

**For discussion
on 9 April 2018**

**Legislative Council Panel on
Information Technology and Broadcasting**

**Report on the public consultation on strengthening the regulation of
person-to-person telemarketing calls**

Purpose

This paper briefs Members on the findings of the public consultation conducted by the Government from 11 May to 31 July 2017 on “Strengthening the Regulation of Person-to-Person Telemarketing Calls” and our proposed way forward.

Background

2. Person-to-Person telemarketing calls (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. It is one of the most common modes of commercial promotion in Hong Kong. As in some other jurisdictions, the rampant proliferation of P2P calls in recent years has caused nuisance to phone users who do not wish to receive any such calls or such calls at such high frequency.

Sector-specific Self-regulatory Regimes

3. The Government has been well aware of the public concerns over P2P calls, and has therefore worked with four specific sectors (namely, finance, insurance, telecommunications and call centres) to establish sector-specific regulatory regimes since 2011 to ensure that these sectors, which are the main users/originators of P2P calls, would conduct their marketing calls in a measured manner through the establishment of codes of practice, with a view to striking a fine balance between disseminating updated market information to their clients/potential clients and reducing nuisance caused by such unsolicited calls to call recipients.

4. Under the self-regulatory regimes, the concerned sectors are voluntarily bound by the code of practice promulgated by their

respective trade associations¹ which specify the modus operandi of P2P calls made by the sector concerned. The codes normally restrict the hours of making P2P calls, specify the need to disclose contact details of the telemarketers and the requirement to respect unsubscription requests by call recipients, etc.

Concerns Expressed

5. When the Government briefed the Panel on past occasions², Members expressed different concerns over the regulation of P2P calls. Some queried the effectiveness of the voluntary self-regulatory regimes, others were concerned about the potential impact on job opportunities should P2P calls be regulated and the need to balance between the nuisance caused by P2P calls and the economic benefits brought by such calls through creation of businesses and employment opportunities.

Consultation Conducted

6. In response to requests for strengthening the regulation of P2P calls and with a view to gauging public views on the preferred mode(s) of regulation, the Government conducted a public consultation between 11 May and 31 July 2017. In the consultation paper³, we have set out the guiding principles for the establishment of a regulatory regime, the factors that needed to be taken into account, the pros and cons of the statutory and non-statutory approaches and references to overseas experiences. To facilitate public discussion, three options have been set out in the consultation paper-

Option 1

Enhancement or expansion of the existing sector-specific self-regulatory regimes;

Option 2

Promotion of the use of call-filtering applications (apps) in smartphones; and

¹ Namely, the Hong Kong Association of Banks, the DTC Association, the Hong Kong Federation of Insurers, the Communications Association of Hong Kong, and the Hong Kong Call Centre Association.

² The Legislative Council Panel on Information Technology and Broadcasting was briefed in April 2016, January 2015 and November 2009 respectively.

³ The consultation document has been uploaded on the following website for public reference: http://www.cedb.gov.hk/ccib/eng/paper/pdf/Consultation%20Paper_E.pdf

Option 3

Establishment of a statutory Do-not-call Register⁴, under which phone users may register their phone numbers so that telemarketers are disallowed to make telemarketing calls to them.

7. Among the above three options, Option 3 will require legislative backing for implementation.

Submissions Received in the Public Consultation

8. We have received a total of 3 709 written (including about 300 non-template and some 3 400 template-style) responses during the consultation period. Generally speaking, the submissions fall under the following categories -

- (a) Non-template submissions from individuals
A total of 253 such submissions were received;
- (b) Non-template submissions from business sectors, trade associations and companies
A total of 18 submissions were received, including eight from trade associations⁵ and ten from commercial enterprises;
- (c) Non-template submissions from non-business sectors
A total of 14 submissions were received, eight from political parties and entities⁶, and six from statutory bodies or other community organisations⁷; and
- (d) Template submissions from business and non-business sectors

⁴ A Do-not-call Register contains a list of telephone numbers to which the telemarketers is forbidden to make telemarketing calls without the call recipient's prior consent. Phone users/consumers may register with, check and remove their numbers from the Do-not-call Register.

⁵ Hong Kong Association of Banks, the DTC Association, the Hong Kong Federation of Insurers, the Communications Association of Hong Kong, the Hong Kong Call Centre Association, the HK Association of Professional Aestheticians International, the Cosmetic & Perfumery Association of Hong Kong Limited and the Federation of Beauty Industry (H.K.).

⁶ They are the NeoDemocrats, the Roundtable, the New People's Party, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), the New Century Forum, the Liberal Party, Hon Charles Mok and a motion from the Sai Kung District Council.

⁷ They are the Consumer Council, the Privacy Commission of Personal Data, the Junk Call Concern Group, the Competition Commission, the Society for the Coordination & Promotion of Eastern District and the Tsuen Wan Rural Committee.

Five template submissions were received, including three template responses⁸ and two template questionnaires⁹, totalling 3 426 submissions.

9. Details of the views expressed by different categories of respondent on the above three options are set out in Chapter 2 of the Consultation Report (**Annex**) while those on other proposals are set out in Chapter 3.

Summary of Respondents' Views

10. In overall terms, views from the business or related sectors and those from the public are starkly dichotomised. Industry associations, trade practitioners and companies of the relevant trades are all in favour of self-regulation. They have expressed unanimous opposition to a legislative approach for regulating P2P calls. Members of the public including most political parties and district/community groups are in clear support of strengthening the regulation of P2P calls by legislation. They opined that self-regulation has not been effective and only through a statutory regime could the P2P call telemarketers be deterred from calling and causing nuisance to them.

