

ALL PASSED

UNSOLICITED ELECTRONIC MESSAGES BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce, Industry and Technology

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>(a) By adding –</p> <p>“(1A) Subject to subsection (2), this Ordinance shall come into operation on the day on which it is published in the Gazette.”.</p> <p>(b) In subclause (2), by deleting “This Ordinance” and substituting “Part 2, sections 30, 30A, 31, 35, 36 and 52A and sections 1(2) and 2(2) and Table 2 of Schedule 1”.</p>
2	<p>(a) In subclause (1) –</p> <p>(i) by deleting the definition of “do-not-call register” and substituting –</p> <p>““do-not-call register” (拒收訊息登記冊) means a register established and kept under section 30 (<i>Authority may establish do-not-call registers</i>);”;</p> <p>(ii) in the definition of “enforcement notice”, by deleting “issued under section 35” and substituting “under section 35(1)”;</p> <p>(iii) by deleting paragraph (c) of the definition of “organization” and substituting –</p> <p>“(c) a partnership or other unincorporated body of persons, whether formed or established in Hong</p>

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Kong or elsewhere;”;

- (iv) by deleting paragraph (d) of the definition of “registered user” and substituting –

“(d) in any other case, the individual or organization who is responsible for the relevant electronic address account,

and, if 2 or more individuals or organizations are jointly responsible for such an account, means any of those individuals or organizations;”;

- (v) by adding –

““document” (文件) includes, in addition to a document in writing –

(a) a disc, tape or other device in which data other than visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the disc, tape or other device; and

(b) a film, tape or other device in which visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the film, tape or other device;”.

(b) By adding –

“(1A) For the purposes of paragraphs (a), (b), (c), (d), (e) and (f) of the definition of “commercial electronic message” in subsection (1), it is immaterial whether –

- (a) the goods, services, facilities, land, interest in land, business opportunity or investment opportunity exists; or
- (b) it is lawful to acquire the goods, services, facilities, land, interest in land, business opportunity or investment opportunity.

(1B) For the purposes of the definition of “electronic message” in subsection (1), it is immaterial whether –

- (a) the electronic address exists; or
- (b) the message reaches its intended destination.”.

(c) In subclause (3), by deleting “, associations, societies”.

(d) By adding –

“(4) Where, in any provision of this Ordinance, a reference is made to another provision of this Ordinance and the reference is followed by text in parenthesis that purports to be descriptive of the subject matter of the provision referred to, the text in parenthesis shall be treated as having been provided for information only and does not have any legislative effect.”.

5

(a) By deleting subclause (1) and substituting –

“(1) For the purposes of this Ordinance –

“consent” (同意), in relation to the sending of a commercial electronic message, means –

- (a) express consent; or
- (b) consent that can reasonably be inferred from the conduct of the individual or organization concerned;

“withdraw” (撤回), in relation to consent, means to expressly withdraw that consent.

(1A) For the purposes of this Ordinance, consent to the sending of a commercial electronic message may be given, and such consent may be withdrawn, by means of an electronic message or in any other manner.”.

- (b) By deleting subclause (2)(b) and substituting –

“(b) has not, within a reasonable period of time prior to the sending of the message, withdrawn that consent.”.

New

By adding –

“5A. Application

- (1) This Ordinance binds the Government.
- (2) Neither the Government nor any public officer in the officer’s capacity as such is liable to be prosecuted for an offence against this Ordinance.”.

6

- (a) In the heading, by deleting “**Exclusions**” and substituting “**Exemptions**”.

- (b) By deleting subclause (1) and substituting –

“(1) The matters specified in Schedule 1 are exempt

from the application of this Ordinance to the extent and subject to the conditions, if any, specified in that Schedule.”.

- 7(1) In the Chinese text, by deleting paragraph (c) and substituting –
“(c) 該訊息載有規例所指明的資料(如有的話)，並符合規例所指明的條件(如有的話)；及”.
- 8 (a) In subclause (1), by adding –
“(ba) the statement complies with such conditions as are specified in the regulations, if any;
(bb) the unsubscribe facility complies with such conditions as are specified in the regulations, if any;”.
(b) In subclause (3), by deleting “7” and substituting “3”.
- 10 (a) In the heading, in the Chinese text, by deleting “拒收登記冊” and substituting “拒收訊息登記冊”.
(b) In subclauses (1), (2) and (3), in the Chinese text, by deleting “拒收登記冊” and substituting “拒收訊息登記冊”.
- 14(3) By deleting “or recklessly”.
- 15(3) By deleting “or recklessly”.
- 16(3) By deleting “or recklessly”.
- 17(3) By deleting “or recklessly”.

