

工商及科技局
通訊及科技科

香港中環花園道
美利大廈一至二樓



COMMUNICATIONS
AND TECHNOLOGY BRANCH
COMMERCE, INDUSTRY
AND TECHNOLOGY BUREAU
1/F-2/F Murray Building
Garden Road
Central, Hong Kong

本局檔號 OUR REF :
來函檔號 YOUR REF : CB1/PL/ITB
電 話 TEL. NO. : 2189 2210
傳 真 FAXLINE : 2511 1458
電子郵件 E-mail Address: tyyli@citb.gov.hk

By Fax
(Fax No. 2869 6794)

10 May 2007

Miss Erin TSANG
Clerk to Panel
Information Technology and Broadcasting Panel
Legislative Council
3/F, Citibank Tower
3 Garden Road
Hong Kong

Dear Miss TSANG,

**Panel on Information Technology and Broadcasting
Meeting on 14 May 2007**

**Item V – Subsidiary legislation to be made under
the Unsolicited Electronic Messages Ordinance**

Further to our paper on the captioned item, I attach herewith the draft Unsolicited Electronic Messages Regulation for Member's reference. Please note that this draft is a preliminary version and is subject to further amendments after consultation.

Yours sincerely,

(LI Yeuk-yue, Tony)
for Secretary for Commerce, Industry and Technology

Encl

cc DG of Tel (Attn: Mr T F SO)]
DoJ (Attn: Mr Jeffrey GUNTER)] w/o Encl 216 3334
Miss Leonora IP)] 2869 1302
2845 2215

DRAFT

UNSOLICITED ELECTRONIC MESSAGES REGULATION

(Made by the Secretary for Commerce, Industry and Technology under section 56 of the Unsolicited Electronic Messages Ordinance (... of 2007))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Commerce, Industry and Technology by notice published in the Gazette.

PART 1

PRELIMINARY

2. Interpretation

- (1) In this Regulation, unless the context otherwise requires –
- “address” (), in relation to an individual or organization, means the address of his or its usual place of business, but does not include a postal box address;
- “calling line identification information” () has the meaning assigned to it by section 12(2) of the Ordinance;
- “identity document” (), in relation to an individual, means any valid document that is issued for the purpose of establishing the identity, nationality and domicile or place of abode or permanent residence of the holder of the document and that is officially issued to him according to the laws of the country or territory by or on behalf of which it is issued;
- “name” () in relation to an organization, includes the name under which the business of that organization is carried on and any abbreviation of that name that reasonably identifies that organization;
- “unsubscribe facility” () has the same meaning as in section 8 of the Ordinance;

“unsubscribe facility statement” () means the statement required to be included in a commercial electronic message under section 8(1)(a) of the Ordinance.

(2) For the purposes of this Regulation, 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. Application and purpose

(1) This Regulation applies to a person who sends a commercial electronic message that has a Hong Kong link.

(2) This Regulation is made for the purposes of paragraph (c) of section 7(1) and paragraphs (ba) and (bb) of section 8(1) of the Ordinance and supplements the rules for sending of commercial electronic messages set out in those sections.

PART 2

SUPPLEMENTARY RULES ABOUT SENDING COMMERCIAL ELECTRONIC MESSAGES

4. Commercial electronic messages must include identity and contact information

(1) A commercial electronic message sent by electronic mail transmission must include –

- (a) the name of the individual or organization who authorized the sending of the message;
- (b) the address of that individual or organization;
- (c) a telephone number at which that individual or organization may be contacted; and

(d) an electronic mail address at which that individual or organization may be contacted.

(2) A commercial electronic message sent by any other means of transmission must include –

(a) the name of the individual or organization who authorized the sending of the message;

(b) the address of that individual or organization; and

(c) a telephone number at which that individual or organization may be contacted.

(3) If the commercial electronic message is authorized to be sent by an individual, the name of the individual included in the message under subsection (1)(a) or (2)(a) must be the individual's name as shown on his identity document.

(4) If the commercial electronic message is a text message and is sent to a telephone number, the address of the individual or organization required under subsection (1)(b) or (2)(b) may be omitted from the message if the recipient is able to obtain the address by using the telephone number included in the message under subsection (1)(c) or (2)(c).

(5) If the commercial electronic message is sent from an electronic address that is a telephone number or facsimile number, the message must include the information required by this section notwithstanding that the calling line identification information of the sending number may contain the same information.

(6) If the commercial electronic message includes the information required by this section, it shall be treated as being in compliance with section 7(1)(a) and (b) of the Ordinance.

5. Language of information required to be included under section 4

(1) Subject to subsections (2), (3) and (4), the information required to be included in a commercial electronic message under section 4 must be given in both Chinese and English.

