

**For Information
On 16 October 2007**

**Legislative Council Panel
on Information Technology and Broadcasting**

**Commencement of Phase Two of
the Unsolicited Electronic Messages Ordinance (“Ordinance”)**

Purpose

This paper briefs Members on the phased implementation of the Ordinance, in particular Phase Two which the Administration targets to commence towards the end of 2007. It will also cover details of the Do-Not-Call Registers (“DNCs”) to be established under the Ordinance and the phased publicity for the Phase Two commencement.

Phased Implementation

2. In order to contain the problem of unsolicited electronic messages, the Ordinance was passed in May this year and will come into effect in two phases.

- (a) In Phase One, those parts of the Ordinance in relation to offences concerning the following have already come into effect on 1 June 2007 –
 - (i) 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
 - (ii) 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).
- (b) In Phase Two (which has not yet come into operation), the rules for sending commercial electronic messages (mainly Part 2 of

the Ordinance) will come into effect. Under Part 2, there are certain requirements that senders of commercial electronic messages must observe in order to comply with the Ordinance, for example –

- (i) provide accurate sender information and unsubscribe facility in a message;
- (ii) honour the recipients' unsubscribe requests and not to send commercial electronic messages to telephone / fax numbers listed on a DNC (for details of DNC, please refer to paragraphs 5-8); and
- (iii) not to withhold the calling line identification information if the message is sent from a telephone / fax number.

Commencement of Phase Two of the Ordinance

3. Pursuant to section 1(3) of the Ordinance, the Secretary for Commerce and Economic Development will appoint, by notice published in the Gazette, a date on which Phase Two of the Ordinance will come into operation. The Administration plans to commence Phase Two of the Ordinance on 22 December 2007.

4. In addition to Phase Two of the Ordinance, the Administration also plans for the Unsolicited Electronic Messages Regulation (“Regulation”) to come into effect on 22 December 2007. To provide practical guidance to senders of commercial electronic messages on compliance with the Ordinance and the Regulation, the Telecommunications Authority (“TA”) will issue a code of practice (“CoP”) which will come into operation on the commencement date of Phase Two of the Ordinance. We have undertaken public consultation on the CoP which has just ended on 8 October 2007. For details, please refer to LC Paper No. CB(1)33/07-08(03).

Do-Not-Call Registers

5. As mentioned in paragraph 2(b)(ii), senders should not send commercial electronic messages to telephone / fax numbers listed on a

DNC. By registering a telephone / fax number on a DNC, the user concerned in effect has opted out from receiving further commercial electronic messages at the telephone / fax number from **all** senders. Accordingly, senders should download the DNCs to “cleanse” their sending lists so that they will not send further commercial electronic messages to the telephone / fax numbers listed on the DNCs unless they have specific consents from the recipients¹. The TA is now actively establishing three DNCs on –

- fax;
- short message; and
- pre-recorded message².

6. The mechanism of registering a telephone / fax number on a DNC is simple. If a person wishes to register his fixed / mobile / fax number on the DNC, he only needs to use his fixed / mobile phone or fax machine to make a call to the registration hotline. Since the DNC system is able to detect the calling line identification information of the fixed / mobile / fax number, the voice response system of the registration hotline will read the fixed / mobile / fax number to the user and ask the user to confirm if he wishes to register such number on the DNC by pressing a number key.³ No information other than the registered telephone / fax number and date of registration will be held by the DNC system. The DNC registration hotline numbers will be announced in the forthcoming publicity materials.

7. In view of the large number of telephone / fax numbers currently in use in Hong Kong (around 14 millions), the TA plans to launch the three DNCs in phases. Furthermore, a pre-registration period will be introduced before the DNC becomes operational (i.e. available for downloading by senders). The following table sets out the planned

¹ Consent given to an individual sender by a recipient overrides the listing on a DNC. In other words, while a person can list his telephone / fax number on a DNC to indicate a “general” refusal to receive promotional messages, that person can still choose to give consent to any “individual” sender and with this individual consent the sender concerned is still allowed to send further messages to this recipient notwithstanding the registration on the DNC.

