

Strengthening the Regulation of Person-to-Person Telemarketing Calls

Consultation Paper



Commerce and Economic
Development Bureau

**Consultation Paper on
Strengthening the Regulation
of Person-to-Person Telemarketing Calls**

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Introduction

Person-to-person telemarketing calls (“P2P calls”) are marketing telephone calls involving interpersonal communication with a view to promoting goods or services to customers. Yet the wide and proliferated use of these commercial advertising calls and the nuisance caused by such calls have aroused public concern. In response to those concerns, individual trades in Hong Kong have put in place some self-regulatory measures but there continues to be calls for more stringent controls over P2P calls. In this connection, the Commerce and Economic Development Bureau (“CEDB”) issues this consultation document to solicit stakeholders’ and the public’s views on how the regulation of P2P calls should be strengthened.

2. Chapter 1 of this consultation paper sets out the background of P2P calls, the current regulatory framework in Hong Kong and the findings of an opinion survey on P2P calls from a Consultancy Study commissioned by the CEDB in 2015. Chapter 2 highlights the regulatory experience in other jurisdictions from which Hong Kong may draw reference. Chapter 3 outlines certain general principles that may need to be taken into account in charting the way forward. Chapter 4 provides an analysis of some possible options, non-statutory as well as statutory, that may be considered in strengthening the regulation of P2P calls. Chapter 5 sets out the implementation and enforcement issues and challenges associated with the options. Chapter 6 contains a conclusion and seeks public’s views.

3. We cordially invite you/your organisation to submit your views on the subject matter put forth in this paper. On the basis of the outcome of the public consultation, the CEDB will formulate the way forward on strengthening the regulation on P2P calls.

4. Please send your comments to us on or before 31 July 2017 by one of the following means –

By email: p2pcalls@cedb.gov.hk

By fax: 2827 6646

By post: Commerce and Economic Development Bureau,
Communications and Creative Industries Branch,
B Division, 21/F, West Wing, Central Government
Offices, 2 Tim Mei Avenue, Tamar, Hong Kong

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Chapter 1 Current Situation in Hong Kong

Background of Person-to-Person Telemarketing Calls (“P2P Calls”)

1.1 P2P calls are marketing telephone calls involving interpersonal communication used to promote goods or services to customers or potential clients. They are contrasted with pre-recorded telephone messages that are made by machines.

1.2 P2P calls serve the purpose of conveying marketing and business information to customers to facilitate commercial transactions¹. This mode of telemarketing is common in Hong Kong and other jurisdictions. However, the wide and proliferated use of these commercial advertising calls has caused much nuisance which has in turn aroused public concern.

Current Self-Regulatory Schemes for P2P Calls

1.3 In 2010, the then Office of the Telecommunications Authority formulated a Benchmark Code of Practice on Person-to-Person Marketing Calls (“Benchmark Code”) (**Annex**). The CEDB has since then actively encouraged the trade associations of the four sectors that were found to have made most of the P2P calls namely finance, insurance, telecommunications and call centres to draw up and issue their respective codes of practice (the “Codes”) with reference to the Benchmark Code and to encourage the industries concerned to adopt the best practice recommended in their Codes. The best practices recommended in the Codes cover, among others, the hours of calling, the need to reveal the identity of telemarketers and a pledge to honour unsubscribe requests.

¹ It should be noted that P2P calls only include calls that are commercial in nature. Non-commercial calls that may be perceived to cause nuisance are not P2P calls. Examples of non-commercial calls include those purely for surveying purposes and silent or nuisance calls which do not have any commercial content.

Since June 2011, the relevant trade associations in the above mentioned sectors² have joined the self-regulatory scheme for P2P calls.

1.4 Since May 2014, the finance sector has, on its own volition, improved its Code by requiring telemarketers to take the initiative to provide their names and official contact numbers to the recipients. This measure allows the recipients to verify the identities of the telemarketers.

1.5 The CEDB has maintained regular contacts with relevant trade associations and understand that the self-regulatory schemes have been running smoothly.

Personal Data (Privacy) Ordinance (Chapter 486)

1.6 The Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”) protects the privacy of individuals in relation to personal data³. With amendments effective from April 2013, the PDPO prohibits the use of personal data in any direct marketing activity (including P2P calls)⁴ without explicit prior consent of the data subject. The PDPO governs P2P calls that involve the use of personal data only.

Unsolicited Electronic Messages Ordinance (Chapter 593)

1.7 The Unsolicited Electronic Messages Ordinance (Cap. 593) was enacted in 2007 and has fully commenced in operation on 22 December 2007. It regulates the sending of commercial electronic

² The trade associations of the respective sectors that have joined the self-regulatory scheme for P2P calls are Hong Kong Association of Banks, DTC Association, Hong Kong Federation of Insurers, Communications Association of Hong Kong, Hong Kong Call Centre Association, and Digital + Direct Marketing Association Asia. Finance sector here covers banks and deposit-taking companies. Money lenders, which are not members of the Hong Kong Association of Banks and DTC Association, are not covered in the self-regulatory scheme.

³ Personal data means any data — (a) relating directly or indirectly to a living individual; (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and (c) in a form in which access to or processing of the data is practicable.

