

---

**RESPONSE TO THE PERSONAL DATA PROTECTION COMMISSION'S  
CONSULTATION PAPER ON PROPOSED ADVISORY GUIDELINES ON THE  
APPLICATION OF THE PERSONAL DATA PROTECTION ACT TO SCENARIOS  
FACED IN THE TELECOMMUNICATIONS SECTOR**

---



**Contact partner: Lam Chung Nian**

d: +65 64168271

e: chungnian.lam@wongpartnership.com

WongPartnership LLP

12 Marina Boulevard Level 28

Marina Bay Financial Centre Tower 3

Singapore 018982

[www.wongpartnership.com](http://www.wongpartnership.com)

## 1. SUMMARY OF MAJOR POINTS

- 1.1. Thank you for the opportunity to comment on the Consultation Paper on the Proposed Advisory Guidelines on the Application of the Personal Data Protection Act to Scenarios Faced in the Real Estate Agency and Telecommunication Sectors.
- 1.2. Our comments on the Proposed Advisory Guidelines on the Application of the Personal Data Protection Act to Scenarios Faced in the Telecommunication Sector ("**Proposed Telecommunications Advisory Guidelines**") are summarised as follows:
  - (a) An exemption should be granted to Singapore telecommunications operators ("**SG Telcos**") on the use of an inbound roamer's mobile phone number. At a minimum, the exemption should allow certain limited uses such as sending messages for obtaining consents.
  - (b) We suggest that an exemption be granted to SG Telcos for any collection, use, or disclosure of personal data that is required or authorised under the IDA Codes of Practice.
  - (c) We suggest that an exemption be provided, at a minimum, for the sending of messages to obtain consent upon activation of pre-paid phone cards.
  - (d) Resellers of pre-paid cards should not be regarded as data intermediaries. Their roles and functions as independent resellers would run counter to their obligations as data intermediaries, and telecommunications operators would be unduly exposed to liability in this regard.
  - (e) The guidelines may need to be clarified as to the extent of due diligence expected of organisations in respect of "publicly available information" in order to comply with the PDPA.

## 2. INBOUND ROAMING

- 2.1. Paragraph 4.3 of the Proposed Telecommunications Advisory Guidelines state that to the extent that a SG Telco is processing information on behalf of and for the purposes of their respective foreign telecommunication operator ("**Foreign Telco**"), they could be considered data intermediaries of the latter. In this regard, such SG Telcos are only required to comply with the obligations set out in sections 24 (Protection of personal data) and 25 (Retention of personal data) of the PDPA in relation to such processing of the personal data of inbound roamers.
- 2.2. Paragraph 4.5 of the Proposed Telecommunications Advisory Guidelines state that when the same SG Telco is collecting, using, or disclosing personal data of inbound roamers for purposes other than processing information on and behalf of the Foreign Telco (e.g. for promotion and marketing pre-paid card options), all of the obligations under the PDPA will apply to such activities unless the relevant exceptions apply. As such, the SG Telco will have to comply with all the data protection obligations, including having to obtain notified consent from the inbound roamers.

2.3. We note that, practically speaking, it may be impossible for the SG Telco to obtain this notified consent from the inbound roamer since any contact by the SG Telco through the inbound roamer's mobile phone number to obtain this notified consent would potentially already constitute a "use" of the inbound roamer's personal data. In view of the practical impossibility of complying with the obligations under sections 13 to 17 of the PDPA on consent (the "**Consent Obligations**") in such a situation, we suggest that an exemption be granted to SG Telcos on the use of an inbound roamer's mobile phone number. At a minimum, the exemption should allow certain limited uses such as sending messages for obtaining consents.

### 3. **PDPA'S INTERACTION WITH POSSIBLE AMENDMENTS TO THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES 2012**

3.1. Paragraph 4.6 of the Proposed Telecommunications Advisory Guidelines notes that the Infocommunications Development Authority of Singapore ("**IDA**") is considering amending the Code of Practice for Competition in the Provision of Telecommunication Services ("**IDA Code**") and authorising telecommunication licensees to collect and use the personal data of inbound roamers to offer such inbound roamers roaming-related information and services. The Proposed Telecommunications Advisory Guidelines acknowledge that would be an exception to the Consent Obligations where collection, use, or disclosure of personal data is required or authorised under a written law.

3.2. However, the IDA Code does not fall within the meaning of "written law" under section 2 of the Interpretation Act. This suggests that the amendment of the IDA Code may not be able to deliver its intended effect when read together with section 4(6) of the PDPA.

3.3. We suggest instead that an exemption be granted to SG Telcos for any collection, use, or disclosure of personal data that is required or authorised under the IDA Codes of Practice.

