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Ministry of Information, Communications and the Arts (“MICA”)

By email: MICA\_DP\_Public\_Consultation@mica.gov.sg

25 October 2011

Dear Sirs

**Re: Public Consultation of the Proposed Consumer Data Protection Regime for Singapore (the “Consultation Paper”)**

ACE Insurance Limited (“ACE” or “we”) is pleased to respond in this submission to the request of MICA for comments regarding the proposals set out in the Consultation Paper.

We have focused our response on the proposals which are more relevant to the insurance industry and our company. The submission is organized it as follows:

- I. Summary of Major Points
- II. Comments
- III. Conclusion

Should you have any questions on our comments, please do not hesitate to contact either of the following persons:

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Yours faithfully,

A handwritten signature in black ink, appearing to be 'Mack Eng', written over a horizontal line.

For and on behalf of  
ACE Insurance Limited



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## **I. SUMMARY OF MAJOR POINTS**

In summary, ACE

- (a) supports the introduction of a DP law;
- (b) is concerned that the interests of all stakeholders are addressed in the preparation of the DP law, whether they be data collectors such as ACE or data owners such as ACE's policyholders and prospective customers; and
- (c) believes that those interests can be most appropriately addressed and balanced by the suggestions made in Section II below.

## **II. COMMENTS**

### **Questions in relation to objectives and principles of proposed DP framework:**

**Question 1: Do you have any views / comments on the impact of the proposed DP law on specific sectors? Do you have any suggestions on measures to mitigate this or any other anticipated impact?**

**Comments** The general insurance industry provides a broad range of consumer products including personal accident, critical illness, hospital income, travel and home & contents insurance. Many of those products are only sold by tele/direct-marketing because the low prices and commissions mean they are rarely offered by financial advisers or life insurers.

Both the said products and sales methods benefit society by helping ensure the public (and in particular those individuals who cannot afford high level life insurance cover or an investment plan) have adequate insurance coverage. It is worth noting that more than 90% of ACE's consumer products are sold by telemarketing or direct marketing.

The proposed DP law should strike a balance between achieving the desired protection of personal data while not: (a) limiting the public's access to affordable insurance resulting in them being uninsured or under-insured; or (b) having a significant adverse financial impact on the insurance industry.

In striking that balance, the following matters should be taken into account:

- (i) The general insurance industry is already regulated by the Monetary Authority of Singapore ("MAS") and General Insurance Association of Singapore ("GIA");
- (ii) General insurers involved in tele/direct-marketing usually comply with the Contact Centre Association of Singapore ("CCAS") and Direct Marketing Association of Singapore ("DMAS") guidelines; and
- (iii) The GIA has formed a Telemarketing Workgroup to develop a business code of best practice for telemarketing and call centre operations,



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and all of the abovementioned organisations have a role or interest in data protection.

In so far as suggestions on measures to mitigate the impact of the proposed DP law are concerned, we refer you to our comments below.

**Question 2:** With reference to paragraph 3.8, do you have any views / comments on the concurrent application of the DP law with existing sectoral regulations?

**Comments:** ACE supports the MICA's approach of having a general DP law that applies the same baseline standard across all sectors, with existing sectoral regulations which impose more stringent DP standards where necessary. However, it is important to ensure that said DP law is a genuine baseline standard and does not drill down to a level of detail which is more appropriately left to sectoral regulators.

**Questions in relation to the definition of "personal data":**

**Question 3:** Do you have any views / comments on the proposed definition of personal data outlined at paragraphs 3.9 to 3.11?

**Comments** We agree with the proposed definition of personal data except we would suggest that said definition not include "identifiable" data (as opposed to "identifying" data) where the collector agrees not to attempt to use the data to identify the relevant individual.

**Question 4:** With reference to paragraphs 3.15 to 3.16, do you have any views / comments as to whether the proposed DP law should cover the personal data of the deceased? If it should, do you have any views / comments on the proposed approach to the protection of personal data of the deceased?

**Comments** We don't have a strong view on the subject but suggest that the proposed DP law cease to cover the personal data of a deceased at the cessation of a prescribed time period.

**Questions in relation to the organisations and activities covered by the DP law:**

**Question 5:** Do you have any views / comments on the proposed organisations covered by the DP law?

**Comments** We agree with the MICA's proposal of a "light touch" baseline legislation that applies equally to all private sector organisations to ensure a minimum standard of data protection across the private sector.

**Question 6:** With reference to paragraphs 3.20 to 3.22, do you have any views / comments as to whether the DP law should extend to organisations located outside Singapore, so long as they engage in personal data collection or processing activities in Singapore? Do you have any suggestions as to how the DP law could be implemented if it should apply to such organisations?



