>23</sup> As explained above, the Commission would not consider the provision of a physical address by itself to fulfil the requirement to provide contact information. This applies equally to the scenario where a person provides only a physical address as contact information on a website.

	<b>Example Message</b>	<b>Contact information provided?</b>
13.21	“ABC organisation invites you to a sale. UNSUB at 12345.”	No. Short codes do not allow a recipient to contact the sender.
13.22	“ABC organisation invites you to a sale. Contact us or UNSUB at 12345678.”	Yes. It is clear from the message that individuals may contact ABC at 12345678 for matters other than to unsubscribe.
13.23	“ABC organisation invites you to a sale. Call or SMS to 12345678 to UNSUB.”	Yes, if ABC can be contacted for matters other than unsubscribing at 12345678.  However, if the telephone number may only be used for unsubscribing, then ABC would not be considered to have provided contact information.

Requirement to provide identification and contact information within the message

13.24 Persons should note that the identification and contact information must be included within the specified message. The following examples illustrate when the information would not be considered to be included within the message.

	<b>Example Message</b>	<b>Contact information provided?</b>
13.25	“ABC organisation invites you to a sale. Click <u>here</u> to contact ABC.”	No.  Compared to a website URL that provides the website address, the hyperlink ‘here’ by itself does not provide any contact information within the message.  In addition, an individual who accesses the message using a device which is unable to

	Example Message	Contact information provided?
		access the hyperlink directly (e.g. a mobile phone which is not a smart phone) would not be able to obtain any contact information for ABC.
13.26	<p><u>From: ABC</u></p> <p>“ABC organisation invites you to a sale.</p> <p>Reply “Y” for contact details.”</p>	<p>No.</p> <p>There is no contact information provided within the message.</p>

## PART V: DEFINITION OF SENDER

### 14 Overview of Part V

14.1 This Part relates to what constitutes sending a message to a Singapore telephone number, who is a “sender” who is responsible for complying with the DNC Provisions as defined in section 36(1) of the PDPA, and the exclusions as provided under section 36 (2) and (3). Clarity is also provided for senders of specified messages in a joint offering scenario.

### 15 Sending a specified message to a Singapore telephone number

15.1 It is important to understand what constitutes the sending of a message to a Singapore telephone number under the PDPA, as this goes towards determining whether the DNC Provisions apply. Section 36(1) of the PDPA defines the term “send” as referring to:

- a) the sending of the message;
- b) causing or authorising the sending of the message; or
- c) the making of a voice call containing the message, or causing or authorising the making of such a voice call<sup>24</sup>.

15.2 Related to the above, the PDPA provides that a message may be sent in different forms. Hence, section 36(1) of the PDPA defines “message” to include a message in sound, text, visual or other form.

15.3 From the above definitions, it is important to note that the DNC Provisions apply equally to all means by which a sender may send a specified message to a Singapore telephone number. These include, for example, voice calls, SMS, or any data applications (such as ‘Whatsapp’, ‘iMessage’ or ‘Viber’) which use a Singapore telephone number.

15.4 However, the DNC Provisions do not apply to specified messages which are not sent to a Singapore telephone number, e.g. location-based broadcasts that are pushed to mobile phones through data-enabled smart phone applications or data applications that do not use a Singapore telephone number to send messages. For the avoidance of doubt, the DP Provisions may still apply to such specified messages which are not

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<sup>24</sup> The term “voice call” is defined in section 36(1) of the PDPA to include (a) a call that involves a recorded or synthetic voice; and (b) in the case of a recipient with a disability (for example, a hearing impairment), a call that is equivalent to a voice call, whether or not the recipient responds by way of pressing buttons on a telephone handset or similar telecommunications device.

sent to a Singapore telephone number.

## 16 Meaning of “sender”

16.1 The DNC Provisions contain obligations in relation to the sending of a specified message. Hence a person who sends a message, referred to in the PDPA as the “sender”, is responsible for complying with the DNC Provisions.

16.2 In brief, the term “sender” is defined in section 36(1) of the PDPA as follows:

- a) the person who actually sends the message or makes a voice call containing the message;
- b) the person who causes the message to be sent or the voice call to be made; and
- c) the person who authorises the sending of the message or the making of the call.

16.3 Hence it is important to note that in addition to the person who actually sent the message or made the call containing the message, persons who caused or authorised the sending of the message or the making of the call are also senders for the purposes of the DNC Provisions and must comply with these provisions. This means that if Person A authorises the sending of the message by Person B, Person A would be considered a sender.