⁴ Direct marketing means — (a) the offering, or advertising of the availability, of goods, facilities or services; or (b) the solicitation of donations or contributions for charitable, cultural, philanthropic, recreational, political or other purposes, through direct marketing means. Direct marketing means include, inter alia, making telephone calls to specific persons.

messages such as faxes, Short Messaging Service (“SMS”) messages and pre-recorded telephone calls. P2P calls were not included in the remit of this Ordinance since its enactment in 2007 on the ground that we need to strike a balance between respecting the rights of phone users and allowing the development of legitimate electronic marketing.

The 2015 Consultancy Study on P2P calls

1.8 In order to have a better understanding of the stakeholders’ and community’s views on the general impact of P2P calls on their lives/businesses, the Government commissioned an independent consultant in 2015 to carry out a study (“Consultancy Study”) to solicit views of the general public (“Public Survey”), the business sector and the industry (“Industry Survey”) on the regulation of P2P calls, to gather information about the employment and business situations of the industry, as well as to study the regulatory regime adopted by other jurisdictions on P2P calls. Major findings of the surveys are highlighted in the ensuing paragraphs.

Response and Public Sentiment towards P2P Calls

1.9 In the Public Survey, when asked about their response upon receiving P2P calls, 13% of the respondents would not answer the calls⁵, 37% would indicate to the callers at the outset that they were not interested in the calls, 27% would hang up immediately while 20% would listen first to see whether they would be interested in the content. A vast majority (96%) of the respondents considered that P2P calls had caused nuisance or inconvenience to some extent.

Benefits of P2P Calls

1.10 Some 4% of the respondents in the Public Survey who had received P2P calls perceived that such calls had brought benefits to them, with enjoying lower prices or discounts being the key perceived benefits. 10% of the respondents had made commercial transactions as a result of the P2P calls. The average transaction success rate of P2P calls was 13% according to responding companies in the Industry Survey.

⁵ They identify the calls as P2P calls by the use of call-filtering applications for smartphones.

Employment relating to P2P Calls

1.11 The responding companies in the Industry Survey reported that they employed around 3 400 staff who were directly or indirectly engaged in making P2P calls, with around 2 400 staff employed in Hong Kong and around 1 000 employees in the Mainland. Based on the reported local employment and the response rate, it was estimated that in 2015, there were around 7 000 employees in Hong Kong who were directly or indirectly engaged in making P2P calls.

Opinion towards Regulation of P2P Calls

1.12 In the Public Survey, 86% of the respondents were of the view that there was a need to expand the regulation of P2P calls to all trades with 67% supporting regulation by legislation, 16% preferring regulation by voluntary Codes and 3% supporting regulation without specifying the particular means. 11% of the respondents held the opposite view that regulation should not expand to all trades that made P2P calls.

1.13 In the Industry Survey, there was split opinion on the preferred mode of regulation. The same proportion of responding companies (29% for each) preferred legislation and voluntary Codes; and slightly more than one-third considered both modes acceptable. 10% of the companies *involved in making P2P calls* preferred legislation, 60% preferred the Codes and 19% considered both were acceptable. These companies are more concerned about the impact of regulation on employment situation, number of transactions and increased operational costs/compliance costs.

Observations

1.14 With 96% of the responding public regarding P2P calls as nuisance to some extent and 86% supporting expanding the regulation, there appears to be public aspiration that either the trade or Government or both parties should take actions to deal with nuisances caused by the unwelcomed P2P calls. 67% of the public respondents preferred regulation by legislation given its perceived effectiveness. On the other hand, it is noteworthy that 10% of the responding public had made commercial transactions as a result of P2P calls. Only 10% of the trade

respondents involved in making P2P calls preferred regulation by legislation given the concern on employment as well as on operational/compliance costs.

1.15 In this regard, in considering the tightening up of regulation over P2P calls and having regard to the fact that 7 000 employees were engaged in the trade, it would be prudent to weigh the economic and social impact on employment and normal business activities in a free society against the public's aspiration for a tighter regulatory regime for telemarketing. It would be reasonable for us to have due regard to the different, and at times conflicting, views and interests of different stakeholders on ways to manage/reduce nuisances caused by P2P calls to the general public in a reasonable and practicable manner.

Chapter 2 Experience of Other Jurisdictions

2.1 In addition to the Public and Industry Surveys, the consultant in the 2015 Consultancy Study has also conducted desktop studies on the regulatory regimes of telemarketing calls in 17 selected jurisdictions⁶ covering Asia, Australasia, Africa, Europe, North and South America. This chapter summarises the relevant findings.

Presence of Regulatory Regime

2.2 All but one jurisdictions under study have some kind of statutory regulations on P2P calls. In addition to statutory regulations, one jurisdiction has in parallel a self-regulatory regime for P2P calls.

