

Direct marketing by means of unsolicited electronic communications

As this is a key section and deals with the processing of personal information for marketing and or promotion purposes, I have included the full requirements exactly as set out in the Act.

(1) The processing of personal information of a data subject for the purpose of direct marketing by means of any form of electronic communication, including automatic calling machines, facsimile machines, SMSs or e-mail is prohibited unless the data subject -

- (a) has given his, her or its consent to the processing; or
- (b) is, subject to subsection (3), a customer of the responsible party.

(2) (a) A responsible party may approach a data subject-

- (i) whose consent is required in terms of subsection (1)(a); and
- (ii) who has not previously withheld such consent, only once in order to request the consent of that data subject.

(b) The data subject's consent must be requested in the prescribed manner and form.

(3) A responsible party may only process the personal information of a data subject who is a customer of the responsible party in terms of subsection (1)(b)-

- (a) if the responsible party has obtained the contact details of the data subject in the context of the sale of a product or service;
- (b) for the purpose of direct marketing of the responsible party's own similar products or services; and
- (c) if the data subject has been given a reasonable opportunity to object, free of charge and in a manner free of unnecessary formality, to such use of his, her or its electronic details-
 - (i) at the time when the information was collected; and
 - (ii) on the occasion of each communication with the data subject for the purpose of marketing if the data subject has not initially refused such use.

(4) Any communication for the purpose of direct marketing 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.

(5) "Automatic calling machine", for purposes of subsection (1), means a machine that is able to do automated calls without human intervention.