

Unsolicited Electronic Messages Ordinance
Guide for the Public

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Chapter 1 - Introduction

1. There are many types of unsolicited electronic messages, such as electronic marketing messages promoting products or services that are sent as text or pre-recorded voice messages to telephones, fax machines or email addresses.
2. To contain the problem of unsolicited electronic messages, the Unsolicited Electronic Messages Ordinance (UEMO) was enacted on 23 May 2007 with an aim to regulate the sending of commercial electronic messages (CEMs). It prohibits professional spamming activities such as the use of unscrupulous means to expand the reach of CEMs and fraudulent activities related to the sending of multiple CEMs. Moreover, the UEMO implements the rules in sending CEMs, such as providing accurate sender information and unsubscribe facilities as well as the launch of do-not-call registers. The UEMO came into full force on 22 December 2007.
3. The Unsolicited Electronic Messages Regulation (UMER) was also made to supplement the rules for the sending of CEMs set out in the UEMO and has come into operation on 22 December 2007.
4. In addition to the UEMO and UEMR, there is also a code of practice (“CoP”) which was issued by the Telecommunications Authority (“TA”) in November 2007. The CoP aims to provide guidance in respect of the application or operation of the provisions of the UEMO.
5. This Guide, together with the summary of the relevant requirements of the UEMO and UEMR, illustrations and advice, are for general reference only. Readers should 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, the information in this Guide should not be regarded as a substitute for legal advice. Readers should consider seeking independent legal advice when necessary.

Chapter 2 - Scope of the UEMO

6. The UEMO only regulates the sending of “commercial electronic messages” with a “Hong Kong link”. Subject to some exemptions, a message falls within the ambit of the UEMO if it meets all three criteria listed below. Therefore, members of the public can assess a message against the following three criteria:

Criterion 1- message type

7. The UEMO covers all types of electronic messages sent over a public telecommunications service, including but not limited to:

- pre-recorded voice/video messages sent to telephones;
- short messages sent to fixed line or mobile phones, or MMS messages
- faxes; and
- emails.

Criterion 2 – message content

8. The UEMO covers “commercial electronic messages” which include messages to advertise or promote goods, services or facilities in the course of, or in the furtherance of, any business (section 2 of the UEMO).

Criterion 3 – message connection with Hong Kong

9. In general, a message has a “Hong Kong link” if it:

- (i) originates in Hong Kong;
- (ii) is sent to Hong Kong; or
- (iii) is sent to a Hong Kong telephone or fax number. So when you are abroad and using mobile roaming services, the UEMO will still protect you no matter where you receive CEMs provided that your mobile number is a Hong Kong mobile number.

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

Exemptions:

10. The UEMO contains a list of exempted electronic messages in Schedule 1, for example:

- (i) Person-to-person interactive calls;
- (ii) Messages sent in response to the recipient's specific requests, such as fax-on-demand;
- (iii) Messages such as invoices or receipts to confirm a commercial transaction that the recipient has previously agreed to enter into with the sender; and
- (iv) Sound broadcasting services and television programme services.

Chapter 3 - Protection against the unsolicited electronic messages

Tips for protecting you against unsolicited commercial electronic messages

11. The general tips are:

Do

- make unsubscribe requests to senders if you do not wish to receive further CEMs from them (subject to the “Don’t” regarding emails)
- add your fax and/or telephone numbers to the do-not-call registers if you do not wish to receive CEMs from all senders (except those messages to which consent has been given)
- report contravention to the Office of the Telecommunications Authority (OFTA) if senders do not honour your unsubscribe requests or your registration onto the do-not-call registers

Don’t

- reply to emails or use the unsubscribe facility in emails sent from dubious sources
- disclose your email addresses or other personal electronic addresses too readily without exercising your vigilance

Identifying the message sender

12. To enable the public to know the source of messages, senders of commercial electronic messages are required to provide the sender’s name, contact telephone number and address in the messages. If the message is an email, the sender is also required to provide a contact email address (section 8 of the UEMO and section 5 of the UEMR). Furthermore, if the message is a fax or a pre-recorded telephone message, the sender must not conceal or withhold the calling line identification (“CLI”) information (section 13 of the UEMO).

Unsubscribe facility:

13. If you do not wish to receive further CEMs from a sender, you can make an unsubscribe request to him. The UEMO requires senders of CEMs to provide an **unsubscribe facility** for recipients to submit unsubscribe request. The sender shall cease sending you further CEMs within 10 working days from the day the unsubscribe request is sent (section 10 of the UEMO). After you have made an unsubscribe request, please keep a copy if possible.

14. If you receive CEMs through SMS, you can make unsubscribe request orally or by entering key input through a Hong Kong telephone number provided in the message (section 9 of the UEMR). If the sender provides you a telephone number which is capable of receiving SMS

messages only for the unsubscribe purpose, you can report the case to the OFTA.