Views of the Trades

11. All the trade respondents, including all the five industry associations¹⁰ from the four sectors which have joined the self-regulatory regimes as mentioned in paragraph 4 above, oppose the proposed regulation of P2P calls by legislation. Serious concerns have been raised over the possible impacts of the legislative approach, such as added cost of compliance and difficulties to their normal conduct of business, especially for small and medium-sized enterprises (SMEs).

12. A number of trade organisations including the Hong Kong Call Centre Association¹¹ and some commercial enterprises from the insurance sector and telecommunications sector expressed that the

⁸ The three template responses totalled 3, 1 284 and 13 submissions respectively.

⁹ The two template questionnaires totalled 1 852 and 380 submissions.

¹⁰ The Hong Kong Association of Banks, the DTC Association, the Hong Kong Federation of Insurers, the Communications Association of Hong Kong and the Hong Kong Call Centre Association.

¹¹ Including also the Hong Kong Association of Banks, the DTC Association and the Communications Associations Hong Kong.

self-regulatory regime has already been in place and industry practitioners are adherent at large. In view of the proliferation of calls from other industry sectors, trade organisations opined that consideration might be given to expand the coverage of the self-regulatory regime as a means to address the public concern.

13. The beauty sector¹² is the most responsive trade in the current consultation exercise with close to 1 700 template submissions. While generally perceived by the public as a trade which has generated large number of P2P calls in recent years, the trade associations and individual SMEs/practitioners have objected strongly against legislation. Specifically, three trade associations¹³ of the beauty sector have volunteered for the sector to be included in the self-regulatory regime.

Views of the General Public

14. In contrast, the vast majority of views (89%) from individuals have expressed support to the legislative approach towards regulating P2P calls. Many considered self-regulation ineffective and have opted for statutory controls to be put in place as a more effective tool to regulate unsolicited P2P calls.

15. Among those who are in favour of a statutory approach, the vast majority (86%) supported adoption of a statutory Do-not-call Register, which would provide phone users with the choice to opt out of receiving P2P calls.

16. Some submissions from individual members of the public also suggested alternative statutory means, such as assigning specific prefixes to telemarketers so that phone users can easily recognise P2P calls and have the discretion to pick up those calls.

17. Among those who are in support of a statutory approach, given the lead time necessary for the entire legislative process, slightly less than half (44%) of the respondents agreed that the promotion of call-filtering apps should be adopted as an immediate measure to tackle P2P calls.

¹² Including feedback from four trade associations, individual beauty companies, as well as a total of 1 677 copies in three forms of template submissions/template questionnaires from individual practitioners.

¹³ They are the HK Association of Professional Aestheticians International, the Cosmetic & Perfumery Association of Hong Kong Limited and the Federation of Beauty Industry (H.K.).

Views of Non-business Organisations

18. Among the eight political bodies and six other organisations, there has been majority support (86%)¹⁴ for adopting a statutory approach for regulating P2P calls. Only one political body¹⁵ expressly supported adopting the sector-specific self-regulatory regime while another organisation¹⁶ had not indicated preference for any particular approach.

19. Among those political bodies who expressed support for a statutory regime towards the control of P2P calls, four of them¹⁷ supported complementing a statutory Do-not-call Register with the use of call-filtering apps in the interim. The political body which supported adopting the sector-specific self-regulatory regime also expressed support for the use of call-filtering apps as a complementary measure. Separately, three political entities¹⁸, which indicated support for setting up a statutory Do-not-call Register, also supported that the Government should legislate for assigning specific prefixes to numbers used by telemarketers for making P2P calls.

20. Among the organisation respondents, the Consumer Council had commented specifically on the viability of assigning specific prefixes for P2P calls. It was concerned that assigning specific prefixes to telemarketers could shorten the life span of the existing 8-digit numbering plan. It remarked that the social cost of upgrading the telecommunications numbering system to a 9- or 10-digit numbering plan would be significant and it would not be fair or desirable to see all telecommunications users of Hong Kong have to bear such cost while other alternatives are available for addressing problems caused by P2P calls.

¹⁴ They are the NeoDemocrats, the Roundtable, the New People's Party, the New Century Forum, Hon Charles Mok, Sai Kung District Council, the Consumer Council, the Privacy Commission of Personal Data Hong Kong, the Junk Call Concern Group, the Society for the Coordination & Promotion of Eastern District and the Tsuen Wan Rural Committee.

¹⁵ The Liberal Party.

¹⁶ The Competition Commission.

¹⁷ Including the NeoDemocrats, the New People's Party, DAB and Hon Charles Mok.

¹⁸ Including DAB, Hon Charles Mok and the Roundtable. For the Roundtable, its submission also contained 4 121 signatures from members of the public who are in support of assigning specific prefixes to numbers used by telemarketers.

Observations and Proposed Way Forward

21. The dichotomised views on the non-statutory and statutory approaches are understandable. The business sectors are concerned about the future restraints imposed on the use of P2P calls as a marketing tool, and the resultant criminal and/or civil sanctions associated with breaches under a statutory regime. They are also concerned about extra compliance costs to be incurred and the impact on SMEs. The majority of members of the public, however, are clearly in favour of the introduction of a statutory regulatory system for its perceived effectiveness of clamping down on unwelcomed and repeated P2P calls. It is noteworthy, however, that only very few submissions (25 (less than 10%) from individuals) have actually called for a total ban of P2P calls in Hong Kong. It can therefore be deduced that the community as a whole accepts that P2P calls have their merits of being able to convey market updates and new products/services or promotional benefits to customers in a quick and direct manner if the calls are appropriately done within a well-managed environment and that the public/consumers are given the choice to receive or not to receive those calls.

22. Having considered the views of different stakeholders, we propose the following measures to strengthen the regulation of P2P calls and address the different concerns of the stakeholders -

Statutory Regulation - Do-not-call Register

23. We **propose** that a statutory Do-not-call Register 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 required to observe the wishes of the phone users and not to make P2P calls unless it is proven that the call recipients' prior consent has been obtained.

