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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 11 June 2008

**Proposed resolutions under section 34(2) of the
Interpretation and General Clauses Ordinance**

I forward for Members' consideration five proposed resolutions which the Secretary for Commerce and Economic Development will move at the Council meeting of 11 June 2008 under section 34(2) of the Interpretation and General Clauses Ordinance relating to the following subsidiary legislation respectively:

- (a) the Trade Descriptions (Provision of Information on Natural Fei Cui) Order (in **Appendix I**);
- (b) the Trade Descriptions (Provision of Information on Diamond) Order (in **Appendix II**);
- (c) the Trade Descriptions (Provision of Information on Regulated Electronic Products) Order (in **Appendix III**);
- (d) the Trade Descriptions (Marking)(Gold and Gold Alloy)(Amendment) Order 2008 (in **Appendix IV**); and
- (e) the Trade Descriptions (Marking)(Platinum)(Amendment) Order 2008 (in **Appendix V**).

The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speeches, in both English and Chinese versions, which the Secretary for Commerce and Economic Development will deliver when moving the proposed resolutions, are also attached.

(Mrs Justina LAM)

for Clerk to the Legislative Council

Encl.

**INTERPRETATION AND GENERAL CLAUSES
ORDINANCE**

RESOLUTION

(Under section 34(2) of the Interpretation and General Clauses
Ordinance (Cap. 1))

**TRADE DESCRIPTIONS (PROVISION OF INFORMATION
ON NATURAL FEI CUI) ORDER**

RESOLVED that the Trade Descriptions (Provision of Information on
Natural Fei Cui) Order, published in the Gazette as Legal Notice
No. 79 of 2008 and laid on the table of the Legislative Council on
23 April 2008, be amended –

- (a) by renumbering section 2 as section 2(1);
- (b) in section 2(1), in the definition of “natural fei cui”, by
repealing everything after “meaning of” and substituting
“section 2 of the Trade Descriptions (Definition of Fei Cui
and Natural Fei Cui) Regulation (L.N. 42 of 2008) which
falls within the definition of “natural” or “天然” in section
3 of that Regulation when used to describe fei cui.”;
- (c) in section 2(1), in the Chinese text, in paragraph (b) of the
definition of “天然翡翠製品”, by repealing “鑲嵌” and
substituting “嵌有”;
- (d) in section 2, by adding –

- “(2) An article on which an object is mounted is regarded for the purposes of this Order as an article inlaid with that object.”;
- (e) in section 3(2)(d), by repealing everything after “describe the” and substituting –
- “article –
- (i) where the article is inlaid with both natural fei cui and other jade, as “natural fei cui plus other jade” or “天然翡翠和其他玉石”; or
- (ii) where the article is –
- (A) composed solely or principally of natural fei cui; or
- (B) inlaid with natural fei cui but with no other jade,
- as “natural fei cui” or “天然翡翠.”;
- (f) in the Schedule, in the English version of the Notice, by repealing paragraph (a) and substituting –
- “(a) only jade that falls within the definition in the Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation (Cap. 362 sub. leg.) can be described as “fei cui”.”;
- (g) in the Schedule, in the Chinese version of the Notice, by repealing paragraph (a) and substituting –
- “(a) 只有符合《商品說明(翡翠及天然翡翠的定義)規例》(第 362 章，附屬法例)中的定義的玉石，方可被稱為“翡翠”.”;
- (h) in the Schedule, in paragraph (b) of the Chinese version of the Notice, by adding “任何” after “經過”.

INTERPRETATION AND GENERAL CLAUSES
ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and General Clauses
Ordinance (Cap. 1))

TRADE DESCRIPTIONS (PROVISION OF INFORMATION
ON DIAMOND) ORDER

RESOLVED that the Trade Descriptions (Provision of Information on
Diamond) Order, published in the Gazette as Legal Notice No. 80
of 2008 and laid on the table of the Legislative Council on 23 April
2008, be amended –

