

**Proposed Revisions of the Code of Practice
on Sending Commercial Electronic Messages under
the Unsolicited Electronic Messages Ordinance
Public Consultation Paper**

1 March 2013

Purpose

This paper consults the public and the senders of commercial electronic messages (“CEMs”) on the proposed revisions of the Code of Practice issued under the Unsolicited Electronic Messages Ordinance (Cap. 593) (“UEMO”) for providing practical and updated guidance about the sending of CEMs in compliance with the UEMO.

Background

2. The UEMO which regulates the conducts of sending of CEMs and related activities came into full operation in December 2007. Examples of CEMs are facsimile messages, pre-recorded telephone messages, short messages and email messages. Pursuant to section 29 of the UEMO, the former Telecommunications Authority (“TA”)¹ issued a Code of Practice (“CoP”) in November 2007 on sending CEMs after consultation with the public and the industry. The CoP was last revised in January 2008².

3. Under section 30 of the UEMO, a failure on the part of any person to observe any provision of an approved 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 an approved CoP is relevant to determining a matter that is in issue in the proceedings, the CoP is admissible as evidence in the proceedings and the proof that the person contravened or did

¹ With effect from 1 April 2012, all duties and powers of the former TA are conferred on the Communications Authority, and all duties and powers of the former Office of the Telecommunications Authority are conferred on the Office of the Communications Authority, the executive arm of the Communications Authority pursuant to the Communications Authority Ordinance (Cap 616).

² The revision was made pursuant to the Unsolicited Electronic Messages (Amendment) Regulation.

not contravene a relevant provision of the CoP may be relied on by any party to the proceedings as tending to establish or negate that matter.

4. From time to time, the Office of the Communications Authority (“OFCA”) receives enquiries about the application of the CoP in respect of the sending of CEMs in compliance with the UEMO. Taking into account the latest development of CEMs, a number of revisions of the CoP are proposed with a view to facilitating compliance of the UEMO by CEM senders. This consultation paper is issued to solicit views on the proposed revisions of the CoP.

5. For the avoidance of doubt, all the views expressed in this consultation paper are for the purpose of discussion and consultation only. Nothing in this consultation paper represents or constitutes a direction or decision made by the Communications Authority (“CA”), and the consultation contemplated by this paper is without prejudice to the exercise of the CA’s powers under the UEMO and the regulations made pursuant to the UEMO.

Subject Matters that Require Revisions of the CoP

Cleansing of Sending List

6. The CA has established three do-not-call registers (“DNCRs”), namely the DNCRs for pre-recorded telephone messages, facsimile messages and short messages respectively in 2008. Before sending CEMs, senders have to cleanse their distribution lists of electronic addresses against the relevant DNCR. However, such a requirement is not included in the CoP at present as it was issued prior to the establishment of all these DNCRs. It is proposed that the CoP be revised to require CEM senders to cleanse their distribution lists of electronic addresses against the relevant DNCR.

Inclusion of sender and recipient number for facsimile messages

7. OFCA handles reports received from the general public about suspected contraventions of the UEMO. In many cases, it is the activation of the call forwarding and/or the duplex ringing number of a telephone line which results in misguided complaints against facsimile message senders. Some

examples illustrating the different scenarios are at **Appendix 1**. In this regard, some overseas jurisdictions, such as Australia³, require commercial facsimile message sender to include the intended recipient number in each message to facilitate easy identification by the recipient as to whether the message is addressed to him/her. It is noted that most facsimile machines support automatic insertion of the calling and called telephone numbers in the facsimile message header. For facsimile messages sent by computer programs, it may call for some programming work so as to comply with this requirement.

8. Pursuant to section 8 of the UEMO, a CEM shall contain clear and accurate sender information. It is proposed that the CoP should be amended to require CEM senders to provide the calling (i.e. the telephone number used for sending the facsimile message concerned) as well as called (i.e. the recipient telephone number) numbers in the sender information. So doing will enable the recipient of the message to identify the existence of any duplex ringing number or activation of call forwarding in the telephone line setting and ascertain whether the sender has breached the provision of the UEMO in sending CEMs.

