

立法會
Legislative Council

LC Paper No. CB(1)1474/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/05/2

Bills Committee on Unsolicited Electronic Messages Bill

**Minutes of the fifteenth meeting on
Tuesday, 17 April 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Howard YOUNG, SBS, JP (Chairman)
Hon SIN Chung-kai, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon James TO Kun-sun
Hon Jasper TSANG Yok-sing, GBS, JP
- Public officers attending** : Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry and Technology
(Communications and Technology)
- Mr Tony LI
Principal Assistant Secretary for Commerce, Industry and
Technology (Communications and Technology) B
- Mr Henry CHANG
Head of Information and Communications Technologies
Office of the Telecommunications Authority
- Miss Carrie TANG
Legal Adviser 5
Office of the Telecommunications Authority
- Mr Jeffrey GUNTER
Senior Assistant Law Draftsman
Department of Justice

Miss Leonora IP
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)4

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Mr WONG Siu-ye
Senior Council Secretary (1)7

Action

I Confirmation of minutes

- (LC Paper No. CB(1)1194/06-07 -- Minutes of meeting on 6 March 2007
LC Paper No. CB(1)1346/06-07 -- Minutes of meeting on 14 March 2007)

The minutes of the meetings held on 6 and 14 March 2007 were confirmed.

II Meeting with the Administration

- (LC Paper No. CB(1)1348/06-07(01) -- Outstanding issues requiring follow-up actions by the Administration (Position as at 13 April 2007)
LC Paper No. CB(1)1348/06-07(02) -- Administration's response to the issues raised at the Bills Committee meeting on 14 March 2007
LC Paper No. CB(1)1348/06-07(03) -- Draft Committee Stage amendments prepared by the Legal Service Division
LC Paper No. CB(1)1117/06-07(03) -- "Examples of Ordinances which contain an express provision that the Ordinance binds the Government" prepared by the Legal Service Division
LC Paper No. CB(1)1124/06-07(01) -- Draft Committee Stage amendments to the Bill proposed by Hon WONG Ting-kwong, BBS (Version as at 13 March 2007)

Action

- LC Paper No. CB(1)1273/06-07(01) -- Letter dated 29 March 2007 from Hon WONG Ting-kwong, BBS
- LC Paper No. CB(1)1348/06-07(02) -- Administration's response to the issues raised at the Bills Committee meeting on 14 March 2007
- LC Paper No. CB(1)1359/06-07(01) -- Letter dated 16 April 2007 from Hon WONG Ting-kwong, BBS
- LC Paper No. CB(3)735/05-06 -- The Bill
- LC Paper No. CB(1)1348/06-07(04) -- Draft Committee Stage amendments to be proposed by the Administration (Position as at 12 April 2007)
- LC Paper No. CB(1)1348/06-07(05) -- Marked-up version of the draft Committee Stage amendments to be proposed by the Administration (Position as at 12 April 2007)
- LC Paper No. CB(1)995/06-07(02) -- Administration's response to the outstanding issues raised at the Bills Committee meetings
- LC Paper No. CB(1)1124/06-07(03) -- Administration's response to the outstanding issues (Position as at 12 March 2007)
- LC Paper No. CB(1)502/06-07(01) -- Submission dated 24 November 2006 from Hong Kong General Chamber of Commerce
- LC Paper No. CB(1)995/06-07(04) -- Administration's response to the views submitted by Hong Kong General Chamber of Commerce)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Administration was requested to consider using the wording "establish and keep" in clause 30(1) in relation to do-not-call registers.

