

## 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(1), 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(1) would not be a specified message for the purposes of the PDPA.

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

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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.

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>	<p>ABC would be considered to have sent a specified message to a Singapore telephone number.</p>
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>	<p>ABC would not be considered to have sent a specified message to a Singapore telephone number.</p>

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>	<p>ABC would be considered to have sent a specified message to a Singapore telephone number.</p>

	<b>Example</b>	<b>Treatment</b>
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>.

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

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>.

	<b>Example</b>	<b>Treatment</b>
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

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

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 the sole purpose of which is to provide –
  - i. notification concerning a change in the terms or features of;

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

- ii. notification of a change in the standing or status of the recipient of the message with respect to; or
- iii. 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;

- f) any message the sole purpose of which is to conduct market research or 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.

4.2 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>
4.3	“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)(i) as its purpose is not solely to provide notification on a change in the terms or features of an ongoing commercial relationship.

4.4 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>
4.5	“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.
4.6	“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.
4.7	“[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)(i) 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.
4.8	“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)(ii) 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.
4.9	“You have an outstanding balance with Organisation ABC. Please pay your bill by 25 June 2014.”	This message falls within paragraph 1(e)(iii) as its sole purpose is to provide, at regular periodic intervals, account balance information.

<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>
4.10	<p>“Your service contract / subscription will cease on 24<sup>th</sup> July 2014. Renew now and get 10% off.”</p> <p>“Your account balance is low. Top up now to enjoy \$5 free credits for every top up of \$20.”</p>	<p>A message may contain more than one purpose which falls within the Eighth Schedule.</p> <p>E.g., these messages could fall within paragraph 1(e)(i) and/or 1(e)(iii).</p>

#### *Surveys and market research*

- 4.11 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>.
- 4.12 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.
- 4.13 However, persons should act in good faith and not attempt to disguise a specified message in the form of the provision of a “gift”.

	<b>Example</b>	<b>Treatment</b>
4.14	<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>

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

	<b>Example</b>	<b>Treatment</b>
4.15	<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*

- 4.16 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.

	<b>Example</b>
4.17	<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>

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

Other messages which are not specified messages

- 4.18 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.

	<b>Example Message</b>	<b>Treatment</b>
4.19	“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.
4.20	“Apply to be a cleaner with Organisation ABC.”	
4.21	“Do a good deed and donate to Charity ABC.”	
4.22	“Spare a dollar for a Charity ABC’s building redevelopment project.”	
4.23	“Charity ABC is looking for volunteers. Sign up to help!”	

- 4.24 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.

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