Regulatory Framework and Authorities

2.3 As regards the regulatory framework of the selected jurisdictions, most of them have established a Do-not-call Register - backed by a relevant law - containing a list of telephone numbers to which the telemarketers cannot make telemarketing calls. Consumers may register, check or remove their numbers in the Do-not-call Register. Telemarketers making P2P calls to registered consumers are liable to prosecution or punishment by the Government under a statutory Do-not-call Register whereas under a non-statutory Do-not-call Register, those telemarketers in breach are liable to sanction by the respective trade association. On top of the Do-not-call Register, a few jurisdictions also have Codes of Practice in place to regulate telemarketers' marketing behaviour and conduct.

2.4 In some other jurisdictions, there are regulations on the use of personal data in marketing activities (including P2P calls). The relevant

⁶ These jurisdictions are India, Israel, Japan, Korea, Singapore, Australia, New Zealand, South Africa, the Netherlands, the United Kingdom, Canada, the United States, Argentina, Mainland China, Macau and Taiwan.

regulations enable individuals to have the right to object to the use of their personal data for marketing purposes.

2.5 Another type of regulation, but less commonly used in jurisdictions selected, is that it regulates simply by way of control in telemarketing business practices. For instance, telemarketers are required to provide certain mandatory information to the call recipients and the call recipients should not be called back again if they have explicitly stated that they have no intention for further transaction.

2.6 The regulatory authority for overseeing and enforcing the relevant regimes for P2P calls differs from jurisdiction to jurisdiction depending in most cases on the regulatory vehicle being used to deal with P2P calls. In broad terms, the regulatory bodies are either telecommunications/communications-related, data protection-related, consumer-related, trade/commerce-related, and in one case an industry-specific approach has been adopted whereby the insurance regulatory commission of the relevant jurisdiction is the enforcement agent. In sum, there is no single mainstream approach as to the type of regulatory body involved in P2P calls among the jurisdictions under study.

2.7 In contrast, the composition of the regulatory authorities in various selected jurisdictions shares a lot of similarities. In almost all cases, a regulatory body has been established and such body is formed or advised by members from a diverse social background including academia, civil service, economics, law, media and telecommunications. A post with a nature of a chief executive officer would also be set up.

Effectiveness of Overseas Regime

2.8 We have also studied the experience of implementing Do-not-call Registers in selected jurisdictions which have legal systems similar to that of Hong Kong to understand the effectiveness of the Do-not-call Registers. In gist, in some cases, there are indications of an overall drop in the number of P2P calls received by recipients on the one

hand, but on the other hand the number of known enforcement actions as compared to the size of complaint cases seemed very small (0.02-0.03%).

2.9 In the consumer surveys in two jurisdictions on their Do-not-call Register in 2014, it was revealed that some 40% - 70% of the respondents considered that they had received fewer P2P calls or telemarketing messages. In one jurisdiction, 80% of respondents observed improvement in organisations' data protection practices. In another consumer survey of one jurisdiction in 2016, it was reported that 16% of persons have registered on the Do-not-call Register, and among those who have registered, 80% agreed that the Register was effective.

2.10 As regards enforcement, it is noted from public domains (such as the official websites of the relevant regulatory authorities of different jurisdictions) that there are reported cases, though not many, of successful enforcement actions which may take the form of formal warnings, court action, or penalties, etc. against breaches. The number of enforcement actions as recorded ranged from a handful to some 30 on an annual basis between different jurisdictions (and it is understood that enforcement actions covered not only breaches for making P2P calls but also for short messages, fax messages). Therefore, if one compares the number of enforcement cases against the number of complaints received, the former only accounted for a very small proportion of the total complaint caseload. For example, in one jurisdiction, the regulator received some 23 000 complaints in 2015-16 and had reportedly taken 5 enforcement actions in the same year while in another jurisdiction, the regulator received over 130 000 complaints in 2015-16 and had undertaken 33 enforcement actions (representing 0.02% or 0.03%). While these data alone may not reflect comprehensively the effectiveness of the enforcement, they do reflect, to a certain extent, the difficulties and challenges involved in enforcing the regulation of P2P calls.

Areas of Concern

2.11 Overseas experience showed that in operating the "Do-not-call Register", some regulatory bodies had to regularly remove invalid (e.g. duplicated, abandoned or disconnected) numbers from its Register, and in

reality, it might not be easy to differentiate active numbers from invalid numbers and the possibility of numbers being wrongly removed from the Register cannot be entirely ruled out. Also, regulation of P2P calls could be effective only to an extent because there was no mechanism to prevent telemarketers to register with telephone service providers under a new name after they had been blacklisted or prosecuted.

2.12 In addition to the above, there are three commonly known technical circumventions which pose genuine challenge to the effective enforcement of a P2P regulatory regime, namely

- (i) *Caller-identification Spoofing* (“Caller-ID Spoofing”), i.e. dishonest telemarketers display a false number by “spoofing” so as to avoid obligations or prosecutions;
- (ii) *Voice over Internet Protocol* (“VoIP”) which carries telephone calls via the Internet instead of using traditional telephone circuits, thus allowing the point of origin to be masked; and
- (iii) *Calls from other jurisdictions*, which presents extra hurdles in gathering sufficient evidence for investigation and prosecution given other jurisdictions are involved.

The above circumventions adopted by telemarketers make violators very difficult to be identified or traced.

