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25 October 2006

Miss Connie FUNG
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Legal Service Division
Legislative Council Secretariat
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8 Jackson Road
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Hong Kong

Dear Miss FUNG,

Unsolicited Electronic Messages Bill

Thank you for your letter of 13 October 2006.

2. Set out below are our comments on your questions regarding the Chinese text of the Unsolicited Electronic Messages Bill (the Bill).

Chinese text proposed for “recklessly”

3. Clauses 14(3), 15(3), 16(3), 17(3) and 18(3) relate to “罔顧” the “實情” (instead of “後果”) of the matters described in those clauses. We intend to retain “罔顧實情” in those clauses as “罔顧後果” does not reflect the legislative intent.

Clauses 21(2) and 22(2)

4. Since the Chinese and English texts of these clauses achieve the same legal effect, we are of the view that it is unnecessary for the two texts to strictly follow the same style of presentation.

Clause 29

5. In clause 29, the word “攸關” reflects the meaning of “relevant to”. “攸關” has been used as the Chinese text for “relevant to” in Hong Kong legislation, recent examples include section 5(1) in Schedule 1 to the Education Ordinance (Cap. 279) and section 10(6) of the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap. 354 sub. leg. N). We intend to retain the original wording.

Clause 30

6. A “do-not-call register” should be called “拒收訊息登記冊” in Chinese, which is clearly reflected in clause 30(1) by referring to “設立及備存一份或多於一份載有電子地址清單的登記冊，而各登記冊均稱為拒收訊息登記冊”. Since a register established under clause 30(1) needs to be referred to many times in the Bill, it is defined in clause 2(1) as a “do-not-call register”. The adoption of “拒收登記冊” in Chinese instead of “拒收訊息登記冊” is for simplicity reason.

Clause 34

7. Please see our response in paragraph 5 above.

Clause 35

8. In essence, the sentence structure in clause 35(2)(a) is “...藉援引 ... 認可實務守則而擬訂”, whilst it is “以 形式擬訂” in clause 35(2)(b). We are of the view that the flow of the language in clause 35(2)(b) does not require the word “而” before “擬訂”.

Clause 37

9. We would consider your proposed amendment to the first part of clause 37(1)(b)(ii) (i.e. “在為使搜查得以進行而合理地需要的期間內，扣留任何在該處所或地方之內或之上發現的人”). However, in relation to the second part, we consider that the current wording has reflected the legislative intent as “that person might prejudice the purpose of the search if he were not so detained” is in fact a condition precedent for an authorized officer to exercise the power under clause 37(1)(b)(ii).

Clause 46

10. As to the word “攸關” in clause 46(1)(b), please see our response in paragraph 5 above.

11. A “case” in clause 46 is a case formally heard by the Unsolicited Electronic Messages (Enforcement Notices) Appeal Board established under Part 6 of the Bill. “案件” also appears in clauses 46(1)(e)(i) and 48. We are of the view that “案件” is appropriate in the context of Part 6 of the Bill.

Clause 47

12. We are of the view that the current wording reflects the legislative intent. We do not consider that any amendment to this clause is necessary.

Clause 52

13. We would take into consideration your proposal of deleting “授予” before “適宜” in clause 52(4).

14. We would consider using the word “施加” in clause 52(7), and revising the structure of the sentence to read, “..... 本條並不影響、限制或減免根據任何其他成文法則或法律規則賦予或施加於任何人的任何權利、特權、義務或法律責任。”.

Clause 54

15. We would take into consideration your proposal of adding “被” before “控犯” in clause 54(3).

Yours sincerely,



(LI Yeuk-yue, Tony)
for Secretary for Commerce, Industry and Technology

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