

立法會
Legislative Council

LC Paper No. CB(1)215/07-08(01)

Ref: CB1/SS/1/07

**Subcommittee on
Unsolicited Electronic Messages Regulation (Commencement) Notice**

**Background brief on
Unsolicited Electronic Messages Ordinance (Commencement) Notice and
Unsolicited Electronic Messages Regulation (Commencement) Notice**

Purpose

This paper provides background information on the Unsolicited Electronic Messages Ordinance (Commencement) Notice (L.N. 201 of 2007) and the Unsolicited Electronic Messages Regulation (Commencement) Notice (L.N. 202 of 2007).

The Unsolicited Electronic Messages Ordinance

2. The Unsolicited Electronic Messages Ordinance (Cap. 593) ("the UEM Ordinance") was enacted by the Legislative Council on 23 May 2007 and published in the Gazette on 1 June 2007. The Ordinance provides for the regulation of the sending of unsolicited electronic messages of a commercial nature. Those parts of the Ordinance in relation to offences concerning the following have come into effect on 1 June 2007 --

- (a) the use of unscrupulous techniques to reach out to more recipients (e.g. use of automated means to generate electronic addresses for sending commercial electronic messages); and
- (b) fraudulent and other illicit activities related to the sending of multiple commercial electronic messages (e.g. hacking into a computer to send multiple commercial emails).

3. Those provisions that specify the rules for the sending of commercial electronic messages and those that are related to the establishment of do-not-call registers (DNCs) have not yet come into operation. These provisions include Part 2 and sections 31, 32, 33, 38, 39 and 58 of, and sections 1(2) and 2(2) and Table 2 of Schedule 1 to, the Ordinance.

4. By L.N. 201 of 2007, the Secretary for Commerce and Economic Development appoints 22 December 2007 as the day on which these remaining provisions of the Ordinance will come into operation.

The Unsolicited Electronic Messages Regulation

5. The Unsolicited Electronic Messages Regulation (L.N. 108 of 2007) (the Regulation) was made under section 62 of the UEM Ordinance by the then Secretary for Commerce, Industry and Technology by notice published in the Gazette on 8 June 2007. The Regulation was subject to the scrutiny of the Legislative Council under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) and the Legislative Council had not passed any resolution to amend it within the scrutiny period provided under that section.

6. Part 2 (sections 8 to 13) of the Ordinance specifies the rules for the sending of commercial electronic messages under an opt-out regime. Under section 8(1)(c) of the Ordinance, a person shall not send a commercial electronic message that has a Hong Kong link unless the message includes such information and complies with such conditions as is or are specified in the regulations. Section 9 prescribes the general requirements for a commercial electronic message which must provide an unsubscribe facility to enable the recipient to send an unsubscribe request to the individual or organization who authorized the sending of the message. Section 9(1)(c) and (d) provide that the statement on the unsubscribe facility and the unsubscribe facility itself should comply with such conditions as are specified in the regulations.

7. The Regulation is made for the purposes of section 8(1)(c) and section 9(1)(c) and (d) of the Ordinance and supplements the rules for the sending of commercial electronic messages set out in those sections. These supplementary rules relate to the requirement to include in a commercial electronic message information relating to the name, address and contact information of the sender of the message; the language requirement for sender information and the unsubscribe facility statement; the manner in which sender information and the unsubscribe facility statement is presented; and the conditions relating to the unsubscribe facility specified in a commercial electronic message.

8. By L.N. 202 of 2007, the Secretary for Commerce and Economic Development appoints 22 December 2007 as the day on which the Regulation will come into operation.

Relevant deliberations of the Bills Committee

9. During the deliberations of the Bills Committee on the Unsolicited Electronic Messages Bill, the Bills Committee had raised the following concerns relating to the rules for sending electronic messages and the DNCs --

- (a) the required retention period for unsubscribe requests;
- (b) the need or otherwise to empower the Telecommunications Authority (TA) to impose a charge on senders of commercial electronic messages for accessing a DNC and whether the charge should be subject to statutory regulation; and
- (c) the need for a mechanism to update the DNCs as the registered users of the same telephone numbers may change from time to time due to the recycling of surrendered telephone numbers.

10. On the issue in (a) above, the Administration heeded the Bills Committee's view by shortening the retention period from seven years to three years. On the issue in (b) above, the Bills Committee agreed to the Administration's proposal to empower the TA to impose a charge for accessing a DNC, and to specify the right of a registered user of an electronic address to verify, free of charge, whether his electronic address is listed in a DNC. The Bills Committee also noted that the Office of the Telecommunications Authority (OFTA) would establish a simple charging scheme based on the cost-recovery principle. Regarding the issue in (c) above, the Administration agreed to the Bills Committee's suggestion by empowering TA to issue directions to telecommunications service providers, who are allocated telephone numbers by OFTA, to provide information on surrendered telephone numbers so that OFTA could remove these numbers from the DNCs. The Committee Stage amendments in respect of the above issues were passed on 23 May 2007.

