



PERSONAL DATA
PROTECTION COMMISSION
S I N G A P O R E

ADVISORY GUIDELINES FOR THE REAL ESTATE AGENCY SECTOR

16 MAY 2014

ADVISORY GUIDELINES FOR THE REAL ESTATE AGENCY SECTOR

PART I: INTRODUCTION	3
1 Introduction.....	3
PART II: APPLICATION OF THE DATA PROTECTION PROVISIONS TO SCENARIOS FACED IN THE REAL ESTATE AGENCY SECTOR.....	4
2 Personal data.....	4
3 The Data Protection Provisions	6
Organisations and Data Intermediaries.....	10
4 Rights and obligations, etc under other laws	13
PART III: APPLICATION OF THE DO NOT CALL PROVISIONS TO SCENARIOS FACED IN THE REAL ESTATE AGENCY SECTOR	15
5 The Do Not Call Provisions.....	15

PART I: INTRODUCTION

1 Introduction

- 1.1 Developed in consultation with the Council for Estate Agencies (“CEA”), these Guidelines aim to address the unique circumstances faced by the real estate agency sector in complying with the PDPA. These Guidelines should be read in conjunction with the document titled “Introduction to the Guidelines” and are subject to the disclaimers set out therein.
- 1.2 In addition to these Guidelines, organisations in the real estate agency sector are encouraged to read other Advisory Guidelines issued by the Commission from time to time on other aspects of the PDPA, including the Advisory Guidelines on Key Concepts in the PDPA (“Key Concepts Guidelines”), which explain in greater detail the obligations which organisations have to comply with under the PDPA, the Advisory Guidelines on the Do Not Call Provisions, which explain in detail the application of the Do Not Call Registry provisions in Part IX of the PDPA, as well as the Advisory Guidelines on Selected Topics, which explain certain topics in detail.

PART II: APPLICATION OF THE DATA PROTECTION PROVISIONS TO SCENARIOS FACED IN THE REAL ESTATE AGENCY SECTOR

The following sections and examples outline certain concepts and the application of some of the Data Protection Provisions in the PDPA. They address particular aspects of the PDPA, and are not meant to exhaustively address every obligation in the PDPA that would apply in that scenario. In particular, these sections and examples do not illustrate the application of the Do Not Call Provisions, which are addressed later in these Guidelines.

2 Personal data

2.1 Personal data is defined in the PDPA as “data, whether true or not, about an individual who can be identified –

a) from that data; or

b) from that data and other information to which the organisation has or is likely to have access.”

2.2 While some data may necessarily relate to an individual, other data may not, on its own, relate to an individual. Such data would not constitute personal data unless it is associated with, or made to relate to, a particular individual. Generic information that does not relate to a particular individual may also form part of an individual’s personal data when combined with personal data or other information to enable an individual to be identified.

2.3 The Commission understands that the types of personal data¹ that are typically collected by estate agent(s)² or salesperson(s)³ may include, but are not limited to, the full name, NRIC number, marital status, contact details and residential addresses of client(s)⁴ and/or other parties to the transaction. Estate agent(s) or salesperson(s) may also obtain documents containing

¹ For example, personal data may be set out in standard forms and agreements (Estate Agency Agreements) prescribed by the CEA to facilitate the estate agent and their salespersons to conduct sale, purchase and lease of residential property. There are a total of eight Estate Agency Agreements forms which can be downloaded from the [CEA website](#). Similarly, personal data may be set out in other forms and agreements such as Tenancy Agreement forms, Option to Purchase (“OTP”) forms. These agreements are typically drafted by lawyers according to the requirements of the sale/lease.

² The Commission understands that the term ‘estate agents’ refers to estate agency business entities (sole proprietorships, partnerships and companies).

³ Salespersons are defined under the Estate Agents Act to mean “an individual who in the course of his employment or engagement (whether under a contract of service or contract for service) by, or as a director or limited liability partner of, an estate agent does estate agency work.”