III Any other business

4. There being no other business, the meeting ended at 10:40 am.

**Proceedings of the fifteenth meeting of the
Bills Committee on Unsolicited Electronic Messages Bill
on Tuesday, 17 April 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000014	Chairman	Confirmation of minutes of the meetings held on 6 and 14 March 2007 (LC Paper Nos. CB(1)1194/06-07 and CB(1)1346/06-07)	
000015 - 000327	Chairman	Opening remarks	
000328 - 000732	Administration Ms Emily LAU	<p>Briefing by the Administration on LC Paper No. CB(1)1348/06-07(02)</p> <p>Enquiry on the mechanism for appointment of members to the Telecommunications Users and Consumers Advisory Committee, and the tenure; and view that more members should be nominated from various sectors so as to enhance their representativeness.</p> <p>The Administration's response that there were several categories of members, some of them were nominated by their respective sectors for appointment by the Government. Members appointed from the disabled and aged communities held positions in their respective sectors. Members of the public were appointed from a database maintained by the Home Affairs Bureau containing the names of persons who were interested in engaging in public services. The tenure of appointment was usually two years.</p>	

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000733 - 003640	<p>Chairman Administration Ms Emily LAU Mr SIN Chung-kai Mr Andrew LEUNG Mr WONG Ting-kwong ALA3 Mr Ronny TONG</p>	<p>Ms LAU's view that Hong Kong legislation should bind the Government</p> <p>The Chairman's enquiry on whether Government bureaux and departments would send promotional messages on their own initiatives or in response to requests</p> <p>The Administration's response that only 19 Government bureaux and departments regularly sent electronic messages, such as e-newsletters or other information about events or educational resources, to recipients who either requested to receive such messages or who did not object to receiving such messages. They would also stop sending such messages if requested by the recipients. The Administration was not aware of any complaints about such messages. The Administration would promulgate guidelines to all Government bureaux and departments requesting them to follow the requirements of the Bill.</p> <p>Ms LAU maintained the view that all Hong Kong legislation should bind the Government. She could not accept that a party should not be regulated just because it had not committed any prohibited acts. She hoped that members and the Administration would not object to the proposed amendment that the Bill should bind the Government.</p> <p>Mr SIN expressed support for the proposed amendment and remarked that under some existing legislation, the Government would be bound but public officers would be immune from criminal liability for contravening provisions of the</p>	

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		<p>relevant legislation when discharging their duties. Whether a piece of legislation should bind the Government and whether public officers should have immunity from criminal liability were two separate issues. Even if the Bill bound the Government, there should not be a serious effect on the Government because most of the messages sent by the Government were not commercial electronic messages.</p> <p>Mr LEUNG expressed reservation on the proposed amendment, pointing out that compliance with requirements of the Bill might delay the dissemination of information by the Government during emergency situations. It would be more appropriate to consider the issue after seeing how the Bill operated after its enactment.</p> <p>Mr WONG queried whether there were any concrete cases of the Government sending spam and causing a nuisance to the public. He would only support the proposed amendment if it could be substantiated that Government messages had caused a nuisance to the public.</p> <p>Mr TONG's view that in view of the principle of equality before the law, he could not accept that legislation should not be binding on the Government. Even if criminal liability was not applicable to the Government, there would be other remedies such as judicial review and civil litigation. Under common law, the Government should be subject to legislative requirements. The Government had no convincing arguments that it should not be</p>	

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		<p>bound by the Bill. He advised Members to consider the issue carefully, because if such an amendment was negated, the image of the Legislative Council would be tarnished and the rule of law undermined.</p> <p>ALA3's remark that some legislation, such as that relating to environmental protection, bound the Government, but public officers were immune from criminal liability for contravening provisions of those pieces of legislation in discharging their duties. The Panel on Administration of Justice and Legal Services had discussed the issue in detail and held the view that whether there should be immunity for public officers should be considered on a case by case basis. The Administration however considered that immunity of public officers from criminal liability in discharging their duties was in line with the practice in most common law jurisdictions. The comparable anti-spam legislation in Australia bound the Australian Government but no criminal liability was imposed on the Australian Government.</p> <p>As the Bills Committee did not have a consensus on the proposed amendment, Ms LAU indicated that she would move the proposed amendment after further discussing with ALA3 the wording of the amendment by drawing reference to the wording of comparable provisions in other legislation. The proposed amendment would be circulated to members for information and to the Administration for response.</p>	