2.13 In sum, while different jurisdictions have adopted different regulatory approaches for handling P2P calls, the use of a statutory “Do-not-call” Register seems to be the most common. P2P calls are regulated in some economies by a statutory Do-not-call Register together with laws governing marketing practices. Yet, none of the regimes under research is known to be fool-proof (i.e. can filter **all** unwanted P2P calls). Hence, while we may make reference to overseas experience, given the changing landscape in telecommunications applications, dynamics in telemarketing practices and customers’ behaviour, we should be aware that there may not be a perfect solution for Hong Kong. We could at best devise one that is generally accepted as feasible and practicable having considered all circumstances.

Chapter 3 General Principles for Consideration

3.1 In Hong Kong, as mentioned in paragraph 1.15 above, given the diverse and at times conflicting interests of different stakeholders involved in telemarketing business, in order to balance the interests of different parties and the public at large, due consideration to certain guiding principles may be necessary in considering the option that befits Hong Kong. We believe that the following guiding principles should be considered -

- ✧ The regime should be effective in identifying and filtering unwanted P2P calls so as to reduce nuisance to recipients;
- ✧ The regime (statutory or otherwise) should be enforceable to the extent that any breach by telemarketers can be effectively traced within reasonable resources;
- ✧ The regime should be flexible enough to respond to quick market changes and people's needs;
- ✧ The regime should not impose onerous burden on normal business operations; and
- ✧ impact on employment opportunities in the telemarketing field and related businesses should be minimised as far as possible.

3.2 In considering whether an option should be pursued, it is important that we weigh it against different principles and identify one that could strike an appropriate balance in the wider public interest, and most importantly, one that is realistic and feasible.

Chapter 4 Possible Options

4.1 This chapter examines different options in strengthening the regulation of P2P calls according to the following five parameters –

- (a) Nature (whether the option is statutory or non-statutory);
- (b) Coverage
- (c) Compliance and expected effectiveness;
- (d) Implications to the economy and employment; and
- (e) Implementation process and timing

In addition to the above, issues regarding implementation and enforceability which have a bearing on the practicability of the schemes will be addressed in greater detail in the next Chapter.

Option 1 – Trade Specific Self-regulatory Regime

4.2 A trade-specific self-regulatory regime means the establishment of codes of practice by trade associations, encompassing tailor-made best practices in making telemarketing P2P calls in specific trade(s). Codes of practice under the current self-regulatory scheme as elaborated in Paragraph 1.3 above specify guidelines including the hours of calling, provide undertaking not to call recipients who has indicated his/her disagreement to accept P2P calls, etc. According to the survey results of the 2015 Consultancy Study, majority of companies involved in making P2P calls preferred this mode of regulation.

4.3 To further enhance the current regime, the trade may introduce more incentives for members to observe the codes and establish formal complaint handling procedures for reporting unwelcomed P2P calls. Number of complaints received can also be made public from time to time to raise public awareness. Tightening up the existing codes of practice and extending the regime to more trades/businesses could also be considered.

Analysis

(a) Nature

4.4 This option is non-statutory in nature. The codes of practices are established, operated and enforced by respective trade associations. Non-compliance will not attract legal liability, either civil or criminal.

(b) Coverage

4.5 This option is trade specific and applies to trades that have established relevant codes of practice. Telemarketers from other sectors are not covered. Further, this option is run by individual trade associations and non-members of those associations are not covered either.

(c) Compliance and expected effectiveness

4.6 As this option is non-statutory in nature, self-initiation and self-discipline of individual trades and their determination to create a better trade name are needed to ensure compliance. Trade associations administering the codes of practice may set up and enforce their own sanctions towards non-compliant members to boost compliance, for example, by formal warnings, suspension or disqualification of membership, public condemnations, etc. The effectiveness of this option hinges on its coverage and the willingness and commitment of the members in complying with the code.

(d) Implications to the economy and employment

4.7 Companies wishing to make telemarketing calls may incur some cost for staff training or compilation of internal guidelines. However, overall compliance cost is relatively low. As telemarketing calls are not banned but are only subject to more stringent restrictions, impact to the business activities and employment in telemarketing is expected to be relatively low. Trades currently using telemarketing calls may prefer this option.

(e) Implementation process and timing

4.8 Codes of practices currently used by the four sectors as mentioned in paragraph 1.3 can provide a basis for further enhancements or extension of the regime to other trades. The time required for implementing this option is thus relatively short.

Option 2 – Call-filtering Applications in Smartphones

4.9 In Hong Kong, there already exist a number of quite widely-used smartphone applications for screening or filtering telemarketing calls. By collecting the telephone numbers of the telemarketers through voluntary reports from members of public, these applications establish a database of such telephone numbers. These applications will then be able to alert the recipients when they receive such calls so that they can block the calls if they wish. As an option, the Government may collaborate (through funding support or other forms) with selected software companies to improve the applications and promote the wider use of call-filtering applications.

Analysis

(a) Nature

4.10 This option is non-statutory in nature. Telemarketers are not prohibited to make telemarketing calls but their calls will be automatically filtered by the call-filtering applications for members of the public who have installed such applications.

