

**For discussion on
25 June 2007**

LEGISLATIVE COUNCIL PANEL ON ECONOMIC SERVICES

REVIEW OF CONSUMER PROTECTION LAWS

INTRODUCTION

The Government is pursuing a two-stage approach to enhance the consumer protection regime of Hong Kong. This paper invites Members' views on the areas that require improvement.

BACKGROUND

2. Through the years, we have put in place various pieces of legislation to protect the interest of consumers. These include the Trade Descriptions Ordinance (Cap.362), the Pharmacy and Poisons Ordinance (Cap.138) and the Undesirable Medical Advertisements Ordinance (Cap.231), which aim to prohibit the making of false or misleading representation in trade descriptions for goods generally and prescribe specific requirements for targeted products and services. On account of the relatively weak bargaining position and vulnerability of consumers, we have also enacted legislation to afford further protection to consumers in their contracts with vendors and service providers, such as the Sale of Goods Ordinance (Cap.26), the Control of Exemption Clauses Ordinance (Cap.71) and the Supply of Services (Implied Terms) Ordinance (Cap.457).

3. In recent years, there have been some rapid changes in our consumer market – for example, a fast-growing service sector, the increasingly aggressive marketing and sales practices for both products and services, as well as significant growth in the number of inbound tourists, especially from the Mainland, who are not fully aware of their rights and as informed as local consumers. There is a need to review the adequacy of our existing regulatory regime to ensure that it will continue to afford effective protection to consumers and cater for the wide array of new products and innovative advertisements and marketing.

A TWO-STAGE APPROACH

4. With a view to ensuring that our regulatory regime continues to promote a fair, safe and informed market and to boost the confidence of tourists and citizens in shopping in Hong Kong, the Financial Secretary announced in his Budget Speech of February 2007 that the Consumer Council would conduct a review of existing measures to protect consumer rights, including ways to improve the relevant legislation to combat misleading and undesirable sales practices. This comprehensive review covers a wide range of issues, including the possibility of enacting a comprehensive law on fair trade practices, entailing fundamental changes to the existing legal and institutional framework for consumer protection.

5. As we were pressing ahead with the comprehensive review, several widely reported retail scams on Mainland tourists occurred earlier this year. The Customs and Excise Department (C&ED) and the Police took immediate action to tackle the unscrupulous shops and brought charges against some of them. The Tourism Commission also co-ordinated many initiatives with the tourism industry with a view to weeding out the malpractices. Although these efforts are taking effect, the Government considers it necessary to take urgent action to strengthen our regulatory tools to protect consumers. We have therefore decided to identify some priority legislative changes ahead of the completion of the comprehensive review, so that they could be implemented as soon as possible as stage one improvement measures. We will continue to pursue other improvement measures in the stage two comprehensive review, which we expect would take more time to deliberate and consult the public in view of the more fundamental changes involved.

STAGE ONE REVIEW

6. The Economic Development and Labour Bureau has set up a task force, comprising representatives from the C&ED, the Police, the Department of Justice, the Consumer Council, Hong Kong Tourism Board and the Travel Industry Council of Hong Kong, to identify legislative changes that could be implemented early to tackle the more prevalent malpractices. We expect these changes would involve relatively simple amendments to the existing legislation. Implementation would also be relatively straight-forward as they mainly serve to pinpoint a few areas that were the usual subjects of complaints in recent years. The Government's plan is to draw up and introduce the relevant legislative proposals in the Legislative Council by around end

2007. Subject to consideration by the Legislative Council, they may be enacted before the end of the current term in summer 2008.

Proposed Changes for Stage One

7. The task force has studied the complaints received by the Consumer Council, the C&ED and the Police to identify the common causes of complaints. Taking into account the existing legislative means, the administrative measures in place or being pursued, business operations of retail outlets, enforcement experiences and overseas practices, the task force has identified the following categories of legislative proposals for consideration in stage one -

(a) **Outlawing additional types of misrepresentations**

The «Trade Descriptions Ordinance» has defined certain types of information as “trade descriptions¹”. Making false or misleading representation on them constitutes an offence. The task force has reviewed the complaints received and overseas practices, and considers that the definition should be extended to cover more information categories, such as -

- (i) **Price indication:** Some retail outlets have adopted the sales practice of displaying misleading price indications as a bait to lure consumers to purchase. As the definition of “trade descriptions” does not cover price indication, a clear legislative basis is necessary to enable enforcement against false or misleading representations on price as a result of, for example, failure to display clearly and prominently the unit weight to which the displayed price refers, and displaying a price that does not cover all the non-optional items of a product.
- (ii) **Warranty and after sale services:** The sale of parallel import goods has become increasingly common. They are normally not covered by warranty and after sale services offered by the manufacturers or their agents. For products

