

## MEMORANDUM

### Public Consultation by MICA on proposed Data Protection Bill

### Response by EuroCham Singapore dated 30 April 2012

EuroCham Singapore is grateful of the opportunity to provide a response to the consultation paper dated 19 March 2012 ('the Consultation Paper') on the proposed DP Law for Singapore and on the proposed law ('the Bill'). The primary Data Protection legislation is proposed to be called the Personal Data Protection Act (PDPA).

EuroCham Singapore was pleased to make a submission dated 25 October 2011 on the proposed Data Protection Law (DP Law) framework for Singapore, and also on the proposed 'Do Not Call' (DNC) Registry proposals (being part of that framework) dated 28 November 2011.

EuroCham Singapore is the voice of European business in Singapore. EuroCham Singapore's ICT Committee takes a keen interest in the ICT sectors. It aims to help strengthen the economies in which our members have invested by supporting pro-competition, free trade and investment policies which attract capital and skills. In doing so, we recognise the important hub status of Singapore. Further details on the aims and role of our ICT Committee can be found at:

[http://www.eurocham.org.sg/index.php?option=com\\_committee&task=view&id=5&Itemid=54](http://www.eurocham.org.sg/index.php?option=com_committee&task=view&id=5&Itemid=54)

As requested by para 3.2 of the Consultation paper, our response is **structured** as follows:

- A) Covering letter dated 30 November with contact details – in a separate PDF file.
- B) Table of contents.
- C) Summary of major points, and general comments
- D) Specific comments; and
- E) Conclusion.

For ease of reference our comments are primarily based on the Consultation Paper and secondarily on the Bill.

#### **B. Table of Contents.**

We have not included a table of contents as our submission is quite short. We trust that this is acceptable.

#### **C. Summary of major points, and general comments**

1. We support business-friendly policies; and these can and should sit well with the protection of personal data. Confidence in the jurisdiction is important for Singapore as a business hub. Other elements such as a reputation for accurate data should further enhance Singapore's standing.

2. We agree with the principle of balance described in para 1.2 of the Consultation Paper concerning economic and reputational benefits.

3. For offshore use, the Singapore link (or connecting factor) may need further review. The concept is sound however.

4. In our prior submissions, we noted there that we considered that the obligation not to contact would be better done at an operator level at this stage, or through industry associations, rather than having a centralised DNC regime.

5. Generally, we would encourage the view that a sound data protection, data security and data accuracy regime will contribute positively to Singapore's business standing and done in a way which is not administratively burdensome or costly, will assist businesses in the data management ecosystem.

Further details appear below.

#### **D. – Specific comments and responses to specific questions**

All our comments are predicated on the recommendation for minimum standards but not a centralised registry.

**Definition of Personal Data** (para 2.4 Consultation Paper) – we have nothing to add to this definition including that the PDPA is to cover non electronic data also (2.9). However we note that the special handling and treatment of certain kinds of data (eg medical records) should continue to be safeguarded (2.8).

**Organisation based ambit.** We have no particular comments about types of organisations (para 2.10 ff). However please see below concerning connecting factors.

**Clarity about connecting factor (or 'link') where extra-territorial reach is proposed:** We recognise the challenges with avoiding jurisdiction (or regulatory) shopping and in sticking to a key value of DP regulation – that there is a reputational advantage to being part of this regime (para 2.17 ff) The primary connecting factor appears to be about “personal data from a person in Singapore” or where there is a ‘Singapore link’ (2.19 of the Consultation Paper and clause 5 of the Bill). Para 2.89 is consistent with this.

This will have an important impact on the data centre industry. Before implementation, we would recommend some kind of operational workshop to assist

**DNC Registry (2.141)** We have a general comment on the DNC registry – see below but agree that if there is one the subject matter would only be marketing messages (2.143). Delineating marketing messages from service calls may be antithetical to Singapore's aspirations as a consumer insights hub, where they are centrally managed. This illustrates one of the problems with having a centralised DNC registry.

#### **General comments on a DNC registry.**

For many providers, a call restriction menu can be sophisticated enough to cater for this. Service calls generally will not apply to the target group described above.

Currently Singapore has no economy-wide data protection law. We consider that a national DNC registry at this stage is not warranted. Rather, management of data under the new DP regime (which does place obligations on the creators, custodians, managers and analysts of data) should be tried first with an obligation on such persons to maintain and honour imposed obligations about maintaining their own registries of customer preferences, which may have more sophisticated specific requirements than a centralised data base. Currently there is no such regime.

Thus it should not be necessary at this stage to create another centralised data base.

A DP law will be new, there are many fundamental concepts which are not yet tested in a Singapore context (eg the concept of purpose of creating, maintaining, using, releasing data of various kinds). There should be time to allow that to happen first.

The costs of a centralised DNC register would per the proposal be shared via levy on the marketing side. The costs of contributing would seem to be a business burden, whereas mandated self-maintenance (which would end up being required anyway), should be less.

Most larger organisations have a structured and sophisticated contact preference menu. For example there are distinctions amongst means of contact as well as source (eg from the service provider; vs from the service provider's marketing partners). A centralised DNC registry – even with some minimum specifications – by the proposal into three means of contact – could not meet this sophistication. But minimum prescribed, mandatory bases could and then operators could build on this.

Not having a centralised registry would also avoid the problems of conflicting information and preferences where the same person had made one set of based preferences in the centralised registry but had expressed a different preference directly with the operator or marketer. The preference is often not a simple instruction but is more sophisticated. Thus the two may not be reconcilable.

It is best left to operators to work out what marketing content is vs. service content. Whether there is a centralised DNC registry or not is not the key determinant of this issue.

Persons to be contacted can be conceived of as being in either of two groups:

- (i) Existing customers of a business – our proposal is to mandate the keeping of DNC lists with a base structure using the proposed scope – ie fixed and mobile phone numbers, SMS, MMS and fax numbers but not the smart phone bases applications, contacts using social media environments or via smart phones; and
- (ii) For 'new' targets – the DP law will introduce a regime whereby a range of current practices using 'acquired' lists will in many circumstances be illegal. The marketer would also be obliged to keep in place a list over time. Although initially some could still be called, a properly enforced regime should ensure compliance over a short time.

We have not yet even tried a DNC regime where operators are required to keep their own DNC records (structured, or at all). Such a regime should be tried first without moving directly to a centralised registry.

## **E. – Conclusion**

A sound data protection, data security and data accuracy regime will contribute positively to Singapore's business standing and done in a way which is not administratively burdensome or costly, will assist businesses operating in the data management ecosystem.

EuroCham Singapore is generally supportive of the base PDPA but considers that a national DNC registry at this stage is not warranted. Rather, management of data under the new DP regime (which does place obligations on the creators, custodians, managers and analysts of

data) should be tried first with an obligation on such persons to maintain and honour imposed obligations about maintaining their own registries of customer preferences, which may have more sophisticated specific requirements than a centralised data base. Currently there is no such regime.

Thus it should not be necessary at this stage to create another centralised data base and the learning to gained from using the new DP law should be experienced first prior to making a centralised data base.

We have made recommendations about a more thorough review and some suggestions on a number of specific aspects.