

Unsolicited Electronic Messages Ordinance (Cap. 593)

**Code of Practice on
Sending Commercial Electronic Messages**

Pursuant to sections 29(3), 29(4) and 29(5) of the Unsolicited Electronic Messages Ordinance (Cap. 593), notice is hereby given that the Communications Authority has approved the following revised Code of Practice on Sending Commercial Electronic Messages under the Unsolicited Electronic Messages Ordinance (Cap. 593). The revised Code of Practice shall take effect on 30 November 2013 (i.e. three months after revision).

**Code of Practice
on
Sending Commercial Electronic Messages under
the Unsolicited Electronic Messages Ordinance (Cap. 593)**

(Revised on 30 August 2013)

Preamble

- 1 This Code of Practice (“CoP”) is approved and issued by the Communications Authority (“CA”) under section 29 of the Unsolicited Electronic Messages Ordinance (Cap. 593) (“Ordinance”) for the purpose of providing practical guidance to senders of commercial electronic messages on certain requirements in the Ordinance as well as the Unsolicited Electronic Messages Regulation (“Regulation”) relating to sender information and unsubscribe facility as described therein.

- 2 Pursuant to section 30 of the Ordinance, a failure on the part of any person to observe any provision of this CoP shall not of itself render that person liable to legal proceedings. However, if, in any legal proceedings, the court is satisfied that a provision of this CoP is

relevant to determining a matter that is in issue in the proceedings, this CoP is admissible in evidence in the proceedings and proof that the person contravened or did not contravene a relevant provision of this CoP may be relied on by any party to the proceedings as tending to establish or negate that matter.

- 3 Senders of commercial electronic message must refer to the statutory requirements in the Ordinance and the Regulation. Without prejudice to the generality of the Ordinance and the Regulation, nothing in this CoP shall absolve any person from complying with the Ordinance or the Regulation or other applicable laws of Hong Kong.

Interpretations

- 4 In this CoP, unless the context otherwise requires –

“address field”, in relation to an SMS message, means the information that is displayable and attached to the message transmitted to the recipient, but is not part of the main text of the SMS message. For the avoidance of doubt, the address field of an SMS message may or may not be numerical;

“commercial electronic message”, in relation to an SMS message and other short messages, includes the main text and any displayable information attached to the message transmitted to the recipient;

“other short message” is a short message other than an SMS message and may contain text, graphic / images and audio / video file clips. This includes, *inter alia*, multimedia message service (“MMS”) message and any short message conveyed via a variety of on-line messaging platforms available for smartphones;

“SMS message” has the meaning assigned to it by section 3 of the Regulation;

“unsubscribe facility” has the meaning assigned to it by section 9 of the Ordinance;

“unsubscribe facility statement” means the statement required to be included in a commercial electronic message under section 9(1)(a) of the Ordinance.

Do-Not-Call Registers

4A. Pursuant to section 31 of the Ordinance, the CA has established three do-not-call registers (“DNCRs”), namely:

- (a) DNCR for pre-recorded telephone messages - the electronic addresses listed in the relevant register are telephone numbers of Hong Kong for not receiving pre-recorded telephone messages;
- (b) DNCR for facsimile messages - the electronic addresses listed in the relevant register are telephone numbers of Hong Kong for not receiving facsimile messages; and
- (c) DNCR for short messages - the electronic addresses listed in the relevant register are telephone numbers of Hong Kong for not receiving SMS messages and other short messages.

Pursuant to section 11 of the Ordinance, a person should not send a commercial electronic message that has a Hong Kong link to an electronic address that, at the time the message is sent, is listed in the relevant DNCR for not less than 10 working days, unless the registered user of the electronic address has given his/her consent to the sending of the message. To ensure compliance with section 11 of the Ordinance, a sender of commercial electronic messages should cleanse his/her distribution list of electronic addresses against the

relevant DNCR. The Ordinance is technology neutral and covers all types of commercial electronic messages irrespective of the technology used by the senders. Information about subscription to the DNCRs can be found at: http://www.ofca.gov.hk/en/industry_focus/uemo/dnc_industry/information_for_senders/index.html.

Provision of Accurate Sender Information

5 Relevant Provisions of the Ordinance and the Regulation

- 5.1 The sender of a commercial electronic message that has a Hong Kong link must provide clear and accurate sender information in the message and the relevant provisions are:
- section 8 of the Ordinance; and
 - sections 5, 6 and 8 of the Regulation.

