

**PUBLIC CONSULTATION (“CONSULTATION”) ISSUED BY
MINISTRY OF INFORMATION, COMMUNICATION & THE ARTS (“MICA”)**

PROPOSED PERSONAL DATA PROTECTION BILL (“PDPA”)

19 MARCH 2012

Response of The Association of Banks in Singapore (“ABS”) dated 30 April 2012

▪ **General observations**

The ABS welcomes MICA’s invitation to the public to comment on the proposed positions to be taken by MICA on various issues in respect of the PDPA, and for the opportunity to vet and comment on the draft PDPA Bill.

In general, the ABS supports the need for a PDPA in Singapore, subject to our comments below.

In particular, the ABS believes that all banks and merchant banks in Singapore (collectively, “Bank”) regulated by the Monetary Authority of Singapore (“**MAS**”) adhere to a higher standard of care in relation to customer information under the relevant statutes administered by the MAS, and understands that the PDPA will not override the aforementioned body of law, including statutes, regulations, notices, circulars, codes and guidelines.

The rules applicable to Banks and other financial institutions involve significant control aspects over customer data, including banking secrecy for Banks, confidentiality requirements for capital market services (“CMS”) license holders who are Singapore Exchange (“SGX”) members, outsourcing guidelines, business continuity planning, technology and other risk management guidelines. This body of law has been developed over the years by the MAS in consultation with the financial industry, and provides more than adequate protection for the data of the relevant organisation’s customers.

The ABS has, in responding to MICA’s various positions, predicated the specific responses below to the overarching principle set out in the immediately preceding paragraph.

MICA’s position in the Consultation is italicised, and the suggested amendments of the ABS to the draft PDPA in red.

▪ **Specific ABS Responses**

PART II: SUMMARY OF RESPONSES & MICA’S POSITION

A) Scope of Coverage of DP Law

Types of Data Covered

Paragraph 2.4

MICA Position : *In view of the feedback, it is proposed that personal data be defined as follows: “**personal data**” means data, whether true or not, about an individual who can be identified —*

(a) from that data, or

(b) from that data and other information to which the organisation is likely to have access.”

- The ABS suggests that the following definitions be adopted (suggested changes in red):
 - **“business contact information”** means an individual, sole proprietor or partner’s name, position name or title, business telephone number, business address, business electronic mail address or business fax number and any other similar information about the individual, sole proprietor or partner, or such other information as may be required by law, unless the personal data was provided by the individual solely for use in a personal context;
 - **“customer”** means such persons as defined under the Banking Act (Cap 19), including prospective customers;
 - **“evaluative purpose”** means –
 - (a) for the purpose of determining the suitability, eligibility or qualifications of the individual to whom the data relates –
 - (i) for employment or for appointment to office;
 - (ii) for promotion in employment or office or for the continuance in employment or office;
 - (iii) for removal from employment or office;
 - (iv) for admission to an education institution;
 - (v) for the awarding of contracts, awards, bursaries, scholarships, honours or other similar benefits;
 - (vi) for selection for an athletic or artistic purpose; or
 - (vii) for a grants of financial or social assistance under any scheme administered by a public agency; or
 - (b) for the purpose of determining whether any contract, award, bursary, scholarship, honour or other similar benefit should be continued, modified or cancelled;
 - (c) for the purpose of deciding whether to insure any individual or property or to continue or renew the insurance of any individual or property;
 - (d) for the purpose of evaluating an individual as a customer for the provision of financial services to that individual or any interested parties or to continue, modify or terminate the provision of financial services to that individual or any interested party;
 - (e) for such similar purposes as may be prescribed by the Minister;
 - **“personal data”** means data, whether true or not, about an individual who can be identified —
 - (a) from that data, or
 - (b) from that data and other information to which the organisation is likely to have access;excluding data that:
 - (i) is provided as business contact information by an individual, sole proprietor or partner as a customer; or
 - (ii) cannot reasonably or practically be linked to an individual within or outside the organisation.
 - **“organisation”** includes any individual, company, association or body of persons, corporate or unincorporated, and excludes any overseas branch of the organisation in Singapore, its immediate or ultimate parent, its subsidiaries, associated or related companies (collectively “associated companies”);