⁴ Under the Estate Agents Act, a client is referred to as “any person who, whether on his own behalf or on behalf of another person, retains or otherwise uses the services of, or otherwise engages or employs, an estate agent, whether directly or through a salesperson.”

personal data such as personal cheques from their client(s) and/or other parties to the transaction.

2.4 In some situations, the information collected, used or disclosed by estate agents or salespersons may not be personal data.

2.5	<p>Example: When information is personal data</p> <p>Estate agent ABC analyses the data of properties bought or sold through its salespersons to gather insights into the property market. The raw data includes personal data about the buyers and sellers of the properties. ABC would also like to publish aggregated statistics of sales for public reference on developments in the property market.</p> <p>ABC anonymises the raw data by removing the identifying information and the means of re-identification, such that the remaining data does not identify any particular individual in itself or in combination with other information that the organisation has or is likely to have access to. In this case, ABC would not be disclosing personal data. However, as a good practice, ABC should consider the possibility of factors beyond its control which may pose a challenge in keeping data anonymised. Please refer to the chapter in the Advisory Guidelines for Selected Topics relating to Anonymisation for more information.</p>
-----	---

2.6	<p>Example: Using personal data</p> <p>Estate agent ABC is marketing the launch of a new development. It distributes flyers to all the mailboxes of properties located in the vicinity of the new launch, addressed generically to “The Resident”. In this case, ABC has not collected or used the personal data of any individual residing in the vicinity in the distribution of the flyers.</p>
2.7	<p>Estate agent ABC is marketing a newly-launched development. It mails flyers specifically to former clients of its salespersons by using the name and address of the former clients. In this case, ABC has used the personal data of these former clients to market the new launch.</p>

3 The Data Protection Provisions

- 3.1 The Data Protection Provisions in Parts III to VI of the PDPA set out the obligations that organisations are required to comply with if they undertake activities relating to the collection, use or disclosure of personal data. Among other things, organisations are required to obtain valid consent from the individual for a limited purpose that has been notified to the individual for the collection, use and disclosure of personal data of the individual, unless exceptions apply.
- 3.2 The PDPC does not prescribe the manner in which consent is obtained by an organisation under the Data Protection Provisions. An organisation may decide on the most suitable way to obtain consent in accordance with the PDPA, and may refer to Chapter 12 of the Key Concepts Guidelines for more information on considerations and good practices when obtaining consent from an individual
- 3.3 In situations where an individual voluntarily provides his personal data to an organisation for a purpose, and it is reasonable that he would voluntarily provide the data, the individual is deemed to consent⁵ to the collection, use or disclosure of the personal data. If an individual gives, or is deemed to have given, consent to the disclosure of personal data about the individual by one organisation to another organisation for a particular purpose, the individual is deemed to consent to the collection, use or disclosure of the personal data for that particular purpose by that other organisation.

3.4	<p>Example: Personal data collected from clients</p> <p>Sarah will be relocating overseas and is putting up her apartment (which she co-owns with her husband, Sam) for sale. She approaches Jack, a salesperson representing estate agent ABC, to sell her property. To understand the characteristics of the property, Jack discusses with Sarah the strengths and weaknesses of the property and Sarah’s reasons for selling the property.</p> <p>(a) Jack indicates to a prospective buyer that “the seller says the afternoon sun does not reach the bedroom”. In this case, Jack has</p>
-----	---

⁵ Although organisations may rely on deemed consent instead of obtaining actual consent from the individual, it is good practice for an organisation to review its business processes to determine the situations where it should obtain actual consent instead of relying on deemed consent. When it is unclear whether consent may be deemed, organisations should obtain consent from the individual to use his personal data for the relevant purposes in order to avoid any disputes over whether consent was given.

