

**RESPONSE TO THE PUBLIC CONSULTATION ISSUED BY THE PERSONAL DATA
PROTECTION COMMISSION**

PROPOSED REGULATIONS ON PERSONAL DATA PROTECTION IN SINGAPORE

AND

**PROPOSED ADVISORY GUIDELINES ON KEY CONCEPTS AND SELECTED TOPICS IN
THE PERSONAL DATA PROTECTION ACT**



1 April 2013

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1. INTRODUCTION

- 1.1. M1 Limited (“M1”) refers to the Personal Data Protection Commission (“PDPC”) consultation documents dated 5 February 2013:-
 - i. Proposed Regulations on Data Protection in Singapore;
 - ii. Proposed Advisory Guidelines on Key Concepts in the Personal Data Protection Act (“PDPA”); and
 - iii. Proposed Advisory Guidelines on the Personal Data Protection Act on Selected Topics, (“Consultation Papers”).
- 1.2. As a leading integrated provider of info-communications services in Singapore, M1 welcome this opportunity to submit our views and comments to PDPC for its consideration on the Consultation Papers.

2. GENERAL

- 2.1. M1 is licensed by the Info-communications Development Authority of Singapore (“IDA”) for the provision of info-communications service in Singapore, and regulated under the Telecommunications Act and its related subsidiary legislation. Upon review of the PDPA and the Consultation Papers, we note that there remain inconsistencies between the PDPA and existing regulations in the info-communications industry which have yet to be addressed.
- 2.2. In addition, we believe that the provisions under the PDPA still remain subjective and open to individuals’ interpretation. For example, how PDPC define “reasonableness” and how organisations are expected to assess whether a minor below 18 years of age but above 14 years of age understands the nature of the right of power and the consequences of exercising the right of power. We would request that PDPC’s positions on key concepts be laid down clearly to guide organisations in their implementation and compliance. Such policy guidance should take into account commercial considerations and operational feasibilities.
- 2.3. As an info-communications service provider, additional sector-specific guidance will be helpful to facilitate industry compliance. It would also be beneficial if the PDPC could lay down the guidelines on the principles that PDPC will generally adopt when assessing cases of non-compliance.



3. SPECIFIC COMMENTS

3.1. Proposed Advisory Guidelines on Key Concepts (“Guidelines”)

No.	Section/Description	M1 Comment
1.	Section 4(6) of the PDPA provides that the provision of other written law shall prevail over the Data Protection Provisions to the extent that the Data Protection Provision is inconsistent with the provision of the other written law.	<p>Under the Telecom Competition Code ("Code"), operators can disclose end user information (EUSI) in certain situations without the customer's consent. In the event these rights conflict with the obligations under the PDPA, please confirm that operators may continue to exercise such rights under the Code, notwithstanding the PDPA.</p> <p>Please confirm that under section 4(6)(a) of the PDPA, the Code and other regulatory directives will supersede the PDPA where there are inconsistencies.</p>
2.	Section 5 – Personal Data	<p>We seek PDPC’s confirmation that any data arising from the provision of services such as,</p> <ul style="list-style-type: none">i) service-related information e.g. account number, user ID, IP address etc. that an organisation <u>assigns/allocates</u> to its customers for the provision of services; andii) derived data e.g. usage records etc., (collectively “Service Data”), <p>should not be deemed as “Personal Data”, and thus, should not be subject to the access and correction provisions under the PDPA. Service Data is part and parcel of service provisioning and is meant for legitimate business purposes of the organisation e.g. billing etc. In the absence of access to the systems and databases of the organisation, Service Data generally cannot be related to an identifiable individual, and would be of no meaning beyond the context of the organisation providing the services.</p> <p>At most, Service Data should only be subject to the protection and retention provisions under the PDPA.</p>



