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* Associated Firm

June 14, 2013

Personal Data Protection Commission

By email
pdpc_consultation@pdpc.gov.sg

Dear Sirs

Public Consultation on Proposed Business Operations of the Do Not Call Registry

We refer to the public consultation paper on the Proposed Business Operations of the Do Not Call (DNC) Registry ("**DNC Consultation**") issued by the Personal Data Protection Commission ("**PDPC**") on 15 May 2013.

We have been keenly following the development of the *Personal Data Protection Act* ("**PDPA**") and we are pleased to set out under cover of this letter our comments on the DNC Consultation.

We thank you for giving us the opportunity to provide feedback on the DNC Consultation and we hope that our input would prove useful.

This submission is made on behalf of Baker & McKenzie.Wong & Leow. If you require any clarification, please do not hesitate to contact the undersigned.

Yours faithfully

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1. SUMMARY OF MAJOR POINTS

- 1.1 Given that the DNC Consultation focuses on the commercial and operational aspects of the operation of the DNC registry, we have limited our comments to the following 2 specific questions:

Question 1: With reference to paragraphs 3.6 to 3.9, do you have any views/comments on the proposed process of registration and deregistration? Is the process simple and straightforward?

- (a) We are of the view that the PDPC should clarify whether both the subscriber and the user of a Singapore telephone number can register and deregister the telephone number on the DNC registry, and if so, we recommend that the PDPC considers specifying procedures to deal with the situation where the subscriber and the user differ in their views as to whether the telephone number should be registered.

Question 4: With reference to paragraph 4.18, do you have any views/comments for not allowing foreign organisation to register an account with the DNC registry?

- (b) We are of the view that there is no compelling reason why the registration of a main account should be limited to organisations registered with the Accounting and Corporate Regulatory Authority of Singapore (ACRA). There are foreseeable circumstances whereby a foreign organisation without an interface with a Singapore-registered organisation may need to perform checks on the DNC registry.

2. COMMENTS

Question 1: With reference to paragraphs 3.6 to 3.9, do you have any views/comments on the proposed process of registration and deregistration? Is the process simple and straightforward?

- 2.1 We note that the processes proposed for registration (and presumably for deregistration) requires the individual to have access to the device that the Singapore telephone number is connected to. However, it appears that no verification will be performed as to the identity of the individual i.e. whether the individual is the subscriber or the user of the telephone number.
- 2.2 While we appreciate that this allows the processes to be streamlined and makes the processes more user-friendly, there may be reasons why the identity of the individual would be relevant. In the first place, we note that section 40 of the PDPA appears to limit applications for registration and deregistration of telephone numbers on the DNC registry to the "subscriber", which essentially refers to *'the subscriber of the telecommunications service to which the Singapore telephone number is allocated.'* This can be usefully contrasted with other provisions in the PDPA (e.g. sections 43(3) or 47 dealing with consent) where both the subscriber and the user are both mentioned. It may therefore be arguable that no individual other than the subscriber should have the standing to register or deregister the telephone number of the DNC registry.
- 2.3 Further, if the PDPC is minded to allow both the subscriber and the user to apply for registration and deregistration of a telephone number, this gives rise to the potential scenario where there are conflicting views between the subscriber and the user as to whether the telephone number should be registered on the DNC registry. There may therefore still be a need to verify whether the individual submitting an application is the subscriber or the user of the telephone number, so that the PDPC may design processes to deal with such potential conflicts. For example, the DNC registry may be designed such that if the subscriber performs the same action (i.e. registration or deregistration) twice, all future applications would need to be submitted by the subscriber only.

Question 4: With reference to paragraph 4.18, do you have any views/comments for not allowing foreign organisation to register an account with the DNC registry?

- 2.4 We note that the PDPC has proposed that only organisations registered with ACRA would be allowed to register for a main account. For foreign organisations that require access to the DNC registry (e.g. a foreign organisation tasked to conduct telemarketing on behalf of a Singapore-registered organisation), the PDPC proposes that:
- (a) the Singapore-registered organisation can perform the check with the DNC registry and pass the filtered list to the foreign organisation; or
 - (b) the Singapore-registered organisation can create a sub-account for the foreign organisation to access the DNC registry to perform the check.
- 2.5 However, we note that it may not necessarily be true that all foreign organisations requiring access to the DNC registry would be sending specified messages on behalf of a Singapore-registered organisation or have any sort of interface with a Singapore-registered organisation. For example, a foreign organisation may wish to market property or investment opportunities in another jurisdictions to individuals in Singapore on its own account, rather than on behalf of a Singapore-registered organisation. Such foreign organisation would presumably be required to comply with the DNC provisions in the PDPA insofar as the specified message is addressed to a Singapore telephone number and the recipient of the specified message is present in Singapore

when the specified message is accessed. The position adopted by the PDPC would imply that such foreign organisation would have to appoint a marketing agent in Singapore to send the specified messages on its behalf. We are not sure if that is intended.

- 2.6 Further, in view of the foregoing, it is unclear why the PDPC stated in paragraph 4.18 of the DNC Consultation that '*the legal obligations and enforcement coverage of the PDPA are not directly applicable to foreign organisations.*' While we appreciate that there will be practical difficulties in enforcing the provisions of the PDPA against an offshore entity, it would appear (based on the drafting of the PDPA) that the PDPA is intended to have extraterritorial effect. More clarity on the scope of the DNC provisions in the PDPA would be appreciated in light of the statement above.

3. CONCLUSION

- 3.1 We hope that the above comments would prove useful to the PDPC in undertaking further review of the proposed business operations of the DNC registry.
- 3.2 There are a number of other issues regarding the implementation of the DNC registry which we have raised in previous public consultations. We have avoided repeating the same points in this response, but would be happy to discuss the same with PDPC if required.
- 3.3 Please note that while the above comments are submitted by the author on behalf of the firm, they do not reflect the position adopted by any of the firm's clients. Responsibility for any error in this submission remains with the author.