

CB(1)2270/05-06(01)

# Unsolicited Electronic Messages Bill

Commerce, Industry and Technology Bureau  
September 2006

# Coverage

- Commercial electronic messages originating from Hong Kong or sent to Hong Kong (*Clause 3*)
- Commercial electronic messages
  - messages which purport to offer, advertise, or promote the provision of goods, facilities, services, land or a business or investment opportunity etc. (*Clause 2*)
- All forms of electronic messages, including e-mails, short messages, fax, voice or video calls (*Clause 2*)

## Messages to be Exempted

- Person-to-person calls (*Schedule 1*)
- Sound and TV broadcasting services already regulated under Telecommunications Ordinance and Broadcasting Ordinance (*Schedule 1*)
- Exclusion list may be amended by the Secretary for Commerce, Industry and Technology (*Clause 6*)

# Opt-out Regime

- **Principle:** A sender may send commercial electronic messages until the recipient refuses to accept further messages
- Recipient may indicate refusal to accept further messages by:
  - sending an “unsubscribe request” to a sender of a commercial electronic message through the “unsubscribe facility” provided by the sender (*Clause 8*); or
  - placing his electronic address on a “do-not-call register” (if a relevant register has been set up) (*Clause 30*)
    - equivalent to sending unsubscribe requests to **all senders of commercial electronic messages**

## Other Rules For Sending Commercial Electronic Messages

- Messages must include accurate information for identifying and contacting the sender (*Clause 7*)
- Messages must not use subject headings which would likely mislead the recipient (*Clause 11*)
- If the messages are sent through a telephone or facsimile number, the sender must not conceal the calling line identification information (e.g. caller number display) (*Clause 12*)

# Enforcement and Penalties

- Contraventions of opt-out regime and rules for sending commercial electronic messages (*Clause 35*)
  - enforced by **Enforcement Notice**
  - Telecommunications Authority to specify contravention and steps required to remedy the contravention in an enforcement notice
  - an offence **if enforcement notice is not complied with**
- Penalties for non-compliance with enforcement notice (*Clause 36*)
  - **1<sup>st</sup> conviction**: a fine up to **\$100,000**
  - **2<sup>nd</sup> or subsequent conviction**: a fine up to **\$500,000**
  - **continuing offence**: further fine of **\$1,000 a day**

## Appeal Mechanism for Enforcement Notice

- To establish the Unsolicited Electronic Messages (Enforcement Notice) Appeal Board (*Clauses 43-51*)
  - comprised of non-officials
  - the Appeal Board may uphold, vary or quash the enforcement notice

# Address Harvesting and Other Techniques Commonly used by Spammers

- It is an offence to **supply, acquire or use** address-harvesting software or harvested-address lists, or to use other techniques commonly deployed by spammers, e.g. “dictionary attack”, use of “automatic throwaway accounts” (*Clauses 14-19*)
- **Penalty**
  - Summary conviction: fine up to **\$100,000** and imprisonment up to **2 years** (no imprisonment term for offences relating to address-harvesting)
  - Conviction on indictment: fine up to **\$1,000,000** and to imprisonment up to **5 years**

# Fraud and Related Activities

- Fraud and related activities in connection with spamming (*Clauses 21-25*) will be enforced by the Police
- Penalties
  - A fine of any amount as determined by the Court
  - Imprisonment up to 10 years

## Claims for Loss or Damage

- A person who suffers **loss or damage** by reason of a contravention of the Bill may bring **civil proceedings** against the person who committed the contravention, **irrespective of whether he has been convicted of an offence** (*Clause 52*)
  - Amount **less than** \$50,000: Small Claims Tribunal
  - Amount **exceeding** \$50,000: District Court

# Liability of Principals, Agents, Employers, Employees

- Acts done by an employee or as an agent shall be treated as done by the employer or principal as well as by the employee or agent (*Clause 53*)
- Defence for employer and principal
  - if they can prove that they have taken practicable steps to prevent the employee or agent from doing that act (*Clause 53*)
- Defence for employee
  - if they can prove that they did the act in the course of employment or in accordance with instructions given to him by or on behalf of his employer (*Clause 53*)

## Liability of Directors, Partners etc.

- Directors of a company, partners of a partnership and officers of an unincorporated body who are responsible for internal management of their organizations shall be presumed to have been done the act, unless sufficient evidence is adduced to raise an issue with respect to that fact and the contrary is not proved by the prosecution beyond reasonable doubt. (*Clause 54*)

**End**