Do Not Call Regime – Personal Data Protection Act

RAJAH TANN

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Training for Professional Investment Advisory Services

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Scope

- The Do Not Call regime/framework
- The organisation's Do Not Call Policy
- Checking with the DNC Registry

Introduction

- "DNC" = Do Not Call

 "PDPA" = Personal Data Protection Act
- DNC Policy to be implemented
- Sets out the processes and procedures to be followed in relation to complying with DNC obligations when sending marketing messages/making marketing calls
- All employees and agents are expected to strictly comply with the policy
- ❖ A risk of a breach of the DNC regime under the PDPA is severe : criminal liability → Penalties of up to \$10,000 per breach/message, and up to \$1,000 in composition fines

Introduction

- ❖ DNC Policy Will form part of the employment contract of employees
- ❖ Failure to comply with the policy or a breach by the employee of the terms of the DNC Policy will subject the employee to disciplinary proceedings including possible termination at the discretion of the organisation
- Organisation reserves the right to claim compensation and damages for any fine resulting from a breach of the DNC regime as a result of an action or omission of any employee

The Do Not Call regime/framework



Stop Calling Me!



General Overview

- Intended to allow individuals to opt-out of receiving marketing messages ("specified messages") by registering their Singapore phone numbers
- Does not cover marketing messages sent by post, email, in-person communication or other methods which do not use a Singapore telephone number
- ❖ Definition in use in these slides : "Do Not Call Provisions" or "DNC Provisions" means the Do Not Call requirements and prohibitions in the PDPA.

3 DNC Registers

- There will be three separate Do Not Call Registers covering:
 - Voice Calls
 - Text Messages (SMSes and MMSes)
 - Fax Messages
- Individuals can register on 1 or more registers. Registration by user or subscriber of telephone number is free
- ❖ The Do Not Call Provisions in PDPA come into effect starting from 2 January 2014. Users/subscribers can start registering their telephone numbers with the DNC Registry from 2 December 2013

Application of the DNC Provisions

- The Do Not Call Provisions apply to persons including individuals as well as companies, associations, and other bodies of persons, corporate or unincorporated
- ❖ The Do Not Call Provisions applies to any Singapore telephone number, whether mobile phone number, fax number, landline, residential or business line. DNC Provisions will apply so long as it is to a Singapore Telephone Number
- ❖ Applies to all senders of a specified message → Even if you outsource the sending of marketing messages, you are still deemed to be the sender → any sender will be held liable for the breach of the DNC Provisions → Who is sender?

Extra territoriality

- The requirements and prohibitions of the DNC regime have extraterritorial effect. They apply where:
 - the sender of the message is in Singapore when the message is sent to a Singapore telephone number; or
 - the recipient of the message is in Singapore when the message is accessed
- It is not possible to avoid the application of the DNC regime by outsourcing the sending of messages to an overseas service provider or a local service provider
- ❖ If that outsource provider breaches the DNC regime/framework, the parties in breach would include the outsourced provider as well as your organisation

"...the DNC Provisions apply to all marketing messages sent to all telephone numbers"

True/False?

DNC Provisions only apply to marketing messages sent to a Singapore Telephone Number

- Targeted at messages that contain marketing elements ("specified messages")
- A "specified message" is a message, where, having regard to
 - the content of the message
 - the presentational aspects of the message
 - the content that can be obtained using the numbers, URLs or contact information mentioned in the message
 - if the number from which the message is made is disclosed to the recipient, the content that can be obtained by calling that number,
- it would be concluded that the purpose/one of the purposes of this message is:
 - to offer to supply, advertise or promote goods or services;
 - to offer to supply, advertise or promote land or an interest in land;

- to advertise or promote a supplier, or prospective supplier, of goods or services
- to advertise or promote a supplier, or prospective supplier, of land or an interest in land
- to offer to provide a business opportunity or investment opportunity;
- to advertise or promote a business opportunity or investment opportunity
- to advertise or promote a provider, or prospective provider, of a business opportunity or investment opportunity
- any other prescribed purpose related to obtaining or providing information
- Immaterial whether goods, services, land, interest or opportunity exists or is lawful

- Exceptions to what are "specified messages:
 - any message sent by a public agency under, or to promote, any programme carried out by any public agency which is not for a commercial purpose
 - any message sent by an individual acting in a personal or domestic capacity
 - any message which is necessary to respond to an emergency that threatens the life, health or safety of any individual

- any message the <u>sole purpose</u> of which is
 - to facilitate, complete or confirm a transaction that the recipient of the message has previously agreed to enter into with the sender
 - to provide warranty information, product recall information or safety or security information with respect to a product or service purchased or used by the recipient of the message
 - to deliver goods or services, including product updates or upgrades, that the recipient of the message is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender

- any message the <u>sole purpose</u> of which is to provide
 - notification concerning a change in the terms or features of
 - notification of a change in the standing or status of the recipient of the message with respect to
 - at regular periodic intervals, account balance information or other type of account statement with respect to

a subscription, membership, account, loan or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of goods or services offered by the sender

- any message the sole purpose of which is to conduct market research or market survey
- any message sent to an organisation other than an individual acting in a personal or domestic capacity, for any purpose of the receiving organisation

Practical considerations

- ❖ There may be instances where you intend to call someone or send an SMS/MMS or a fax to someone where you are unsure whether it is a marketing message. ALWAYS err on the side of caution
- If unsure whether such message constitutes a marketing message, then the default position should be that you treat it as a marketing message and comply with the requirements of the PDPA
- Alternatively, seek clarification from your Data Protection Officer

Overview of the 3 key DNC obligations

- Overview of the 3 key obligations:
- a) Requirement to check the DNC Registry;
- b) Requirement to provide Contact Information;
- c) Voice call calling line identity prohibition.

