

立法會
Legislative Council

LC Paper No. CB(1)1803/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/05/2

Bills Committee on Unsolicited Electronic Messages Bill

**Minutes of the sixteenth meeting on
Thursday, 3 May 2007, at 10:45 am
in Conference Room B 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 SO Tat-foon
Assistant Director of Telecommunications (Support)
- 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-yee
Senior Council Secretary (1)7

Action

I Confirmation of minutes

(LC Paper No. CB(1)1474/06-07 -- Minutes of meeting on 17 April 2007)

The minutes of the meeting held on 17 April 2007 were confirmed.

II Meeting with the Administration

(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)1443/06-07(01) -- Committee Stage amendments proposed by Hon Emily LAU Wai-hing
LC Paper No. CB(1)1461/06-07(01) -- Letter dated 25 April 2007 from Hon Emily LAU Wai-hing providing explanations for her proposed Committee Stage amendments
LC Paper No. CB(1)1439/06-07(01) -- Letter dated 20 April 2007 from Hon SIN Chung-kai
LC Paper No. CB(1)1489/06-07(01) -- Letter dated 30 April 2007 from Hong Kong General Chamber of Commerce)

Action

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Bills Committee expressed support for the Administration to move the Committee Stage amendments (CSAs) originally proposed by Ms Emily LAU. The Bills Committee also expressed support for the revised clause 33 as proposed by the Administration. The Bills Committee agreed that there should be a provision to sanction telecommunications service providers for non-compliance with the directions issued by the Telecommunications Authority (TA) under clause 33, but the penalty level should be lower than that under section 36C of the Telecommunications Ordinance. Taking into account members' views, the Administration proposed to revise the penalty level in new clause 36A to: up to \$50,000 for the first occasion of non-compliance; up to \$100,000 for the second occasion; and up to \$200,000 for any subsequent occasion. Except for Mr SIN Chung-kai, members present considered the revised penalty level acceptable.
4. The Administration was requested to provide the revised CSAs it would move for members' information.

III Any other business

5. There being no other business, the meeting ended at 12:30 pm.

Council Business Division 1
Legislative Council Secretariat
31 May 2007

**Proceedings of the sixteenth meeting of the
Bills Committee on Unsolicited Electronic Messages Bill
on Thursday, 3 May 2007, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000100	Chairman	Confirmation of minutes of the meeting held on 17 April 2007 (LC Paper No. CB(1)1474/06-07)	
000101 - 001139	Chairman	Opening remarks	
000140 - 000757	Ms Emily LAU Administration	<p>Ms LAU briefed members on her proposed CSAs. She welcomed that the Administration had taken heed of the view that the Bill should bind the Government. Although the Government and public officers would not be liable to prosecution for an offence against the Bill, the Government should conduct internal investigations on such cases.</p> <p>The Administration responded that although it was not necessary for the Bill to bind the Government, doing so could set a good example for the community and the telemarketers. The Administration would not object to and would incorporate Ms LAU's proposed CSAs as part of the Administration's CSAs.</p>	
000758 - 001247	Ms Emily LAU Mr Andrew LEUNG Mr WONG Ting-kwong Mr Ronny TONG Mr SIN Chung-kai	<p>Mr LEUNG said that the Liberal Party would accept the proposed CSAs.</p> <p>Mr WONG indicated support for the proposed CSAs.</p> <p>Mr TONG supported the proposed CSAs but considered that respecting the rule of law rather than setting a good example for the community should be the rationale for the Administration's decision.</p>	