- (a) by renumbering section 2 as section 2(1);
- (b) in section 2(1), in the definition of “article of diamond”,
by repealing paragraphs (a), (b) and (c) and substituting –
 - “(a) which is composed solely of diamond; or
 - (b) which is inlaid with diamond for the purpose of
adornment;”;
- (c) in section 2, by adding –
 - “(2) An article on which an object is mounted
is regarded for the purposes of this Order as an article
inlaid with that object.”;
- (d) in section 3(2)(d), by repealing everything after “describe
the” and substituting –

“article –

- (i) as being composed solely of diamond;
- (ii) where the article is inlaid with both diamond and other precious stone, as being inlaid with both diamond and other precious stone; or
- (iii) where the article is inlaid with diamond but with no other precious stone, as being inlaid with diamond,

as may be appropriate; and”.

**INTERPRETATION AND GENERAL CLAUSES
ORDINANCE**

RESOLUTION

(Under section 34(2) of the Interpretation and General Clauses
Ordinance (Cap. 1))

**TRADE DESCRIPTIONS (PROVISION OF INFORMATION
ON REGULATED ELECTRONIC PRODUCTS) ORDER**

RESOLVED that the Trade Descriptions (Provision of Information on Regulated Electronic Products) Order, published in the Gazette as Legal Notice No. 81 of 2008 and laid on the table of the Legislative Council on 23 April 2008, be amended –

- (a) in section 2(1), in the English text, in paragraph (a) of the definition of “digital audio player”, by repealing “playing” and substituting “to play”;
- (b) in section 2(1), in the English text, in paragraph (b) of the definition of “digital audio player”, by repealing “products” and substituting “the product”;
- (c) in section 2(1), in the English text, in the definition of “digital camcorder”, by repealing “making” and substituting “to make”;
- (d) in section 2(1), in the English text, in the definition of “digital camera”, by repealing “recording and storing” and substituting “to record and store”;

- (e) in section 2(1), in paragraph (a) of the definition of “mobile phone”, by adding “and” after the semicolon;
- (f) in section 2(1), in the English text, in paragraph (a) of the definition of “portable multimedia player”, by repealing “playing” and substituting “to play”;
- (g) in section 2(1), in the English text, in paragraph (b) of the definition of “portable multimedia player”, by repealing “products” and substituting “the product”;
- (h) in section 2(2)(b), by repealing “and”;
- (i) in section 2(2)(c), by repealing the full stop and substituting “; and”;
- (j) in section 2(2), by adding –
“(d) any other relevant information.”;
- (k) in section 3, by adding –
“(1A) Subsection (1) applies only to trade or business conducted on premises being a tenement included in the valuation list in force under section 14 of the Rating Ordinance (Cap. 116).”;
- (l) in the English text, by repealing section 3(2)(f) and substituting –
“(f) the following information as regards service for the inspection, repair or maintenance of the product –
 - (i) such service is available free of charge or such service is not so available, as may be applicable; and
 - (ii) where such service is available –
 - (A) subject to subsection (3), the place at which such service is available;

- (B) the identity of the provider of such service; and
 - (C) the period for which such service is available;”;
- (m) in section 3(3), in the English text, by repealing “facilities for the inspection, repair or service of a product are” and substituting “a service for the inspection, repair or maintenance of a product is”;
- (n) in section 3(3)(a), by repealing “facilities are available in any particular one of those places, show” and substituting “service is available in any particular one of those places, contain information on”;
- (o) in section 3(3)(b), by repealing “facilities are available in a particular place, show” and substituting “service is available in a particular place, contain information on”;
- (p) in section 3(3)(b)(i), in the English text, by repealing “facilities” and substituting “service”;
- (q) in section 3(3)(b)(ii), in the English text, by repealing “facilities are” and substituting “service is”;
- (r) in the Schedule, in the Chinese text, in paragraph (c) of the item “數碼攝錄機”, by adding “以像素列出的” before “硬照”;
- (s) in the Schedule, in paragraph (d) of the item “Digital camcorder”, by adding “(if provided)” after “card”;
- (t) in the Schedule, in the Chinese text, in paragraph (a) of the item “數碼相機”, by repealing “鏡頭” and substituting “相機”;
- (u) in the Schedule, in paragraph (b) of the item “Digital camera”, by adding “(if provided)” after “card”;

- (v) in the Schedule, in paragraph (*b*) of the item “Mobile phone”, by adding “(if provided)” after “card”;
- (w) in the Schedule, in the Chinese text, in paragraph (*d*) of the item “手提電話”, by repealing “鏡頭”.