24. We anticipate that there will be a number of essential features in the statutory regime, including clear definitions of telemarketers and telemarketing, procedures for phone users to register/de-register their numbers on the Do-not-call Register, identification and suitable authorisation of an implementation agency in executing and administering (including regular updating) of the Do-not-call Register, ways to make the Register readily available to telemarketers for the latter's observance, handling of all personal data by parties concerned,

and the establishment of the enforcement mechanism and legal responsibilities, including the collection of evidence and level of proof required for prosecution/sanctions, etc.

25. We are mindful that the scope for P2P calls has to be clearly and accurately defined so that important calls such as those from hospitals and other important public service providers will not be advertently caught by the regulatory regime. In other words, there is a need to provide for the making of “non-marketing” calls to individuals whose number is on the Do-not-call Register.

26. As regards the enforcement agency of the proposed Do-not-call Register, we note that the Office of the Privacy Commissioner for Personal Data (PCPD) is currently regulating direct marketing activities with the use of personal data¹⁹ under the Personal Data (Privacy) Ordinance (Cap. 486), including telemarketing calls that might involve the improper use of personal data. From the perspective of the community, it would be desirable to have a single, well-recognised and experienced agency to administer the future Do-not-call Register given the well-recognised difficulty for members of the public to distinguish P2P calls with or without the use or abuse of personal data. We therefore **propose** to assign PCPD to administer and execute the proposed Do-not-call Register for P2P calls such that all telemarketing calls can be dealt with by a single authority in a one-stop and user-friendly manner²⁰. We will work out the details of the future regulatory scheme in consultation with PCPD.

27. To ease the concern of the trade about the future operation of the statutory Do-not-call Register, we will actively engage the relevant trade organisations and other stakeholders in the legislative process with a view to devising a system that is practical, efficient and effective. Suffice to say, however, the Do-not-Call Register could indeed improve the efficiency of telemarketing P2P calls as a business promotion tool to focus on those interested to take P2P calls, and at the same time companies and SMEs could put resources in other more appealing marketing efforts for potential customers whose numbers are on the Do-not-call Register.

28. There are suggestions that consideration might be given to

¹⁹ Including P2P calls with the use of personal data.

²⁰ In this regard, it is noted that a Do-not-call Register is established under the Singapore Personal Data Protection Act 2012.

operating a Do-not-call Register by sectors so that the phone user can choose which “sector(s)” he/she wants to receive P2P calls and which “sector(s)” he/she rejects. We have reservation over any exemption by “sectors” in the Do-not-call Register because in the case of Hong Kong, there are no clear delineations or definitions of most business/trade “sectors”, except for practitioners or commercial establishments that are regulated by a licensing system, e.g. banks, doctors or telecommunications service providers. A sector-by-sector approach in the Do-not-call Register for customers or P2P calls will cause a lot of confusion and will be hard to enforce.

29. In the consultation process, we note that some trade respondents (in particular those from the beauty sector) have indicated willingness to join the sector-specific self-regulatory regime to regulate the modus operandi of making P2P calls by practitioners in the sector. Indeed, pending the establishment of the statutory regime, trade organisations of different sectors are encouraged to seriously consider enhancing/revamping the use of P2P calls as a marketing tool without causing nuisance to the public. We believe that this would go a long way in influencing the phone users’ choice or wish in registering themselves with the Do-not-call Register when it is set up in the future. An effective and functional self-regulatory regime would have the effect of reducing the number of phone users seeking to put their numbers on the Register and as a result, businesses could continue to use P2P calls as a marketing tool but in a more welcoming manner.

Other Statutory Options Proposed by Respondents

30. We have also considered the suggestion in some submissions that the Government should legislate for telemarketers to use designated/specific prefixes in making P2P calls but decided against it. We note and agree with the comments of the Consumer Council that the social cost of implementing the suggestion is high and disproportional to the effectiveness of curbing P2P calls. The Office of the Communications Authority (OFCA) advises that from a practical point of view, to freeze up a series of phone numbers with designated prefixes for telemarketers’ specific use would reduce the overall supply in the phone numbers and would in turn affect the efficient use of the current

8-digit numbering plan²¹. Realistically, this approach has little, if at all, effect if the telemarketers do not call from numbers with the specific prefixes or if they call from outside Hong Kong.

31. There are also suggestions from respondents that there should be different treatments between the so called “warm calls” and “cold calls”. Warm calls broadly refer to calls whereby the caller from the company is able to identify the call recipient whilst cold calls refer to those generated from the computer call machine whereby the caller does not know the recipient. Warm calls involve the use of personal data while cold calls do not. As mentioned in paragraph 26 above, calls involving the use of personal data are already regulated under the Personal Data (Privacy) Ordinance. In most other submissions received, respondents did not mention different handling of “warm calls” and “cold calls”, and there is no evidence showing that warm calls are more welcomed than cold calls from the phone users’ point of view. Instead of differentiating between warm and cold calls, a more practical approach would be for the company/practitioner to obtain the phone user’s *prior* consent in order that “warm calls” could be made to that particular customer/client.

32. A number of submissions also suggested that the criminal liability arising from the making of non-compliant P2P calls should be borne by the “final beneficiaries” (i.e. companies for which the P2P calls promote and which authorise the making of such calls). The submissions suggested that these companies are the originator of the unwanted P2P calls and should not be allowed to escape from liability. We will study these suggestions with the Department of Justice in detail during the law drafting process.