Regulation of “other short messages”

9. Short-Message-Service (“SMS”) has been used for many years to transmit plain text over mobile telecommunications networks. In recent years, Multimedia-Message-Service (“MMS”) is also available for conveyance of multimedia messages⁴. With the prevailing use of mobile data services and smartphones nowadays, a variety of on-line messaging services have emerged in the market, offering services similar to SMS and MMS. A commonality of these on-line messaging services, such as WhatsApp Messenger, is that mobile phone numbers are used for sending or receiving messages. As UEMO is technology neutral, its scope extends to all types of electronic messages that are commercial in nature. In this regard, it is proposed that the CoP be revised to define “other short messages” as all forms of short messages other than SMS. These cover MMS messages as well as those conveyed via on-line messaging platforms.

³ See http://www.acma.gov.au/WEB/STANDARD/pc=PC_312519

⁴ Multimedia messages may contain text, graphic, images, video and/or audio clips.

Storage of Records of Unsubscribe Requests

10. Pursuant to section 9(3) of the UEMO, a person to whom an unsubscribe request is sent shall ensure that a record of the request is retained in the format in which it was originally received, or in a format that can be demonstrated to represent accurately the information originally received, for at least three years after its receipt. From time to time, there are enquiries from CEM senders about the appropriate format and means for the storage of unsubscribe requests under different scenarios. To facilitate CEM senders to comply with the relevant requirement, it is proposed that the CoP should be revised to provide guidance on the form and means for storage of unsubscribe requests.

The Revised CoP

11. To address the above mentioned issues, a draft revised CoP is at **Appendix 2** to provide among others practical and updated guidance on -

- (a) the need for senders of CEM to use the respective DNCRs to cleanse the sending lists in order to comply with the requirement of section 31 of the UEMO;
- (b) the inclusion of additional information by commercial facsimile message senders to avoid misguided complaints;
- (c) the application of the UEMO to the sending of commercial short messages based on emerging and new technologies; and
- (d) the appropriate form and means for the storage of unsubscribe requests under different scenarios.

Questions are posed in the draft revised CoP to invite further inputs on the revisions of the CoP.

Invitation for Comments

12. Any person wishing to respond to this consultation paper should do so on or before 12 April 2013. OFCA reserves the right to publish all views and comments and to reveal the identity of each submission. Accordingly, any part of a submission considered commercially confidential should be clearly marked together with the reasons for such claims. The CA will take such markings into consideration in making its decision as to whether or not to disclose such information. Submissions should be addressed to -

Office of the Communications Authority
25/F, Wu Chung House,
213 Queen's Road East,
Wanchai
Hong Kong
Attention: Senior Regulatory Affairs Manager
Unsolicited Electronic Messages Section
Facsimile: 2838 5004
Email: consult-uemo-cop@ofca.gov.hk

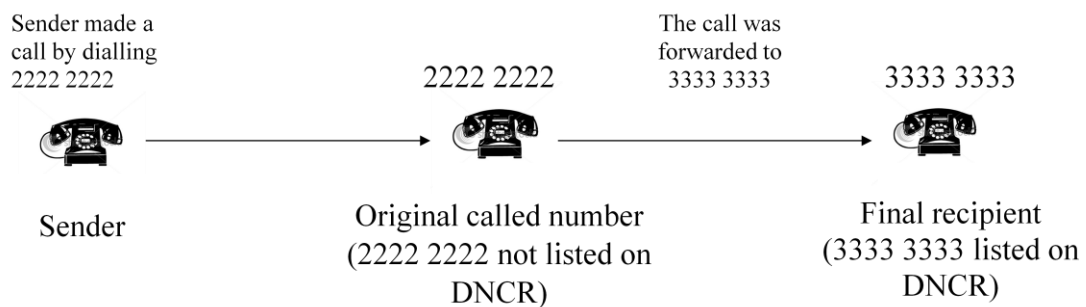
13. An electronic copy of the submission should be provided by email to the address indicated above.

