

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

Guidance Note on Conducting Sales by Unsolicited Calls

Introduction

1. This Guidance Note is issued by the Mandatory Provident Fund Schemes Authority (MPFA) to provide guidance to registered intermediaries (RIs) in making unsolicited calls for marketing activities (Telemarketing). “Unsolicited call” means any call that is made without the express invitation of the called person (for the purposes of this definition, the provision by a person of his contact details, including an address, telephone or facsimile number, or electronic mail address, shall not be regarded as an express invitation to call that person). “Marketing” means advertising, promoting or selling MPF-related products or services.
2. This Guidance Note applies to all such unsolicited calls made to persons who do not have any existing customer relationship with the RI in respect of the provision of any MPF-related products or services.
3. This Guidance Note aims at setting out the relevant requirements and applicable measures relating to Telemarketing. The measures and controls set out in this Guidance Note are not meant to be exhaustive and principal intermediaries (PIs) should establish additional controls and procedures taking into account their own business operation and new developments.
4. This Guidance Note is complementary to, and does not have the force of law or replace, any legislative provisions applicable to, or codes or guidelines issued by industry/frontline regulators in respect of regulated persons.
5. Any RI who has engaged any service provider to conduct Telemarketing should ensure that the service provider complies with this Guidance Note. The relevant RI will remain fully responsible for the acts of the service provider including the calls whenever made by the service provider.
6. Since personal data as defined under the Personal Data (Privacy) Ordinance (PDPO) (Cap 486) may be used and collected during the unsolicited calls, PIs are also advised to

pay heed to the relevant provisions of the PDPO and the “Guidance on Direct Marketing” issued by the Privacy Commissioner for Personal Data.

7. This Guidance Note shall become effective on 1 September 2023.

Regulatory requirements

8. Under section 34ZL(3) of the Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap 485), PIs must establish and maintain proper controls and procedures for securing compliance by themselves and their subsidiary intermediaries (SIs) with Part 4A of the MPFSO (including the conduct requirements as provided under section 34ZL).
9. Further, section 34ZL(1)(a) of the MPFSO requires that RIs must act honestly, fairly, in the best interest of the client, and with integrity. Section 34ZL(1)(e) requires that RIs must make such disclosure of information to the clients as is necessary for the clients to be sufficiently informed for the purpose of making any material decision.
10. Pursuant to paragraph III.60(n) of the Guidelines on Conduct Requirements for Registered Intermediaries (Conduct Guidelines), where telephone marketing campaigns are to be undertaken, PIs should provide compliance guidelines before embarking on such campaigns and maintain a call log for monitoring purposes.
11. Furthermore, paragraph III.20 of the Conduct Guidelines requires SIs to comply with the controls, procedures and standards of conduct as required by their PIs.

Guidance for implementing procedures and controls over Telemarketing

12. To facilitate RIs’ compliance with the above requirements, the MPFA would like to provide guidance to RIs as set out below:

- (1) ***Provide a designated telephone number of PI for public’s enquiry and verification of the callers’ identities***

The provision of a designated telephone number would facilitate the public in verifying the identities of the callers directly and easily with the concerned PI. Such telephone number should be made readily available to the public, e.g. by posting it on the website and/ or via social media platform of the PI.

(2) *Callers to accurately and sufficiently inform the called parties about the purpose of the calls*

In relation to section 34ZL(1)(e) of the MPFSO, paragraphs III.32 and III.34 of the Conduct Guidelines set out the necessary information which should be provided by RIs in the initial contact with a client, in particular, RIs should provide the names of the relevant PIs and SIs, the capacity in which the PIs and SIs are acting, and what types of regulated activities they will conduct.

In particular, the caller should at the beginning of the call, accurately and sufficiently provide the following information to the called party:

- (i) Full name of the caller;
- (ii) If the caller is an SI, the MPF registration number of the caller;
- (iii) Name of the PI that authorized the making of the call;
- (iv) Purpose of the call; and
- (v) Designated telephone number of the PI which the called party can call during normal business hours to verify the identity of the caller.

Provision of the above information is essential, which will facilitate the called parties in verifying the identities of the callers and enable PIs to trace the callers and look into the matter in case of queries or complaints.

It is also important that the callers should honestly and accurately inform the called parties about the purpose of the calls. Hence, the callers should not provide to the called parties any misleading or deceptive information, including but not limited to information about the purpose of the calls and features of particular MPF schemes and funds, for the purpose of asking the called parties to attend a meeting, etc.

(3) *Maintain a list of callers who are authorized by PIs to conduct Telemarketing*

Only authorized persons of PIs should be allowed to conduct Telemarketing. Furthermore, if any regulated activities may be conducted during the calls, the calls must be made by SIs only.

Maintaining a list of authorized callers would facilitate PIs' monitoring and control to ensure that only authorized persons on the list would be allowed to make the calls.

(4) *Use only designated or authorized telephone lines to make the calls*

PIs should provide designated or authorized telephone lines to authorized persons to conduct Telemarketing. A caller should not conceal or withhold from the called party the calling line identification information of the sending telephone number, or issue any instruction in connection with making the call that has the same effect.