Non-statutory Measures

33. As we have mentioned in the consultation paper and as supported by respondents in their submissions, pending introduction of the relevant bill into the Legislative Council for the introduction of the Do-not-call Register, we **propose** that that some non-statutory measures could be introduced to mitigate the plight faced by some phone users in

²¹ OFCA has implemented a host of measures in two phases from 1 January 2017 and from 1 July 2017, such as releasing vacant number blocks of leading digits “4”, “7” and “8” for allocation to mobile services. It is also expected the third-phase of measures will be launched on 1 July 2021. With those measures in place, OFCA estimates that the 8-digit numbering plan could last until 2029.

the interim.

Enhancement of the Existing Self-Regulatory Regimes

34. Respondents from the business sector have unanimously expressed their preference for the self-regulatory mechanism. We therefore **propose** that the industry bodies or trade associations should 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. This will help improve the image of the sector(s) and incentivise customers/clients to give consent to receiving P2P calls by companies of these sectors in the future when the statutory Register is established.

Enhancement of Call-filtering Apps

35. As pointed out in the consultation paper, call-filtering app is an effective tool in helping screen out a large number of unwanted calls. Some, however, are reluctant to use them because of concerns over data privacy. In view of this, we **propose** to encourage the apps companies to upgrade such apps in terms of data privacy protection. To this end, we intend to incentivise the apps operators by subsidising them to acquire accreditation by independent accreditation agency/agencies recognised or specified by the Government. The sponsored accreditation would cover, inter alia, proof that the concerned apps are capable of protecting personal data of the phone-user-subscriber to their filtering apps. In addition, we might also provide the apps company with fixed sponsorship to facilitate the company's implementation of improvement proposals suggested by the independent accreditation agency so as to upgrade the apps to meet the prescribed accreditation standards.

Public Education on Using Call-filtering Apps

36. We are aware that the effectiveness of call-filtering apps hinges on, to a large extent, the technology literacy of the phone users. While use of smartphones in Hong Kong is amongst the highest in the world (ranked third among 52 countries in 2017²²), it is generally believed that elderly people might be less IT savvy. As such, we **propose**, as a start, to launch public education programmes targeting the elderly people to teach them how to make use of call-filtering apps to

²² According to Zenith's Mobile Advertising Forecasts 2017.

tackle nuisance from P2P calls. In this connection, we intend to make use of the existing programmes that reach out to the elderly community, e.g. the “Elder Academy Scheme” operated by the Labour and Welfare Bureau and local welfare agencies and schools which has been in place since 2007 with a dedicated purpose of continuous education for the elderly. The Scheme has a network of about 130 Elder Academies throughout the territory and is able to reach out quite extensively to the elderly community. We will liaise with the professional apps operators and explore holding classes to the elderly through this network. We will also conduct promotion and education in public media as suitable through the Information Services Department.

Next Steps

37. Subject to Members’ views, we will proceed to preparing the legislative proposal for establishing a statutory Do-not-call Register in consultation with the Department of Justice, PCPD and relevant stakeholders with a view to drawing up a regime that is feasible and suitable for Hong Kong. We will continue to keep in view developments in other places where statutory Do-not-call registers are implemented and draw on their experience in devising our own system. In the meantime, we will work with the relevant parties to take forward the non-statutory measures with a view to reducing the nuisance caused by P2P calls to the general public.

Advice Sought

38. Members are invited to note the findings of the consultation exercise and comment on our proposed way forward.

**Communications and Creative Industries Branch
Commerce and Economic Development Bureau
March 2018**

**Strengthening the Regulation of
Person-to-Person Telemarketing Calls**

Report on Public Consultation

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* The Annexes have been uploaded to the website of the Commerce and Economic Development Bureau
(<http://www.cedb.gov.hk/ccib/eng/paper/index.htm>)

Chapter 1: Introduction

- 1.1 Person-to-Person telemarketing calls (P2P calls) are marketing telephone calls involving interpersonal communication with a view to promoting goods or services to customers. These calls are common in Hong Kong and other jurisdictions to mainly serve the purpose of conveying marketing and business information to customers to facilitate commercial transactions.
- 1.2 As the wide and proliferated use of these commercial calls has caused nuisance to the public and raised the public's concern, the Government conducted a public consultation from 11 May to 31 July 2017 on strengthening the regulation of P2P calls to collect public views.
- 1.3 Copies of the consultation paper were distributed through District Offices, and its e-version was uploaded to the websites of the Commerce and Economic Development Bureau (CEDB) and GovHK for public viewing. We proactively sent letters to different concern groups and stakeholders, including the 18 District Councils, the Office of the Privacy Commissioner for Personal Data (PCPD), the Consumer Council, the Competition Commission, trade associations whose members make P2P calls, companies operating call-filtering applications (apps) for smartphones, etc., to invite their views. During the public consultation, the Secretary for Commerce and Economic Development also attended the meeting of the Legislative Council (LegCo) Panel on Information Technology and Broadcasting to explain the consultation paper to LegCo Members and solicit their views.
- 1.4 During the consultation period, we received 3 709 submissions¹. Among them -
 - (a) 253 were non-template submissions from individuals (**Annex A**)²;
 - (b) 32 were non-template submissions from groups/organisations/enterprises, including -
 - (i) 18 submissions from trade associations/enterprises (**Annex B1**);

¹ Twenty-three overdue submissions were received after the consultation period.

² Submissions with the same content and from the same person were counted as one submission.

- (ii) eight submissions from political parties/political bodies/ LegCo Members, including one enclosing 4 121 signatures of the public (**Annex B2**); and
 - (iii) six submissions from other organisations (**Annex B3**).
- (c) 3 426 copies from five template submissions/questionnaires³ -
- (i) Template A (**Annex C1**): a template submission, with three copies from anonymous persons;
 - (ii) Template B (**Annex C2**): a template submission, with 1 284 copies from individual members of the beauty sector;
 - (iii) Template C (**Annex C3**): a template submission, with 13 copies from individual members of the beauty sector;
 - (iv) Template D (**Annex C4**): a template questionnaire, with 1 852 copies from the “opinion generator” of LegCo Member Hon Charles Mok; and
 - (v) Template E (**Annex C5**): a template questionnaire, with 380 copies from anonymous persons.