Breach of the any of the above DNC obligations is **CRIMINAL**.

- Must within prescribed period prior to sending marketing message, checked with the DNC Registry whether the Singapore telephone number has been registered on the relevant DNC Register (depending on whether a fax, SMS or voice call is intended to be sent/made); and
- Can only send the marketing message to that Singapore telephone number via the mode of communication for which the Singapore telephone number has not been registered, within the validity period of the results.
- You must <u>NOT</u> send the marketing message if the Singapore telephone number is registered.
- Once the validity period has lapsed, organizations will be required to perform another check against the DNC Registry if they intend to continue their telemarketing activities.

Exception:

Clear and unambiguous consent which is in writing or other form which is accessible for subsequent reference.

- The following prescribed periods for checking Singapore telephone number against the DNC Registers will apply:
 - for Marketing Messages sent from 2 January 2014 and before 1 August 2014 (i.e. between 2 January 2014 to 31 July 2014), the prescribed period is 60 days.
 - for messages sent on or after 1 August 2014, the prescribed period is 30 days.
- ❖ If any person wishes to send a Marketing Message to an Sg Tel No., it is mandatory under the law to check with the DNC Registry unless clear and unambiguous consent given → Even if one takes the risk of not checking and indeed the Sg Tel No. is not registered, a criminal offence is still committed as the PDPA requires checking as a default.

- Exemption To The Requirement To Check
 - The Personal Data Protection (Exemption from Section 43)
 Order 2013 was announced on 26 December 2013. It introduced an exemption from the requirement to check.
 - The exemption will only <u>only apply to text or fax messages</u>, and does not applicable to voice calls

- ❖ To rely on the exemption, the following conditions must be met by the sender or his agent:
 - At the time of the transmission of the message, the sender is in an ongoing relationship with the recipient

AND

The purpose of the message is related to the subject of the ongoing relationship

- The Exemption is subject to the following conditions:
 - An exempt message must contain a statement to inform the subscriber or user that he may opt out from receiving via that SG telephone number any exempt from the sender in future by submitting an opt-out notice
 - An opt-out facility must be available and valid and capable of receiving the opt-out notice from the recipient, if any, at all times for a period of 30 days after the date on which the exempt message is transmitted
 - The opt out facility must not result in the recipient incurring any additional cost normally incurred in sending a text or fax message

- The Exemption will not apply if at the time of the transmission of the exempt message:
 - The recipient has withdrawn the consent given to the sender for sending to that number and the prescribed period under S47(3) of the PDPA has expired
 - The recipient has opted out from receiving any exempt message from the sender and a period of 30 days after the date on which the opt-out notice was submitted has lapse
 - The recipient has otherwise indicated to sender that he does not consent to the sender sending such messages

2) Requirement to provide contact information

All marketing messages must contain clear and accurate information:

- identifying the organisation that sent or authorised the sending of the message;
- on how the recipient of the message can contact the sender; and
- that is to be valid for at least 30 days after the recipient receives the message.

3) Voice call calling line identity prohibition

- Where voice call/telephone call made to the recipient, the calling line identity must <u>not</u> be concealed from the recipient
 - the recipient must be able to see the actual telephone number of the sender and the sender information on his telephone/mobile phone must not read as 'Blocked' or 'Private Number' or any other words to that effect.
- "Calling line identity" means the telephone number or information identifying the sender.

Do I have to check the DNC Registry?

"...before sending a marketing message to a Singapore Telephone Number, I always have to check the DNC Registry."

True/False?

❖ A person is not required to check the Do Not Call Registry before sending a specified message to a Singapore telephone number if the person has obtained clear and unambiguous consent of the user/subscriber of the Singapore Telephone Number to send marketing messages to that number.

Understanding Clear and Unambiguous Consent

- ❖ A mere failure to opt out through inaction on the part of the user or subscriber is insufficient. It must be opt-in.
- Consent has to be evidenced in <u>written or other form</u> and must be obtained from the subscriber or user of the Singapore Telephone Number for the sending of the message to that number

Evidence of Consent

- Evidence must be in written or other form so as to be accessible for subsequent reference
- Written form may include physical documents, documents or other form of records in electronic form
- Applies to both online and offline situations
- Regardless of the form in which consent is recorded, always ensure that you keep a record of the consent provided

Consent

- Mechanism of consent
- A person shall not, as a condition for supplying goods, services, land, interest or opportunity, require a subscriber or user of a Singapore telephone number to give consent for the sending of a specified message to that Singapore telephone number or any other Singapore telephone number beyond what is reasonable to provide the goods, services, land, interest or opportunity to that subscriber or user, and any consent given in such circumstance is not validly given
- Consent is not validly given if consent was obtained by providing false or misleading information/practices

Methods of obtaining Consent

- PIAS forms to be used
 - PIAS Financial Planner and Abridged Financial Planner Forms (to be used effective 1 Feb 2014)
 - PIAS Personal Data Notice & Consent Form
 - PIAS Personal Data Update Form
 - PIAS Event Evaluation Form
 - Email version of PIAS Personal Data Notice & Consent Form

Methods of obtaining Consent

Consent can be obtained from New & Existing Clients via the following Forms

- 1. Financial Planner ("FP") & abridged version of FP ("AFP"), available for use from 1^{st} February 2014
- 2. Personal Data Notice & Consent Form
- 3. Personal Data Update Form
- 4. Event Evaluation Form
- 4. Email version of Personal Data Notice & Consent Form

- Submit the form to DPU as per existing business lodgment process
- You are encouraged to maintain records on your end as well



- Submit soft copy of the form within 3 working days to DPU (dataprotection@proinvest.com.sg)
- You are encouraged to maintain records on your end as well



DPU updates internal records by;

- by 2 working days for consent given via FP Forms
- by 1 to 2 weeks for consents received via Personal Data Notice and Consent Form, Personal Data Update Form or Event Evaluation



- No DNC Register check is required for telephone numbers with given consent.
- However, any individual can instruct PIAS to withdraw the consent that he/ she had given before.
- Hence, always check the validity status of this consent for each number <u>prior</u> to calling, texting, faxing Marketing Message via PIAS Client Consent Portal* for the interim until when IAgent is running.

