



**The Unsolicited Electronic Messages Ordinance**  
**An Industry Guide**

**Revised in March 2009**

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## Chapter 1: Background

1. To contain the problem of unsolicited electronic messages, the Unsolicited Electronic Messages Ordinance (“UEMO”) and the Unsolicited Electronic Messages Regulation (“UEMR”) have been enacted in 2007. This Guide aims to equip the industry with a broad understanding of the requirements under the UEMO and the UEMR to facilitate their compliance.

### Unsolicited Electronic Messages Ordinance

2. The UEMO came into full force on 22 December 2007. It prohibits professional spamming activities such as the use of unscrupulous practices to reach out to more recipients and fraudulent activities in relation to sending commercial electronic messages. In particular, Part 2 of the UEMO sets out the rules of sending commercial electronic messages (e.g. the requirement to provide sender information, to honour unsubscribe requests as well as the do-not-call registers (“DNCs”)<sup>1</sup>).

### Unsolicited Electronic Messages Regulation

3. The UEMR prescribes detailed requirements relating to “sender information”, “unsubscribe facility” and “unsubscribe facility statement” to be included in messages.

### Code of Practice

4. In addition to the UEMO and UEMR, there is also a code of practice (“CoP”). The CoP aims to provide guidance in respect of the application or operation of the provisions of the UEMO. Although the CoP does not stipulate statutory requirements and failure to observe the CoP would not be subject to legal proceedings, the CoP represents the views of the TA on how certain statutory provisions should be applied or operated and is admissible in evidence in legal proceedings. If the court is satisfied that the CoP is relevant to determining a matter at issue, failure to observe the CoP may be relied upon to establish or negate that matter. The TA may approve or issue other CoPs in the future.

5. This Guide is for general reference only. The industry is advised to refer to the provisions of the UEMO and the UEMR for a complete and definitive statement of the law. As each case needs to be considered in its own circumstances and its own merits, this Guide should not be regarded as substitute for legal advice and the industry should not rely solely on this Guide or our views for assessing whether their activities may be regulated under, or may

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<sup>1</sup> For details of DNCs, please see Chapter 5.

contravene, the UEMO or the UEMR. The industry should consider seeking independent legal advice when necessary.

## Chapter 2: The Regulatory Regime and the Phased Commencement

### Types of Electronic Messages being Regulated

6. The UEMO regulates the sending of “commercial electronic messages” with a “Hong Kong link”.

#### *Commercial electronic messages*

7. “Commercial electronic messages” are defined as electronic messages with purposes, or one of the purposes of, which is, among others, to offer or supply goods, services, facilities, land, business opportunity, or advertise or promote a supplier of goods, services, facilities, land, business opportunity etc, in the course of or in the furtherance of any business (section 2 of the UEMO).

8. Whether a message is of a promotional nature has to be determined on a case-by-case basis, taking into account matters including the purpose and content of the concerned message. If the purpose (or one of the purposes) of the message sent by a non-commercial organisation meets the criteria prescribed in paragraph 7 above, the message will be considered to have a ‘commercial’ nature, thereby falling within the scope of the UEMO.

#### *Types of messages*

9. Any form of electronic messages sent over a public telecommunications service to an electronic address is regulated under the UEMO, including email, fax, SMS/MMS, pre-recorded voice/video messages. However, person-to-person interactive calls are exempted (please see paragraph 12).

#### *“Hong Kong link”*

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

- (a) originates in Hong Kong;
- (b) is sent to Hong Kong; or
- (c) is sent to a Hong Kong telephone or fax number.

Detailed meaning of Hong Kong link can be found in section 3 of the UEMO.

11. In accordance with section 4 of the UEMO, “sending” a message includes causing a message to be sent and attempting to send a message.

## *Exemptions*

12. Some messages are not regulated under UEMO or part 2 of the UEMO. Specifically:
- (a) The following messages are exempted from application of the **entire UEMO** (Table 1 of Schedule 1 of the UEMO):
    - person-to-person telemarketing calls;
    - sound broadcasting or television programme services.
  
