

立法會 *Legislative Council*

LC Paper No. CB(1)649/07-08(03)

Ref : CB1/ BC/2/07

Bills Committee on Trade Descriptions (Amendment) Bill 2007

Background brief

Purpose

This paper sets out the background of the Trade Descriptions (Amendment) Bill 2007 (the Amendment Bill), and summarizes the major concerns expressed by Members at meetings of the Panel on Economic Development (the Panel)¹ on related issues.

Background

Need to strengthen the consumer protection regime

2. In recent years, there have been repeated incidents in which unscrupulous retailers employ deceptive, misleading and unfair trade practices in the course of their business. The blatant malpractices of some retailers were widely reported in the local and Mainland media, which have given rise to much public concern on the seriousness of the problem. In order to protect both local consumers and tourists, and to uphold Hong Kong's reputation of a "Shoppers' Paradise", the Government considers it necessary to strengthen the consumer protection 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.

3. The Financial Secretary (FS) announced in his Budget Speech of February 2007 that the Consumer Council (CC) would conduct a comprehensive review of existing measures to protect consumer rights, including ways to improve the relevant legislation to combat misleading and undesirable sales practices in order to boost the confidence of tourists and citizens in shopping in Hong Kong. While CC was conducting the review, the Government considered it necessary to take urgent action to strengthen the regulatory tools to tackle the prevalent malpractices of the unscrupulous shops

¹ Formerly known as the Panel on Economic Services

and bring charges against them. The Government therefore decided to pursue a two-stage approach to deal with the matter.

Stage one review

4. The former Economic Development and Labour Bureau has set up a Task Force² to identify priority legislative changes that could be implemented early to tackle the more prevalent malpractices. These changes involve relatively simple and straight-forward amendments to existing legislation, pinpointing mainly a few areas that are the usual subjects of complaints received by CC, the Customs and Excise Department and the Police in recent years.

Stage two review

5. To follow up the initiatives announced by FS in his Budget Speech of February 2007, CC has set up a dedicated Working Group on Improvement of Consumer Protection Laws. The Working Group has already started reviewing the existing measures to protect consumer rights including ways to improving the relevant legislation to curb misleading and undesirable sales practices, and to study the possibility of enacting a comprehensive law on fair-trade practices.

The Amendment Bill

6. The Government has drawn up the relevant legislative proposals covered under *stage one review* and introduced the Amendment Bill into the Legislative Council on 9 January 2008. On 11 January 2008, the House Committee decided that a bills committee be formed to scrutinize the Amendment Bill.

7. The Amendment Bill is to amend and add new provisions to the Trade Descriptions Ordinance (Cap. 362) (TDO). TDO is a major piece of legislation to protect consumers. It prohibits false trade descriptions and misstatements provided in the course of trade. According to the Administration, the existing provisions of TDO are inadequate in dealing with certain trade malpractices where dishonest retailers use misleading or deceptive representations to get consumers to buy goods. The key elements of the Amendment Bill include:

- (a) Amending section 2(1) of TDO to expand the definition of "trade description" to include certain matters relating to warranty and

² The Task Force comprises representatives from the Customs and Excise Department, the Police, the Department of Justice, CC, Hong Kong Tourism Board and the Travel Industry Council of Hong Kong.

after-sale repair and maintenance services for goods. The effect of the amendment is that the provisions of TDO concerning false trade descriptions will apply to false representations relating to after-sale service.

- (b) Adding three new provisions to prohibit retailers from giving misleading price indications and making false or misleading representations to deceive consumers. The three new provisions are:
 - (i) requiring retailers to show clearly and conspicuously the weight unit of goods displayed for sale;
 - (ii) requiring retailers to inform customers before they make payment if the price of five types of prescribed electronic products (digital camera, digital camcorder, mobile phone, digital audio (MP3) player and portable multimedia (MP4) player to be specified in Part 1 of the proposed Schedule 2) does not include the essential accessories; and
 - (iii) prohibiting retailers from making false or misleading representations regarding their connection with or endorsement by individuals or organizations of good standing and reputation.
- (c) Aligning the level of penalties for the above new offences with the existing provisions.

Consultation

8. According to the Administration, it has consulted 132 trade associations between August and September 2007. 17 of these associations³ provided written comments mostly in support of the proposals in the Amendment Bill. After the consultation exercise, taking into account the views of stakeholders the Administration has reviewed its original proposals and fine-tuned some proposals to better meet the needs of the industry.

Major views and concern expressed by Members

9. The Panel was briefed on the Administration's review of consumer protection laws with a view to strengthening consumer protection at its meetings on 25 June and 22 October 2007. Members supported the legislative

³ Of the 17 respondents, nine are from the precious stones and metals industry, five are general trade associations, one from the electronic products industry, one from the tourist industry and one is the Hong Kong Productivity Council.

proposals in general and were keen to ensure that the proposals should target at combating unscrupulous practices of a small handful of retailers and would not affect operation of the honest traders nor cause compliance burden on retailers. Members also noted that besides the Amendment Bill, the Administration planned to introduce five pieces of new subsidiary legislation under TDO and amend three existing ones in a separate exercise.⁴ As regards the stage two review, some members urged the Administration to review the role, function and power of CC to enable it to undertake its work more effectively.

References

10. A list of relevant papers is set out in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
23 January 2008

⁴ The relevant subsidiary legislations are concerned with:
(i) misrepresentation regarding natural fei cui, diamond, and platinum;
(ii) unclear/inadequate information provided in invoices for gold and platinum; and
(iii) misinterpretation regarding the core features of electronic products.

Trade Descriptions (Amendment) Bill 2007

List of references

Council/Panel	Date of meeting	Paper
Panel on Economic Services	25 June 2007	<p>Administration's paper on review of consumer protection laws (LC Paper No. CB(1)1924/06-07(04)) http://www.legco.gov.hk/yr06-07/english/panels/es/papers/es0625cb1-1924-4-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)2268/06-07) (paragraphs 15 to 42) http://www.legco.gov.hk/yr06-07/english/panels/es/minutes/es070625.pdf</p>
Panel on Economic Development	22 October 2007	<p>Administration's paper on proposed amendments to the Trade Descriptions Ordinance and its subsidiary legislation to strengthen consumer protection (LC Paper No. CB(1)76/07-08(02)) http://www.legco.gov.hk/yr07-08/english/panels/es/papers/edev1022cb1-76-2-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)458/07-08) (paragraphs 73 to 80) http://www.legco.gov.hk/yr07-08/english/panels/es/minutes/ev071022.pdf</p>
Press release	21 December 2007	<p>" Trade Descriptions (Amendment) Bill 2007 to be introduced" http://www.info.gov.hk/gia/general/200712/21/P200712210102.htm</p>
Press release	9 January 2008	<p>Speech by Secretary for Commerce and Economic Development in moving the Second Reading of Trade Descriptions (Amendment) Bill 2007(Chinese version only) http://www.info.gov.hk/gia/general/200801/09/P200801090158.htm</p>