

7 February 2014

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TO : i. MEMBERS, IUTA AND CUTA
ii. PRS PROVIDERS, INSTITUTIONAL PRS ADVISERS AND
CORPORATE PRS ADVISERS

ATTN. : AUTHORISED REPRESENTATIVE/CHIEF EXECUTIVE
OFFICER

**PROPOSAL PAPER NO. 1/2014 ON “GUIDE IN DEALING WITH DIRECT
MARKETING UNDER THE PERSONAL DATA PROTECTION ACT 2010” ISSUED
BY PERSONAL DATA PROTECTION DEPARTMENT MALAYSIA**

Your attention is brought to the above captioned matter.

The Personal Data Protection Department is seeking feedback or opinions on the “Guide in Dealing with Direct Marketing Under the Personal Data Protection Act 2010” (“**Paper**”).

Briefly, the salient provisions in the Paper are:-

- (i) The Paper acknowledges that the application of the law on direct marketing activities varies depending on the medium through which the marketing is delivered, namely, through postal or electronic communications such as sms, email, phone call and fax.
- (ii) The Paper states that data protection law imposes “strict obligations on the use of personal data for direct marketing via electronic communications compared to traditional postal marketing”. Direct marketing via electronic communications is stated as “more intrusive than the traditional postal marketing” in terms of privacy impact.

We note that the Paper represents initial suggestions of the Personal Data Protection Department and they are requesting for feedback and opinions on the matters above.

The deadline to provide feedback or opinions is **20 February 2014**. We would appreciate if you could forward your feedback and opinions to Personal Data Protection Department directly via post, fax or e-mail to the following address:

Commissioner
Personal Data Protection Department
Aras 6, Kompleks KKMM
Lot 4G9, Persiaran Perdana, Presint 4
Pusat Pentadbiran Kerajaan Persekutuan
62100 Putrajaya
E-mail: pcpdp@pdp.gov.my
Fax: 03 8911 7959

Cont'd...

Contact Persons:

Siti Dinar binti Othman (Tel: 03 8911 7924)

Sengngeng Mohd Saleng (Tel: 03 89117397)

Ahmad Syazwan bin Mohd Ghazali (Tel: 03 8911 7920)

If you have any query, please contact Poh Khie Yee (Ext 300) or Sharon Kaur (Ext 309) of Legal, Secretarial & Regulatory Affairs at 03-2093 2600.

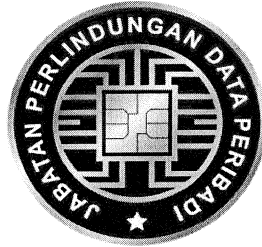
Yours faithfully,
Federation of Investment Managers Malaysia



MOHAMED NIZA B ABU BAKAR

Chief Executive Officer

Encl.



PROPOSAL PAPER

[No. 1/2014]

“GUIDE IN DEALING WITH DIRECT MARKETING UNDER PERSONAL DATA PROTECTION ACT (PDPA) 2010”

Personal Data Protection Department welcomes the feedback and opinion in writing to the Department in relation to matters raised in this paper. The feedback and opinion shall be submitted before 20th February 2014 to the address or e-mail as follows -

Commisioner

Personal Data Protection Department

Level 6, Kompleks KKMM

Lot 4G9, Persiaran Perdana, Presint 4

Pusat Pentadbiran Kerajaan Persekutuan

62100 Putrajaya

Email: pcpdp@pdp.gov.my

Fax: 03 8911 7959

Contact person –

Siti Dinar binti Othman (Tel: 03 8911 7924)

Sengngeng Mohd Saleng (Tel: 03 89117397)

Ahmad Syazwan bin Mohd Ghazali (Tel: 03 8911 7920)

The paper seeks to obtain feedback and opinion on the proposal of the Personal Data Protection Department (the Department) to establish a Guide In Dealing With Direct Marketing Under Personal Data Protection Act (PDPA) 2010

Direct marketing activities such as providing information on products and services to individuals through communications mean is widely recognized as legitimate business activities. The Personal Data Protection Act 2010 (PDPA) defines direct marketing as any advertising or marketing material which is directed to particular individual. The application of the law on direct marketing activities vary depending on the medium through which the marketing is delivered, namely, through postal or electronic communications such as sms, email, phone call and fax.

2. Data protection law imposes strict obligations on the use of personal data for direct marketing using electronic communications than that of the traditional postal marketing as the former medium is more intrusive than the latter mean in terms of privacy impact. The restriction on the sending of unsolicited direct marketing message through email or sms as reflected in Section 43 of the PDPA is aimed at ensuring that the individual's privacy right is always respected.

Postal Direct Marketing

3. An Individual who receives unwanted direct marketing materials from unidentified sender have a right to object to such materials. It is against the law for an organisation not to respect a written request from an individual. The law imposes an obligation on an organisation that has not obtained personal data from an individual directly such as from public domains to inform the individual concerned the original source of the personal data so as to enable the original organization to be contacted.