1.5 This report consolidates views and suggestions from different sectors and stakeholders on strengthening regulation of P2P calls. Due to limited space, the main text of this report does not include exhaustively all the views received, but all the original written submissions are included in the annexes. If there is any inconsistency, the originals in the annexes shall prevail.

³ One of the template questionnaires has both Chinese and English versions. The two versions are counted as one template.

Chapter 2: Views Received on Different Options

2.1 In the consultation paper, we set out an objective analysis of three possible options for strengthening regulation of P2P calls. They were -

Option 1: Improving trade-specific self-regulatory regimes;
Option 2: Promoting call-filtering apps in smartphones; and
Option 3: Establishing a statutory Do-not-call Register.

2.2 This chapter summarises views received on the three options.

Option 1: Improving Trade-specific Self-regulatory Regimes

2.3 Currently, four sectors (finance, insurance, telecommunications and call centres) have established their respective self-regulatory regimes.

2.4 The self-regulatory regimes of the four sectors are built on codes of practice drawn up and issued by their respective trade associations⁴. These codes of practice specify guidelines and best practices for observance by members of the sectors concerned, including restrictions on calling hours, need to reveal identity of the telemarketers and pledge to honour unsubscribe requests.

2.5 To enhance the current regime, the consultation paper pointed out that the trades might introduce additional measures to encourage members to adhere to the codes of practice and establish formal complaint handling procedures for reporting of non-compliant P2P calls. The number of complaints received could also be made public from time to time to raise transparency. Tightening up the existing codes of practice and extending the regimes to more trades/businesses could also be considered.

Submissions from individuals

2.6 Among the 253 non-template submissions from individuals, none supports the option of improving trade-specific self-regulatory regimes⁵.

⁴ In 2010, the then Office of the Telecommunications Authority formulated a Benchmark Code of Practice on Person-to-Person Marketing Calls (“Benchmark Code”). Trade associations then drew up and issued their respective codes of practice with reference to the Benchmark Code.

⁵ One of the submissions mentioned that it did not support self-regulation, but then said that it supported Option 1 (i.e. self-regulatory regimes). Given the conflicting views, that submission is not counted as supporting self-regulatory regimes.

2. 7 These submissions generally consider that there is no need to strengthen or extend the self-regulatory regimes as the regimes have proven ineffective over the years for lacking of sufficient deterrent effect, nor have the trades demonstrated sufficient self-discipline in adherence. Instead, other options with greater deterrent effect (e.g. legislation) should be adopted to strengthen the regulation of P2P calls.

Group submissions

Trade associations/enterprises

2. 8 Among the 18 submissions from trade associations/enterprises, the vast majority (17 submission or 94%), especially trade associations or groups⁶ currently participating in the self-regulatory regimes, support the self-regulatory regimes and opine that the current system of trade-specific codes of practice has been effective.
2. 9 These supporting views point out that the number of complaints against P2P calls has dropped after implementation of the self-regulatory regimes, and that members of the sectors are generally compliant. As such, other means to strengthen the regulation should not be required.
2. 10 These views also consider self-regulatory regimes flexible as they can be adapted to suit the specific circumstances of different trades, so as to better meet the practical needs of the trades concerned without impacting much on the existing business operation.
2. 11 Two submissions further suggest that a mandatory accreditation system should be put in place in addition to self-regulation to require participating enterprises to conduct regular reviews to ensure compliance with the codes of practice.
2. 12 In addition, three trade associations of the beauty sector⁷ (which is not one of the sectors participating in the self-regulatory regimes) indicate support in their submissions for the self-regulatory regimes and suggest extending such regimes to the beauty sector to improve the sector's

⁶ Trade associations which participate in self-regulatory regimes include the Hong Kong Call Centre Association, the Communications Association of Hong Kong, the Hong Kong Association of Banks, the DTC Association and the Hong Kong Federation of Insurers.

⁷ The trade associations include the Federation of Beauty Industry (H.K.), the HK Association of Professional Aestheticians International and the Cosmetic & Perfumery Association of Hong Kong Limited.

telemarketing practices, so as to minimise nuisance caused to the public while not considerably altering the modes of operation and marketing of the sector.

Political parties/political bodies/LegCo Members

2. 13 Among the eight submissions from political parties/political bodies/LegCo Members, the majority (seven)⁸ do not support the option of improving trade-specific self-regulatory regimes.
2. 14 These political parties/political bodies/LegCo Members consider that the public favours a statutory approach for regulating P2P calls. Self-regulation means maintaining the status quo which has proven ineffective, and trades that are considered most problematic (such as the beauty sector and money lenders) have not participated in such regimes. Of these respondents, Hon Charles Mok states that among the 1 755 responses canvassed by his “opinion generator”⁹, about 78% considered self-regulation completely ineffective. The submission from the New Century Forum states that over 60% of the respondents of their telephone opinion poll had requested P2P call telemarketers to stop calling, but about 90% still received calls from the same companies thereafter. The New Century Forum therefore questions the effectiveness of the option of self-regulatory regimes.
2. 15 On the contrary, the Liberal Party opines that the option of trade-specific self-regulatory regimes is more flexible, as it does not require a lengthy legislative process, and trades can revise their codes of practice in a swift manner to suit any changes in circumstances. The Liberal Party considers that the implementation of the self-regulatory regimes in the past several years shows that the trades are willing to comply with the codes of practice. The drop in the number of complaints against P2P calls received by the CEDB and the Office of the Communications Authority also shows the effectiveness of the self-regulatory regimes. Therefore, the Liberal Party supports extending such regimes to other trades.