No.	Section/Description	M1 Comment
3.	<p>Section 23 of the PDPA states that :</p> <p><i>“An organisation shall make a reasonable effort to ensure that personal data collected by or on behalf of the organisation is accurate and completed, if personal data:-</i></p> <p><i>(a) Is likely to be used by the organisation to make a decision that affected the individual to whom the personal data relates; or</i></p> <p><i>(b) Is likely to be disclosed by the organisation to another organisation.“</i></p> <p>Section 5.8 of the Guidelines further clarifies that organisations have an obligation in certain situations to make a reasonable effort to ensure that personal data collected is accurate and complete.</p>	<p>We seek PDPC’s confirmation that where the personal data collected does not fall under Sections 23(a) or (b) of the PDPA, there is then no obligation for the organisation to verify the accuracy and completeness of the data. For example, personal data that is used for providing a service would not ordinarily be considered to be used to “make a decision that affected the individual” or “disclosed by the organisation to another organisation”, and thus, the obligation to verify the accuracy and completeness of personal data will not apply.</p> <p>Notwithstanding the above, where the organisation is under an obligation to verify the accuracy and completeness of the data, we would like to clarify that a confirmation in writing by the individual that the data is accurate and complete, would be sufficient to satisfy Section 23 of the PDPA.</p>
4.	<p>Section 5.15 of the Guidelines gives an example where personal data of a third party is provided by an individual to an organisation and indicates that the consent of the third party may be required.</p>	<p>Please clarify whether consent from the third parties will be required when a customer nominates third parties and provides personal details of such nominees for the purpose of consuming the services being offered e.g. to enjoy free or discounted rates for calls made by the customer to the nominees.</p>
5.	<p>Section 5.19 of the Guidelines states that the PDPA does not apply to business contact information.</p>	<p>Where the customer is a corporation and the information provided by the corporation relates to personal data e.g. employee information etc., would the PDPA then apply to this data? If so, is the corporation deemed to have consented to and deemed to have procured the consent of the individuals for the collection and use of the personal data?</p>
6.	<p>Section 5.21 – Business Contact Information</p>	<p>Business cards are commonly used for varied purposes and it is not feasible to require organisations/agents to ascertain whether it was provided for business or personal purposes. Hence, for clarity, we recommend that all information on business name cards be deemed as business contact information where the PDPA does not apply. This is in line with the intent of business cards.</p>



No.	Section/Description	M1 Comment
7.	Section 6.7 – Example on Travel Agency	<p>We refer to MICA’s comments in Section 2.47 of the Proposed Personal Data Protection Bill dated 19 Mar 2012 as follows:</p> <p>“In the case of referrals by existing customers of an organisation...Given that the organisation would not be able to approach the referred individuals directly, the organisation may ask the referrer to confirm that consent had been given by the referred individuals”.</p> <p>However, we note that this does not seem to be covered as an exception in the Second, Third and Fourth Schedules of the PDPA. Please clarify if organisations can adopt MICA’s comments in meeting the consent obligations under the PDPA. If not, please clarify how organisations would be reasonably expected to obtain consent from the referred individuals. In many cases, the referred individual (i.e. Jane) may not wish to be contacted by the organisation or inconvenienced by unnecessary administrative burden.</p> <p>Please also clarify if this specific example could or could not rely on any of the exceptions provided in the PDPA. If so, please clarify what are the specific exception(s) under the specific Schedule(s) and explain why this exception(s) can be relied upon for this example.</p>
8.	Section 9.5 – Definition of a “reasonable person” <i>“A reasonable person” is judged based on an objective standard and can be said to be a person who exercises the appropriate care and judgment in the particular circumstances.</i>	<p>Please clarify the following:</p> <ol style="list-style-type: none">1) The objective standard PDPC has or will be using;2) How would PDPC determine whether “appropriate care” was exercised?3) How would PDPC determine if an “appropriate judgment was made in a particular circumstance?4) It may be helpful if the PDPC could provide some examples to illustrate the assessment of “reasonableness” or a “reasonable person”.



No.	Section/Description	M1 Comment
9.	<p data-bbox="272 331 732 394">Section 10.2 (g) – The Retention Limitation Obligation</p> <p data-bbox="272 426 732 489">Section 17.1 of the Guidelines sets out the retention limitation obligation.</p> <p data-bbox="272 520 732 772">Section 25 of the PDPA sets out the Retention Limitation Obligation which is that an organisation must cease to retain 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:</p> <ul data-bbox="272 804 732 1003" style="list-style-type: none"><li data-bbox="272 804 732 930">i) the purpose for which the personal data was collected is no longer served by retention of the personal data; and<li data-bbox="272 930 732 1003">ii) the retention is no longer necessary for legal or business purposes.	<p data-bbox="755 331 1448 394">We seek guidance on what constitutes “retention is no longer necessary for legal or business purposes”.</p> <p data-bbox="755 426 1448 552">Under Sections 3.3.4(b) and (c) of Code, a customer may contest a bill or charge within one (1) year of the bill or charge. Please confirm that retention of personal data can be limited to one (1) year.</p> <p data-bbox="755 583 1448 709">Otherwise, please confirm if it should be left to the discretion of companies to interpret and formulate the appropriate retention period, taking into account the nature and circumstances of their business.</p>
10.	<p data-bbox="272 1029 732 1281">Section 11.1 of the Guidelines sets out the obligation under the PDPA to obtain consent and further clarifies that the requirement to obtain consent does not apply where collection, use or disclosure of an individual’s personal data without consent is required or authorised under the PDPA or any other written law.</p>	<p data-bbox="755 1029 1448 1186">Under IDA Regulations, licensees are required to provide directory services for all Level 6 subscribers. As this requires personal data of the Level 6 subscribers to be disclosed, will the licensees now be required to obtain customer consent prior to disclosing such information under the PDPA?</p>