(b) Coverage

4.11 The coverage of call-filtering applications may vary from company to company. As the applications rely on the voluntary reporting of the telephone number of the telemarketers from the general public, there is no guarantee that such reporting is accurate or timely, though a wider usage of the applications will improve the coverage, and

the applications can practically block calls of most, if not all, trades. However, the call-filtering applications are not applicable to fixed lines or certain models of mobile phones by virtue of their inability to install applications.

(c) Compliance and expected effectiveness

4.12 The effectiveness of this option depends whether the database of the call-filtering applications is comprehensive and up-to-date. A wider usage of the applications will improve the effectiveness of this option as mentioned in Paragraph 4.11 above.

4.13 The handling of personal data by certain software companies may present concerns to users. Overseas experience revealed that some smartphone applications contain a “reverse look-up” function that allows the application to access and share the user’s contacts and related information within the user’s phonebook directory. As a result, the user’s personal phone number may become accessible by third parties.

4.14 To increase public confidence and receptiveness in using call-filtering apps, if this option is preferred, the Government may, as a means to encourage wider use of this option, consider providing funding support to those software companies which commit to adopting stringent terms and conditions to ensure data privacy or use of the relevant data. This should be able to address concerns of phone users who opt to install the applications.

(d) Implications to the economy and employment

4.15 Currently, there are already private companies that develop and run call-filtering applications in the Hong Kong market. Government support to certain software companies has to be carefully exercised in order not to upset the free market on the one hand while providing phone users with choices in call-filtering apps on the other. With a suitable level of Government support, it is possible to attract more new entrants to the market for providing the service.

(e) Implementation process and timing

4.16 The readily available software infrastructure in market can be used as a basis for further enhancement or expansion of the applications. The time required for preparation and implementation is relatively short.

Option 3 – Do-not-call Register

4.17 Under this option, a Do-not-call Register needs to be established by law to prohibit telemarketers from calling the numbers listed on the Register. Most jurisdictions in the 2015 Survey have adopted the statutory Do-not-call Register approach.

Analysis

(a) Nature

4.18 This option is statutory in nature. Non-compliant telemarketers will be subject to legal sanction, either civil or criminal.

(b) Coverage

4.19 A Do-not-call Register established by law can prohibit telemarketers of **all** trades from calling the numbers on the Register, which operates on an “*opt-out system*”. Any phone user unwilling to receive telemarketing calls can register his/her phone number(s) with the Register.

(c) Compliance and expected effectiveness

4.20 A statutory Do-not-call Register will likely impose a stronger deterrent effect for telemarketers compared with other non-statutory measures. However, P2P calls made from outside of Hong Kong, collection of evidence and circumvention techniques by non-abiding telemarketers like spoofing and VoIP calls could seriously undermine the enforceability and efficacy of the regime.

(d) Implications to the economy and employment

4.21 Given the legal liabilities arising from breaches of the Do-not-call Register, some telemarketers may give up this mode of marketing and normal business activities/transactions arising from P2P calls will decrease. Compliance costs for companies will increase and the impact on small and medium-sized enterprises (SMEs) will likely be greater than that on the bigger enterprises. In addition, businesses may turn to other marketing modes. As a result, the employment opportunities of the 7 000 telemarketers currently engaged in this sector are expected to be severely affected.

4.22 There are also resource implications for setting up a competent regulator to operate the statutory Do-not-call Register, who is required to among others, maintain an effective number list, deal with public complaints and enquiries and carry out investigation/ enforcement duties.

(e) Implementation process and timing

4.23 Given that all trades will be statutorily regulated, it takes time to consult all stakeholders before devising a workable model and a legislative regime that fits the operational characteristics and business practice of different industries. We also need to refine the enforcement arrangements and details of the agencies responsible for administering the Register, which takes time to handle.

Other Options Explored but Concluded Not Feasible

4.24 Apart from the above three options, we have also explored other options including setting up a self-regulated broad-based do-not-call register and assigning specific prefixes to telemarketers. However, these options are concluded **not feasible** for Hong Kong as elaborated below.

A self-regulated broad-based Do-not-call Register

4.25 A self-regulated broad-based Do-not-call Register is a non-statutory Register across industries maintained and operated by a trade association or similar private organisation. We note that New Zealand adopts this approach and a voluntary telemarketing code and non-statutory Do-not-call Register is established and administered by a private trade association called the Marketing Association of New Zealand.

Analysis

(a) Nature

4.26 A self-regulated Do-not-call Register is non-statutory in nature, established, operated and enforced by possibly a trade association or an not-for-profit organisation. Non-compliance will not attract legal liability, either civil or criminal.

(b) Coverage

4.27 The Do-not-call Register should be a centralised database and apply to all trades (as in the case of New Zealand). However, given the diversity of businesses and the vast number of SMEs in Hong Kong, there is yet to have a single trade body in Hong Kong that is in a position to establish, maintain, operate and administer a non-statutory yet broad-based Do-not-call Register covering different trades. Any

Do-not-call Register set up by a trade association will only bind its own members.

