



SINGAPORE TELECOMMUNICATIONS LTD

**SUBMISSION TO THE PERSONAL DATA PROTECTION COMMISSION OF
SINGAPORE**

IN RESPONSE TO THE

**PUBLIC CONSULTATION ON PROPOSED REGULATIONS ON DATA
PROTECTION IN SINGAPORE**

DATE OF SUBMISSION: 1 APRIL 2013



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1 INTRODUCTION

- 1.1 Singapore Telecommunications Limited and its related companies (“**SingTel**”) are licensed to provide info-communications services in Singapore. SingTel is committed to the provision of state-of-the-art info-communications technologies and services in Singapore.
- 1.2 SingTel has a comprehensive portfolio of services that includes voice and data services over fixed, wireless and Internet platforms. SingTel services both corporate and residential customers and is committed to bringing the best of global info-communications to its customers in the Asia Pacific and beyond.
- 1.3 SingTel is also a leading Internet service provider (“**ISP**”) in Singapore and has been at the forefront of Internet innovation since 1994, being the first ISP to launch broadband services in Singapore. It is licensed to offer IPTV services under a nationwide subscription television licence granted by the Media Development Authority of Singapore (“**MDA**”).
- 1.4 SingTel welcomes the opportunity to comment on the Proposed Positions Document under the Personal Data Protection Act (“**Act**”) (the “**Proposed Positions Document**”) and the efforts of the Personal Data Protection Commission (“**PDPC**”) in developing these.
- 1.5 This submission is structured as follows:
 - (a) Introduction;
 - (b) Summary of major points;
 - (c) Comments; and
 - (d) Conclusion.

2 SUMMARY OF MAJOR POINTS

- 2.1 SingTel considers that the Proposed Positions Document provides the telecommunications sector and persons subject to the Act with a reasonable degree of guidance about the nature of some of their obligations under the Act and how these obligations are likely to be construed for compliance purposes. This guidance is particularly helpful at this point in time, as organisations take steps to implement the requirements of the new privacy regime under the Act.
- 2.2 SingTel also considers that there is merit in the PDPC increasing the level of detail in the regulations to be made under the Act to allow organisations to undertake more comprehensive planning and development of their internal processes and operations as part of the transition to the new regime, and to ensure clarity in both scope and operation of the regulations themselves.
- 2.3 SingTel submits that the proposed regulations, as explained in the Proposed Positions Document, could benefit from the following:
- (a) additional granularity regarding how the regulations are intended to operate, including greater clarity around the operation of the regulations themselves, further clarity in the form of explanatory notes and separate guidance on topical issues or particular scenarios; and
 - (b) reducing the cost burden on organisations in complying with the Act and regulations through an administrative structure that supports the use of pre-approved standard forms, contractual clauses and corporate rules, as well as best practice procedures for organisational decision-making in relation to particular matters.
- 2.4 In particular, SingTel makes the following comments:
- (a) SingTel considers that organisations ought to be permitted to recover, as part of its incremental costs for access, the reasonable upfront capital costs and expenditure necessarily incurred by an organisation to process an access request.
 - (b) SingTel also seeks clarification regarding whether or not persons who are able to act for others would be liable for the payment of the relevant fee for an access request.

- (c) SingTel submits that the PDPC should reconsider its position on this issue and should not require organisations to accept access requests or correction requests that are submitted in non-prescribed formats, where the organisation in question decides to use prescribed forms and processes.
- (d) A degree of flexibility will be needed in the regulations about how to deal with movements of personal data offshore that occurred prior to the Act, or which occur pursuant to arrangements that were concluded prior to the commencement of the Act.
- (e) SingTel also recognises that the transfer of personal data outside Singapore raises some difficult issues from a compliance and enforcement perspective. This is due to the fact that the overseas organisation that accepts the personal data will usually be subject to different privacy laws and legal requirements, and may be reluctant to subject itself to the requirements of a foreign jurisdiction. This is likely to be the case with both inter-company transfers and transfers to non-related organisations. The PDPC should therefore provide greater clarity and guidance on the contents and structure of binding corporate rules. At the same time, the PDPC should develop and approve a standard agreement/contractual clauses that an organisation can utilise as the basis for transferring personal data out of Singapore to third party organisations.
- (f) SingTel also notes the importance of clarifying issues regarding priority and inconsistency in instructions in relation to the exercise of rights and powers of individuals as well as minors.

