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## Submission of Comments

# Public Consultation of the Proposed Consumer Data Protection Regime for Singapore

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## Abbreviations

Abbreviations	Full Name

## Distribution List

Name	Organisation, Department
	MICA

## Revision History

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1	Wong Onn Chee	25 Oct 2011	Initial version	Email: onnchee@resolvo.com

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## 1 Summary

We are supportive of the enactment of the upcoming Data Protection Act (DPA) and applaud MICA's effort in pushing for such a legislation. Though there will be increased costs of compliance, the Act will improve our competitiveness by attracting customers from major trading partners to host data in Singapore, spurring Singapore to be the trusted global hub for data. This is akin to the benefits we gained in the digital media and creative industry ever since the harmonisation of our Copyright Act with relevant legislation in the U.S.

With such an Act, our Government can embark on discussions with our major trading partners to mutually recognise each other's data privacy legislations and promote trading/hosting of data between each other. At this moment, Singapore is hampered by the absence of data privacy legislations.

We look forward to the enactment of the DPA which we believe will benefit the consumers here and our nation as a whole.

## 2. Comments

### **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?**

Costs are expected to increase in the effort to ensure compliance with the DPA. To mitigate such costs, the Government can offer subsidies for small/medium enterprises (SMEs) and/or increased tax credits for investments to improve protection of personal information.

In addition, the time window to comply with the Act can be extended across two (2) years to mitigate any sudden impact on the private sector.

Lastly, our Government can embark on economic/trade promotion campaigns among our trading partners to highlight our improved data privacy protection. This is to make sure that the DPA can bring in greater economic benefits to our nation.

### **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?**

We must be careful that any violation of data privacy does not result in double application of the DPA and existing sectoral regulations. The Attorney-General Chambers/regulators should apply the stricter of the DPA and sectoral regulations.

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

I agree that the Act should not prescribe a fixed, or "hardwired", list of personal data that should be protected. The courts should be capable and competent to judge each case on its merits. As long as the leaked information can be used to identify a unique individual, it should be covered.

### **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?**

In the area of personal data of deceased persons, I suggest the Act to limit the scope to persons who are deceased for less than 7 years. This is inline with the rest of the data retention requirements imposed by other regulators such as IRAS and MAS.

In addition, a custodian of the private information of the deceased should be appointed so as to provide consent required by the Act in certain situations.

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

I object to the blanket exemption of public agencies from protecting information of private individuals.

The reasons are:

- 1) Our Official Secrets Act (OSA) does not explicitly protect against leakage of personal information of citizens collected by public agencies.

2) We have seen instances of negligence within public agencies in protecting the personal information such as the leakage of the political candidate's, including our Ministers', personal information during GE 2011 (Refer to Annex A for the example).

Similar to the Canadian regime, we can enact a separate Act or enhance the existing OSA to include protection of sensitive private information, even if DPA excludes the public agencies.

In addition, the "light touch" proposed by the DPA, though it seems to be friendly to the private sector, may be to the disadvantage of the private sector. For instance, it was stated that one of the objectives of the DPA is to "support Singapore's future development as a global hub for data". If our "light touch" approach is not accepted by our major trading partners as being on par with their privacy laws, DPA may result in higher costs for the private sector without any benefits, as Singapore may still be barred from hosting personal data for customers from our major trading partners.

One can take a look at our wealth management sector which is regulated by MAS. Singapore has gained the reputation of a trusted wealth management hub, as wealthy private banking customers do know that their privacy is protected by law if they allocate their funds to be managed out from Singapore.

**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?**

I agree that the DPA should exclude any extra-jurisdictional application.

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

With reference to my feedback to Question 5, I object to the blanket exemption of the personal data about an individual that is "under the control of a public agency".

Specific uses of personal information can be permitted by DPA to facilitate efficient provision of government services, such as sharing of personal information between agencies. Disclosures by public agencies due to negligence or malicious intent should not be exempted under the Act.

In addition, I do not think news organisation should be exempted from the Act. I do not see the need to violate an individual's personal information in the course of journalistic reporting.

I do agree that an individual's business contact information should not be covered by the Act, as such information belongs to the business organisation and not the individual. Also, it is in the normal course of business to share an individual's business contact information. To bar this will severely impede business communications.

**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?**

I disagree to exclude disclosure of personal information for artistic and literary purposes. Firstly, as mentioned, there is considerable practical difficulty defining such exclusions to meet legitimate needs. Secondly, one should not disclose personal information of individuals without their consent for sake of art and literature.

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

Pursuant to my earlier point to include public agencies under the Act, certain disclosure of personal information by public agencies can be excluded from the Act for public benefit. For instance, publication of legal suits or prosecutions should be excluded from the Act. This is to enable the public to correctly identify the parties involved. Unrelated persons whose names are similar to the parties involved in legal cases may be subjected to mistaken identities and unnecessary complications.

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

I agree with the proposed general rules.

**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?**

I disagree with an opt-out approach. Consent should be explicitly given by individuals based on an opt-in approach. Such consent can be collected at the point of the individual procuring the goods or services.

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

I agree with the proposed rules on collection, use and disclosure of personal data.

**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?**

Though it is too onerous for organisations to seek consent for the collection of their members' personal data for internal purposes, we should be careful not to exclude willful or negligent disclosure of their members' personal data from the Act.