(c) Compliance and expected effectiveness

4.28 As this option is non-statutory in nature, self-initiation and self-discipline of the trades and their determination to create a better trade name is needed for its successful implementation. Further, for a non-statutory Do-not-call Register to be effective, we need a critical mass of socially-conscientious businesses which are willing to build up and be bound by the Register and finance its operation. Given the high cost and manpower involved in setting up and maintaining the Do-not-call register, it is unlikely for businesses to self-initiate such a move in Hong Kong.

(d) Implications to the economy and employment

4.29 If trade and business bodies are minded to establish a self-initiated Do-not-call Register, in a free economic market, the cost for its establishment and operation will eventually be borne by consumers. Employment opportunities in telemarketing are expected to diminish while some employment may be created in managing the Register but the number is expected to be much smaller compared with the former.

(e) Implementation timing

4.30 Given that a cross-industry trade association that can manage a broad-based Do-not-call Register is non-existent currently in Hong Kong, the time required for setting up such a Register is uncertain.

Assigning Specific Prefixes to Telemarketers

4.31 Assigning specific prefixes to telemarketers mandates telemarketers who wish to make P2P telemarketing calls to register with the telecommunications authority and be assigned specific prefixes such that the general public can easily identify the callers as telemarketers before deciding whether to answer the call.

Analysis

(a) Nature

4.32 This requires setting up of a new law to empower the relevant telecommunications authority to register telemarketers and assign them with specific number prefixes for the purpose of making P2P calls. The law may further provide that any person who makes P2P calls from unregistered telemarketers or certain assigned telephone number prefixes will be liable to prosecution.

(b) Coverage

4.33 This prefix system should theoretically cover all trades intending to make telemarketing calls and benefit all phone users who may identify such calls easily through assigned prefix numbers. However, it will be extremely difficult, if not impossible, to catch telemarketers who seek to circumvent the prefix registration system or deliberately avoid registering with the Government by calling with ordinary phone number prefixes.

(c) Compliance and expected effectiveness

4.34 Apart from circumventing the system as discussed above, the collection of proof in such instances will be highly challenging. Furthermore, assigning special number prefix will generate a higher demand for telephone numbers, reduce flexibility by the regulatory authority on number assigning and create adverse impact on the existing 8-digit numbering plan. P2P calls originating from overseas call centres, which are not uncommon, will also not be caught by this system. Overall effectiveness is expected to be low.

(d) Implications to the economy and employment

4.35 In terms of compliance costs, given the need to set up a new and elaborate telemarketing prefixes registration system, the administrative costs and manpower incurred will likely be borne by telemarketers based on the “user pay” principle. This may drive out the telemarketers/businesses of the SMEs who cannot afford to do so.

(e) Implementation timing

4.36 The establishment of a new and elaborate telemarketing prefixes registration system will take considerable time. It should also be expected that a long time is required for telemarketers to switch from their existing registered call number to the new telemarketing prefix.

Chapter 5 Implementation and Enforcement Issues

Non-statutory Regimes

Advantages

5.1 The advantages of a non-statutory approach is that it can be put in place within a short period of time as it does not involve the lengthy process of formulating an across-the-board regulatory model and going through the legislative process. Furthermore, it provides greater flexibility in responding to changing circumstances or market conditions. Different trades can design regimes according to individual trade practices and customer needs. With a less stringent burden on the trade, the impact of non-statutory regimes on employment in telemarketing could be managed. In overall terms, the compliance costs for business operators and telemarketers are expected to be lower than that for a statutory approach.

Drawback

5.2 Non-statutory regimes in practice work better if there is a lead figure or body that commands relationship and status to take the lead in setting the rules and there is relatively strong cohesion within the trade. The Marketing Association of New Zealand, for instance, assumes the role of such a lead body and runs the non-statutory Do-not-call Register in New Zealand. Such a lead body or strong cohesion is, however, not easily found in Hong Kong, for example, in beauty and the money lender sectors which comprise many SMEs with diversified interests.

5.3 Furthermore, as a non-legally binding scheme, it may not have effect on those who do not join the scheme, and this may give rise to, among others, concerns of a level playing field between those who are regulated albeit voluntarily and those who are not. In addition, in case of breaches, only administrative sanctions, such as warnings or disqualification from being a member of a trade organisation, may be imposed. These sanctions may be regarded as not having sufficient deterrent effect against non-compliance. All in all, non-statutory schemes are more versatile and efficient but their effectiveness depends

to a large extent on the determination and unity of individual trades and their willingness for self-regulation and adopting good practices in telemarketing.

Statutory Regimes

5.4 A statutory regime will no doubt inspire greater assurance to the public. Stronger deterrent effect may be achieved through the imposition of suitable sanctions. As it is applicable to all trades (unless being exempted under the law), from the angle of fairness, it is conducive to maintaining a level playing field. However, the implementation and enforcement difficulties in relation to operating a statutory regime for regulating P2P calls cannot be underestimated.

Collection of Evidence

5.5 Investigating into the possible contraventions by telemarketers in respect of P2P calls would involve the solicitation of evidence (e.g. proof of an existence of a P2P call and proof of violation of regulation). Under a statutory system, evidence must be solicited for investigation and has to meet the high standard of proof in criminal proceedings (i.e. beyond reasonable doubt) for prosecution purposes, for example, recording incoming P2P calls and testifying as a witness in court will be necessary. These steps may by themselves be regarded as cumbersome by the general public who may not find it worthwhile his/her time and effort to report say, a 5-second P2P call to the relevant enforcement agent.