⁸ Including the submissions of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), the New People’s Party, the New Century Forum, the Roundtable, the NeoDemocrats, LegCo Member Hon Charles Mok of the functional constituency of information technology, and a motion of the Sai Kung District Council.

⁹ These responses are Template D, a template questionnaire.

Other organisations

2. 16 The Consumer Council states that according to its experience, self-regulatory regimes are unable to balance the interests of the trades and the public. The current self-regulatory regimes inconvenience consumers as such regimes are not regulated by a unified central authority and consumers have to ask individual companies one by one not to make P2P calls.
2. 17 PCPD also holds similar views. It considers that self-regulatory regimes would serve well as an interim measure, but the effectiveness of such regimes hinges on self-discipline of members of the trades while there seems to be a lack of industry organisations or strong cohesion in many of the relevant trades. It also notes the need for consumers to ask individual companies one by one not to make P2P calls under such regimes. All these dampen the effectiveness of trade-specific self-regulatory regimes in mitigating the nuisance caused by P2P calls.
2. 18 The Competition Commission does not indicate preference for any of the three options listed in the consultation paper, and says that if the Government were to strengthen regulation by codes of practice, impacts on market competition, e.g. restriction on pricing and marketing conduct of industry participants, should be avoided.

Template submissions/ questionnaires

2. 19 Among the template submissions/questionnaires received, Template A does not express views on this option, Template D considers that this option does not have sufficient deterrent effect, while Template B, Template C and Template E support improving trade-specific self-regulatory regimes.
2. 20 Template B points out that the beauty sector, having a unique mode of operation, is different from other trades, and therefore should be allowed to draw up a trade-specific code of practice. The template points out that compared to the legislative approach, the cost for compliance with trade-specific codes of practice is lower, the time required for preparation and implementation shorter and the impact on the established modes of operation and marketing of the beauty sector smaller.

Option 2: Improving Call-filtering Applications in Smartphones

2. 21 In Hong Kong, there are already a handful of rather widely-used call-filtering smartphone apps. These apps alert call recipients to possible P2P calls, so that the recipients can decide whether to decline the calls.
2. 22 In the consultation paper, we proposed that the call-filtering apps might be improved with funding support or other forms of support by the Government, and that the Government might promote wider use of such apps.

Submissions from individuals

2. 23 Among the non-template submissions (250) from individuals which support stepping up regulation by legislation, around 40% (110) agree that given the lengthy legislative process, smartphone call-filtering apps should be enhanced in the interim.
2. 24 These submissions generally consider that although call-filtering apps are not a long-term solution for P2P calls, they could help users who do not want to receive such calls screen out such calls in the interim. As such, it is worthwhile to promote their use before completion of the legislative process.
2. 25 Around 20% (48) of these submissions, however, consider that if the Government were to deal with P2P calls by legislation, there is no need to expend extra time and efforts on studying the option of promoting call-filtering apps.

Group submissions

Trade associations/enterprises

2. 26 Among the 18 submissions from trade associations/enterprises, slightly less than half (8) support both the options of improving call-filtering apps in smartphones and improving self-regulatory regimes at the same time.
2. 27 Two submissions consider that while blocking P2P calls, call-filtering apps should also “whitelist” calls from government or public service bodies such as hospitals so that users would not miss such important calls.

2. 28 One submission objects to the option of smartphones call-filtering apps, considering the option inherently defective in according protection for such apps are not available for fixed-line phones and non-smart mobile phones.
2. 29 Among the submissions from companies developing call-filtering apps, some (four) recommend that the Government consider improving the accuracy of the databases of these apps by e.g. encouraging government departments, telecommunications service operators and private companies or organisations to provide their telephone numbers to the apps operators. Some companies suggest that the Government should engage third parties to conduct accreditation for these apps to raise the public's confidence in using them. Regarding government subsidy, some of the companies consider that such would enhance the quality and functions of the apps, but some opine that government subsidy is not necessary as they do not develop those apps for monetary gains; while some opine that monetary subsidies will only attract companies which want to enter the market with that government subsidy or publicity, and would not help improve the databases.

Political parties/political bodies/LegCo Members

2. 30 Among the eight submissions from political parties/political bodies/LegCo Members, the majority (six)¹⁰ support the option of smartphone call-filtering apps.
2. 31 These submissions consider that the Government should adopt a multi-pronged approach in dealing with the issues of P2P calls, and call-filtering apps can play a supplementary role in screening out some P2P calls.
2. 32 The submission from Hon Charles Mok states that the views canvassed by his "opinion generator" indicated that around 87% of the respondents agreed that the Government could consider ways to improve the accuracy of such apps in respect of identifying e.g. caller-identification spoofing, voice over Internet protocol, calls from other jurisdictions etc.; while 60% of the respondents agreed that requirements and guidelines for protecting privacy should be drawn up and information on apps

¹⁰ Including the submissions of DAB, the New People's Party, the New Century Forum, the NeoDemocrats, the Liberal Party and LegCo Member Hon Charles Mok of the functional constituency of information technology.

meeting such criteria should be publicised.

2. 33 The submission from the Roundtable says that while many users have already installed call-filtering apps, the effectiveness of such apps is limited as filter updates of such apps can hardly catch up with the swift and massive rollout of new numbers used by the trades making P2P calls; it is hard to ensure such apps' accuracy and timeliness.

Other organisations

2. 34 The Consumer Council supports adopting the option of improving call-filtering apps as an interim measure, but has concerns over possible privacy issues of such apps and considers that such apps should be barred from obtaining or using any information stored in the users' phones. The Council submits that should there be no effective measure in place to safeguard personal data, it would have reservation about this option.
2. 35 PCPD also supports improving call-filtering apps as an interim measure. Noting that there were previously incidents of such apps leaking personal data of their users, PCPD stresses the need to ensure sufficient safeguard to protect users' personal data when promoting use of such apps. It also points out that people benefiting from this option would be limited as the apps are not available for fixed-line telephones and elderly people do not usually use smartphones.

