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19 November 2007

Ms Anita SIT
Clerk to Subcommittee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Ms SIT,

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

At the last subcommittee meeting of 15 November 2007, Members agreed to the Administration's proposal to make the Unsolicited Electronic Messages (Amendment) Regulation (UEM(A)R) in order to address the industry's concern in respect of the language requirement of sender information and unsubscribe facility statement for commercial electronic messages under the Unsolicited Electronic Messages Regulation (UEMR).

In the light of Member's views and suggestions on the wording of the proposed UEM(A)R, I attach herewith the revised draft of the UEM(A)R, in both English and Chinese, and should be grateful for your distribution to the Members for their comments before the next subcommittee meeting.

As the UEMR is a subsidiary legislation of the Unsolicited Electronic Messages Ordinance (UEMO), we propose that the UEM(A)R should commence effect on 22 December 2007. This would ensure that the sender of commercial electronic message who sends message to overseas recipients could follow the amended arrangement as soon as the second phase of implementation of the UEMO, and the UEMR come into force.

Yours sincerely,



(Alan Siu)

Deputy Secretary for Commerce
and Economic Development
(Communications and Technology)

Encls

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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Section 6(2) of the Unsolicited Electronic Messages Regulation (L.N. 108 of 2007) is repealed and the following substituted –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;
- (b) the sender or the individual or organization who authorized the sending of the message knows or reasonably believes that the person to whom the message is sent is an individual who –
 - (i) resides outside Hong Kong; and
 - (ii) uses or is able to communicate in that language; or
- (c) the sender or the individual or organization who authorized the sending of the message knows or reasonably believes that the person to whom the message is sent is an organization that –

- (i) is not carrying on business or activities in Hong Kong; and
- (ii) uses or is able to communicate in that language.”.

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, in relation to the commercial electronic message concerned –

- (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 statement may be given in that language;
- (b) the sender or the individual or organization who authorized the sending of the message knows or reasonably believes that the person to whom the message is sent is an individual who –
 - (i) resides outside Hong Kong; and
 - (ii) uses or is able to communicate in that language; or
- (c) the sender or the individual or organization who authorized the sending of the message knows or reasonably believes that the person to whom the message is sent is an organization that –
 - (i) is not carrying on business or activities in Hong Kong; and
 - (ii) uses or is able to communicate in that language.”.

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 “in any language” and adds further exceptions 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 person to whom the message is sent is an individual who resides outside Hong Kong and uses or is able to communicate in that language, or is an organization that is not carrying on business or activities in Hong Kong and uses or is able to communicate in that language.
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.