16.4 Section 37 (3) and (4) of the PDPA clarifies when a person is considered to have authorised another to send a message. These provisions state:

*Subject to subsection (4), a person who authorises another person to offer, advertise or promote the first person’s goods, services, land, interest or opportunity shall be deemed to have authorised the sending of any message sent by the second person that offers, advertises or promotes that first person’s goods, services, land, interest or opportunity.*

*For the purposes of subsection (3), a person who takes reasonable steps to stop the sending of any message referred to in that subsection shall be deemed not to have authorised the sending of the message.*

16.5 Under section 37 (3) and (4), if Person A authorises Person B to promote his goods, services, land, interest or opportunity, Person A would be deemed to have authorised the sending of any message for that purpose, unless Person A had taken reasonable steps to prevent Person B from doing so. The determination of whether reasonable steps had been taken depends on the specific facts in question. For

example, reasonable steps may include requiring, as a condition of the authorisation given, that Person B shall not promote Person A’s goods by sending specified messages addressed to Singapore telephone numbers.

- 16.6 A person should note that he would be subject to the DNC Provisions if he falls within the definition of a “sender”, even if the message was sent on behalf of or for another person’s purposes.

	<b>Example</b>	<b>Treatment</b>
16.7	<p>Organisation ABC engages a call centre to send specified messages by SMS to ABC’s customers’ Singapore telephone numbers.</p> <p>ABC provides the call centre with the list of customers, their Singapore telephone numbers, and the contents of the specified message.</p>	<p>Both ABC and the call centre would be considered a “sender” for the purposes of the PDPA and would be subject to the DNC Provisions.</p> <p>ABC would be considered a “sender” because ABC has authorised the sending of the specified message.</p> <p>The call centre would be considered a “sender” because it would be the person actually sending the specified message.</p>
16.8	<p>Organisation ABC engages Organisation 123 to handle its marketing campaigns. 123 engages a call centre to send specified messages by voice call to ABC’s customers’ Singapore telephone numbers.</p> <p>123 provides the call centre with the list of ABC’s customers, their Singapore telephone numbers, and the contents to be included in the voice call.</p>	<p>ABC, 123, and the call centre would be considered a “sender” for the purposes of the PDPA and would be subject to the DNC Provisions.</p> <p>ABC and 123 would be considered a “sender” because they have separately authorised the making of a voice call containing a specified message.</p> <p>The call centre would be considered a “sender”, as the person who actually makes the voice call containing a specified message.</p>

	Example	Treatment
16.9	<p>Organisation ABC places an advertisement for a product on a poster.</p> <p>The poster informs individuals to call a mobile number if they are interested to find out more information about the product.</p> <p>Jane calls the mobile number and speaks to a representative of ABC. ABC promotes the product to Jane.</p>	<p>ABC would not be considered a “sender” for the purposes of the PDPA.</p>

## 17 Excluded persons

17.1 The PDPA excludes certain persons from the scope of the DNC Provisions to the extent that the sending of the message does not involve active intervention on their part. Specifically, under section 36 (2) and (3) of the PDPA, the following persons are presumed not to have sent or authorised the sending of a message unless the contrary is proved:

- a) a telecommunications service provider who merely provides a service that enables the sending of a specified message; and
- b) the owners or authorised users of a telecommunication device, service or network that was used to send a specified message if, at the relevant time, that device, service or network was controlled by a person without the knowledge of the owner or authorised users<sup>25</sup>.

17.2 As the DNC Provisions impose obligations on individuals as well as corporate entities such as companies, the PDPA provides that there are certain situations in which it would not be appropriate to apply the DNC Provisions. Apart from the exclusion for messages sent by an individual acting in his personal or domestic capacity (noted above), the PDPA includes a specific defence for individuals acting as employees.

## 18 Defence for employees

18.1 Under section 48, an employee who acted or engaged in conduct that would be a contravention of one of the DNC Provisions has a defence to any proceedings that may be brought against him, for an offence under the DNC Provisions, if he can prove

<sup>25</sup> Section 36(4) clarifies that such control means either physical control or control through the use of software or other means.

that he acted or engaged in the conduct in good faith in the course of his employment or in accordance with instructions given to him by or on behalf of his employer in the course of his employment. This defence is not available to an “officer” of an organisation that may have committed an offence under the DNC Provisions<sup>26</sup>.