15. For other types of messages, the sender has to provide you with the unsubscribe facility that is capable of receiving an unsubscribe request transmitted from the telecommunications device that is used by you to access the message (section 9(1) of the UEMR). For example, if you receive a CEM through fax, the fax sender should provide a Hong Kong fax number for you to make the unsubscribe request by fax.

16. For emails, in order to protect yourself against email containing malware or links to website containing virus, you should not open or reply to emails or use the unsubscribe facility in emails sent from unknown sources. You should use email filtering software to block or screen out such messages and install antivirus and anti-spyware software to increase protection against malware. If you wish to know more tips on handling unsolicited emails, please visit our anti-spam website (www.antispam.gov.hk).

Do-not-call registers:

17. You can register your fixed line numbers, mobile numbers and/or fax numbers in the do-not-call registers to notify all senders of CEMs that you do not wish to receive such messages. If senders of CEMs still send messages (except those messages to which consent has been given) to your registered number on or after the protection commencement date, you may lodge a complaint with OFTA.

18. If your numbers have been registered onto the do-not-call registers for 10 working days or longer, all senders should not send any CEMs to you unless they have obtained your consent (section 11 of the UEMO). If you wish to receive CEMs from any individual senders, you can give consent to them and there is no need for you to de-list your numbers from the do-not-call registers.

19. After registering your numbers onto the do-not-call registers, the registration will remain valid until you cancel the registered number from the do-not-call registers. If you wish to cancel the registration of your number, you can call the registration hotline and select the option “to cancel a registered number” in the voice menu.

20. You can also check the status of registration of your number by calling the registration hotline from the phone or fax machine of the number that you want to check. Alternatively, you may check the registration status at <http://www.dnc.gov.hk/>.

Reporting contravention

21. Under the UEMO, senders have to follow the rules in sending CEMs. You can make reports to OFTA if you:

- continue to receive CEMs from a sender although you have made an unsubscribe request to him for more than 10 working days (section 10 of the UEMO);
- receive CEMs after you have added your telephone / fax numbers onto the do-not-call registers for at least 10 working days, unless the sender has obtained your consent to send CEMs (section 11 of the UEMO);
- receive CEMs which do not include sender's information or unsubscribe facilities (sections 8 and 9 of the UEMO); or
- receive commercial fax messages or pre-recorded telephone calls without CLI (section 13 of the UEMO).

22. To report any contravention, you can fill in a form posted on OFTA's website (http://www.ofta.gov.hk/en/enq_help/uem.html) or obtainable through the fax-on-demand service (please call 2961 6333). The form can be filled in online or can be sent:

by post to: UEM Team
OFTA, 29/F, Wu Chung House, 213 Queen's Road East,
Wan Chai, Hong Kong;
by fax to: 3155 0956; or
by email to: uem-report@ofta.gov.hk

You may also report any contravention by a letter to the above postal address. The letter should include the following information:

- your full name;
- your postal address, contact telephone number, fax number or email address;
- the type of message received, receiving electronic address, the date and time the message was received, and other contact information provided in the message, such as telephone number;
- details of the suspected breach; and
- any other documents that would assist us to handle your report, such as the fax received.

In case you have difficulty in expressing yourself in writing, you may contact OFTA by calling 29616333 (from 8:30am to 5:45pm, Monday to Friday except public holidays). Our officer can help to fill in the report form for you. To ensure accuracy, the completed form will be sent by

post or by fax to you for your confirmation and signature.

Claims of the loss or damages

23. Any person affected by the unsolicited electronic messages sent in contravention of the provisions of the UEMO has the right to make civil claim for loss or damages against the sender of the message, irrespective of whether the sender has been convicted of any offence (section 57 of the UEMO). If the amount of monetary claim is less than \$50,000, he/she can make the claim in the Small Claims Tribunal.

Other Types of Unsolicited Electronic Messages

Person-to-person telemarketing calls not included

24. At this stage, the UEMO does not regulate person-to-person telemarketing calls. However, if your personal data, such as name and telephone numbers, are used by the sender for marketing purpose, you may exercise your right under Personal Data Privacy Ordinance to ask the sender to cease to use your personal data for direct marketing purpose. If the sender continues to call you, you may complain to the Privacy Commissioner. For more information, please refer to the website of the Office of the Privacy Commissioner for Personal Data at <http://www.pcpd.org.hk/>.

Phishing or other scam emails

25. Phishing or scam email is not regulated under the UEMO. In view of its fraudulent nature, it falls into the scope of the general criminal law and complaints should be made to Hong Kong Police (<mailto:crimeinformation@police.gov.hk>).

Chapter 4 - Further Information

26. For further information on unsolicited electronic messages, please visit the OFTA website at <http://www.ofta.gov.hk/en/uem/main.html> or call our hotline 2961 6333 (press 3 for English then 4 for UEM matters) for details. For more information on the do-not-call registers, please visit <http://www.dnc.gov.hk/>.