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**Comments** Organisations outside Singapore which collect or process personal data in Singapore should be subject to the proposed DP law so that organisations in Singapore are not at a disadvantage compared to their foreign competitors. While we appreciate the enforcement difficulties, MICA could: (a) consider cross-border cooperation with other governments to enforce data protection internationally; and (b) create a platform for informing the public about organisations outside Singapore which take advantage of their off-shore location to contravene the proposed DP law.

**Questions in relation to the general exclusions from the DP law:**

**Question 7:** Do you have any views / comments on the proposed general exclusions from the DP law?

**Comments** ACE has no comment other than supporting the business contact information exclusion.

**Question 8:** With reference to paragraph 3.26, do you have any views / comments as to whether there should be exclusions for artistic and literary purposes under the DP Act? How should these exclusions be defined if exclusions for artistic and literary purposes should be provided for?

**Comments** ACE has no comment.

**Question 9:** Are there any other exclusions that should be catered for under the DP Act?

**Comments** ACE has no comment other than agreeing that there should be an exclusion for employee personal data collected by an employer.

**Questions in relation to the proposed general rules:**

**Question 10:** Do you have any views / comments on the proposed general rules under the DP law?

**Comments** The proposed DP law should define precisely what is meant by “consent” and our respectful submission is that the definition should provide that: (a) consent can mean express or implied consent; and (b) consent can be implied from the mere provision of the personal information if and where the collector has complied with the disclosure/notice obligations in paragraph 3.41. We believe that this approach strikes a good balance between protecting the interests of consumers and businesses. It is also consistent with the approach adopted in many other countries.

Paragraph 3.28 states that, “the proposed DP law does not distinguish between organisations as data controllers or data processors, but will hold an organisation responsible for personal data under its custody or control.” We agree with this approach provided it is made clear in the DP law (as contemplated in paragraph 3.41) that the appropriate disclosure/notice and consent requirements do not apply to data processors who have taken reasonable steps to satisfy themselves that said notices have been given and said consent has been obtained by the data controller.



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Paragraph 3.31 states that, “an organisation may not, as a condition of supplying a product or service, require an individual to consent to the collection, use or disclosure of personal data beyond what is necessary to provide the product or service”. We respectfully submit that this restriction is unreasonably onerous and would prevent ACE from using personal information to create and market the best possible insurance products and services to its customers, resulting in the public being unnecessarily uninsured or underinsured.

In so far as paragraph 3.38 requires an organisation to designate one or more individuals to be responsible for ensuring that said organisation complies with the proposed DP law, we respectfully suggest the proposed DP law make it clear it is permissible and sufficient to identify the individual(s) by role rather name.

**Question 11:**     **With reference to paragraph 3.35, do you have any views / comments as to whether individuals should be deemed to have given consent for organisations to collect, use or disclose their personal data if they are notified and given reasonable time to opt out but do not?**

**Comments**       We refer to our comments in the first paragraph of our answer to question 10 above. ACE is strongly of the view that all parties’ interests are best served by an “opt out” approach that requires a data collector to give notice to the data owner of the proposed use of the personal data at the time of collection of the personal data (or where that is not possible, as soon as reasonably practicable thereafter). This approach: (a) gives the data owner the opportunity to withhold the personal data if they do not approve of the proposed use; (b) reduces uncertainty for data collectors about the operation of the DP law while not imposing unreasonably costly and/or burdensome requirements on them; and (c) is consistent with the approach taken elsewhere in the Asia Pacific region, e.g. Australia, Hong Kong and New Zealand.

**Questions in relation to the proposed rules on collection, use and disclosure of personal data:**

**Question 12:**     **Do you have any views / comments on the proposed rules on collection, use and disclosure of personal data?**

**Comments**       Paragraph 3.40 provides that, “organisations may only collect personal information for the purposes that a reasonable person would consider appropriate in the circumstances, and which fulfill the purposes that the organisation discloses.” We respectfully submit that the words “that a reasonable person would consider appropriate in the circumstances” are redundant as compliance with the disclosure/notice requirements necessarily has the consequence of making the relevant use reasonable.

In so far as paragraph 3.41 requires the disclosure of the business contact information of an officer or employee of the organisation who is able to answer any questions an individual may have about the collection of his personal data, we respectfully suggest the proposed DP law make it clear it is permissible and sufficient to identify the officer or employee by role rather name.



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**Question 13:** Do you have any views / comments on the proposed exceptions to the rules on collection, use and disclosure? Should an exception be provided for organisations to collect, use and disclose an individual's personal data for the purposes of identifying him or her as a member, or for circulation within the organisation? Are there any other exceptions that should be provided?

