

**For discussion on
22 July 2013**

**Legislative Council
Panel on Economic Development**

**Protection of the Interest of Consumers
Using Telecommunications Services**

PURPOSE

This paper briefs Members on the regulatory measures implemented by the Communications Authority (“CA”) to deal with unfair trade practices of telecommunications service providers, and updates Members on the implementation of the industry self-regulatory scheme in relation to the conclusion of telecommunications service contracts between service providers and consumers.

BACKGROUND

2. The telecommunications market in Hong Kong has been developing rapidly. A variety of fixed, mobile and broadband services is available in a highly competitive market. The market is fully liberalised with fair competition, and the CA has been closely monitoring the market operation and regulating the service providers under the power conferred by the Telecommunications Ordinance (“TO”).

3. Hon Tang Ka-piu wrote to the Legislative Council Panel on Economic Development on 5 February this year to invite the relevant policy bureau to discuss “Issues concerning telecommunications consumer rights and the implementation of code of practice”. The issues raised in the letter were mainly about the unfair trade practices of telecommunications service providers, the implementation of cooling-off period, and the measures formulated by the Government to strengthen the protection of consumer rights. The ordinances and measures involved include section 7M of the TO (Cap. 106), the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (“Amendment Ordinance”), and the Industry Code of Practice for Telecommunications Service Contracts (“Industry Code”), which is a self-regulatory scheme of the industry.

Investigation and Enforcement under Section 7M of the TO

4. Coming into force in 2000, section 7M of the TO stipulates that a telecommunications service licensee shall not engage in conduct which, in the opinion of the CA, is misleading or deceptive in providing or acquiring telecommunications networks, systems, installations, customer equipment or services including (but not limited to) promoting, marketing or advertising the network, system, installation, customer equipment or service. Upon commencement of the Amendment Ordinance on 19 July this year, section 7M of the TO was repealed. Please refer to paragraph 8 below for details.

5. As the executive arm of the CA, the Office of the Communications Authority (“OFCA”) in the past conducted administrative investigations pursuant to section 7M of the TO, whereas the CA would impose sanctions on telecommunications service licensees who have contravened the provisions according to the details of the cases and the investigation results of OFCA. If the CA decides that any telecommunications service licensees are in breach of the requirements of section 7M of the TO, a financial penalty will be imposed on the licensees. For the first occasion, the penalty imposed shall not exceed HK\$200,000. For the second and subsequent occasions, the maximum penalty imposed shall not exceed HK\$500,000 and HK\$1,000,000 respectively¹.

6. Since section 7M of the TO came into operation, OFCA has processed over 570 complaint cases which called for a detailed inquiry and investigation, with an annual average of over 40 cases. The breakdown of the complaints from 2009 to the end of June 2013 is shown in Table 1. In summary, complaint cases in the past mainly involved misleading or deceptive advertisements, promotional short messages, promotion leaflets, etc. issued by telecommunications service providers, or misleading or deceptive statements or conduct made or engaged in by the salespersons of telecommunications service providers when conducting sales promotion by phone or in person.

¹ The financial penalty imposed by the CA must be proportionate and reasonable in each specific case. Please refer to the Guidelines on the Imposition of Financial Penalty under Section 36C of the Telecommunications Ordinance issued by the former Telecommunications Authority in April 2002 for details.
(http://tel_archives.ofca.gov.hk/en/legislation/guideline_6d_1/guideline_6d_1_150402.pdf)

	No. of cases involving telecommunications service calling for a detailed inquiry and investigation
2009	37
2010	42
2011	47
2012	53
2013 (January to June)	39

Table 1 The number of complaints relating to section 7M from 2009 to the end of June 2013 processed by OFCA

7. Since the TO came into operation, the CA has decided a total of 70 cases to be in breach of section 7M of the TO, an average of five cases in a year. The telecommunications service licensees concerned were imposed financial penalties ranging from HK\$25,000 to \$300,000.

Implementation of the Amendment Ordinance

8. The Legislative Council enacted the Amendment Ordinance on 17 July 2012 to prohibit various types of unfair trade practices that may be deployed by traders against consumers. The Amendment Ordinance came into full force on 19 July 2013.