No.	Section/Description	M1 Comment
11.	<p>Section 11.4 of the Guidelines sets out the requirement to notify the customer of the purpose of the use of his/her data and to obtain consent.</p> <p>Section 13.5 of the Guidelines further sets out the possibility to notify the individual through a data protection policy.</p> <p>Section 13.10 of the Guidelines states that information about an organisation's purposes may be stated in an agreement between the organisation and individual or may be stated in a separate data protection notice provided to the individual.</p>	<p>Please confirm that the following procedure will fulfil the notification and consent obligation under the PDPA:</p> <p>(a) Organisations set out in the Personal Data Protection Policy a list of essential purposes (i.e. essential for the provision of the service) and another list of optional purposes (i.e. purposes that are not essential for the provision of the service such as marketing services);</p> <p>(b) When a customer signs up for services, the customer's consent to use of personal data for essential services would be indicated in the application/sign-up form and he/she has an option to tick a box to indicate consent to the use of the personal data for optional services where clear reference will be made to Personal Data Protection Policy;</p> <p>(c) If the customer requests for a copy of the data protection policy at the point when he signs up for the services, we then provide him with an opportunity to sight the data protection policy; and</p> <p>(d) The data protection policy will also be made publicly available on our corporate website so that customers can refer to it at any point in time.</p>
12.	<p>Section 11.38 of the Guidelines states that once an organisation has received a notice to withdraw consent, the organisation should inform the individual concerned of the likely consequences of withdrawing his consent.</p>	<p>Please confirm if it would suffice to notify the individual of the consequences of withdrawal of consent by indicating the consequences via the organisation's Personal Data Protection Policy.</p>
13.	<p>Section 11.48 – Example on Jeff</p>	<p>M1 notes that it would be reasonably expected that Jeff's image would be captured by CCTVs in shopping malls installed for security reasons.</p> <p>If Jeff subsequently enters a retail store to make a purchase, can we confirm that it would also be reasonably expected that Jeff's image would be captured by CCTVs in stores installed for security reasons?</p>
14.	<p>Section 13.20(d) of the Guidelines state that in considering how specific to be when stating its purposes, organisations may have regard to the following....(d) if the personal data will be disclosed to other organisations, how the organisations should be made known to the individual.</p>	<p>Please confirm if making known the third party organisation to the individual is a requirement under the PDPA. If so, does this requirement also apply to data intermediaries?</p>



No.	Section/Description	M1 Comment
15.	<p>Section 13.23 of the Guidelines states that in determining if personal data can be used or disclosed for a particular purpose without obtaining fresh consent, an organisation should determine whether the purpose is within the scope of the purposes for which the individual concerned had originally been informed....</p> <p>The section further goes on to give an example where Sarah agrees to the spa using her personal data for purposes of sending greeting cards and reminders to her and hence her financial advisor Paul could send an analytical report to her but not the company's newsletter.</p>	<p>When indicating the purpose of the use of the personal data to the customer, is it possible to add at the end of the purpose a phrase to cover ancillary purposes e.g. ".....for all purposes which are ancillary or consequential to the above purposes"?</p> <p>Please also confirm that nothing in this rule prohibits a listed company from sending Annual Reports to Shareholders who are also customers of the company for compliance with the Company's Act.</p>
16.	<p>Section 14.9 of the Guidelines sets out the exceptions to the obligation to provide access and one of the exceptions is as follows:</p> <p><i>"(g) a document related to a prosecution if all proceedings related to the prosecution have not yet been completed"</i></p> <p>Section 14.18 of the Guidelines sets out the exceptions to the obligation to correct personal data and one of the exceptions is as follows:</p> <p><i>"(e) a document related to a prosecution if all proceedings related to the prosecution have not been completed"</i></p>	<p>In both cases, please confirm that "prosecution" also includes civil litigation and arbitration proceedings.</p>
17.	<p>Section 14.9(k)(i) of the Guidelines sets out another exception to the obligation to provide access as follows:</p> <p><i>"Any request that would unreasonably interfere with the operations of the organisation because of the repetitious or systematic nature of the requests."</i></p>	<p>Appreciate PDPC's guidance on what would be the principles/guide it would adopt to assess whether a request "unreasonably interfere with the operations of the organisation" or is "repetitious or systematic".</p>



