

立法會
Legislative Council

LC Paper No. CB(1)538/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/05/2

Bills Committee on Unsolicited Electronic Messages Bill

**Minutes of the ninth meeting on
Tuesday, 5 December 2006, 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
- Members absent** : Hon James TO Kun-sun
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Ronny TONG Ka-wah, SC
- Public officers attending** : Mr Tony LI
Principal Assistant Secretary for Commerce, Industry and
Technology (Communications and Technology) B
- Mr Franco KWOK
Assistant Secretary for Commerce, Industry and
Technology (Communications and Technology) B1
- Mr SO Tat-foon
Assistant Director of Telecommunications (Support)
- 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

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I Confirmation of minutes

(LC Paper No. CB(1)399/06-07 -- Minutes of meeting on
21 November 2006)

The minutes of the meeting held on 21 November 2006 were confirmed.

II Paper issued since last meeting

(LC Paper No. CB(1)419/06-07(01) -- Issues requiring follow-up
action/consideration by the
Administration (Position as at
4 December 2006))

2. Members noted the paper issued since last meeting.

III Meeting with the Administration

(LC Paper No. CB(1)401/06-07(01) -- Letter dated 24 November 2006
from Legal Service Division to the
Administration

LC Paper No. CB(1)401/06-07(02) -- Reply letter dated 28 November
2006 from the Administration to
Legal Service Division

LC Paper No. CB(3)735/05-06 -- The Bill

LC Paper No. CB(1)2306/05-06(03) -- Marked-up copy of the relevant
statutory provisions to be amended
by the Bill

LC Paper No. CB(1)202/06-07(01) -- Extracts of relevant statutory
provisions

LC Paper No. CB(1)2306/05-06(01) -- Letter dated 1 September 2006
from Legal Service Division to the
Administration

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- LC Paper No. CB(1)2306/05-06(02) -- Reply letter dated 22 September 2006 from the Administration to Legal Service Division
- LC Paper No. CB(1)168/06-07(03) -- Letter dated 13 October 2006 from Legal Service Division to the Administration
- LC Paper No. CB(1)168/06-07(04) -- Reply letter dated 25 October 2006 from the Administration to Legal Service Division
- LC Paper No. CB(1)175/06-07(02) -- Summary of views submitted to the Bills Committee and the Administration's response (Position as at 27 October 2006))

3. The Bills Committee deliberated (index of proceedings attached at **Annex**).
4. The Administration was requested to –
 - (a) consider whether the intended arrangement that the Hong Kong Police Force (the Police) would be responsible for enforcing Part 4 of the Bill while the Office of the Telecommunications Authority (OFTA) would be responsible for enforcing the rest of the Bill with the assistance of the Police where necessary should be clearly reflected in the Bill, and if so, to advise the necessary amendments to the Bill;
 - (b) review the appropriateness of replacing the wording "functions conferred or imposed on authorized officers by this Ordinance" with "functions conferred or imposed on authorized officers under this Part and Part 3" in clause 27 so as to clearly reflect the policy intent that officers authorized by the Telecommunications Authority (TA) would perform functions conferred or imposed on them under Parts 3 and 5 of the Bill;
 - (c) report on its proposed amendment to add a provision to make it clear that any notice published in the Gazette for notification of approval of / revision of / withdrawal of approval from a code of practice under clause 28(3) or 28(7) was not subsidiary legislation;
 - (d) state explicitly its policy intent on how OFTA would conduct consultation on proposed codes of practice and revisions to approved codes of practice made for the purpose of providing practical guidance in respect of the application or operation of any provision of the future Unsolicited Electronic Messages legislation;
 - (e) regarding its proposed amendment to empower TA to impose a charge on senders of commercial electronic messages for accessing a do-not-call register, provide information on the charging scheme being implemented in

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the United States for their do-not-call registers, and whether the fee/charge to be imposed by TA would be subject to any regulation; and

- (f) consider replacing all references to "拒收登記冊" in the Bill by "拒收訊息登記冊".

IV Any other business

5. Members noted that clause-by-clause examination of the Bill would continue at the next meeting starting from clause 31.

6. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
18 December 2006

**Proceedings of the ninth meeting of the
Bills Committee on Unsolicited Electronic Messages Bill
on Tuesday, 5 December 2006, at 10:45 am
in Conference Room B of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action required |
|-----------------|--|--|------------------------------|
| 000000 - 000155 | Chairman | Confirmation of minutes of the meeting held on 21 November 2006 (LC Paper No. CB(1)399/06-07) | |
| 000156 -001001 | ALA3 Administration Mr SIN Chung-kai Chairman | Enquiries and explanation on the technical issues arising from the drafting practice of incorporating the section heading of a cross-referenced section in provisions of the Bill Taking note of the Administration's written response (LC Paper No. CB(1)401/06-07(02)) and the Administration's further explanation that the abovementioned drafting practice was not a new practice and the practice would only be used when it could facilitate the readers in better understanding the legislation | |
| 001002 - 001534 | Chairman Administration | Continuation of clause-by-clause examination of the Bill The Administration's briefing on the structure of Part 5 of the Bill | |
| 001535 - 003255 | Administration Ms Emily LAU ALA3 Chairman | Clauses 26 to 27 Enquiry on enforcement authorities for different offences The Administration's explanation that it was intended that offences under Part 4 would be enforced by the Police while those under Parts 3 and 5 would be enforced by OFTA Request for the Administration to consider clearly reflecting its intention in the Bill and, if so, advise the necessary amendments to the Bill | The Administration to report |