9. Specifically, the Amendment Ordinance amends the existing Trade Descriptions Ordinance (Cap. 362) through the introduction of new/revised provisions (collectively known as “fair trading sections”²) that applies to goods and services (including telecommunications services) in order to prohibit the following types of trade practices³:

- (a) false trade descriptions of goods or services;
- (b) misleading omissions;
- (c) aggressive commercial practices;
- (d) bait advertising;

² Sections 4, 5, 7, 7A, 13E, 13F, 13G, 13H and 13I of the amended Trade Descriptions Ordinance.

³ For details of the unfair trade practices to be prohibited, please refer to Discussion Paper CB(1)260/12-13(04) of the Legislative Council Panel on Economic Development, entitled “Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 – Draft Enforcement Guidelines and Other Enforcement-related Matters”

(<http://www.legco.gov.hk/yr12-13/english/panels/eDEV/papers/eDEV1211cb1-260-4-e.pdf>)

- (e) bait-and-switch; and
- (f) wrongly accepting payment.

10. Any person convicted of committing an offence against the unfair trade practices specified above is liable to a maximum fine of \$500,000 and imprisonment for 5 years. The Amendment Ordinance also introduces a compliance-based mechanism under which civil enforcement options can be drawn on to deal with infringements: the Enforcement Agencies may, with the consent of the Secretary of Justice, seek an undertaking from a trader suspected of deploying an unfair trade practice to stop and not to repeat that practice instead of lodging criminal prosecutions and, where necessary, seek an injunction from the court for the purpose.

11. The Customs and Excise Department (“C&ED”) is the principal agency for enforcing the Trade Descriptions Ordinance (“TDO”). The CA has been conferred concurrent jurisdiction which, however, is limited to commercial practices of licensees under the Broadcasting Ordinance (Cap. 562) (“BO”) and the TO that are directly connected with the provision of a broadcasting service or telecommunications service under the respective Ordinances. To facilitate the compliance of the fair trading sections by traders and enhance transparency in enforcement, the C&ED and the CA have jointly issued a set of Enforcement Guidelines⁴ comprising the “Compliance and Enforcement Policy Statement - Implementing the Fair Trading Sections of the Trade Descriptions Ordinance” and the “General Guidelines on the Fair Trading Sections of the Trade Descriptions Ordinance”, with the former setting out the objectives of taking enforcement actions by the two Enforcement Agencies, the C&ED and the CA, the basic principles in the application of enforcement tools available under the TDO and the factors that will be taken into account in prioritising the enforcement resources, whereas the latter describes the manner in which officers authorised by the Enforcement Agencies may exercise their powers in respect of the fair trading sections and provides guidance as to the operation of the provisions of the TDO.

⁴ To download the Enforcement Guidelines, please visit the websites of the C&ED or the CA: <http://www.customs.gov.hk/> and <http://www.coms-auth.hk/en/home/index.html>

12. Section 7M of the TO was repealed upon the implementation of the Amendment Ordinance. As far as the transitional arrangements are concerned, if the misleading or deceptive conduct of the telecommunications service licensees was engaged in prior to the implementation of the Amendment Ordinance, such conduct is still regulated and will be dealt with by section 7M of the TO. If the unfair trade practices involved in the provision of broadcasting or telecommunications services by the broadcasting and telecommunications licensees are engaged in after the implementation of the Amendment Ordinance, the CA will make reference to the provisions and enforcement mechanism of that new Ordinance when handling the case. The CA will, as it has been the case all along, closely monitor the developments in the telecommunications and broadcasting markets, investigate cases involving any unfair trade practices, and where circumstances warrant, exercise the powers conferred on the CA under the TDO. Since the unfair trade practices specified under the Ordinance are criminal offences, of which the penalties include fines and imprisonment, this has a significant deterrent effect on all telecommunications service licensees. We expect that the implementation of the Ordinance will help further regularise and improve the trade practices of telecommunications service licensees, thereby enhancing the service standards of the telecommunications sector in the long run. It will also afford more protection to consumers while they enjoy quality telecommunications services.

Introduction to the Industry Code and its Implementation

13. In order to protect consumers' interest and to enhance transparency in the process of contract conclusion, OFCA has been working closely with the industry to draw up and implement self-regulatory measures in relation to telecommunications service contracts. After active discussions between OFCA and the industry, the Industry Code, drawn up by the Communications Association of Hong Kong ("CAHK"), an industry organisation, and the major service providers, has been implemented by the industry since July 2011. Please refer to Annex A for the full text of the Industry Code.