Deliberations of the Panel on Information Technology and Broadcasting

11. The Panel on Information Technology and Broadcasting (the Panel) was consulted on the then proposed Regulation on 14 May 2007, and on the matters relating to the commencement of the remaining provisions of the UEM Ordinance on 16 October 2007.

Deliberations on the proposed Unsolicited Electronic Messages Regulation

12. On the proposed Regulation, the Panel noted that two industry associations, when consulted, had expressed reservation on the requirement to provide sender information and the statement on unsubscribe facility at the beginning of a commercial electronic message. They considered that such

requirements would limit the marketers' creativity and were not in accordance with the normal practice elsewhere. Their concern was on text messages, in particular e-mail message and SMS message, which recipients could "scroll" back and forth readily to locate the information. They agreed that this information positioning requirement was indeed necessary for pre-recorded voice or video telemarketing message, which the recipient must listen to or view sequentially without the ability to "scroll" the message.

13. According to the Administration, the purpose of this proposal was to facilitate the recipient to learn of the sender information and statement on unsubscribe facility quickly. Subsequent to the Panel meeting, the Administration advised that having further considered the industry's view, the nature of text messages and international best practices, it agreed to reduce the scope of application of the requirement to pre-recorded voice or video telemarketing message only at the initial stage.

14. The Panel supported in principle the proposed Regulation. A member urged the Administration to further consult the industry on the effectiveness and adequacy of the regulation proposals and in drawing up the code of practice for the industry. Another member called on the Administration to ensure that all relevant privacy concerns would be adequately addressed, as there was a possibility that personal data would be involved for direct marketing purposes.

Deliberations on the Phase Two commencement of the Ordinance and draft Code of Practice to be made under the Ordinance

15. On the overall situation of monitoring and enforcement since the Phase One commencement of the Ordinance in June 2007, the Panel noted that up to end September 2007, around 1 000 reports had been received. About 2% of the reports involved person-to-person telemarketing calls that were not regulated by the Ordinance, and the majority were related to matters covered by the provisions not yet come into operation. OFTA had taken the initiative to draw the attention of telemarketing companies in question to the impending Phase Two implementation and to explain the circumstance to the informants. Moreover, OFTA had been using 200 blank SIM cards to monitor the frequency of person-to-person telemarketing calls. Statistics showed that the frequency of such calls before and after 1 June 2007 remained steady at less than one call per SIM card per month. As regards OFTA's enforcement capacity, the Administration advised that the existing establishment of four staff in OFTA for handling reports and complaints on unsolicited electronic messages would be doubled to eight when the Ordinance came into full operation. The Administration also planned to set up an anti-spamming task force comprising representatives from various sectors of the community to assist the Government in monitoring the effectiveness of the legislation, and to advise the Government on the strategies to further tackle the problem of spamming.

16. On the education and publicity work to enhance public awareness of the Phase Two commencement of the Ordinance, the Panel noted that a budget in the region of a few million dollars had been set aside for an extensive education and publicity campaign for the industry and the general public. Four industry briefings on the overall regulatory framework had been conducted by OFTA since July 2007. More briefings would be conducted upon requests from various industry segments. Publicity activities for the general public including TV and radio APIs, regional briefings, poster advertisements at MTR stations, newspaper advertisements and online advertisements specifically on DNCs would be launched nearer the commencement of the pre-registration and operational date of DNCs.

17. Regarding the DNCs, the Panel noted that in view of the large number of telephone/fax numbers currently in use in Hong Kong, which amounted to around 14 million, the three DNCs in respect of fax, short message, and pre-recorded message would be launched in phases; a pre-registration period and an operational date had been tentatively set for each DNC, with the last DNC (Pre-recorded Message) scheduled to come into operation on 26 March 2008.

18. Regarding the draft Code of Practice (CoP) for the purpose of providing practical guidance in respect of the application or operation of any provision of the Ordinance, the Panel noted that the public consultation on the draft CoP had ended on 8 October 2007. TA was studying the submissions received and would issue the finalized CoP in November 2007. According to the Administration, the major trade associations that had an interest in the matter (including the chambers of commerce, small and medium size enterprises, the marketing sector, the telecommunications sector) as well as the Consumer Council had been invited to give views and members of the public were free to express their views. Following thorough discussions with the telemarketing industry, the industry in general agreed to the draft CoP, which had incorporated most of its views. The Regulation and the CoP would also come into operation on the same day.