## 19 Sending specified messages in a joint offering scenario

- 19.1 The Commission notes that there may be scenarios where person A and person B are jointly offering to supply a particular good or service (e.g. service AB) but are not agents of each other.
- 19.2 In such a scenario, whether person A or B or both would be considered the “sender” of specified messages promoting service AB would depend on the actual arrangements between the two persons.
- 19.3 In the case where both persons A and B are considered “senders” of a single specified message to a particular Singapore telephone number (e.g. joint telemarketing), persons would be considered to have fulfilled the section 44 requirement to provide identification and contact information in a specified message if either person A or B’s identification and contact information was provided in the message. Similarly, for that specified message, the Commission expects either person A or B to check the DNC Register before sending the specified message to the Singapore telephone number, if the senders have not obtained clear and unambiguous consent in evidential form to send that message.

*Effect of withdrawal in a scenario where two or more persons are jointly offering a good or service*

- 19.4 In the case where person A and person B are jointly offering to supply particular goods or services (e.g. service AB) and they are relying on the clear and unambiguous consent of an individual that was given to person A to send specified messages to a Singapore telephone number, the withdrawal of consent by the individual for person A to send specified messages to his Singapore telephone number will result in both person A and person B being unable to rely on the consent given to person A to offer to supply the joint service AB. However, this will not affect any separate clear and unambiguous consent given by the individual to person B. In the scenario where B had obtained separate clear and unambiguous consent by the individual to offer to

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<sup>26</sup> The term “officer” is defined in section 52(7) of the PDPA.

supply joint service AB, B may continue to do so notwithstanding the withdrawal of consent from person A.

- 19.5 However, where a person’s products or services are being independently marketed by other persons (e.g. in this case, service AB is marketed by both person A and person B independently), and an individual withdraws consent from person A for the use of his personal data for marketing purposes, it would be good practice for person A to inform the individual that he might still receive information related to person A if he has given consent to other persons marketing the same products (e.g. person B).

	<b>Example</b>	<b>Treatment</b>
19.6	<p>Organisations ABC and XYZ are providing a joint service.</p> <p>Each organisation has separately obtained clear and unambiguous consent from John to send him specified messages by SMS about all their service offers, including offers that are offered jointly with partners.</p> <p>John withdraws the consent given to ABC for telemarketing. ABC ceases to send John specified messages after the expiry of the prescribed period.</p> <p>XYZ continues to send John specified messages, including messages about the service jointly provided by ABC and XYZ.</p>	<p>XYZ may continue to rely on the consent given by John to XYZ to send him service offers, including offers jointly offered with partners such as ABC.</p>
	<p>a) Organisations ABC and 123 jointly provide a service. 123 is ABC’s agent in relation to the provision of this joint service.</p> <p>ABC has obtained clear and unambiguous consent from John to send him specified messages by SMS about all their service offers. Both ABC and 123 have been sending John specified messages about the joint service.</p>	<p>Both ABC and 123 must cease to send John specified messages.</p>

	<b>Example</b>	<b>Treatment</b>
	John withdraws consent from ABC. ABC must cease, and cause its agents (including 123) to cease to send John specified messages after the expiry of the prescribed period.	

**PART VI: DICTIONARY ATTACKS AND ADDRESS-HARVESTING SOFTWARE****20 Prohibition on use of dictionary attacks and address-harvesting software**

- 20.1 Under section 48B, a person must not send, cause to be sent, or authorise the sending of any message, insofar as the recipient telephone number is obtained by dictionary attack or address-harvesting.
- 20.2 Under section 48A(1), “dictionary attack” means the method by which the telephone number of a recipient is obtained using an automated means that generates possible telephone numbers by combining numbers into numerous permutations. For instance, this would include randomly generating strings of 8-digit numbers, in running sequence or otherwise. This can happen even if the recipients have never published their telephone numbers.
- 20.3 Section 48A(1) also defines “address-harvesting software” as software that is specifically designed or marketed for use for searching the Internet for telephone numbers and collecting, compiling, capturing or otherwise harvesting those telephone numbers. This happens where the recipients have published their telephone numbers.

	<b>Example</b>	<b>Treatment</b>
20.4	Organisation DEF is seeking to call prospective customers to offer products and services. It makes such calls by taking existing phone numbers of its customers and adding “1” behind an existing number. (E.g. Customer A, who has an existing relationship with Organisation DEF, has a phone number 12345678. DEF takes this number and calls unknown number B, 12345679.) DEF checks that unknown number B is not listed in the DNC register before calling unknown number B.	The random generation of numbers by adding 1 to the end of existing numbers constitutes dictionary attack. DEF is in contravention of section 48B of the PDPA, even though it has checked the relevant DNC Register.
20.5	DEF uses an address-harvesting software to trawl the web for publicly-available contact numbers so as to promote an employment opportunity without any marketing elements. While the message does not fall within the definition of a “specified message” (as per paragraph 4.31 above), it falls under the definition of	The use of the address-harvesting software is in contravention of section 48B of the PDPA.

