

L/M No. 2 to CTB(CR) 7/5/18(06) Pt. 6
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BY FAX
Fax No. : 2536 8113

Dear Mr Gunter,

Unsolicited Electronic Messages Bill

I am writing to follow up matters relating to the drafting practice of incorporating the section heading of a cross-referenced section in provisions of the Bill.

While we appreciate that the drafting practice in question is adopted with a view to making the legislation more readable and user-friendly, we are concerned whether the technical issues arising from the drafting practice have been considered. Set out below are some of the issues that we have identified:

- (a) In the light of section 18(3) of Interpretation and General Clauses Ordinance (Cap. 1), a section heading may be amended editorially without using legislative means. In the event that the heading of a section is changed editorially after enactment, questions may arise as to whether the section heading included in a cross-reference of the section can be amended editorially, or whether it should be amended by legislative means on the basis that the section heading is part of the legislative text.
- (b) If it is intended that a section heading incorporated to provide context to a cross-reference does not have legislative effect, please consider the need to reflect this intention clearly in section 18 of Cap. 1. While section 18(3) of Cap. 1 provides that a section heading does not have any legislative effect, there may be doubt as to whether the same is applicable to a section heading which is used to provide context to a cross-reference and has become part of the legislative text.

Consistent with existing practice, if it is decided that the above drafting practice will be adopted as the general norm for new Bills in future, the relevant Panel of the Legislative Council should be consulted before it is formally implemented.

I would appreciate it if you could let us have your reply in both languages by *1 December 2006*.

Yours sincerely,

(Connie FUNG)
Assistant Legal Adviser

c.c.: Commerce, Industry and Technology Bureau (Attn: Mr Tony LI, PAS)
DoJ (Attn: Miss Leonora IP, SGC)
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