

# 立法會 *Legislative Council*

LC Paper No. LS61/07-08

## Bills Committee on Trade Descriptions (Amendment) Bill 2007

### Information paper on statutory provisions in overseas jurisdictions on misleading price indication, misleading representations on after-sale services and misleading representations in relation to seller's connection with or endorsement by any individual or body and similar provisions proposed under the Trade Descriptions (Amendment) Bill 2007

| Jurisdiction | Statutory provisions on misleading price indication  | Scope of application   |
|--------------|--|--|
| Australia    | <p>(a) Section 53(e) of the Trade Practices Act 1974 (TPA) provides that a corporation shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services make a false or misleading representation with respect to the price of goods or services.</p> <p>(b) Section 75AZC(1)(g) of TPA provides that a corporation must not, in trade or commerce, in connection with the supply or possible supply of goods or services, or in connection with the promotion by any means of the supply or use of goods or services, make a false or misleading representation about the price of goods or service.</p> | <p>(a) Both sections 53(e) and 75AZC(1)(g) apply to the supply of both goods and services. "Corporation" is defined to mean a body corporate that is a foreign corporation or is a trading corporation formed within Australia. By virtue of section 6 of TPA, a reference to "corporation" in those sections includes a reference to a person not being a corporation.</p> <p>(b) Sections 53(e) and 75AZC(1)(g) do not apply to financial services.</p> <p>(c) Neither do they apply to misleading representations as to the price of land, which is dealt with in a separate provision under TPA.</p> <p>(d) An application for an injunction may be made to the Court if there is a contravention of section 53. Contravention of section 75AZC is an offence.</p> |
| New Zealand  | <p>Section 13(g) of the Fair Trading Act 1986 (FTA) provides that no person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services, make a false or misleading representation with respect to the price of any goods or services.</p>   | <p>(a) The section applies to the supply of both goods and services.</p> <p>(b) "Trade" is defined to mean any trade, business (whether for gain or reward or not), industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods or services or to the disposition or acquisition of any interest in land.</p> <p>(c) The section applies to body corporate and persons other than a body corporate.</p> <p>(d) Similar to the Australia's Trade Practices Act, misleading representations as to the price of land is dealt with in a separate provision under FTA.</p>   |

| Jurisdiction   | Statutory provisions on misleading price indication   | Scope of application  |
|----------------|---|---|
| United Kingdom | <p>Section 20 of the Consumer Protection Act (CPA)-<br/> “(1) Subject to the following provisions of this Part, a person shall be guilty of an offence if, in the course of any business of his, he gives (by any means whatever) to any consumers an indication which is misleading as to the price at which any goods, services, accommodation or facilities are available (whether generally or from particular persons).</p> <p>(2) Subject as aforesaid, a person shall be guilty of an offence if-</p> <p>(a) in the course of any business of his, he has given an indication to any consumers which, after it was given, has become misleading; and</p> <p>(b) some or all those consumers might reasonably be expected to rely on the indication at a time after it has become misleading; and</p> <p>(c) he fails to take all such steps as are reasonable to prevent those consumers from relying on the indication.”.</p> | <p>(a) The section applies to the provision of goods, services, accommodation and facilities to consumers.</p> <p>(b) The section applies to misleading price indications given in any means, including, for example, indications published in an advertisement, book, newspaper, magazine or film or in a programme included in a programme service within the meaning of the Broadcasting Act 1990.</p> <p>(c) “In the course of any business of his” has been interpreted by the courts to mean any business of which an accused is either the owner or in which he has a controlling interest (<i>R v Warwickshire County Council ex p Johnson</i> [1993] AC 583, <i>Warwickshire County Council v Johnson</i> [1993] 1 All ER 299, HL, where a shop manager being an employee was held not to be liable).</p> <p>(d) Under section 23 of CPA, references to accommodation or facilities being available in section 20 shall not include references to accommodation or facilities being available to be provided by means of the creation or disposal of an interest in land except where:</p> <p>(i) the person who is to create or dispose of the interest will do so in the course of any business of his; and</p> <p>(ii) the interest to be created or disposed of is a relevant interest in a new dwelling and is to be created or disposed of for the purposes of enabling that dwelling to be occupied as a residence of the person acquiring the interest.</p> <p>(e) “Consumer” is defined in section 20(6) of CPA as follows:</p> <p>(i) in relation to any goods, means any person who might wish to be supplied with the goods for his own private use or consumption;</p> <p>(ii) in relation to any services or facilities, means any person who might wish to be provided with the services or facilities otherwise than for the purposes of any business of his; and</p> <p>(iii) in relation to any accommodation, means any person who might wish to occupy the accommodation otherwise than for the purposes of any business of his.</p> <p>(f) The meaning of “misleading” for the purposes of section 20 of CPA is provided in section 21 of CPA [please refer to p.2 of LC Paper No. CB(1)808/07-08(02)].</p> |

