

立法會
Legislative Council

LC Paper No. CB(1)240/09-10(05)

Ref. : CB1/PL/ITB

Panel on Information Technology and Broadcasting

Meeting on 9 November 2009

**Background brief on
the operation of the Unsolicited Electronic Messages Ordinance**

Purpose

This paper describes the operation of the Unsolicited Electronic Messages Ordinance (UEMO) (Cap. 593). It also gives a summary of views and concerns raised by Members previously.

The operation of the Unsolicited Electronic Messages Ordinance

2. Electronic communication is an essential part of business development for many businesses in Hong Kong. However, unsolicited electronic messages are causing a lot of concerns in the community. In order to contain the problem of such messages, the UEMO was enacted by the Legislative Council on 23 May and published in the gazette on 1 June 2007. Following scrutiny by a subcommittee formed under the House Committee to study the Unsolicited Electronic Messages Regulation (Commencement) Notice, the UEMO came into full operation on 22 December 2007. The UEMO aims to regulate the sending of commercial electronic messages that have a Hong Kong link¹, including pre-recorded messages sent to telephones, messages through short messaging services, faxes and emails.

3. Under the UEMO, three do-not-call registers (DNCs) covering facsimile messages, short messages and pre-recorded telephone messages have been set up under the Office of the Telecommunications Authority (OFTA). Members of the

¹ In general, a commercial electronic message has a Hong Kong link if the message:

- (i) originates in Hong Kong;
- (ii) is sent to Hong Kong; or
- (iii) is sent to a Hong Kong telephone or fax number.

Detailed meaning of Hong Kong link is set out in section 3 of the UEMO.

public can register their telephone and fax numbers onto the relevant DNC in order to unsubscribe from unsolicited commercial electronic messages. Protection under the UEMO will commence on the tenth working day from the date on which the number is registered onto the DNC. Senders of commercial electronic messages are not allowed to send messages to any telephone/fax numbers listed on the DNC unless consent has been obtained from the registered user of the number concerned. The Telecommunications Authority may issue enforcement notices to those senders who contravene the prescribed rules of the UEMO. Failure to comply with the enforcement notice is a criminal offence and is subject to a fine up to \$100,000 on first conviction, and up to \$500,000 on second and subsequent conviction. However, person-to-person telemarketing calls are currently not regulated by the UEMO. The OFTA does not have the authority to investigate complaint cases relating to such calls.

Previous discussions

4. There is general public concern about the regulation of unsolicited commercial electronic messages and person-to-person telemarketing calls. The issues have also received ongoing attention by Members and were discussed by the Panel on Information Technology and Broadcasting (the Panel).

5. At the Panel meetings held on 16 October 2007 and 13 May 2008, the Administration briefed members on the progress update of the implementation of the UEMO. Some Panel members expressed concern whether there were sufficient manpower resources to handle the complaints/reports of contravention received within a reasonable timeframe given the increasing public awareness of spamming. They also expressed concern about the effectiveness of the regulation and the mechanism in place to monitor the implementation of the UEMO.

6. According to the Administration, an anti-spamming task force comprising representatives from various sectors of the community, including chambers of commerce, electronic marketing industry associations, electronic communications industry associations, consumer groups and the Legislative Council would be set up to assist the Government in monitoring the effectiveness of the legislation, to advise the Government on the strategies to further tackle the problem of unsolicited electronic messages, and to enhance public awareness of the rights and responsibilities of senders and recipients.

7. At the Council meetings on 26 November 2008, 4 February and 24 June 2009, Members raised questions pertaining to the number of registrations on the registers, the number of complaints received since the full commencement of the UEMO and the follow-up action taken by OFTA as well as the publicity efforts to enhance public awareness of the DNC registers. Some Members also raised concern about the extent of the problem caused by person-to-person telemarketing calls. They urged the Administration to consider introducing legislation to regulate such calls.

8. In reply to Members' questions raised at Council meetings, the Administration has explained that the UEMO presently excludes person-to-person telemarketing calls mainly because most business establishments in Hong Kong are small and medium enterprises which relies on this mode of communication as a means of marketing. In drawing up the UEMO in 2006, the Government, after balancing different views and in order to strike a right balance between respecting the rights of recipients of unsolicited electronic messages and allowing the development of legitimate electronic marketing in Hong Kong, had excluded such calls from the ambit of the UEMO to avoid affecting the development of legitimate electronic marketing in Hong Kong.

Latest position

9. Between 2008 and 2009, OFTA has commissioned a public opinion survey and collected views from the industry to assess the impact of person-to-person telemarketing calls on the public. The Administration will brief the Panel on 9 November 2009 the findings of the surveys, with the Government's views on what, if any, further action may be required in respect of person-to-person calls.

Relevant papers

Information paper provided by the Administration for the Information Technology and Broadcasting Panel meeting on 16 October 2007

<http://www.legco.gov.hk/yr07-08/english/panels/itb/papers/itb1016cb1-33-2-e.pdf>

Minutes of Information Technology and Broadcasting Panel meeting on 16 October 2007

<http://www.legco.gov.hk/yr07-08/english/panels/itb/minutes/itb071016.pdf>

Information paper provided by the Administration for the Information Technology and Broadcasting Panel meeting on 13 May 2008

<http://www.legco.gov.hk/yr07-08/english/panels/itb/papers/itb0513cb1-1456-5-e.pdf>

Minutes of Information Technology and Broadcasting Panel meeting on 13 May 2008

<http://www.legco.gov.hk/yr07-08/english/panels/itb/minutes/itb080513.pdf>

Question No. 16 raised by Hon LAU Kong-wah on "Telemarketing Calls Made to Mobile Telephone Users" and the Administration's reply at the Council meeting on 26 November 2008

<http://www.legco.gov.hk/yr08-09/english/counmtg/hansard/cm1126-translate-e.pdf>

Question No. 9 raised by Hon WONG Ting-kwong on "Do-not-call Registers" and the Administration's reply at the Council meeting on 4 February 2009

<http://www.legco.gov.hk/yr08-09/english/counmtg/hansard/cm0204-translate-e.pdf>

Question No. 1 raised by Hon Samson TAM on "Regulation of Person-to-person Telemarketing Calls" and the Administration's reply at the Council meeting on 24 June 2009

<http://www.legco.gov.hk/yr08-09/english/counmtg/hansard/cm0624-translate-e.pdf>

Submission from a member of the public expressing views on regulation of person-to-person telemarketing calls

<http://www.legco.gov.hk/yr08-09/chinese/panels/itb/papers/itbcb1-2489-1-c.pdf>

Council Business Division 1
Legislative Council Secretariat
4 November 2009