

Unsolicited Electronic Messages Ordinance

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Agenda

Part One

- Introduction to Unsolicited Electronic Messages Ordinance (UEMO)

Part Two

- Rules of Sending Commercial Electronic Messages
- Do-Not-Call Registers

Part Three

- Case Studies



Part One

Introduction to UEMO



History of Legislation

Jan 2006 - Public consultation on the legislative measure
against UEMs

Jul 2006 - Draft UEM Bill tabled to Legislative Council (LegCo)

May 2007 – UEMO enacted

Jun 2007 – Phase One implementation of the UEMO

Dec 2007 – Full commencement of the UEMO



Guiding Principles in Legislation

1. Rights of receivers to decide whether to receive or refuse further electronic messages
2. There should be room for the development of e-marketing in Hong Kong
3. Hong Kong should avoid becoming a haven for illicit spamming activities
4. Freedom of speech and expression must not be impaired
5. Penalties and remedies should be proportionate to the severity of the offences
6. The legislative provisions should be enforceable with reasonable efforts



Regime

- Opt-out regime
- Commercial electronic messages can be sent until the recipient indicates his/her wish to unsubscribe
- Methods to unsubscribe:
 - unsubscribe facilities
 - do-not-call registers



Regime

Electronic messages, including:

- Pre-recorded voice/video messages (person-to-person interactive communications are exempted)
- Fax
- Short messages
- Email
- Others



Regime

Commercial in nature


- Offer, advertise or promote goods, services or business opportunities, etc.

Hong Kong link

- Send from Hong Kong
- Send to Hong Kong, or
- Send to a Hong Kong number



Major Parts of Legislation

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- Prohibition of the use of unscrupulous ways to reach out to more recipients for sending commercial electronic messages (enforced by OFTA)
 - Prohibition of fraud and other illicit activities related to the sending of commercial electronic messages (enforced by Hong Kong Police Force)
 - Rules of sending commercial electronic messages (enforced by OFTA)



Use of unscrupulous ways to reach out to more recipients for sending commercial electronic messages

- Supply, acquisition and use of address-harvesting software or harvested-address list
- Use of automated means to generate electronic addresses (dictionary attack, brute force attack)
- Use of automated means to register for five or more email addresses
- Use of open relay / proxy to transmit commercial electronic messages



~ End of Part One ~



Part Two

Rules of Sending Commercial Electronic Messages

Do-Not-Call Registers (DNCs)



Rule(1): Providing accurate sender information

- ▶ Sender information: name, contact telephone number and address. For email messages, also include email address. For short messages, address can be omitted if this can be obtained from the contact telephone no. given in the message
- ▶ Language - use both English and Chinese to display the sender information unless the recipient has indicated his language preference



Rule(1): Providing accurate sender information

- ▶ Code of Practice gives guidance on how to display the sender information
 - Fax: at the top or bottom of the first page of the fax
 - Email: at the top or bottom of the body of the email
 - Short message: use “查詢EN” to display the contact telephone no.
- ▶ Content of a pre-recorded message should be arranged in the order of (1) name of the sender; (2) unsubscribe facility statement; (3) contact telephone no and address; and (4) commercial content.



Rule(2): Providing free unsubscribe facility

- ▶ Unsubscribe facility must be capable of receiving an unsubscribe request transmitted from the telecom device that is used by the recipient to access the message
- ▶ Code of Practice gives guidance on the choice of unsubscribe facility
 - Fax: a Hong Kong fax number
 - Email: an email address, a web page or a web address
 - Pre-recorded message: by pressing a number key when the message is being played
- ▶ For short message, the unsubscribe facility must be a Hong Kong telephone no. with which unsubscribe requests may be made orally or by entering key inputs



Rule(2): Providing free unsubscribe facility

- ▶ Language - use both English and Chinese to display the unsubscribe facility statement unless the recipient has indicated his language preference
- ▶ Code of Practice gives guidance on how to display the statement
 - Fax: at the top or bottom of the first page of the fax
 - Email: at the top or bottom of the body of the email
 - Short message: use “取消UN” to display the no. served as unsubscribe facility
- ▶ Content of a pre-recorded message should be arranged in the order of (1) name of the sender; (2) unsubscribe facility statement; (3) contact telephone no and address; and (4) commercial content.



Rule (3): Honouring unsubscribe requests

- ▶ Unsubscribe request remains valid until the recipient withdraws the request or gives consent to the sending of messages
- ▶ Record of unsubscribe request should be kept for at least 3 years after receipt
- ▶ Sender should cease the sending of messages within 10 working days from when the unsubscribe request is made




Rule (4): Not sending messages to numbers listed on DNC

- ▶ Three DNCs for fax, short messages and pre-recorded telephone messages (*no* DNC will be set up for emails)
- ▶ To register a number onto the DNC, you can call the registration hotline 1835 000 and registration is free of charge
- ▶ Messages should not be sent to a number which has been listed on a DNC for 10 working days or longer




Rule (4): Not sending messages to numbers listed on DNC

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- ▶ Consent overrides the DNC registration
 - ▶ Unless a sender has obtained valid consent from registered users of all numbers on his sending list, he should vet his sending list against the relevant DNC before the sending of messages



