

ANNEX A

AMERICAN EXPRESS RESPONSE TO PUBLIC CONSULTATION FOR MANAGING UNSOLICITED COMMERCIAL MESSAGES AND THE PROVISION OF GUIDANCE TO SUPPORT INNOVATION IN THE DIGITAL ECONOMY

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

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

A. General Comments on Scope and Applicability

We agree with the proposal to merge and streamline the scope and applicability of the DNC and the Spam Control Act into a New Act as this will reduce ambiguity and overlap between the legislations.

B. Commercial Text Messages Sent Using IM Identifiers

- i. American Express understands that PDPC has proposed for the Spam Control Provisions to cover unsolicited commercial text messages sent directly to IM identifiers via an instant messaging channel.
- ii. Clarification is required as to which provisions (the DNC Provisions or Spam Control Provisions) should govern unsolicited commercial messages sent via IM identifiers that are Singapore telephone numbers. For example, on some social media platforms, mobile numbers are used as IM identifiers. There may be an overlap between the DNC Provisions and Spam Control Provisions in the New Act in situations involving IM identifiers that are Singapore telephone numbers. For example, paragraph 3.5 of the Consultation Paper states that the DNC Provisions are intended to apply to unsolicited marketing text messages that are sent to a Singapore telephone number, regardless of whether they are sent in bulk, whereas the Spam Control Provisions will be extended to apply to unsolicited commercial text messages where they are addressed to IM identifiers and are sent in bulk. Therefore, both the DNC Provisions and the Spam Control Provisions could potentially apply to unsolicited commercial messages sent in bulk that are addressed to Singapore telephone numbers that are IM identifiers. Therefore, some clarity as to which provision ought to apply where there is an overlap is required.
- iii. Under the current Personal Data Protection Act, a user can provide express specific consent to receive marketing messages via telephone, we suggest that where such express specific consent is already obtained from the consumer to receive marketing messages via the telephone, there should not be a requirement to also comply with the Spam Control Provisions for marketing sent via telephone as IM identifiers as the user has made a clear express choice to receive marketing messages.

B. Organizations to Establish Internal Un-subscribe Registers

- i. In respect of establishing internal un-subscribe registers for IM identifiers, for the same reasons highlighted by the PDPC at paragraph 3.13, organizations will also face practical difficulties and challenges in maintaining unsubscribe lists for IM identifiers. To further highlight additional challenges:
 - (I) An individual may have multiple IM identifiers across different social media or IM platforms or even on the same platform, it would be challenging to ascertain whether the individual intends to unsubscribe from marketing on all IM identifiers if the individual opts out for one IM identifier; and
 - (II) An individual may also update/change their IM identifier on the social media or IM platforms from time to time and it is operationally challenging to track such updates/changes.
- ii. Therefore, requiring organizations to establish internal unsubscribe IM registers will result in unduly high compliance and operational costs for the set-up and maintenance of multiple unsubscribe lists for various social media and IM platforms. Privacy choices or settings could also be managed by individuals on the relevant social media or IM platform itself.

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

We urge the PDPC to reconsider shortening maintaining the period for organizations to effect a withdrawal of consent. Maintaining a 30 days period to effect withdrawal of consent is reasonable and strikes a good balance between the interests of consumers and organizations.

The key difference between the DNC Register and the unsubscribe lists established by an organization pursuant to the Spam Control Provisions is the unsubscribe list is maintained internally by an organization, whereas the DNC Register is maintained externally. It is reasonable for a consumer to expect a faster speed of implementation of a request to unsubscribe under the Spam Control Provisions as such a unsubscribe list is internally managed by an organization. Whereas the organization would need to check the DNC Register against its own internal database and then ensure that a do not call tag is placed on the relevant individual on its own internal database. This requires more time, resources and processes before the withdrawal of consent made under the DNC Register can be effected.

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 urge the PDPC to reconsider the proposal to include B2B marketing messages to the requirements under the DNC provisions for the following reasons:

- i. B2B telemarketing is a common practice and is an established and accepted way of doing business in Singapore. Business telephone numbers are usually obtained by referrals obtained from employees, business associates or partners, or from on-site visits to business premises, as well as from public information (such as business web-sites or industry directories). Accordingly, business contact telephone numbers are legitimately obtained and provided by the businesses themselves for use in connection with current or proposed business dealings.

- ii. It is unclear who would have legitimate authority to register a business contact number on the DNC, for instance, the decision maker or owner of a business may not be the relevant person who places the number on the DNC and may wish to receive B2B marketing to grow the business, however another employee may then register the business contact number on the DNC and in this instance, the business may be deprived of legitimate business opportunities.
- iii. B2B marketing calls also do not affect the fundamental basis of privacy of individuals as the calls are of a business nature and are usually made to a decision-maker or officers of a business. B2B marketing calls are usually made during office hours and are not usually perceived as a nuisance by the receiver because they represent business opportunities and could meet business needs of the receiver and the marketer.
- iv. Certain businesses (such as sole proprietorships and partnerships) may have telephone numbers registered under their own individual names and this will be the only point of business contact for such businesses. The proposed regulations may have an unintended consequence of requiring businesses to revert to inflexible, less efficient, costly or more labor intensive methods of marketing, such as face-to-face marketing or above-the-line marketing. Depending on the products and services, it may not be effective to always conduct above-the-line marketing, for example where the products/ services offered are specialised in nature or targeted at particular sectors/industries or businesses.
- v. Excluding B2B telemarketing from the scope of DNC regulations is also consistent with the practices adopted in Australia. Under the Do Not Call Register Act 2006, business telephone numbers are not eligible for registration with the Australia DNC Registry. Accordingly, where an individual registers his business number on the DNC Register, we suggest that this should restrict marketing to him/her as a consumer or individual, but should not extend to B2B marketing for legitimate business reasons.

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

We agree with, and are supportive of, PDPC's proposal to establish an Enhanced Practical Guidance framework.

Additional Comment – Time Frame for Implementation

As the proposed enhancement to the DNC and Spam Control Provisions may require all organizations to review their current processes on marketing, implement changes to internal policies and processes, review contracts with third parties and implement a change process to comply with the regulatory changes, we request that the PDPC provide a 12 month implementation period to allow organizations to comply with the enhanced New Act.