

**For discussion
on 16 April 2019**

**Panel on Information Technology and Broadcasting
Panel on Commerce and Industry**

**Major Parameters of Proposed Legislative Framework for
Strengthening Regulation of Person-to-Person Telemarketing Calls**

Purpose

This paper briefs Members on the major parameters of the proposed legislative framework for strengthening regulation of person-to-person telemarketing calls (P2P calls) and the associated control measures.

Background

2. In recent years, P2P calls have caused nuisance to many members of the public. Such calls are telephone calls involving interactive communications that are used as a marketing tool by business/trades to promote goods or services to customers/potential customers. Most of these calls are made without prior consent of the recipients. In a public consultation conducted by the Government in mid-2017, and during the discussion at the meeting of the Legislative Council Panel on Information Technology and Broadcasting on 9 April 2018, we noted the growing demands from the public on strengthening the regulation of such calls.

3. In response to public demands, the Government has decided to introduce legislation to regulate P2P calls. In gist, similar to the existing regulatory framework for unsolicited electronic messages (UEMs), we propose to put in place an “opt-out” arrangement for P2P calls, supported by a do-not-call (DNC) register to be set up to allow phone users who do not wish to receive P2P calls to conveniently indicate so by including their phone numbers in the register. In mapping out the legislative framework, we will strive to strike a balance between satisfying public expectations and reducing the compliance cost of the trades and industries. The details are described in the ensuing paragraphs.

Legislative Framework

Legislative Vehicle

4. UEMs sent by e-mails, short messages, faxes or pre-recorded telephone messages, etc. have a similar unsolicited nature as unsolicited P2P calls, in that both are sent or made without consent of the recipients. UEMs are currently regulated under the Unsolicited Electronic Messages Ordinance (Cap. 593) (UEMO), which has been fully implemented since December 2007. The UEMO framework provides for the establishment of DNC registers, definition of “Hong Kong Link” for unsolicited messages, requirements and formats for sending commercial electronic messages, mechanism for issuing enforcement notices, etc. As a matter of fact, when the legislation was drafted, we already had in mind that the legislative framework could potentially be extended to regulate P2P calls in the future. Currently, the UEMO expressly exempts voice calls made by a person by virtue of Schedule 1.

5. We have reviewed the regulatory framework for UEMs under the UEMO. We consider that most of the principles and modus operandi enshrined in the existing provisions of the UEMO are applicable and could be extended to cover unsolicited P2P calls. We have concluded that the extension of the regulatory framework therein to regulate unsolicited P2P calls is the most effective way forward.

Scope of Calls to be Covered

6. To define the regulatory scope for UEMs that are cross-boundary in nature, the existing UEMO has established a definition called “Hong Kong Link” to tackle UEMs originating from Hong Kong, as well as those sent from overseas to a Hong Kong electronic address. A message has a “Hong Kong Link” if –

- (a) the message originates in Hong Kong;
- (b) the individual or organisation who sent the message or authorised the sending of the message is an individual who is physically present in Hong Kong, an organisation carrying on business or activities in Hong Kong or a

Hong Kong incorporated company;

- (c) the telecommunications device that is used to access the message is located in Hong Kong;
- (d) the registered user of the electronic address to which the message is sent is physically present in Hong Kong (in the case of an individual) or is carrying on business or activities in Hong Kong (in the case of an organisation);
or
- (e) the message is sent to an electronic address allocated or assigned by the Authority.

7. P2P calls, similar to UEMs, can be made and received ubiquitously in the era of convenient mobile telecommunications. We propose that the same “Hong Kong Link” concept should be applied to define the scope for regulating P2P calls originating from Hong Kong or overseas jurisdictions.

Calls of a Commercial Nature

8. Apart from having a “Hong Kong Link”, an UEM must be of a commercial nature for it to fall under the regulatory scope of the existing UEMO. Commercial electronic message means an electronic message the purpose, or one of the purposes, of which is –

- (a) to offer to supply goods, services, facilities, land or an interest in land, or to provide a business or investment opportunity;
- (b) to advertise or promote goods, services, facilities, land or an interest in land or a business or investment opportunity; or
- (c) to advertise or promote a supplier of goods, services, facilities, land or an interest in land or a provider of a business or investment opportunity,

in the course of or in the furtherance of any business.

9. We propose to follow such scope by only regulating P2P calls that are of a commercial nature, i.e. the content of the P2P calls should be offering, advertising or promoting goods, services, facilities, land or an interest in land, business or investment opportunities, etc. in the course of or for furtherance of any business. This is the very nature of telemarketing calls that are causing nuisance to the general public.

10. In other words, any communications that are not intended to offer or promote goods or services for the furtherance of business would fall outside the scope of the legislative proposals. Examples of such communications include calls made during emergency situation by hospitals and other important public service providers such as the Hong Kong Police Force and other Government departments, calls for donation from charitable organisations, and calls for academic research from educational institutions.

DNC Register

11. The “opt-out” framework under UEMO allows recipients to request to stop receiving further UEMs. A major tool to support the “opt-out” framework is the establishment of various DNC Registers under the UEMO, allowing individual phone/fax users to conveniently indicate their wishes against receiving further UEMs by registering their phone/fax numbers with the Registers. A similar Register for P2P calls will be established, allowing phone users who are unwilling to receive P2P calls to register his/her phone number(s) with the Register. If P2P calls are still received at a registered number and there has been no prior consent given by the phone user to that particular telemarketer, reports of contravention could be made for investigation.