(2) The information may be given solely in Chinese, English or another language if the recipient of the commercial electronic message has indicated to the sender or the individual or organization who authorized the sending of the message that the information may be given solely in that language.

(3) The name of the individual or organization who authorized the sending of the commercial electronic message may be given –

(a) solely in English, if the individual or organization has an English name only; or

(b) solely in Chinese, if the individual or organization has a Chinese name only.

(4) The address of the individual or organization who authorized the sending of the commercial electronic message may be given –

(a) solely in English, if the address is in English only; or

(b) solely in Chinese, if the address is in Chinese only.

6. Language of unsubscribe facility statement

(1) Subject to subsection (2), an unsubscribe facility statement included in a commercial electronic message must be given in both Chinese and English.

(2) The unsubscribe facility statement may be given solely in Chinese, English or another language if the recipient of the commercial electronic message concerned has indicated to the sender or the individual or organization who authorized the sending of the message that the statement may be given solely in that language.

7. Presentation of information

(1) Subject to subsections (2) and (3), the information required to be included in a commercial electronic message under section 4 and the unsubscribe facility statement must be presented at the beginning of the message in a clear and conspicuous manner.

(2) Subsection (1) does not apply if the commercial electronic message is a voice, sound, image or video message (or a message combining voice, sound, images or video) and is sent to a telephone number and the following conditions are met –

- (a) the message provides a facility by which the recipient may enter a key input specified in the message to immediately request to be provided with the address and telephone number of the individual or organization who authorized the sending of the message;
- (b) the facility referred to in paragraph (a) is accessible to the recipient at all times during the transmission of the message; and
- (c) the name of that individual or organization, the specified key input referred to in paragraph (a) and the unsubscribe facility statement are presented at the beginning of the message in a clear and conspicuous manner.

(3) If the commercial electronic message is a voice, sound, image or video message (or a message combining voice, sound, images or video) and the message is sent to a telephone number, the information referred to in paragraphs (a), (b) and (c) of this subsection must be presented in the order stated below –

- (a) first, the name of the individual or organization who authorized the sending of the message;
- (b) secondly, the unsubscribe facility statement; and
- (c) thirdly –
 - (i) the address and the telephone number of that individual or organization; or
 - (ii) where applicable, the specified key input referred to in subsection (2)(a).

8. Conditions relating to unsubscribe facility

(1) This section applies to the unsubscribe facility specified in a commercial electronic message in compliance with section 8(1)(a) of the Ordinance.

(2) Subject to subsection (3), the unsubscribe facility must be capable of receiving an unsubscribe request transmitted from the telecommunications device that is used by the recipient to access the message.

(3) If the commercial electronic message is a text message sent to a telephone number, the unsubscribe facility must be in the form of a telephone number assigned by the Authority with which unsubscribe requests may be made orally or by entering key inputs.

(4) The unsubscribe facility –

(a) must be convenient to use;

(b) must be readily available for use by the recipient of the message; and

(c) must not itself contain a commercial electronic message.

(5) For the avoidance of doubt, if a commercial electronic message specifies more than one unsubscribe facility, at least one of them must meet all of the conditions of this section.

Secretary for Commerce, Industry and
Technology

Explanatory Note

The object of this Regulation is to establish supplementary rules about the sending of commercial electronic messages for the purposes of section 7 and 8 of the Unsolicited Electronic Messages Ordinance (of 2007) (“the Ordinance”) including –

- (a) the information or conditions that a commercial electronic message must include or comply with for the purpose of section 7 of the Ordinance;
- (b) the conditions that the statement on the unsubscribe facility (“the unsubscribe facility statement”) that is required to be included in a commercial electronic message under section 8 of the Ordinance must comply with; and
- (c) the conditions that the unsubscribe facility that is required to be made available to recipients of commercial electronic messages under section 8 of the Ordinance must comply with.

2. Section 1 provides for the commencement of the Regulation. The Regulation will come into operation on a day to be appointed by the Secretary for Commerce, Industry and Technology.

3. Section 2 sets out definitions for the purposes of the Regulation.

4. Section 3 provides for the application of the Regulation and describes its purpose.

5. Section 4 specifies the information that must be included in a commercial electronic message about the individual or organization who authorized the sending of the message.

6. Sections 5 sets out the language requirements relating to the information required to be included in a commercial electronic message under section 4. The

basic rule is that the message must be in both Chinese and English but the person to whom it is sent may opt to receive the information in one language only.

7. Section 6 sets out the language requirements relating to the unsubscribe facility statement. The requirements are similar to those under section 5.

8. Section 7 sets out requirements relating to the order in which the information required by section 4 and the unsubscribe facility statement is to be presented.

9. Section 8 sets out conditions relating to the form, use and contents of an unsubscribe facility.