	<p>not disclosed the personal data of Sarah.</p> <p>(b) Jack indicates to a prospective buyer who visits the apartment that the seller Sarah and her husband have two children attending school in the vicinity of the apartment, and the couple is selling the apartment because they are relocating to country XYZ. In this situation, Jack is disclosing personal data of Sarah. Jack should obtain Sarah’s consent⁶ to disclose her personal data to prospective buyers. For example, when Jack discusses the sale with Sarah, Jack could obtain Sarah’s consent to mention some of her personal details to prospective buyers⁷.</p> <p>(c) After Sarah has signed an estate agency agreement⁸, Jack obtains Sarah’s personal data from her for the purposes of providing the agency service to her, including her contact details. As Sarah had voluntarily provided such personal data to Jack for this purpose, Sarah is likely to be deemed to have consented to Jack’s collection, use and disclosure of such personal data for the purpose of providing her with the agency service, for example calling her to discuss offers received for her property or to arrange for prospective buyers to view her property.</p> <p>(d) Sarah asks Jack to suggest a law firm which she could engage to obtain conveyancing services. Jack recommends law firm XYZ and obtains consent from Sarah to disclose her email address to XYZ in order for XYZ to contact her directly to provide more details about its conveyancing services.</p>
--	--

3.5	<p>Example: Marketing of potential en-bloc sale</p> <p>Estate agent ABC is assisting the Management Corporation (“MC”) of a condominium to market a potential en-bloc sale of the condominium to</p>
-----	---

⁶ Consent from Sarah may also be deemed, depending on the particular circumstances of the case. Please refer to the Key Concepts Guidelines for more information on “deemed consent”.

⁷ The Commission understands that some of the personal data may be publicly available. For example, the information that Sarah and her husband, Sam, own the property may be obtained from documents readily available to the public, such as property title information that is made generally available to the public by the Land Titles Registry of the Singapore Land Authority. The disclosure of publicly available personal data would not require consent.

⁸ The Estate Agents Act defines estate agency agreement to mean “one or more written documents embodying the terms agreed for the time being between an estate agent and a client of such agent being terms on and subject to which estate agency work is to be done by such agent for the client.”

	<p>owners of units in the condominium.</p> <p>ABC has compiled a list containing the names, addresses and telephone numbers of owners taken from various sources including online title search services, the MC and communications with neighbours of some of the owners. ABC intends to first contact the owners by mailing letters to inform them of the potential en-bloc sale, and then place follow-up calls to these owners.</p> <p>In this case, the Data Protection Provisions will apply as ABC has collected and used personal data relating to the individual owners to market the potential en-bloc sale. Among other things, ABC will have to obtain consent from the individual owners on or before collecting and using their personal data, unless exceptions apply⁹. In this regard, possible exceptions may include if the personal data is publicly available.</p>
--	--

3.6	<p>Example: Disclosure of client’s personal data in a co-broking¹⁰ situation</p> <p>Sarah approached Jack, a property salesperson representing estate agent ABC, to sell her apartment. Another salesperson, Tommy, has a client who is interested in making an offer for Sarah’s apartment. Tommy and Jack agree to enter into a co-broking arrangement for this property.</p> <p>After viewing the apartment, the potential buyer decides to proceed with the purchase. Tommy wishes to disclose the potential buyer’s personal data, including his name, NRIC and contact details, to Jack. In this case, Tommy would be required to obtain consent from the buyer, though he may decide on the most suitable way to obtain consent.</p>
-----	---

3.7	<p>Example: Valid consent for personal data of multiple individuals</p> <p>John and Sarah intend to purchase a residential property together. They engage Jack, a salesperson with estate agent ABC, to help source for</p>
-----	--

⁹ Please refer to the Second, Third and Fourth Schedules of the PDPA for more information on applicable exceptions to the Consent Obligation.

¹⁰ CEA Professional Service Manual (1.8.3): “Co-broking is a common practice in the industry. It is a situation where two or more estate agents/salespersons are involved in the same property transaction and are working together to achieve the best possible outcome in price or rent for their respective clients.”