14. The Industry Code provides guidelines on the drawing up of fair, balanced and reasonable service contracts between the industry and personal or residential users, so as to bring about improvements in such aspects as contract contents, and arrangements for contract termination and renewal, viz.:

- (a) Enhanced clarity of information on services and charges incurred and provisions in contracts;
- (b) Provision of written confirmation for contracts concluded over the telephone by participating service providers;
- (c) Opt-out option for free-trial service with the arrangement not leading to inconvenience for customers or incurring any cost for them;
- (d) A seven-day cooling-off period for contracts that are entered into during unsolicited visits to customers' homes;
- (e) No automatic contract renewal without the customer's prior agreement;
- (f) More transparent arrangements for contract terminations, renewals, extensions and replacements;
- (g) Better customer protection in case service providers vary the contract terms and conditions unilaterally; and
- (h) Fairer arrangement for customers' service relocation requests

15. From July 2011, all major fixed and mobile network service providers and one major external telecommunications service provider in Hong Kong have implemented the Industry Code. The number of complaint cases in relation to disputes on telecommunications service contracts received by OFCA has significantly reduced after the implementation of the Industry Code. The number of relevant complaints in 2012 and 2011 was decreased by 13% as compared with that in the previous year. The numbers of complaints received from 2010 to June 2013 are as follows: (the number of complaints broken down by the types of disputes is at Annex B)

	2010	2011	2012	2013 Jan – Jun
Total Number of Complaints	1 466	1 277	1 116	495
As Compared with the Previous Year	N/A	-13%	-13%	N/A

We consider that the Industry Code has effectively improved the transparency in the contracting process and customer satisfaction, as well as reduced the number of disputes on contracts.

16. The Industry Code has been implemented for two years. OFCA has been closely monitoring its implementation and effectiveness throughout the course and has not found any cases of contravening the Industry Code. OFCA considers it the opportune time to conduct a comprehensive review on the effectiveness and scope of the Industry Code now. In this connection, OFCA proposed to CAHK some suggestions for improving the Industry Code in May this year. CAHK is currently discussing the proposal with various service providers.

17. The Industry Code provides standards for the industry, while OFCA and CAHK also encourage service providers to introduce measures that are better than those standardised in the Industry Code. In fact, a service provider has started offering a 14-day cooling-off period for newly registered customers on all of its sales channels since March this year to further enhance the protection of consumers' rights.

Conclusion and Way Forward

18. OFCA's enforcement of section 7M of the TO in the past was effective in regulating the misleading or deceptive conduct of telecommunications service licensees, and the implementation of the Amendment Ordinance can further strengthen the prevention of various unfair trade practices in different sectors and industries (including the telecommunications industry). As there is an overall downward trend on the number of complaint cases in relation to telecommunications service contracts, we consider that the self-regulatory scheme of the industry has played a active role in addressing the concern of consumers in the contracting process. We encourage the industry to improve the self-regulatory measures to enhance the protection of consumers' rights.

**Communications and Technology Branch,
Commerce and Economic Development Bureau
Office of the Communications Authority
July 2013**

Code of Practice for Telecommunications Service Contracts

Preamble

This Code of Practice is intended to enhance customer satisfaction levels in respect of the provision of telecommunications services in Hong Kong by improving the clarity of provisions in the telecommunications service contracts.

This Code of Practice represents a minimum set of practices and service providers who adopt this Code of Practice may choose to include other provisions which are not inconsistent with this Code of Practice.

