

ELECTRONIC DIRECT MARKETING GUIDELINES

**Personal Data
Protection Center**

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Introduction

Electronic direct marketing (EDM) has become a widely used tool for individuals and organisations seeking to promote their products, services, or initiatives, as they enable efficient and large-scale outreach. To do so, EDM relies extensively on personal data, including contact details, interests, and online behaviour, to tailor messages and reach target audiences effectively. They also frequently involve third parties, including email service providers and social media platforms, which facilitate delivery and audience targeting.

Given their nature, EDM gives rise to privacy concerns regarding the lawful parameters of data collection, data sharing, and data security, and entails broader considerations concerning the potential impact of marketing activities on data subjects' rights and freedoms. In this regard, the Personal Data Protection Law (PDPL) introduces and regulates the concept of EDM in a dedicated chapter to ensure respect for data subjects' rights and freedoms (Chapter 8).

This guideline sets out:

1. EDM key concepts;
2. EDM obligations under the PDPL; and
3. Key compliance considerations.

1. EDM Key Concepts

The following concepts are key to understanding EDM obligations under the PDPL:

1.1. Electronic Direct Marketing

For Chapter 8 of the PDPL to apply, marketing communications must be both (a) electronic and (b) direct.

a. Electronic

Electronic marketing definition (Article 1 of the PDPL):

“Sending any message, statement, advertisement, or marketing content—by any technological means—which directly or indirectly aims to promote goods, services, or commercial, political, social, or charitable requests, targeted at specific individuals.”

Accordingly, the means through which EDM is carried out—referred to as electronic direct marketing communications (EDMCs)—encompass all forms of electronic communications, including emails, text messages (SMS or instant messaging), live telephone calls, and automated calls.

In addition to the requirement of being electronic, the key element in any communication is their objective. Communications promoting a product, service or a cause fall under the scope of the PDPL, regardless of whether the objective of the communication is commercial or not. In other words, the PDPL applies to communications regarding political or charitable matters, as well as communications promoting free offers.

Note:

Purely customer-service-related communications do not constitute EDM. This is so long as the communication does not mix customer-service-related information with promotional content. For instance, a communication with the sole purpose of informing the data subject of the expected delivery date of a product does not fall within the scope of EDM under the PDPL.

b. Direct

The marketing communication must be direct, i.e., addressed to a specific individual or a defined category of individuals, relying on personal data such as names, contact details, or online identifiers.

By contrast, indirect communication refers to general or mass marketing activities that are not directed at specific individuals or identifiable groups that do not involve the use of personal data (such as billboards on public roads, television or radio commercials, or print advertisements). Given the lack of a personal element, indirect marketing falls outside the scope of the PDPL.

Note:

General marketing content displayed on a website, such as promotional banners or bars that are shown uniformly to all visitors and are not targeted at specific individuals using their personal data, does not constitute EDM under the PDPL.

However, where website marketing banners or bars are personalised, targeted, or triggered based on the processing of personal data (such as user profiles, behavioural data, or online identifiers), they may constitute EDM and remain subject to the applicable provisions of the PDPL.

1.2. Creator and Sender

Creators and senders can be either natural or juridical persons. While the creator determines the purposes and means of the EDM, the sender is responsible for delivering the EDMC to the data subject on behalf of the creator. The creator and the sender can be the same entity or separate entities.

Example:

Company A determines the purposes and means of a marketing campaign to promote their latest products. Company A engages Company B to send promotional emails to their customers on their behalf.

Company A is the creator	Company B is the sender
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If Company A sends the EDMC directly using their internal mailing system, it will be considered both the creator and the sender.

1.3. Opt In and Opt Out Mechanisms

An opt in mechanism refers to the means by which the data subject provides their consent to receiving EDMCs. In other words, once a data subject has opted in, they are eligible to receive EDMCs.

Conversely, an opt-out mechanism refers to the means by which the data subject withdraws their given consent or object to receiving EDMCs. The data subject uses such a mechanism to opt out from receiving EDMCs. Subsequently, honouring opt out requests requires the suppression of any personal data that was processed for EDM purposes.

2. EDM Obligations Under the PDPL

The following obligations set out the key requirements for creators, senders and EDMC content.

2.1. Creators Obligations

Creators must:

- Obtain an EDM license or permit titled “EDM for Self” prior to initiating any EDMC (*for more information on how to apply for permits and licenses, please refer to the Licenses and Permits Guideline*);
- Obtain the data subject’s valid consent prior to the sending of any EDMCs (*for more information on valid consent, please refer to the Data Subject’s Consent Guideline*);
- Honour opt out requests without undue delay; and
- Maintain an updated and accurate record of all opt out requests (referred to as “suppression list”).

Transitional Provisions for Existing Customers: the “soft opt in” mechanism

To ease the compliance burden during the one-year compliance grace period of the PDPL, creators may rely on the “soft opt in” mechanism to lawfully continue sending EDMCs to existing customers. This approach is an exemption to obtaining valid consent in situations where there is an existing customer relationship established through a prior sale of a product or payment for a service, and when the marketing activity relates to similar products or services offered by the same creator.