	<p>suitable properties. John provides Jack with the personal data (such as full name and address) of himself and Sarah for Jack to prepare the estate agency agreement and other documentation required for the purchase of the property (should they wish to proceed with the purchase)</p> <p>In this scenario, the Data Protection Provisions would generally apply in respect of Jack’s collection, use or disclosure of John and Sarah’s personal data. Jack may therefore wish to obtain consent from John and Sarah such as through the signing of the estate agency agreement. Jack would then be able to collect, use and disclose their personal data for such purposes for which consent had been obtained.</p> <p>Alternatively, certain exceptions to the Consent Obligation may potentially apply, depending on the specific facts of the case. For example, if John and Sarah are a married couple purchasing the property for their own residential use, the exception to the Consent Obligation in paragraph 1(m) of the Second Schedule to the PDPA¹¹ may potentially be applicable in respect of Jack’s collection of Sarah’s personal data from John. However, if Jack is relying on this exception to collect Sarah’s personal data from John without Sarah’s consent, Jack can only use her details for the purposes of the services that he is providing for the personal or domestic purposes of John (i.e. buying a home for residential use).</p> <p>Please also refer to the Key Concepts Guidelines for more information on obtaining personal data from third party sources with/without the consent of the individual.</p>
--	---

<p>3.8</p>	<p>Example: Business contact information¹² of client(s)</p> <p>Jim and Lisa are the directors of company GEF and are looking for a commercial property to be used as GEF’s office premises. They engage Andy, a salesperson with estate agent XYZ, to help source for suitable office space. Jim provides the business contact information of himself and Lisa to Andy so that Andy may liaise with both of them.</p>
------------	---

¹¹ The personal data was provided to the organisation by another individual to enable the organisation to provide a service for the personal or domestic purposes of that other individual.

¹² Business contact information is defined in the PDPA as “an individual’s name, position name or title, business telephone number, business address, business electronic mail address or business fax number and any other similar information about the individual, not provided by the individual for his personal purposes.”

	<p>The Data Protection Provisions do not apply to business contact information. Hence, Andy is not required to obtain the consent of Jim or Lisa to collect, use or disclose their business contact information. However, the Data Protection Provisions would apply if Andy collects, uses or discloses Jim's or Lisa's personal data, beyond the business contact information provided to Andy.</p>
--	---

<p>3.9</p>	<p>Example: Personal data of salespersons</p> <p>A prospective buyer enquires about a property listed on estate agent ABC's website. ABC provides the prospective buyer with the business phone number of its salesperson, Alan, for the buyer to enquire about the listing. Since that phone number forms part of Alan's business contact information, ABC does not require Alan's consent to disclose his business contact information to the prospective buyer.</p>
------------	---

Organisations and Data Intermediaries

- 3.10 If salespersons are not employees of the estate agents that they represent, they may not fall within the exclusion from the Data Protection Provisions for employees acting in the course of their employment. In such cases, salespersons may instead be considered separate organisations from estate agents and would be required to comply with the Data Protection Provisions as if they were separate organisations from the estate agents they represent.
- 3.11 The PDPA does, however, provide that a data intermediary¹³ that processes personal data on behalf of and for the purposes of another organisation pursuant to a contract which is evidenced or made in writing will only be subject to the Protection Obligation and Retention Limitation Obligation and not any of the other Data Protection Provisions.
- 3.12 A data intermediary remains responsible for complying with all Data Protection Provisions in respect of other activities that do not constitute processing of personal data on behalf of and for the purposes of another organisation that is pursuant to a contract evidenced or made in writing.
- 3.13 In any case, under section 4(3) of the PDPA, the organisation that engages the data intermediary would still have the same obligations under the PDPA in

¹³ The PDPA defines data intermediary as an organisation which processes personal data on behalf of another organisation but does not include an employee of that other organisation.

respect of personal data processed on its behalf as if the personal data were processed by the organisation itself.

- 3.14 For the real estate agency sector, whether a salesperson may be considered a data intermediary of an estate agent depends largely on the working arrangements¹⁴ between the salesperson and the estate agent.
- 3.15 Please refer to the Key Concepts Guidelines for a discussion on the criteria for and obligations of data intermediaries.

