

**President's ruling on  
Committee Stage amendments to  
Unsolicited Electronic Messages Bill  
proposed by Hon WONG Ting-kwong, BBS**

Hon WONG Ting-kwong has given notice to move Committee Stage amendments (CSAs) to the Unsolicited Electronic Messages Bill, if the motion for the Second Reading of the Bill is agreed to at the meeting of the Legislative Council (LegCo) on 23 May 2007. Before making a ruling on the admissibility of these CSAs, I have invited the Secretary for Commerce, Industry and Technology (SCIT) to offer his comments and Mr WONG to offer his response. I have also sought the advice of Counsel to the Legislature.

**Hon WONG Ting-kwong's proposed amendments**

2. Mr WONG proposes to add new provisions to Schedule 1 to the Bill to cover "person-to-person interactive communications", and also to make related amendments to clause 6.

**The Administration's view**

3. SCIT is of the view that Mr WONG's proposed CSAs fall outside the scope of the Bill on the grounds that the provisions of the Bill, the Explanatory Memorandum and the LegCo Brief have clearly reflected that the purposes of the Bill do not include regulation of person-to-person telemarketing.

4. SCIT points out that it is the Administration's policy decision not to regulate person-to-person telemarketing calls under the Bill at this juncture. The primary purpose of the Bill, as stated in his speech on 12 July 2006 moving the Second Reading of the Bill, is to combat unsolicited commercial electronic messages, and to set the ground rules for sending such messages so that the wishes of the recipients can be respected and realized and, at the same time, to leave room for the development of normal business activities. He also made it clear that the Bill would not at this stage regulate person-to-person calls in order to allow limited forms of electronic marketing activities and to address the concerns of small and medium enterprises.

5. SCIT also points out that this policy objective is reflected in the LegCo Brief. In paragraph 10 of the LegCo Brief, the Administration explained that person-to-person telemarketing would not be regulated because they required substantial manpower resources and time from the telemarketers.

The extent to which they could cause nuisance to recipients, and lead to abuse of the telecommunications networks was much more limited than voice or video messages with pre-recorded or synthesized elements. This policy objective is also reflected in item 1 of Schedule 1 to the Bill which exempts messages involving "person-to-person interactive communications" without any pre-recorded or synthesized element. This policy objective is further highlighted in paragraph 9(a) of the Explanatory Memorandum which lists normal telephone calls between two individuals as an example of the communications excluded from the application of the Bill.

6. SCIT also refers to my ruling on proposed CSAs to the Education (Amendment) Bill 1999. The object of the Bill was described broadly in its long title as "to amend the Education Ordinance". I ruled that the purpose of the Bill was specifically to amend the Education Ordinance for implementing the policy regarding retirement age for principals and teachers of "aided schools" only, and CSAs to extend the policy to cover "schools under the Government's direct subsidy scheme" were not relevant to the subject matter of the Bill.

7. SCIT considers that the CSAs proposed by Mr WONG would cause significant enforcement problem which is not contemplated within the original scope of the Bill. SCIT also argues that the CSAs would raise significant, substantial and complex new issues.

### **Response from the Member**

8. Hon WONG Ting-kwong is of the view that to determine whether or not an amendment is relevant to the subject matter of a bill, consideration should not be confined to the clauses of the bill, the Explanatory Memorandum of the bill and the LegCo Brief. Apart from these three sets of documents, the bill as a whole, including the background to and justifications for the introduction of the bill by the Administration, should be taken into account before a decision can be made on the relevance of the amendment to the subject matter of the bill.

9. In relation to SCIT's reference to my ruling on the Education (Amendment) Bill 1999, Mr WONG argues that the background and history to the introduction of that Bill makes it clear that the scope of that Bill is confined to principals and teachers of aided secondary schools.

10. Mr WONG considers that the fundamental purpose of the Bill is to impose regulation on all nuisance caused by unsolicited electronic messages, including an increase in roaming phone charges. Regarding nuisance caused by person-to person marketing calls, Mr WONG points out in his response that "according to the Administration's study, such nuisance was not serious. The Administration considers that there should not be regulation for the time being".

However, a survey undertaken by his political party showed that nuisance caused by such type of calls was quite serious, and they should be brought into the ambit of the Bill with immediate effect.

11. Mr WONG explains that to strike a proper balance between the interests of the trade and recipients, his CSAs do not seek to impose an overall regulation. They only seek to require callers "to include accurate sender information" and "not to conceal the calling line identification information of the telephone or facsimile number" in person-to-person interactive telemarketing, as well as to exempt telemarketing calls "with previous or current business or client relationship".

12. Mr WONG points out that the Administration has "constructed the Bill so that if it is decided in future to bring person-to-person telemarketing calls into the ambit of the Bill, such decision could be effected expeditiously by way of a notice published in the Gazette". He therefore considers that the regulation of person-to-person telemarketing calls is relevant to the subject matter of the Bill. The differences between his CSAs and the Administration's position are when and to what extent should person-to-person telemarketing calls be regulated.

13. Mr WONG argues that the main clauses of the Bill simply do not reflect clearly that the purpose of the Bill does not include the regulation of person-to-person telemarketing calls. On the contrary, SCIT is empowered to make appropriate amendments at an appropriate time, and person-to-person telemarketing calls are within the scope of such amendments. His CSAs only seek to amend details of the exclusions which are subject to amendment by SCIT at any time. For this reason, the Administration's view that his CSAs are outside the ambit of the Bill is unfounded.