	Example	Treatment
	an “applicable message” under section 48A(1) of the PDPA.	
20.6	DEF seeks to expand its customer base and contact a large number of prospective customers in the shortest amount of time. It employs a software that randomly generates a set of numbers that resembles phone numbers and proceeds to make robocalls that auto-dial the randomly generated numbers and play pre-recorded messages to 10,000 recipients within a day.	The random generation of phone numbers constitutes dictionary attack and is in contravention of section 48B of the PDPA.

20.7 The primary responsibility lies with the organisation that sends the messages and employees are not liable if they are merely acting in the course of their employment. However, directors, partners<sup>27</sup> or other officers<sup>28</sup> of similar level of seniority may also be held liable for their organisation’s actions.

20.8 For instance, an employee A receives instructions to send a message to a list of numbers that was given to him by his director B. He is not aware that the numbers were generated automatically through dictionary attack. While the sending of the messages is prohibited by section 48B(1), section 48B(2) excludes him from the application as he sent the message in good faith, in accordance with instructions given to him in the course of his employment. However, his director B will not be excluded from the application of section 48B(1) as he falls under the meaning of an “officer” under section 48B(3)(b) read with section 52(7).

<sup>27</sup> Defined under section 52A(7).

<sup>28</sup> Defined under section 52(7).

## PART VII: OTHER CLARIFICATIONS

### 21 Locations of sender and recipient

21.1 It should be noted that the locations of the sender and recipient when a specified message is sent and accessed affect whether the DNC Provisions apply. Section 38 of the PDPA provides that the DNC Provisions apply where:

- a) the sender of the specified message is in Singapore when the message is sent; or
- b) the recipient of the specified message is in Singapore when the message is accessed.

21.2 Under section 38, the DNC Provisions do not apply if both the sender and the recipient are not in Singapore when the specified message is sent and accessed respectively. This may be the situation, for example, when the recipient is travelling in another country and accesses a specified message sent by a sender in that country. However, the DNC Provisions would apply if the recipient is travelling in another country and the sender is in Singapore. The DNC Provisions also apply where one of the senders is located overseas while another is located in Singapore.

	<b>Example</b>
21.3	<p>Charles subscribes to the services of Operator X, a Singapore telecommunications service provider. He leaves Singapore and starts roaming on the network of an overseas telecommunications provider, Operator A. He receives a specified message from Operator A, a telecommunications service provider in the other country, about Operator A's services. The sending of this specified message will not be subject to the application of the DNC Provisions.</p> <p>Later in the day (while Charles is still in the other country), he receives another specified message, this time from his insurance agent who was in Singapore when the message was sent. The sending of the specified message by Charles' insurance agent will be subject to the application of the DNC Provisions.</p> <p>A few days later, Charles returns to Singapore. Shortly thereafter, he receives a third specified message, now from an overseas number. However, Charles discovers that the specified message was sent on behalf of his bank in Singapore which had outsourced part of its marketing operations to an overseas call centre and authorised the call centre to send the message. The sending of the specified message by the bank (through the overseas call centre) will also be subject to the application of the DNC Provisions.</p>

## **22 Using personal data collected before the PDPA comes into effect for telemarketing purposes**

- 22.1 Section 19 provides that organisations can continue to use personal data collected before the appointed day for the same purposes for which the personal data was collected without obtaining fresh consent, unless the individual has withdrawn consent (whether before on, or after the appointed day). Organisations should note that section 19 only applies to reasonable existing uses of personal data collected before the appointed day.
- 22.2 Persons should note that even if the sending of specified messages to a Singapore telephone number is considered a reasonable existing use under section 19, the DNC Provisions apply concurrently. In particular, section 19 does not in any way affect the requirement that persons must check the DNC Register or obtain clear and unambiguous consent before the sending of any specified messages (except exempt messages).
- 22.3 Therefore, persons who wish to use personal data collected before the appointed day for telemarketing purposes should review their existing consent procedures to determine if clear and unambiguous consent in evidential form has been obtained. If such consent has not been obtained, persons must check the DNC Register before sending any specified messages or obtain fresh consent that meets the section 43(4) requirement to obtain clear and unambiguous consent in evidential form on and after 2<sup>nd</sup> January 2014.

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