<p>3.16</p>	<p>Example: Whether a salesperson is a data intermediary processing personal data on behalf of and for purposes of an estate agent pursuant to a contract evidenced or made in writing</p> <p>Jack intends to sell his apartment and informs Sarah, a salesperson with estate agent ABC, that he wishes to engage estate agent ABC to market his apartment to potential buyers.</p> <p>Pursuant to her agreement signed with estate agent ABC, Sarah provides Jack a copy of the estate agency agreement and delivers the completed agreement (which includes personal data such as Jack’s full name, NRIC and address) to estate agent ABC.</p> <p>In this scenario, Sarah is considered to be a data intermediary processing personal data on behalf of and for the purposes of ABC pursuant to a contract made in writing and will not be subject to the other Data Protection Provisions other than the Protection Obligation and Retention Limitation Obligation. ABC will have the same obligations under the PDPA in respect of the personal data processed on its behalf by Sarah, as if the personal data were processed by ABC itself.</p>
<p>3.17</p>	<p>Boris, a salesperson with estate agent DEF, uses personal data of his clients who purchased property in a particular neighbourhood to create a profile of prospective clients that may be interested in properties in that neighbourhood for his own use. Such activities fall outside the scope of the activities that Boris is to carry out on behalf of DEF.</p>

¹⁴ The Commission understands that an estate agent and salesperson typically sign an “associate agreement” that lists the terms and conditions of any working arrangements between both parties. Depending on the terms and conditions agreed by both parties, a salesperson may be regarded as an associate under a contract for service, and not an employee of the estate agent. The Commission will consider the specific facts of the case when determining if a salesperson is a data intermediary of the estate agent.

	In this case, Boris is not considered to be a data intermediary processing personal data on behalf of and for the purposes of DEF pursuant to a contract made in writing.
--	---

3.18 There are several obligations within the Data Protection Provisions which require organisations to develop and implement policies and practices that are necessary for the organisation to meet its obligations under the PDPA. Organisations are required to make the information about their data protection policies available. For more information, please refer to the latest Key Concepts Guidelines and the latest Advisory Guidelines on the PDPA for Selected Topics.

4 Rights and obligations, etc under other laws

4.1 Section 19 of the PDPA provides that notwithstanding the other provisions of Part IV of the PDPA (which contain some of the Data Protection Provisions), an organisation may use personal data collected before the appointed day for the purposes for which the personal data was collected, unless consent for such use is withdrawn or the individual has indicated to the organisation that he does not consent to the use of the personal data. Such ‘use’ could include disclosure that is necessarily part of the organisation’s use of such personal data. For avoidance of doubt, the Do Not Call Provisions will apply to the sending of specified messages to Singapore telephone numbers, even if the Singapore telephone numbers are collected before the appointed day.

4.2	<p>Example: Existing use of personal data</p> <p>Estate agent ABC has been using the database of past and existing clients, collected before the appointed day (i.e. 2 July 2014), to send them flyers on new launches. ABC may continue to use such personal data for the reasonable purpose of sending clients flyers about new launches. For the avoidance of doubt, if ABC collects the personal data on or after the appointed day, ABC will have to comply with the relevant Data Protection Provisions, including obtaining the consent of its new clients to collect, use and disclose their personal data for the intended purposes.</p> <p>ABC wishes to call the clients in its database to market its new launches. While ABC may not need to obtain consent under the Data Protection Provisions to use the personal data of its clients in the database to call them for its new launches, the Do Not Call Provisions separately apply. ABC is required to either check and confirm that the Singapore telephone number is not listed on the Do Not Call Registers within the prescribed period before making the marketing call. An exception is when ABC has obtained the clear and unambiguous consent of the subscriber or user of the Singapore telephone number in evidential form to the sending of the marketing message, or it is exempted from checking the registers for the sending of such message under the Personal Data Protection (Exemption from Section 43) Order (S.817/2013) (“Exemption Order”). ABC can rely on clear and unambiguous consent in evidential form that it has obtained before the appointed day to send the marketing message.</p>
-----	---

- 4.3 Section 4(6) of the PDPA states that unless otherwise provided in the PDPA, nothing in Parts III to VI of the PDPA shall affect any authority, right, privilege or immunity conferred, or obligation or limitation imposed, by or under the law, including legal privilege, except that the performance of a contractual obligation shall not be an excuse for contravening the PDPA, and the provisions of other written law shall prevail to the extent that any provision of Parts III to VI is inconsistent with the provisions of that other written law.
- 4.4 Section 13(b) of the PDPA provides that an organisation shall not, on or after the appointed day, collect, use or disclose personal data about an individual without the consent of the individual unless the collection, use or disclosure, as the case may be, without the consent of the individual is required or authorised under the PDPA or any other written law.