**Comments** We do not disagree with any of the proposed exclusions but support the addition of an exclusion for organisations to collect, use and disclose an individual's personal data for the purposes of identifying him or her as a member or for circulation within the organisation for the reasons identified by the MICA in the consultation paper.

**Question 14A:** Do you agree with the proposed approach to the transfer of personal data outside Singapore outlined at paragraphs 3.60 to 3.61?

**Comments** We agree with the MICA's proposed approach.

**Questions in relation to the proposed rules on accuracy, protection and retention of personal data:**

**Question 14B:** Do you have any views / comments on the proposed requirements for the accuracy, protection and retention of personal data outlined at paragraphs 3.62 to 3.67?

**Comments** Subject to our answer to question 15 below, we agree with the MICA's proposed rules on accuracy, protection and retention of personal data.

**Question 15:** With reference to paragraph 3.67, do you have any views / comments as to whether organisations should be required to specify the retention period when collecting personal data?

**Comments** We respectfully submit that organisations should not be required to specify the retention period when collecting personal data because, in our industry at least, it is more often than not impossible to ascertain or estimate the time period during which the information will be required.

**Questions in relation to the proposed rules on access to and correction of personal data:**

**Question 16:** Do you have any views / comments on the proposed rules on access to and correction of personal data?

**Comments** ACE has no comment.

**Questions in relation to the proposed penalty and enforcement regime:**

**Question 17:** Do you have any views / comments on the proposed enforcement powers of the DPC or the proposed appeals mechanism?

**Comments** ACE has no comment.



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**Question 18:** Do you have any views / comments on the proposed penalties for contravention of the DP law outlined at paragraphs 4.4 to 4.5? Do you have any views / comments on the criteria for breaches that would warrant financial penalties?

**Comments** ACE respectfully: (a) submits that the \$1 million upper limit for fines is too high; (b) asks the MICA to clarify whether the financial penalty is on a per offence or per individual basis; (c) opposes making the proposed DP law subject to criminal penalties; and (d) opposes enabling individuals to bring civil proceedings for breach of the law.

**Questions in relation to transitional arrangements:**

**Question 19:** Do you have any suggestions on specific guidelines that the DPC should provide to help organisations achieve compliance with the DP law?

**Comments** ACE has no comment other than we agree that there should be such guidelines.

**Questions in relation to transitional arrangements:**

**Question 20:** With reference to paragraphs 4.11 to 4.14, do you have any views / comments as to whether a one to two year “sunrise” period would be appropriate?

**Comments** We agree that a sunrise period is necessary and believe that two years rather than one year is appropriate.

**Question 21:** With reference to paragraphs 4.15 to 4.19, do you have any views / comments on the proposed treatment of existing personal data?

**Comments** ACE has no comment except that, when deciding whether the use of existing personal data is reasonable taking into account the nature of the organisation’s business, the DPC should take an expansive interpretation of what is reasonable.

We respectfully submit that organisations should be permitted to call individuals who have provided their personal data to the organisation but subsequently add their name to any Do-Not-Call Registry established in Singapore on the basis that the provision of the data demonstrates a willingness to be contacted by the organisation notwithstanding the addition of their name to the Do-Not-Call Registry.

**Question 22:** Are there certain organisations that may require different transitional arrangements?

**Comments** ACE has no comment.

**Questions in relation to proposed National Do-Not-Call Registry:**

**Question 23:** Do you have any views / comments as to whether a National Do-Not-Call Registry should be set up in Singapore?



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**Comments** We respectfully submit that a national Do-Not-Call registry is unnecessary given that most organisations which engage in telemarketing already have their own Do-Not-Call lists.

However, if a national Do-Not-Call registry was to be established, then it should be constituted and operated on the following terms:

- A further consultation should be held with regard to its implementation;
- Organisations will need to be able to bulk check their database against the registry database in the most cost effective and secure way;
- The inclusion of an individual in the registry should be deemed ineffective where that individual has otherwise consented to being contacted (whether expressly or impliedly); and
- Inclusion on the registry should be subject to a time limit (for example 1 year), following the expiry of which the individual concerned will need to contact the registry to refresh his or her registration. The rationale behind the time limit is our belief that an individual's circumstances may change over time and consumers should not be deprived of opportunities to: (a) learn about new products which may be of interest to them; and (b) obtain adequate insurance protection in line with their changing needs.

### **III. CONCLUSION**

In summary, we support the introduction of the proposed DP law subject to an appropriate balance being struck between the interests of data collectors/processors and data owners and respectfully request that our views and the views of businesses like ours (particularly those involved in the insurance and telemarketing industries) be taken into account in the preparation and finalization of the proposed DP law.