5.6 Caller-ID spoofing, together with VoIP calls and calls from other jurisdictions, make it very hard for the enforcement agencies to track and identify the caller. As far as we know, this is an issue of concern commonly faced by jurisdictions that operate a statutory Do-not-call Register.

Ways to Circumvent the Statutory Regulations

5.7 In practical terms, a telemarketer may at the beginning of a call ask for the customer's consent as a pretext/disguise to what is in essence

a P2P call. In some less clear cut cases, it would be difficult to prove beyond doubt that a telephone call of this kind is prosecutable. Telemarketers may also use prepaid SIM cards to make P2P calls, in which case the caller can hardly be traced to effect an investigation, let alone prosecution.

Calls Originated from Other Jurisdictions

5.8 In view of the above and coupled with the spoofing technology mentioned in paragraph 2.12 above, it is almost impossible to trace or track the origin of calls from other jurisdictions. While the enforcement agents are empowered to conduct investigations including raid and seizure locally, they will not have such powers outside of their jurisdictions, thus inhibiting collection of evidence and enforcement.

5.9 Unlike fraud or scams which are commonly treated as criminal offences across jurisdictions and can be tackled through international or trans-boundary collaboration, P2P calls may not be seen in the same light by different jurisdictions. Enforcement agents will not be able to follow up on the case in jurisdictions where P2P calls are not regulated or regulated in a different manner.

5.10 In dealing with calls generated from other jurisdictions, there may be a need to establish regional/international collaboration with other enforcement agencies, such as setting up a reporting referral channel among jurisdictions. But the practical effect of facilitating the relevant enforcement should not be overstated, as the level of cooperation by the law enforcement agents depend very much on the relevant laws (if any) of the respective jurisdictions.

5.11 The adoption of a statutory regime does not provide a panacea to guarantee that the system is water-tight and that nuisance by P2P calls be rid of altogether. The setting up of such a regime also involves costs and manpower. Employment in telemarketing and normal business activities may be affected to some extent. The social and economic impacts have to be carefully considered against the benefits (if any) from the system as well.

Chapter 6 Conclusion and Views Sought

6.1 The notion of tightening the conduct of P2P calls will involve various considerations, including the need to strike a balance between legitimate and bona fide transactions through telemarketing and free flow of information on one hand, and prevention of nuisance caused by the unwelcome calls on the other. The potential impact on employment opportunities and the cost of compliance to general businesses, in particular SMEs, also need to be considered.

6.2 We understand that there are public aspirations for a quick, convenient and effective way to deal with nuisance caused by P2P calls. In overall terms, a non-statutory regime could provide a relatively quick, convenient and flexible way while a statutory regime may provide one with a stronger deterrent effect. However, given the need for industry consultation and subsequent legislative processes, the latter will take a much longer time to be established. In terms of effectiveness, unscrupulous telemarketers could easily use technical circumventions, such as caller-ID spoofing and VoIP calls to break the control. We acknowledge that there might not be a fit-all solution to the issue of P2P calls and are open to the way forward.

6.3 In the light of the information set out in this consultation paper, we would like to invite your views on the following questions –

- (a) Do you prefer a statutory or non-statutory regime for enhancing the regulation of P2P telemarketing calls?

If you opt for a statutory regime, please also consider question (b);

If you opt for a non-statutory regime, please also consider question (c)

- (b) As the establishment of a statutory Do-not-call Register will take time, do you prefer to have some non-statutory measures in place in the interim, such as those set out in question (c)?

(c) Which of the following non-statutory option under Chapter 4 do you prefer?

Option 1: Trade Specific Self-regulatory Regime;

Option 2: Call-filtering Applications in Smartphones

(d) Other Suggestions

6.4 We sincerely invite you to express your views on the above questions or on any other issues relating to the way forward in enhancing regulation for P2P telemarketing calls.

6.5 Please refer to paragraph 4 of “Introduction” on the means for sending in your views.

**Communications and Creative Industries Branch
Commerce and Economic Development Bureau
May 2017**

**Benchmark Code of Practice
On
Person-to-Person Marketing Calls**

Preamble

1. This Code of Practice (“CoP”) is issued by *[name of the company / organisation / industry association (“the Company / Organisation / Association”)]* for the purpose of providing guidance to *[its employees (for use by individuals or organisations) / its members (for use by associations)]* in making person-to-person telephone calls for marketing activities (“person-to-person marketing calls”).
2. This CoP applies to all person-to-person marketing calls to be made or authorised to be made by *[the Company / Organisation / Association’s members]*, regardless of whether there is any business relationship between the *[the Company / Organisation / Association’s members]* and the called party. *[The Company / Organisation / Association’s members]*, who have outsourced the making of person-to-person marketing calls to other parties, should make every effort to ensure that the outsourced parties comply with this CoP. By the same token, *[the Company / Organisation / Association’s members]* who are authorised to make person-to-person marketing calls for other parties should make necessary arrangements with the concerned parties to ensure compliance with this CoP.
3. *[Whether the CoP is voluntary in nature or there will be penalty for contravention is to be decided by the industry association adopting the CoP.]*
4. For the avoidance of doubt, nothing in this CoP shall absolve any person from complying with the Unsolicited Electronic Messages Ordinance (Cap. 593), the Personal Data (Privacy) Ordinance (Cap. 486) or other applicable laws in Hong Kong.