  - (b) The following messages are exempted from application of **Part 2 of the UEMO** (rules for sending of commercial electronic messages) only (Table 2 of Schedule 2 of the UEMO):
    - electronic messages sent in response to the recipient's requests;
    - the primary purpose of the messages is:
      - (i) to facilitate, complete or confirm a commercial transaction previously agreed;
      - (ii) to provide warranty information, product recall information or safety or security information with respect to a commercial product previously purchased or used by the recipient;
      - (iii) to deliver goods or services, including product updates and upgrades, that the recipient is entitled to receive under the terms of the transaction previously agreed;
      - (iv) to provide notification or updates in relation to a subscription, membership, account, loan, etc; and
      - (v) to provide information directly related to an employment relationship or a related benefit plan in which the recipient is currently involved, participating or enrolled.

## **Chapter 3: Management Responsibilities**

### Liability of Principals and Agents in Outsourcing Arrangements

13. Companies/organisations may outsource all or part of the sending of commercial electronic messages to a third party, ranging from a simple outsourcing of the actual sending work to the complete outsourcing of the process (e.g. from the identification of potential recipients through the management of address lists to the actual sending of the messages and the operation of unsubscribe facilities).

14. Nevertheless, companies/organisations should bear in mind any act done or conduct engaged in by an agent or the outsourced service provider will be treated as done or engaged in by the principal (i.e. the company/organisation). However, the company/organisation can defend by proving that he has taken practicable steps to prevent the agent from doing the act or engaging in the conduct. (section 59(2) of the UEMO)

15. Therefore, the companies/organisations should take all practicable steps under the outsourcing arrangement to prevent their outsourced service providers from breaching the UEMO and the UEMR.

### Liability of Directors and Partners

16. Where an organisation has done any act or engaged in any conduct constituting an offence under the UEMO, any director of the company, partner in the partnership<sup>2</sup>, or officer in an organisation who was responsible for the internal management of the organisation shall be presumed also to have done the act unless there is evidence showing that he did not authorise the act (section 60(1) of the UEMO).

17. They will be taken not to have done the act if sufficient evidence is adduced to raise an issue that they did not authorize the act and the contrary is not proved by the prosecution beyond reasonable doubt.

### Liability of Employers and Employees

18. Any act done or conduct engaged in the employee shall be treated as done or engaged in by his employer as well as by him, whether or not it was done or engaged in with the employer's knowledge or approval (section 59(1) of the UEMO). However, it can serve as a defence if the employer can prove that he has taken practicable steps to prevent the employee from breaching the UEMO.

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<sup>2</sup> If there is no such director (partner), any person who was responsible under the immediate authority of the directors of the company (partners of the partnership) for the internal management of the company (partnership).

19. For the employee, he can defend himself if he could prove that he was not in a position to make or influence a decision regarding the act and
- (a) he did the act in good faith in the course of his employment; or
  - (b) in accordance with instructions given to him by and on behalf of his employer.



## **Chapter 4: How to Comply with the UEMO When Using Commercial Electronic Messages to Promote Goods or Services etc.**

20. If a sender considers that the electronic message it intends to send falls within the definition of commercial electronic message of the UEMO and has a Hong Kong link, he/she should take the necessary steps to ensure compliance with the UEMO and the UEMR. This chapter specifically lists out some steps to facilitate senders to comply with the rules stipulated in the UEMO.

21. The general rules for sending commercial electronic messages are set out in the box below.

### **General rules for sending messages**

#### Do

- provide accurate sender information in the message
- provide a functional unsubscribe facility with an unsubscribe facility statement in a clear and conspicuous manner
- honour recipient's unsubscribe request

#### Don't

- send message to any telephone / fax number listed on the DNC, unless consent has been obtained from the registered user of the telephone / fax number
- use misleading subject heading for an e-mail message
- conceal or withhold the caller line identification information when sending message from a fax or telephone number

22. A sample checklist in Appendix can help senders to assess whether they have complied with the main statutory requirements in preparing and sending commercial electronic messages for general reference. Sender is also advised to refer to the UEMO and UEMR to ensure compliance with the law. Senders may develop alternative or more detailed instructions having regard to their circumstances or mode of operation of sending commercial electronic messages.

### Preparation Stage

#### *Preparation of the Target Address List*

23. In general, a sender starts with a list of electronic addresses of potential recipients. If

the sender is to build up such an address list, he/she should not:

- (a) use any address harvesting software<sup>3</sup> in connection with, or to facilitate, the sending of messages without the consent of the registered user of the electronic address (section 17(1)(a) of the UEMO); or
- (b) use automated means<sup>4</sup> to obtain an electronic address for the sending of a message (section 18(1) of the UEMO).