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

I agree with the proposed approach. Even if an organisation offshores the handling and storage of personal data collected from Singapore, the organisation should still be required to exercise due diligence in ensuring their overseas partners are compliant to the Act.

**Question 14: 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?**

I agree with the proposed required, except on the accuracy of personal data. To require organisations to ensure that the personal data of individuals is accurate may be too costly. For instance, if a mobile subscriber does not inform the mobile operator about his/her new home address, the mobile operator should not be required by law to update it or be penalised if they do not update it.

Nevertheless, it is in the organisation's self interest to update personal data of their customers.

Therefore, I suggest that we leave this to market forces which will encourage organisations to keep the personal data updated and accurate.

**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?**

I agree that organisations should be required to specify the retention period when collecting personal data.

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

I agree with the proposed rules on access to and correction of personal data, especially those related to national security.

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

With regards to the proposed appeals mechanism, are the conclusions of the Independent Appeals Board final or can the parties still appeal to our Court of Appeal?

**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?**

I agree with criteria for breaches that would warrant financial penalties.

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

Pursuant to my answer to Q1, DPC can offer subsidies for SMEs and better tax incentives to larger organisations.

**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?**

I agree to a two (2) year “sunrise” period to reduce the impact and costs of compliance with the Act.

**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?**

I agree with the proposed treatment of existing personal data.

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

I have no comments for this question.

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



I agree with the formation of a National DNC registry for the stated benefits. However, the effectiveness may be limited, as most telemarketers are based overseas. If an overseas telemarketer calls a resident in Singapore, it is unlikely the overseas telemarketer will refer to our National DNC registry.

Hence, if the resulting costs of maintaining this National DNC registry are high, I suggest we do not set up a National DNC registry. Instead, if the individual does not want to be included in any third-party marketing activities, the individual can indicate his/her preference to the service provider. If the service provider willfully disregards the individual's preference, DPC can then take action against the service provider.

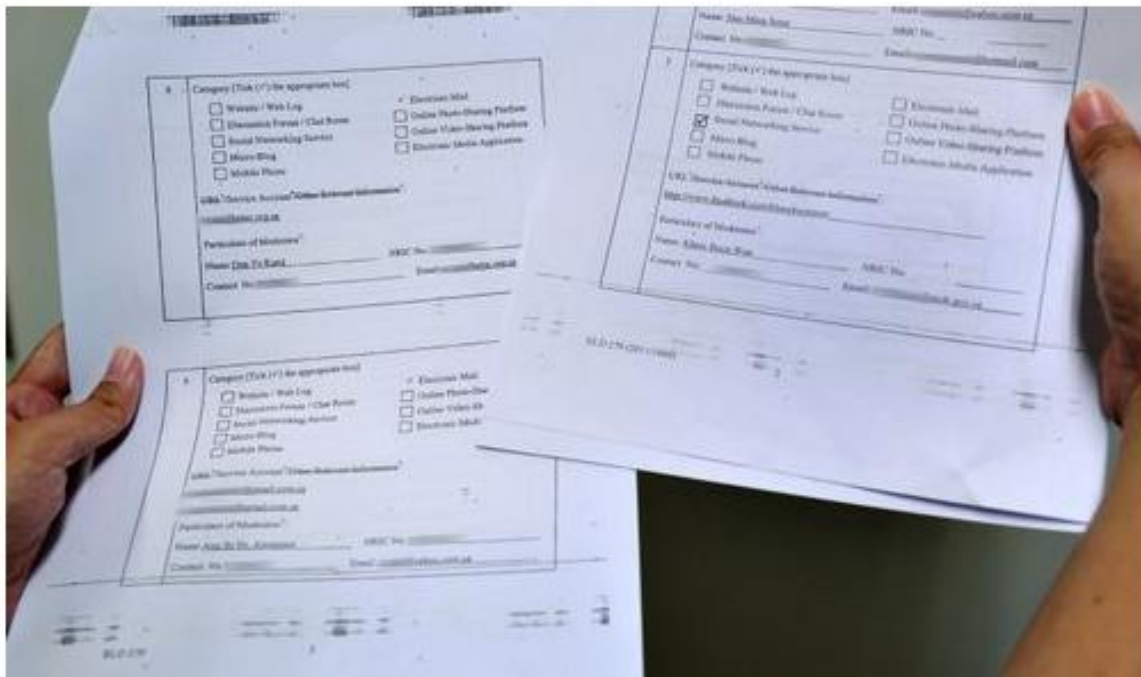
### 3 Appendix A – Information leakage from SG Government

#### 1 3.1 Elections Department Boo Boo (<http://www.tnp.sg/content/elections-department-boo-boo>)

## Elections Department boo boo

May 8, 2011 - 10:56pm

By: Tay Shi'an



**TNP PHOTO: Kua Chee Siong**

On April 29, The New Paper alerted the Elections Department that it had upload scanned forms containing the personal information of several candidates contesting in this year's elections.

At about 3pm on the same day, the website with all the forms was taken down.

The forms included the NRIC number of Health Minister Khaw Boon Wan, and the NRIC and handphone numbers of Aljunied candidate Ong Ye Kung from the People's Action