However, the “soft opt in” mechanism does not exempt creators nor senders from their EDM obligations, including the requirement to provide a valid opt out mechanism.

For more information on valid consent, please refer to the Data Subject’s Consent Guideline.

For more information on how to apply for permits and licenses, please refer to the Licenses and Permits Guideline.

2.2. Senders Obligations

Senders must:

- Obtain an EDM license or permit titled “EDM for others” prior to initiating any EDMCs, unless the creator is also the sender (*for more information on how to apply for permits and licenses, please refer to the Licenses and Permits Guideline*);
- Ensure the data subject’s valid consent is obtained;
- Refrain from disclosing the data subject’s contact details to any unauthorized entity; and
- Maintain electronic records evidencing the data subject’s consent, including any amendments or consent withdrawals. These records must be retained for a period of three (3) years from the date of the last EDMC sent to the data subject. *For more information on consent records, please refer to the Consent Guideline.*

2.3. Electronic Direct Marketing Communications Content Obligations

All EDMCs must include the following elements:

- The identity of both the creator and the sender;
- The contact details of the sender;
- The purpose of the EDM; meaning the message must explicitly state its objective, such as promoting products, services, or offers (e.g., “the purpose of this message is to promote our latest product range and exclusive offers”); and
- A valid opt out mechanism.

Note:

Legally, both creators and senders are responsible for ensuring EDMC content obligations are met. To mitigate the risk of incurring liabilities for another party’s non-compliance, both creators and senders are advised to clearly define and allocate roles and responsibilities in written agreement, to ensure EDMCs contain all information mandated by the PDPL.

What does a valid opt out mechanism look like?

Opt out mechanisms must be:

1) CLEAR

Presented in a visible and accessible format.

- **Consider:** Display the “Unsubscribe” option clearly within the message in a prominent and easily readable format.
- **Avoid:** Hide the “Unsubscribe” option within unrelated content or place it in a location that is difficult to find, such as in general website text or footer disclaimers.

2) SIMPLE

The withdrawal process must not require more than two steps.

- **Consider:** Provide a direct link that allows the user to confirm their opt out immediately.
- **Avoid:** Require the user to log in, complete lengthy forms, or give reasons for unsubscribing.

3) FREE OF CHARGE

No fees or costs may be imposed on the data subject for exercising this right.

- **Consider:** Offer a free opt out option through a link or email.
- **Avoid:** Require the user to call a premium-rate number or use any paid service to unsubscribe.

3. Key Compliance Considerations

Below is a list of practice tips for creators and senders to avoid commonly encountered pitfalls.

3.1. Effective Opt Out Mechanisms

It is important to regularly monitor the effectiveness of opt out mechanisms, for instance, by ensuring that unsubscribe links function correctly and that keywords used for opt out requests are accurate.

Example:

Company A sends marketing messages that instruct individuals to reply “STOP” to unsubscribe. However, their system only recognises the keyword “FISTOP”, which renders the opt out requests ineffective as they are not reflected in the company’s suppression list. This renders the EDMCs unlawful, as every promotional communication must include a clear and effective opt out mechanism.

3.2. Alignment Across All Systems

Lack of synchronisation of suppression records prevents opt out requests from being properly enforced when the data is processed across different systems. Therefore, it is important to:

- Map all systems across which the data is being processed to ensure the prompt and consistent reflection of opt out requests across all relevant systems, including marketing databases, contact lists, suppression records, and any tools used for EDMCs.
- Ensure that adequate internal governance and staff training are in place to honour opt out requests promptly and effectively.

3.3. Use of Third-Party Data

When obtaining personal data from brokers or partners, creators are legally liable to ascertain the existence of a valid lawful basis prior to using or re-using third party data. Such measures include:

- Carrying out due diligence on the chain of collection;
- Verifying the lawful basis on which data is collected; and
- Ensuring that data subjects were informed that their data could be used by third parties.

3.4. Use of Cookies and Tracking Technologies

The use of cookies or similar tracking technologies for EDM purposes is subject to EDM obligations, including obtaining the data subject’s prior valid consent.

3.5. Transparency and Consent Validity

Data users must avoid:

- **Deceptive consent interfaces (“dark patterns”):** Senders must avoid interfaces that visually emphasise the “accept” option while obscuring the “refusal” option, or those that bundle multiple choices into a single action. These practices create a false sense of choice, and lack transparency. Consent obtained through such interfaces is invalid as they are neither explicit, informed, nor freely given.
- **Deceptive messaging formatting:** Marketing communications must be explicitly identifiable as such. EDMCs cannot be disguised or formatted to resemble personal messages (e.g., mimicking the format and placement of emails within an inbox), since this presents a high risk of misleading the user. Acceptable alternative formats, such as “sticky banners”, must be clearly separated from a user’s content and remain visually distinct from the list of emails.