3 COMMENTS

Minimal fee for access request (*Ref p 5*)

- 3.1 The PDPC has proposed that organisations be permitted, when processing access requests, to charge a *minimal fee* to recover the incremental cost(s) associated with processing that request. The PDPC has also stated that incremental costs do not include costs associated with capital purchases.
- 3.2 SingTel is not opposed to a requirement that any fees charged for responding to access requests be kept to a minimum and believes that this is a sensible requirement.
- 3.3 Nor has SingTel made a decision about whether it will charge customers for the

processing of access requests.

- 3.4 However, it is unclear why organisations should not be allowed to recover reasonable upfront costs as a part of their incremental costs, as incremental costs typically take account of any upfront costs that need to be incurred by an organisation in delivering a particular unit or transaction. For example, where the delivery of an additional unit requires an organisation to incur upfront costs (e.g. building a new telecoms network to provide a service to one or more individuals), then those upfront costs would ordinarily be recoverable as part of the incremental charge that is levied for the service.
- 3.5 In preparing for the transition to the new personal data protection regime, most organisations, but particularly large corporate organisations, will need to invest in new or upgraded systems and internal business processes, as well as staff training to be able to process access requests and otherwise comply with the Act.
- 3.6 For large corporate organisations, such costs may be significant. For example, these upfront costs may include designing, developing and implementing enhanced IT systems with the capability to process access requests, implementing new business processes and training staff so that they can properly liaise with customers in connection with access requests.
- 3.7 SingTel considers that organisations ought to be permitted to recover, as part of its incremental costs for access, the reasonable upfront capital costs and expenditure necessarily incurred by an organisation to process access requests.
- 3.8 SingTel also seeks clarification regarding whether or not persons who are able to act for others would be liable for the payment of the relevant fee in circumstances where an organisation decided to pass through the incremental costs of an access request. It is important to clarify this issue to ensure the smooth processing of access requests by an organisation and to avoid situations where both the individual and the person acting on behalf of the individual denies responsibility for payment of the fee. As a general rule, in cases where an organisation has an existing commercial relationship with one party (e.g. in relation to delivery of a service), SingTel considers that it would be appropriate that such a fee be payable by the person with the commercial relationship.

How access and correction requests should be made by individuals; key considerations in relation to administration (*Ref p 4 and 6*)

- 3.9 The Proposed Positions Document indicates that while an organisation can establish standard forms or procedures for individuals to submit access or correction requests to an organisation, an organisation should also accept requests that are made in writing or by any other manner accepted by the organisation, even if they do not comply with the standard forms offered by the organisation.¹
- 3.10 SingTel submits that the PDPC should reconsider its position on this issue and should not require organisations to accept access requests or correction requests that are submitted in non-prescribed formats, where the organisation in question decides to use prescribed forms and processes.
- 3.11 For example, an organisation should not be required to accept a correction request by an individual that is hand-written on a blank piece of paper and sent to the organisation in circumstances where the organisation makes available a range of options for making correction requests and at least one of those options is appropriate in the circumstances. These options may include providing individuals the ability to email or fax a change request form to the organisation using a prescribed form available on the organisation's website, or to log into their account with the organisation and follow the prompts to change their personal details.
- 3.12 SingTel considers that an organisation ought to have the discretion to choose whether to utilise standard forms for access or correction requests, and recognises that some smaller organisations may wish to accommodate such requests without using prescribed forms.
- 3.13 Large corporate organisations, such as SingTel, are likely to develop their own forms for access requests and correction requests and to develop specific backend procedures that specifically cater for the processing of those requests. Such arrangements would be designed to support high volume processing and quick response times, and to help ensure that the timeframes set by the PDPC will be met. An additional requirement to accept access and correction requests in any written format (or in a non-prescribed format) will require the development of separate processes and staff training and would entail additional costs and slower response times, which would be disproportionate to the low number of requests that would most probably be made in this manner. Such an approach would also likely result in

¹ Proposed Positions Document, paragraph 6.2.

higher numbers of processing errors. It is important that the PDPC recognise the operational issues that such a requirement will create for larger organisations.