1. Definition

1.1 In this Code of Practice

“**CAHK**” means the Communications Association of Hong Kong;

“**contract**” means a contract between a service provider and a customer in relation to the provision of one or more telecommunications services to the customer, including services provided after a free-trial period (subject to the requirement in paragraph 4.4);

“**customer**” means a residential or individual user who acquires a telecommunications service for personal or residential use (that is, not for commercial use) where the service terms are based on a standard form of contract of the service provider; for the avoidance of doubt, a service will be deemed to be acquired for commercial use if the service is registered under a company/business name or if the service is to be provisioned at a commercial premises;

“**Contract Service Charges**” means all fees or charges (except Other Charges) payable by customer for the telecommunications services expressly subscribed pursuant to contract and as referred to in paragraph 3.2(e) below;

“**date**” means a particular day, expressed as a numbered day in a named calendar month in a numbered calendar year;

“**day(s)**” means calendar day(s);

“**OFTA**” means the Office of the Telecommunications Authority;

“**Other Charges**” means the administrative charges and usage based charges payable by a customer for telecommunications services not specifically covered by the contract and as referred to in paragraph 3.2(f) provided that if a customer subscribed to fixed line service, Other Charges shall be those in relation to fixed line services and if a customer subscribed to mobile service, Other Charges shall be those in relation to mobile service;

“**service provider**” means a telecommunications service provider;

“**term contract**” means a contract to which telecommunications services are provided to the customer over a specific period of time which for the avoidance of doubt, does not include contract on a month-to-month basis;

“**unsolicited contract**” means a contract concluded during unsolicited visits to a customer’s home;

“**written confirmation**” means a hardcopy or softcopy, as the case may be, of the written contract save that it does not require a customer to sign;

“**written contract**” means a contract, the terms and conditions of which are in writing, in the form of one or more documents, and which requires the customer’s signature to effect the customer’s:

- (a) application for telecommunications services on the terms and conditions in, and referred to in, the documents; or
- (b) acceptance of telecommunications services on the terms and conditions in, and referred to in, the documents.

2. General

2.1 Service providers who adopt this Code of Practice will state so on their respective websites.

2.2 Service providers who adopt this Code of Practice may also state so on their contracts.

2.3 Service providers who adopt this Code of Practice will adopt this Code of Practice for all new contracts, and other specified contracts, that are entered into after an effective date to be announced by the individual service provider.

- 2.4 This Code of Practice is available at OFTA's website: <http://www.ofta.gov.hk> and the website of CAHK at <http://www.cahk.hk>.
- 2.5 OFTA and CAHK may publish information in relation to the adoption to this Code of Practice and update the published information on a regular basis.
- 2.6 CAHK, in consultation with its members, will review this Code of Practice periodically taking relevant input from OFTA and other relevant public bodies.

3. Style, format and structure of written contracts

- 3.1 A written contract for the provision of telecommunications services to customers:
- (a) must be written in plain language and appear in legible print;
 - (b) must be bilingual in Chinese and English, or in either Chinese or English as the customer elects, with the English and Chinese versions of the contract carrying equal legal effect; and
 - (c) must use a print font size of at least 9 point for the body text, footnotes and remarks, and must have adequate contrast with the background.
- 3.2 The principal contract document (for the main service with or without other services) must contain the following features and display them prominently:
- (a) the name of the company which the customer is contracting with in respect of the provision of all the main telecommunications services covered by the contract (which for the avoidance of doubt, does not include the names of the suppliers of the customer equipment and content services);
 - (b) the name of the customer which the company is contracting with;
 - (c) the specific service elements that the customer has subscribed to at the time the particular contract was entered into including essential ancillary services, value-added services, or customer equipment, whether a charge for the individual element is made or not;

- (d) in the case of a term contract, a target commencement date of the term and the duration of the specific term (or a target expiry date), and subject to paragraph 6.2 below, an obligation on the service provider to notify the customer about the impending expiry of the term;
- (e) clearly identified Contract Service Charges, being all fees or charges (except Other Charges) payable by customer for the telecommunications services expressly subscribed pursuant to contract, including:
 - (i) any deposit amount and the circumstances when the deposit is refundable or may be applied by the service provider;
 - (ii) any prepayment amount and the circumstances when the prepayment is refundable or is to be off set from the charges;
 - (iii) any waivable charges and the circumstances when the waivable charges may apply;
 - (iv) all service establishment and/or installation charges;
 - (v) any subsequent charges if the customer's usage exceeds the service entitlement included in the Contract Service Charges;
- (f) specified common categories of Other Charges; i.e administrative charges (being lost and replacement charges) and usage based charges/rates (such as IDD, roaming, international SMS) and where information on such charges/rates can be obtained (e.g. hotline) and, in the case of a term contract, whether such charges/rates will be subject to change during the term;
- (g) specified customer's service entitlement in respect of Contract Service Charges;
- (h) specified arrangements for termination of contract by customers and charges, if any, which may apply to termination or early termination;
- (i) specified arrangements for extension of term and renewal of the term of the contract or replacement of the contract;
- (j) the terms and conditions of the contract that can be changed unilaterally by the service provider, and the arrangements for any such change to be implemented;
- (k) the arrangements which the service provider must make available for customers, without undue cost or inconvenience to them, to return any customer equipment upon the expiry, termination or cancellation of

the contract;