*To be launched end of January 2014, more information will be provided in due time

Methods of Obtaining Consent

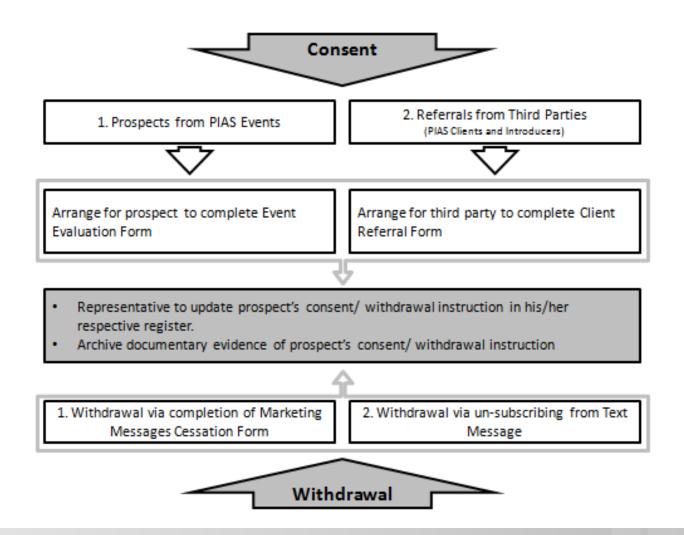
- The interim PIAS Client Consent Portal (To be launched end of January 2014) is limited to capturing only existing client's
 consent withdrawal data.
- Until when the <u>IAgent</u> system is available, such information of their own leads will be updated in registers maintained by each individual representative.
- Therefore, consent or withdrawal instructions of non-PIAS clients (prospects) should not be submitted to DPU as the system will not be able to capture the data.
- With the above, it is a requirement that the register contains all the below information specified in the below table illustration.

	Client Name	NRIC	CONSENT GIVEN			WITH DRAWAL INSTRUCTED		
			Voice Call Number(s) and Consent Date	SMS/ MMS Number(s) and Consent Date	Fax Number(s) and Consent Date	Voice Call Number(s) and Withdrawal Date	SMS/ MMS Number(s) and Withdrawal Date	Fax Number(s) and Withdrawal Date
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Each representative is responsible of ensuring

- The accuracy and completeness of the data entered and
- Prompt updates in the register upon receiving the consent or withdrawal instructions.

Methods of Obtaining Consent



Withdrawal of Consent

Withdrawal of consent

- An individual may withdraw consent at any time upon giving notice
- A person cannot prohibit an individual from withdrawing his consent, but this does not affect any legal consequences arising from such withdrawal
- The withdrawal can be in any form eg. sms, email, face to face, in writing. If you receive any withdrawal of consent by an individual to receiving Marketing Messages, you must <u>immediately</u> act upon it. > send it to <u>dataprotection@proinvest.com.sg</u>.

Withdrawal of consent

Obligations when withdrawal of consent notice received:

❖ Receipt of a notice of such withdrawal of consent means that an organisation must cease (and cause its agents to cease) sending marketing messages to that number after the expiry of the "prescribed duration".

"prescribed duration"

- 60 days, for a notice of withdrawal given by an individual from 2
 January 2014 to 1 July 2014 (inclusive); and
- 30 days, for a notice of withdrawal given on or after 2 July 2014.
- Criminal offence committed if you still send a marketing message to the individual after the above prescribed duration.

Procedure (1)

RECEIVING A REQUEST TO WITHDRAW CONSENT THROUGH ANY MODE OF COMMUNICATION (MEETINGS, CALLS, EMAILS, EXCEPT TEXT MESSAGE)

❖ You <u>must</u> advise the existing client to complete the Marketing Messages Cessation Form and forward a soft copy of the completed form to DPU at <u>dataprotection@proinvest.com.sg</u>

Procedure (2)

RECEIVING A REQUEST TO WITHDRAW CONSENT THROUGH TEXT MESSAGE

- Upon receipt of SMS, you <u>must</u> forward the request via email to <u>dataprotection@proinvest.com.sg</u>, with the following mandatory information
 - name of the existing client;
 - NRIC/ Passport Number of the client;
 - ❖ Date and time of un-subscription message sent by that client to withdraw his/ her consent

Withdrawal of Consent

Modes of Withdrawal for Consent from Existing Clients







Submit withdrawal instruction for only marketing via text message, via email within 3 working days to DPU (dataprotection@proinvest.com.sg) with the following mandatory information;

- Name of the client
- 2. NRIC/ Passport Number of the client
- Date and time of un-subscription message sent by that client to withdraw his/ her consent

- Arrange for client to complete Marketing Messages Cessation Form
- Submit soft copy within 3 working day to DPU (dataprotection@proinvest.com.sg)

DPU updates internal records within 2 weeks, you will be able to access the updated records in the PIAS Clients Consent Portal* thereafter.



