

**立法會**  
**Legislative Council**

LC Paper No. LS34/07-08

**Paper for the House Committee Meeting  
on 11 January 2008**

**Legal Service Division Report on  
Trade Descriptions (Amendment) Bill 2007**

**I. SUMMARY**

1. **Object of the Bill**      To amend the Trade Descriptions Ordinance (Cap. 362) (TDO) to strengthen the protection of consumers against certain undesirable trade practices.
  
2. **Comments**
  - (a) The Bill seeks to expand the scope of application of TDO to cover types of trade malpractices which involve the giving of misleading or incomplete information to consumers.
  
  - (b) The definition of “trade description” is proposed to be amended to cover information relating to after-sale inspection and maintenance service.
  
  - (c) New offences are created to tackle the problems of misleading price indication and false or misleading misrepresentations related to the seller’s connection with or endorsement by individuals or bodies of good standing and reputation.
  
3. **Public Consultation**      The Administration consulted 132 trade associations between August and September 2007 and has fine-tuned some proposals in the light of the views received.
  
4. **Consultation with LegCo Panel**      The Panel on Economic Development was briefed on the legislative proposals at its meeting on 22 October 2007. Members of the Panel were in general supportive of the legislative proposals.
  
5. **Conclusion**      It is likely that the Bill will have implications on traders, retailers and the operation of the retail trade. Members may wish to form a bills committee to study the legislative proposals in detail.

## **II. REPORT**

### **Object of the Bill**

To amend the Trade Descriptions Ordinance (Cap. 362) to strengthen the protection of consumers against certain undesirable trade practices.

### **LegCo Brief Reference**

2. File ref.: EDB CR2/3310/01(2) issued by the Commerce, Industry and Tourism Branch of the Commerce and Economic Development Bureau on 19 December 2007.

### **Date of First Reading**

3. 9 January 2008.

### **Comments**

4. At present, certain undesirable trade practices are prohibited under the Trade Descriptions Ordinance (Cap. 362) (TDO) with a view to protecting consumers. These practices include false trade descriptions, false marks and misstatements in respect of goods provided in the course of trade. Currently, there are no provisions under TDO that deal with the types of trade malpractices relating to the provision of misleading price indications, use of misleading terminologies, making of false or misleading representations in relation to after-sale maintenance services, inclusion or otherwise of certain accessories and sponsorship of celebrities or prestigious organizations.

5. The main purpose of the Bill is to strengthen the existing regulatory regime for the protection of consumers against malpractices in the retail business by expanding the scope of application of TDO to cover types of trade malpractices which involve the giving of misleading or incomplete information to consumers.

6. Clause 4 of the Bill expands the definition of “trade description” in section 2(1) of TDO to cover information on the availability, scope, duration, cost, location and provider of after-sale inspection and maintenance service. The effect of the proposed amendment is that the provisions of TDO concerning false trade descriptions will apply to false representations relating to after-sale service. Under section 7 of TDO, it is an offence for any person to apply a false trade description to any goods in the course of trade or business, and the maximum penalty for the offence is a fine of \$500,000 and imprisonment for five years on conviction on indictment and a fine of \$100,000 and imprisonment for two years on summary conviction.

7. Clause 7 of the Bill adds a new Part IIA to TDO to provide for new offences relating to the giving of misleading or incomplete information to consumers. The maximum penalty proposed for these new offences is the same as that for the offence of applying false trade descriptions to goods under section 7 of TDO set out in paragraph 6 above. The new offences, which are provided in the new sections 13A, 13B and 13C, are summarized as follows:

- (a) Section 13A seeks to prohibit the display, in the course of any trade or business, of signs that fails to give clear information as to the price of the goods set by reference to weight unit.
- (b) Section 13B requires sellers of any goods specified in Part 1 of the proposed Schedule 2 to inform customers, before they make payment for the goods, if the price does not include any basic accessories of the goods. Five types of goods are specified in the proposed Schedule 2, and these are digital audio players, digital camcorders, digital cameras, mobile phones and portable multimedia players.
- (c) Section 13C seeks to prohibit persons from making false or misleading representations in the course of any trade, business or profession regarding a retailer's connection with or endorsement by individuals or bodies of good standing and reputation.

8. If enacted, the Bill will come into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

### **Public Consultation**

9. According to paragraph 7 of the LegCo Brief, the Administration consulted 132 trade associations between August and September 2007 and has fine-tuned some proposals to better meet the needs of the industry in the light of the views received in the consultation exercise.

### **Consultation with LegCo Panel**

10. The Panel on Economic Development was briefed on the legislative proposals to amend TDO at its meeting on 22 October 2007. While members of the Panel were in general supportive of the legislative proposals, some members expressed the view that the proposals should target at combating unscrupulous practices of a small handful of retailers and should not affect the operation of the trade in general.

## **Conclusion**

11. It is likely that the Bill will have implications on traders, retailers and the operation of the retail trade. Members may wish to form a bills committee to study the legislative proposals in detail.

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