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

Joint meeting on 16 April 2019

**Updated background brief on review on regulation of
person-to-person telemarketing calls**

Purpose

This paper provides background information on regulation of person-to-person telemarketing calls ("P2P calls") and summarizes previous discussions by Members on the subject.

Background

2. P2P calls refer to telephone calls involving real person interactions used as a marketing tool by businesses/trades to promote goods or services to customers/potential customers. The wide and proliferated use of these commercial advertising calls and the nuisance they have caused to the public have aroused concerns. There have been calls for more stringent controls over P2P calls.

Personal Data (Privacy) Ordinance (Cap. 486)

3. At present, only the use of personal data in P2P calls is regulated. Under the Personal Data (Privacy) Ordinance (Cap. 486), the use of personal data in any direct marketing activity (including P2P calls) without the explicit prior consent of the data subject is prohibited.

Unsolicited Electronic Messages Ordinance (Cap. 593)

4. The Unsolicited Electronic Messages Ordinance (Cap. 593) regulates the sending of commercial electronic messages, including faxes, Short Messaging Service ("SMS") messages and pre-recorded telephone calls. To

protect the public from receiving unsolicited commercial electronic messages, the Communications Authority has established three registers under Cap. 593, namely, a Do-not-call ("DNC") Register for fax, a DNC Register for short messages and a DNC Register for pre-recorded telephone messages. Cap. 593 does not cover P2P calls.

Sector-specific self-regulatory regimes for person-to-person telemarketing calls

5. The finance, insurance, telecommunications and call centres sectors have adopted non-statutory regulatory measures on P2P calls since 2011 to ensure that their marketing calls would be conducted in a measured manner. Under the self-regulatory regimes, these four sectors have been voluntarily bound by the codes of practice promulgated by their respective trade associations. The codes covered, among others, the hours of calling, the need to reveal the identity of telemarketers and a pledge to honour un-subscription requests.

Previous public consultation

6. To gauge public views on whether the regulation of P2P calls should be strengthened and, if so, the specific mode(s) through which such calls should be regulated, the Administration launched a public consultation in May 2017. While industry associations, trade practitioners and companies of the relevant trades were in favour of self-regulation and opposed to a legislative approach for regulating P2P calls, members of the public, including most political parties and district/community groups, were in support of strengthening the regulation of P2P calls by legislation. They considered that self-regulation had not been effective and only through a statutory regime could P2P call telemarketers be deterred from calling and causing nuisance to the public.

7. Having considered the views of different stakeholders, the Administration proposed the following statutory and non-statutory measures to strengthen the regulation of P2P calls and address the different concerns of the stakeholders:

Statutory measures

- (a) a statutory DNC Register should be set up allowing individual phone users who do not wish to receive P2P calls to register their phone numbers with the Register. Telemarketers would be prohibited from making P2P calls without prior consent from the call recipients; and

- (b) the Office of the Privacy Commissioner for Personal Data ("PCPD") should be assigned to administer and execute the proposed DNC Register for P2P calls such that all telemarketing calls can be dealt with by a single authority in a one-stop and user-friendly manner.

Non-statutory measures

- (c) industry bodies or trade associations should be asked to take the initiative to encourage its sector members to subscribe to the sector-specific self-regulatory regime, or to introduce measures to improve the conduct of P2P calls by members within their sector;
- (d) the Government should subsidize call-filtering application ("app") companies to acquire accreditation that the concerned apps are capable of protecting personal data of the phone-user-subscribers, and sponsor these companies to implement improvement proposals suggested by the independent accreditation agencies so as to upgrade the apps to meet the prescribed accreditation standards; and
- (e) public education programmes targeting elderly people should be launched to teach them how to make use of call-filtering apps to tackle nuisance from P2P calls.

Previous discussions

8. At the Panel on Information Technology and Broadcasting ("the Panel") meeting held on 9 April 2018, the Panel discussed on the findings of the public consultation conducted by the Administration on "Strengthening the Regulation of P2P calls" in May 2017.

The enforcement authority

9. Members noted that the Administration's proposal of setting up a statutory DNC Register was a mainstream approach adopted by most overseas jurisdictions. Some members asked whether the regulation of P2P calls should be included in Cap. 593 and whether the Office of the Communications Authority, instead of PCPD, should be responsible for the implementation of the DNC Register. They queried whether PCPD had the power and resources to undertake the task. The Administration explained that PCPD was currently regulating direct marketing activities with the use of personal data under Cap. 486, including telemarketing calls that might involve the improper use of personal data. The Administration considered it more appropriate that the

statutory provisions for the regulation of P2P calls should be included in Cap. 486, and that PCPD should be responsible for the implementation of the proposed DNC Register.

