L.N. 108 of 2007

UNSOLICITED ELECTRONIC MESSAGES REGULATION

(Made under section 62 of the Unsolicited Electronic Messages Ordinance (9 of 2007))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary by notice published in the Gazette.

PART 1

PRELIMINARY

2. Purpose

This Regulation is made for the purposes of paragraph (*c*) of subsection (1) of section 8 and paragraphs (*c*) and (*d*) of subsection (1) of section 9 of the Ordinance and supplements the rules for the sending of commercial electronic messages set out in those sections.

3. Interpretation

(1) In this Regulation, unless the context otherwise requires—

"address" (地址), 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" (來電線路識別資料) has the meaning assigned to it by section 13(2) of the Ordinance;

"commercial electronic message" (商業電子訊息), in relation to an SMS message, includes the main text and any displayable information attached to the message transmitted to the recipient;

"identity document" (身分證明文件), 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" (名稱), in relation to an organization, includes the name under which the business of that organization is carried on and also includes—

(*a*) any registered trade mark that contains or consists of that name; and

(*b*) any abbreviation of that name that reasonably identifies that organization;

"registered trade mark" (註冊商標) means a trade mark registered under the Trade Marks Ordinance (Cap. 559);

"SMS message" (短訊) means a text message using the short message service as defined in the Global System for Mobile Communications (GSM) or any similar short message service;

"unsubscribe facility" (取消接收選項) has the same meaning as in section 9 of the Ordinance;

"unsubscribe facility statement" (取消接收選項陳述) means the statement required to be included in a commercial electronic message under section 9(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.

4. Application

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

PART 2

SUPPLEMENTARY RULES ABOUT SENDING COMMERCIAL ELECTRONIC MESSAGES

5. 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*) subject to subsection (4), 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 an SMS message, the address of the individual or organization required under subsection (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 (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. Language of information required to be included under section 5

(1) Subject to subsections (2), (3) and (4), the information required to be included in a commercial electronic message under section 5 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 concerned 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 Chinese, if the individual or organization has a Chinese name only; or

(*b*) solely in English, if the individual or organization has an English 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 Chinese, if the address is in Chinese only; or
(*b*) solely in English, if the address is in English only.

7. Language of unsubscribe facility statement

(1) Subject to subsection (2), the unsubscribe facility statement 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.

8. Presentation of information

(1) This section applies to a commercial electronic message that is in the form of a voice, sound, image or video message (or a message combining voice, sound, images or video) and is sent to a telephone number.

(2) The information required to be included in the commercial electronic message under section 5 and the unsubscribe facility statement must be presented at the beginning of the message in a clear and conspicuous manner and in the following order—

(*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, any other information required to be included in the message under section 5.

(3) Subsection (2) does not apply if the following conditions are met—

(*a*) the commercial electronic 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 of the individual or organization who authorized the sending of the message and a telephone number at which that individual or organization may be contacted;
(*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 and in the following order—
(i) first, the name of that individual or organization;
(ii) secondly, the unsubscribe facility statement; and
(iii) thirdly, the specified key input.

9. Conditions relating to unsubscribe facility

(1) Subject to subsection (2), the unsubscribe facility specified in a commercial electronic message in compliance with section 9(1)(*a*) of the Ordinance (or, if more than one unsubscribe facility is so specified, at least one of them) must be capable of receiving an unsubscribe request transmitted from the telecommunications device that is used by the recipient to access the message.

(2) If the commercial electronic message is an SMS message, the unsubscribe facility specified in the message (or, if more than one unsubscribe facility is specified in the message, at least one of them) 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.

(3) Every unsubscribe facility specified in a commercial electronic message—

(*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.

Joseph W. P. WONG
Secretary for Commerce, Industry and Technology

5 June 2007

Explanatory Note

The object of this Regulation is to establish supplementary rules about the sending of commercial electronic messages for the purposes of sections 8 and 9 of the Unsolicited Electronic Messages Ordinance (9 of 2007) ("the Ordinance") including—

(*a*) the information or conditions that a commercial electronic message must include or comply with for the purposes of section 8 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 9 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 9 of the Ordinance must comply with.

2. Section 1 provides for the commencement of the Regulation.

3. Section 2 describes the purpose of the Regulation.

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

5. Section 4 provides for the application of the Regulation.

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

7. Section 6 sets out the language requirements relating to the information required to be included in a commercial electronic message under section 5. The basic rule is that the information must be in both Chinese and English but the recipient of the message may opt to receive the information in a particular language only.

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

9. Section 8 sets out requirements relating to the order in which the information required by section 5 and the unsubscribe facility statement are to be presented in commercial electronic messages that are in the form of voice, sound, image or video messages.

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