24. If the address list is obtained or leased from a third party, the sender should ensure that it is not a harvested-address list (section 16(1)(c), (d) and 16(4) of the UEMO), and refrain from using any harvested-address list (section 17(1)(b) of the UEMO).

25. Before sending of commercial electronic message to the target recipient, the sender should ensure that the target address list does not include:

- (a) any electronic address from which an unsubscribe request has been received (section 10 of the UEMO)<sup>5</sup>; and
- (b) any telephone / fax numbers listed in the DNCs , unless the sender has obtained consent from the registered user of the telephone / fax number.

Senders should update their database of address lists as soon as such unsubscribe requests are received in order to ensure that an unsubscribe request could take effect within 10 working days from the day on which it is sent. They should also download the DNCs from time to time in order to avoid sending any commercial electronic message to a telephone / fax number that has been listed in a DNC for 10 working days or more.

26. The sender can seek the consent of the registered user of the telephone / fax number for sending commercial electronic messages such that the sender can send commercial electronic messages to the relevant telephone / fax number even though it is already listed in a DNC (section 11(2) of the UEMO). However, in any event, the sender is required to comply with other provisions in Part 2 of the UEMO when sending messages to this registered user. In particular, the sender is still required to provide an unsubscribe facility in the message and the sender must honour unsubscribe requests within 10 working days from the day on which the

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<sup>3</sup> Address harvesting software means software that is specifically designed or marketed for use for searching the Internet or a public telecommunications network, and collecting electronic addresses such as telephone numbers or email addresses.

<sup>4</sup> Automated means refers to an automated process that generates possible electronic addresses by combining letters, characters, numbers or symbols into numerous permutations.

<sup>5</sup> In the event that both a consent and an unsubscribe request have been received for the same electronic address, the latest received request would prevail. In other words, if a consent is received after an unsubscribe request, the sender may send further messages to that electronic address. On the other hand, if an unsubscribe request is received after a consent, the sender must not send any further messages to that electronic address.

unsubscribe requests are sent (section 10 of the UEMO).

### *Preparation of the Content of the Message*

#### **Sender information**

27. The purpose of inclusion of the sender information is to allow the recipients to identify the senders who initiate the promotional activity. Normally "sender" of a commercial electronic message refers to the individual/organisation that promotes the product/service and not the individual/organisation which merely sends the message. In the cases where only the sending process is outsourced, it is expected that the organisation which authorises that sending of the message should be identified. However, there can be exceptions to this, for example, a reseller/an organisation who offers products (from another product supplier) to its own customers/members would need to provide its own information (instead of information of the product supplier) as the sender information in the message. Each case should therefore be judged on its own facts.

28. The sender information should be reasonably likely to be valid for at least 30 days after a message is sent (section 8(1)(d) of the UEMO). For example, if a sender could foresee the relocation of his/her office to another premises in the period of 30 days following the sending of a message, he/she should include the address of the new premises and its effective date. Alternatively he/she could make arrangements for communications that go to the old premises to be re-directed to the new premises for a period of time

#### **Unsubscribe Facility**

29. The sender of the commercial electronic message is required to provide unsubscribe facility to enable the recipient to submit unsubscribe requests. Any unsubscribe facility should –

- (a) be capable of receiving unsubscribe requests at all times during a period of at least 30 days after the message is sent (section 9(1)(f) of the UEMO);
- (b) be free of any usage charge to the recipient (section 9(1)(g) of the UEMO);
- (c) be convenient to use, readily available and does not contain in itself any information promoting or advertising products, services, facilities, organisation etc. (section 9(3) of the UEMR).

30. The sender can provide more than one unsubscribe facilities in a message. Please refer to paragraph 8 of the CoP for the guidance on the basic requirement of unsubscribe facility to be provided in the message. The unsubscribe facility should allow recipients to unsubscribe from all commercial electronic messages to be sent by the sender. Having said that, the sender

may also provide options for the recipients to choose the types of messages that he wants to subscribe or unsubscribe, as long as the statutory requirements have been met.

**Language requirement for the sender information and the unsubscribe facility statement**

31. As a matter of principle, sender information and the unsubscribe facility statement should be given in both Chinese and English, unless the recipient of the message has indicated to the sender that such information and statement may be given in one language only.