- 3.14 SingTel considers that allowing organisations to determine which approach best suits their organisation (and not obligating them to implement all formats where there is a prescribed format) will achieve the right balance between the right of individuals to obtain access to their personal data and the need to avoid unnecessary compliance burden for organisations.

Transfer of data outside Singapore (*Ref Part III*)

- 3.15 SingTel is sensitive to the privacy issues associated with transferring personal data offshore and believes that it is important for strong safeguards to be in place to protect against the misuse of such data that is transferred offshore.
- 3.16 However, it is also important to recognise that international transfers of personal data are already a common feature in today's globalised economy and that global organisations are likely to already have a number of arrangements in place with overseas entities for the transfer of data offshore to support their business activities.
- 3.17 For example, it is common for companies headquartered in Singapore to process a wide range of activities, ranging from employee remuneration, IT system support and data storage, offshore. Similarly, it is common for multi-national corporations based in Singapore to move personal data to their corporate headquarters in other jurisdictions.
- 3.18 Accordingly, a degree of flexibility will be needed in the regulations about how to deal with movements of personal data offshore that occurred prior to the Act, or which occur pursuant to arrangements that were concluded prior to the commencement of the Act. The regulations ought to clarify how Sections 19 and 26 of the Act and the prescribed requirements in regulations are intended to apply to personal data transferred or which may be transferred outside Singapore under a contract that was created before the appointed day. Will organisations be able to rely on their existing contractual arrangements or will they need to examine their arrangements to ensure that they meet, or substantially meet the prescribed requirements? Can the receiving organisation also transfer the data received to another organisation within the second or to another third country for the purpose of fulfilling a contractual obligation to the first organisation?

- 3.19 In addition, SingTel also recognises that the transfer of personal data outside Singapore raises some difficult issues from a compliance and enforcement perspective. This is due to the fact that the overseas organisation that accepts the personal data will usually be subject to different privacy laws and legal requirements, and may be reluctant to subject itself to the requirements of a foreign jurisdiction. This is likely to be the case with both inter-company transfers and transfers to non-related organisations.
- 3.20 To this end, SingTel welcomes the PDPC's proposal that, when transferring personal data offshore, organisations may do so in accordance with binding corporate rules or contractual clauses. However, the PDPC will need to provide further guidance on how these arrangements will work in practice.

Binding corporate rules

- 3.21 The PDPC has identified the types of provisions that are to be included in binding corporate rules for inter-corporate transfers of personal data.² However, more granularity and clarity is needed regarding how the rules will be developed, implemented and enforced.
- 3.22 SingTel considers that there are several issues that need to be addressed by the PDPC.
- 3.23 First, is it intended that organisations will be required to submit their binding corporate rules for 'authorisation' by the PDPC, as per current practice within the European Union?
- 3.24 Second, the PDPC should provide greater clarity and guidance on the contents and structure of binding corporate rules. For example, the European Union currently provides guidance on the following matters in relation to binding rules of conduct:
- (a) a framework for the structuring of binding corporate rules by organisations;³
 - (b) a full checklist of the requirements that must be included by organisations in binding corporate rules;⁴ and

² Proposed Positions Document, paragraph 7.5.