Consent required

15. An organisation shall not, on or after the appointed day, collect, use or disclose personal data about an individual unless —

- (a) the individual gives, or is deemed to give, his consent under this Act to the collection, use or disclosure, as the case may be; or
- (b) the collection, use or disclosure, as the case may be, without the consent of the individual is required or

authorised under this Act; or
(c) the collection, use or disclosure, as the case may be, is required or authorised under the written law of any territory.

Explanations as to the reasons for the suggested changes will be set out below on a more comprehensive basis.

Types of Organisations and Activities Covered

Organisations outside of Singapore

Paragraph 2.19

MICA Position: MICA proposes that the PDPA will cover all organisations that are engaged in data collection, processing or disclosure within Singapore, even if the organisations may not be physically located in Singapore.

- The ABS understands that in the context of a financial institution, there could be four separate scenarios for data collectors, processors or disclosers (collectively “data users”) which could arise, based on MICA’s comments.

They are as follows:

- a. A data user resident in Singapore which is a Bank collecting, processing or disclosing (collectively “using”) data of its customers resident in Singapore;
 - The PDPA will not apply as it is superseded by the provisions of the Banking Act in accordance with the PDPA, s. 4(6), s. 4(7) read with s.19(1) and paragraph 1(g) of the Third Schedule; s.19(2) and paragraph 1(g) of the Fourth Schedule; and s.19(3) and paragraph 1(h) of the Fifth Schedule;
- b. A data user not resident in Singapore, using data of residents of Singapore who are customers of a Bank;
 - The PDPA will not apply as it is superseded by the provisions of the Banking Act in accordance with the PDPA, s. 4(6), s. 4(7) read with s.19(1) and paragraph 1(g) of the Third Schedule; s.19(2) and paragraph 1(g) of the Fourth Schedule; and s.19(3) and paragraph 1(h) of the Fifth Schedule;
- c. A data user resident in Singapore which is a Bank, using data of non-residents of Singapore;
 - The PDPA will not apply to customers of a Bank in this scenario as it is superseded by the provisions of the Banking Act in accordance with the PDPA, s. 4(6), s. 4(7) read with s.19(1) and paragraph 1(g) of the Third Schedule; s.19(2) and paragraph 1(g) of the Fourth Schedule; and s.19(3) and paragraph 1(h) of the Fifth Schedule;
- d. in scenarios where a Bank merely acts as data intermediary for clients and employees of its affiliates outside of Singapore, the PDPA will apply on a limited scope basis in accordance with the proposed s.4(2) of the PDPA; A data user not resident in Singapore, using data of non-residents of Singapore.
 - The ABS is of the view, given MICA’s explanations in the Consultation and previous consultations, that the PDPA does not apply, as neither the data user or the data is connected to Singapore.

B) DP Rules & Exclusions

Exclusions from Application of DP Law

Data Processors or Intermediaries

Paragraph 2.24

MICA Position: *MICA proposes to define a category of organisations called “data intermediaries” in the PDPA.*

- ABS is generally supportive of the differentiation in treatment for data processors.
- However, clarification is sought in respect of the application of s.5 of the PDPA, and in particular, the context of “use” in the section. “Use” is not a defined term in the PDPA, and the ABS does not equate this term to “processing”.

Many financial institutions process data for their affiliates through their Singapore entity, and the data may relate either to employees or customers who are not employees or customers of the organisation in Singapore. Under such circumstances, the ABS is of the view that there is no Singapore link as set out in s.5(1) where the Singapore organisation merely processes the data, and does not “use” such data. Even if the Singapore financial institution were to act beyond the scope of the definition of “processing” (i.e. where the operations department in Singapore has to review, investigate and correct a potentially failing transaction on behalf of the overseas affiliate), the ABS is of the view that there is no Singapore link as the organisation is merely utilising data of non-Singapore resident customers as a data intermediary only.

