

PART V: DEFINITION OF SENDER

15 Overview of Part V

15.1 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.

16 Sending a specified message to a Singapore telephone number

16.1 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 call²⁸.

16.2 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.

16.3 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.

16.4 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

²⁸ 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.

17 Meaning of “sender”

17.1 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.

17.2 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.

17.3 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.

17.4 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.

17.5 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.

- 17.6 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.

	Example	Treatment
17.7	<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>
17.8	<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
17.9	<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>

18 Excluded persons

18.1 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 users²⁹.

18.2 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.

19 Defence for employees

19.1 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 that he acted or engaged in the conduct in good faith in the course of his

²⁹ Section 36(4) clarifies that such control means either physical control or control through the use of software or other means.

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 Provisions³⁰.

20 Sending specified messages in a joint offering scenario

- 20.1 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.
- 20.2 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.
- 20.3 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

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

³⁰ The term “officer” is defined in section 52(5) of the PDPA.

20.5 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).

	Example	Treatment
20.6	<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>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.</p>	<p>Both ABC and 123 must cease to send John specified messages.</p>