

PDPC's Public Consultation on Managing Unsolicited Commercial Messages and the Provision of Guidance to Support Innovation in the Digital Economy

Submitted by:

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Question 1 : What are your views on the proposed scope and applicability of the DNC Provisions and the Spam Control Provisions?

We agree with the proposal. It will provide better clarity to the public and business to consolidate regulations on bulk commercial messages into one New Act and streamline the requirements relating to these.

Question 2 : What are your views on including commercial text messages sent using IM identifiers under the Spam Control Provisions?

We agree with the proposal. We recognize that individuals should have the right to decide what commercial messages they wish to receive. At the same time, we also need to recognize the importance of the use of new technologies in the commercial eco-system. It is important that organizations are allowed to use IM identifiers to send commercial messages.

In relation to paragraph 3.10, having the unsubscribe facility would give individual the right to decide and manage the types of commercial messages they would want to receive. We would like to confirm that for commercial text messages sent via IM identifiers in bulk, in order for the organization to comply with the New Act, all that is required is for the organization to provide an unsubscribe facility and their contact information. In addition, please clarify what is the nature of the contact information to be provided, e.g., email address, phone number, etc.

In relation to paragraph 3.12, we would like to highlight that once a telephone number is on the DNCR, there is no mechanism to remove that number from the DNCR when the number is re-assigned or re-issued to new subscribers. Over time, there would be a build-up of telephone numbers on the DNCR where new subscribers have no intention for their numbers to be on the DNCR. PDPC may want to look into this with the telecommunication operators on how to remove re-assigned or re-issued numbers from the DNCR.

Question 3 : What are your views on the proposed reduction of the period for effecting withdrawal of consent to 10 business days, in line with the period to effect an unsubscribe request under the Spam Control Provisions.

We wish to clarify whether there will be a “sunrise period” to implement this. Some organizations may require time to effect changes to their existing system to configure the reduced period for effecting withdrawal of consent. In addition, giving organizations 10 business days to effect the withdrawal of consent may be too short.

Question 4 : What are your views on prohibiting the use of dictionary attack and address harvesting software for sending of commercial messages to all telephone numbers, IM identifiers and email addresses?

We do not have any comments on this.

Question 5: Should B2B marketing messages be subject to the requirements under the DNC Provisions, in alignment with the coverage under the Spam Control Provisions?

We propose that B2B marketing messages should not be subject to the requirements under the DNC Provisions. We agree with PDPC that this will increase business costs and create additional compliance requirement to check against the DNCR even for B2B marketing. If an individual telephone number is listed on his/her business cards or marketing materials, such numbers should not be subject to the requirements under the DNC Provisions. There should be a presumption that B2B marketing messages could be sent to that telephone number without having to check the DNCR.

Question 6: What are your views on the proposal for the DNC Provisions to be enforced under an administrative regime?

We agree with the proposal.

Question 7: What are your views on the proposed obligation to communicate accurate DNCR results, and liability on third-party checkers for any infringements of the DNC Provisions resulting from inaccurate information they provided?

We agree with the proposal.

Question 8: What are your views on the proposed prohibition of resale of results of telephone numbers checked with the DNCR?

We agree with the proposal.

In relation to paragraph 4.4, please clarify how PDPC will monitor and enforce the prohibition of the resale of the results of telephone numbers screened through the DNCR by third-party checkers. There will need to be robust ongoing monitoring and enforcement action, together with adequate consequences for such prohibition to achieve the desired deterrent effect.

Question 9: What are your views on the proposed deeming provision?

Administratively, this will improve efficiency. However, there is concern that a subscriber's telephone number may have been used illegally by another person. Since this is a deeming provision and the burden of proof is shifted to the subscriber, there must be provisions to protect such unaware subscribers. In such instances, it is unfair to put the burden of proof on the subscriber.

Question 10: What are your views on the proposed Enhanced Practical Guidance framework?

We agree with the proposal. We are of the view that the name of the organization should not be published in the determination under the EPG framework. This is to ensure confidentiality of the organization seeking guidance under the EPG framework.

Please clarify whether PDPC will also provide determinations on proposed business activity, given paragraph 6.1 which states that PDPC will not provide determinations relating to hypothetical situations.

Before embarking on new business initiatives, especially those involving technological innovations, there may be situations where businesses may wish to seek determinations when the position under the PDPA and/or guidelines may be unclear.

Paragraph 6.2 sets out the criteria that PDPC will take into consideration when assessing requests for determinations. Please provide greater clarity on this. In particular, what situation is limb (c) intended to address, i.e. query does not amount to a request for legal advice? Presumably, limbs (a) and (b) which state that there should be no clear position under the legislation and/or guidelines should be sufficient.

In relation to paragraph 6.4, please clarify how the fees under the EPG framework will be determined by PDPC. In addition to calibrating the fees according to the type and size of the organization, we are of the view that the PDPC should also take into account the complexity of the issue. Organizations should not be charged by their type and size alone.

In relation to paragraph 6.5, in stating that the “EPG framework is intended to support organizations with innovative solutions but not intended for organizations to seek solutions from PDPC to comply with the Data Protection Provision(s)”, please clarify how the PDPC will provide such support to organizations through the EPG framework.