Upon withdrawal of consent, you <u>must</u> be checked with the DNC Registry whether that Singapore telephone number is registered on the relevant DNC Register <u>prior</u> to calling, texting, faxing Marketing Message hereafter

^{*}To be launched end of January 2014, more information will be provided in due time

Dealing with vague communication

VAGUE COMMUNICATION

- When you are unclear on whether that individual is seeking to withdraw his consent to receive specified messages but you have an impression that the individual appears to be seeking to withdraw his consent
- ❖ You must clarify with the existing client, advise the existing client to complete the Marketing Messages Cessation Form

Third party leads

- ❖ You are allowed to purchase information of leads (which may include the leads' telephone numbers) from a third party source *provided* that you filter all the numbers with the DNC Registry before calling.
- You must get a suitable warranty/declaration from such third party source (Introducers and Client Referrals). Refer also to the Client Referral Form.
- Prior to disclosing the personal data of a lead to PIAS, you should ensure that the lead has consented to you disclosing his/her personal data to PIAS (either by way of written forms or verbal consent).

Engaging third parties to send messages

- ❖ Before engaging third parties to send messages on your organisation's behalf, you must ensure that:
 - your Data Protection Officer is notified in writing about it
 - such engagement has been authorised by your head of department.
 - there is a written contract in place between your Organisation and the third party service provider.

DNC Provisions and the 8 data protection principles

- ❖ PDPA consists of two parts which every organisation needs to comply with. One part is the DNC regime/framework while the other is the 8 DP principles.
- ❖ The DNC regime/framework will come into force first on 2 January 2014, while the 8 DP principles come into force on 2 July 2014.
- ❖ As the DNC regime/framework comes into force first, it is possible for you to send a marketing message to an individual whose Singapore telephone number you have checked is not registered on the DNC Registry, without breaching the 8 DP principles (this is because the 8 data protection principles do not come into force until 2 July 2014).
- This will only apply to specified messages sent during the period between 2 January 2014 and 1 July 2014 inclusive.

Checking with the DNC Registry



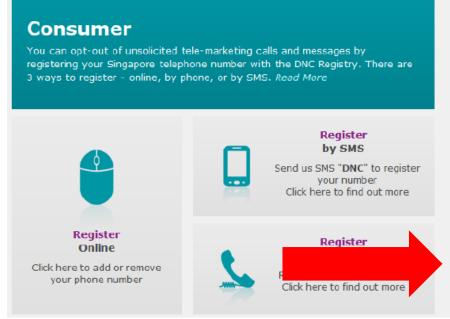
To use the services of the DNC Registry, an individual will need to:

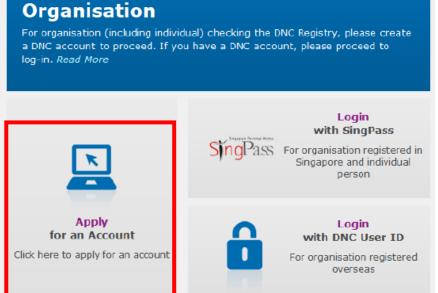
- ❖ Apply for a individual account with the DNC Registry.
 - There is a one-time creation fee for each account.
 - Each account will receive 500 free credits every year which will be valid for one year from the given date.
 - One time registration fee



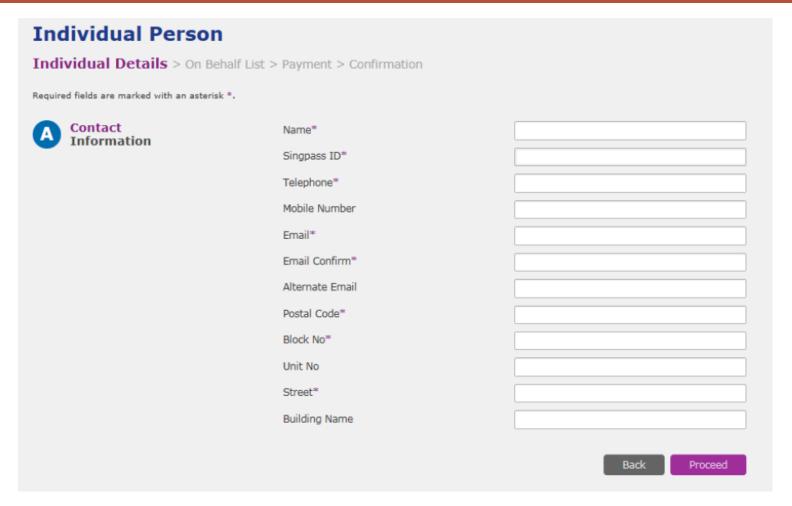


Welcome to the Do Not Call (DNC) Registry

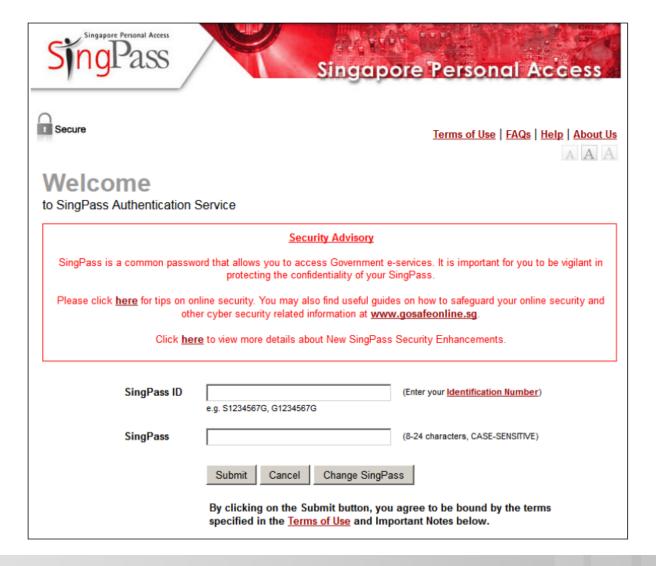




Source of pictures: Personal Data Protection Commission



Choose "Individual Person" option



Account Creation Summary

Organisation Details > Sub Account > On Behalf List > Payment > Confirmation

Organisation Name: ABC Company
Main Account: John Doe

Email: jdoe@abc-company.com

Telephone: 65562342

List of Sub Account(s)

Account Name	Office Number	Mobile Number	Email Address
John Tan	65523342		jtan@abc-company.com

Payment Details

Description	Unit Price (SGD)	Quantity	Sub Total (SGD)
Main Account	\$30.00	1	\$30.00
Sub Account	\$30.00	1	\$30.00
GST			\$4.20
Grand Total			\$64.20

Back

Proceed To Payment

Registration Confirmation

Organisation Details > Sub Account > On Behalf List > Payment > Confirmation

An activation email has been sent to the contact person of the main account and each sub account (if any).