| Jurisdiction   | Statutory provisions on misleading price indication  | Scope of application  |
|----------------|--|---|
| United Kingdom | <p>The Price Marking Order 2004(PMO) made under the Prices Act 1974-</p> <p>(a) Article 4(1) provides that where a trader indicates that any product is or may be for sale to a consumer, he must indicate the selling price of that product.</p> <p>(b) Article 5(1) provides that where a trader indicates that any product is or may be for sale to a consumer, he shall indicate the unit price of that product in accordance with the provisions of PMO.</p> <p>(c) Articles 6 and 7 set out the manner of indicating the selling price and unit price respectively -</p> <p>(i) Under Article 6, an indication of selling price and unit price must be in sterling. If, however, a trader indicates his willingness to accept foreign currency for the purchase of a product, he must, in addition to the price indications in sterling, give an indication of the selling price and any unit price required for the product in the foreign currency in question together with any commission to be charged; or clearly identify the conversion rate on the basis of which the foreign currency price will be calculated together with any commission to be charged.</p> <p>(ii) Under Article 7, an indication of selling price or unit price must be -</p> <p>(A) unambiguous, easily identifiable and clearly legible;</p> <p>(B) given in proximity to the product (except where the product is an item of jewellery, item of precious metal, or watch displayed in a window of the premises where it is or may be for sale and the selling price of which is in excess of £3,000), or in the case of distance contracts and advertisements, to a visual or written description of the product; and</p> <p>(C) so placed as to be available to consumers without the need for them to seek assistance from the trader or someone on his behalf in order to ascertain it.</p> | <p>(a) PMO does not apply to products which are supplied in the course of the provision of a service; or to sales by auction or sales of works of art or antiques.</p> <p>(b) “Trader” is defined in PMO to mean any person who sells or offers or exposes for sale products which fall within his commercial or professional activity.</p> <p>(c) “Consumer” is defined to mean any individual who buys a product for purposes that do not fall within the sphere of his commercial or professional capacity.</p> <p>(d) “Selling price” is defined to mean the final price for a unit of a product, or a given quantity of a product, including VAT and all other taxes.</p> <p>(e) “Unit price” in Article 5(1) of PMO is defined as the final price, including VAT and all other taxes, for one kilogram, one metre, one square metre or one cubic metre of a product except in respect of certain specified products where unit price means the final price including VAT and all other taxes for the corresponding units of quantity set out in Schedule 1 to PMO; and in respect of products sold by number, where unit price means the final price including VAT and all other taxes for an individual item of the product.</p> <p>(f) The requirement under Article 4(1) does not apply to products sold from bulk; or to an advertisement for a product.</p> <p>(g) The requirement under Article 5(1) applies –</p> <p>(i) only in respect of products sold from bulk or required by or under Parts IV of the Weights and Measures Act 1985 to be marked with an indication of quantity or to be made up in a quantity prescribed by or under that Act;</p> <p>(ii) in relation to an advertisement for a product only where the selling price of the product is indicated in the advertisement.</p> <p>(h) “Products sold from bulk” is defined to mean products which are not pre-packaged and are weighed or measured at the request of the consumer.</p> |