- (l) for service provided in respect of particular locations, arrangements for customers to request the service to be relocated to other locations, and the arrangements when the relocation is not feasible; and
- (m) pursuant to paragraph 5, information relating to a cooling-off period which applies to unsolicited contracts.

3.3 Where a written contract has been signed by a customer, a copy of the signed contract must be given to the customer within a reasonable time thereafter.

3.4 Paragraphs 3.1 to 3.4 do not apply where the customer is not required to be registered as a customer for the enjoyment of the service (such as where the customer purchases a pre-paid SIM card for mobile services or a pre-paid calling card for IDD services, or the service provider provides a free Wi-Fi card to the customer for trial).

4. Contracts other than in writing

4.1 Where a contract is entered into other than by means of a physical document (physical document for this purpose shall include online application) such as by telephone (which for the avoidance of doubt, does not include WAP application through the customer's handset), the service provider must within a reasonable time thereafter, (which is targeted to be within 10 working days after the expiry or termination of the applicable cooling-off period) give the customer a written confirmation in English or Chinese, as the customer elects, of the service acquired or maintained.

4.2 The written confirmation will be dispatched by post, or by the optional reasonable means offered by the service provider (such as where the customer has subscribed for the Internet service, the service provider can send an email to alert customers to check the written confirmation online)¹.

4.3 Paragraphs 4.1 and 4.2 do not apply:

- (a) where the customer is not required to be registered as a customer for enjoyment of the service (such as where the customer purchases a

¹ At the time of issuing this Code of Practice, there is IT limitation for some service providers to dispatch a written confirmation to customers after a contract is entered into by telephone. While enhancement of the IT system will take a few months to complete, these service providers will send a written acknowledgement to customers for the service subscribed by way of a SMS.

pre-paid SIM card for mobile services or a pre-paid calling card or where the service provider provides a free Wi-Fi card to the customer for trial); or

- (b) where the service concerned is a service which is subsequently subscribed in addition to the main service under the same existing contract, provided that the service provider shall make available reasonable means for the customer to check (on any day) the contract terms of such service as described in paragraph 3.2 including any specific terms applicable to the customer.

4.4 A customer shall have the choice whether to accept and use a free-trial service. Where the free-trial service may become chargeable after the free-trial period expires, the service provider shall explain to the customer any arrangements for opting out when the free-trial service is offered and it must not put the customer to inconvenience or involve their incurring any cost in respect to exercising the opt-out request. This Code applies to services provided after the free-trial period.

5. Cooling-off period for unsolicited contracts

5.1 An unsolicited contract must provide for a cooling-off period during which the customer may cancel the contract without incurring any payment liability or any other obligation whatsoever.

5.2 A cooling-off period must be not less than seven days from the date the customer enters into the unsolicited contract.

5.3 The arrangements for customers to cancel the unsolicited contract during the cooling-off period must be specified in the contract and must not put them to inconvenience or involve their incurring anything other than incidental costs reasonably and properly incurred in the communication of the cancellation.

5.4 An unsolicited contract may provide for the cooling-off period to be waived by customers at the time they sign the contract, provided that the waiver requires customers to specifically indicate that they understand the benefit of the cooling-off period, and that they nevertheless elect to waive the period without inducement on behalf of the service provider.

5.5 A cooling-off period does not apply in the following circumstances:

- (a) where a customer is not required to be registered as a customer for

enjoyment of the service (such as where the customer purchases a pre-paid SIM card for mobile services or a pre-paid calling card, or the service provider provides a free Wi-Fi card to the customer for trial);

- (b) where the service is subsequently subscribed in addition to the main service under the same existing contract; or
- (c) where the contract is extended, the contract term is renewed or the contract is replaced unless the extension, renewal and replacement (as the case may be) is concluded during an unsolicited visit to the customer's home.