- 18(3) By deleting “or recklessly”.
- 21(1) (a) By deleting “knowingly or recklessly”.
(b) In paragraph (b), by adding “knowingly” before “initiates”.
- 23 (a) In subclause (1)(b), by deleting “or recklessly”.
(b) In subclause (2), by deleting “knowingly”.
- 24 (a) In subclause (1) –
(i) in paragraph (a), by deleting “knowingly”;
(ii) in paragraph (b), by deleting “or recklessly”.
(b) In subclause (2), by deleting “knowingly”.
- 25(1)(b) By deleting “or recklessly”.
- 26 In the definition of “specified offence”, by adding “or Part 7
(*miscellaneous*)” before the full stop.
- 27 By deleting “Ordinance” and substituting “Part”.
- 28 By deleting subclause (10) and substituting –
“(10) A code of practice approved under this section
and a notice published under subsection (3) or (7) are not
subsidiary legislation.”.
- 29(5)(b) By deleting “(*Appeal Board established*)”.

30

- (a) In the heading, in the Chinese text, by deleting “拒收登記冊” and substituting “拒收訊息登記冊”.
- (b) By deleting subclause (1) and substituting –
 - “(1) The Authority may establish and keep one or more registers of electronic addresses for the purposes of this Ordinance, each of which is to be known as a do-not-call register, and may do all things necessary for, or incidental or conducive to, the establishment, operation and administration of such registers.”.
- (c) In subclause (2), in the Chinese text, by deleting “拒收登記冊” and substituting “拒收訊息登記冊”.
- (d) In subclause (3), in the Chinese text, by deleting “拒收登記冊” and substituting “拒收訊息登記冊”.
- (e) In subclause (4), by deleting “A do-not-call” and substituting “Without limiting the generality of subsection (1), a do-not-call”.
- (f) In subclause (5) –
 - (i) by deleting “pursuant to subsection (1)”;
 - (ii) in the Chinese text, by deleting “拒收登記冊” and substituting “拒收訊息登記冊”.
- (g) By deleting subclause (6).
- (h) In subclause (7)(a), in the Chinese text, by deleting “拒收登記冊” and substituting “拒收訊息登記冊”.
- (i) By adding –
 - “(7A) A certificate purporting to be signed by the Authority or an authorized officer and stating that an electronic address was or was not listed in a do-not-call

register at a date specified in the certificate shall be admissible as evidence of its contents in any legal proceedings.”.

- (j) By deleting subclause (8).

New

By adding –

“30A. Powers of Authority in relation to do-not-call registers

(1) Without limiting the generality of section 30(1) (*Authority may establish do-not-call registers*), the Authority may determine –

- (a) the criteria for determining whether an electronic address is eligible to be listed in a do-not-call register;
 - (b) the procedures for adding an electronic address to a do-not-call register;
 - (c) the period for which an electronic address may be listed in a do-not-call register;
 - (d) the circumstances in which and the manner in which an electronic address may be removed from a do-not-call register;
 - (e) the fees to be paid for the provision by the Authority of any service in relation to a do-not-call register; and
 - (f) any other matter relating to the establishment, operation or administration of a do-not-call register.
- (2) The Authority shall not add an electronic

address to a do-not-call register unless the registered user of that electronic address has given his consent to its inclusion in the register and to its being made available under section 31 (*access to do-not-call registers*).”.

31 By deleting the clause and substituting –

“31. Access to do-not-call registers

(1) Subject to subsection (2), the Authority shall, having regard to the purposes described in section 30(2) (*Authority may establish do-not-call registers*), cause the information contained in a do-not-call register to be made available to senders of commercial electronic messages.

(2) The Authority may, for the purpose of performing his functions under subsection (1), determine –

- (a) the procedures to be followed by any person who wishes to obtain access to information contained in a do-not-call register;
- (b) the conditions that must be met before such information is made available to any person;
- (c) the form in which and the manner in which such information is made available to any person;
- (d) the conditions subject to which such information is made available to any person; and

(e) any other matter relating to the provision by the Authority to any person of any such information.