**Presentation of the sender information and unsubscribe facility statement in different types of messages**

32. The following tables show the specific requirements of the sender information, unsubscribe facility, and the unsubscribe facility statement for different types of messages:

(i) Email messages:

Sender information required	Name, address, contact telephone number and contact email address should be provided (section 5(1) of the UEMR)
Unsubscribe facility	At least one unsubscribe facility should be an email address, a web page or a web address (Paragraph 8.2 of the CoP)
Position of the sender information and unsubscribe facility statement	They should be prominently displayed either at the top or at the bottom of the body of the email message; and reasonably visible in terms of the font size, position and contrast/colour (Paragraphs 6.2 and 8.2 of the CoP)

(ii) Fax message:

Sender information required	Name, address and contact telephone number should be provided (section 5(2) of the UEMR)
Unsubscribe facility	At least one unsubscribe facility should be a Hong Kong fax number (Paragraph 8.1 of the CoP)
Position of the sender information and unsubscribe facility statement	They should be prominently displayed either at the top or at the bottom of the first page of the fax message; and reasonably visible in terms of the font size, position and contrast (Paragraphs 6.1 and

	8.1 of the CoP).
Capacity of the unsubscribe facility	Sender should use reasonable endeavours and take into account the volume and rate of commercial electronic messages being sent to design the capacity of the concerned telecommunications line so that the unsubscribe facility has adequate capacity to receive the incoming unsubscribe requests.

(iii) Pre-recorded voice or video telephone call:

Sender information required	Name, address, contact telephone number should be provided (section 5(1) of the UEMR)
Presentation of the sender information	<p>If the sender information is voice-based, it should be presented at such speed so as to be reasonably audible.</p> <p>If the sender information is text/image-based, it should be reasonably visible and separate and distinguishable from the commercial content of the message. Moreover, it should be displayed long enough for the recipient to read the information. (Paragraph 6.3 of the CoP)</p>
Order of the presentation of the sender information	<p>The sender information should be put at the beginning of the message in the following order (section 8(2) of the UEMR) –</p> <p>(i) the name of the sender;  (ii) the unsubscribe facility statement; and  (iii) address and contact telephone number of the sender.</p> <p>However, a sender may choose to provide an option (accessible at all times during the transmission of the message) of obtaining the address and contact telephone number through entering a key input specified in the message, so as to position the marketing message as early as possible in the voice or video message. In such situation, the order of presentation of information, starting from the beginning of the message, should instead be (section 8(3) of the UEMR) –</p> <p>(i) the name of the sender;  (ii) the unsubscribe facility statement; and</p>

	(iii) the specified key input for obtaining the address and contact telephone number of the sender.
Unsubscribe facility	At least one unsubscribe facility should be activated by key input of a specified one-digit number. It should be ready for use immediately after the unsubscribe facility statement has been given and should be available throughout the duration when the rest of the message is being played.
Unsubscribe facility statement	The subscribe facility statement should be presented at such speed so as to be reasonably audible when such statement is voice-based.  When such statement is text/image-based, it should be reasonably visible and separate and distinguishable from the commercial content of the message. Moreover, it should be displayed long enough for the recipient to read the statement (Paragraph 8.3(b) of the CoP).

(iv) SMS messages

Sender information required	Name, address and contact telephone number should be provided. A sender may choose not to include the physical address in the message itself, provided that such information can be obtained by calling the contact telephone number provided in the message (sections 5(2) and 5(4) of the UEMR)
Presentation of the sender information	The contact phone number should be presented in digits in the main text of the SMS message: <ul style="list-style-type: none"> <li>(a) with a preceding label of either “查詢 EN” or “EN 查詢” if the recipient has not indicated language preference to the sender;</li> <li>(b) with a preceding label of “查詢”, if the recipient has indicated to the sender that the sender information may be given solely in Chinese;</li> <li>(c) with a preceding label of “EN” , if the recipient has indicated to the sender that the sender information may be given solely in English; or</li> <li>(d) if the recipient has indicated to the sender that the sender</li> </ul>