Rule (4): Not sending messages to numbers listed on DNC

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- ▶ Senders need to apply for subscription account in order to download the DNCs for vetting their sending lists
 - ▶ Online application at <http://www.dnc.gov.hk/tm/>
 - ▶ Subscription fee: HK\$1,600 per year per register (or HK\$425 per quarter per register) – unlimited downloading during subscription period
 - ▶ Two downloading formats for senders to choose
 - ▶ Demonstration website:
<http://www.ofta.gov.hk/en/uem/dnc.html>
 - ▶ The downloading of DNC, vetting of sending lists and sending of messages should be completed within 9 working days



Rule (5):

**Not using misleading subject heading
in emails**

Rule(6):

**Not withholding calling number
display when sending messages from
a telephone or fax number**



For details of the sending rules, please see:

- ▶ UEM Ordinance (Part 2)
- ▶ UEM Regulation
- ▶ Code of Practice
- ▶ Industry Guide
- ▶ Frequently Asked Questions

<http://www.ofta.gov.hk/en/uem/main.html>




Penalty for Contravention of Sending Rules

- ▶ Telecommunications Authority to issue Enforcement Notice (EN) to direct the sender to remedy the contravention
- ▶ Contravention of EN
 - First conviction: a fine up to HK\$100,000
 - Second and subsequent conviction: a fine up to HK\$500,000
 - An additional daily fine of HK\$1,000 in case of continuing offence



Exemptions (Tables 1 and 2 of Schedule 1 of UEMO)



Examples of Exempted Messages	Scope of Exemption
Person-to-person interactive calls	Exempted from the whole UEMO
Messages sent in response to information communicated by the recipient	If messages are sent within a reasonable time, they can be exempted from the sending rules but still need to comply with other provisions
Messages sent to confirm a commercial transaction	Exempted from the sending rules but still need to comply with other provisions



Consent from Recipient

With the consent from registered users of all numbers on his sending list, the sender does not need to vet his sending list against the relevant DNC, but he is still required to comply with other rules stipulated under the UEMO (e.g. providing sender information and unsubscribe facility statement in the message, honouring unsubscribe requests, etc.)

Example: Fax

Name, contact telephone no. and address displayed in Chinese and English at the top or bottom of the first page

ABC Co, 213 Queens Rd East, Wan Chai, 23456789

甲乙丙公司, 灣仔皇后大道東213號, 2345 6789

Marketing message, marketing message

如閣下不想再收到我們以下的傳真 (請加上✓號)

If you do not wish to receive further fax from us on (please tick):

- 講座seminars
- 產品products
- 以上各項all of the above

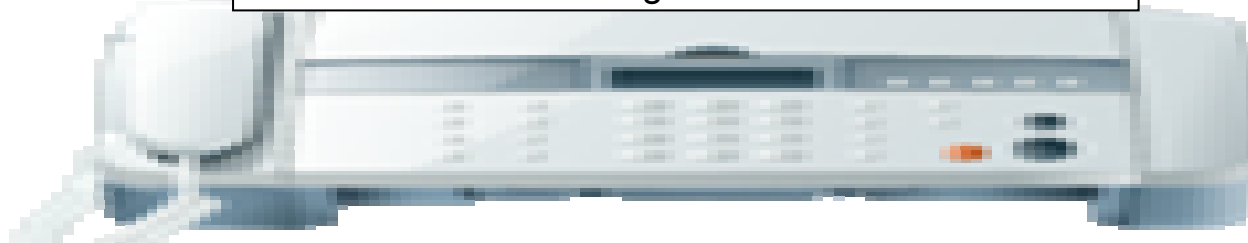
請註明閣下的傳真號碼_____並傳真至2345 6789 /
please write your fax number here _____and fax to 2345 6789.

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Minimum law requirement

Unsubscribe facility must be a HK fax number

Unsubscribe facility statement displayed in Chinese and English at the top or bottom of the first page



Example: Email

Name, contact telephone no, address and email address displayed in Chinese and English at the top or bottom of the email body

ABC Co, 213 Queens Rd East, 2345 6789, info@abc.com
甲乙丙公司, 灣仔皇后大道東213號, 2345 6789, info@abc.com

Marketing message, marketing message

如閣下不想再收到我們的電郵，請回覆此電郵或按這裡。
If you do not wish to receive further email messages from us, please reply this email or click here.



Unsubscribe facility statement displayed in Chinese and English at the top or bottom of the email body

Unsubscribe facility must be an email address, web page or web address

Example: Pre-recorded Message

OK

哩個電話係由甲乙丙公司打俾你，如果你以後唔想再收到我地的訊息，請按9字。你亦可致電23456789或親臨灣仔皇后大道東213號29樓查詢。We are calling from ABC Company. If you do not wish to hear any more message from us, please press 9 at any time. Our enquiry number is 23456789 and we are located at 29/F, 213 Queen's Road East, Wan Chai.