(3) Without limiting the powers of the Authority under section 30A(1)(e) (*powers of Authority in relation to do-not-call registers*) but subject to subsection (4), the Authority may charge fees for making information contained in a do-not-call register available to any person under this section.

(4) The Authority shall provide facilities to enable the registered user of an electronic address to verify, free of charge, whether that electronic address is listed in a do-not-call register.”.

32 By deleting the clause.

33 By deleting the clause and substituting –

“33. Authority may issue directions to telecommunications service providers

(1) Subject to subsections (2) and (3), the Authority may, by notice in writing served on a telecommunications service provider, issue directions to the telecommunications service provider requiring it to –

(a) take such action as the Authority considers necessary for the purpose of assisting the Authority to determine whether to commence an investigation into a contravention or suspected

contravention of a provision of this Ordinance;

- (b) take such action as the Authority considers necessary for the purpose of assisting or enabling the Authority to investigate a contravention or suspected contravention of a provision of this Ordinance; or
- (c) provide information to the Authority for the purpose of assisting or enabling the Authority to establish, operate or administer a do-not-call register,

and the telecommunications service provider shall give effect to such directions before a date specified in the notice, being a date reasonable in all the circumstances of the case.

(2) No directions shall be issued to a telecommunications service provider under subsection (1) in relation to a matter for which the Authority may serve a notice on the telecommunications service provider under section 34 (*Authority may obtain information or documents relevant to investigation*) or section 35 (*Authority may issue enforcement notice*).

(3) No directions shall be issued to a telecommunications service provider under subsection (1) unless the Authority is satisfied that the telecommunications service provider has been afforded a reasonable opportunity to make representations to the Authority.

33A. Authority may impose financial penalties

(1) The Authority may, by notice in writing served on a telecommunications service provider, require the telecommunications service provider to pay to the Government the financial penalty specified in the notice in any case where it fails to comply with any direction issued in respect of the telecommunications service provider under section 33 (*Authority may issue directions to telecommunications service providers*).

(2) A financial penalty imposed on a telecommunications service provider under subsection (1) shall not exceed –

- (a) \$50,000 for the first occasion on which a financial penalty is so imposed;
- (b) \$100,000 for the second occasion on which a financial penalty is so imposed;
and
- (c) \$200,000 for any subsequent occasion on which a financial penalty is so imposed.

(3) The Authority shall not impose a financial penalty under this section unless, in all the circumstances of the case, the financial penalty is proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that financial penalty.

(4) The Authority shall not impose a financial penalty under this section unless he has given the telecommunications service provider concerned a reasonable

opportunity to make representations, and the Authority shall consider all representations made to him before he makes a decision whether or not to impose a financial penalty.

(5) Subsection (1) shall not apply in the case of the telecommunications service provider concerned unless the Authority is satisfied that it has been afforded a reasonable opportunity of complying with the direction in respect of which that subsection is sought to be applied.

(6) A financial penalty imposed under this section is recoverable as a civil debt due to the Government.”.

- 34
- (a) In subclause (1), in the Chinese text, by deleting “(但不限於)” and substituting “但不限於”.
 - (b) In subclause (3) –
 - (i) by adding “, on application by the Authority” after “a magistrate may”;
 - (ii) in paragraph (a), by deleting “and” at the end;
 - (iii) in paragraph (b), by deleting “notice,” and substituting “notice; and”;
 - (iv) by adding –
 - “(c) after considering the representations, if any, made by the Authority or the person on the hearing of the application,”.
 - (c) By adding –
 - “(3A) The person in respect of whom an application is made by the Authority under subsection (3) shall be entitled to be heard on the hearing of the application –

- (a) where the person is an individual, either in person or through a counsel or solicitor;
or
- (b) where the person is an organization, either through a counsel or solicitor or through –
 - (i) in the case of a Hong Kong company or other company or body corporate, any of its directors or other officers;
 - (ii) in the case of a partnership, any of its partners; and
 - (iii) in the case of any other organization, any of its officers.”.
- (d) By deleting subclauses (5) and (6).