	<p>information may be given solely in a language other than Chinese or English, with a preceding label with the meaning of “Enquiry” in that language.</p> <p>For a long SMS message that is split into two or more transmissions, the sender information must be included in the first transmission of the SMS message (Paragraph 6.4 of the CoP).</p> <p>Furthermore, if the address field of the SMS message already displays some of the sender information (e.g. name or contact telephone number of the sender), there is no need to repeat such information in the main text of the SMS message.</p>
Unsubscribe facility	<p>The unsubscribe facility should be a Hong Kong telephone number with which unsubscribe requests may be made orally or by entering key inputs (section 9(2) of the UEMR). In other words, a telephone number capable of receiving unsubscribe SMS messages would not suffice.</p>
Unsubscribe facility statement	<p>The telephone number serving as the unsubscribe facility should be presented in digits in the main text of the SMS message:</p> <ul style="list-style-type: none"> <li>(a) with a preceding label of either “取消 UN” or “UN 取消”, if the recipient has not indicated language preference to the sender ;</li> <li>(b) with a preceding label of “取消”, if the recipient has indicated to the sender that the unsubscribe facility statement may be given solely in Chinese;</li> <li>(c) with a preceding label of “UN”, if the recipient has indicated to the sender that the unsubscribe facility statement may be given solely in English; or</li> <li>(d) if the recipient has indicated to the sender that the unsubscribe facility statement may be given solely in a language other than Chinese or English, preceded by a label with the meaning of “Unsubscribe” in that language.</li> </ul> <p>For a long SMS message that is split into two or more transmissions, the unsubscribe facility statement must be included</p>

	<p>in the first transmission of the SMS message.</p> <p>Furthermore, if the address field of the SMS message already displays the telephone number serving as the unsubscribe facility, there is no need to repeat such number in the main text of the SMS message.</p>
Capacity of the unsubscribe facility	<p>Sender should use reasonable endeavours and take into account the volume and rate of commercial electronic messages being sent to design the capacity of the concerned telecommunications line (and the relevant human resources if applicable) so that the unsubscribe facility has adequate capacity to receive the incoming unsubscribe requests.</p>

(v) Other types of messages:

Sender information required	<p>Name, address and contact telephone number should be provided (section 5(2) of the UEMR)</p>
Unsubscribe facility	<p>The unsubscribe facility should be capable of receiving an unsubscribe request transmitted from the telecommunications device that is used by the recipient to access the message (section 9(1) of the UEMR).</p>
Presentation of the sender information and unsubscribe facility statement	<p>If the information and statement are voice-based, they should be presented at such speed so as to be reasonably audible.</p> <p>If they are text/image-based, they should be:</p> <ul style="list-style-type: none"> <li>(a) reasonably visible in terms of the font size, position and contrast/colour;</li> <li>(b) separate and distinguishable from the commercial content of the message; and</li> <li>(c) displayed long enough for the recipient to read the information and the statement (Paragraph 6.5 and 8.5 of the CoP).</li> </ul>



## Sending of the Commercial Electronic Message

### *Electronic Address from which Messages are sent*

33. In relation to the electronic address from which commercial messages are sent, the UEMO prohibits:

- (a) the use of automated means to register for 5 or more email addresses from which to send multiple commercial electronic messages (section 19 of the UEMO);
- (b) registration for 5 or more email addresses or 2 or more domain names using falsified information to send multiple electronic messages (section 25 of the UEMO); and
- (c) falsely representing to be the registrant of 5 or more email addresses or 2 or more domain names to send multiple electronic messages (section 26 of the UEMO).

### *Technical Infrastructure*

34. The UEMO also places a number of requirements on how commercial electronic messages should be sent using technical infrastructure. These requirements include:

- (a) When sending messages from a telephone or fax number, the sender should not conceal the calling line identification information (“CLI”) (section 13 of the UEMO). In practice, if senders have made arrangements with their telecommunications service providers to withhold CLI information for all outgoing calls, they should either cancel such arrangements, or dial “1357” before each telephone/fax number of recipients so that the CLI information would be displayed at the recipients’ device. Even though the senders have not made arrangements with the telecommunications service providers to withhold CLI information, they should ensure that their staff would not dial “133” before each telephone/fax number of recipients when sending the messages;
- (b) Sender must not use automated means to generate an electronic address to which a commercial electronic message is sent (section 18(1) of the UEMO);
- (c) Sender must not use open relay/proxy to relay or retransmit multiple commercial electronic messages (section 20 of the UEMO);
- (d) Sender must not access a telecommunications device without authorisation to send multiple commercial electronic messages (section 22 of the UEMO);

(e) Sender must not send multiple commercial electronic messages from a telecommunications device without authorisation with a view to deceiving or misleading recipients about the source (section 23 of the UEMO); and

(f) Sender must not falsify header information in multiple commercial electronic messages and send such messages (section 24 of the UEMO). For the avoidance of doubt, header information includes email header as well as other types of header such as CLI.

