

## 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 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>. Further, certain senders who are in an ongoing relationship with individuals may be exempted from the obligation to check the DNC Registry before sending specified text or fax messages related to the subject of the ongoing relationship. The scope of the exemption is elaborated on in the sections below.

### 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 (3), persons shall not send a specified message addressed to a Singapore telephone number unless they had:

- a) checked the relevant DNC Register within the “prescribed duration” before sending the message and received confirmation that the telephone number is not listed in the register<sup>17</sup>; or
- b) obtained the clear and unambiguous consent of the user or subscriber of the telephone number (evidenced in written or other form accessible for future reference) to the sending of the message to that Singapore telephone number.

However, certain senders who are in an ongoing relationship with individuals may be exempted from the section 43(1) obligation to check the DNC Registry in respect of specified text or fax messages related to the subject of the ongoing relationship.

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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.

<sup>17</sup> Section 43(4) clarifies that as there may be more than one (1) DNC Register established by the Commission, the relevant DNC Register shall depend on the particular type of specified message. For example, if a specified message will be sent through a voice call only, the organisation must check the DNC Register relating to voice calls but need not check the other DNC Registers relating to text messages and faxes.

The following chapters should hence be read in conjunction with Chapter 11 below which provides more details on the exemption.

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:

- a) 60 days, for messages sent before 1 August 2014; and
- b) 30 days, for messages sent on or after 1 August 2014.

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”, and provides for a gradual transition to address the switch in “prescribed duration” from 60 days to 30 days.

<u>Validity period of results returned from the DNC Registry</u>		
<b>Receipt of Results</b>	<b>Validity Period</b>	<b>Remarks</b>
Between 2 January 2014 to 31 May 2014 (both dates inclusive)	<b>60 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 4 March 2014, the results will be valid until 3 May 2014.
Between 1 June 2014 to 1 July 2014 (both dates inclusive)	Until <b>31 July 2014</b>	As this is the transition period between the 60/30 days validity period, all results received during this period will be valid until 31 July 2014.
From 2 July 2014 onwards	<b>30 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 4 July 2014, the results will be valid until 4 August 2014.

6.4 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 30 days, for a notice of withdrawal given on or after 2 July 2014.

- 6.5 Under section 43(2), contravention of section 43(1) is an offence and offenders are liable upon conviction to a fine not exceeding \$10,000. The Commission also has the discretion, under section 55(2), to compound any offences under Part IX of the PDPA prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding \$1,000.

## **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 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 [ ]</li> <li>b) SMS [ ]</li> <li>c) Email [ ]</li> <li>d) Mail [ ]</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.

	<b>Example</b>	<b>Treatment</b>
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>	<p>Mary would be considered to have given clear and unambiguous consent.</p>
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 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>	<p>Joyce would be considered to have given clear and unambiguous consent.</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>

	<b>Example</b>	<b>Treatment</b>
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>18</sup>.

	<b>Example</b>	<b>Treatment</b>
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	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.  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.	Retailer B may send a specified text message to Laura’s Singapore telephone number.  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.

### 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, the termination of the number or change in the user of the number does not

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<sup>18</sup> Please refer to the section on the “Consent Obligation” within the Key Concepts Guidelines for more information.



automatically or on its own invalidate the consent provided by the original subscriber or original user<sup>19</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.

	<b>Example</b>	<b>Treatment</b>
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>19</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(3) 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(3) 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>20</sup>. The “prescribed period” (as set out in section 47(3)) within which persons must effect a withdrawal of consent is 30 days, for a notice of withdrawal given on or after 2 July 2014.

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>20</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.

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

	<b>Example</b>	<b>Treatment</b>
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 section on the “Consent Obligation” in the Key Concepts Guidelines for more information.

## **11 Exemption for certain specified messages**

- 11.1 The Commission notes that individuals with an ongoing relationship with other persons may wish to receive information from those persons about goods and services which are related to the subject of the ongoing relationship. In the same vein, persons may wish to keep their customers or members (with whom they have an ongoing relationship) updated about related goods and services that are available to them. This is especially the case if the information is beneficial in some way to the individuals who are in an ongoing relationship, for example if it facilitates the individuals’ utilisation of the goods and services purchased through the ongoing relationship or their utilisation of a membership.
- 11.2 The Commission has received feedback that the requirements of the DNC Provisions may lead to an unintended outcome where individuals expect to but do not receive relevant information from other persons with whom they have an ongoing relationship. This could happen as a result of an individual’s registration with one or more DNC Registers (that are part of the DNC Registry established by the Commission under the PDPA), and where the other person did not obtain clear and unambiguous consent in evidential form from the individual to send specified messages to his Singapore telephone number<sup>21</sup>.

