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**Paper for the House Committee meeting
on 30 November 2007**

**Report of the Subcommittee on
Unsolicited Electronic Messages Regulation (Commencement) Notice**

Purpose

This paper reports on the deliberations of the Subcommittee formed to study the Unsolicited Electronic Messages Regulation (Commencement) Notice (L.N. 202 of 2007).

Background

2. The Unsolicited Electronic Messages Regulation (Commencement) Notice and the Unsolicited Electronic Messages Ordinance (Commencement) Notice (L.N. 201 of 2007), which were tabled in the Legislative Council (LegCo) on 31 October 2007, form a single package of subsidiary legislation to implement the opt-out regime for regulating the sending of unsolicited commercial electronic messages enshrined in the Unsolicited Electronic Messages Ordinance (Cap. 593) (the Ordinance).

3. The Ordinance was enacted by LegCo on 23 May 2007 and published in the Gazette on 1 June 2007. The Ordinance provides for the regulation of the sending of commercial electronic messages that have a Hong Kong link¹. 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).

¹ The meaning of "Hong Kong link" is laid down in section 3 of the Ordinance.

4. Those provisions that specify the rules for the sending of commercial electronic messages and those that are related to the establishment and management of do-not-call registers have not yet come into operation.

5. The Unsolicited Electronic Messages Regulation (L.N. 108 of 2007) (the Regulation), which was published in the Gazette on 8 June 2007, was made under section 62 of the UEM Ordinance by the then Secretary for Commerce, Industry and Technology. The Regulation was subject to the scrutiny of LegCo under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) and LegCo had not passed any resolution to amend it during the relevant scrutiny period. The Regulation was made to supplement the rules for the sending of commercial electronic messages set out in Part 2 of the Ordinance. The Regulation prescribes the information in relation to the sender that must be included in a commercial electronic 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.

6. By the Unsolicited Electronic Messages Ordinance (Commencement) Notice and the Unsolicited Electronic Messages Regulation (Commencement) Notice, the Secretary for Commerce and Economic Development appoints 22 December 2007 as the day on which the remaining provisions of the Ordinance and the Regulation will come into operation.

The Subcommittee

7. At the meeting of the House Committee on 2 November 2007, Members agreed that a subcommittee should be formed to study the Unsolicited Electronic Messages Regulation (Commencement) Notice.

8. Under the chairmanship of Hon SIN Chung-kai, the Subcommittee has held one meeting. The membership list of the Subcommittee is in **Appendix I**.

Deliberations of the Subcommittee

9. Under sections 6 and 7 of the Regulation, all commercial electronic messages that have a "Hong Kong link" must include sender information and an unsubscribe facility. The sender information and the unsubscribe facility statement must be given in both Chinese and English, except for the situation that the recipient has indicated to the sender that such information may be given solely in a particular language. The Subcommittee has noted that the electronic marketing industry is concerned about this language requirement.

10. According to the Administration, the industry has submitted that the bilingual language requirement is unnecessary for messages to be sent overseas targeting non-Hong Kong people or organizations. For example, a non-Chinese recipient may 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 recipients' enquiries. As such, normal business operation would be unnecessarily affected. Moreover, the language requirement under the Regulation would give rise to an anomaly in that a Hong Kong company could commit an offence for not sending information in Chinese to a foreigner outside Hong Kong.

11. Having considered the industry's concern, the Subcommittee shares the Administration's view that putting unnecessary burden on business operation targeting overseas clients should be avoided and the appropriate measure to address the concern is to make necessary amendments to the Regulation.

12. The Administration had presented to the Subcommittee an initial draft (**Appendix II**) of the Unsolicited Electronic Messages (Amendment) Regulation 2007 (Amendment Regulation). The proposed amendments would have the effect of allowing the sender to provide the sender information and unsubscribe facility statement in any language if --

- (a) the recipient has indicated to the sender that the information may be given in that language; or
- (b) the sender knows or reasonably believes that the recipient understands or is familiar with that language or the recipient is not an organization carrying on business or activities in Hong Kong.

13. The Subcommittee considers that the protection of the rights of recipients of commercial electronic messages would become inadequate if a sender is allowed to provide the sender information and unsubscribe facility statement in any language just by relying on the condition that the sender knows or reasonably believes that the recipient understands or is familiar with that language. Moreover, since the industry's concern lies on messages to be sent to persons and organizations outside Hong Kong, such an extent of relaxation of the language requirement would go beyond what is required to address the industry's concern.

14. The Administration takes heed of the Subcommittee's comments and has subsequently provided a revised draft of the Amendment Regulation (**Appendix III**). Under the revised draft, for a recipient in Hong Kong who has not indicated his/her language preference, the sender information and unsubscribe facility statement must be given in both Chinese and English; for a recipient outside Hong Kong, the sender information and unsubscribe facility

statement may be given in any language if the sender knows and reasonably believes that the recipient --

- (a) is an individual residing outside Hong Kong or is an organization not carrying on business and activities in Hong Kong; and
- (b) uses or is able to communicate in that language.

The Subcommittee finds that the revised draft of the Amendment Regulation accurately reflects the legislative intent and can 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.

15. The Subcommittee notes that the Administration will arrange for the Amendment Regulation to be gazetted as soon as possible and does not object to the Administration's proposal that the Amendment Regulation should come into operation on 22 December 2007, same as that for the Regulation and the remaining provisions of the Ordinance, in order to tie in with the scheduled implementation of the opt-out regime for regulating the sending of unsolicited commercial electronic messages.

Recommendation

16. The Subcommittee supports the Unsolicited Electronic Messages Regulation (Commencement) Notice, the Unsolicited Electronic Messages Ordinance (Commencement) Notice, and the Administration's proposal to amend the Regulation by way of an Amendment Regulation as presented to the Subcommittee.

Advice sought

17. Members are requested to note the deliberations and recommendation of the Subcommittee.

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

Membership list

Chairman	Hon SIN Chung-kai, SBS, JP
Members	Hon WONG Ting-kwong, BBS Hon Ronny TONG Ka-wah, SC (Total: 3 members)
Clerk	Ms Anita SIT
Legal Adviser	Ms Connie FUNG
Date	15 November 2007

(Initial Draft)

**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.

(Revised Draft)

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(AMENDMENT) REGULATION 2007**

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1. Commencement

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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.