Marketing message
Marketing message

OK

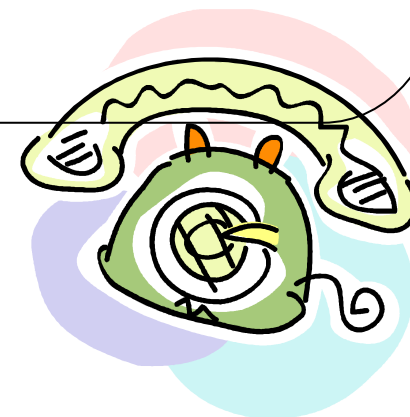
**** The order of information in a pre-recorded message must be: name, unsubscribe facility statement, address and contact telephone no (can be obtained by key input) and lastly commercial content ****

**** Sender information and unsubscribe facility statement must be presented in Chinese and English ****

**** Unsubscribe facility: by pressing a number key ****

哩個電話係由甲乙丙公司打俾你，如果你以後唔想再收到我地的訊息，請按9字。想知道我地的聯絡資料，請按0字。We are calling from ABC Company. If you do not wish to hear any more message from us, please press 9 at any time. To get our contact information, press 0.

Marketing message
Marketing message



Example: Short Message

Name and contact telephone no (address can be omitted if it can be obtained through the contact no given in the message)

甲乙丙公司ABC Company
查詢EN23456789
取消UN98765432
Marketing message

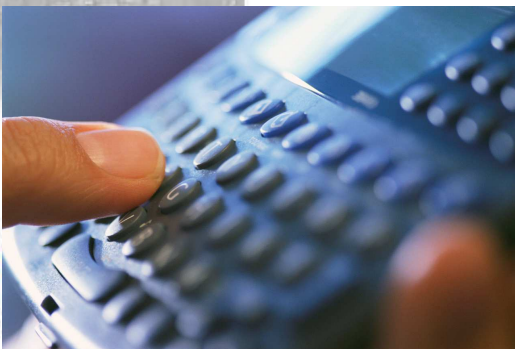
OK

Unsubscribe facility must be a HK telephone no which can accept unsubscribe requests made orally or by key input

甲乙丙公司ABC Company
查詢/取消EN/UN23456789
Marketing message

OK

If the contact telephone no and the no served as unsubscribe facility are the same, such number can be displayed in this format





For more details, please see:

<http://www.ofta.gov.hk/en/uem/main.html>



~ End of Part Two ~




Part Three

Case Studies



Case (1): Consent




Scenario: If you do not wish to receive any further messages from us, please reply by email. Otherwise, we will assume that you have consented to receive our messages.

- ◆ In general, mere acquiescence to a statement in the message will not constitute consent.
- ◆ Section 5 of the UEMO: Consent means –
 - (i) express consent; or
 - (ii) consent that can reasonably be inferred from the conduct of the individual or organization concerned.



Case(2): Consent




Scenario: After a customer gave consent to receive messages from a service provider, he/she register the relevant number in the DNC. Is the customer's consent still valid?

- ◆ The consent is still valid.
- ◆ Section 11(2) of the UEMO: the rule of no sending to electronic address listed in the DNC does not apply if, prior to or subsequent to the listing in the DNC, the registered user of the electronic address has given his consent to the sending of the message.



Case(3): Unsubscribe Request



Scenario: A customer request to unsubscribe from all commercial messages to him/her. Will a message to any of his/her electronic address become a contravention of the UEMO?

- ◆ Unsubscribe request is based on the electronic address.
- ◆ Section 9(4) of the UEMO: Unsubscribe request is a message to the effect that the registered user of the electronic address does not wish to receive, at that electronic address, any further commercial electronic messages from or authorized by that individual or organization.



Case(4):Do-not-call Register

Scenario: Can the DNC be shared for use?

- ◆ The Terms and Conditions for use of the DNC subscription account (“T&C”) requires that account holders shall not copy, distribute, rent, share, lease or otherwise transfer the information or part of the information downloaded from do-not-call registers to any other party, including but not limited to, their respective subsidiaries or affiliated companies
- ◆ However, the T&C does not prohibit the account holder from using the information in the DNC to provide cleansing service to other people or organisations.




Case(5): eNewsletter

Scenario: eNewsletter is subscribed by the recipient, is it exempted from application of the UEMO?

- ◆ The consent of the recipient only exempt the sender from vetting against the DNC before sending. The sender still need to comply with other rules of sending of commercial electronic messages.



Case(6): Missed Call



Scenario: Is the use of “Missed Call” tactic to deliver pre-recorded telemarketing telephone messages subject to the regulation of the UEMO?

- ◆ It is subject to the regulation of the UEMO.
- ◆ The message has to comply with the requirements of the UEMO, including:
 - ◆ not to send to electronic address listed in the DNC;
 - ◆ to provide sender information and unsubscribe facility in the message; and
 - ◆ to honour unsubscribe requests.



Case(7): Overdue Payment Notice

Scenario: A person received a pre-recorded telephone message, asking whether the recipient is the customer of a company. If the answer is “yes”, a message about overdue payment notice will be played. Otherwise, the call will be terminated. Is it regulated by the UEMO?

- ◆ The message has no promotional purpose, and is not regulated by the UEMO.



~ End of Part Three ~



Q&A