6 Guidelines under this CoP

- 6.1 If the message is a facsimile, the message should contain:
- (a) all sender information being prominently displayed either at the top, or at the bottom, of the first page of the facsimile message and reasonably visible in terms of the font size, position and contrast; and
 - (b) the telephone numbers from and to which the facsimile message is sent to enable easy identification by the recipient as to whether the message is sent to one of his/her numbers.
- 6.2 If the message is an email, all sender information should be:
- (a) prominently displayed either at the top, or at the bottom, of the

body of the email message; and

- (b) reasonably visible in terms of the font size, position and contrast/colour.

6.3 If the message is a voice or video telephone call¹, and

- (a) if the sender information is voice-based, it should be presented at such speed so as to be reasonably audible; or
- (b) if the sender information is text/image-based, it should be:
 - (i) reasonably visible in terms of the font size, position and contrast/colour;
 - (ii) separate and distinguishable from the commercial content of the message; and
 - (iii) displayed long enough for the recipient to read the information.

6.4 If the message is an SMS message, the contact telephone number of the sender should be presented in digits in the main text of the SMS message:

- (a) with a preceding label of either “查詢 EN” or “EN 查詢”; or
- (b) with a preceding label of “查詢” or “EN”, or a preceding label with the meaning of “Enquiry” in any language other than Chinese and English, if the conditions specified in section 6(2)(a), (b) or (c) of the Regulation are fulfilled².

¹ Section 8(2) of the Regulation requires sender information to be presented at the beginning of the message together with the unsubscribed facility statement in the prescribed order.

² Section 6(2) of the Regulation provides that the sender information to be included in a commercial electronic message 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.

Apart from the sender's contact telephone number, the main text of the SMS message must also include other sender information³. However, if the address field of the SMS message already displays some of the sender information, for example, the sender's contact telephone number (with or without the preceding label of “查詢EN”, “EN 查詢”, “查詢” or “EN”) or the sender's name, there is no need to repeat such information in the main text of an SMS message. The reason is that, the address field displayed and attached to the SMS message transmitted to the recipient is considered as part of the “commercial electronic message”. Hence, there is no need to repeat the sender information in the main text if it is already displayed in the address field of the SMS message.

Furthermore, 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.

- 6.5 For a message that is not covered by paragraphs 6.1-6.4 of this CoP,
- (a) if the sender information is voice-based, it should be presented at such speed so as to be reasonably audible; or
 - (b) if the sender information is text/image-based, it should be:
 - (i) reasonably visible in terms of the font size, position and contrast/colour;
 - (ii) separate and distinguishable from the commercial content of the message; and
 - (iii) displayed long enough for the recipient to read the information.

For the avoidance of doubt, MMS messages and other short messages are not covered by paragraphs 6.1-6.4 of this CoP and are therefore

³ For details, please refer to section 5 of the Regulation.

subject to the requirements specified in this paragraph.

Unsubscribe Facility and Unsubscribe Facility Statement

7 Relevant Provisions of the Ordinance and the Regulation

7.1 A person shall not send a commercial electronic message that has a Hong Kong link unless the message contains an unsubscribe facility and an unsubscribe facility statement that comply with the requirements under:

- section 9 of the Ordinance; and
- sections 7, 8 and 9 of the Regulation.

8 Guidelines under this CoP

8.1 If the message is a facsimile,

- (a) at least one unsubscribe facility should be a Hong Kong facsimile number; and
- (b) the unsubscribe facility statement is considered clear and conspicuous if such statement is:
 - (i) reasonably visible in terms of the font size, position and contrast;
 - (ii) separate and distinguishable from the commercial content of the message; and
 - (iii) placed either at the top, or at the bottom, of the first page of the facsimile message.

8.2 If the message is an email,

- (a) at least one unsubscribe facility should be an email address, a

web page or a web address; and

- (b) the unsubscribe facility statement is considered clear and conspicuous if such statement is:
 - (i) reasonably visible in terms of the font size, position and contrast/colour;
 - (ii) separate and distinguishable from the commercial content of the message; and
 - (iii) placed either at the top, or at the bottom, of the body of the email message.