Impact on the trade

10. Some members commented that the Administration's proposal would put unnecessary restraints on normal business operations, as banks and insurance companies might be blocked from contacting their clients even on daily business matters unrelated to telemarketing (e.g. for the renewal of insurance contracts) if their clients had put their numbers on the DNC Register. Some members expressed reservations on setting up the DNC Register by legislation as it would not be feasible for individuals to keep track of all companies they had business relationship with and to give consent to each of these contact points one by one if they wanted these companies to be able to contact them.

11. Some members commented that strengthening the regulation on P2P calls might affect the employment of many current practitioners in the sector. The Administration estimated that there were around 7 000 employees in Hong Kong who were directly engaged in the telemarketing call business. However, as the proposed regulatory regime did not seek to prohibit telemarketing call business altogether, the Administration was unable to assess the impact of the proposed legislation on the sector.

Difficulties in law enforcement

12. Panel members in general welcomed the suggestion that the criminal liability of making non-compliant P2P calls should be borne by the final beneficiaries, but they expressed concerns on the enforcement difficulties if the calls were originated outside Hong Kong's jurisdiction; or made by intermediaries or callers with masked or fake identities. The Administration informed Panel members that the detailed association of liability between the originators of P2P calls, the final beneficiaries and other intermediate parties would be mapped out when the proposed legislation was drafted.

13. Some members asked whether the proposed regulatory regime would cover telemarketing calls made by robots using artificial intelligence technology. The Administration said that the scope of the regulatory regime of P2P calls would be further examined during the drafting stage of the proposed legislation, and added that the proposed legislation intended to cover interactive human P2P calls, while Cap. 593 covered pre-recorded electronic messages.

Promotion of call-filtering applications for smartphones

14. Panel members agreed that the Administration should promote the use of call-filtering apps for smartphones. They suggested that call-filtering apps that had been accredited using government subsidies should be made available to the public for free, at least for the initial periods when the apps were launched. Some members expressed concerns that these apps might not be effective as the phone numbers of telemarketing calls would be changed frequently. Other Panel members commented that there were risks that those call-filtering apps might leak users' data stored in their smartphones or screen out important calls.

15. The Administration responded that free call-filtering apps were available in the market, and operators of these apps would regularly update their P2P call databases to identify telemarketing calls effectively. Accreditation centres, such as those under the Hong Kong Productivity Council, were available to certify whether a call-filtering app was capable of protecting personal data of the phone-user-subscriber, and to give advice on upgrades to be made to an app to meet the prescribed standards.

Assignment of specific prefixes to the phone numbers of institutions/telemarketers

16. Some members proposed that special prefixes be assigned to numbers used by government institutions, such as the public hospitals, to help people distinguish important calls from telemarketers. The Administration said that this might not be feasible as different people might have different views on the definition of "important" calls. The proposal to assign specific prefixes to telemarketers was also considered infeasible as it would freeze up many telephone numbers which should otherwise be allocated for use. Requiring telemarketers to use telephone numbers with specific prefixes would also involve lengthy legislative process, and such a measure might easily be circumvented by the use of technology such as spoofing or falsifying caller identity.

Questions raised at Council meetings

17. Mr SHIU Ka-fai raised a question related to P2P calls at a Council meeting. Details of the question and the Administration's reply are given in the hyperlink in the **Appendix**.

Latest position

18. The Administration will brief the Panel on 16 April 2019 on the legislative proposal for strengthening the regulation of P2P calls.

Relevant papers

19. A list of the relevant papers is set out in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
9 April 2019

List of relevant papers

Issued by	Meeting date/ Issue date	Paper
<p>Panel on Information Technology and Broadcasting</p>	<p>9 April 2018</p>	<p>Administration's paper on the report on the public consultation on strengthening the regulation of person-to-person telemarketing calls LC Paper No. CB(4)835/17-18(03)</p> <p>Administration's paper on the report on the public consultation on strengthening the regulation of person-to-person telemarketing calls (Power-point presentation materials) (Chinese version only) LC Paper No. CB(4)845/17-18(01)</p> <p>Paper on the review on regulation of person-to-person telemarketing calls prepared by the Legislative Council Secretariat (updated background brief) LC Paper No. CB(4)835/17-18(04)</p> <p>Minutes of meeting LC Paper No. CB(4)1593/17-18</p>
<p>Council meeting</p>	<p>5 December 2018</p>	<p>Question No. 12 raised by Mr SHIU Ka-fai Enhancing regulation of person-to-person telemarketing calls</p>