5.6 Subject to paragraph 5.7, a cooling-off period shall cease to apply upon the occurrence of any of the following events, or the expiry of the cooling-off period as required under paragraph 5.2 above, whichever is earlier:

- (a) once the service has been provisioned;
- (b) once the service provider commences the physical provisioning of the service (including by arrangement with a third party);
- (c) once the network terminating unit, customer premise equipment or user device or any promotional gift supplied in connection with the service has been collected by or delivered to the customer;
- (d) 3 days before the scheduled completion date of the number porting as agreed by the customer; or
- (e) after a quality control confirmation call in respect of the contract concerned has been made provided that:
 - (i) the service provider shall inform the customer clearly, and the customer acknowledges his awareness, that the quality control confirmation call will terminate the cooling-off period; and
 - (ii) the quality control confirmation call is made more than one hour after the unsolicited contract has occurred. (if the call is made within the hour the cooling off period will remain in force until the earlier of its expiry or the occurrence of an event mentioned in paragraph 5.6(a) to (d))

- 5.7 For the purpose of paragraph 5.6, the service provider shall inform the customer clearly, and the customer acknowledges his awareness, that, in the relevant contract or otherwise, prior to conclusion of contract that (i) the cooling-off period will cease to apply once the event(s) mentioned in paragraph 5.6(a)-(e) that is/are applicable to the customer occur(s); and (ii) when those event(s) will occur (based on the experience of the service provider, acting reasonably), and shall keep evidence of the notification and the customer's acknowledgement, such as a written copy or audio recording of the telephone conversation.

6. Expiry of Term Contract

- 6.1 Term contracts must comply with the following requirements:

- (a) the contract must state the target commencement date of the term and the duration of the term (or a target expiry date), and it must clearly differentiate those dates from other dates for the provision or cessation of service, or in respect of which the customer may have a payment obligation, or dates relating to the customer's electing to extend the term, renew the contract or enter into a replacement contract;
- (b) the contract must oblige the service provider to notify the customer of the impending expiry of the term of the contract, no more than 60 days and no less than 30 days before the date the contract expires;
- (c) the contract must specify whether service will continue to be provided to the customer after the expiry date:
 - (i) pending renewal, extension, or replacement of the contract; or
 - (ii) pending the customer notifying termination; or
- (d) if service is to continue after expiry of the term, the contract must specify the charges (e.g., at the prevailing market rate) which will be payable by the customer, as well as any changes which may apply to the service provision or to the customer's previous rights, obligations, or benefits or if the charges or if changes cannot be confirmed or specified at the time the contract is entered into, such charges or changes, if applicable, shall be notified to the customer not less than 30 days prior to the contract renewal date.

- 6.2 For the avoidance of doubt, paragraph 6.1 only applies to fixed term contracts and paragraph 6.1(b) does not apply where the service provider has made available reasonable means for the customer to check (on any day)

the expiry date of contract.

7. Termination by Customer

7.1 Contracts must provide customers with a right of termination, which includes the following features:

- (a) the customer must not be obliged to give the service provider more than one month's prior notice of termination;
- (b) the arrangements for termination must not put customers to inconvenience or involve their incurring anything other than incidental costs reasonably and properly incurred in effecting the notice; and
- (c) the fact that a specific charge may apply in the event of early termination, such as payment of an amount for a gift or device provided to the customer and the amount of such gift and device, any administration fee and the actual amount payable by customer for the remainder of the term.

7.2 For the purpose of paragraph 7.1(b), the service provider shall make available reasonable means for the customer to obtain (on any day) information in relation to, and exercise the right of, termination.

7.3 Where the customer exercises the right of termination in respect of any severable service element pursuant to the terms of contract, such termination shall not affect the force and effect of the contract in respect of the surviving service elements.

8. Extension or renewal of a term or replacement of a contract

8.1 The provisions of a contract providing for extension or renewal of the term of a contract or replacement of the contract, must provide that the arrangements for customers indicating their agreement include their receiving a written confirmation, in English or Chinese as the customer elects.