## Response Management

### *Retention of unsubscribe requests*

35. On receiving commercial electronic messages, the recipients may raise unsubscribe requests. The sender should retain a record of unsubscribe requests in a format in which they were originally received, or in a format that can be demonstrated to represent accurately the information originally received, for at least 3 years after their receipt. (section 9(3) of the UEMO)

36. For example, for unsubscribe requests sent by fax, the sender may either retain the hardcopy, or scan them as images for digital storage. Similarly for unsubscribe requests sent by e-mail, or by clicking an Internet hyperlink, an electronic record of such e-mail message or information received from the action of clicking the hyperlink should be stored.

37. In case of unsubscribe requests given orally over the telephone, the sender may, subject to compliance with the Personal Data (Privacy) Ordinance (Cap.486) and any applicable law, tape the actual conversation for record in order to meet the statutory requirement.

## Chapter 5: The Do-not-call Registers

38. By registering his telephone / fax number to a DNC, the registrant has in effect opted out from receiving further commercial electronic messages at his telephone / fax number from all senders. The senders should not send further commercial electronic messages to the telephone / fax numbers listed on the DNCs that has been listed on the DNC for 10 working days or more, unless they obtain specific consents from the registered user of the telephone / fax number. In this connection, senders should download the DNCs to purge their sending lists

39. Consent given to an individual sender by a registered user of the telephone / fax number overrides the listing on a DNC. In other words, while a person has listed his/her telephone / fax number on a DNC to indicate a “general” refusal to receive promotional messages, that person can still give consent to any “individual” sender to allow the latter to send messages to him.

40. Three DNCs have been set up by OFTA:

- DNC (Fax);
- DNC (Short Message) -- for Short Messaging Service (SMS) and Multimedia Messaging Service (MMS) messages; and
- DNC (Pre-recorded Telephone Message) -- for pre-recorded voice, sound, video and image messages.

41. To apply for the access of DNCs in order to purge those numbers from their sending lists, senders can submit an online application at the DNC website <http://tm.dnc.gov.hk>. Applicants will have to submit relevant identification documents and pay the necessary subscription fee. The subscription fee is:

Unlimited downloading for one year per register	HK\$1,600
Unlimited downloading for 3 months per register	HK\$425

42. Once the vetting of application is completed, senders will be notified by email and be provided the details on how to download the DNC. The information downloaded will be in the format of a text file containing a list of 8-digit numbers, or a text file containing a list of 8-digit numbers with the corresponding registration dates. No personal data<sup>6</sup> of the registrant will be included in the downloaded file.

43. For more details regarding the DNC, please visit OFTA’s website at

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<sup>6</sup> 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. There is no need for the DNC system to capture personal data (e.g. name) of the registrants.

<http://www.ofta.gov.hk/en/uem/dnc.html> or the DNC website at <http://tm.dnc.gov.hk>.

44. The information obtained from unsubscribe requests or DNCs should only be used for purposes for compliance with the statutory requirements in the UEMO and UEMR (section 58 of the UEMO). A person who fails to comply with this requirement will be subject to a fine of \$100,000 on summary conviction. If he knowingly contravenes this provision, he is liable on conviction an indictment to a fine of \$1,000,000 and to imprisonment for 5 years.

## **Chapter 6: Penalty for Contravention**

### Penalty for Contravention of Part 2 of the UEMO

#### *Enforcement Notice*

45. Where TA is of the opinion that any person is contravening any provision of Part 2 of the UEMO which prescribes rules about sending commercial electronic messages, or has contravened in circumstances that make it likely that the contravention will continue or be repeated, he may serve an enforcement notice to the relevant person requiring him to take remedial action as specified.

46. A person who fails to comply with an enforcement notice commits an offence. On the first conviction, the offender may attract a level 6 fine (currently at HK\$100,000). On a second and subsequent conviction, the offender may attract a fine up to HK\$500,000. For continuing offence, a further daily fine of \$1,000 for each day can be imposed.