New

By adding –

“34A. Disclosure of information and documents given or produced under section 34

(1) The Authority shall not disclose any information or document given or produced to him under section 34 (*Authority may obtain information or documents relevant to investigation*) unless he is satisfied that –

- (a) it is necessary to disclose the information or document for the purposes of a proceeding under subsection (3) of that section;
- (b) it is necessary to disclose the information or document for the purposes of –

- (i) the prevention or detection of crime;
 - (ii) the apprehension, prosecution or detention of offenders; or
 - (iii) the fulfilment of any obligation under an international agreement applicable to Hong Kong and relating to unsolicited electronic messages; or
- (c) it is otherwise in the public interest to disclose the information or document.

(2) The Authority shall not disclose any information or document given or produced to him under section 34 (*Authority may obtain information or documents relevant to investigation*) unless he has given the person who gave or produced the information or document to the Authority a reasonable opportunity to make representations on the proposed disclosure, and the Authority shall consider all representations made to him before he makes a decision whether or not to disclose the information or document, as the case may be.”.

37

- (a) In subclause (1)(b) –
- (i) by deleting “38” and substituting “38(1)”;
 - (ii) in subparagraph (ii), in the Chinese text, by deleting “扣留任何在該處所或地方之內或之上發現的人的期間內；扣留該人” and substituting “的期間內，扣

留任何在該處所或地方之內或之上發現的人”。

- (b) By deleting subclause (2).
 - (c) In subclause (3) –
 - (i) by deleting “this section” and substituting “a warrant issued under section 38(1) (*power of magistrate to issue search warrant*)”;
 - (ii) by adding –
 - “(ab) require to be given or produced to him any information (including but not limited to passwords) or document or other thing as will enable him to inspect, operate and analyze any telecommunications device or other thing referred to in paragraph (a);”.
 - (d) By adding –
 - “(3A) The Authority or an authorized officer may –
 - (a) break into and forcibly enter any premises or place that he is empowered to enter and search under a warrant issued under section 38(1) (*power of magistrate to issue search warrant*); and
 - (b) remove by force any person or thing obstructing him in the performance of his functions under this section.”.
 - (e) In subclause (6), by adding “enactment or rule of” before “law”.
- (a) By renumbering the clause as clause 38(1).

(b) By adding –

“(2) Where the Authority or an authorized officer enters any premises or place under a warrant issued under subsection (1), he shall, on request, produce the warrant and evidence of his identity for inspection by any person found in or on the premises or place.”

39(1)

(a) In paragraph (a), by deleting “this Ordinance” and substituting “section 37 (*powers of entry, search, arrest, etc.*)”.

(b) In paragraph (b), by adding “under that section” after “authorized officer”.

(c) In paragraph (c), by deleting “this Ordinance” and substituting “that section”.

40

By adding –

“(4) In this section, “costs and expenses” (費用及開支), in relation to an investigation, means staff costs and expenses and the financing of liabilities paid out of the Office of the Telecommunications Authority Trading Fund in respect of that investigation.”

New

By adding –

“40A. Service of notices for purposes of sections 33, 33A, 34 and 35

(1) A specified notice may be served by prepaying (where requisite), registering and posting an envelope addressed to the person on or to whom the notice is to be served at his usual or last known place of abode or business

and containing the notice; and, unless there is evidence to the contrary, the notice shall be deemed to have been served and received at the time at which such envelope would have been delivered in the ordinary course of post.

(2) For the purposes of this section, a company within the meaning assigned by section 2(1) of the Companies Ordinance (Cap. 32) shall be deemed to have its usual place of business at its registered office for the purposes of that Ordinance, and any other organization shall be deemed to have a usual place of business at its principal office or any other place at which it carries on business.

(3) In this section, “specified notice” (指明通知) means a notice under –

- (a) section 33 (*Authority may issue directions to telecommunications service providers*);
- (b) section 33A (*Authority may impose financial penalties*);
- (c) section 34 (*Authority may obtain information or documents relevant to investigation*); or
- (d) section 35 (*Authority may issue enforcement notice*).”.

42

- (a) By deleting “(*Appeal Board established*)” wherever it appears.
- (b) In the definition of “presiding officer”, by deleting “section 45(1)(a) (*procedure on appeal*)” and substituting “section 45 (*composition of Appeal Board for purposes of appeal*)”.