8.2 The contract must provide for the written confirmation to be dispatched by post, or by the optional reasonable means offered by the service provider (such as where the customer has subscribed for the Internet service, the service provider can send an email to alert customers to check the written confirmation online), within a reasonable time after the contract term is

extended, renewed or a contract is replaced.²

- 8.3 Paragraphs 8.1 and 8.2 do not apply where the contract term is extended, renewed or a contract is replaced with the agreement of the customer upon the same terms as, or on terms more favourable than, those of the original written contract or confirmation, provided that the service provider shall keep evidence of the customer's agreement on such extension, renewal or replacement, such as audio recording of the telephone conversation, and shall make available reasonable means for the customer to check (on any day) the contract terms as described in paragraph 3.2 including any specific terms applicable to the customer.
- 8.4 Automatic extension or renewal of the term of a contract shall be subject to paragraph 7.1 and shall not be effective unless the customer has specifically indicated in writing, or specifically confirmed if the contract is entered into otherwise than in writing, his acceptance of the automatic extension or renewal of the term, provided that the service provider must keep evidence of the customer's agreement on such automatic extension or renewal such as audio recording of the telephone conversation.
- 8.5 For the avoidance of doubt, references to "extension" and "renewal" in paragraph 8 refers to extension or renewal (as the case maybe) of a contract for a specified fixed term after expiry of a fixed term, but does not include any extended provision of service on a month-to-month basis referred to under paragraph 6.1(c).

9. Unilateral variation of terms and conditions

- 9.1 If a contract includes provisions allowing the service provider to unilaterally change the terms and conditions of the contract, those provisions must include the following features:
- (a) the terms and conditions which can be changed unilaterally by the service provider;
 - (b) in the event that the change will (i) result in an increase in a Contract Service Charges or (ii) have a substantial and adverse impact on the service enjoyed by a substantial number of customers, the service provider must use reasonable means to give not less than 30 days'

² At the time of issuing this Code of Practice, there is IT limitation for some service providers to dispatch a written confirmation to customers after a contract is extended or renewed. While enhancement of the IT system will take a few months to complete, these service providers will send a written acknowledgement to customers for the service subscribed by way of a SMS.

prior notice to the affected customers before effecting the change;

- (c) in the event that the change will result in an increase in an Other Charges (save for charges for IDD or roaming services provided that the service providers have informed the customers that such charges are subject to changes from time to time³), the service provider must inform the affected customers of the change on its website or such other means as it considers appropriate not less than 30 days prior to effecting such change; and
- (d) the provisions must permit the customer to terminate the contract, by notice no more than 15 days prior to the change coming into effect, without the customer incurring any charges of any kind in respect of that termination (other than incidental costs), in the event that:
 - (i) there is any increase in the Contract Service Charges (save for charges that are no longer applicable to the customers after they have installed or subscribed to the service such as service establishment/installation charges, deposit amount, prepayment amount or any waivable charges);
 - (ii) there is an increase in those Other Charges which is obliged to incur for the continued use of the subscribed service by the customer (e.g. replacement charges for lost SIM cards) (save for charges for IDD or roaming services³ provided that the service providers have informed the customers that such charges are subject to changes from time to time) which is more than HK\$30 or 30% of the amount of the monthly Contract Service Charges, whichever is higher; or
 - (iii) if the customer can demonstrate that the change to the contract terms will result in a substantial and adverse impact to the service that he/she has acquired.

10. Return of Customer Equipment to Service Provider

10.1 Where customer equipment provided to the customer by the service provider is required to be returned upon the expiry, termination or

³ This may include future services where the costs of providing fluctuate and are significantly dependent on third parties beyond the control of service providers.

cancellation of the contract, the contract must specify the manner in which the customer equipment is to be returned by the customer which must not put customers to inconvenience or involve their incurring anything other than incidental costs reasonably and properly incurred in effecting the return.

11. Customer Moving Location

11.1 Where a contract provides for services to be provided in respect of a particular location, the service provider must advise the customer the following.