#### *Appeals against Enforcement Notice*

47. In the event that the person on whom an enforcement notice is served does not agree with the views of the TA set out in the enforcement notice, the person can appeal to the Unsolicited Electronic Messages (Enforcement Notices) Appeal Board (“Appeal Board”) within 14 days after the enforcement notice is served against any part of the enforcement notice.

48. Unless ordered by the Appeal Board, the lodging of a notice of appeal shall not have the effect of suspending the operation of the enforcement notice. In other words, the person should still comply with an enforcement notice even though an appeal against the enforcement notice has been lodged.

49. After hearing an appeal against an enforcement notice, the Appeal Board will determine the appeal by upholding, varying or quashing the enforcement notice and may make such consequential orders as it considers necessary.

### Penalty for Contravention of Part 3 of the UEMO

50. Under Part 3 of the UEMO, a sender is prohibited to use unscrupulous techniques to reach out to more recipients. It is an offence to:

- (a) supply, acquire or use address-harvesting software<sup>7</sup> or harvested-address lists for sending commercial electronic messages without the recipients' consent (sections 15-17 of the UEMO);
- (b) send commercial electronic messages to electronic addresses obtained using automated means<sup>8</sup> (e.g. "dictionary attack") (section 18 of the UEMO);
- (c) use scripts or other automated means to register for multiple email addresses (section 19 of the UEMO); and
- (d) knowingly send commercial email messages through open relays or open proxies so as to hide the source of the message (section 20 of the UEMO)

51. These offences would be prosecuted in court and subject to a fine at level 6 (currently at \$100,000) and imprisonment up to 2 years (no imprisonment term for offences relating to address-harvesting) on summary conviction, or a fine up to \$1,000,000 and imprisonment for up to 5 years on conviction on indictment.

#### Penalty for Contravention of Part 4 of the UEMO

52. Under Part 4 of the UEMO, fraud and other illicit activities in connection with sending of multiple commercial electronic messages are prohibited. It is an offence to:

- (a) hack into a computer for the purpose of sending multiple commercial electronic messages (section 22 of the UEMO);
- (b) use devices without authorization and sending multiple commercial electronic messages (section 23 of the UEMO);
- (c) falsify header<sup>9</sup> information in multiple commercial electronic messages (section 24 of the UEMO);
- (d) use false identity to register for electronic addresses or domain names and sending multiple electronic messages; (section 25 of the UEMO); and
- (e) falsely represent oneself to be the registrants of electronic addresses or domain names and sending multiple electronic messages (section 26 of the UEMO).

53. Given their seriousness in nature, a heavier penalty will be imposed the above offences, i.e. a fine of any amount to be determined by the court and imprisonment of up to 10 years.

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<sup>7</sup> Address harvesting software means software that is specifically designed or marketed for use for searching the Internet or a public telecommunications network, and collecting electronic addresses such as telephone numbers or email addresses.

<sup>8</sup> Automated means refers to an automated process that generates possible electronic addresses by combining letters, characters, numbers or symbols into numerous permutations.

<sup>9</sup> Header is machine-generated information about the source or routing of the electronic message such as calling line identifications or IP addresses. It does not include the 'from' field in email message which can easily be altered by senders.

## Chapter 7: Further Information

54. For the full text of the UEMO, UEMR and CoP, as well as the frequently asked questions and useful links, please visit OFTA's website at <http://www.ofta.gov.hk/en/uem/main.html>.

55. If you are sender of commercial electronic messages and have enquiries about subscription account such as application procedure and technical issues, please email to [register-enquiry@dnc.gov.hk](mailto:register-enquiry@dnc.gov.hk) or call OFTA's hotline at 2961 6333 during office hours (8:30 a.m. – 5:45 p.m. Monday to Friday, except public holidays).

56. Detailed instructions on how to register numbers onto the do-not-call registers can be found in <http://www.ofta.gov.hk/en/uem/instruction.html>.

For enquiries about number registration, please email to [public-enquiry@dnc.gov.hk](mailto:public-enquiry@dnc.gov.hk) or call OFTA's hotline at 2961 6333 during office hours (8:30 a.m. – 5:45 p.m. Monday to Friday, except public holidays).