Interpretation

5. In this CoP, unless the context otherwise requires –

“called party” means a member of the public or an organisation;

“calling line identification information” means telecommunications network information generated and transmitted by the calling party’s telecommunications network for the purpose of enabling the called party’s telecommunications network to identify the telephone number of the calling party;

“marketing” means advertising or promoting goods, services, facilities, land, a business opportunity or an investment opportunity;

“organisation” includes—

- (a) Hong Kong company;
- (b) any other company or body corporate, wherever incorporated or otherwise established; and
- (c) a partnership or other unincorporated body of persons, whether formed or established in Hong Kong or elsewhere;

“principal” means an individual or organisation who has authorised the making of person-to-person marketing calls;

“telemarketer” means:

- (a) an individual or organisation engaged in the practice of marketing via person-to-person marketing calls;
- (b) employees of the principal engaged in the practice of marketing via person-to-person marketing calls;
- (c) an individual or organisation who is authorised by a principal to make person-to-person marketing calls for and on behalf of the principal, if the principal has contracted out part or whole of the marketing campaign to that individual or organisation; and
- (d) employees of the individual or organisation of item (c) above;

“unsubscribe request”, in relation to a person-to-person marketing call, means:

- (a) a message to the effect that the registered user of the telephone number to which the call is made does not wish to receive, at that telephone number, any further person-to-person marketing call from or authorised by that principal; or
 - (b) a message to similar effect.
6. In this CoP, the singular includes the plural and vice versa, and words importing a gender include every gender.

Hours of Calling

7. Person-to-person marketing calls should only be made between Hong Kong time 9:00am and 10:00pm, unless the called party has advised that a call at another time would be more convenient and acceptable or a call outside this period is allowed under the guidelines published in accordance with the Banking Ordinance (Cap.155). *[Industry associations may consider adopting more restricted calling hours for their members if they think fit.]*

Identity and Purpose

8. A telemarketer who makes a person-to-person marketing call should not conceal or withhold from the called party the calling line identification information of the sending telephone number, or issue any instruction in connection with making the call that has the same effect.
9. At the commencement of a person-to-person marketing call, the following information should be provided to the called party:
- (a) the name of the principal that authorised the making of the call; and
 - (b) the purposes of the call.
10. As far as practicable, the called party should be informed of a telephone number (“Contact Telephone Number”) which he can call during normal business hours to lodge complaints in respect of the person-to-person marketing calls made or authorised to be made by the principal or to make enquiries with the principal.

Unsubscribe Request

(For use by associations)

11.A principal should not make or authorise to make any further person-to-person marketing calls to a number after the registered user of that number has made an unsubscribe request to the principal or to a telemarketer.

OR

(For use by individuals or organisations)

11.A telemarketer should not make any further person-to-person marketing calls to a number after the registered user of that number has made an unsubscribe request to him or to his principal.

12.A telemarketer should accept an unsubscribe request made during a person-to-person marketing call, as well as an unsubscribe request made when a person calls at the Contact Telephone Number as mentioned in paragraph 10 above. A telemarketer may choose to offer other additional channels for members of the public to make an unsubscribe request.

13.A telemarketer and a principal should ensure that the list of telephone numbers in respect of which unsubscribe requests have been made should be properly maintained and updated as soon as practicable, and that all telemarketers should not make person-to-person marketing calls to the telephone numbers on the up-to-date list.

Statistics of Complaints

14.A telemarketer and a principal should keep a proper record of statistics of complaints in relation to person-to-person marketing calls, and provide statistics of complaints to *[name of the industry association]* and the relevant authority or public body from time to time as requested by *[name of the industry association]* and the relevant authority or public body for the purpose of monitoring the compliance situation.

Use of Automated Dialing Equipment

15. Telemarketers using automated dialling equipment should allow 15 seconds or four rings before disconnecting an unanswered call.
16. The called party should be connected to a live agent within two seconds after the call has been answered. Otherwise, the call is considered abandoned whether or not the call is eventually connected. Telemarketers should frequently review the percentage of abandoned calls and make every endeavour to minimise such percentage. *[Industry associations may consider specifying in the CoP the level of maximum percentage of abandoned calls allowed.]*
17. The automated dialling equipment deployed should be capable of generating relevant statistics for monitoring and ensuring compliance with this CoP.

Called Party Who is Travelling Overseas when the Call is Made

18. If a telemarketer, when making a person-to-person marketing call, is aware that the called party is travelling overseas, he/she should endeavour to disconnect the call immediately (if the call has not yet been answered by the called party) or terminate the conversation as soon as practicable (if the call has been answered by the called party).

Effective Date

19. This CoP shall take effect on the date appearing below.

[The Company / Organisation / Association]

[Date]

[END]