³ European Commission, *Working Document Setting up a framework for the structure of Binding Corporate Rules*, 1271-00-01/08/EN, WP 154, 24 June 2008. See, http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2008/wp154_en.pdf

⁴ European Commission, *Working Document setting up a table with the elements and principles to be found in Binding Corporate Rules*, 1271-00-00/08/EN, WP 153, 24 June 2008. See, http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2008/wp153_en.pdf

- (c) a list of responses to frequently asked questions and interpretative guidance on key issues in relation to binding corporate rules.⁵
- 3.25 Further, if organisations are required to submit their binding corporate rules for authorisation by the PDPC, then there should be a prescribed application form and process, as is also the case under current European Commission practice.⁶
- 3.26 Third, SingTel also requests further guidance from the PDPC on the criteria that it will use to establish whether binding corporate rules are, in fact, “legally binding” on the organisation and “legally enforceable” against the organisation. As the European Commission has observed:⁷
- “There is, however, an element that must be present in all systems if they are to be used to adduce safeguards for the data transfers to third countries: the binding nature of the corporate rules both internally and towards the outside world (legal enforceability of the rules)”.*
- 3.27 In the European Union, binding corporate rules envisage that the legally binding nature of the rules can be implemented through various mechanisms, including intra-group agreements, unilateral undertakings, internal regulatory measures, policies of the group and other means. The key issue is the need to demonstrate that all intra-group members are effectively bound or feel compelled by the rules.⁸ In addition, however, there is also a need to ensure that the chosen mechanism is capable of being enforced against the organisation in question.
- 3.28 SingTel considers that there is currently a lack of clarity as to the types of mechanisms that the PDPC considers would meet both these requirements. To this end, SingTel submits that while the PDPC should continue to recognise that binding corporate rules can be implemented through several means, it should also provide further clarity on which mechanisms it considers will be capable of being both “legally binding” and “legally enforceable” under Singaporean law.

⁵ European Commission, *Working Document on Frequently Asked Questions (FAQs) related to Binding Corporate Rules*, 1271-04-02/08/EN, WP 155 rev.04, 8 April 2009. See, http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2008/wp155_rev.04_en.pdf

⁶ European Commission, *Recommendation 1/2007 on the Standard Application for Approval of Binding Corporate Rules for the Transfer of Personal Data*, WP133, 10 January 2007.

⁷ Viviane Reding, *Binding Corporate Rules: unleashing the potential of the digital single market and cloud computing: Speech to IAPP Europe Data Protection Congress*, Paris, 29 November 2011, page 10. See, http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2003/wp74_en.pdf

⁸ *Ibid*, page 11.

- 3.29 Fourth, SingTel notes that under the European Union’s approach binding corporate rules are not necessary in circumstances where the transfer of personal data is to jurisdictions that satisfy the EC’s “adequacy” requirements. Currently, the European Union has identified 13 separate national jurisdictions that satisfy the “adequacy” requirement.⁹ SingTel submits that a similar approach should be adopted by the PDPC, in which binding corporate rules are not required in respect of those jurisdictions in which the PDPC determines that adequate protections exist. SingTel submits that the current list of jurisdictions used by the European Union can provide an appropriate starting point.
- 3.30 Finally, SingTel notes that recent changes under the European Union data protection regime allow binding corporate rules to be adopted by data processors, not just data controllers.¹⁰ This is intended to reduce the burden for data processors and data controllers in negotiating the data protection arrangements between them on a case by case basis, as data controllers can rely on the data processors ensuring adequacy of data protection through their binding corporate rules. Once approved, the binding corporate rules can be used by both the data processor and the data controller. SingTel submits that binding corporate rules should be available for adoption in a similar manner by data intermediaries under the regulations to the Act. This is particularly important that binding corporate rules be available for multinational data intermediaries to enable them to transfer their data processing functions between different geographic offices without undue burden.

Contractual clauses

- 3.31 SingTel welcomes the PDPC’s proposal to allow contractual clauses to be used between an organisation and overseas entities that receive personal data on behalf of the organisation.
- 3.32 SingTel understands that the introduction of binding corporate rules and contractual clauses is intended to ensure that the standard of protection given to personal data transferred outside Singapore is comparable to the protection under the Act (Section 26 of the Act). However, as noted above in the context of binding corporate rules, SingTel considers that the PDPC should clarify that the requirement for contractual clause should only apply where the transfer of personal data is to a jurisdiction that does not have “adequate” data protection laws in place.