### 4. **PRE-PAID MOBILE SERVICES: COMPLYING WITH THE NOTIFICATION OBLIGATION FOR PRE-PAID MOBILE SERVICE PROVIDERS**

4.1. Paragraph 4.17 of the Proposed Telecommunications Advisory Guidelines states that SG Telcos collecting, using, or disclosing the personal data of individuals who buy pre-paid cards will have to comply with all the relevant provisions in the PDPA.

4.2. Paragraph 4.18 of the Proposed Telecommunications Advisory Guidelines provides suggestions which the SG Telcos may adopt to fulfil their Consent Obligations, including the listing of purposes for collection, use, and disclosure of personal data, such as the marketing of other telecommunication services, on the pre-paid card.

4.3. However, to the extent that "marketing of other telecommunication services" seems to be an "optional purpose" for the provision of pre-paid mobile services, this method of notifying individuals as to the purposes for collection, use, and disclosure of their personal data seems to be in conflict with section 14(2)(a) of the PDPA. Section 14(2)(a) PDPA states that an organisation shall not as a condition of providing a product or service, require an individual to consent to the collection, use, or disclosure of his personal data beyond what is reasonable to provide the product or service. We would seek clarification on the scope and type of purposes which SG Telcos can properly list on their pre-paid cards.

- 4.4. The act of purchasing a pre-paid mobile card would not in itself constitute consent on part of the customer to all the notified purposes listed (whether on the card itself, the operator's website, or the reseller's counter). This applies to the Consent Obligations, and is all the more so for the obtaining of consent for compliance with the Do-Not-Call ("**DNC**") obligations as these require "clear and unambiguous consent" to be given for organisations to send "specified messages". We would suggest that an exemption be provided, at a minimum, for the sending of messages to obtain consent upon activation of the pre-paid cards.

## 5. **PRE-PAID MOBILE SERVICES: RESELLERS AS DATA INTERMEDIARIES**

- 5.1. Paragraph 4.17 of the Proposed Telecommunications Advisory Guidelines suggests that depending on the arrangements between the telecommunication operators and the pre-paid card resellers, the latter may be considered to be data intermediaries acting pursuant to a contract.

- 5.2. We note that section 4(3) of the PDPA states:

"An organisation shall have the same obligation under this Act in respect of personal data processed on its behalf and for its purposes by a data intermediary as if the personal data were processed by the organisation itself."

Accordingly, should pre-paid card sellers be regarded as data intermediaries, any failure to discharge their PDPA obligations set in sections 24 (Protection of personal data) and 25 (Retentions of personal data) will also render the principal organisation represented by them liable for non-compliance.

- 5.3. We note that pre-paid cards are provided by a wide range of resellers, from mobile phone shops to provision stores such as family-run stores in HDB estates and Seven-Elevens. It would be too onerous to regard all such pre-paid card resellers as data intermediaries as this would subject SG Telcos to liability from an overly wide range of entities that they have no real control over.
- 5.4. We would therefore urge caution in arriving at any a conclusion that such resellers would constitute data intermediaries as there are many other sectors that rely on similar arrangements. The resellers in such sectors would, in principle, then be regarded as data intermediaries as well but this may be at odds with how parties characterise the relationship commercially—for example, the resellers are very often trading as principals in their own right. We would also request clarification from the PDPC on the circumstances which may render resellers data intermediaries given the issues of liability that are attendant on this issue.

## 6. **INTERACTION BETWEEN GENERIC DATA AND OTHER INFORMATION THAT ALLOW THE INDIVIDUAL TO BE IDENTIFIED**

- 6.1. Paragraph 3.2 of the Proposed Telecommunications Advisory Guidelines emphasise that generic information may still be personal data if the organisation has access to other data that will allow the individual to be identified when taken together with the former.
- 6.2. We suggest that the guidelines may need to be clarified as to the extent of due diligence expected of organisations in respect of "publicly available information" in order to comply with

the PDPA, in particular, the particular types of publicly available data they should pay more attention to.

## 7. **CONCLUSION**

The implementation of the PDPA is still in its nascent stage. It will take businesses some time to adjust and adapt their practices. In addition, it is also necessary to ensure that in doing so, they are not unduly hampered or restricted in carrying on what would be regarded by both customers and industry participants as normal and beneficial to both sides. It is suggested that at this stage, a more flexible and open approach be taken in order to see where the issues and limits lie. In this regard, it is suggested that the better approach is for the PDPC to be slow to restrict practices if there are currently no clear and compelling complaints with regards to them.

WongPartnership LLP  
13 February 2014