Template submissions/ questionnaires

2. 36 Template A and Template B do not express views on this option, while Template C, Template D and Template E support this option.
2. 37 Template D considers that requirements and guidelines for privacy should be drawn up, apps which meet such criteria should be publicised and studies should be conducted to improve the accuracy of such apps in respect of identifying caller-identification spoofing, voice over Internet protocol and calls from other jurisdictions.
2. 38 Template E points out that this option is not legislative regulation and would not attract legal liability for telemarketers.

Option 3: Establishing a Statutory Do-not-call Register

2. 39 A Do-not-call Register is normally established by law. Phone users who do not want to receive P2P calls may register their phone numbers with

the Register. Telemarketers are prohibited from calling the numbers listed on the Register.

Submissions from individuals

2. 40 Among the 253 non-template submissions from individuals, the majority (193) support establishment of a statutory Do-not-call Register.
2. 41 These submissions generally consider statutory regulation more effective for its provision of sufficient deterrent effect. A Do-not-call Register allows users to decide whether to receive P2P calls or whether to receive P2P calls from companies of their choice, thereby providing phone users with both safeguard and flexibility.
2. 42 Among the submissions supporting establishment of a Do-not-call Register, a few (nine) further suggest that the Register should be operated by sectors and that the public may choose not to receive P2P calls from certain sectors, while continue to receive calls from other sectors.
2. 43 Some submissions (17) also consider that as the vast majority of the public are unwilling to receive P2P calls, prohibition of P2P call should be made applicable across the board without necessitating the need for registration of phone numbers. Alternatively, only those who wish to receive P2P calls should be required to register their phone numbers with the Register, and telemarketers should be prohibited from calling those not on the list.

Group submissions

Trade associations/enterprises

2. 44 Among the 18 submissions from trade associations/enterprises, all of them are in clear opposition to establishment of a statutory Do-not-call Register.
2. 45 These submissions generally contend that regulation of P2P calls by legislation will seriously hamper normal business operation and marketing, and will in particular increase the publicity costs for micro enterprises and small and medium-sized enterprises (SMEs). Furthermore, with the increasing cost and decreasing effectiveness of P2P calls, some enterprises will need to turn to other publicity means, which may also bring about adverse impacts on employment

opportunities and livelihoods of P2P call telemarketers.

2. 46 Some trade associations/enterprises stress that overseas experiences show enormous difficulties in enforcement as regulation by legislation has various limitations, e.g. difficulties in detecting calls from other jurisdictions and collecting evidence, possible use of technology to circumvent regulation, etc., which would render this option ineffective in eliminating nuisance caused to the public by P2P calls.
2. 47 Two submissions from trade associations/enterprises mention that under the Personal Data (Privacy) Ordinance, the collection, use and transfer of personal data with regard to P2P calls are already strictly regulated. Further strengthening of regulation is inappropriate and will seriously affect operation of the relevant trades.
2. 48 Another two submissions from trade associations/enterprises propose that should the Government eventually decide to establish a statutory Do-not-call Register, consideration should be given to recognise the effectiveness of the existing self-regulatory regimes by providing certain exemptions. Another business organisation submits that even if the Government were to establish such a Register, as phone numbers might change hands, phone numbers on the Register should be made to lapse after a certain period say two to three years, after which users would have to re-register their numbers with the Do-not-call Register.

Political parties/political bodies/LegCo Members

2. 49 Among the eight submissions received from political parties/political bodies/LegCo Members, the majority (seven)¹¹ support early establishment of a statutory Do-not-call Register.
2. 50 These submissions consider that the statutory approach offers the highest deterrent effect and is the most effective option. Submission from the New Century Forum states that half of the respondents from its telephone opinion poll supported establishment of a Do-not-call Register. Hon Charles Mok states that over 73% of the responses canvassed by his “opinion generator” agreed to cover P2P calls in the Do-not-call Register to ban all trades from conducting telemarketing. The Roundtable says that the time required for introducing legislation and

¹¹ Including the submissions of DAB, the New People’s Party, the New Century Forum, the NeoDemocrats, the Roundtable, LegCo Member Hon Charles Mok of the functional constituency of information technology, and a motion of the Sai Kung District Council.

the enforcement difficulties are not valid reasons to defy the legislative approach.

2. 51 The submission from the New People's Party opines that as the Do-not-call Register could reduce the spam information in the market, it could have positive impact on raising the efficiency of telemarketing, and that registration with the Do-not-call Register should be made simple and user-friendly.
2. 52 The Liberal Party does not support establishment of a statutory Do-not-call Register. It considers that an across-the-board legislative regulation should not be taken lightly as it would affect all trades and all sectors, the business environment and livelihoods of the telemarketers. As micro enterprises and SMEs have limited resources, many of them (e.g. upper floor shops) would have difficulties attracting customers by other means than telemarketing. If compliance cost were to increase due to the legislation, these enterprises might be driven out of the market for their lack of promotional channels to get new customers, which might in turn enable monopolisation of the market by big players. The Liberal Party also sets out in its submission the limitations of statutory regulation in enforcement drawing on overseas experiences, e.g. difficulties in detecting calls from overseas and collecting evidence, possible use of technology to circumvent regulation, etc.