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<sup>21</sup> Please refer to Chapters 7 and 8 for more information.



- 11.3 At the same time, the Commission notes that individuals who wish to receive such information may prefer to receive them in a timely yet minimally intrusive manner. In that regard, the Commission considers there to be a distinction between receiving these information in the form of a voice call, text message, and fax message. As a voice call requires the immediate attention of an individual receiving it, it is arguably the most intrusive channel. On the other hand, text and fax messages do not require immediate attention, and individuals may choose to access them at a convenient time.
- 11.4 In view of the foregoing factors, the Commission, with the approval of the Minister, has decided to exempt certain senders who are in an ongoing relationship with individuals from the obligation to check the DNC Registry before sending specified text or fax messages related to the subject of the ongoing relationship to the Singapore telephone numbers of such individuals. The scope of this exemption is explained further below.
- 11.5 Section 62 of the PDPA provides that the Commission may, with the approval of the Minister and by order published in the Gazette, exempt any person or organisation or any class of persons or organisations from all or any of the provisions of the PDPA, subject to such terms or conditions as may be specified in the order. The Personal Data Protection (Exemption from section 43) Order 2013 (“Exemption”) has been gazetted to come into operation on 2<sup>nd</sup> January 2014 and has been made available through the Commission’s website. An extract of the relevant text of the Exemption is provided at **Annex A**.

#### Scope of exemption

- 11.6 The Exemption exempts from the requirements of section 43(1) of the PDPA a sender or his agent in respect of a specified fax message or a specified text message addressed to a Singapore telephone number if —
- a) at the time of the transmission of the specified fax message or the specified text message to that Singapore telephone number, the sender is in an ongoing relationship with the subscriber or user of that Singapore telephone number; and
  - b) the purpose of the specified fax message or the specified text message is related to the subject of the ongoing relationship.
- 11.7 The aforementioned exemption does not apply if at the time of the transmission of the exempt message (which means a specified fax message or a specified text message addressed to a Singapore telephone number as described in the paragraph above) to that Singapore telephone number, the subscriber or user —

- a) has under section 47(1) of the PDPA withdrawn the consent given to the sender for the sending to that Singapore telephone number of any specified message and the prescribed period under section 47(3) of the PDPA has expired;
- b) has opted out from receiving via that Singapore telephone number any exempt message from the sender by submitting to the sender an opt-out notice referred to in the Exemption and a period of 30 days after the date on which the opt-out notice was submitted has lapsed; or
- c) has otherwise indicated to the sender that he does not consent to the sender sending to that Singapore telephone number any specified message.

*Definition of ongoing relationship*

- 11.8 The Exemption defines an ‘ongoing relationship’ as a relationship, which is on an ongoing basis, between a sender and a subscriber or user of a Singapore telephone number, arising from the carrying on or conduct of a business or activity (commercial or otherwise) by the sender.
- 11.9 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.
- 11.10 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, a subscription, membership, account, loan or comparable relationships involving the ongoing purchase or use of goods and services supplied by the sender to the individual. Relationships which may arise from regular participation in the activities of an organisation, such as students of a school or a donor with a standing order to regularly donate to a charity, may also be considered to be an ongoing relationship between the individual and the sender. Factors determining whether there is an ongoing relationship could include the frequency of visits 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). It should be noted that once-off transactions are insufficient to establish an ongoing relationship.
- 11.11 The Exemption only applies to senders that are in an ongoing relationship with the subscriber or user of the Singapore telephone number at the point of the transmission of the exempt message to that Singapore telephone number, as well as the agents of the sender that are sending the exempt message. Senders may not rely on the Exemption once the ongoing relationship between the sender and the recipient has ceased.

*Related to the subject of the ongoing relationship*

11.12 The Exemption applies to a sender in an ongoing relationship with the subscriber or user of the Singapore telephone number when sending a specified text message or specified fax message which purpose is related to the subject of the ongoing relationship. Hence, depending on the subject of the ongoing relationship with the recipient, a sender may not rely on the Exemption to market all other aspects of its business indiscriminately without considering the subject of the 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>
11.13	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>
11.14	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>
11.15	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>

	<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>
11.16	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>
11.17	Recipient is an existing home fixed-line broadband service subscriber	<p>“Enjoy faster speeds with fibre broadband at only \$X a month.”</p>
11.18	Recipient is an existing member of a rewards programme	<p>“All rewards programme members get 10% off Service ABC.”</p> <p>“Use your membership rewards points to redeem vouchers at organisation ABC.”</p> <p>“ABC celebrates your birthday month! Show this SMS to enjoy 10% discount for your purchases at ABC’s stores this month.”</p>
11.19	Recipient is an existing member of a club or society	<p>“Course for all society members on improving interview and communication skills. Sign up now.”</p> <p>“Members enjoy 10% discount at all F&amp;B outlets in the club. Sign up now.”</p>
11.20	Recipient has an existing arrangement to regularly donate to a charity	<p>“Buy tickets to our charity’s fund raising event.”</p>

*Specified text message and specified fax message*

- 11.21 Persons should note that the Exemption only applies to the sending of specified text messages and specified fax messages. Messages sent by way of a voice call would thus not be covered by the Exemption.

