

For information

Consumer Protection

INTRODUCTION

This paper outlines Government's policy on consumer protection, with particular reference to the functions and powers of the Consumer Council.

POLICY AND FRAMEWORK

2. The Government is committed to protecting the legitimate interests of consumers. The Economic Services Bureau has since 1 July 2000 taken up the overall policy responsibility for consumer protection.

3. The primary objectives in consumer protection policy is to ensure that the products (and services) procured by consumers are safe, the quality is up to their expectation, and the contract terms are fair. We also ensure that aggrieved consumers have access to conciliation or relevant legal remedies and are given adequate consumer education and information. The Consumer Council assumes the front-line role in handling complaints, mediating in consumer disputes and conducting tests and surveys on products and services.

4. The legal framework for the general protection of consumers include laws that ensure that -

- (a) goods supplied for local consumption satisfy safety standards (e.g. the Consumer Goods Safety Ordinance and the Toys and Children's Products Safety Ordinance);
- (b) goods and services supplied are of reasonable quality (e.g. the Supply of Services (Implied Terms) Ordinance and the Sale of Goods Ordinance); and
- (c) goods and services supplied are offered on fair terms (e.g. the Unconscionable Contracts Ordinance and the Trade Descriptions Ordinance).

These general consumer protection laws are enforced mainly by the Customs and Excise Department.

5. Where more specific consumer protection measures are called for in particular areas, tailor-made provisions are contained in sector-specific laws to ensure that the required protection is in place for consumers in the respective sectors. A wide range of such laws apply to different specific areas. A few examples include legislation which regulates telecommunications business and protects users of telecommunications services (Telecommunications Ordinance) and legislation prescribing safety requirements for electrical products (Electricity Ordinance). Enforcement responsibilities of these sector-specific laws rest with the authorities specified by the respective laws (Office of the Telecommunications Authority and the Electrical and Mechanical Services Department respectively in the above-mentioned examples).

CONSUMER COUNCIL

6. The Consumer Council plays an essential role in protecting consumer interests. The Council is an independent organisation established in 1974. Its functions and powers were formalised with the enactment of the Consumer Council Ordinance in 1977.

Functions and Constitution

7. As set out in Section 4 of the Consumer Council Ordinance, the functions of the Council are to protect and promote the interests of consumers of goods and services and purchasers, mortgagors and lessees of immovable property by –

- collecting, receiving and disseminating information concerning goods and services and immovable property;
- receiving and examining complaints by giving advice to consumers of goods and services and purchasers, mortgagors and lessees of immovable property;
- taking such action as it thinks justified by information in its possession, including tendering advice to the Government or to any public officer;
- encouraging business and professional associations to establish codes of practice to regulate the activities of their members; and

- undertaking such other functions as the Council may adopt with the prior approval of the Chief Executive in Council.

8. There are 22 members in the Council, appointed by the Chief Executive and Financial Secretary of the HKSAR. The Council operates through a structure comprising different functional committees, which may also include co-opted members. The Council Office is headed by its chief executive, who is also appointed by the Chief Executive of the HKSAR. There are eight functional divisions which discharge the full range of the Council's functions.

Work of the Council

9. The Council is funded mainly by an annual subvention from Government. Its work ranges from developing new consumer protection initiatives to conducting studies on trade practices and matters affecting consumer interests. It mediates in consumer disputes, disseminates information and advice, and organises consumer education activities. It also tests products, conducts in-depth studies and surveys, publishes a consumer magazine "CHOICE", and examines and responds to consultation papers and reports on consumer-related issues.

10. In 2000, the Council handled 19,000 consumer complaints and answered more than 110,000 consumer enquiries. It held 150 consumer education programmes, conducted/answered more than 5,000 press interviews and enquiries, distributed 50,900 pamphlets and circulated 350,000 publications.

11. In recognition that consumers may also require assistance in pursuing their rights for consumer protection under the law, the Consumer Legal Action Fund was set up in 1994 with a \$10 million grant from Government, and with the Consumer Council as trustee administering the fund to assist consumers in taking legal action against unscrupulous traders. Apart from providing actual assistance to consumers in pursuing legal action, the availability of the fund to assist such action can also help to deter suppliers of goods and services from carrying on unscrupulous practices.

Effectiveness of Council's Work

12. Since its establishment in 1974, the Council has had an illustrious track record of performing its functions most effectively.