4. This is the traditional and oldest form of direct marketing. For mail received through home or office letter boxes to be considered to be direct marketing it must meet two criteria i.e it must be addressed to a named person and secondly it must be about product or service promotion. The law does not apply to all unaddressed mails such as those addressed to *the occupant, the resident or the houseowner* which do not involve the use of personal data.

5. The basic rule of law applies to direct marketing is that one, you need the consent of the individual to use their personal data for direct marketing

purposes. In addition, an individual must be given a right to refuse such use of their personal data both at the time the data is collected using free "opt-out" facility. Further, in the case of direct marketing by electronic means, an opt-out right must be made available on every subsequent marketing message.

Electronic Communications Direct Marketing

6. To date, electronic communications (i.e. a text message, voice message, sound message, image message, multimedia message or email message) have emerged as the most popular medium used for the purpose of direct marketing. Just like postal direct marketing, electronic communication cannot be used for direct marketing without an individual prior consent unless it is from someone with whom the individual concerned have a relationship as customer. Direct marketing organisations are not allowed to use electronic communications for direct marketing except in the situations individuals;

- Individuals have given explicit consent to do so;
- personal data of individuals have been obtained in the course of a sale of products or services;

- individuals have been informed of the identity of direct marketing organisations, purpose of collecting individuals personal data and the persons to whom the said personal data may be disclosed;
- materials of the direct marketing to be given are limited to similar products and services only, and
- means of refusing the use of individuals personal data for direct marketing purposes at the time of collection are provided;

7. A complaint about unsolicited direct marketing can be made in writing or phone call to

**Commissioner of Personal Data Protection
Level 6, Komplek KKMM,
Lot 4G9, Persiaran Perdana , Presint 4
Pusat Pentadbiran Kerajaan Persekutuan
62100 Putrajaya**

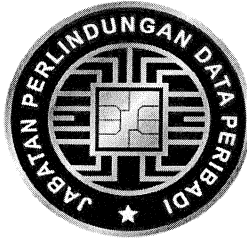
Telefon : 03 89117924/7393/7920

Faxs : 03 89117959

Emel : pcpdp@pdp.gov.my

When making a complaint, individual should provide as much information as possible, including contact details; time and date of the direct marketing message, a copy of the message if possible, or a summary of contents if not and information about any previous dealing with the sender of the message.

The paper above represents initial suggestions of the Department. The Department would therefore like to welcome any feedback and opinion on the above proposed matters.



KERTAS CADANGAN

[No. 1/2014]

“PANDUAN PENGURUSAN PEMASARAN LANGSUNG DI BAWAH AKTA PERLINDUNGAN DATA PERIBADI (APDP) 2010”

Jabatan Perlindungan Data Peribadi mengalu-alukan maklum balas dan pendapat secara bertulis kepada Jabatan berhubung dengan perkara yang dibangkitkan di dalam kertas ini. Maklum balas dan pendapat hendaklah dikemukakan sebelum 20 Februari 2014 kepada alamat atau e-mel seperti berikut:-

Pesuruhjaya Perlindungan Data Peribadi Malaysia

Aras 6, Kompleks KKMM

Lot 4G9, Persiaran Perdana, Presint 4

Pusat Pentadbiran Kerajaan Persekutuan

62100 Putrajaya

Emel: pcpdp@pdp.gov.my

Faks: 03 8911 7959

Pegawai untuk dihubungi –

Siti Dinar binti Othman (Tel: 03 8911 7924)

Sengngeng Mohd Saleng (Tel: 03 89117397)

Ahmad Syazwan bin Mohd Ghazali (Tel: 03 8911 7920)

Kertas ini bertujuan untuk mendapatkan maklum balas dan pendapat berkenaan cadangan Jabatan Perlindungan Data Peribadi (Jabatan) untuk mewujudkan **Panduan Pengurusan Pemasaran Langsung Di Bawah Akta Perlindungan Data Peribadi (APDP) 2010**.

Aktiviti pemasaran langsung seperti memberikan maklumat mengenai produk dan perkhidmatan kepada individu melalui pelbagai kaedah komunikasi telah diiktiraf secara meluas sebagai aktiviti perniagaan yang sah. Akta Perlindungan Data Peribadi 2010 (APDP) mendefinisikan pemasaran langsung sebagai apa-apa bahan pengiklanan atau pemasaran yang ditujukan kepada individu tertentu. Aplikasi undang-undang ini kepada aktiviti pemasaran langsung berbeza-beza bergantung kepada medium melalui mana pemasaran itu disampaikan, iaitu, melalui pos atau komunikasi elektronik seperti sms, emel, panggilan telefon dan faks.