No.	Section/Description	M1 Comment
18.	<p>Section 14.11 sets out situations specified under section 21(3) of the PDPA where personal data must not be provided.</p> <p>Some of the situations are as follows:</p> <p><i>“(a) threaten the safety or physical or mental health of an individual other than the individual who made the request;</i></p> <p><i>(b) cause immediate or grave harm to the safety or the physical or mental health of the individual who made the request;</i></p> <p><i>(c) reveal personal data about another individual”</i></p>	<p>For situation (a) and (b), how do organisations assess the physical or mental state of an individual?</p> <p>For situation (c), please confirm that we cannot release call records (which sets out details of customer calls to and from third party telephone numbers) to the customer as we would not have the consent of the third party to disclose his/her telephone number.</p>
19.	<p>Section 14.17 of the Guidelines states that if an organisation is satisfied upon reasonable grounds that a correction should not be made, then Section 22(5) of the PDPA requires the organisation to annotate the personal data in its possession or under its control indicating the correction that was requested by not made. As a good practice, the organisation may also wish to annotate the reasons why it has decided that the correction should not be made.</p>	<p>For purposes of Section 22.5 of the PDPA, please confirm whether it would suffice for us to keep a log record of the customer’s request to correct and the company’s refusal to correct.</p>
20.	<p>Section 15.6 of the Guidelines clarifies that an organisation is not required to check the accuracy and completeness of an individual’s personal data each and every time it makes a decision about the individual. However it would be prudent for an organisation to do so if it intends to make a decision that will significantly impact the individual concerned.</p>	<p>Does “affects” in section 23(a) of the PDPA mean that there must be “significant impact” on the individual?</p>



No.	Section/Description	M1 Comment
21.	Section 15.8 of the Guidelines states that an organisation should also be more careful when collecting personal data about an individual from a source other than the individual in question. The organisation may obtain confirmation from the source of the personal data that the source had verified the accuracy and completeness of that personal data.	If some of the information comes from a third party, how are we able to verify the accuracy and completeness of the personal data? Please provide examples.
22.	Section 16.6 of the Guidelines sets out the description of “data intermediary”.	Please clarify if distributors i.e. chain shops that distribute services to customers will be considered “data intermediaries” for our organisation. Please also confirm if share registrars of listed companies who collate shareholders’ information for listed companies are considered data intermediaries of the listed company.
23.	Section 18.1 of the Guidelines sets out the Transfer Limitation Obligation where under Section 26 of the PDPA, there is a limitation on the ability of the organisation to transfer personal data outside of Singapore.	Please confirm that for roaming partners overseas, as long as the overseas roaming partner does not come into contact with any data that can identify our Singapore customer, then section 26 of the PDPA does not apply.
24.	Section 23.1 of the Guidelines states that an organisation may use personal data collected before the appointed day for the purposes for which the personal data was collected.	The wordings seem to indicate that personal data collected before the appointed day may be used but not disclosed. Please confirm that if a corporation needs to disclose such pre-existing data for the provision of services to the customer, this would fall within the ambit of “use of data”.



3.2. Proposed Advisory Guidelines on Selected Topics

No.	Section/Description	M1 Comment
1.	Section 6 – Example on John <i>“...Operator X could ask for other information such as John’s account number or date of birth to verify his identity”.</i>	The suggestion may compromise the protection/safeguarding of John’s personal information as: 1) Any 3 rd party with a copy of John’s bill will have his account number e.g. tenant staying in John’s flat etc. 2) Birth date is commonly known by many of John’s contacts e.g. ex-colleagues etc. Hence, operators should not be expected to use the stated alternatives instead of NRIC as this would compromise the stringent standards put in place to safeguard the personal data of our customers.

3.3. Proposed Regulations on Personal Data Protection in Singapore

No.	Section/Description	M1 Comment
1.	Section 5.1 of the proposed regulations states that an organisation is entitled to charge an individual who makes an access request a minimal fee to recover the incremental costs directly related to the request for the time and effort spent by the organisation in responding to the access request.	In lieu of a “minimal fee”, should it not be a “reasonable fee” to take into account not just time and effort spent but also new systems that have to be implemented to cater to such situations. Please also confirm that the costs incurred may include management time, costs of implementation of systems and administrative costs.
2.	Section 9.1 a) (ii) proposed that minors may exercise any right or power conferred by the PDPA if the individual is: a) 18 years of age or older; or b) Is less than 18 years of age but above 14 years of age and understands the nature of right or power and the consequences of exercising the right or power.	Please clarify how organisations should ascertain whether a minor of less than 18 years of age but above 14 years of age understands: <ul style="list-style-type: none"> • the nature of right or power; and • the consequences of exercising the right or power. It may be helpful if the PDPC could provide some examples for illustration purposes.
3.	Part IV outlines how individuals may act on behalf for others under the PDPA.	For corporate customers, we seek PDPC confirmation as to whether any consent given or deemed to have been given by the employees of the corporation include any consent given or deemed to have been given by its employer. In addition, under what circumstances would the employer be considered as validly acting on behalf of its employees?