## Appendix: Sample Checklist for Compliance with UEMO and UEMR

Important Notice: This checklist is for general reference only and does not purport to represent all the statutory requirements set out in the UEMO and the UEMR. Readers should refer to the detailed provisions in the UEMO and the UEMR to ensure compliance with the law, and may consider seek legal advice on their specific circumstances as necessary. Senders may also develop alternative or more detailed instructions having regard to their specific circumstances or mode of operation of sending commercial electronic messages.

### Preparation Stage

#### Step 1: Prepare the target address list

If you are building the list:

- Don't use any address harvesting software; and
- Don't use automated means to obtain electronic addresses.

If you are obtaining or leasing a list from a third party:

- Ensure that it is not a harvested address list; and
- Don't use any harvested address list.

#### Step 2: Cleanse the target address list

- Ensure that telephone / fax numbers contained in the applicable DNCs are removed from the target address list (unless consent has been obtained from the recipient). The downloading of DNC, the cleansing of sending lists and the sending out of messages should be completed within 9 working days.
- Ensure that electronic addresses for which unsubscribe requests have been received are removed from the target address list (unless the recipient has subsequently withdrawn his unsubscribe request or given his consent to the sending of message.).

#### Step 3: Prepare the content of the message

- Include the sender name, address and contact telephone number<sup>1</sup> and an unsubscribe facility statement in both Chinese **and** English, unless the recipient of the message has indicated to the sender that the information and statement may be given in one language only. Include contact email address if the message is an email
- Make sure that the sender information would be valid for at least 30 days after the messages are sent.

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- Provide an unsubscribe facility<sup>2</sup> that
  - ◆ can reasonably receive unsubscribe requests at all times for at least 30 days after the message is sent;
  - ◆ can be used by the recipient free of any charge;
  - ◆ does not contain any promotional or marketing message; and
  - ◆ is a Hong Kong number, if the unsubscribe facility is a telephone or fax number.
- If the message is a pre-recorded voice or video message sent to a telephone number, the order of presentation of sender information and unsubscribe facility statement in the message must meet the requirements set out in section 8 of the UEMR.
- If the message is an email, the subject heading should not mislead the recipient about the content or subject matter of the message.

**Sending Stage**

**Step 4: Arrange for the electronic address from which messages are to be sent**

- Don't use automated means to create multiple email accounts for sending multiple messages.
- Don't register for multiple email addresses or domain names using falsified information.
- Don't falsely represent to be the registrant of multiple email addresses or domain names.

**Step 5: Prepare the technical infrastructure**

- Don't conceal the calling line identification information ("CLF") when sending messages from a telephone or fax number.
- Don't use automated means to generate electronic addresses to which messages are sent.
- Don't use open relay/proxy to relay or retransmit multiple messages.

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- Don't access a telecommunications device without authorisation to send multiple messages
- Don't send multiple messages from a telecommunications device without authorisation with a view to deceiving or misleading recipients about the source.
- Don't falsify header information in multiple messages.

**Response Management Stage**

**Step 6: Post-sending arrangements**

- Arrangement should be made to retain unsubscribe requests received for at least 3 years after their receipt.
- Target address list should be updated as soon as such unsubscribe requests are received to ensure that an unsubscribe request could take effect within 10 working days from the day on which it is sent.
- Information obtained from unsubscribe requests or do-not-call registers should not be used for purposes other than for compliance with the statutory requirement not to send further messages.

[END]

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1. If the message is an SMS message, the sender may choose:
    - a) not to include the physical address in the SMS message itself, provided that such address can be obtained by calling the contact telephone number set out in the SMS message; and/or
    - b) not to include the contact telephone number in the main text of the SMS message, but rather in the address field of the SMS message. Please see the definitions of “commercial electronic message” and “SMS message” in section 3 of the UEMR when applying section 5(5) of the UEMR to commercial electronic messages sent as SMS messages
  2. The unsubscribe facility should be capable of receiving an unsubscribe request transmitted from the same telecommunications device that received the message. For further guidance on the type of unsubscribe facility to be provided in different types of messages, please refer to the CoP. Having said that, the UEMR has specifically mentioned that if the message is an SMS message, the unsubscribe facility must be a Hong Kong telephone number capable of receiving unsubscribe requests made orally or by entering key inputs.