Other organisations

2. 53 The Consumer Council supports establishment of a Do-not-call Register. For the operation of the Register, it considers that this Do-not-call Register for P2P calls should have the same enforcement agency as the one currently under the Unsolicited Electronic Messages Ordinance (Cap. 593) for the sake of administrative convenience. Exemptions should be carefully granted to balance the risk of abuse and the public needs for critical public services. Also, the Council suggests that the Government should draw up a standard code of practice to guide the telemarketers for compliance with the statutory requirements, and that the Do-not-call Register should be kept simple and user-friendly.
2. 54 PCPD agrees that establishment of a Do-not-call Register would be the most effective and consumer-friendly option amongst all, for such a Register offers users a "one-stop shop" to opt out of all P2P calls. Such a statutory Do-not-call Register would also provide a mechanism to sanction non-compliance, and increase the cost-effectiveness of telemarketing by screening out users who are not interested in P2P calls

at all.

Template submissions/ questionnaires

- 2. 55 Template A and Template B are in support of the proposal, while Template C, Template D and Template E are against the proposal.
- 2. 56 Template B considers that more resources should be allocated to the enforcement agency of the Do-not-call Register for handling complaints, conducting investigations and enforcement.

Chapter 3: Other Suggestions Received

- 3.1 Apart from the three options mentioned in Chapter 2, the consultation paper also invited the public to express other suggestions on the subject.
- 3.2 This Chapter summarises the major suggestions received.

Suggestion 1: Assigning Specific Prefixes to Telemarketers

- 3.3 Twenty-three submissions from individuals, three group submissions (including submissions from DAB and Hon Charles Mok respectively, and submission from the Roundtable which attaches 4 121 signatures) and one template questionnaire (Template D) suggest that the Government should require telemarketers to be registered and be assigned specific telephone prefixes for making P2P calls, so that phone users can easily identify P2P calls and decide whether to answer those calls.
- 3.4 The consultation paper stated that assigning specific prefixes to telemarketers would generate a higher demand for telephone numbers and create adverse impact on the existing 8-digit numbering plan. In response to this, one group submission (from the Roundtable) suggests that the Government could consider assigning multi-digit telephone prefixes to telemarketers (e.g. three-digit prefixes: XXX1 2345) to minimise impact on supply of telephone numbers.
- 3.5 PCPD states that while it is not in a position to comment on the impacts of the proposal of assigning specific prefixes on the 8-digit numbering plan, it considers that the Government should explore the possibility of requiring telecommunications service providers by law to assign specific prefixes to telemarketers.
- 3.6 The Consumer Council does not agree with the proposal to assign specific telephone prefixes to telemarketers. It is of the view that supply of telephone numbers under the current 8-digit numbering plan has already been tight, it would be unsatisfactory to assign specific prefixes to telemarketers as this could further shorten the life span of the 8-digit numbering plan incurring huge social cost.

Suggestion 2: Imposing Criminal Liability on the Final Beneficiaries of P2P Calls

- 3.7 Currently, many companies which wish to conduct commercial promotion through P2P calls would make the calls through third parties

(such as call centres).

3. 8 Five submissions from individuals, three group submissions and one template questionnaire (Template D) point out that the final beneficiaries of P2P calls are usually companies which authorise the making of such calls. Should P2P calls be regulated by legislation, apart from the frontline telemarketers, the companies being final beneficiaries of the calls should also bear the criminal liability so as to curb P2P calls at source.
3. 9 The said submissions consider that if the final beneficiaries were also made liable, then even if the P2P calls were made from overseas by telemarketers or agents, the enforcement agency could still enforce the law against those final beneficiaries, plugging the loophole of difficult enforcement outside Hong Kong.

Suggestion 3: Separating P2P Calls With and Without Using Personal Data

3. 10 Generally speaking, telemarketers can make P2P calls either randomly or to specific targeted phone users with use of personal data.
3. 11 Eight submissions from individuals, seven group submissions and one template questionnaire (Template D) are of the view that the Government's regulation should focus on random P2P calls without use of personal data (so-called "cold calls"). These submissions point out that targeted P2P calls with use of personal data ("warm calls") have their business values and do not necessarily cause nuisance. Warm calls are generally made to existing customers of the companies and have a better chance in procuring business transactions. As such, warm calls should be handled separately from random cold calls, or should be exempted from regulation altogether.
3. 12 The Consumer Council, however, points out that from its past experiences of handling complaint cases relating to P2P calls, many people were unable to distinguish whether a P2P call was a random cold call or a targeted warm call with use of personal data previously supplied to a company. The Council therefore considers it impractical to separate the handlings of cold calls and warm calls for this would bring about enforcement difficulties.

Suggestion 4: "White List" for Important Calls

3. 13 Phone users who are against P2P calls answer calls selectively and may

decline incoming calls from unknown sources altogether.

3. 14 Two group submissions are of the view that the Government should provide a “White List” of important telephone numbers (e.g. hospitals, emergency service authorities, etc.), so that the public would not miss important calls. Companies which develop call-filtering apps also express wish to have the Government and public authorities and companies to provide verified phone numbers to enhance the database of the apps so that they could remind the public to answer those calls.

Suggestion 5: Strengthening Public Education

3. 15 Five group submissions urge the Government to strengthen public education on, e.g. the right to lodge request not to receive further P2P calls, the awareness of personal data protection and signs of suspicious calls. These submissions consider that should the public know P2P calls better, they should be able to handle such calls better.

Chapter 4: Conclusion

- 4.1 P2P calls are a common mode of commercial promotion in Hong Kong. We understand that different sectors have different or even contradictory views on how to strengthen the regulation of P2P calls. Drawing on the practical and enforcement experiences of regulating P2P calls in other jurisdictions, we have to accept that whichever the regulatory approach, there could be no guarantee of eradication of circumvention by P2P call telemarketers.

- 4.2 We are very thankful for the participation by the public and the stakeholders in the consultation exercise. The views and suggestions received in the consultation has helped the Government gauge better the expectations of the society at large, thereby providing a sound basis for us to move forward to improve the regulation of P2P calls.