

29 April, 2012

Ministry of Information, Communications and
The Arts

Singapore

Submitted via email: mica_dp_bill_consultation@mica.gov.sg

Re: Public Consultation on the Proposed Personal Data Protection Bill

Dear Sir or Madam:

Wells Fargo & Company and its subsidiaries (“Wells Fargo”) appreciate the opportunity to comment on the Ministry of Information, Communications and the Arts (“MICA”) public consultation on the proposed Personal Data Protection Bill (the “Bill”) including the framework for consumer data protection and establishing a national do-not-call registry for Singapore. Wells Fargo is one the largest financial services companies in the United States and provides commercial and retail banking, insurance, mortgage banking, investments, investment banking and other financial services. Several Wells Fargo businesses conduct business with commercial and institutional clients in Singapore.

It is important that the Bill is clear about when it will apply to data activities and in that regard, the proposed Bill covers situations where personal data is “located” in Singapore at the time of collection. Given that data is often stored on servers that may be located anywhere but accessed from other locations, it is unclear to Wells Fargo when data would be deemed to be “located” in Singapore and therefore when the law would apply. Wells Fargo urges MICA to limit the general applicability provision to collection of the data from an individual physically located and exclude the reference to location of the data.

In addition, Wells Fargo commends MICA on excluding Business Contact Data from the consent requirements as well as access, security and other obligations under the Bill. However, it would still require notice with regard to the purposes, which can be problematic in business situations. If the purposes are consistent with the expectations (i.e. for use to contact the individual in connection with his/her employment), Wells Fargo urges MICA to consider also excluding the notice for Business Contact Information. Wells Fargo also notes that it is unclear how notices can be “provided” in the context of collecting personal information from business representatives. We urge MICA to provide additional guidance on provision of data protection notices in the business context, including posting the notice on the controller’s website as an appropriate means to provide the data protection notice, at least in the context of notices to business representatives. Finally, we reiterate our prior comments in regard to the Do Not Call registry and urge MICA to exclude business phone numbers from coverage and to establish an Established Business Relationship exception.

Attached please find our comments. Wells Fargo appreciates the opportunity to comment on the proposed DNC registry framework. Please feel free to contact the undersigned at +1-(704)374-2302 or Kathryn.d.kohler@wellsfargo.com if you have any questions regarding the foregoing.

Sincerely,

Kathryn D. Kohler
Kathryn D. Kohler
Senior Counsel

Together we'll go far



Summary of Comments

It is important that the Bill clearly indicate when its provisions will apply to avoid confusion and unintended consequences. It is unclear to Wells Fargo when personal data will be considered to be “located” in Singapore at the time of collection such that the provisions of the Bill would apply to handling of that data. Since most data is now stored electronically on servers that can be located anywhere and accessed from multiple locations, the location of personal data can be difficult to determine and perhaps should not be relevant to the applicability of a country’s data protection law. Therefore, Wells Fargo urges MICA to eliminate the location of data as a condition for applicability of the Singapore data protection law.

Wells Fargo commends MICA for the proposed exclusion of Business Contact Data from most provisions of the Bill given the nature of that data and the usual circumstances of collection and use. However, the Bill would still require provision of a data protection notice describing the purposes of use to the individual, which can be problematic in many business contexts. Wells Fargo recommends that MICA limit the requirement to provide the notice to those situations where the purposes would exceed the usual expectations for use relating to contact with individuals in their capacity as representatives of their corporate employer or business. If MICA decides to retain the notice requirement, Wells Fargo urges it to clarify that the notice can be provided by posting on the public website or physical office locations in Singapore, at least in the context of Business Contact Data.

Comments

Scope – Applicability to Personal Data “located” in Singapore

The Bill states that it will not apply unless the Personal Data in question has a Singapore link. It further states that personal data will be considered to have a Singapore link if the personal data is collected from an individual who is physically present in Singapore at the time of collection or *the personal data was located in Singapore at the time of collection*. In regard to this latter condition, Wells Fargo believes that the physical location of data may no longer be relevant in the current data management environment. Since data is often stored on servers that can be located anywhere (e.g. cloud computing) and accessible from multiple locations, it is often not clear where the data is located and the location of the data may not be relevant for purposes of establishing a Singapore link. For example, Wells Fargo personnel in Singapore may collect personal information from representatives of corporate clients located in Malaysia by electronic means (e.g. email) and stored in servers in other locations and it is unclear whether that would constitute data “located” in Singapore thus implicating the provisions of the Bill. Wells Fargo recommends that MICA provide delete the location provision and limit the general provision to collection of data from an individual physically located in Singapore.