PART III: APPLICATION OF THE DO NOT CALL PROVISIONS TO SCENARIOS FACED IN THE REAL ESTATE AGENCY SECTOR

The following examples outline the application of the Do Not Call Provisions and the Exemption Order. They address particular aspects of the PDPA, and are not meant to exhaustively address every obligation in the PDPA that would apply in that scenario. In particular, they do not illustrate the application of the Data Protection Provisions, which were addressed earlier in these Guidelines.

5 The Do Not Call Provisions

- 5.1 Messages which purposes are to offer to supply, advertise, or promote goods or services, land or an interest in land, or a business or investment opportunity, or a supplier of such goods, services, land or opportunity are specified messages and the Do Not Call Provisions will apply to such messages. Messages offering to supply, advertise or promote property, or a supplier of property, would typically be considered specified messages. Messages which do not have any of the purposes listed above will not be considered specified messages. In addition, the Eighth Schedule to the PDPA sets out exclusions from the meaning of “specified message” that relate to, among others, any message sent by an individual acting in a personal or domestic capacity, any message the sole purpose of which is to conduct market research or market survey, any “business-to-business” marketing message and other types of information specified in the Eighth Schedule.
- 5.2 The Do Not Call Provisions apply to a specified message addressed to a Singapore telephone number if the sender of the specified message is present in Singapore when the specified message is sent or the recipient of the specified message is present in Singapore when the specified message is accessed.
- 5.3 One significant obligation under the Do Not Call Provisions is that the organisation sending the specified message will have to check the Do Not Call Registers as described above, unless:
 - a) the user or subscriber of the Singapore telephone number has given clear and unambiguous consent in written or other accessible form to the sending of the specified message to that number; or
 - b) the organisation is exempted from complying with its obligation under the Exemption Order.

5.4 Under the Exemption Order, a sender that is sending a specified fax message or a specified text message to a Singapore telephone number related to the subject of an ongoing relationship between the sender and a recipient is exempted from the requirement to check the relevant Do Not Call Registers, if certain conditions are met. An “ongoing relationship” under the Exemption Order means a relationship which is on an ongoing basis, between a sender and a subscriber or user of a Singapore telephone number, arising from the carrying on or conduct of a business or activity (commercial or otherwise) by the sender. The Commission’s Advisory Guidelines on the Do Not Call Provisions provide further elaboration.

5.5 In determining what constitutes an ongoing relationship, the Commission considers one-off interactions or transactions in themselves to be insufficient to be an ongoing relationship. For example, the fact that an individual previously contacted the sender to enquire about a particular property on sale, the fact that the individual previously engaged the sender to market a property for the individual, or the fact that the individual left his telephone number at a showroom, in themselves, would be insufficient to establish an ongoing relationship between the individual and the sender.

5.6	<p>Examples: whether messages are specified messages</p> <p>Jack is a salesperson with estate agent ABC. Susan is interested to sell her apartment and engages Jack as her salesperson to market her apartment.</p> <p>(a) Jack receives an offer for the apartment and calls Susan to discuss the offer. Jack is <u>not</u> sending a specified message to Susan and the Do Not Call Provisions do <u>not</u> apply to the sending of the message.</p> <p>(b) Jack calls estate agent XYZ, who has been sourcing for suitable properties for a prospective buyer, to market Susan’s apartment. Jack is sending a message to XYZ for the purposes of XYZ’s business, i.e., a “business-to-business” marketing call, which is excluded from the meaning of “specified message”. The Do Not Call Provisions do <u>not</u> apply to the sending of the message.</p> <p>(c) Jack buys a database of telephone numbers from a third party and calls a telephone number listed to ask if the individual would be interested to buy the property. Jack is sending a specified message to the recipient and the Do Not Call Provisions apply.</p> <p>(d) Jack recalls his old contact list and calls Tom, who enquired about another property that Jack was marketing previously, to ask if he would be interested to buy the property. Jack is sending a specified</p>
-----	--