¹ “Trade Descriptions” is defined to include: quantity, size or gauge; method, place or date of, manufacturing, production, processing or reconditioning; composition; fitness for purpose, strength, performance, behavior, accuracy or other physical characteristics; testing conducted and the results thereof; approval obtained; person by whom manufactured, produced, processed or reconditioned; and history, including previous use or ownership.

imported by authorized dealers, such services may not be available outside Hong Kong. Including such information in the definition of “trade descriptions” can deter unscrupulous retail outlets from their existing practice of misleading consumers on their availability.

Apart from false or misleading representations on goods, the task force also notices cases of retail outlets making false or misleading claims that they are sponsored by, or affiliated or connected with some celebrities or prestigious organizations. Such type of misrepresentations, usually made to instil a false sense of security in consumers, should be prohibited.

- (b) Providing clear legal definitions for the representation of certain types of products

The «Trade Descriptions Ordinance» empowers the Chief Executive in Council to make orders to define and prescribe detailed information requirements for targeted products. Orders have already been made for gold and platinum. It is observed that some retail outlets have loosely presented their merchandises as certain types of precious gemstones and metal or consisting of such substances. There have also been cases of exaggeration on their quality. The task force recommends making additional orders to cover those precious gemstones that are common subjects of misrepresentation, such as diamond and natural jade. The orders should set out the conditions for using such term or terms which suggest similar meaning and the information that should be provided to consumers. The C&ED is seeking expert opinions on the technical details for the classifications. In addition, the task force sees the need to tighten the existing orders for gold and platinum in the light of the malpractices adopted by a small number of retail outlets, such as confusing consumers on their fineness and presenting white gold as platinum.

- (c) Enhancing the information to consumers and effectiveness of enforcement action for certain product categories

Making false or misleading representation, whether orally or in writing, on trade descriptions like quality, performance and fitness for purpose of products is already an offence under the «Trade Descriptions Ordinance». Successful prosecution is however rare as it is extremely difficult for the enforcement

agency to prove a case without written evidence. To ensure that consumers are provided with truthful information essential to their purchase decisions and to facilitate enforcement, the task force recommends that for certain product categories which are often subjects of complaints, such as mobile phones, digital cameras, digital camcorders and MP3/4 players, retail outlets should be required to write down in the relevant invoices the products' core features and functions as well as the availability of warranty and after sale service.

Moreover, the task force has proposed that retailers should be required to state the country of origin on the invoices if they have made any representation in this regard about these products.

(d) Regular review to cater for new products and features

In proposing the coverage of the legislative amendments, the task force is mindful of the need to strike an appropriate balance between consumer protection and compliance burden of retail outlets. As a start, we propose to target at those product categories and representations that have been subjects of common complaints. Taking into account the rapid changes in our consumer market, the task force recommends that we should review the specified product categories and information requirements under paragraph (c) above regularly and update them as necessary by way of subsidiary legislation to cater for the emergence of new products and features in the future.

STAGE TWO REVIEW: COMPREHENSIVE REVIEW

8. To follow up the initiatives announced by the Financial Secretary, the Consumer Council has set up a dedicated Working Group on Improvement of Consumer Protection Laws, with input from relevant Government departments, to identify areas for improvement in consumer protection against unfair, misleading and deceptive trade practices. With reference to the consumer complaints received and the development of the consumer protection regime in other jurisdictions, the Consumer Council has already started reviewing a wide range of issues, including: (a) regulation of misleading and deceptive advertisements; (b) enhancing protection in our consumer goods and service market; (c) specific consumer protection measures for individual sectors taking into account their specific nature and characteristics; (d) merits of enacting a

comprehensive law on trade practices; and (e) the relevant implementation mechanism of the proposed legislation.

9. The current plan of the Consumer Council is to submit a report on the comprehensive review to the Government by around the end of 2007. Since the comprehensive review might entail changes that have significant implications on the operations of retail and service businesses in Hong Kong, the Government will conduct intensive consultation with stakeholders in drawing up the formal legislative proposals, and will consult Members later.

WAY FORWARD

10. We welcome Members' views on the above subjects. We shall also consult relevant stakeholders before proceeding further.

Economic Development and Labour Bureau
15 June 2007