INTERPRETATION AND GENERAL CLAUSES
ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and General Clauses
Ordinance (Cap. 1))

TRADE DESCRIPTIONS (MARKING)(GOLD AND GOLD
ALLOY)(AMENDMENT) ORDER 2008

RESOLVED that the Trade Descriptions (Marking)(Gold and Gold Alloy)(Amendment) Order 2008, published in the Gazette as Legal Notice No. 82 of 2008 and laid on the table of the Legislative Council on 23 April 2008, be amended –

- (a) in section 4(2), in the new paragraph 6(1)(d)(ii), by adding “by virtue of paragraph 5(1)” before “and the”;
- (b) in section 10, by adding before subsection (1) –
 - “(1A) The Third Schedule is amended in the English version of the Notice by repealing “Order 1984” and substituting “Order (Cap. 362 sub. leg.)”.”;
- (c) in section 10, by adding –
 - “(2A) The Third Schedule is amended in the Chinese version of the Notice by repealing “《1984年商品說明(標記)(黃金及黃金合金)令》” and substituting “《商品說明(標記)(黃金及黃金合金)令》(第 362 章，附屬法例)”.”.

INTERPRETATION AND GENERAL CLAUSES
ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and General Clauses
Ordinance (Cap. 1))

TRADE DESCRIPTIONS (MARKING)(PLATINUM)
(AMENDMENT) ORDER 2008

RESOLVED that the Trade Descriptions (Marking)(Platinum)(Amendment)
Order 2008, published in the Gazette as Legal Notice No. 83 of
2008 and laid on the table of the Legislative Council on 23 April
2008, be amended –

- (a) in section 5(2), in the new paragraph 6(1)(d)(ii), by adding
“by virtue of paragraph 5(1)” before “and the”;
- (b) in section 11(1), by repealing everything after “by” and
substituting “repealing “Order, every article made of
platinum that is supplied or offered for supply in the
course of trade or business” and substituting “Order (Cap.
362 sub. leg.), every article made of platinum that is
supplied or offered for supply in the course of trade or
business at retail level”.”;
- (c) in section 11(3), by repealing everything after “by” and
substituting “repealing “令》, 每一件在” and
substituting “令》(第 362 章, 附屬法例), 每一件在零
售層面的”.”.

**Speech by the Secretary for Commerce and Economic
Development in moving the motion to amend five
regulations made under the Trade Descriptions Ordinance
11 June 2008**

Trade Descriptions (Provision of Information on Natural Fei Cui) Order

Madam President,

I move to amend five regulations made under the Trade Descriptions Ordinance, namely the Trade Descriptions (Provision of Information on Natural Fei Cui) Order, the Trade Descriptions (Provision of Information on Diamond) Order, the Trade Descriptions (Provision of Information on Regulated Electronic Products) Order, the Trade Descriptions (Marking) (Gold and Gold Alloy) (Amendment) Order 2008 and the Trade Descriptions (Marking) (Platinum) (Amendment) Order 2008. The proposed amendments have been set out in the agenda.

The five regulations were made by the Chief Executive in Council on 8 April 2008 under Section 4 of the Ordinance. The objective is to strengthen consumer protection by requiring retailers to issue to purchasers an invoice or receipt containing specified information in relation to the sale of natural fei cui, diamond, gold, platinum and five types of electronic products; and requiring retailers of natural fei cui and diamond to display prominently at the point of supply a prescribed notice informing customers of the definitions of natural fei cui and diamond to prevent deceitful traders from making false trade descriptions or misstatements.

The regulations were introduced into this Council on 23 April 2008. Subsequently, a Subcommittee on Subsidiary Legislation was set up to scrutinise the subsidiary legislation. The Subcommittee has now completed its work. I would like to thank the Honourable CHAN Kam-lam, Chairman of the Subcommittee, its members and the Legal Service Division of the Legislative Council Secretariat for their many constructive comments. We have accordingly made certain amendments to the above regulations. The amendments as set out in the resolutions have their support.