| Jurisdiction | Statutory provisions on misleading price indication  | Scope of application  |
|--------------|--|---|
| Malaysia     | <p>Under section 12(1) of the Consumer Protection Act 1999 (The 1999 Act), a person commits an offence -</p> <ul style="list-style-type: none"> <li>(a) if he gives to a consumer an indication which is misleading as to the price at which any goods or services are available; or</li> <li>(b) if an indication given by him to a consumer as to the price at which any goods or services are available becomes misleading and he fails to take reasonable steps to prevent the consumer from relying on the indication.</li> </ul>   | <ul style="list-style-type: none"> <li>(a) The 1999 Act applies in respect of all goods and services that are offered or supplied to one or more consumers in trade, but it does not apply to land or interests in land except as may be expressly provided in the Act and to certain services including financial services and services provided by professionals who are regulated by any written law.</li> <li>(b) False or misleading representations as to the price payable for an interest in land is dealt with in a separate provision under the 1999 Act.</li> <li>(c) The definition of “consumer” in the 1999 Act is similar to that provided in the UK Consumer Protection Act.</li> <li>(d) What amounts to misleading indication as to a price is defined in section 12(3) of the 1999 Act which are in similar terms to the corresponding provision in the UK Consumer Protection Act.</li> <li>(e) The offence under section 12(1) may be committed by a person who gives the indication either on his own behalf or on behalf of another.</li> <li>(f) The offence under section 12(1) may be committed by the publication of an advertisement.</li> </ul>  |
| Singapore    | <ul style="list-style-type: none"> <li>(a) Under section 4(a) of the Consumer Protection (Fair Trading) Act 2003 (the 2003 Act), it is an unfair practice for a supplier, in relation to a consumer transaction to do or say anything, or omit to do or say anything, if as a result a consumer might reasonably be deceived or misled.</li> <li>(b) Under section 4(d) of and the Second Schedule to the 2003 Act, it is an unfair practice for a supplier, in relation to a consumer transaction, represent that goods or services are available or are available for a particular reason, for a particular price, in particular quantities or at a particular time if the supplier knows or can reasonably be expected to know it is not so, unless the representation clearly states any limitation</li> </ul> | <ul style="list-style-type: none"> <li>(a) “Consumer” is defined to mean an individual who, otherwise than exclusively in the course of business, receives or has the right to receive goods or services from a supplier.</li> <li>(b) The section applies to supply of goods and services to a consumer as a result of purchase, lease, gift, contest or other arrangement.</li> <li>(c) “Goods” is defined to include residential property and “services” is defined to include a service offered or provided that involves the addition to or maintenance, repair or alteration of goods or any residential property.</li> <li>(d) In determining whether or not a person has engaged in an unfair practice, section 5 of the 2003 Act provides that the reasonableness of the actions of that person in those circumstances is to be considered, and an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred in the course of the employee’s employment with the person, or of the agent exercising the powers or performing the duties on behalf of the person within the scope of the agent’s actual or apparent authority.</li> </ul> |

| Jurisdiction   | Statutory provisions on misleading price indication   | Scope of application   |
|----------------|---|--|
| New York State | <p>(a) Section 197-b(2) from Article 16 of the New York State Weights and Measures Law (WML) sets out the pricing requirements on a retail store. These include displaying the retail price of each stock-keeping unit offered for sale, either on each unit or on easy to read shelf tags, or signs, located directly above or below or immediately adjacent to every stock-keeping unit or group of stock-keeping units of the same brand, size and price, assuring that the price charged after the final total has been determined is equivalent to the retail price and posting in a conspicuous place, the refund policy of such retail store in the event of an overcharge.</p> <p>(b) Under section 214-h from Article 17 of the New York State Weights and Measures Law (WML), each person who sells, offers or exposes for sale at retail in a food store a consumer commodity shall disclose to the consumer the unit price and the total price of the commodity.</p> <p>(c) Part 345 (section 345.1 to 345.7) of the New York State Weights and Measures Regulations (the Regulations) is made to effectuate the provisions under section 214-h of WML, which relate to providing consumers with information on the unit price of certain consumer commodities.</p> <p>(i) Under section 345.2, where a commodity is displayed upon a shelf and conspicuously visible to the consumer, the unit price and total selling price shall be displayed by attaching a stamp, tag, or label on the shelf edge directly beneath the item offered for sale. Where the commodity is conspicuously visible to the consumer but is not displayed upon a shelf, such as items offered for sale in baskets, portable racks or bins, the unit price and total selling price shall be affixed on the commodity itself, or by placing a sign or list at or near the point at which the item is offered or exposed for sale and in such a manner that the unit pricing information contained thereon is plainly visible from such point.</p> <p>(ii) section 345.3 provides that the unit price shall be expressed in terms of dollar or cents, as applicable. If the unit pricing information is displayed on a stamp, tag, or label, the stamp, tag or label shall contain specific information which is required to be presented in a manner specified in section 345.3(c) of the Regulations.</p> | <p>(a) Section 197-b(2) of WML applies to retail stores which sell stock-keeping units directly to consumers.</p> <p>(b) “Stock-keeping unit” is defined to mean each group of items offered for sale of the same brand, quantity of contents, retail price, and having different colours, flavours or varieties.</p> <p>(c) “Retail price” is defined to mean the lowest advertised, written, posted, or marked price of a stock-keeping unit.</p> <p>(d) Section 214-h and Part 345 apply to consumer commodities such as food, napkins, facial tissues, foil wrapping, paper towelling, disposable plates, detergents, soaps and other cleansing agents, non-prescription drugs, etc.</p> |