2. Undang-undang perlindungan data mengenakan kewajipan yang ketat ke atas penggunaan data peribadi bagi tujuan pemasaran langsung melalui komunikasi elektronik daripada pemasaran langsung melalui pos memandangkan komunikasi elektronik adalah lebih mengganggu daripada pos dari segi impak privasi. Sekatan ke atas penghantaran mesej pemasaran langsung yang tidak diminta melalui e-mel atau sms, seperti yang dinyatakan di Seksyen 43, APDP adalah bertujuan untuk memastikan bahawa hak privasi individu sentiasa dihormati.

Pemasaran Langsung Melalui Pos

3. Individu yang menerima bahan-bahan pemasaran langsung yang tidak diingini daripada penghantar yang tidak dikenali mempunyai hak untuk menghalang penerimaan bahan-bahan tersebut. Menjadi satu kesalahan di bawah undang-undang ini bagi sesebuah organisasi yang tidak menghormati permintaan bertulis daripada seseorang individu. Undang-undang ini meletakkan tanggungjawab ke atas sesebuah organisasi yang tidak mendapat data peribadi daripada individu secara langsung, seperti dari domain awam; untuk memaklumkan individu yang berkenaan berkaitan sumber asal data peribadi bagi membolehkan organisasi asal dihubungi.

4. Ini merupakan bentuk pemasaran langsung yang tradisional dan tertua. Untuk mel yang diterima di rumah atau peti surat dianggap sebagai pemasaran langsung, ia mesti memenuhi dua kriteria iaitu ia hendaklah dialamatkan kepada seseorang yang dinamakan dan kedua, ia mesti berkenaan produk atau promosi perkhidmatan. Undang-undang tidak terpakai bagi semua mel yang dialamatkan secara umum kepada penghuni, pemastautin atau empunya rumah.

5. Peraturan asas undang-undang yang terpakai kepada pemasaran langsung adalah bahawa persetujuan diperlukan daripada individu untuk penggunaan data peribadi mereka bagi tujuan pemasaran langsung. Di samping itu, seseorang individu perlu diberi hak untuk menolak penggunaan apa-data peribadi mereka pada masa pengumpulan data dengan menggunakan "*opt-out*" kemudahan secara percuma. Selanjutnya, dalam hal pemasaran langsung melalui cara elektronik, hak "*opt-out*" perlu disediakan di setiap mesej pemasaran berikutnya.

Pemasaran Langsung Melalui Komunikasi Elektronik

6. Setakat ini, komunikasi elektronik (iaitu mesej teks, mesej suara, mesej bunyi, mesej imej , mesej multimedia atau mesej e-mel) telah muncul sebagai medium yang paling popular digunakan untuk tujuan pemasaran langsung. Sama seperti pemasaran langsung melalui pos, komunikasi elektronik tidak boleh digunakan untuk pemasaran langsung tanpa persetujuan individu kecuali ia adalah dari seseorang dengan siapa individu berkenaan mempunyai hubungan sebagai pelanggan. Organisasi pemasaran langsung tidak dibenarkan untuk menggunakan komunikasi elektronik bagi pemasaran langsung kecuali dalam situasi di mana :

- Individu telah memberi persetujuan yang jelas untuk berbuat demikian;
- data peribadi individu telah diperolehi daripada sesuatu jualan produk atau perkhidmatan;
- individu telah dimaklumkan mengenai identiti organisasi pemasaran langsung, tujuan pengumpulan data peribadinya dan orang yang baginya data peribadi tersebut akan dizahirkan;
- bahan-bahan pemasaran langsung yang akan diberikan adalah terhad kepada produk dan perkhidmatan yang seumpama dengannya sahaja, dan
- kaedah untuk tidak mempersetujui penggunaan data peribadi individu bagi tujuan pemasaran langsung semasa pengumpulan data adalah disediakan.

7. Aduan mengenai pemasaran langsung yang tidak diminta boleh dibuat secara bertulis atau telefon kepada :

**Pesuruhjaya Perlindungan Data Peribadi
Aras 6, Kompleks KKMM
Lot 4G9, Persiaran Perdana , Presint 4
Pusat Pentadbiran Kerajaan Persekutuan
62100 Putrajaya**

Telefon : 03 89117924/7393/7920

Faks : 03 89117959

E-mel : pcpdp@pdp.gov.my

Apabila membuat aduan, individu perlu memberi maklumat sebanyak mungkin, termasuk butiran perhubungan, tarikh dan masa penerimaan mesej pemasaran langsung, salinan mesej (jika boleh), atau ringkasan kandungan mesej dan maklumat berkenaan urusan-urusan sebelum ini dengan penghantar **mesej**.

Kertas di atas mewakili cadangan awal Jabatan. Oleh itu, Jabatan ini ingin mengalu-alukan sebarang maklum balas dan pendapat mengenai perkara-perkara yang dicadangkan.