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003641 - 005753	Chairman Administration Mr WONG Ting-kwong Ms Emily LAU	<p>The Administration's elaboration on the reasons for not supporting Mr WONG's proposed amendments as detailed in paragraphs 7 to 13 of LC Paper No. CB(1)1348/06-07(02) and their legal advice that those amendments did not comply with the requirements of Rule 57(4)(a) of the Rules of Procedures of the Legislative Council. The Administration would keep the situation under review after enactment of the Bill to see if there was a need to regulate person-to-person interactive telemarketing calls.</p> <p>Mr WONG's view that the Bill had already contemplated the possibility of regulating person-to-person telemarketing calls and the long title did not preclude this possibility. Calling line identification information could facilitate recipients to lodge complaints and decide whether to accept a call, and enhance service standards of telemarketers. He also disagreed that the number of person-to-person telemarketing calls had decreased, as the monitoring conducted by the Office of the Telecommunications Authority (OFTA) did not cover electronic messages involving the use of personal data.</p> <p>The Administration's response that person-to-person telemarketing calls which involved the use of personal data were already regulated under the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO). As many person-to-person telemarketing calls involved a previous or current business or client relationship between the caller and the recipient and those calls would be exempted</p>	

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		<p>under Mr WONG's proposed amendments, the amendments would not likely be able to further reduce the number of person-to-person telemarketing calls. Opt-out mechanisms were already provided under PDPO and by telemarketers at present.</p> <p>Mr WONG's enquiry on whether electronic messages sent by political parties would be regulated under the Bill</p> <p>The Administration's response that they would be regulated if the electronic messages that they sent fell within the definition of "commercial electronic message" in the Bill</p>	
005754 - 005957	Chairman	The Chairman's remark that the Bills Committee had completed the discussion of Mr WONG's proposed amendments and Mr WONG could lobby Members to support his proposed amendments	
005958 - 010137	Administration Ms Emily LAU	<p>Examination of the draft Committee Stage amendments to be proposed by the Administration (LC Paper No. CB(1)1348/06-07(05))</p> <p>Ms LAU's enquiry on the expected timeframe for commencement of operation of the provisions of the Bill mentioned in new clause 1(2)</p> <p>The Administration's response that those provisions were expected to commence operation around the end of 2007 to allow sufficient time for publicity work by the Government and preparatory work by senders to comply with the requirements</p>	

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010138 - 010637	Administration Mr SIN Chung-kai	<p>Mr SIN's enquiry on the wording of the definition of "document"</p> <p>The Administration's explanation that the definition of "document" in the Bill was standard and commonly used in other legislation (e.g. PDPO) to cater for the situation that written documents could take many different forms. The wording "other device" would cater for devices to be developed in future.</p>	
010638 - 011344	Chairman Ms Emily LAU Administration ALA3	<p>Ms LAU's enquiry on the reason for replacing "established" by "kept" in the definition of "do-not-call register"</p> <p>The Administration's explanation that the change was only a consequential amendment arising from refinements to clause 30 and the addition of clause 30A concerning the powers of the Telecommunications Authority in relation to do-not-call registers</p> <p>ALA3's remark that the Administration could consider using the wording "establish and keep" in clause 30(1)</p>	The Administration to consider
011345 - 012309	Administration Chairman Ms Emily LAU	<p>The Chairman's enquiry on the reason for deleting "knowingly" in clause 23(2)</p> <p>The Administration's explanation that the relevant provision in the comparable legislation in the United States did not have the equivalent of "knowingly" and clause 23(2) only specified what "materially falsifies" meant</p>	