| <b>Jurisdiction</b> | <b>Statutory provisions on misleading price indication</b>  | <b>Scope of application</b>   |
|---------------------|---|---|
| Hong Kong           | Section 13A(1) of the Trade Descriptions (Amendment) Bill 2007 provides that any person who, without, reasonable excuse, displays in the course of trade or business a sign which indicates a price set by reference to any weight unit for any goods that are exposed for sale, but fails to give clear information as to the actual price of the goods, commits an offence. | <ul style="list-style-type: none"><li>(a) Section 13A does not apply to supply of services.</li><li>(b) Section 13A does not apply if the retailer or seller does not indicate the price of goods by the display of signs.</li><li>(c) Section 13A does not apply to misleading price indications given by other means such as advertisements.</li><li>(d) Section 13A does not apply to price indication set by reference to units other than weight units.</li><li>(e) Unlike the New York State legislation, the Bill does not set out in detail the manner of disclosure of unit pricing information or the way the unit price is calculated and displayed.</li></ul> |

| Jurisdiction | Statutory provisions on misleading representations on after-sale services   | Scope of application  |
|--------------|---|---|
| Australia    | <p>(a) Sections 53(ea) and (g) of the Trade Practices Act 1974 (TPA) provide that a corporation shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods, or concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.</p> <p>(b) Sections 75AZC(1)(h) and (k) of TPA contain similar provisions to sections 53(ea) and (g) above.</p>  | <p>(a) By virtue of section 6 of TPA, a reference to “corporation” in sections 53 and 75AZC includes a reference to a person not being a corporation.</p> <p>(b) An application for an injunction may be made to the Court if there is a contravention of section 53. Contravention of section 75AZC is an offence.</p> <p>(c) The sections concerned apply to false and misleading representations.</p> <p>(d) False or misleading representations concerning the availability of spare parts for goods or concerning the existence or effect of any condition of the goods are prohibited.</p>                |
| New Zealand  | <p>Section 13(i) of the Fair Trading Act 1986 provides that no person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services, make a false or misleading representation concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right or remedy.</p>   | <p>(a) The section applies to false and misleading representations.</p> <p>(b) False or misleading representations concerning the existence or effect of any condition of the goods are prohibited.</p>   |
| Malaysia     | <p>Under section 10(1)(k) of the Consumer Protection Act 1999, no person shall make a false or misleading representation that concerns the existence, exclusion or effect of any condition, guarantee, right or remedy.</p>   | <p>Section 10(1)(k) is similar to section 13(i) of the New Zealand Fair Trading Act.</p>  |
| Singapore    | <p>Section 4 of and the Second Schedule to the Consumer Protection (Fair Trading) Act 2003 provide that it is an unfair practice for a supplier, in relation to a consumer transaction, to represent the availability of facilities for repair of goods or of spare parts for goods if that is not the case.</p>  | <p>False or misleading representations concerning the availability of spare parts for goods are prohibited.</p>   |
| Hong Kong    | <p>(a) The definition of “trade description” in section 2(1) of the Trade Descriptions Ordinance (Cap. 362) (TDO) is proposed to be expanded to cover information on the availability, scope, duration, cost, location and provider of after-sale inspection and maintenance service.</p> <p>(b) The effect of the proposed amendment is that the provisions of TDO concerning false trade descriptions will apply to false descriptions relating to after-sale services. Under section 7 of TDO, it is an offence for any person to apply a false description to any goods in the course of trade or business. By virtue of section 6(2) of TDO, an oral statement may amount to the use of a trade description.</p> | <p>(a) The proposed definition of “trade description” may not cover information on the availability of spare parts for goods.</p> <p>(b) The proposed definition of “trade description” may not cover information on the existence or effect of any condition of the goods.</p> <p>(c) Section 7 of TDO apply to a trade description which is false to a material degree or a trade description which, though not false, is misleading, that is to say, likely to be taken for such an indication of any matters specified in the definition of “trade description” as would be false to a material degree.</p> |