² DNC (Pre-recorded Message) covers any pre-recorded voice or video telephone calls.

³ For some fax machines which do not have the handset for making outgoing calls, the user can make a call to the registration hotline using any fixed or mobile phone and input the fax number he wishes to register. The DNC system will then fax a confirmation slip with an authentication code to the fax number the user wishes to register. The user will have to call back the registration hotline (using any phone) to input the authentication code in order to complete the registration process. The fax-back authentication arrangement is to ensure that the person intending to register the fax number does have access to the fax number.

commencement date of pre-registration and the operational date of the three DNCs.

		Commencement Date of Pre-registration⁴	Operational Date of DNC⁵
DNC (Fax)		22 Dec 2007	8 Jan 2008
DNC (Short Message)		8 Jan 2008	25 Jan 2008
DNC (Pre-recorded Message)	Prefix 2 or 3 fixed line number	25 Jan 2008	26 Mar 2008
	Prefix 6 mobile number	12 Feb 2008	
	Prefix 9 mobile number	4 Mar 2008	

8. To apply for the access of telephone / fax numbers on DNCs in order to purge those numbers from their sending lists, senders will have to visit a dedicated web site for registration by submitting relevant identification documents and pay the necessary subscription fee. Senders can choose to pay a subscription fee of HK\$1,600 per register for unlimited downloading of telephone / fax numbers on DNCs for one year, or a subscription fee of HK\$425 per register for unlimited downloading for three months. The fees are set based on cost recovery principles. Once the vetting of application is completed, senders will be notified by email and be provided with a username and password of an online account using which telephone / fax numbers on the DNC can be downloaded from a specific web site. The information downloaded will be in the format of a text file containing a list of 8-digit numbers only (i.e.

⁴ During the pre-registration period, the DNC is not yet operational (i.e. will not yet be available for downloading by senders). All the numbers registered during the pre-registration period will be uploaded to the DNC on the operational date of the individual DNC. Senders will have to cease sending messages to these pre-registered numbers starting from the 10th working day after the DNC operational date.

⁵ On and after the DNC operational date, the DNC will be available for downloading by senders. Senders have to check their sending lists against the downloaded DNC before sending out messages.

no personal data⁶ of the registrant will be included in the downloaded file). Details regarding the DNC (e.g. application procedures, terms and conditions of use) will be announced in due course in the OFTA and the DNC system web sites. In particular, senders will be reminded that it is an offence under section 58 of the Ordinance for the information on the DNC to be used for purposes other than those prescribed in the Ordinance and may, on conviction, be fined up to \$1,000,000 and imprisoned for up to five years. We expect to accept applications from senders starting from around late November 2007.

Publicity

9. In order to enhance public awareness of the commencement of Phase Two of the Ordinance and to give reasonable amount of time for the industry to prepare for compliance with the Ordinance and the Regulation, publicity events have been conducted and more will be carried out in the forthcoming two months.

(a) Publicity for the industry on the overall regulatory framework:

- (i) two industry briefings have been conducted by OFTA in July 2007 and two more will be conducted in late October;
- (ii) briefings have been and will be conducted upon requests from various industry segments;
- (iii) four regional briefings will be conducted in November 2007 for representatives of the local community.

(b) Publicity for the general public:

- (i) specifically for DNCs: TV and radio APIs, poster advertisements at MTR stations, newspaper advertisements, and online advertisements.

⁶ The purpose of the DNCs is to require senders to cease the sending of commercial electronic messages to those telephone / fax numbers listed on the DNCs. Accordingly, there is no need for the DNC system to capture personal data (e.g. name) of the registrants and the senders do not need to know such details of the registrants.

- (ii) for Phase Two commencement (including DNCs): press conference/release; promotional leaflets and posters will be distributed to housing estates, community centres, schools, elderly homes and via district offices of Home Affairs Department; and
- (iii) publicity for individual groups (e.g. liaisons with non-government organisations on publicity for elderly people; and liaisons with the Education Bureau on publicity for schools).

Office of the Telecommunications Authority
10 October 2007