

PDPC's Public Consultation on Managing Unsolicited Commercial Messages and the Provision of Guidance to Support Innovation in the Digital Economy
(ABS' collation dated 06 June 2018)

Question 1

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

We would like to seek more clarity on the scope of the proposed 'merged' legislation, particularly on the overlapping of the existing DNC Provisions (which govern only marketing messages) and SCA (which governs all types of electronic messages).

In addition, to comply with the SCA, organisations currently need to include '<ADV>' and 'UNSUB' in marketing messages sent via SMS. With the proposed streamlining, would similar conditions be applicable for marketing messages sent via SMS?

We would also like to respectfully seek clarity from the PDPC on the application of this proposal to in-app notifications (e.g. banners).

Question 2

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

We believe it is a move in the right direction given the ubiquity of social media and IM platforms and the changes they have driven in the commercial communications landscape.

Having said that, we request PDPC be specific about platforms proposed to be in-scope or provide detailed characteristics of such platforms. For example, would marketing text messages sent within a mobile app or website fall under the Spam Control Provisions simply because the marketing solution would use an individual's log-in credentials as the identifier? In addition, for scenarios in which the user withdraws consent for one channel and not the other (e.g. do-not-contact for mobile number but contact for email), how would this conflict be resolved for IM platforms which permit both email and mobile numbers as identifiers?

Further complexities could arise from the interaction between DNC Provisions and Spam Control Provisions, owing to which clear guidelines have to be established in order for organisations to implement them effectively and for consumers to rely on their protection. For companies to effectively draw up exceptional handling procedures, for example, PDPC has to indicate where the onus lies in exceptional situations, particularly where customers can 'opt out' of receiving marketing messages (e.g. via adjusting their Facebook privacy settings or by changing their feed preferences).

Lastly, there is a need to be mindful of the potential compliance costs that the amendment will bring to organisations. As implementing the register of IM identifiers will not be driven centrally, organisations will have to devote resources to maintain several registers for different social media platforms in order to transmit marketing messages as well as to provide consumers with the unsubscribe facility.

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?

Whilst we appreciate that the alignment of the withdrawal of consent period would eliminate confusion, the cost of compliance for organisations (which is already not insignificant) would increase substantially, and therefore respectfully ask that PDPC reconsider the real benefit to individuals in light of the unduly burdensome impact to organisations.

For most organisations, a substantial part of the compliance process for DNC Provisions is still manual (e.g. searching the DNC registers, circulation/updating of marketing call leads, preparing and launching of text messages with vendors), unlike for the SCA. Reducing the time to effect a withdrawal of consent to 10 days would therefore increase the burden of compliance, particularly if the scrubbing of marketing call leads has to be conducted against the entire database and/or if hard copy lists are distributed to telemarketers, some of whom may be contract or casual workers and not employees.

Should organisations utilise third-party telemarketing agents, whose systems are not directly synchronised with the organisation's system, there will be increased operational challenges for the third-party telemarketing agent to communicate withdrawal of consent requests and for organisations to effect these requests into their system within 10 working days. Further, unlike text or emails, marketing messages sent via telemarketing calls may not always get delivered to the intended individuals in the first instance. Thus, we respectfully request PDPC to reconsider the proposed reduction of the period for effecting withdrawal of consent to accord organisation sufficient time for the communication of marketing promotions via telemarketing calls to interested parties.

If the amendment is introduced, a clear definition of 'business days' should be established as some organisations maintain partial operations on weekends.

Separately, we would also like to seek clarity on whether the 'prescribed duration' would be reduced from the current 30 days to 10 days as well. An increased frequency of checks would similarly have a substantial cost impact to banks, which typically process a large volume of numbers.

In line with any proposed reduction in validity of DNCR checks, we would like to respectfully submit that PDPC consider a reduction in the costs of DNCR checks.

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 are supportive of this prohibition as this will eliminate the chance of organisations abusing the system to perform 'mass marketing'.

Nevertheless, could PDPC clarify whether the provisions would require organisations to verify the methods of third-party companies which provide leads after checking the DNCR (e.g. to verify that their leads were not obtained through automated means)?

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?

Could PDPC clarify how it will implement this proposal? Will there be a new DNC register set up specifically for B2B messages?

A single DNC register for both retail and B2B messages may be overly restrictive and inconvenient for individuals who use one mobile number for both personal and business purposes. There would be a significant segment who prefer to receive business messages only, or individual messages only. For a telephone number which is commonly shared by a few business entities (e.g. entities that share a common office or common owner), the registration of the commonly shared telephone number on the DNCR would eliminate B2B marketing to all entities, even though some entities may wish to receive B2B marketing promotions.

Business networking could potentially be hindered. Name cards are freely exchanged to facilitate and invite contact. However, if the DNC rules apply, an organisation would not be able to send B2B messages notwithstanding that the numbers were given for such purposes, without first doing a DNC check or obtaining clear and unambiguous written consent. This will impose significant operational and technology costs on organisations.

We respectfully request for PDPC to consider that unlike consumer promotions, B2B marketing messages communicate solutions to address business needs and concerns. Business contacts details are typically obtained through subscription of memberships and volunteering of name cards at corporate events, and thus, are less susceptible to abuse as compared to individual contact details.

We therefore submit that there is no need to extend the scope (and protection) of the DNC regime to businesses. We implore the PDPC to consider the heavy compliance and opportunity costs for organisations.

Question 6

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

We have no comments on 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 are supportive of the proposal as it promotes accountability and would fairly place the responsibility of compliance on appropriate parties.

Question 8

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

We believe that holding third parties (aside from the organisation) responsible for the infringement of DNC Provisions would curb the key concerns relating to the resale of telephone number lists.

Question 9

What are your views on the proposed deeming provision?

In keeping with technology, there may be situations such as in the example of IoT that consent at the point of data collection may be challenging. Moving to a regime of legitimate purpose is in line with GDPR and future technology use cases.

Furthermore, even with the proposed deeming provision, the identification and proof of the actual sender of the marketing message would still be independent of the circumstances surrounding the case. For example, these measures should take into account and provide exceptions for spoofing and other related cybercrimes that may develop over time where the registered mobile user would not have sent out the offending messages. Could PDPC clarify (i) the standard of proof that an organisation rebutting this presumption is required to satisfy; and (ii) PDPC's position on the liability of an organisation if it had not, in fact, authorised the sending of the specified messages (e.g. the sending was done in error or the sending resulted from a hacking attack)?

Question 10

What are your views on the proposed Enhanced Practical Guidance Framework?

The proposed framework would provide an avenue for organisations to clarify whether current/proposed business activities comply with the Data Protection Provisions under the PDPA. We welcome the publication of the redacted cases of PDPC's determination to raise awareness and provide organisations (with similar business activities) with further guidance.

- (i) Could PDPC give a sense of how the fees for the proposed framework will be structured, and whether a flat fee structure could be considered?
- (ii) What are the terms of reference for the EPG Framework?
- (iii) What is the targeted turnaround time of their PDPC's responses under the EPG Framework?