

DIRECT MARKETING STAYING ON THE RIGHT SIDE OF THE LAW

FACT SHEET THREE

1 WHAT IS DIRECT MARKETING?

Direct marketing means, “to approach a data subject, either in person or by mail or electronic communication for the direct or indirect purpose of (a) promoting or offering to supply, in the ordinary course of business, any goods and services to the data subject; or (b) requesting the data subject to make a donation of any kind for any reason”.

3 PROHIBITION AGAINST DIRECT MARKETING

Section 69 of POPIA prohibits direct marketing by means of any form of electronic communication for example direct marketing via email, SMS, automatic calling machines or fax unless the recipient:

- has consented to receive direct marketing; or
- is a customer of the responsible party, subject to additional requirements being met.

Where you wish to rely on consent, you may only approach a data subject (who has not previously withheld consent) once in order to request his/her/its consent.

2 DO WE NEED TO CONSIDER AND APPLY BOTH POPIA AND THE CPA WHEN PERFORMING DIRECT MARKETING?

You must comply with both the Protection of Personal Information Act No. 4 of 2013 (“POPIA”) and the Consumer Protection Act No. 68 of 2008 (“CPA”) as it pertains to direct marketing. It is important to note that while section 69 of POPIA specifically regulates direct marketing via electronic communication, the CPA regulates direct marketing more broadly and applies to all forms of direct marketing. Where there is an overlap or contradiction between the provisions of the CPA and POPIA – you must apply the stricter requirement which affords the data subject / consumer the greatest protection.

4 CONTENT OF DIRECT MARKETING COMMUNICATIONS

Every direct marketing communication must contain (a) details of the identity of the sender or the person on whose behalf the communication has been sent and (b) an address or other contact details to which the recipient may send a request that such communications cease.

DIRECT MARKETING IN TERMS OF THE CPA

The CPA also regulates direct marketing by any means (i.e. it is not limited to direct marketing via electronic communications). All organisations (whether they are considered a responsible party or operator) would need to comply with the requirements of the CPA as it pertains to all forms of direct marketing in the wider sense.

A person who has been approached for the purpose of direct marketing may demand during or within a reasonable time after that communication that the person responsible for initiating the communication cease any further communication. The CPA requires that any person authorising, directing or conducting any direct marketing must implement appropriate procedures that allows recipients to, free of charge, opt-out of such communications. Once this demand has been received, the organisation must respect the data subject’s wishes and cease such direct marketing communications.

The CPA further regulates the dates and times that direct marketing can be sent to a consumer at his/her home.

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