Advisory Guidelines on the Singapore Do Not Call Provisions: The Personal Data Protection Act


Specified Messages

The Act allows Singapore telephone number users to opt out from receiving specified messages³. Section 37 of the Act defines “specified messages” – essentially any marketing messages of a commercial nature that advertizes, promotes or offers to supply or provide goods or services, land or an interest in land or a business opportunity or an investment opportunity. The DNC Guidelines explain that invitations to events, seminars or courses can also be considered specified messages – depending on the nature of the event, seminar or course, an invitation to attend an event could offer to supply a good or service, a seminar to promote or advertize a supplier and an invitation to a course or seminar that purports to impart certain skills could also fall within the definition of a specified message as an offer to supply services.

Interestingly, the DNC Guidelines explain that an offer to send a specified message is also deemed a specified message⁴; so for instance, the DNC Guidelines have explained that the message: “ABC would like to send you information about special offers from time to time” sent by voice call, text messaging or fax to a Singapore telephone number is considered the sending of a specified message. The DNC Guidelines also explain⁵ that persons who wish to contact individuals to obtain clear and unambiguous consent for the sending of specified messages on or after January 2, 2014, must do so in a manner that does not involve the sending of a specified message to a Singapore telephone number.⁶

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² DNC Guidelines, p. 5.
³ Specified messages are sent by text messaging (SMS or internet-based text messaging), voice call or fax.
⁴ DNC Guidelines, p. 7.
⁵ Ibid.
⁶ Thus, sending advertising emails or messages to non-Singapore telephone numbers would not be in breach of the Act.
Excluded Messages

Paragraph 1(f) to the 8th Schedule of the Act excludes any message that has the sole purpose of conducting market research or market survey from the definition of a specified message. The DNC Guidelines state that persons should act in good faith and not attempt to disguise a specified message in the form of the provision of a “gift” after the “market-research” is done.

Messages whose sole purpose is to confirm a transaction, which a recipient had previously agreed to enter into with the sender, to deliver a product update or upgrade which the recipient is entitled to receive under the terms of a previously agreed transaction, to provide notification concerning a change in the terms or features of an ongoing commercial relationship involving the ongoing purchase or use by the recipient of goods or services offered by the sender, or to provide periodic account balance information (e.g., bank account) are also types of messages that fall within the 8th Schedule of the Act and are excluded from the definition of a specified message.

Also of importance is the fact that messages sent solely to promote employment opportunities, to solicit donations for charitable/religious or to promote political causes would not be regarded as a specified message.

Exemption for certain specified messages

The DNC Guidelines also explain that the Commission has, pursuant to section 62 of the Act, exempted certain senders who are in an ongoing relationship with individuals from the obligation to check the Do Not Call Registry before sending specified text or fax messages related to the subject of the ongoing relationship. Crucially, the exemption does not extend to voice calls as this “requires the immediate attention of an individual receiving it ... and it is arguably the most intrusive medium.” The rationale for such a carve-out is that “the requirements of the DNC Provisions may lead to an unintended outcome where individuals expect to but do not receive relevant information from other persons with whom they have an ongoing relationship,” but at the same time “the Commission notes that individuals who wish to receive such information may prefer to receive them in a timely yet minimally intrusive manner.” The power to exempt is made through the Personal Data Protection (Exemption from section 43) Order 2013, and the persons, organizations or any class of persons or organizations exempted will be published in the Government’s Gazette.

Notably, the broad definition of ‘ongoing relationship’ adopted by the Commission is certainly pro-business. The DNC Guidelines provide that ongoing relationships between the individual and the sender can be in the form of commercial or non-commercial relationships. These may include, for example, a subscription, membership, account, loan or comparable relationships involving the ongoing purchase or use of goods and services supplied by the sender to the individual. Relationships that arise from regular participation in the activities of an

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7 8th Schedule, paragraph 1(d)(i).
8 Ibid., paragraph 1(d)(iii).
9 Ibid., paragraph 1(e)(i).
10 Ibid., paragraph 1(e)(iii).
11 DNC Guidelines, p. 12.
12 The persons, organizations or class of persons.
14 Ibid.
15 Ibid.
organization, such as students of a school or a donor with a standing order to regularly donate to a charity, may also be considered to be an ongoing relationship between the individual and the sender.16

Conclusion

The major announcement in the DNC Guidelines is the new exemption order that allows organizations that have “ongoing relationships” with customers to send out marketing messages (text or fax only) without having to check the DNC Registry. This is likely to be welcomed by business, which relies on direct marketing to maintain customer relations. This exemption will also save businesses numerous man-hours that they would have had to spend to sieve through their client registry in a matching exercise with the DNC Registry.

The pro-consumer view on the other hand will likely welcome the extended definition of specified messages, which also now includes offers to send specified messages.

If you have any questions regarding this update, please contact the Sidley lawyer with whom you usually work.

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16 DNC Guidelines, p. 16.