

**Code of Practice on the Handling of
Customers' Deposit and Prepayments of Charges
for Telecommunications Services**

Industry Consultation Paper

22 November 1999

Introduction

In June 1999, two paging companies in Hong Kong went into liquidation. As the liquidation was sudden and a considerable number of subscribers were using the paging services of these two companies before the liquidation, there were public concerns about whether there was sufficient protection of consumer interests in a situation when a telecommunications service provider went into liquidation.

2. One of the issues that drew the public's particular attention was the reimbursement of customers' deposit and prepayment of charges. The public was concerned that, when a telecommunications service provider suddenly went into liquidation, customers who had paid deposit or made prepayment of service charges to the telecommunications service provider might not be able to get full reimbursement of the outstanding amount of money from the telecommunications service provider. This is because the customers were only unsecured creditors in the liquidation proceedings.

Consideration for Regulation

3. In response to the public's concerns, the Telecommunications Authority (TA) has recently conducted a study to assess whether it is a common practice for consumers to pay deposit or make prepayment of charges in the telecommunications industry. The result of the study indicates that almost all telecommunications service providers receive from their customers in one form or another deposit payments or prepayment for service charges. The amount of deposit or prepayment of charges ranges from less than one hundred dollars (e.g. one month's subscription charge) to several thousand dollars (e.g. 36 months' subscription charge). One common form of prepayment is pre-paid telephone cards for IDD services or mobile services. In general, the

deposit and prepayment of charges are kept by the telecommunications service provider for a rather long period of time and are refunded to consumers upon their termination of subscription of service or in phases during a contractual period.

TA's Preliminary Views

4. In view of the fact that it is common in the telecommunications industry that consumers pay deposit or make prepayment of charges, to protect consumer interest, the TA is of the preliminary view that there may be a need for the imposition of certain regulatory controls over the telecommunications service providers so as to ensure that they all take a serious and responsible attitude in handling customers' deposit and prepayment of charges. In addition, it is also necessary to enhance consumers' awareness of the risks associated with deposit and prepayment of charges made to telecommunications service providers.

5. Despite the above preliminary view, the TA does not recommend at this stage to make provisions in the legislation nor in the licences of the telecommunications service providers for this purpose. The TA considers that the telecommunications industry should be given firstly the opportunity to self-regulate on the issues relating to the handling of customers' deposit and prepayment of charges.

6. The Consumer Council is having a similar view as the TA. It has suggested to the TA that a set of guidelines be developed for the telecommunications service providers to follow in handling customers' deposit and prepayment of charges. The TA agrees that the suggestions of the Consumer Council merit further considerations. The TA further considers that, if the guidelines can be enforced as a Code of Practice (the "Code") in the telecommunications industry, the confidence of consumers and the goodwill of the telecommunications industry will be substantially enhanced. With greater consumer confidence and better goodwill, it would be easier for the telecommunications service providers to market their services and to sustain the prosperity and growth of the telecommunications industry.

The Draft Code

7. The TA has prepared a draft Code at Annex I. In drawing up the draft Code, the TA has considered the following three suggestions from the Consumer Council:-

- (a) Include a Cautionary Reminder
Companies should include a reminder on documentation passed to consumers (such as sales contract) in participating in a prepayment scheme, that making the prepayment is not risk free and that if a company should go out of business, there is no guarantee that consumers will recover their money.

- (b) Secure a Guarantee from a Third Party
To render the above qualification unnecessary, a business could secure a guarantee from a third party such as a bank, an insurance company or a trade association that, if it cannot meet its obligations, the money paid into the prepayment scheme will be repaid.

- (c) Act with Prudence
Companies should commit themselves to acting with prudence. If they have specific obligations attached to a prepayment scheme there should be corresponding funds or related goods or services to fulfill expectations from consumers. In addition, avoiding the use of money raised through prepayment schemes for non-related activities would be a sound prudent practice.

8. Points (a) and (c) were adopted and refined to cater for the needs of the industry. A cost would be involved to secure a guarantee from a third party and the cost will eventually be passed to the consumers. Point (b) would involve additional cost burden to the consumers. The TA considers that further deliberation should be made before inclusion in the Code.

