

**Personal Data Protection Commission**  
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Singapore 117438

**Email: [corporate@pdpc.gov.sg](mailto:corporate@pdpc.gov.sg)**

**Attention:**

SENDER'S REF	RECIPIENT'S REF	DATE	PAGE
RSN/LZG (PDPC)	-	12 June 2018	1/6

Dear Sirs,

**PDPC'S PUBLIC CONSULTATION ON MANAGING UNSOLICITED COMMERCIAL MESSAGES AND THE PROVISION OF GUIDANCE TO SUPPORT INNOVATION IN THE DIGITAL ECONOMY**

We refer to the consultation paper released by the PDPC on 27 April 2018 ("**Consultation Paper**").

Our comments on the Consultation Paper are attached for the PDPC's consideration.

We would like to thank the PDPC for the opportunity to provide comments on the Consultation Paper.

Yours faithfully



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**FEEDBACK  
MANAGING UNSOLICITED COMMERCIAL MESSAGES AND  
THE PROVISION OF GUIDANCE TO SUPPORT INNOVATION IN THE DIGITAL  
ECONOMY**

Rajah & Tann Singapore LLP is grateful for the opportunity to provide input to the Personal Data Protection Commission's ("PDPC's") public consultation for managing unsolicited commercial messages and the provision of guidance to support innovation in the Digital Economy issued on 27 April 2018 (the "**Public Consultation Paper**").

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

1.1. We are supportive of the proposed scope and applicability of the Do Not Call ("DNC") Provisions and the Spam Control Provisions.

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

We welcome the inclusion of commercial text messages sent using instant messaging ("IM") identifiers under the Spam Control Provisions, as it represents PDPC's intention for the New Act to stay relevant as technology standards and platforms continue to rapidly evolve. The statement made by PDPC that "it is mindful of the compliance costs for businesses should they be required to (i) check multiple Registers for different types of IM identifiers that they intend to send commercial messages to; and (ii) check for all IM identifiers, even though they may not belong to individuals in Singapore or may no longer be in use, before sending any commercial text messages" is also welcomed, as it demonstrates that PDPC has considered the possible operational difficulties and costs that organisations may face in complying with the New Act.

**3. Comments to 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 welcome the proposed reduction of the period for effecting withdrawal of consent to 10 business days under the DNC Provisions so as to streamline with the period under the Spam Control Provisions.

**4. Comments to 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 on PDPC's proposal to prohibit the use of dictionary attack and address harvesting software for sending of commercial messages to all telephone numbers, IM identifiers and email addresses.

**5. Comments to 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 are of the view that the business costs which would arise due to this proposal by PDPC may significantly affect certain organisations in terms of both costs and operations. Moreover, it would be helpful if PDPC could explain whether it has considered that an individual who uses his or her telephone number for both work and personal purposes should expect to receive business-to-business (“**B2B**”) marketing messages due to this dual purposes.

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

We broadly agree with the proposed implementation of an administrative regime in respect of the DNC Provisions, provided that such regime allow for the alleged offender to continue to have access to various rights which are similarly present to an accused in a hearing (for example: the opportunity to be heard, right to counsel). This is to ensure that the principles of natural justice are adhered to notwithstanding the implementation of an administrative regime for the DNC Provisions.

**7. Comments to 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 generally supportive of this proposal.

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

We welcome this proposal made by PDPC.

**9. Comment to Question 9: What are your views on the proposed deeming provision?**

- 9.1. Under paragraph 4.6 of the Public Consultation Paper, we note that PDPC has stated that “should the specific message be sent by a third party, PDPC will consider any evidence submitted by the subscriber to substantiate the same.”
- 9.2. It would be helpful if PDPC could elaborate if this paragraph would be introduced as part of the proposed deeming provision under the DNC Provisions under the New Act, or if it would be part of PDPC’s administrative discretion instead.

**10. Comments to Question 10: What are your view on the proposed Enhanced Practical Guidance framework?**

10.1. At paragraph 6.2 of the Public Consultation Paper, PDPC is proposing that a relevant factor for assessing determination under the Enhanced Practical Guidance (“EPG”) Framework is whether “the query relates to a complex or novel compliance issue for which there is currently no clear position for its treatment under the PDPA”

10.2. We suggest that PDPC provides more guidance on what constitute “novel” or “complex” in this regard.

10.3. We also observe that under paragraph 6.2 of the Public Consultation Paper, another relevant factor for assessing determinations under the EPG Framework is that “the query does not amount to a request for legal advice”. The footnote to this section further indicates that:

“For example, PDPC will not accept EPG applications relating to compliance with the Protection Obligation under the PDPA, since assessment and implementation security arrangements can be provided by professional DP and IT security services”

10.4. We seek the PDPC’s guidance as to what does not constitute legal advice. It is not immediately clear what consists of “legal advice” as defined by the PDPC, especially since a query relating to a complex or novel compliance issue may necessarily involve a legal interpretation. Also, based on the footnote above, would such “legal advice” be confined to general assessment, as the footnote suggest?

10.5. We note that under paragraph 7.1 of the Public Consultation, it is stated that:

“To provide regulatory certainty to organisations, PDPC proposes for the determination issued to generally remain valid, including when the organisation is subsequently being investigated for a matter related to the subject of an EPG determination”

10.6. We seek clarification from PDPC as to whether organisations can rely on determinations issued in response to queries posted by other organisations. In addition, we are of the view that the scope of such validity appears uncertain; that is to say, will such determinations have binding force of law? The concern for many organisations is that they will wish to know the extent of the risk of relying on such determinations.

**11. Solicitation of feedback on exceptions to consent**

11.1. Paragraph 1(e) of the Second Schedule of the PDPA reads as follows:

“An organisation may collect personal data about an individual without the consent of the individual or from a source other than the individual in any of the following circumstances:

...

The personal data is included in a document –

(i) produced in the course, and for the purposes, of the individual’s employment, business or profession; and

(ii) collected for purposes consistent with the purposes for which the document was produced;”

11.2. We seek the PDPC’s clarification as to what constitute personal data which is “produced in the course, and for the purposes, of the individual’s employment, business or profession”, given that there may be difficulty in distinguishing between personal data produced in the course of an individual’s employment from personal data produced by other means.

11.3. The exemption to use and disclose personal data for “research purposes” is provided for under paragraphs 1(i), and 2 of the Third Schedule and paragraphs 1(q) and 4 of the Fourth Schedule. Particularly, one of the criteria in paragraph 2 of the Third Schedule and paragraph 4 of the Fourth Schedule is that it must be “impracticable” for the organisation to seek the individual’s consent for the use or disclosure of his or her personal data. The definition of “impracticable” is unclear and can easily be understood by organisations to include the idea of inconvenience or difficulty in obtaining consent due to sheer number of individuals. Additionally, “research purpose” is undefined in the PDPA and as a result organisations are unclear how to rely on the research purpose exemption and are not willing to take the risk of utilising this exemption, notwithstanding that their purpose of use or disclosing the personal data may be regarded as for research.

## 12. Concluding Remarks

Thank you for the opportunity to provide our input to the Public Consultation Paper. For further enquires or discussion, please do not hesitate to contact our team below.

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