Payment Amount: \$64.20

Payment Method: Internet Banking
Payment Reference Number: TEST585151

Payment Date/Time: 18 September 2013 03:10:16

DNC Reference Number: DNCA13091858818

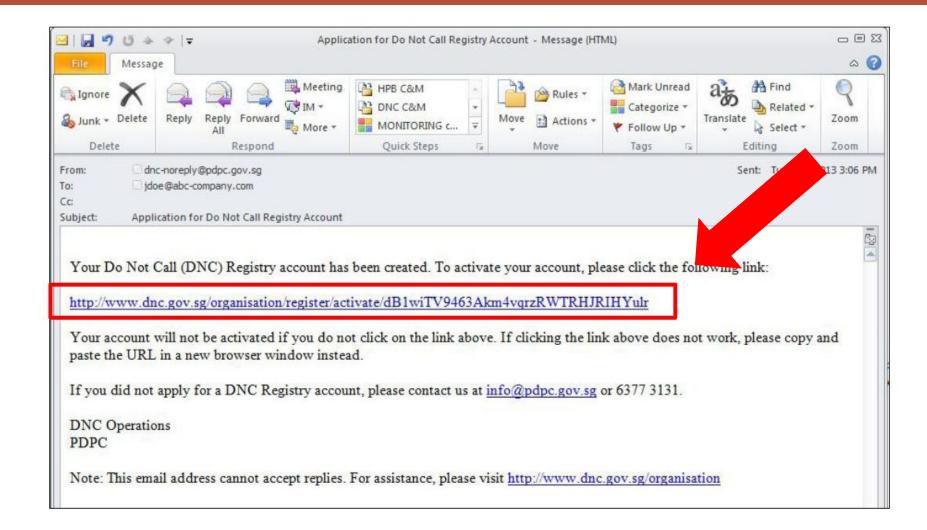
 Main Account
 \$30.00

 Sub Account
 \$30.00

 GST
 \$4.20

 Grand Total
 \$64.20

View Receipt

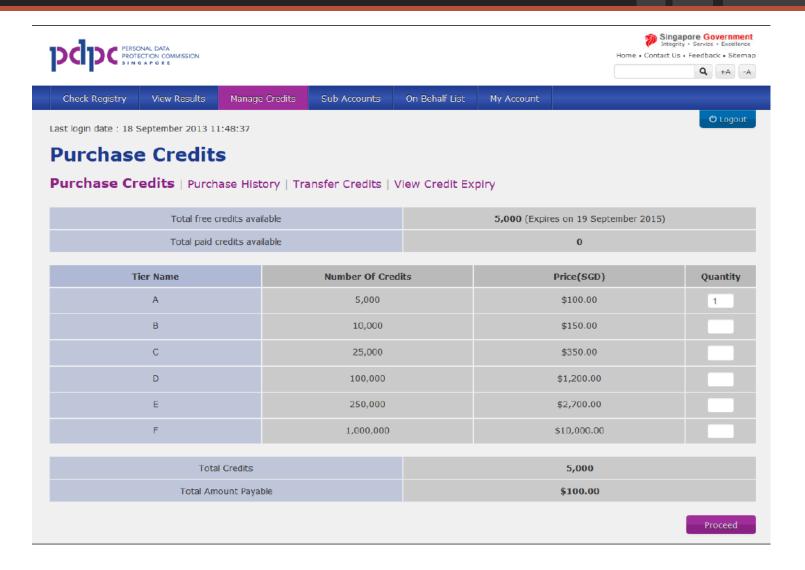


Pricing Breakdown

Pre-paid Pricing Breakdown			
Price (S\$)	No. of credits	Price (S\$)	Price Per Number (S\$)
А	5,000	100	0.02
В	10,000	150	0.015
С	25,000	350	0.014
D	100,000	1,200	0.012
E	250,000	2,700	0.0108
F	1,000,000	10,000	0.01

Pay-per-use Pricing Breakdown		
Quantity of Valid Numbers Submitted	Price Per Number (S\$)	
1 – 4,999	0.025	
> 5,000	0.023	

Buying Pre-paid Credits



Buying Pre-paid Credits

Payment Summary			
Description	Unit Price (SGD)	Quantity	Sub Total (SGD)
Tier A	\$100.00	1	\$100.00
GST			\$7.00
Grand Total			\$107.00

Payment Confirmation

Payment Amount: \$107.00

Payment Channel: Internet Banking
Payment Reference Number: TEST596530

Payment Date/Time: 19 September 2013 05:17:23

DNC Reference Number: DNCA13091962860

Tier A \$100.00 GST \$7.00 Grand Total \$107.00

Download Receipt

Back

- Log in at <u>www.dnc.gov.sg</u>
- Telephone numbers submitted will be checked against all three DNC registers automatically. Each number will be charged, regardless of duplicates.

There are two methods to submit telephone numbers for checking against the DNC Registry:

- 1. Small Number Lookup: Enter up to 10 telephone numbers at a time via the DNC Registry website.
- 2. Bulk Filtering: Submit as many telephone numbers as required by uploading a file to the DNC Registry website.