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| | | <p>Enquiry on appointment of authorized officers by TA</p> <p>The Administration's clarification that clause 27 was merely an enabling provision to cater for the administrative arrangement that TA might appoint authorized officers to perform functions as were specified in the authorization. Such authorization was confined to those functions that were conferred or imposed on authorized officers under other provisions of the Bill</p> <p>Suggestion of replacing "by this Ordinance" with "under this Part and Part 3 of this Ordinance" in clause 27, since only Part 3 and Part 5 of the Bill contained provisions conferring or imposing functions on authorized officers</p> | <p>The Administration to consider and report</p> |
| 003256 - 003657 | Administration Ms Emily LAU | <p>Clause 28</p> <p>Enquiry on whether it was a common practice for an enforcement authority to approve codes of practice prepared by another party</p> <p>The Administration's response that it was common for TA to adopt internationally or locally accepted guidelines or standards as codes of practice for the purpose of regulating or providing guidance to the telecommunications industry in Hong Kong and therefore clause 28(1)(a) specified that the codes of practice approved and issued by TA could be prepared by another party</p> | |

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| 003658 - 003934 | ALA3 Administration | <p>Enquiry on clause 28(3) under which a notice in the Gazette had to be published where a code of practice was approved under clause 28(1)</p> <p>The Administration's response that the Gazette notice was not subsidiary legislation</p> | |
| 003935 - 004305 | Mr SIN Chung-kai Administration | <p>Enquiry on whether there was a need to include in the Bill provisions specifying that there would be consultation in preparing the codes of practice, like the provisions in the Telecommunications Ordinance</p> <p>The Administration's response that there was no provision under the Telecommunications Ordinance specifically requiring TA to conduct consultation in the course of preparing codes of practice or guidelines, except for a few very important issues, such as those relating to operators' right of access to land, dominance and interconnection</p> | |
| 004306 - 004841 | Mr WONG Ting-kwong Administration ALA3 Ms Emily LAU | <p>Enquiry on the need for clarifying that any notice published in the Gazette for notification of approval of / revision of / withdrawal of approval from a code of practice was not subsidiary legislation</p> <p>The Administration's response that it would consider proposing an amendment to clarify the issue</p> <p>Enquiry on the purpose of publishing such a notice in the Gazette</p> <p>The Administration's explanation that publishing a notice in the Gazette would serve as a formal public announcement and the Administration would also</p> | The Administration to report |

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| | | disseminate the information through other channels such as issuing a press release | |
| 004842 - 005549 | Administration Ms Emily LAU Chairman | <p>Enquiry on the circumstances and manner in which OFTA would conduct consultation on proposed codes of practice and revisions to codes of practice. Members noted that the Broadcasting Authority was required to conduct consultations under the Broadcasting Ordinance before approving a code of practice</p> <p>The Administration's response that TA would normally consult the industry on the draft and all major amendments to the codes of practices. One of the consultation channels was through the relevant advisory committees established by OFTA. It was necessary to allow TA some flexibility in this matter</p> <p>Request for the Administration to state explicitly its policy intent on how OFTA would conduct consultation on proposed codes of practice and revisions to approved codes of practice</p> | The Administration to provide a response |
| 005550 - 010005 | Administration Ms Emily LAU Chairman ALA3 | <p>Enquiry on the purpose of clause 28(5)</p> <p>ALA3's explanation that clause 28(5) specified that the procedure specified under clause 28(3) would, with the necessary modifications, apply in relation to any revision to codes of practice prepared by TA or approval of any revision to codes of practice approved under clause 28</p> | |
| 010006 - 011302 | Administration Ms Emily LAU Chairman | <p>Clause 29</p> <p>Enquiry and explanation on clauses 29(1) and 29(2)</p> | |