9. The Telecommunications Users & Consumers Advisory Committee (UCAC) under the auspices of the Office of the Telecommunications Authority has been consulted on this issue at its meeting held on 9 October 1999. UCAC Members generally agreed that there was a need to protect consumer interest and supported the TA's proposal of issuing the attached Code for the telecommunications service providers to follow in handling customers' prepayment for telecommunications services.

Invitation of Comments

10. The TA invites comments from the telecommunications industry and interested parties on the adoption of the Code as proposed at Annex I. Views and comments should be made in writing and should reach the Office of the Telecommunications Authority **on or before 17 January 2000**. The TA reserves the right to publish all views and comments and to disclose the identity of the source. Any part of the submission which is considered commercially confidential should be clearly marked. The TA would take such markings into account in making his decision as to whether to disclose such information or not. Submissions should be addressed to:

Office of the Telecommunications Authority
29/F, Wu Chung House
213 Queen's Road East
Wan Chai
Hong Kong
[Attn: Senior Executive officer (Regulatory)]

Fax: 2803 5112
E-mail: comments@ofta.gov.hk

Office of the Telecommunications Authority
22 November 1999

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Preamble

In order to protect consumer interest and to enhance consumer confidence towards prepayment schemes offered by telecommunications service providers, the Telecommunications Authority ("TA") recommends telecommunications service providers to adopt this Code of Practice (the "Code") in handling customers' prepayment for telecommunications services.

For the avoidance of doubt, nothing in this Code absolves any member of the industry from operating in accordance with the terms of its licence and legislation currently in force in Hong Kong.

Basic Guiding Principles

- Before a telecommunications service provider collects any deposit or prepayment of charges from a consumer, the telecommunications service provider should explain to the consumer in detail the nature of the deposit and the prepayment of charges so that the consumer can exercise his/her freedom of choice of whether to pay the deposit or make the prepayment.
- The consumer should be reminded that, in case the telecommunications service provider goes into liquidation, the rights for the consumer to get reimbursement of the deposit and unredeemed prepayment of charges will be subject to the relevant laws and regulations governing liquidation of companies in Hong Kong.
- The telecommunications service provider should include a reminder on documentation passed to consumers (preferably on the relevant contract between the consumer and the telecommunications service provider) that paying the deposit or making the prepayment is not risk

free and that in case the telecommunications service provider goes into liquidation, there is no guarantee that consumers will receive their money back.

- If the prepayment of charges is associated with the provision of a "free" or "discounted" telecommunications device to a consumer (e.g. mobile telephone handset, pager, personal computer, etc.) in exchange for the consumer's prepayment and commitment to a service contract, the telecommunications service provider should specify in the service contract that, in case the telecommunications service provider goes into liquidation, the ownership of the telecommunications device will be retained by consumers as a compensation in lieu of the reimbursement of the unredeemed prepaid charges from the telecommunications service provider.
- Telecommunications service providers should always maintain a sense of responsibility and act with prudence in handling consumers' deposit and prepayment of charges.
- Telecommunications service providers should always avoid using the money raised from consumers' deposits or prepayment of charges for activities not related to the provision of the telecommunications services concerned.
- Telecommunications service providers should give as much advance notice as possible to the Office of the Telecommunications Authority about impending financial difficulties and possible liquidation proceeding so that an orderly arrangement for minimizing disruption or inconvenience to their customers can be worked out.

Enforcement

- The Code is voluntary in nature.
- Members of the telecommunications industry are to self-police the compliance of this Code. Each member has the responsibility to maintain both the integrity and goodwill of the telecommunications industry.
- The TA will monitor the industry response to the Code. If the Code and the associated self-disciplinary mechanism is ineffective, the TA will review further options, for example, inserting certain special

conditions in the licences granted to telecommunications service providers, or enacting new legislation to regulate the business practice of telecommunications service providers in regard to the handling of consumers' deposit and prepayment of charges.

Changes to the Code

The TA reserves the right to amend and approve modifications to the Code, as and when necessary.

Office of the Telecommunications Authority
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