

Subcommittee on Unsolicited Electronic Messages Regulation (Commencement) Notice

Amendments to the Unsolicited Electronic Messages Regulation

Introduction

This paper briefs Members that the Secretary for Commerce and Economic Development will make the Unsolicited Electronic Messages (Amendment) Regulation (UEM(A)R), under section 62 of the Unsolicited Electronic Messages Ordinance (UEMO), to address the industry's concern about the language requirement of provision of sender information and unsubscribe facility statement for commercial electronic message under the Unsolicited Electronic Messages Regulation (UEMR).

Background

2. Under sections 6 and 7 of the UEMR (extracted at **Annex A**), all commercial electronic messages that have a "Hong Kong link" must contain sender information and unsubscribe facility statement in both Chinese **AND** English. However, such information may be given solely in Chinese, English **OR** in other preferred language if the recipient has made such indication to the sender. The purpose of these provisions are to protect the rights of recipient who may know only Chinese or English on one hand, and to keep flexibility to facilitate communications between the sender and recipient on the other hand. The UEMR has been passed by the Legislative Council through the negative vetting process and is scheduled to come into operation on 22 December 2007 to tie in with the implementation of the second stage of the Unsolicited Electronic Messages Ordinance.

3. The industry has recently submitted that the bilingual language requirement is unnecessary for message to be sent overseas targeting non-Hong Kong people. For example, a non-Chinese recipient does not understand Chinese at all and as such does not require the information in Chinese. On the contrary, the inclusion of Chinese information in the message may invite unnecessary questions from the recipient. It would put onerous burden on the sender to handle recipient's enquiry and to deal with recipient's request for selection of

preferred language. As such, normal business operation would be unnecessarily affected. Moreover, it would be an anomaly whereby a Hong Kong company could commit an offence for not sending information in Chinese to a foreigner outside Hong Kong.

4. The primary objective of the UEMO and the UEMR is to achieve a balance between respecting the rights of recipients and allowing the development of legitimate electronic marketing in Hong Kong. Having considered the industry's view, we agree that we should avoid putting unnecessary burden on business operation targeting overseas clients. Therefore, we will make a technical amendment to the UEMR by allowing the sender to provide the sender information and unsubscribe facility statement in any language if he knows or reasonably believes that the registered user of the electronic address to which the message is sent understands or is familiar with that language or the registered user is not an organization carrying on business or activities in Hong Kong. This could address the industry's concern but without compromising our objective of protecting the rights of the recipients.

Legislative Timetable

5. To tie in with the implementation of the second stage of UEMO and UEMR on 22 December 2007, we propose that the UEM(A)R should come into operation on the same day. We will gazette the UEM(A)R on 16 November 2007, with a view to completing the 28-day negative vetting period by 19 December 2007. An advance copy of the UEM(A)R is at **Annex B** for Member's reference.

Commerce and Economic Development Bureau
14 November 2007

**Extract of Sections 6 and 7
of Unsolicited Electronic Messages Regulation**

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.

**UNSOLICITED ELECTRONIC MESSAGES
(AMENDMENT) REGULATION 2007**

(Made by the Secretary for Commerce and Economic Development under section 62 of the Unsolicited Electronic Messages Ordinance (9 of 2007))

1. Commencement

This Regulation shall come into operation on the day appointed for the commencement of the Unsolicited Electronic Messages Regulation (L.N. 108 of 2007).

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

Section 6(2) of the Unsolicited Electronic Messages Regulation (L.N. 108 of 2007) is repealed and the following substituted –

“(2) The information required to be included in a commercial electronic message under section 5 may be given in any language if –

- (a) the recipient of the message has indicated to the sender or the individual or organization who authorized the sending of the message that the information may be given in that language; or
- (b) the sender or the individual or organization who authorized the sending of the message knows or reasonably believes that the registered user of the electronic address to which the message is sent understands or is familiar with that language or is not an organization carrying on business or activities in Hong Kong.”.

3. Language of unsubscribe facility statement

Section 7(2) is repealed and the following substituted –

“(2) The unsubscribe facility statement may be given in any language if –

- (a) 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 in that language; or
- (b) the sender or the individual or organization who authorized the sending of the commercial electronic message concerned knows or reasonably believes that the registered user of the electronic address to which the message is sent understands or is familiar with that language or is not an organization carrying on business or activities in Hong Kong.”.

Secretary for Commerce and Economic
Development

2007

Explanatory Note

This Regulation amends the provisions of the Unsolicited Electronic Messages Regulation (L.N. 108 of 2007) (“the principal Regulation”) relating to

the language of the information that is required to be included in a commercial electronic message.

2. Section 2 amends section 6(2) of the principal Regulation. Section 6(1) of the principal Regulation provides that the identity and contact information required to be included in a commercial electronic message under section 5 of the principal Regulation must be given in both Chinese and English. Section 6(2) of the principal Regulation provides an exception by allowing the information to be given solely in Chinese, English or another language if the recipient of the message has indicated to the sender or the individual or organization who authorized the sending of the message that the information may be given in that language. The amendment to section 6(2) of the principal Regulation replaces the words “solely in Chinese, English or another language” by “any language” and adds a further exception which will allow the information to be given in any language if the sender or the individual or organization who authorized the sending of the message knows or reasonably believes that the registered user of the electronic address to which the message is sent understands or is familiar with that language or is not an organization carrying on business or activities in Hong Kong.

3. Section 3 makes a similar amendment to section 7(2) of the principal Regulation in relation to the language of the unsubscribe facility statement.