PIs should maintain a list of designated or authorized telephone lines such that when the public enquires with the PIs about the unsolicited calls, PIs would be able to readily confirm whether the telephone numbers used for Telemarketing have been designated or authorized by PIs. PIs should also notify the public of such arrangement for public enquiries.

(5) *Set standards and issue guidelines to the callers of Telemarketing*

In order to ensure that the callers clearly understand the relevant requirements for conducting Telemarketing, PIs should establish standards and guidelines for the callers, setting out clearly PIs' required procedures and controls for conducting Telemarketing. PIs should provide adequate training for the callers to ensure that they understand the requirements.

(6) *Provide standard telephone scripts and contents for the calls*

PIs should provide standard telephone scripts and contents for the calls which would facilitate the callers in complying with the standards and guidelines as mentioned in paragraph 12(5) above, as well as any other applicable laws and rules.

(7) *Maintain a call log on Telemarketing and audio-record the calls*

It is important to keep proper records of the calls to facilitate regular review and monitoring by PIs over Telemarketing. In case of disputes or complaints, this would facilitate PIs' handling of the disputes or complaints and also any subsequent investigations by regulators (if applicable).

PIs should maintain a call log which records (i) the dates and time of the calls, (ii) the names of the relevant callers and the called parties, and (iii) the purposes of the calls. RIs are also recommended to audio-record these calls.

Such records are important and useful for PIs to monitor Telemarketing by their callers. By inspecting such records, PIs would know whether the callers have complied with their standards and guidelines, as well as the scripts provided, so that they can take prompt actions to follow up any non-compliance by the callers. Hence, PIs should establish a mechanism to randomly and regularly check such records to ensure compliance by their callers and service providers.

The above call log records should be kept for at least 2 years.

(8) *Controls regarding engagement of service providers in conducting Telemarketing*

SIs should only engage service providers after obtaining their PIs' approval. Also, RIs should only engage reputable service providers and should include in the contracts with their service providers the following terms which contractually require them to:

- (i) act in accordance with the requirements as set out in this Guidance Note, follow the standards and guidelines, as well as the call scripts devised by the PIs as mentioned in paragraphs 12(5) and 12(6) above;
- (ii) if any query or complaint from a called party is received, report the matter to the PIs and provide all necessary information of the matter to the PIs for the further handling by the PIs;
- (iii) comply with applicable laws and rules under the MPFSO and Conduct Guidelines as well as other applicable laws and rules, including the Data Protection Principles under the PDPO; and
- (iv) allow the engaging RIs to inspect and conduct audit checks on all the records and documents maintained by the service providers for the Telemarketing where necessary.

The engagement or use of service providers by RIs (including those providing to RIs a list of potential clients whom the service providers have already contacted prior to the engagement or use by RIs) does not absolve RIs from their responsibility to comply with this Guidance Note. If a service provider fails to comply with the requirements of this Guidance Note imposed on RIs, the relevant RI will remain fully responsible for the acts of the service provider including the calls whenever made by the service provider.

(9) ***Restrict the hours of calling***

Telemarketing calls should only be made between 9 am and 9 pm unless the called party has advised that a call at another time would be more convenient and acceptable.

(10) ***Comply with any unsubscribe request made by the called parties***

Whenever a called party makes a request to remove the called party's contact information from the PI's call list, the PI concerned should accept and comply with such unsubscribe request. In this regard, an unsubscribe list recording details of the unsubscribe requests received, such as receipt date of the requests and relevant contact information, should be maintained and updated in a timely manner by the PI.

This list should also be distributed and made known by the PI to all callers, so that prior to making every call of Telemarketing, the caller would check whether the called party is on the list. If that is the case, the caller should not make the call.

PIs are advised to observe any other applicable requirements over Telemarketing, including but not limited to requirements under the PDPO.

(11) ***Inform the called parties the source of their contact information***

When a called party expresses concerns about how his/her contact information was obtained by the caller, the caller should explain the source of the information.

(12) ***Handle complaints properly***

Paragraph III.60(h) of the Conduct Guidelines requires that a PI should have in place procedures and controls for handling client complaints. Paragraph III.61 further provides the minimum level of such procedures and controls, which includes but not limited to: handling the complaint in a timely and appropriate manner, conducting enquiry or investigation into the complaint and duly informing the complainant of the result of its assessment, keeping a proper record of the complaint and the result of the PI's enquiry/ investigation, etc.

Hence, when any complaint concerning Telemarketing is received, the PI should fulfil the requirements of paragraphs III.60(h) and III.61 as mentioned above.

According to paragraph III.61(e) of the Conduct Guidelines, if the enquiry or investigation reveals that there may be a case of a criminal nature (e.g. misappropriation of client funds or forgery of documents) or other serious nature (e.g. unauthorized transfer of client's MPF benefits), the PI should report the case to the frontline regulator as well as its respective industry regulator (if the industry regulator is not the frontline regulator) immediately.

(13) ***Conduct publicity when scam calls are identified***

The MPFA notices that some fraudsters may make scam calls by falsely claiming that they represent certain MPF trustees or PIs in order to gain trust from the called parties.

If a PI suspects that fraudsters might have impersonated its representatives in making scam calls, the PI should conduct appropriate publicity to alert the public (e.g. issuing press release, alerts on their website and/or hotlines).