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		<p>Mr SIN found the proposed CSAs acceptable but not entirely satisfactory because Government and public officers would not be liable to prosecution for an offence against the Bill, and thus the Government and members of the public were not equal before the law.</p>	
001248 - 001606	<p>Ms Emily LAU Administration Chairman</p>	<p>Ms LAU requested that the Secretary for Commerce, Industry and Technology should spell out clearly in his speech during the Second Reading debate that the Government would conduct internal investigations on cases of non-compliance with the Bill by the Government and public officers.</p> <p>The Administration indicated that it would adopt the same wording as proposed by Ms LAU when it moved the CSAs.</p>	
001607 - 003830	<p>Mr SIN Chung-kai Administration Chairman Ms Emily LAU Mr Ronny TONG</p>	<p>Mr SIN referred to the Administration's paper which was tabled and issued vide LC Paper No. CB(1)1523/06-07(01), and expressed support for the Administration's proposal to narrow the scope of the directions to be issued by TA under clause 33. He however considered that the financial penalties to be imposed on telecommunications service providers under clause 36A were not proportionate with the gravity of the offence because the financial penalties were even higher than those proposed for sanctioning spammers.</p> <p>The Administration considered that without penalties, it could not ensure the effective enforcement of the provisions of clause 33. The Administration further invited members' views on whether clause</p>	

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		<p>36A should be removed or those financial penalties should be revised downwards.</p> <p>In response to Mr TONG's enquiry on what other enforcement measures would be available if there were no financial penalties, the Administration advised that it could seek a court order in the form of an injunction.</p>	
003831 - 004521	<p>Ms Emily LAU Chairman Mr SIN Chung-kai Administration Mr Ronny TONG</p>	<p>Mr TONG considered it unacceptable if no financial penalties were imposed. The blameworthiness of telecommunications service providers could be as high as spammers under certain situations, such as intentional refusal to provide the necessary information in collusion with their customers.</p> <p>Mr SIN pointed out that there could be several options, such as setting different levels of financial penalties corresponding to different causes of non-compliance, or authorizing TA to seek court orders.</p> <p>Ms LAU considered that there should be financial penalties, but they could be revised downwards.</p> <p>Mr TONG pointed out that clauses 36A(3) and 36A(4) specified that the financial penalties should be proportionate and reasonable, and opportunities to make representations were available.</p>	
004522 - 010310	<p>ALA3 Administration Mr SIN Chung-kai Ms Emily LAU Chairman Mr Ronny TONG</p>	<p>ALA3 remarked that reference could be made to clause 34 where a fine at level 5 (\$50,000) was proposed for offences relating to failure to give or produce to TA information or documents that were relevant to TA's</p>	

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	Mr Andrew LEUNG	<p>investigation of a contravention or suspected contravention of a provision of the Bill.</p> <p>In response to the Chairman's enquiry, the Administration considered that it would be more appropriate to have more than one level of financial penalties, such as level 5 and level 6 for the first occasion and any subsequent occasion of non-compliance respectively.</p> <p>Mr TONG considered that if the financial penalties were too low, telecommunications service providers might rather be fined than to comply. Consideration could be given to imposing an additional daily fine.</p> <p>Mr TONG considered that a fine at level 6 was too low for subsequent occasions of non-compliance.</p> <p>Mr LEUNG considered that a fine at level 6 was not low taking into account the competitive business environment of the industry. He also did not envisage that telecommunications service providers would choose not to comply with TA's directions repeatedly.</p> <p>In response to Ms LAU and Mr WONG's enquiry, the Administration advised that there would be a reasonable time period, which would depend on individual circumstances, before imposing financial penalties on each subsequent occasion to allow the telecommunications service providers to make representations.</p> <p>Mr TONG considered that there</p>	

