

**UNSOLICITED ELECTRONIC MESSAGES BILL**

**COMMITTEE STAGE**

Amendments to be moved by the Honourable WONG Ting-kwong, BBS

<u>Clause</u>	<u>Amendment Proposed</u>
6	<p>(a) In section heading, by deleting “Exclusions” and substituting “Exemptions”;</p> <p>(b) By deleting subclause (1) and substituting— “(1) A matter falling within a description set out in a table in Schedule 1 is exempt from the provisions of this Ordinance to the extent and subject to the conditions, if any, specified in that table”.</p>

Schedule 1 By deleting Schedule 1 and substituting—

“SCHEDULE 1  
EXEMPTIONS

[s.6]

1. Interpretation

(1) In this Schedule—

“sound broadcasting service” (聲音廣播服務) means—

- (a) a service that includes broadcasting as defined in section 13A(1) of the Telecommunications Ordinance (Cap. 106); or
- (b) a service of a like nature;

“television programme service” (電視節目服務) means—

- (a) a television programme service as defined in section 2(1) of the Broadcasting Ordinance (Cap. 562); or

(b) a service of a like nature.

(2) For the avoidance of doubt, the exemption of a matter from the provisions of Part 2 of this Ordinance in accordance with Table 2 shall not be construed as implying that the other provisions of this Ordinance apply to that matter.

## 2. Exemptions

(1) The matters described in an item in column 1 of Table 1 are exempt from the provisions of this Ordinance to the extent, if any, specified in column 2, of that item.

(2) The matters described in an item in column 1 of Table 2 are exempt from the provisions of Part 2 of this Ordinance subject to the conditions, if any, specified in column 2, of that item.

TABLE 1  
MATTERS EXEMPTED FROM APPLICATION OF ORDINANCE

	Column 1	Column 2
Item	Description of exempt matter	Extent of exemption
1.	Voice, sound, image or video messages, or messages combining text, voice, sound, images or video, that involve person-to-person interactive communications between a caller and a recipient without any pre-recorded or synthesized (machine-generated or simulated) element.	The matters described in Items 1 and 2 are exempt from the application of the Ordinance to the extent that the messages involve person-to-person interactive communications made pursuant to a previous or current business or client relationship between the caller and the recipient.
2.	Voice, sound, image or video messages, or messages combining	Where the person-to-

text, voice, sound, images or video, person interactive  
that involve— communications involved  
(a) person-to-person interactive are made otherwise than  
communications between a caller and a recipient; and pursuant to any such  
relationship between the  
(b) a pre-recorded or synthesized caller and recipient,  
(machine-generated or sections 7 and 12 of the  
simulated) element, Ordinance shall apply.  
whereby the pre-recorded or  
synthesized element is activated in  
response to information  
communicated by the caller.

- |    |   |                |
|----|---|----------------|
| 3. | Television programme services, whether or not licensed under the Broadcasting Ordinance (Cap. 562).     | Not applicable |
| 4. | Sound broadcasting services, whether or not licensed under the Telecommunications Ordinance (Cap. 106). | Not applicable |

TABLE 2  
MATTERS EXEMPTED FROM APPLICATION  
OF PART 2 OF ORDINANCE

	Column 1	Column 2
Item	Description of exempt matter	Conditions to which exemption is subject
1.	Any commercial electronic message sent to a person that meets the	The exemption is subject to the condition that the

following conditions—

- (a) the message is sent in response to information communicated to the sender by that person (including but not limited to information communicated through the Internet);
- (b) the information is communicated to the sender by that person either directly or in consequence of the conduct of that person;
- (c) the message would not have been sent but for the communication of that information; and
- (d) the message is of a kind that the person would normally expect to receive as a result of the communication of that information.

commercial electronic message is sent to the person within a reasonable time after the information is communicated to the sender by that person.

2. Any electronic message the primary purpose of which is—

- (a) to facilitate, complete or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;
- (b) to provide warranty information, product recall information or safety or

Not applicable

security information with respect to a commercial product or service used or purchased by the recipient;  
or

- (c) to deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

- |    |   |                  |
|----|---|------------------|
| 3. | Any electronic message the primary purpose of which is to provide— <ul style="list-style-type: none"><li>(a) notification concerning a change in the terms or features of;</li><li>(b) notification of a change in the recipient’s standing or status with respect to; or</li><li>(c) at regular periodic intervals, account balance information or other type of account statement with respect to, a subscription, membership, account, loan or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of goods or services offered by the sender.</li></ul> | Not applicable   |
| 4. | Any electronic message the primary  | Not applicable”. |

purpose of which is to provide information directly related to an employment relationship or a related benefit plan in which the recipient is currently involved, participating or enrolled.