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012310 - 013139	Administration Chairman Ms Emily LAU	<p>Ms LAU's request for further explanation on clause 30</p> <p>The Administration's explanation that the contents of clause 30(8) were elaborated and specified in new clauses 30(1) and 30A(1), and clause 30(6) became new clause 30A(2) for the sake of coherence. New clause 30(7A) was added to obviate the need to produce a copy of the entire do-not-call register or extracts thereof when the information required for the purpose of legal proceedings was whether an electronic address was or was not listed in the do-not-call register.</p>	
013140 - 013511	Administration Chairman Ms Emily LAU	<p>Ms LAU's enquiry on new clause 30A(2)</p> <p>The Administration's explanation that the consent of the registered user of an electronic address was required before the Telecommunications Authority could add that electronic address to a do-not-call register</p> <p>The Administration's further explanation that there was no need to maintain personal data in a do-not-call register. Registered users of telephone numbers could add their telephone number to a do-not-call register by calling a designated telephone number and entering the required information. For some Private Automatic Branch Exchange telephone systems where the calling line identification information displayed might not correspond to the actual telephone number intended to be added to the do-not-call register, registration could be achieved by calling the designated telephone number and entering the telephone number to be</p>	

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		added and the system would make a return call for confirmation.	
013512 - 013826	Administration Chairman Ms Emily LAU	<p>Ms LAU's enquiry on the fees to be charged on telemarketers for accessing information in a do-not-call register</p> <p>The Administration's response that the fees would be in the region of several thousand dollars per year</p>	
013827 - 014338	Administration Chairman Ms Emily LAU	<p>Ms LAU's enquiry on new clauses 31(3) and 31(4)</p> <p>The Administration's explanation that new clause 31(3) was to cater for persons who had to comply with the requirement of not sending commercial electronic messages to electronic addresses listed in a do-not-call register, while new clause 31(4) would enable the registered user of an electronic address to verify, free of charge, whether that electronic address was listed in a do-not-call register</p>	
014339 - 014839	Administration Chairman ALA3 Ms Emily LAU	<p>ALA3's remark that she agreed to the principles in new clauses 34(3A) and 34(3B) and would discuss with the Administration on their drafting in order to better reflect the relationship of these new clauses</p> <p>Ms LAU's request for further explanation on new clause 34A</p> <p>The Administration's explanation that clauses 34(5) and 34(6) were changed to new clauses 34A(1) and 34A(2) respectively. Slight amendments were introduced in new clause 34A(2) to make the wording more neutral.</p> <p>In relation to new clause 36A(2), the</p>	

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		<p>Administration advised that the proposed fines were modeled on those in the Telecommunications Ordinance (Cap. 106). In response to members' enquiry on whether the telecommunications service providers had been consulted on the level of financial penalty, the Administration stated that it had notified industry associations of the proposal and no comments had been received up to the time of the meeting.</p>	
014840 - 020246	<p>Administration Chairman Ms Emily LAU</p>	<p>Ms LAU's enquiry on the reason for adding "enactment or rule of" in clause 37(6)</p> <p>The Administration's response that it was for consistency in terminology with clause 52(7) and "rule of law" was the terminology used in other legislation to refer to common law</p> <p>Ms LAU's enquiry on the reason for changing clause 32 to new clause 52A</p> <p>The Administration's explanation that it was more appropriate to place the provision in Part 7 of the Bill</p>	
020247 - 020604	<p>Administration Chairman Ms Emily LAU</p>	<p>Ms LAU's enquiry on how information in do-not-call registers would be handled properly and securely by the responsible staff</p> <p>The Administration's response that the responsible staff had a duty to keep do-not-call registers properly and securely and the issue was related to the conduct of public officers and the Administration's internal management rather than the provisions of the Bill</p> <p>Completion of examination of the</p>	

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		English version of the draft Committee Stage amendments (CSAs) to be proposed by the Administration ALA3 was requested to examine the Chinese version of the draft CSAs and report to the Bills Committee in due course.	
020605 - 020639	Administration Chairman	Submission from Hong Kong General Chamber of Commerce (LC Paper No. CB(1)502/06-07(01)) and the Administration's response (LC Paper No. CB(1)995/06-07(04)) noted	
020640 - 020830	Chairman Administration	The Administration's plan to give notice of resumption of Second Reading debate of the Bill in May 2007	