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| 011303 - 011545 | Administration Ms Emily LAU | <p>Enquiry on the consequence of non-compliance with a provision of an approved code of practice</p> <p>The Administration's explanation that non-compliance with a provision of an approved code of practice <i>per se</i> would not be an offence. A person could achieve the intent of a provision through alternative methods which were not specified in the code of practice. On the other hand, the non-compliance might be relied on by the enforcement agency as relevant evidence to establish or negate a matter under determination in legal proceedings, as provided in clause 29(2)</p> | |
| 011546 - 001750 | Administration Ms Emily LAU | <p>Enquiry and explanation on the purpose of the wording "in the absence of evidence to the contrary" in clauses 29(3) and 29(4)</p> | |
| 011751 - 001912 | Ms Emily LAU Administration | <p>Enquiry on which courts would handle cases involving contravention of a provision of the Bill</p> <p>The Administration's explanation that depending on the offences committed and the actual circumstances, cases might be handled by the magistrate, the district court, or any other court and tribunal. For an appeal against the Enforcement Notice issued by TA, it would be handled by the Unsolicited Electronic Messages (Enforcement Notices) Appeal Board</p> | |
| 011913 - 012128 | Mr SIN Chung-kai Administration | <p>Enquiry on the intended implementation timetable for different provisions of the Bill</p> <p>The Administration's elaboration on the initial plan to commence Parts 3 and 4 of the Bill as early as possible</p> | |

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| | | <p>after enactment of the Bill, and to bring Part 2 into operation in 3 to 6 months after enactment of the Bill to allow sufficient time for the industry to make necessary preparation</p> | |
| 012129 - 013159 | <p>Administration ALA3 Chairman Ms Emily LAU Mr WONG Ting-kwong</p> | <p>Clause 30</p> <p>ALA3's reference to the use of "拒收登記冊" and "拒收訊息登記冊" in the Bill</p> <p>Members taking note that the heading of clause 30 used "拒收登記冊" while clause 30(1) used "拒收訊息登記冊"</p> <p>The Administration's explanation that "拒收登記冊" was used for the sake of simplicity and the full name of the registers should be "拒收訊息登記冊" as specified in clause 30(1)</p> <p>Suggestion of replacing all references to "拒收登記冊" in the Bill by "拒收訊息登記冊" to avoid causing confusion to readers</p> | <p>The Administration to consider</p> |
| 013200 - 013344 | <p>Mr WONG Ting-kwong Administration Chairman</p> | <p>Enquiry on whether provisions relating to do-not-call registers would apply to person-to-person interactive telemarketing calls</p> <p>The Administration's response that as the current proposal was to exclude person-to-person interactive telemarketing calls from the regulation of the Unsolicited Electronic Messages legislation, those provisions relating to do-not-call registers would not apply to person-to-person interactive telemarketing calls</p> | |

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| 013345- 013520 | Ms Emily LAU Administration Chairman | <p>Enquiry on the wording "one or more registers" in clause 30(1)</p> <p>The Administration's explanation that there would be different registers to cater for different types of electronic messages, e.g. telephone, fax and short messaging service (SMS)</p> | |
| 013521 - 013802 | Administration Ms Emily LAU Mr SIN Chung-kai | <p>The Administration's advice that registered users of electronic addresses could check their own records in a do-not-call register and that registered users would not be charged for listing their electronic addresses in a do-not-call register</p> | |
| 013803 - 014223 | Administration Ms Emily LAU Chairman | <p>Concern about unauthorized amendments to do-not-call registers</p> <p>The Administration's response that there would be sufficient measures to safeguard the information in do-not-call registers</p> | |
| 014224 - 014331 | Administration Ms Emily LAU | <p>The Administration's advice that it would propose an amendment to empower TA to impose a charge on senders of commercial electronic messages for accessing a do-not-call register</p> <p>Enquiry on the fee to be imposed for accessing a do-not-call register and whether the fee would be subject to regulation</p> <p>The Administration's response that the fee to be imposed would depend on the cost of establishing a do-not-call register and reference would be drawn from overseas experience, e.g. the United States. The Administration would provide information on the charging scheme being implemented in the United</p> | <p>The Administration to provide information</p> |

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| | | States for their do-not-call registers, and would consider, in the course of drafting the amendments, members' views on whether the fee/charge should be subject to regulation | |
| 014332 - 015222 | Administration Ms Emily LAU Chairman Mr SIN Chung-kai Mr WONG Ting-kwong | <p>Enquiry on the purpose of clause 30(5)</p> <p>The Administration's explanation that the provision would cater for circumstances such as reproducing the information in a do-not-call register from the hard disk or other storage device of a computer in a legible form</p> <p>Enquiry on the verification mechanisms for handling requests for listing in a do-not-call register</p> <p>The Administration's response that there would be automated verification mechanisms such as checking the calling line identification information or sending confirmation SMS</p> <p>Enquiry on whether there would be any expiry dates for telephone numbers listed in a do-not-call register and concern about the implications of using recycled telephone numbers</p> <p>The Administration's response that there would be no expiry dates for telephone numbers listed in a do-not-call register so as to avoid the inconvenience of submitting renewal requests by users; and users of recycled telephone numbers could check the do-not-call registers to ascertain whether their telephone numbers were listed in the registers</p> <p>View that network operators should</p> | |

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| | | be required to inform TA to remove recycled telephone numbers from the do-not-call registers The Administration's response that the industry would be further consulted on the matter before establishing the do-not-call registers Completion of clause-by-clause examination of the Bill up to clause 30 | |
| 015223 - 015228 | Chairman | Continuation of clause-by-clause examination of the Bill at the next meeting | |