Exclusion for Business Contact Data – Notice still required

Wells Fargo commends MICA on its decision to exclude Business Contact Data from many of the requirements of the Bill, including consent for collection, use and disclosure¹, access and correction and care of personal data, given the purposes and expectations with respect to that data. However, it is our understanding that a data protection notice would still be required to be provided to those individuals describing the purposes of collection, use and disclosure of the data. Initially, we note that it is unclear how to “provide” the notice in this context. Although controllers may collect Business Contact Data directly from the individuals, they often obtain it from other sources (such as the company, public sources, referrals, etc.). In those contexts, there is no direct contact with the individual at the time of collection during which the notice could be provided. Even in the direct collection situation, it is not a usual business practice to hand out data protection notices in connection with exchange of business cards and the like.² In addition, if the

¹ Wells Fargo notes that MICA’s consultation paper indicates that the Bill will exclude Business Contact Data from consent requirements for collection, use and disclosure, however the Bill only references Business Contact Data in Schedule III (collection), but does not list it in Schedules IV (use) or V (disclosure). We recommend adding Business Contact Data in those Schedules as well for clarity.

² We understand in the direct collection situation, consent may be “deemed” and a data protection notice may not be required.

purposes of collection, use and disclosure of Business Contact Data are consistent with business expectations (e.g. to contact individuals at the business in connection with their employment, profession or business representation of the corporate client), the notice would not add any additional information and in fact would likely describe rights not applicable to that data (such as access, consents, etc.). Wells Fargo urges MICA to similarly exclude the requirement to provide a data protection notice in connection with collection, use and disclosure of Business Contact Data, unless the purposes exceed those expected uses for business communication.

If MICA determines that data protection notices are still appropriate in regard to collection, use and disclosure of Business Contact Data, Wells Fargo urges MICA to provide additional guidance on how controllers may “provide” the notices. We recommend that MICA authorize provision of such notices by public posting on the website of the controller and/or in publicly accessible offices located in Singapore.

Do Not Call Registry

Wells Fargo currently only conducts business-to-business marketing activities in Singapore. These activities and contacts may be made through a variety of means including face-to-face meetings, meetings at conferences or other events and referrals. This is similar to how many, if not most, organizations generate leads. However, requiring organizations to scrub any such telephone contacts prior to making calls to other corporate and institutional organizations, or to obtain express consents, would be counterproductive and is not consistent with current business practices. Wells Fargo reiterates its recommendation to exclude business phone numbers from coverage of the Registry as inconsistent with usual business practice and contrary to promoting commerce in Singapore. As an alternative, MICA could include a provision requiring businesses to accept requests not to call a business number (opt out) to give individuals with business numbers some control over receipt of marketing calls.

Wells Fargo also reiterates its recommendation that MICA include an exception to the requirement to scrub the registry prior to making a call for existing business relationships (“EBRs”). Establishing the DNC registry in such a way that a customer, registering their numbers to avoid numerous marketing calls from unknown companies, will then no longer learn about benefits from businesses with which they currently have relationships, is likely to result in more expense and fewer options for consumers. On the other hand, implementing an EBR exception so that businesses that have customer relationships with the consumers can call them unless and until the consumer instructs them not to continue making calls sets the right balance. Consumers who do not wish to hear from their businesses, can (and will) opt out from those calls. This approach would allow consumers to register their number on the DNC registry without limiting their ability to learn about good deals or new products from businesses with which they currently engage. Similarly, this approach would be applicable for business customers, should MICA continue its approach of including business phone numbers on the Registry.

Conclusion

Wells Fargo respectfully recommends that MICA amend the Bill to clarify applicability of the law as it relates to personal data “located” in Singapore at the time of collection. In addition, we urge MICA not to require provision of a data protection notice when collecting, using or disclosing Business Contact Data unless it will be used for purposes other than contacting the individual in connection with his/her employment, profession or business representation of the corporate entity.

Wells Fargo respectfully recommends that MICA revise the framework for the DNC Registry for Singapore by (1) excluding business phone numbers from coverage of the rule, and (2) including an existing business relationship exception allowing businesses that have EBRs with an individual to continue to call those individuals even though the individual has registered his or her phone number on the DNC registry, unless and until the individual tells that business to discontinue calls.