

LCQ12: Enhancing regulation of person-to-person telemarketing calls

Following is a question by the Hon Shiu Ka-fai and a written reply by the Secretary for Commerce and Economic Development, Mr Edward Yau, in the Legislative Council today (December 5):

Question:

The Government proposes to establish a statutory Do-not-call Register to enhance the regulation of person-to-person telemarketing calls, and plans to introduce the relevant bill into this Council within the current Legislative Council term. In this connection, will the Government inform this Council:

(1) whether it has examined if the enactment of the proposed legislation can eradicate (i) telemarketing calls pretended to have come from legitimate financial institutions, and (ii) overseas telemarketing calls; if it has examined and the outcome is in the negative, whether it will review if it is still necessary to enact the legislation;

(2) whether the proposed legislation will require any person or company to obtain the prior consent of each of the persons with whom that person/company has business connections before calling such persons to carry out marketing activities; if so, whether it has assessed if this requirement is practicable;

(3) whether it will stipulate in the proposed legislation that the prior consent of the targets of marketing activities may be obtained through instant messaging applications;

(4) regarding the practice that a person makes calls to new acquaintances, using the contact information on the business cards obtained on social occasions, to introduce products or services to them, whether the Government has plans to bring this practice within the ambit of the proposed legislation;

(5) given that some trades and industries need to contact their clients from time to time (e.g. reminding their clients to renew their service contracts which will expire soon), whether it has assessed if this kind of normal business activities will be impeded after the enactment of the proposed legislation; and

(6) whether it has assessed the changes in Hong Kong's business environment and the daily operation of small and medium enterprises upon the enactment of the proposed legislation; if so, of the outcome; if not, the reasons for that?

Reply:

President,

In recent years, person-to-person telemarketing calls (P2P calls) have caused nuisance to many members of the public. There are growing demands on strengthening the regulation of such calls. Based on the views collected in a public consultation conducted by the Government in mid-2017 and further to the discussion at the meeting of the Legislative Council (LegCo) Panel on Information Technology and Broadcasting (ITB) on April 9, 2018, we propose to set up a statutory Do-not-call Register to allow phone users who do not wish to receive P2P calls to indicate so by including their phone numbers in the Register. We are working on the content of the framework of the legislative amendments and will consult the relevant LegCo Panel on the legislative proposals.

Our reply to the various parts of the question is as follows:

(1) The aim of the proposed statutory Do-not-call Register is to allow phone users who do not wish to receive P2P calls to indicate so by including their phone numbers in the Register.

Telemarketing calls involving unfair trade practices are regulated by the Trade Descriptions Ordinance (Cap. 362) whereas those involving fraud may violate offences under the Theft Ordinance (Cap. 210). The Unsolicited Electronic Messages Ordinance (Cap. 593) also contains provisions dealing with fraud and other illicit activities related to the transmission of commercial electronic messages. We will make reference to the relevant legislation when drawing up the framework of legislative amendments to ensure that the future regulatory mechanism will be compatible with other legislation.

Regarding P2P calls from places outside Hong Kong, as we indicated at the meeting of the Panel on ITB in April this year, there may be more difficulties in investigation, evidence gathering and prosecution for cases involving places outside Hong Kong. We will further examine the enforcement details during the stage of formulating the framework of legislative amendments.

(2) to (4) We are mapping out the details of the framework of legislative amendments, including operational details of the proposed Do-not-call Register. Take the existing Unsolicited Electronic Messages Ordinance as an example, regarding the regulation of unsolicited electronic messages, "consent" can be express consent or consent that can reasonably be inferred from the conduct concerned. Reference will be made to the practice of regulating commercial electronic messages under the Unsolicited Electronic Messages Ordinance on, for instance, what constitutes consent, how to withdraw consent, etc., so as to ensure that the proposed legislative provisions can strike a balance between public expectations and the practical operational needs of the trades and industries.

(5) Taking the regulation of commercial electronic messages under the existing Unsolicited Electronic Messages Ordinance as a reference, if the concerned person-to-person telemarketing communications do not involve "commercial" marketing purposes (i.e. carrying out matters specified in the Ordinance in the course of or in the furtherance of any business, including

offer to supply, advertise or promote goods, services, facilities, land or business opportunity, etc.; and to advertise or promote a supplier of goods, services, facilities, land or a provider of a business opportunity, etc.), or when the persons or organisations making the concerned P2P calls have obtained prior consent of the clients, there should not be violation of the proposed regulatory framework of P2P calls. We therefore consider that our proposal will not affect non-marketing business activities.

Upon passage of the bill, we will formulate appropriate guidelines and conduct publicity and education activities to ensure that the trades and industries as well as the public understand the legal requirements and could avoid violating the law.

(6) We understand that setting up a Do-not-call Register may increase the operation cost of the trades and industries. However, the call from the public for early introduction of the legislation has been clear, and they consider that the self-regulatory mechanism of P2P is not effective. As such, we will be, as mentioned above, cautious in handling the various definitions and details when we draft the bill and will introduce the bill into LegCo for scrutiny and discussion. We will endeavour to ensure that a balance can be struck between satisfying public expectations and reducing the compliance cost of the trades and industries.