8.3 If the message is a voice or video telephone call,

- (a) at least one unsubscribe facility should be activated by key input of a specified one-digit number, and 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. Furthermore, the recipient should be considered as having sent the unsubscribe request to the sender once the specified key has been pressed by the recipient when the rest of the message is being played; and
- (b) the unsubscribe facility statement⁴ is considered clear and conspicuous:
 - (i) if it is presented at such speed so as to be reasonably audible when such statement is voice-based; or
 - (ii) if it is:
 - (A) reasonably visible in terms of the font size, position and contrast/colour;
 - (B) separate and distinguishable from the commercial content of the message; and
 - (C) displayed long enough for the recipient to read the statement,

⁴ Section 8(2) of the Regulation requires unsubscribe facility statement to be presented at the beginning of the message together with the sender information in the prescribed order.

when such statement is text/image-based.

- 8.4 If the message is an SMS message, the unsubscribe facility statement is considered clear and conspicuous if it is displayed in the main text of the SMS message in the form of a Hong Kong telephone number serving as the unsubscribe facility in digits and is:
- (a) preceded by a label of either “取消UN” or “UN 取消”; or
 - (b) preceded by a label of “取消” or “UN”, or preceded by a label with the meaning of “Unsubscribe” in any language other than Chinese and English, if the conditions specified in section 7(2)(a), (b) or (c) of the Regulation are fulfilled⁵.

For a long SMS message that is split into two or more transmissions, the unsubscribe facility statement must be included in the first transmission of the SMS message.

If the address field of the SMS message already displays the telephone number serving as the unsubscribe facility (with or without the preceding label of “取消UN”, “UN 取消”, “取消” or “UN”), there is no need to repeat such number in the main text of the SMS message.

Furthermore, if the telephone number serving as the unsubscribe facility is the same as the contact telephone number and such telephone number is not displayed in the address field of the SMS message, such number should be presented in digits in the main text of the SMS message once only,

- (a) preceded by a label of either “查詢/取消 EN/UN” or “EN/UN 查

⁵ Section 7(2) of the Regulation provides the unsubscribe facility statement to be included in a commercial electronic message 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 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.

詢/取消”; or

- (b) preceded by a label of “查詢/取消” or “EN/UN”, or preceded by a label with the meaning of “Enquiry/Unsubscribe” in any language other than Chinese and English, if the conditions specified in section 6(2)(a), (b) or (c) and section 7(2)(a), (b) or (c) of the Regulation are fulfilled.

8.5 For a message that is not covered by paragraphs 8.1-8.4 of this CoP,

- (a) if the unsubscribe facility statement is voice-based, it is considered clear and conspicuous if it is presented at such speed so as to be reasonably audible; or
- (b) if the unsubscribe facility statement is text/image-based, it is considered clear and conspicuous if it is:
 - (i) reasonably visible in terms of the font size, position and contrast/colour;
 - (ii) separate and distinguishable from the commercial content of the message; and
 - (iii) displayed long enough for the recipient to read the statement.

For the avoidance of doubt, MMS messages and other short messages are not covered by paragraphs 8.1-8.4 of this CoP and are therefore subject to the requirements specified in this paragraph.

8.6 If a telephone number or a facsimile number is provided as the unsubscribe facility, the 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 used as the unsubscribe facility (and the relevant human resources if applicable) so that the unsubscribe facility has adequate capacity to receive the incoming unsubscribe requests.

8.7 To facilitate compliance with section 9(3) of the Ordinance, for the records of unsubscribe requests, if they are made to the designated unsubscribe facility:

- (a) over telephone, the telephone conversation should be recorded using a voice recorder and be kept in its original format or converted to a digital voice file for storage;
- (b) by facsimile, a copy should be kept in its original format or converted to an image or PDF (portable document format) file for storage;
- (c) by SMS or other short messages, the content of the SMS/other short message should be retained and kept in its original format for storage;
- (d) by email or using the hyperlink provided, the content of the email message or the content returned by the web page of the hyperlink should be retained and kept in its original format for storage; or
- (e) by pressing a key during listening to a pre-recorded telephone message, a data record should be kept showing, among other things, the date, time and the called telephone number for which the unsubscribe request was received.

The records should be kept for at least 3 years after receipt.

Communications Authority

30 August 2013