Apart from researching on consumer matters, disseminating information and helping aggrieved consumers, it has also consistently provided independent and useful advice to Government on issues of consumer interest. With its independent status, the Council is in a good position to be responsive to consumer views, and to express its own considered views publicly. Its independent stance and hard work have also earned the trust of consumers and the respect of suppliers of goods and services.

Additional Powers Proposed

13. The Consumer Council has recently studied how the effectiveness of its work may be enhanced, and has come to the conclusion that, in addition to managing the Consumer Legal Action Fund, the Council should have the power to take legal action on its own initiative to protect consumer interests. The power would enable the Council to apply, on behalf of consumers, to the court to declare certain terms of a contract ineffective (declaratory relief) and/or to issue an injunction to stop unfair business practices (injunctive relief). This is intended to give the Council/consumers an effective leverage to counter business malpractices.

14. The Council has provided an outline proposal to us in this regard. We are discussing further with the Council regarding matters such as the effectiveness of the proposal in enhancing consumer protection, potential change to the Council's current role as an independent mediator, potential impact on the business environment, resource implications, etc.

COMPARISON WITH CONSUMER PROTECTION FRAMEWORK IN PLACES OUTSIDE HONG KONG

15. At Members' request, we have done a quick survey on the consumer protection framework in a number of other places. A table showing the functions and powers of organisations responsible for various aspects of consumer protection in these places is at **Annex**. Generally speaking, our framework has covered all major areas in consumer protection. We have a comprehensive legislative framework to counter conducts infringing consumer interests and a system to ensure product safety. Not least of all, we have established an independent Consumer Council, which provides very effective assistance to consumers and advice to Government on issues of consumer interest.

CONCLUSION

16. Government maintains a close working relationship with the Consumer Council on matters pertaining to consumer protection. Members' views on the functions and work of the Council are welcome.

Economic Services Bureau
11 April 2001

Functions and Powers of Organisations with Consumer Protection Responsibilities

	<i>Hong Kong</i>	<i>Australia</i>	<i>China</i>	<i>United Kingdom</i>	<i>USA</i>
Formulate Consumer Protection Policy	ESB	DT, SGA	SAIC	CAD	SCAS
Enforce Major Consumer-related Laws	C&ED	ACCC, SGA	SAIC, SBQTS	OFT	CPSC, FTC, SGA
Issue Safety Standards	ESB	DT, SGA	SBQTS	TSO	CPSC
Conduct Investigation	C&ED	ACCC, SGA	SAIC, SBQTS	OFT	FTC, SGA
Sue on Behalf of Consumers	no	ACCC, SGA	at discretion of provincial authority	CA*, OFT	CU*, FTC, SGA
Facilitate Establishment of Codes of Practice	CC*	DT, ACCC, SGA	unknown	OFT	FTC, SGA
Handle Complaints	CC*	ACCC, SGA	CCA	OFT, CA*	FTC, SGA
Conduct Mediation	CC*	SGA, IA	CCA	IA	SGA, BBB
Publicise Censure of Conducts Infringing Consumer Rights	CC*	ACCC, SGA, ACA*	CCA	OFT, CA*	FTC, SGA, CU*
Conduct Tests and Research	CC*	ACA*, ACCC, SGA	CCA, SBQTS	CA*	CU*, FTC, SGA
Educate Consumers	CC*	ACCC, SGA, ACA*, DT	CCA, SBQTS	CA*	CU*, FTC, SGA

* Non-government organisation

Key

Hong Kong

C&ED	Customs and Excise Department
CC	Consumer Council
ESB	Economic Services Bureau

Australia

ACA	Australian Consumers Association
ACCC	Australian Competition and Consumer Commission
DT	Department of Treasury
IA	Industry Associations
SGA	State Government (consumer protection) Agencies

China

CAC	Consumers Association of China
SAIC	State Administration for Industry and Commerce
SBQTS	State Bureau of Quality Technical Supervision

United Kingdom

CA	Consumers' Association
CAD	Consumer Affairs Directorate
IA	Industry Associations
OFT	Office of Fair Trading
TSO	Trade Standards Office

United States of America

BBB	Better Business Bureaus
CPSC	Consumer Product Safety Commission
CU	Consumer Union
FTC	Federal Trade Commission
SCAS	Subcommittee on Consumer Affairs of Senate
SGA	State Government (consumer protection) Agencies