Personal Data Pertaining to Deceased Individuals

Paragraph 2.27

MICA Position: *MICA proposes that personal data pertaining to deceased individuals shall be protected only in the areas of disclosure and security arrangements, and up to 10 years from the date of death.*

- The ABS suggests that the PDPA be brought in line with various statutes in Singapore such as the Income Tax Act where the retention period is 5 years. The Limitation Act also sets out the limit for contractual claims as 6 years. It is a common practice for financial institutions to retain records for 6 years, after which they will be destroyed. An increase in the retention period will not assist the individual in any way, and increase storage costs for the financial institution.

Business Contact Information and Related Data

Paragraph 2.30

MICA Position: *The PDPA will provide an exclusion in relation to collection, use or disclosure of business contact information.*

- ABS is of the view that the current definition of “business contact information” is too narrow and proposes amending the definition as set out above in the response to paragraph 2.4 of the Consultation and consequential amendments to the use of the term “personal data” in the PDPA.
- In addition to the suggested amendments to the definition of “business contact information”, the ABS suggests that the Fourth and Fifth Schedules of the PDPA be amended to include the equivalent of the amended paragraph 1(p) of the Third Schedule, which reads as follows:

“1. An organisation may collect personal data about and individual without the consent of the individual or from a source other than the individual only if –

(p) the data provided by the individual, sole proprietor or partner is business contact information;”

The equivalent of paragraph 1(p) above does not currently exist in the Fourth and Fifth Schedules of the proposed PDPA.

New Exclusions Suggested by Respondents

Paragraph 2.35

MICA Position: *Exclusion will not be provided for the sharing of data among related organisations. (Related organisations means the collection, use or disclosure of personal data within a group of organisations, or between an organisation and its head office or affiliates.) However, organisations will still be able to share personal data with related organisations in certain circumstances, such as where required or authorised by written law.*

- The ABS is of the view that financial institutions will be able to share data among related organisations where this is in accordance with the Banking Act and other relevant statutes, regulations, Notices, Circulars, Codes and Guidelines issued by the MAS and in accordance with the PDPA, s.19(1) and paragraph 1(g) of the Third Schedule; s.19(2) and paragraph 1(g) of the Fourth Schedule; and s.19(3) and paragraph 1(h) of the Fifth Schedule.

General Rules With Respect to Protection of Personal Data

Designation of Organisation's Representative

Paragraph 2.38 – Need for Privacy Officer

MICA Position: *Organisations need to designate individuals responsible for compliance with the Data Protection Law.*

- The ABS would like to seek MICA's clarification for the need to designate a Privacy Officer. If contact details are clearly made available to the public, this would obviate the necessity of a Privacy Officer. We note that a Privacy Officer is not a mandatory requirement under Hong Kong's Personal Data (Privacy) Ordinance;
- If a Privacy Officer is considered necessary, the ABS would suggest the issuance of a practice note from MICA as to the roles and responsibilities of such a person.

Rules and Exclusions on Collection, Use and Disclosure

1) Consent

Paragraph 2.43

MICA Position: *An organisation is not allowed to require an individual to consent to the collection, use or disclosure of personal data, as a condition of supplying the product or service, beyond what is reasonable to provide the product or service to that individual.*

- The ABS is of the view that s.20 of the draft PDPA is superseded by virtue of s.19 and paragraph 1(g) of the Third Schedule, paragraph 1(g) of the Fourth Schedule and paragraph 1(h) of the Fifth Schedule. As the statutes and other regulations established by the MAS clearly dictate the controls around the collection, processing and disclosure of customer information, such use would be deemed reasonable through convention and the passage of time for financial institutions.
- The suggested amendments to s.15 of the PDPA above are meant to ensure that the provisions under the Banking Act (or any other written law applicable to the Singapore Branch of a foreign bank), which contain specific controls over the use and disclosure of customer information, will override the provisions of the PDPA so as not to create confusion within a regulated activity such as banking.