⁹ See, http://ec.europa.eu/justice/data-protection/document/international-transfers/adequacy/index_en.htm

¹⁰ Press Release by the Article 29 Data Protection Working Party, *European data protection Authorities launch Binding Corporate Rules for processors*, Brussels 21 December 2012. See, http://ec.europa.eu/justice/data-protection/article-29/press-material/press-release/art29_press_material/20121221_pr_bcrs_en.pdf

- 3.33 Further, SingTel considers that, where contractual clauses are required due to the inadequacy of data protection laws in the relevant jurisdiction, the imposition of contractual terms on organisations in foreign jurisdictions may be somewhat contentious and may be difficult to negotiate in certain situations (e.g. where there is disagreement about what constitutes a compliant contractual provision under the Act).
- 3.34 To avoid these difficulties, SingTel submits that the PDPC should develop and approve a standard agreement/contractual clauses that an organisation can utilise as the basis for transferring personal data out of Singapore to third party organisations, as is the case in the European Union in relation to the transfer of data to data processors outside of the EU in jurisdictions that do not provide an adequate level of data protection.¹¹
- 3.35 Specific guidance and/or information sheets in relation to transferring information offshore will be required to assist organisations to better understand their obligations both under the Act and in the context of international regulation of personal data transfers.

Exercise of rights and powers of individuals (*Ref p 8*)

- 3.36 SingTel notes the importance of clarifying issues regarding priority and inconsistency in instructions to avoid perceived errors and disputes. The regulations to the Act ought to specifically provide for circumstances in which an organisation receives conflicting instructions from an individual and another individual who may or may not have the right or power to act on behalf of the first individual. For example, if the individual makes a request to change his/her account details and the individual's representative subsequently informs the organisation that the change was made in error and requests that the previous account details be reinstated. Which instruction would prevail in the event of uncertainty, or how should the issue be resolved?
- 3.37 An important related issue is how an organisation should confirm whether a person is in fact duly authorised or has been conferred the right or power to act on behalf of another individual. What documentary proof would be regarded as appropriate and sufficient to establish authority to act on behalf of another? It would be good practice to develop a standard list of acceptable forms of identification and evidentiary documentation that organisations could rely on for this purpose.

¹¹ European Commission, Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council, 2010/87/EU, Annex – Standard Contractual Clauses. See, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:039:0005:0018:EN:PDF>

Minors (Ref p 9)

- 3.38 SingTel notes the proposed test for a minor is a person who is either less than 18 years old, or more than 14 years old and understands the nature of the right or power and the consequences of exercising that right or power. Regulations to the Act and/or separate guidance should deal with how organisations should determine whether or not the minor in the later age group is able to understand the nature of its right or power. Without guidance from the PDPC, organisations will be unable to determine such sensitive issues.

Priority of nearest relatives to an individual (Ref p 9)

- 3.39 Another issue is how an organisation should confirm which individual is of higher priority; in paragraph 9.11, the PDPC says that if two or more individuals have equal priority based on the listings in the Proposed Positions Document, then the priority passes to the individual who is the eldest. However, where there are two persons of the same age who share equal priority, will the exact age down to the date of birth or time of birth be the determining factor of seniority and priority?

Other Comments

- 3.40 We also seek clarity from the PDPC as to what it means in the case of the following:
- (a) 'opinion data' in paragraph 3.4 of the Proposed Positions Document. The term 'opinion' is used again in paragraph 3.6; please explain whether it relates to a subjective matter and/or insights;
 - (b) 'reasonable effort' and 'reasonable opportunity' in paragraph 3.7 (a) and (b);
 - (c) 30 days in paragraphs 3.7 (b) and 6.3 - for example, does it refer to working days or calendar days; and
 - (d) in paragraph 5, is the minimum fee to apply for each request that a customer makes, eg if the customer was to make 3 requests (either pertaining to the same set of personal data or different personal data) in one month, the organisation can levy the minimum fee three (3) times.

4 CONCLUSION

- 4.1 SingTel kindly requests that the PDPC take account of our comments as it works to further develop the proposed positions for regulations to the Act.