- ❖Small Number Lookup : results will be displayed immediately
- ❖Bulk Filtering of numbers: results will be available within 24 hours
- ❖ An email and/or SMS will be sent to notify account holders when the results are available. Account holders may access the results of telephone numbers checked against the DNC Registry

Checking the registry:

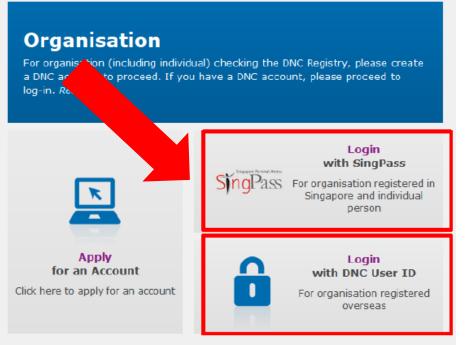
- When you check a Singapore telephone number against the DNC Registry, you will receive a confirmation from the DNC Registry on whether the telephone number in question is registered in the relevant DNC Register or not. Subject to further changes from the PDPC
 - if you see the notation "NR", it means the telephone number in question is not registered with the DNC Register in question; or
 - If you see the notation "DNC", it means the telephone number in question is registered with the DNC Register in question.

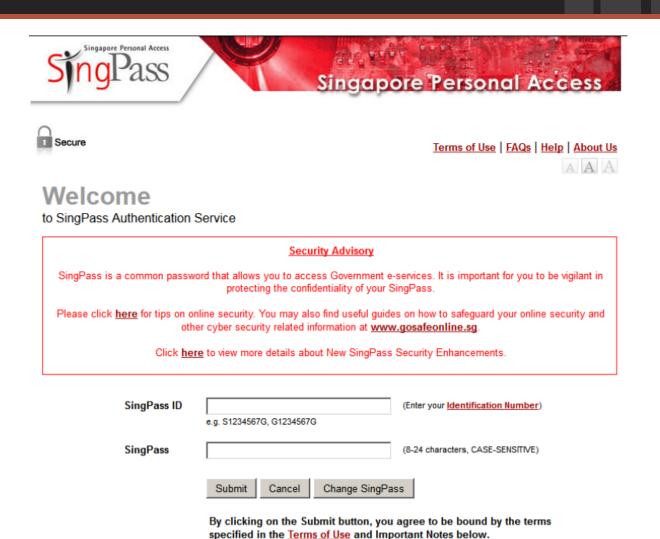


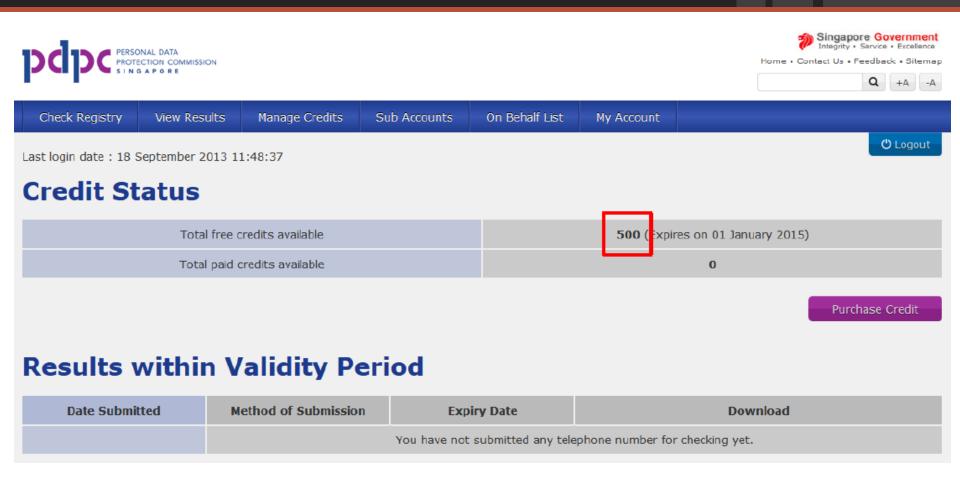


Welcome to the Do Not Call (DNC) Registry



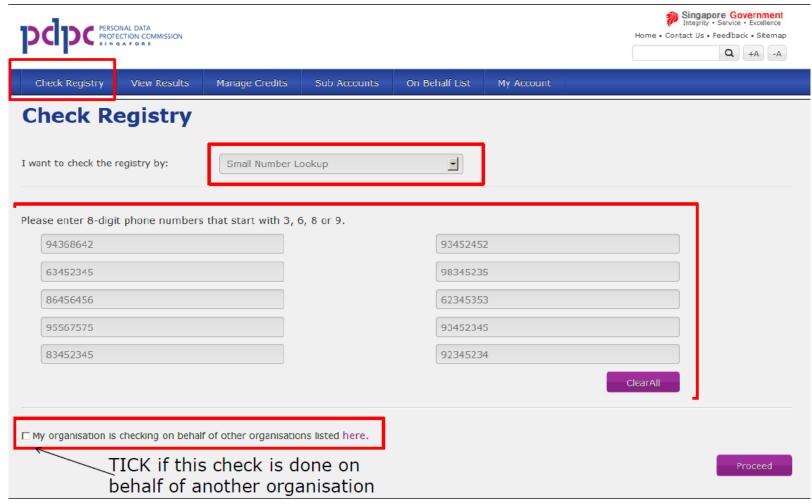