Office of the Communications Authority
1 March 2013

Examples of Cases involving Call Forwarding and Duplex Ringing

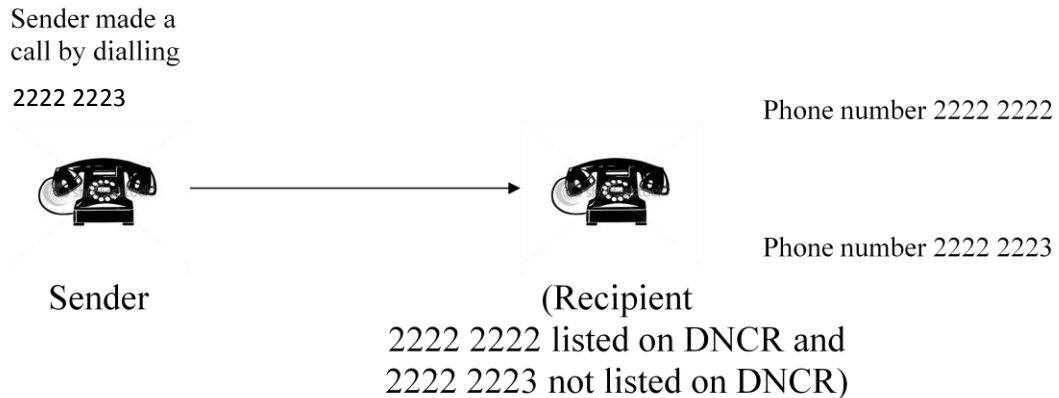
(A) Simple call forwarding or duplex ringing involving the DNCR

Scenario 1: Call forwarding



- A sender sends a commercial facsimile message to the number “2222 2222” which is not listed in the DNCR.
- The telephone line of “2222 2222” has activated call forwarding, as a result of which all calls to it are forwarded to the number “3333 3333”, which is listed in the DNCR.
- The recipient reports to OFCA that the sender has contravened section 11 of the UEMO (i.e. CEMs must not be sent to an electronic address listed in the DNCR).

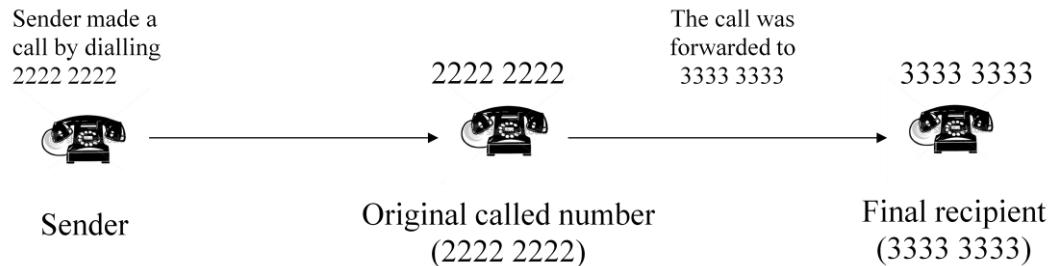
Scenario 2: Duplex ringing



- A user has been provided with two telephone numbers (i.e. “2222 2222” being the prime telephone number and “2222 2223”) for his single telephone line. However, he has forgotten about the arrangement and has only registered number “2222 2222” onto the DNCR.
- A sender sends a commercial facsimile message to the number “2222 2223” which is not listed in the DNCR.
- The recipient receives the facsimile message due to the duplex ringing arrangement and he has no recollection of the existence of an associated number of “2222 2223” of his telephone line.
- The recipient reports to OFCA that the concerned sender has contravened section 11 of the UEMO (i.e. CEMs must not be sent to an electronic address listed in the DNCR).

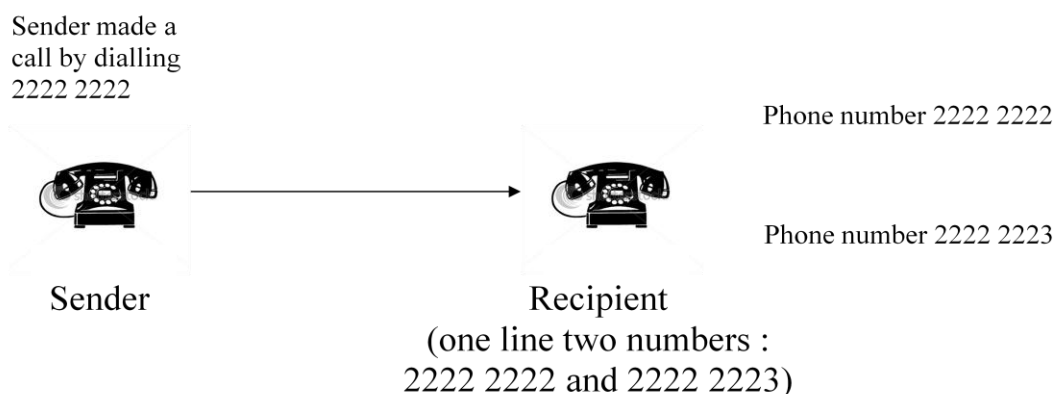
(B) Mismatch on the unsubscribe request due to call forwarding or duplex ringing