| Jurisdiction  | Statutory provisions on misleading representations in relation to seller's connection with or endorsement by any individual or body  | Scope of application  |
|---------------|--|---|
| Australia     | <p>(a) Section 53(d) of the Trade Practices Act 1974 (TPA) provides that a corporation shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services represent that the corporation has a sponsorship, approval or affiliation it does not have.</p> <p>(b) Section 75AZC(1)(f) of TPA contain similar provisions to section 53(d) above.</p>  | <p>(a) Both sections 53(d) and 75AZC(1)(f) apply to supply of goods and services. By virtue of section 6 of TPA, a reference to "corporation" in those provisions includes a reference to a person not being a corporation.</p> <p>(b) No express reference to "false or misleading" representations.</p> <p>(c) There is no requirement that the sponsorship, approval, endorsement or affiliation must be in relation to a person or body of good standing or reputation.</p>   |
| New Zealand   | <p>Under section 13(f) of the Fair Trading Act 1986, no person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply of goods or services, make a false or misleading representation that a person has any sponsorship, approval, endorsement, or affiliation.</p>   | <p>(a) The section applies to the supply of goods and services.</p> <p>(b) There is no requirement that the sponsorship, approval, endorsement or affiliation must be in relation to a person or body of good standing and reputation.</p>  |
| United States | <p>Under section 43(a)(1) of the Trademark Act 1946, any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.</p> | <p>(a) The section applies to supply of goods and services.</p> <p>(b) There is no requirement that the affiliation or association must be in relation to a person or body of good standing and reputation.</p>   |
| Malaysia      | <p>Section 10(1)(i) of the Consumer Protection Act 1999 (the 1999 Act) provides that no person shall make a false or misleading representation that the person has any sponsorship, approval, endorsement or affiliation.</p>  | <p>(a) The 1999 Act applies in respect of all goods and services that are offered or supplied to one or more consumers in trade, but it does not apply to land or interests in land except as may be expressly provided in the Act and to certain services including financial services and services provided by professionals who are regulated by any written law.</p> <p>(b) False representations that any person has any sponsorship, approval, endorsement or affiliation in connection with the sale or grant of an interest in land is dealt with in a separate provision under the 1999 Act.</p> <p>(c) There is no requirement that the sponsorship, approval, endorsement, etc. must be in relation to a person or body of good standing and reputation.</p> |



| <b>Jurisdiction</b> | <b>Statutory provisions on misleading representations in relation to seller's connection with or endorsement by any individual or body</b>   | <b>Scope of application</b>   |
|---------------------|--|---|
| Hong Kong           | <p>(a) Section 13C(1) of the Trade Descriptions (Amendment) Bill 2007 provides that any person who, in the course of any trade, business or profession, makes a false representation to any other person that a particular seller who sells any goods in the course of any trade or business is connected with or endorsed by any individual or body commits an offence.</p> <p>(b) Under section 13C(2) of the Bill, a person who, in the course of any trade, business or profession, makes a representation regarding a seller's connection with or endorsement by any individual or body, is required, where the information recipient is likely to mistake the individual or body represented for a person or body of good standing and reputation when in fact the seller is not so connected or endorsed, to take reasonable steps to prevent the information recipient from believing that the seller is connected with or endorsed by the reputable individual or body.</p> | <p>(a) Proposed section 13C does not apply to supply of services.</p> <p>(b) There is no requirement under proposed section 13C(1) that the connection or endorsement must be in relation to a person or body of good standing and reputation.</p> <p>(c) No provision similar to the proposed section 13C(2) can be found in similar legislation in the above jurisdictions.</p> |

Note:

Information on statutory provisions in the overseas jurisdictions set out in this paper is based on information available on the Internet [Accessed between 27 February and 3 March 2008].

Prepared by

Fung Sau-kuen, Connie  
Assistant Legal Adviser  
Legislative Council Secretariat  
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