12. The operation of the Register on P2P calls would follow that of the three existing Registers for fax, short messages and pre-recorded telephone messages respectively established pursuant to the UEMO. The public can call an automated registration hotline and register his/her phone number through a free-of-charge interactive voice response system. The public can also de-register or check the registration status of their numbers (i.e. actively registered or not yet registered) by calling the hotline. The registration status may also be checked online. As regards businesses making P2P calls, they can apply for a subscription account to access and download the numbers in the Register for pruning their calling lists in order to comply with the statutory requirements.

Format of Calls

13. The existing UEM regulatory system imposes requirements governing the information provided and the format required in sending UEMs. We propose to suitably adapt and amend the existing control measures for P2P calls, taking into account the differences between interactive voice calls and other forms of UEMs. The proposed major requirements for P2P calls are as follows –

- (a) not to make P2P calls to telephone numbers which are listed in the Register for P2P calls;
- (b) not to make P2P calls with calling line identification information concealed;
- (c) to include accurate caller information in the calls (i.e. introduction of the party authorising the calls in either Chinese or English) to enable the recipients to identify who the callers (or the organisations authorising the making of the call) are;
- (d) to cease calling those telephone numbers the registered users of which have made an unsubscribe request within ten working days after such request has been made; and
- (e) to ensure unsubscribe requests made are recorded for at least three years after their receipt.

14. For P2P callers who have sought prior consent from a target recipient, such consent will remain valid even if the relevant telephone number is subsequently registered with the Register. Such consent needs positive indication from the consenting party for agreeing to receive further P2P calls, and be written, oral or by conduct. This arrangement is similar to the existing arrangement for UEMs under section 11 of the UEMO which provides for the prohibition against sending of UEMs to the phone/fax numbers in the Register, and that it is not applicable to the cases which consent is given. That said, consent could be withdrawn after it was given. P2P calls should no longer be made by the same caller to such telephone numbers the registered users of which have opted not to receive further P2P calls through express

indication to that caller.

Enforcement and Sanctions

15. The enforcement arrangement for UEMs will suitably be adapted for P2P calls. For instance, with reference to Part 2 of the UEMO, we propose to adopt an enforcement notice mechanism for regulating P2P calls. That is, if the enforcement authority forms an opinion that a contravention has taken place and will likely continue or be repeated, it will issue an enforcement notice to the person in breach or the organisation authorising the calling, specifying the steps required to remedy the contravention. P2P callers must take the corresponding remedial actions and comply with the enforcement notices. Failure to comply with an enforcement notice will be an offence punishable by a fine up to \$100,000 for the first conviction, and to \$500,000 for the second or subsequent conviction.

16. Regarding the offences under Part 3 of UEMO that prohibit, among others, the use of address harvesting software and the sending of UEMs to electronic addresses obtained using automated means, we propose that these offences should also apply to P2P calls. That is, the use of telephone number harvesting software and making of P2P calls to telephone numbers obtained using automated means will be sanctioned. Similar to the arrangement for UEMs, in view of the more serious nature of these offences, they should not be subject to the enforcement notice mechanism, but to prosecution in court and a fine of up to \$1,000,000 and imprisonment for up to five years.

17. Overseas experience has revealed that the passage of legislation against P2P calls would create a deterrent effect and the number of such calls is likely to decrease after the commencement of the legislation. That said, the enforcement difficulties should not be underestimated. Enforcement of the UEMO has revealed various enforcement hurdles, such as reluctance of complainants to testify as witnesses in the court for prosecution purpose, and difficulties in tracing senders using prepaid SIM cards in sending UEMs, etc. The verbal nature of P2P calls will present additional challenge to enforcement. Unlike most UEMs which could be saved and copied in its original format by the complainant, for P2P calls, it would be more difficult to effectively collect evidence by retaining records of the content of the voice communications between the two parties during such calls.

18. The ubiquity of P2P calls presents another enforcement difficulty in tackling those originating from overseas jurisdictions. In particular, there will be challenges in tracing the identity of the callers and collecting evidence for P2P calls originating from outside Hong Kong. In dealing with such calls, making reference to the experience of regulating UEMs, there may be a need to establish regional/international collaboration with other enforcement agencies, such as setting up reporting and referral channels among jurisdictions. The actual effect of each channel may vary, depending on the level of cooperation by the law enforcement agents and the relevant laws (if any) of the respective jurisdiction, as well as the priorities of the enforcement agents concerned.

Appeal Mechanism

19. We propose to expand the Terms of Reference of the Unsolicited Electronic Messages (Enforcement Notices) Appeal Board (“Appeal Board”) to handle appeals against all enforcement notices, covering those related to both the existing UEMs and future P2P calls, under the UEMO. Following existing practice, unless it is ordered by the Appeal Board, the lodging of an appeal would not suspend the operation of the enforcement notice in relation to P2P calls. Such arrangements are in line with the established mechanism under UEMO.

Public Education and Publicity

20. To enhance the public’s, in particular elderly people’s, awareness of appropriate choice and use of call-filtering applications for screening out unwanted telephone calls, we have been working on a public education programme targeting elderly people to equip them with the knowledge on how to choose and make use of call-filtering applications to tackle nuisance from P2P calls. We will also work on other public education programmes on the use of call-filtering applications. The above programmes will be launched in 2019/2020.

Advice Sought

21. Members are invited to comment on the major parameters of the proposed legislative framework for regulating P2P calls set out above.

**Communications and Creative Industries Branch
Commerce and Economic Development Bureau
April 2019**