- (c) By adding –
 ““legally qualified” (具所需法律資格) means qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336);”.

43

- (a) By deleting subclause (2) and substituting –
 “(2) The Chief Executive shall appoint a legally qualified person to be the Chairman of the Appeal Board and such other legally qualified persons as he thinks fit to be Deputy Chairmen of the Appeal Board.”.

- (b) By deleting subclauses (3) and (4).

- (c) By deleting subclause (5) and substituting –

“(5) The Chief Executive shall appoint a panel of persons, not being public officers, whom he considers suitable for selection under section 45(1)(b) (*composition of Appeal Board for purposes of appeal*) as members of the Appeal Board.

(5A) A person shall be appointed under subsection (2) or (5) for a term of not more than 3 years but may be reappointed.”.

45

By deleting the clause and substituting –

**“45. Composition of Appeal Board
 for purposes of appeal**

(1) For the purposes of an appeal, the Appeal Board shall consist of –

- (a) a presiding officer, who shall preside at the hearing of the appeal; and

(b) 2 panel members selected by the presiding officer.

(2) Subject to subsections (3), (4) and (5), the Chairman or, if the Chairman so determines, a Deputy Chairman selected by the Chairman shall act as presiding officer.

(3) The Chairman shall not act as presiding officer if he has a direct or indirect interest in the appeal.

(4) The Chairman shall not select a Deputy Chairman to act as presiding officer if the Deputy Chairman has a direct or indirect interest in the appeal.

(5) In the event that the Chairman and each Deputy Chairman has a direct or indirect interest in an appeal, the Chief Executive may select a panel member who is legally qualified and who does not have a direct or indirect interest in the appeal to act as presiding officer.

(6) The presiding officer shall not select a panel member to hear an appeal if the panel member has a direct or indirect interest in the appeal.

(7) If the term of appointment of the presiding officer or a panel member selected under subsection (1)(b) expires during the hearing of an appeal, the presiding officer or panel member may continue to hear the appeal until the appeal is determined.

45A. Procedure on appeal

(1) In the hearing of an appeal, every question before the Appeal Board shall be determined by the opinion of

the majority of the members hearing the appeal except a question of law which shall be determined by the presiding officer, and in the case of an equality of votes the presiding officer shall have a casting vote.

(2) A party to an appeal shall be entitled to be heard –

- (a) where the party is an individual, either in person or through a counsel or solicitor; or
- (b) where the party is an organization, either through a counsel or solicitor or through –
 - (i) in the case of a Hong Kong company or other company or body corporate, any of its directors or other officers;
 - (ii) in the case of a partnership, any of its partners; and
 - (iii) in the case of any other organization, any of its officers.

(3) The Appeal Board may, if it sees fit, permit a party to an appeal to submit written representations to the Appeal Board in lieu of the party appearing at a sitting of the Appeal Board either in person or through a counsel or solicitor or a director, officer or partner referred to in subsection (2).

(4) Every sitting of the Appeal Board shall be held in public unless the Appeal Board considers that in the interests of justice a sitting or part of a sitting should not be held in public, in which case it may hold the sitting or part of

the sitting in private.

(5) After hearing an appeal, the Appeal Board shall determine the appeal by upholding, varying or setting aside the enforcement notice and may make such consequential orders as it considers necessary.

(6) The Appeal Board shall notify in writing the parties to the appeal of its decision and the reasons for the decision.”.

- 46 (a) In subclause (1)(b)(i), by deleting “information or”.
- (b) In subclause (4), by deleting “the rules” and substituting “any rules”.

51 By deleting paragraph (b) and substituting –

“(b) generally for regulating the practice and procedure of the Appeal Board.”.

52 (a) In subclause (1), by deleting “(whether or not he has been convicted of an offence in relation to the contravention)”.

(b) By adding –

“(1A) For the purposes of subsection (1), it is immaterial whether –

(a) the contravention constitutes an offence;
or

(b) the person who committed the contravention has been convicted of an offence in relation to the contravention.”.

- (c) In subclause (4) –
 - (i) by adding “enactment or rule of” before “law”;
 - (ii) by deleting “mentioned” and substituting “referred to”;
 - (iii) in the Chinese text, by deleting “或授予” and substituting “或”.
- (d) In subclause (5), by deleting “mentioned” and substituting “referred to”.
- (e) In subclause (7), in the Chinese text, by deleting “任何人根據任何其他成文法則或法律規則而獲賦予或委予” and substituting “根據任何其他成文法則或法律規則賦予或施加於任何人”.