	<p>message to Tom and the Do Not Call Provisions apply.</p>
<p>5.7</p>	<p>Jack is a salesperson with estate agent ABC. Susan is interested to buy an apartment and engages Jack to source for a suitable apartment for her. Jack manages to successfully find an apartment for Susan. Two years later, the property market appreciates and Jack calls Susan to ask if she would be interested to sell her apartment with him as her agent. Jack is sending a specified message to Susan (as he is offering his agency services to Susan) and the Do Not Call Provisions apply.</p>
<p>5.8</p>	<p>Jack is a salesperson with estate agent ABC stationed at the showroom of a new launch development “NewLaunch”. Mark visits the showroom.</p> <p>(a) Jack walks Mark through the showroom and discusses a possible purchase of a NewLaunch unit with Mark. Mark tells Jack that he is not prepared to make a decision that day and would like to consider the purchase. Mark leaves his number with Jack and asks Jack to call him the next day for his final decision. Jack calls Mark the next day to find out his decision. As Jack is responding to Mark’s request to call him about the decision on the purchase and not to make an offer or promote another good or service, Jack is <u>not</u> sending a specified message to Mark, and the Do Not Call Provisions do <u>not</u> apply.</p> <p>(b) After Jack introduces the features of NewLaunch, Mark requests that Jack holds a unit for him and informs that he would return by close of business the next day with a cheque for the option amount. Jack calls Mark later to confirm if Mark will be heading back with the cheque. Jack will <u>not</u> be sending a specified message to Mark (as he is calling to confirm if Mark will be providing the down payment) and the Do Not Call Provisions will <u>not</u> apply.</p> <p>(c) Jack has no interaction with Mark at the showroom, but obtains Mark’s contact details from the guestbook at the showroom. Jack calls Mark the next day to ask whether he would be interested to purchase a unit at NewLaunch. Jack will be sending a specified message to Mark and the Do Not Call Provisions apply.</p> <p>(d) Jack obtains Mark’s contact details (either from Mark directly or from the guestbook) and calls Mark to market other properties that Jack or ABC is marketing. Jack will be sending a specified message to Mark and the Do Not Call Provisions apply.</p>

<p>5.9</p>	<p>Sarah advertises her apartment for sale in a newspaper.</p> <p>(a) Jack, a salesperson with estate agent ABC, contacts Sarah regarding her advertisement to offer his services to sell Sarah’s apartment. In this case, Jack is considered to be sending a specified message as his offer of service would fall within the definition of a specified message.</p> <p>(b) One of estate agent GHI’s salespersons, Tom, calls Sarah to enquire for more information about her apartment on behalf of a potential buyer. To the extent that Tom is not promoting, marketing or offering any goods or services or any other activity that falls within the definition of a specified message, Tom would <u>not</u> be sending a specified message.¹⁵</p>
<p>5.10</p>	<p>Estate agent ABC sends an SMS to one of its salespersons, Sarah, informing her of details of an upcoming property launch and its proposed commission structure. To the extent that the SMS is for Sarah’s business purposes, estate agent ABC will <u>not</u> be sending a specified message and the Do Not Call Provisions will not apply.</p>
<p>5.11</p>	<p>Example: Use of different contact details relating to the same individual but collected on different occasions</p> <p>Over the past few months, Sarah has been visiting various showflats of property developments marketed by estate agent ABC to source for a suitable home.</p> <p>At each showflat, Sarah provides either her home or mobile number in ABC’s guestbook for ABC to contact her to follow-up on the developments. Sarah also gives clear and unambiguous consent in writing to the sending of specified messages regarding any and all property developments marketed by ABC to any and all of her telephone number(s) that she has provided to ABC.</p> <p>ABC would like to contact Sarah to inform her about a limited-period special</p>

¹⁵ The Commission recognises that a salesperson may send a variety of messages to the Singapore telephone numbers of individuals who advertised their property in the newspapers. The Commission will consider whether other types of messages sent by a salesperson to the individual who has advertised his property are specified messages on a case-by-case basis.