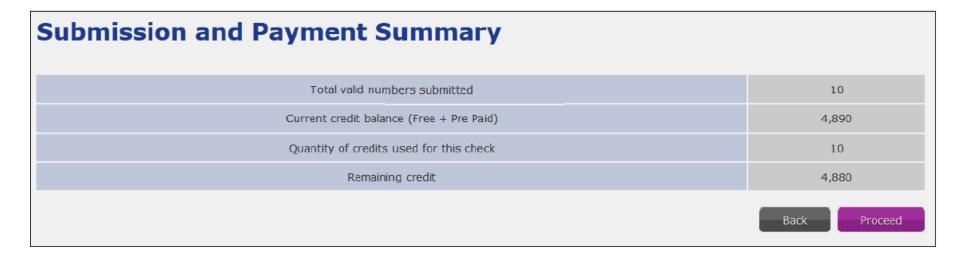


Dashboard

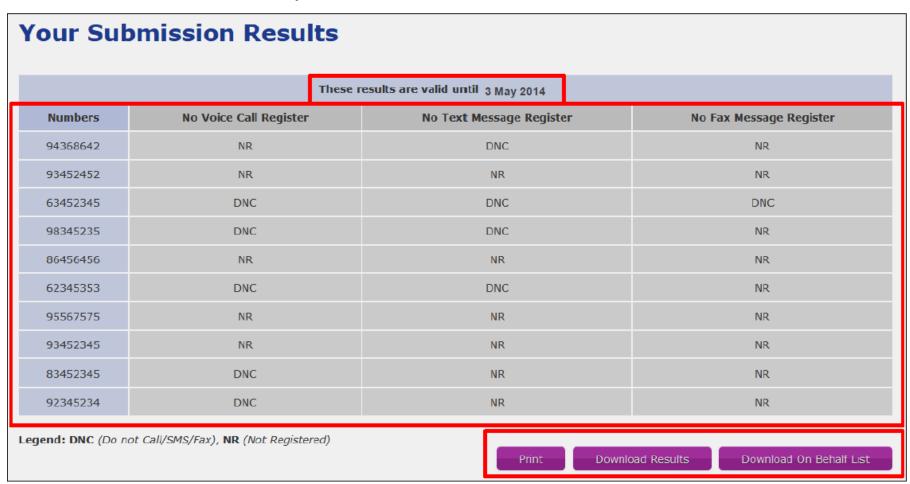
Small Number Lookup



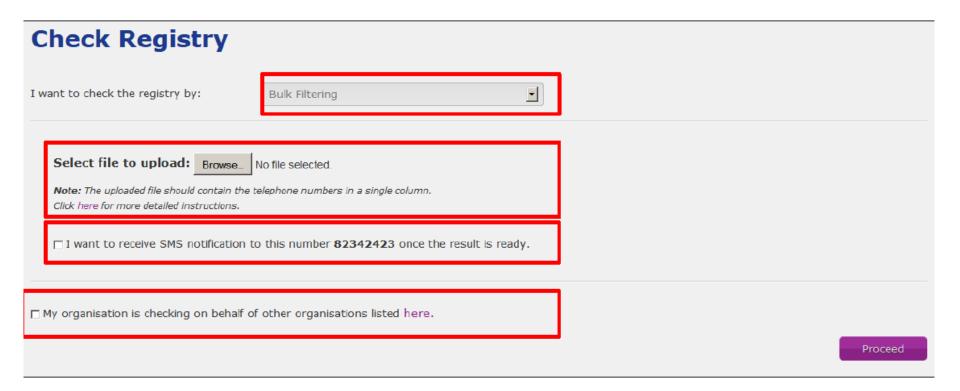
Small Number Lookup - Payment



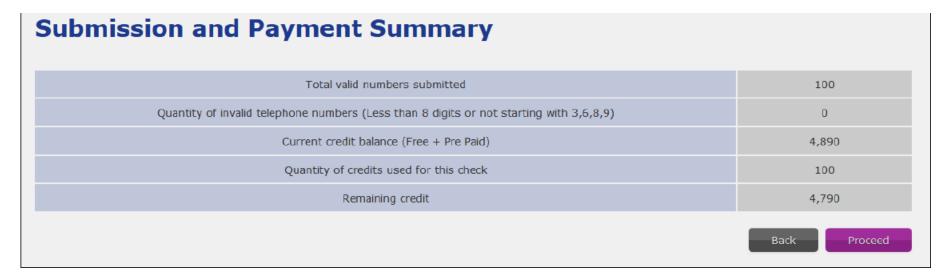
Small Number Lookup - Results

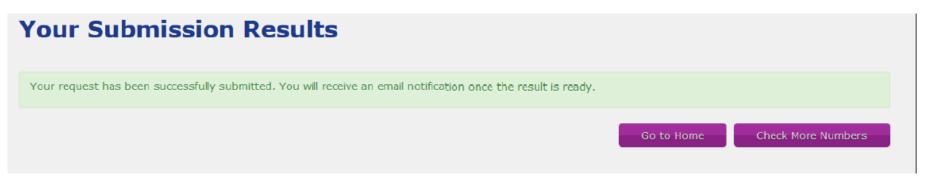


Bulk Filtering

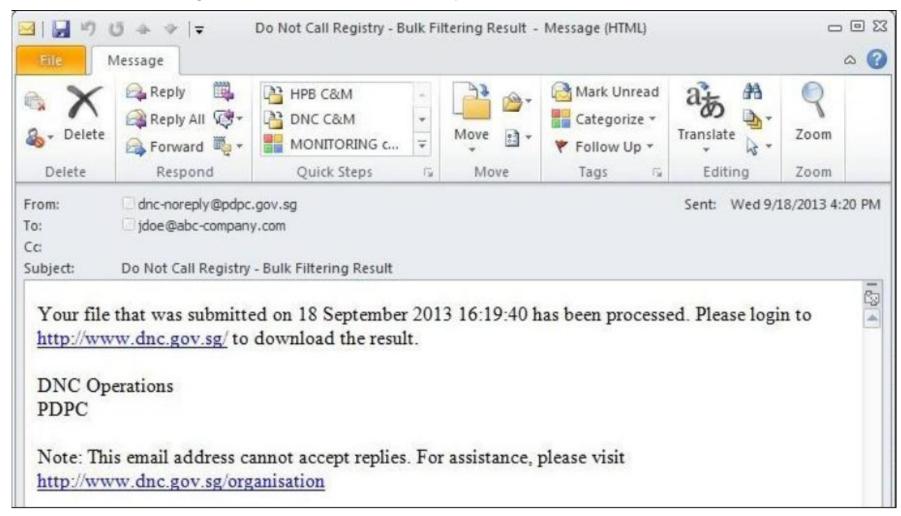


Bulk Filtering - Payment

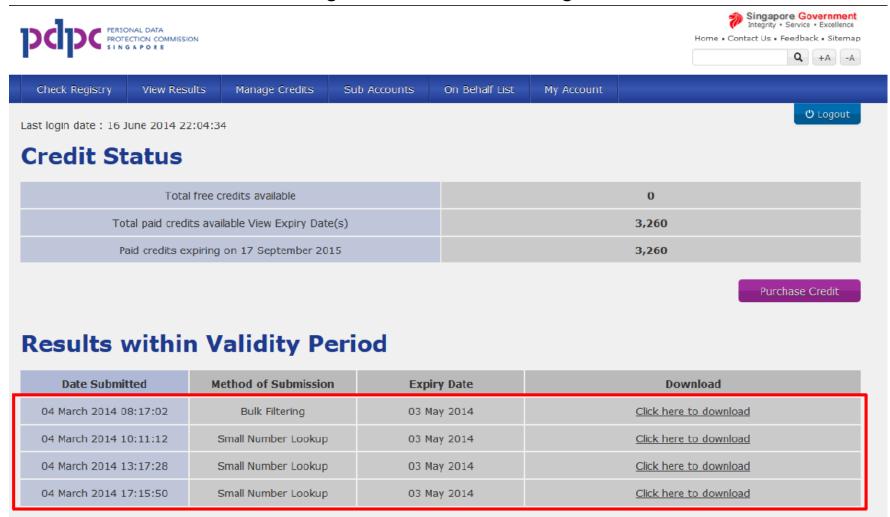




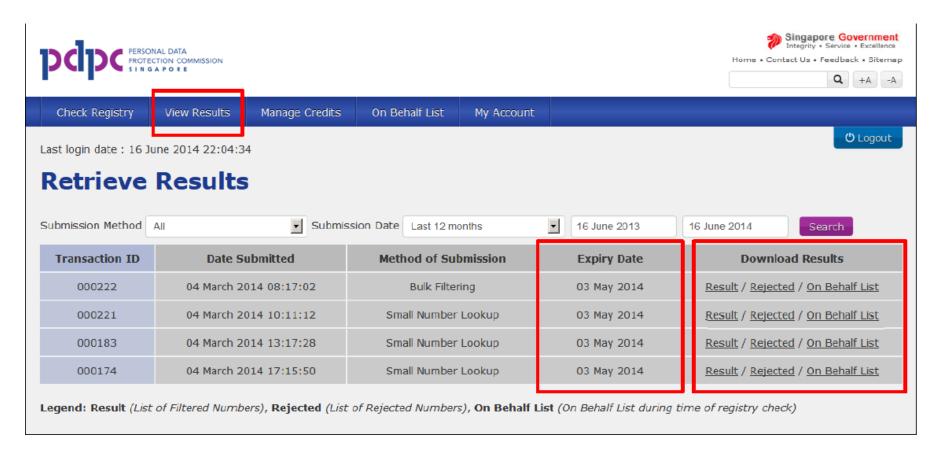
Bulk Filtering – Results notification by email (or SMS) within 24 hours



Dashboard after submitting numbers for checking



Viewing current and past results



Validity Period of results

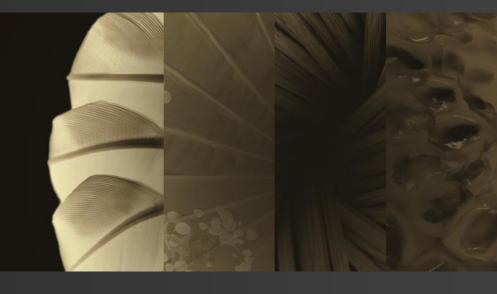
Validity period of results returned from the Do Not Call Registry

Receipt of Results	Validity Period	Remarks
Between 2 January 2014 to 31 May 2014 (both dates inclusive)	60 days from receipt of results	E.g., If an organization submits telephone numbers for checking against the Do Not Call Registry and receives the results on 4 March 2014, the results will be valid until 3 May 2014.
Between 1 June 2014 to 1 July 2014 (both dates inclusive)	Until 31 July 2014	As this is the transition period between the 60/30 days validity period, all results received during this period will be valid until 31 July 2014.
From 2 July 2014 onwards	30 days from receipt of results	E.g., If an organization submits telephone numbers for checking against the Do Not Call Registry and receives the results on 4 July 2014, the results will be valid until 4 August 2014.

Checking the registry:

- ❖ For any and all results that you receive from the DNC Registry on your checks, you must keep a copy of the same for future verification or investigation. How long?
- ❖ Once the validity period for a check on a Singapore telephone number has expired, you <u>must</u> re-check that Singapore telephone number with the DNC Registry to ensure that it is not registered in the relevant DNC Registers before sending a specified message to that Singapore telephone number.

Questions?



RAJAH NAT

Lawyers who know Asia

Thank You