First of all, I move to amend the Trade Descriptions (Provision of Information on Natural Fei Cui) Order. According to the definition set out in the Order, an “article of natural fei cui” means any article inlaid with natural fei cui. To strengthen consumer protection and prevent deceptive representations by unscrupulous retailers, we propose to amend Section 3(2)(d) by requiring retailers to describe an article inlaid with natural fei cui as well as other jade as “natural fei cui plus other jade”, rather than “natural fei cui”, in the invoice or receipt.

In addition, we also propose some technical amendments to certain provisions to improve the flow of the text and make it more understandable. The amendments have been set out in the agenda.

With these remarks, I urge members to support the proposed amendments. Thank you, Madam President.

Trade Descriptions (Provision of Information on Diamond) Order

Madam President,

I move to amend the Trade Descriptions (Provision of Information on Diamond) Order.

I have just explained the proposed amendments to the Trade Descriptions (Provision of Information on Natural Fei Cui) Order. Similarly, an “article of diamond” may also mean an article which is inlaid with both diamond and other precious stone. In view of the same legislative intent, we propose to amend Section 3(2)(d) to require retailers to describe an article inlaid with diamond as well as other precious stone as “being inlaid with both diamond and other precious stone” in the invoice or receipt to make it clear to consumers that the precious stones inlaid on the article are not solely diamond.

Lastly, we also propose to make a technical amendment to Section 2 relating to the definition of “article of diamond” to better reflect the legislative intent.

I urge members to support the proposed amendments. Thank you, Madam President.

Trade Descriptions (Provision of Information on Regulated Electronic Products) Order

Madam President,

I move to amend the Trade Descriptions (Provision of Information on Regulated Electronic Products) Order.

In Section 2(1), we have specified that the five “regulated electronic products” are digital audio players, digital camcorders, digital cameras, mobile phones and portable multimedia players. Since “regulated electronic products” are categorised according to their “principal function”, we have set out in Section 2(2) factors to determine the principal function of an electronic product, which include descriptions of the product on its package, documents relating to the supply of the product, or descriptions in any promotional materials or advertisement concerning the product.

We propose to amend Section 2(2) by adding “any other relevant information” to give the court more flexibility in considering other factors in determining the principal function of a product.

In addition, we recognise that itinerant stalls that sell second-hand electronic products may not be able to provide the specified information in the invoice or receipt as required by the new regulation. We therefore propose to amend Section 3(1) by stipulating that the provision is applicable only to tenements included in the rating valuation list under Section 14 of the Rating Ordinance (Chapter 116). This will exempt itinerant stalls from the requirement.

The proposed amendments have been endorsed by the Subcommittee on Subsidiary Legislation. We have also accepted other comments made by the Subcommittee, and have made some technical amendments to certain provisions. This will enhance the clarity of the Order and ensure that its Chinese and English versions are consistent. Details of the amendments have been set out in the agenda.

I urge Members to support the above amendments. Thank you, Madam President.

**Trade Descriptions (Marking) (Gold and Gold Alloy)
(Amendment) Order 2008**

Madam President,

I move to amend the Trade Descriptions (Marking) (Gold and Gold Alloy) (Amendment) Order 2008.

We propose to make minor technical amendments to Section 6(1) of the Trade Descriptions (Marking) (Gold and Gold Alloy) Order to enhance its clarity.

In addition, we propose to amend the Third Schedule by replacing the obsolete citation with “Trade Descriptions (Marking) (Gold and Gold Alloy) Order (Cap. 362, sub. leg.) in the notice.

I urge members to support the proposed amendments. Thank you, Madam President.

**Trade Descriptions (Marking) (Platinum)
(Amendment) Order 2008**

Madam President,

I move to amend the Trade Descriptions (Marking) (Platinum) (Amendment) Order 2008.

We propose to make minor technical amendments to Section 6(1) of the Trade Descriptions (Marking) (Platinum) (Amendment) Order 2008 to enhance its clarity.

I urge members to support the motion. Thank you, Madam President.