	<p>discount offered to buyers of units in either of two upcoming properties, “NewLaunch” and “GreatLaunch”. In this case, based on the scope of consent, ABC may contact Sarah using either her home or mobile number.</p>
--	--

5.12 The following examples illustrate the application of the Exemption Order.

<p>5.13</p>	<p>Examples: When the Exemption Order may or may not apply based on whether there is an ongoing relationship</p> <p>(a) Sarah sends a message to enquire about a property marketed by a salesperson, Jack. Jack responds to the enquiry with more details about the property. In this case, while Jack can respond to Sarah’s query, he <u>cannot</u> rely on the Exemption Order to subsequently send specified messages to Sarah’s telephone number as her enquiry is a one-off interaction.</p> <p>(b) Sarah signs an option to purchase a property from Henry, which is marketed by a salesperson, Jack. Jack <u>cannot</u> rely on the Exemption Order to send specified messages to Sarah’s telephone number as the option does not establish an ongoing relationship between Sarah and Jack.</p> <p>(c) Sarah previously engaged a salesperson, Jack, to sell her property. As part of maintaining his clientele base, Jack sends regular email updates to Sarah even though she neither requested for them nor responded to them. Jack <u>cannot</u> rely on the Exemption Order to send specified messages to Sarah’s telephone number as the sale of Sarah’s property is a one-off transaction and unilateral action on the part of Jack does not cause an ongoing relationship between Jack and Sarah to be formed.</p> <p>(d) Sarah signs up to be estate agent ABC’s VIP member. VIP members receive regular updates on property market developments in Singapore and analyses of the property market from estate agent ABC. When signing up, Sarah selects the types of properties she would like to be updated on based on a list of criteria (e.g. price, size, location, number of bedrooms) selected by her. This constitutes an ongoing relationship between ABC and Sarah. Estate agent ABC may rely on the Exemption Order to send text or fax messages containing updates about newly listed properties within the specified criteria to Sarah’s telephone number (subject to other conditions in the Exemption Order being met).</p>
-------------	--

5.14 The following examples illustrate what the Commission would consider in assessing whether clear and unambiguous consent in evidential form has been given.

<p>5.15</p>	<p>Examples: Obtaining clear and unambiguous consent in evidential form</p> <p>Jack is a salesperson with estate agent ABC marketing a property.</p> <p>The following situations, <u>on their own</u>, are <u>not likely</u> to constitute clear and unambiguous consent <u>in evidential form</u> from the subscriber to receive telemarketing calls from Jack:</p> <ul style="list-style-type: none"> (a) ‘Unverified claims’ by third party: Jack buys a database of telephone numbers from a third party. The third party makes unverified claims that consent has been obtained from the subscribers of the telephone numbers to receive telemarketing calls; (b) Publicly available information: Jack obtained the telephone number from a publicly available source like a telephone directory or a publicly available social network profile; (c) Failure to opt out: There is a sign at a showroom that states “ABC or its salespersons may contact you for marketing and promotions”; (d) Prior business relationship: Jack was previously in touch with Tom to source for or sell a property for Tom.
<p>5.16</p>	<p>The following situations are likely to constitute clear and unambiguous consent in evidential form from the subscriber to receive telemarketing calls, if evidence is retained to demonstrate that the individual has indeed given such consent:</p> <ul style="list-style-type: none"> (a) The guestbook at a showroom clearly indicates for every individual to “tick here if you wish to be contacted by phone or SMS for this development and other new launches by ABC Development Pte Ltd”; (b) Tom contacts Jack to enquire about a property. Jack sends an email to Tom with details of the property, in which Jack also asks if Tom would be agreeable to Jack calling him to provide information about other properties on the market. Tom replies “Yes” via email.

- 5.17 For avoidance of doubt, as noted in the Advisory Guidelines on the Do Not Call Provisions, a message sent to a Singapore telephone number where the purpose, or one of the purposes, is to obtain clear and unambiguous consent for the sending of specified messages, would be considered a specified message.

END OF DOCUMENT