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		<p>should be three levels of financial penalties.</p>	
010311 - 011114	Mr SIN Chung-kai Administration	<p>Mr SIN enquired about the contents of the directions that TA might issue under clause 33.</p> <p>The Administration responded that TA's directions could include requiring telecommunications service providers to monitor the traffic delivered from certain Internet Protocol addresses or telephone numbers of suspected spammers, and to provide such information to the TA. It would not be reasonable for the TA to direct the telecommunications service providers to provide information which was not kept by them at the time of the request. Before issuing a direction, the TA must allow telecommunications service providers to make representations. The telecommunications service providers might also seek judicial review if they considered a direction unreasonable.</p> <p>Mr SIN considered that two levels of financial penalties at level 5 and level 6 would be acceptable and there was no need to set another higher level.</p>	
011115 - 012003	Ms Emily LAU Administration Mr Ronny TONG Mr SIN Chung-kai Chairman Mr WONG Ting-kwong	<p>In response to Ms LAU's enquiry, the Administration considered that setting three levels of financial penalties, i.e. up to \$50,000 for the first occasion of non-compliance; up to \$100,000 for the second occasion; and up to \$200,000 for any subsequent occasion, would be conducive to enforcement.</p> <p>Ms LAU and Mr TONG considered the three levels of financial penalties</p>	

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		<p>acceptable.</p> <p>Mr SIN indicated that he had to consult the industry first on the proposed three levels of financial penalties.</p> <p>Mr WONG considered that there was no reason for repeated non-compliance with TA's directions and telecommunications service providers could make representations and seek judicial review.</p> <p>The Bills Committee expressed support for the Administration to move the CSAs originally proposed by Ms Emily LAU. The Bills Committee also expressed support for the revised clause 33 as proposed by the Administration. Subject to ALA3's vetting on the wording of the revised clause 36A, except for Mr SIN Chung-kai, members present considered that setting the financial penalties under that clause as suggested by the Administration above was acceptable.</p>	
012004 - 012332	Chairman Administration	Members noted the letters from Hong Kong General Chamber of Commerce and Communications Association of Hong Kong, and the Administration briefed members on its response on the issues raised in the letters.	
012333 - 013131	Ms Emily LAU Administration Chairman Mr SIN Chung-kai	In response to Ms LAU's enquiry, the Administration advised that tendering of the system for setting up do-not-call registers was in progress and telecommunications service providers had been informed of the matter. The system was designed with sufficient capacity to handle a large number of requests for adding electronic addresses to the	

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		<p>do-not-call registers.</p> <p>In response to Mr SIN's enquiry, the Administration explained that the fees for accessing information in a do-not-call register would be in the region of several thousand dollars per year and telemarketers should update their information at least 10 working days each time before sending commercial electronic messages.</p>	
013132 - 013544	Ms Emily LAU Administration	<p>In response to Ms LAU's enquiry, the Administration indicated that TA would conduct consultation on the preparation of codes of practice and on their subsequent major amendments. The codes of practice would not deviate from the spirit of the provisions of the Bill.</p>	
013545 - 013827	Administration	<p>The Administration planned to resume the Second Reading debate on the Bill on 23 May 2007. Upon gazettal on 1 June 2007, the provisions of the Bill would come into operation, except for those specified in clause 1(2) which were expected to come into operation around the end of 2007 to allow sufficient time for the Government to publicize the new legislation and for enterprises to undertake compliance preparatory work.</p> <p>As regards the regulations to be made, the Administration planned to publish those regulations in the Gazette on 8 June 2007 and introduce them into the Legislative Council for negative vetting on 13 June 2007. There would be wide publicity on those regulations.</p>	

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013828 - 014329	Ms Emily LAU Administration Mr SIN Chung-kai	<p>In response to Ms LAU's enquiry, the Administration advised that the computer system for handling the do-not-call registers was expected to be ready in November 2007 and registration could hopefully commence in December 2007.</p> <p>In response to Mr SIN's enquiry, the Administration indicated that it had notified the industry of the content of the proposed regulations on 4 April 2007 and the Panel on Information Technology and Broadcasting would be consulted on the draft regulations in May 2007.</p> <p>Ms LAU and Mr SIN considered that there should be early and wide consultation on the regulations to be made. Mr SIN added that it would be more desirable if the draft regulations could be made available for consultation.</p>	
014330 - 014400	Chairman Ms Emily LAU	The Administration's revised CSAs would be circulated to members for information. No discussion would be necessary unless members or ALA3 had further views on those revised CSAs.	The Administration to provide revised CSAs