*Exemption from section 43(1) of the PDPA*

- 11.22 The effect of the Exemption is that persons may send specified text messages and specified fax messages to a Singapore telephone number if they are in an ongoing relationship with the subscriber or user of that telephone number and they are sending a message which purpose is related to the subject of that ongoing relationship, without first checking with the DNC Registry or obtaining clear and unambiguous consent from the subscriber or user of the telephone number to send the specified message in evidential form. Hence, persons may do so regardless of an individual's registration on the DNC Registry's No Text Message Register or No Fax Message Register.
- 11.23 Persons should note that there is no exemption in relation to section 44(1) or 45(1) of the PDPA. They must continue to comply with those sections when relying on this Exemption to send specified messages.

Conditions for sending an exempt message

- 11.24 The Exemption is subject to the following conditions:
- a) an exempt message addressed to a Singapore telephone number must contain a statement, clearly displayed and in the English language, to inform the subscriber or user that he may opt out from receiving via that Singapore telephone number any exempt message from the sender in future by submitting to the sender an opt-out notice —
    - i. where the exempt message is a specified text message, by way of a text message to a Singapore telephone number or a short number code facility stated in the exempt message; or
    - ii. where the exempt message is a specified fax message, by way of a facsimile message to a facsimile number stated in the exempt message;
  - b) the telephone number or short number code facility referred to in sub-paragraph (a)(i) or the facsimile number referred to in sub-paragraph (a)(ii), as the case may be, must be valid and capable of receiving the opt-out notice from the subscriber or user, if any, at all times for a period of 30 days after the date on which the exempt message is transmitted by the sender or his agent; and
  - c) the use of the telephone number or short number code facility referred to in sub-paragraph (a)(i) or the facsimile number referred to in sub-paragraph (a)(ii), as the case may be, does not result in the subscriber or

user incurring any cost additional to the cost normally incurred in sending a text message or a facsimile message.

- 11.25 This requires senders to include an opt-out facility for recipients to give an opt-out notice to opt out of any exempt message from the sender. Hence, if a sender relies on the Exemption to send an exempt message to a Singapore telephone number, and the subscriber or user of that Singapore telephone number uses the opt-out facility to opt out, that sender should not rely on the Exemption to send any other exempt message to that Singapore telephone number within the stated timeframe.

*Effect of opt-out notice or withdrawal of consent*

- 11.26 As indicated above, the exemption does not apply if at the time of sending an exempt message to a Singapore telephone number, the subscriber or user of that Singapore telephone number has withdrawn consent given to the sender for the sending of any specified message, or otherwise indicated to the sender that he does not consent to the sending of any specified or exempt message (including through the use of the opt-out facility), and any specified timeframes to give effect to the withdrawal of consent or opt-out notice have lapsed<sup>22</sup>.
- 11.27 Persons may wish to note that the requirements of other laws may also apply in relation to sending of exempted messages. For example, where the exempted message meets the conditions under the Spam Control Act (Cap. 311A) in relation to the sending of unsolicited commercial electronic messages in bulk, the provisions of the Spam Control Act will apply<sup>23</sup>. The Commission envisages that the opt-out facility and statements used for the purposes of complying with the requirements of the Spam Control Act may be similarly used for complying with the conditions under the Exemption.

General comments on the Exemption

- 11.28 The Exemption offers an additional option for some organisations to send specified text and fax messages to individuals, with conditions. To be clear, organisations may opt to comply with the provisions of section 43(1) of the PDPA in relation to the sending of such specified messages rather than rely on the Exemption.
- 11.29 With the Exemption, the DNC Provisions generally apply to organisations' sending of messages to a Singapore telephone number as follows:

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<sup>22</sup> Please refer to Chapter 8 above which elaborates on withdrawing clear and unambiguous consent.

<sup>23</sup> Spam Control Act, section 11 and Second Schedule.

- a) Where the message is not a specified message, including where it falls within the Eighth Schedule exclusions, the DNC Provisions do not apply;
- b) Where the message is a specified message:
  - i. if the sender falls within the Exemption, the DNC Provisions except section 43(1) apply; and otherwise
  - ii. the DNC Provisions apply.