- (a) the customer shall have the right to request the services provisioning to be relocated to another location that he/she resides provided that he/she must produce proof, to the satisfaction of the service provider, to demonstrate that he/she is residing at the relocated address;
- (b) the service provider will use its reasonable endeavours to relocate the service provisioning;
- (c) the service provider will advise the customer as soon as practicable upon its satisfaction of the proof as mentioned in paragraph (a) above whether it is feasible to provide the service at the relocated premises and any applicable charges;
- (d) if it is not feasible to provide the service at the relocated premises, the customer shall have the right to choose to continue to use the service at the same location or terminate the contract;
- (e) in the event that the customer chooses to terminate the contract under paragraph (d) above, the amount of termination charges, if applicable, shall only include (i) the installation charges incurred or waived and the value of any upfront gift that was given to the customers; and (ii) on a pro rata basis, the value of any benefits given to a customers on the basis of his/her agreement to use the service in question for the specified term, including but not limited to discounted monthly fee. For the avoidance of doubt, such termination charges shall not include any monthly service charges for the remaining contract period. However, the service provider may reduce or waive any termination charges as it sees fit and at its sole discretion which may take into consideration any benefits that have been given to the customer e.g.

upfront gift, remaining contract period and any other circumstances provided that the customer must produce proof to the satisfaction of the service provider as specified in paragraph (a) above.

12. Others

12.1 In this Code, where the terms or words “**reasonable means**” or “**inconvenience**” appear, they should include the following requirements on the service provider:

- (a) the service provider shall provide reasonable means so that the customer may make enquiry about the contract terms, expiry date, termination or relocation information. Such means may include but not limited to online enquiry, telephone enquiry or shop enquiry, and any other means that may be provided by the service provider;
- (b) where the customer makes the enquiry by telephone, the service provider shall endeavour to answer the call within the time pledged in accordance with its published customer charter or customary practice related to its subscription enquiry;
- (c) the service provider shall provide information about contract terms, expiry date, termination or relocation as soon as practicable and through the means (so far as practicable) that was used by the customer to make the enquiry in the first place, or any other means as agreed by the customer and the service provider;
- (d) where the contract term requires the submission of written notice for termination or relocation in prescribed form, the service provider shall provide the form to the customer as soon as practicable upon request by fax, post, email, online download or collection at shop. The customer may return the form by any of the above means as agreed by the customer and the service provider;
- (e) in respect of opt-out arrangement during free-trial period or cancellation during cooling-off period the need of submission of written opt-out or cancellation notice shall be dispensed with if so requested by the customer and the opt-out or cancellation arrangement shall be effected by other effective means (including arrangement by telephone or online means or at shop at the choice of the customer, or any other means as agreed by the customer and the service provider) subject to proper verification of identity of the customer; and

- (f) where the contract term requires the return of customer equipment, the service provider shall allow the customer to return the equipment to its designated office, shop or centre at the choice of the customer.
- 12.2 In computing time for the purpose of this Code of Practice, a period of days from the happening of any event shall be deemed to be inclusive of the day on which the event happens. For example, where a contract is signed at noon on Day 1, the customer may (subject to other provisions) exercise his cancellation right during a seven-day cooling-off period at any time on or before end of Day 7. Similarly, where a number porting is scheduled to complete at noon on Day 7, the cooling-off period (subject to other provisions) shall cease to apply at the start of Day 5.
- 12.3 This Code of Practice is concerned only with the minimum requirements that service provider agreed to meet in their form of service contract, and it does not preclude service providers from including other provisions which are not inconsistent with this Code of Practice.

Communications Association of Hong Kong
21 December 2010

Annex B

The number of complaints in relation to disputes on telecommunications service contracts received by the Office of the Communications Authority (OFCA) from 2010 to the first half of 2013, broken down by the types of disputes, is set out below:

<i>Types</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013 Jan – Jun</i>
Contract Content	445	315	304	106
Contract Termination Arrangement	465	411	300	163
Service Relocation Arrangement	183	181	172	70
Contract Renewal Arrangement	126	100	124	51
Unilateral Variation of Contract Terms	160	79	58	19
Contracting Process	23	39	14	6
Seven-day Cooling-off Period	N/A ¹	12	8	4
Others (includes all complaints from business subscribers)	64	140	136	76
Total	1 466	1 277	1 116	495
As Compared with the Previous Year	N/A	-13%	-13%	N/A

¹ As OFCA did not maintain separate figures for such complaint type in that particular year, the respective complaint figures were grouped under the category "Others".