New

By adding –

“52A. Offences relating to misuse of information

(1) No person to whom an unsubscribe request is sent under section 8 (*commercial electronic messages must contain unsubscribe facility*) shall use any information obtained thereby other than for the purpose of complying with the requirements of that section or section 9 (*commercial electronic messages must not be sent after unsubscribe request is sent*).

(2) No person to whom any information contained in a do-not-call register is made available under section 31 (*access to do-not-call registers*) shall use any information obtained thereby other than for the purpose described in section 30(2)(b) (*Authority may establish do-not-call registers*).

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine at level 6.

(4) A person who knowingly contravenes subsection (1) or (2) commits an offence and is liable on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 5 years.

(5) It is a defence to a charge for an offence under subsection (3) for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.”.

54

- (a) In subclause (1) –
- (i) by deleting “a company or a partnership” and substituting “an organization”;
 - (ii) by deleting “he proves” and substituting “there is evidence showing”;
 - (iii) in paragraph (a), by deleting “case of the company” and substituting “case of a Hong Kong company or other company or body corporate (“the company”)”;
 - (iv) in paragraph (b) –
 - (A) in the English text, by deleting “case of the” and substituting “case of a”;
 - (B) in subparagraph (ii), by deleting the full stop and substituting “; and”;
 - (v) by adding –
 - “(c) in the case of any other organization, any

officer of the organization or other person who, at the time the act was done or the conduct was engaged in, was responsible for the internal management of the organization.”.

(b) By deleting subclause (2).

(c) By deleting subclause (3) and substituting –

“(3) A person charged with an offence under this Ordinance by virtue of subsection (1) is taken not to have done the act in question or not to have engaged in the conduct in question if –

(a) sufficient evidence is adduced to raise an issue that he did not authorize the act to be done or the conduct to be engaged in; and

(b) the contrary is not proved by the prosecution beyond reasonable doubt.”.

Schedule 1 By deleting the Schedule and substituting –

“SCHEDULE 1

[s. 6]

EXEMPTIONS

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 application of Part 2 of this Ordinance (*rules about sending commercial electronic messages*) 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 Table 1 are exempt from the application of this Ordinance.

(2) The matters described in an item in column 1 in Table 2 are exempt from the application of Part 2 of this Ordinance (*rules about sending commercial electronic messages*) subject to the conditions, if any, specified in column 2 of that item.

TABLE 1
MATTERS EXEMPTED FROM APPLICATION OF ORDINANCE

Item	Description of exempt matter
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.
2.	Voice, sound, image or video messages, or messages combining text, voice, sound, images or video, that involve – (a) person-to-person interactive communications between a caller and a recipient; and (b) a pre-recorded or synthesized (machine-generated or simulated) element, 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).
4.	Sound broadcasting services, whether or not licensed under the Telecommunications Ordinance (Cap. 106).

TABLE 2
MATTERS EXEMPTED FROM APPLICATION
OF PART 2 OF ORDINANCE

Item	Column 1 Description of exempt matter	Column 2 Conditions to which exemption is subject
1.	<p>Any commercial electronic message sent to a person that meets the following conditions –</p> <ul style="list-style-type: none"> (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. 	<p>The exemption is subject to the condition that the commercial electronic message is sent to the person within a reasonable time after the information is communicated to the sender by that person.</p>

2. Any electronic message the primary purpose of which is – Not applicable.

- (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 security information with respect to a commercial product or service purchased or used 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 – Not applicable.

- (a) notification concerning a change in the terms or features of;
- (b) notification of a change in the recipient's standing or status with respect to; or
- (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.

4. Any electronic message the primary 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. Not applicable.”.

- Schedule 2
- (a) In section 1(2), in the proposed section 24(2)(a), by deleting “any other law” and substituting “the Unsolicited Electronic Messages Ordinance (of 2007)”.
 - (b) In section 2, by deleting everything after “item 1,” and substituting –
“by repealing “Telephone Ordinance (Cap. 269)” and substituting “Unsolicited Electronic Messages Ordinance (of 2007)”.”.