Explicit, Implied and Deemed Consent

Paragraph 2.46

MICA Position: *An organisation which seeks consent from individuals must state the purposes for the collection, use or disclosure of personal data.*

- Please refer the ABS' response to paragraph 2.43 above.

Paragraph 2.47

MICA Position: *Organisations collecting personal data must ensure that consent had been given by the individuals referred by existing customers, prior to or at the point of collection.*

- The ABS is of the view that a financial institution which has taken reasonable measures to ensure that the relevant consent has been provided by such individuals, whether express, implied or deemed under the PDPA, will be in full compliance with the PDPA.

Paragraph 2.48

MICA Position: *An individual is deemed to have given his consent to the collection, use or disclosure of his personal data by an organisation for a purpose if the individual, without actually giving consent, voluntarily provides the personal data to the organisation for that purpose, and it is reasonable that he would voluntarily provide the data.*

- The ABS supports the provision of deemed consent under the proposed PDPA. It would be helpful for MICA to provide guidance on what are the circumstances in which it would be "reasonable" that an individual would voluntarily provide the data or make clear what are the circumstances under which this would clearly not be the case.

Withdrawal of Consent

Paragraph 2.53

MICA Position: *MICA intends to retain the provisions for withdrawal of consent. However, in relation to personal data already in an organisation's possession, withdrawal of consent would only apply to the organisation's prospective use or disclosure of the personal data concerned.*

- The ABS is of the view that individuals (including customers, sureties, guarantors, or employees, whether potential or ex-employees) should not be permitted to withdraw their consent under the certain circumstances. For example:
 - where the organisation is required by law, whether in Singapore or otherwise, to retain records of customers;
 - during the existence of a transaction with the individual, or where the individual is acting as a guarantor or surety; or
 - where there is a dispute with the individual.
- The ABS welcomes the inclusion of s.18(5) of the PDPA which prevents an individual from withdrawing his or her consent if it frustrates the performance of a legal obligation.

2) Exclusions for Collection, Use or Disclosure Without Consent

Other Exclusions Proposed in the DP Public Consultation

Paragraph 2.69

MICA Position: *An exclusion will be included to enable the collection, use or disclosure of personal data without consent for the purpose of establishing an employment relationship.*

- The ABS is of the view that a specific exemption should be created for the purposes of the Representative Notification Framework (“RNF”). Such exemption should also include responding to enquiries made by other financial institutions regarding an individual who was subject to the RNF framework.
- The ABS further suggests there should be no notification requirement where the purpose of collection, use or disclosure is solely for managing or terminating an employment relationship.

New Exclusions Suggested by Respondents

Para 2.75

MICA Position: *An exclusion will be included for collection, use or disclosure of personal data without consent which is necessary for any investigation or proceedings, if it is reasonable to expect that seeking the consent of the individual would compromise the availability or accuracy of the personal data.*

- The ABS is supportive of such an exclusion which includes the collection, use or disclosure of personal data without consent for the purposes of an investigation and invites the MAS to consider including such an exclusion in the Banking Act.

3) Purpose

Collection from Another Organisation Without Consent

Para 2.83

MICA Position: *An organisation collecting personal data on individuals from another organisation must ensure that the organisation from which it collects the personal data is permitted to disclose such data under the PDPA.*

- The ABS is of the view that where the personal data is provided by market information providers such as the Accounting & Corporate Regulatory Authority or Credit Bureau (Singapore), financial institutions may place reliance that such market information providers are authorised to provide such information and that banks may use information without reference to the individual concerned.