Scenario 1: Call forwarding



- A sender follows the UEMO requirements to send a commercial facsimile message with an unsubscribe facility to number “2222 2222”.
- The telephone line of “2222 2222” has activated call forwarding and as a result of which all calls to it are forwarded to the number “3333 3333”.
- The recipient of the facsimile message makes an unsubscribe request to the sender, for him not to receive further commercial facsimile messages on his number “3333 3333”. However, he has forgotten about the call forwarding setting previously activated on his other telephone number “2222 2222”.
- The sender receives and honours the unsubscribe request, in not sending further commercial facsimile messages to number “3333 3333”.
- The concerned sender continues to send commercial facsimile messages to the number “2222 2222” which is not listed in the DNCR and from which he has received no unsubscribe request.
- The recipient receives further facsimile messages on the number “3333 3333” from the sender after ten working days of making the unsubscribe request. He reports to OFCA that the sender concerned has contravened section 10 of the UEMO (i.e. CEMs must not be sent after an unsubscribe request is sent).

Scenario 2: Duplex ringing



- A user has been provided with two telephone numbers (i.e. “2222 2222” being the prime number and “2222 2223”) for his single telephone line.
- A sender follows the UEMO requirement to send a commercial facsimile message with an unsubscribe facility to the number “2222 2222”.
- The recipient of the facsimile message makes an unsubscribe request to the sender, for him not to receive further commercial facsimile messages on his telephone number “2222 2222”.
- The sender receives and honours the unsubscribe request by not sending further commercial facsimile messages to the number “2222 2222”.
- The concerned sender sends further facsimile messages to the number “2222 2223” which is not listed in the DNCR and from which he has not received unsubscribe request.
- The recipient receives further facsimile messages from the sender after ten working days of making the unsubscribe request. He reports to OFCA that the sender concerned has contravened section 10 of the UEMO (i.e. CEMs must not be sent after an unsubscribe request is sent).

(C) Other more complicated cases involving hunting groups (i.e. groups of telephone lines with a pre-defined call-forwarding arrangement) which is a combination of scenarios (A) and (B) above.

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

(Revised on [dd mmm 2013])

Preamble

- 1 This Code of Practice (“CoP”) is approved and issued by the ~~Telecommunications~~ Communications Authority (“~~TA~~—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 ~~For the avoidance of doubt, SMS message does not include multimedia message service (“MMS”) message;~~

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

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 this section of the UEMO, a sender of commercial electronic messages should cleanse his/her distribution list of electronic addresses against the relevant DNCR. The UEMO 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.

Question (1): Are there any matters which should be included in paragraph 4A above to provide practical guidance in relation to the use of DNCRs in sending CEMs? If yes, please provide reasons for your suggestion.

Provision of Accurate Sender Information

5 Relevant Provisions of the Ordinance and the Regulation

- 5.1 The sender of 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, ~~all sender information should be 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.

~~;~~ and

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

Question (2): In relation to the proposed revision set out in paragraph 6.1(b) above, do you agree that the proposal will reduce the burden on CEM senders in answering misguided complaints against them and enhance the awareness of the recipient to avoid making misguided complaints? Is there any other proposal that you would like to make? If yes, please provide your proposal with reasons.

- 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 call⁵, 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

⁵ 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.

- (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 fulfilled⁶.

Apart from the sender’s contact telephone number, the main text of the SMS message must also include other sender information⁷. 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

⁶ 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.

⁷ For details, please refer to section 5 of the Regulation.

- (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 subject to the requirements specified in this paragraph.

Question (3): Are there any matters which should be included in paragraph 6.5 above to provide practical guidance in relation to the sending of other short messages? If yes, please provide reasons for your suggestion.

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 statement⁸ 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,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 fulfilled⁹.

⁸ 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.

⁹ 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

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) uses or is able to communicate in that language.

- (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.

Question (4): Are there any matters which should be included in paragraph 8.5 above to provide practical guidance in relation to the unsubscribe facility statement for other short messages? If yes, please provide reasons for your suggestion.

- 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 (and the relevant human resources if applicable) so that the unsubscribe facility has adequate capacity to receive the incoming unsubscribe requests.
- 8.7 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 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 webpage 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 response was received.

Question (5): Are there any matters which should be included in paragraph 8.7 above to provide practical guidance in relation to the retention and storage of unsubscribe requests? If yes, please provide reasons for your suggestion.