### **Advice of Counsel to the Legislature**

14. Counsel to the Legislature advises that the purpose of the Bill as set out in its long title, i.e. to provide for the regulation of the sending of unsolicited electronic messages and for connected purposes, is broad enough to cover the regulation of all forms of electronic communications, including person-to-person voice or video messages without any pre-recorded elements. This understanding is consistent with what is stated in paragraph 1 of the Explanatory Memorandum attached to the Bill. Paragraph 1 states that the object of the Bill is to set up a scheme for regulating the sending of unsolicited electronic messages that have a commercial purpose, including e-mail messages and other forms of electronic messaging.

15. Counsel also advises that an examination of the structure of the Bill and its provisions in detail leaves no doubt that the subject matter of the Bill is that as stated in the long title.

16. Counsel points out that Mr WONG's CSAs seek to impose a condition on the applicability of the exclusions proposed in the Bill, i.e. there must be a previous or current client or business relationship between the caller and the recipient before the call is exempted. In procedural terms, the proposed CSAs relate to the details of the Bill which provide an alternative to the committee of the Whole Council to consider at Committee stage proceedings on the Bill.

17. Counsel advises that the effect of Mr WONG's proposed CSAs is that while telemarketing calls between persons with previous or current client or business relationship are not subject to the regulation of the Bill, a person making "cold" telemarketing calls is required to provide in the calls accurate sender information identifying the individual or organization who authorized the making of the calls (clause 7 refers), and the caller is not allowed to conceal from the called party the calling line identification information (clause 12 refers).

18. Counsel also points out that SCIT stated in his Second Reading speech on the Bill that "[i]t is the Administration's policy decision not to regulate person-to-person telemarketing calls under the Bill at this juncture". This policy decision is reflected in the Bill through clause 6 of the Bill which, together with Schedule 1, excludes such telemarketing calls. It appears to Counsel that the policy decision so reflected forms part of the details of the Bill.

19. In relation to the views expressed by the Administration on my ruling on the Education (Amendment) Bill 1999, and Mr WONG's views made in response, Counsel advises that that ruling serves to illustrate that where a long title of an amendment bill is worded as generally as "to amend a certain ordinance" only, the usefulness of the long title for the President in ascertaining the subject matter of the bill for the purpose of considering the admissibility of proposed CSAs in the context of Rule 57(4)(a) will be very limited.

20. Counsel also advises that there are other points which SCIT has made in support of its argument that the proposed CSAs are outside the scope of the Bill. However, those points relate to the practical effect of the proposed CSAs which go to the merits of the proposed CSAs and are not relevant for my consideration of the procedural issues.

21. It is Counsel's view that Mr WONG's proposed CSAs comply with the requirement as set out in Rule 57(4)(a).

## **My opinion**

22. Rule 57(4)(a) of the Council's Rules of Procedure provides that an amendment to a bill must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.

23. The purpose of the Bill, as set out in its long title, is to provide for the regulation of the sending of unsolicited electronic messages and for connected purposes. Clause 6 of the Bill excludes matters listed in Schedule 1 from the application of the Bill. Such matters include, among other things –

- (a) person-to-person interactive communications without pre-recorded or synthesized element; and
- (b) person-to-person interactive communications that contain a pre-recorded or synthesized element but where the pre-recorded or synthesized element is activated in response to information communicated by the caller.

Details of the exclusions prescribed in Schedule 1 to the Bill may be amended by SCIT by notice published in the Gazette.

24. Mr WONG's CSAs seek to amend clause 6 of and Schedule 1 to the Bill to the effect that person-to-person voice or video messages without pre-recorded or synthesized element are to be regulated, except where 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.

25. Counsel advises me that the purpose of the Bill as set out in its long title is broad enough to cover the regulation of all forms of electronic communications, including person-to-person voice or video messages without any pre-recorded elements. From the way the Bill is structured and the provisions included in the Bill, there is no doubt that the subject matter of the Bill is that as stated in the long title. Counsel also advises me that the Administration's policy decision "not to regulate person-to-person telemarketing calls under the Bill at this juncture" is reflected in the Bill through clause 6 of the Bill which, together with Schedule 1, excludes such telemarketing calls. It appears to Counsel that the policy decision so reflected forms part of the details of the Bill.

26. I accept Counsel's view that in procedural terms, the proposed CSAs relate to the details of the Bill which provide an alternative to the committee of the Whole Council to consider at Committee stage proceedings on the Bill. Mr WONG's proposed CSAs therefore comply with the requirement as set out in Rule 57(4)(a) in that they relate to the subject matter of the Bill and to the subject matter of the provisions in the Bill to which the CSAs relate.

27. SCIT has commented that Mr WONG's CSAs would cause significant enforcement problem which is not contemplated within the original scope of the Bill, and they would also raise significant, substantial and complex new issues. I should make it clear that whether the CSAs have merits or would give rise to enforcement problems, if passed, are matters for Members to consider. These points are not relevant for my consideration of the procedural issues.

### **Ruling**

28. I rule that Hon WONG Ting-kwong's proposed CSAs are relevant to the subject matter of the Bill and the provisions in question. They are admissible under Rule 57(4)(a) of the Rules of Procedure.

( Mrs Rita FAN )  
President  
Legislative Council

17 May 2007