4) Other Issues

Rules on Access and Correction

Proposed Rules

Para 2.92

MICA Position: *Individuals may find out how organisations have used, or are using, the personal data collected, correct information that may be inaccurate, or seek redress for suspected breaches of the PDPA.*

- The ABS is of the view that greater clarity should be provided as to the scope of personal data which individuals may access and/or correct. ABS proposes that (i) an organisation need not provide information under section 23(1) of the PDPA and (ii) Section 24 of the PDPA shall not apply in respect of:
 - Personal data relating to an individual which an organisation may have but such personal data was not provided by such an individual;
 - Where the Personal data is no longer required for business purposes; and
 - Personal data which may not be disclosed where there is a legal obligation not to inform the individual.
- The ABS would like to suggest that Schedules 6 and 7 of the PDPA which pertain to exceptions from access requirement and exceptions from consent requirement respectively should be expanded to include the three scenarios set out above

Paragraphs 2.92 and 2.95

MICA Position:

1. *Upon request of an individual, an organisation must provide such individual with his personal data in the custody or control of the organisation, and information about the ways in which the personal data has been or may have been used by the organisation.*
 2. *The organisation must send any other third-party organisations corrected data where the related personal data was disclosed to such third-party organisations within a year before the date the correction was made.*
- The ABS would like to draw MICA's attention to the MAS' Guidelines on Outsourcing ("Guidelines") and to the numerous requirements imposed by the Guidelines. As large multinational and multijurisdictional organisations, financial institutions carry significant costs complying with the Guidelines. Such a requirement under the PDPA would add an additional layer of complexity without any corresponding increase in controls. As such, the ABS proposes that MAS regulated entities be exempted from the requirements above.

Exceptions from Access and Correction Requirements

Para 2.100

MICA Position: *Organisations may refuse access or correction of opinion data kept solely for an evaluative purpose.*

- The ABS proposes that all internal reviews, whether for credit risk management or anti-money laundering ("AML") purposes will fall within this category of evaluative purposes.

Rules on Accuracy, Protection and Retention

Para 2.106

MICA Position: *It was commented that an organisation must destroy its documents containing personal data, or anonymise such data when retention is no longer necessary for legal or business purposes.*

- ABS is of the view that such documents need not be destroyed where other statutes require document retention, or where there is a dispute with the individual.

Proposed Rules in DP Public Consultation

Para 2.112

MICA Position: *It is not mandatory for organisations to issue data breach notifications.*

- The ABS is supportive of this position.

C) Implementation Framework

Transitional Arrangements

Existing Personal Data

Para 2.139

MICA Position: *Fresh consent would need to be obtained if an organisation intends to use existing personal data for a new purpose, or for purposes beyond what would be considered reasonable.*

- The ABS is of the view that financial institutions will not be required to obtain fresh consent for such purposes where consent has been obtained from customers. Any application of the PDPA to existing customers could be construed as a retrospective application of a statute in circumstances where consent is express.

D) DNC Registry

Scope of Coverage

Registration of Business Numbers

Paragraph 2.155

MICA Position:

1. *MICA proposes to allow registration of business numbers under the DNC Registry.*
2. *Explicit consent to override the registration on the DNC Registry for business numbers can be given by an employee duly authorised to act.*

- ABS does not support the proposal to allow registration of business numbers under the DNC Registry. This is inconsistent with the proposed PDPA which provides an exclusion in relation to collection, use or disclosure of business contact information. Further, ABS is of the view that DNC Registry should be for individuals who are acting in their personal capacity only.

Design of DNC Registry

Exception for Existing Business Relationships

Paragraph 2.168

MICA Position: *There should not be an exception for existing business relationships.*

- The ABS does not support this view as this is not consistent with Data Protection Law. Please see our response to paragraph 2.155 above.

“Filtering” of DNC Lists

Paragraph 2.172

MICA Position: *The current minimum requirement is to send an organisation’s marketing list to the DNC Registry for “filtering” at least once every 30 days.*

- The ABS proposes that the periodic filtering to be conducted on a staggered basis, based on the number of Singapore telephone numbers that the organisation has in its database.