

立法會 *Legislative Council*

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Subcommittee to Study Six Items of Subsidiary Legislation under the Trade Descriptions Ordinance Gazetted on 18 April 2008

Background brief

Purpose

This paper sets out the background of the six items of subsidiary legislation under the Trade Descriptions Ordinance (Cap. 362) (TDO) gazetted on 18 April 2008¹, and summarizes the major concerns expressed by Members at meetings of the Panel on Economic Development (the Panel) on related issues.

Background

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 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.

¹ The six items of subsidiary legislation are:

- (i) Trade Descriptions (Provision of Information on Natural Fei Cui) Order
- (ii) Trade Descriptions (Provision of Information on Diamond) Order
- (iii) Trade Descriptions (Provision of Information on Regulated Electronic Products) Order
- (iv) Trade Descriptions (Marking) (Gold and Gold Alloy) (Amendment) Order 2008
- (v) Trade Descriptions (Marking) (Platinum) (Amendment) Order 2008
- (vi) Trade Descriptions (Definition of Platinum) (Amendment) Regulation 2008

CC then set up a dedicated Working Group on Improvement of Consumer Protection Laws to take forward the task. On 25 February 2008, CC published the report entitled "Fairness in the Marketplace for Consumers and Business" which put forward a package of recommendations including the introduction of a comprehensive Trade Practices Law in Hong Kong to prohibit against unfair trade practices of all types of goods and services.

4. While the Government is reviewing the outcome of the review conducted by CC, the Administration considers it necessary to take urgent action to strengthen the regulatory tools to tackle the prevalent malpractices of the unscrupulous shops and bring charges against them. Some of the proposals have been introduced through the Trade Descriptions (Amendment) Bill 2007 which is currently being scrutinized by the relevant Bills Committee, and two items of subsidiary legislation² made under TDO which was enacted in April 2008.

The Subsidiary Legislation

5. The Government introduced the six items of subsidiary legislation into the Legislative Council on 23 April 2008. On 25 April 2008, the House Committee decided that a subcommittee be formed to scrutinize the subsidiary legislation.

6. TDO is a major piece of legislation to protect consumers against false trade descriptions and misstatements made by deceitful traders. According to the Administration, however, its existing provisions are not adequate in protecting consumers as complaints lodged by them against false or misleading representations could not be followed up easily in the absence of written records. This is particularly the case for jewellery items and popular electronic products. Therefore, the Administration introduces the six items of subsidiary legislation to give effect to some of its proposals to strengthen the existing regulatory regime with a view to providing better protection to consumers. The key elements of the subsidiary legislation include:

- (a) 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;
- (b) 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 and the supplier's obligation to issue a detailed invoice or receipt when he supplies such articles;

² The two items of subsidiary legislation are:

- (i) Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation; and
- (ii) Trade Descriptions (Definition of Diamond) Regulation .

- (c) Changing the Chinese translation of white gold and platinum to prevent retailers from misrepresenting white gold as platinum; and
- (d) Retailers who fail to comply with any of the requirements under the subsidiary legislation commit an offence:
 - (i) the maximum penalty for the offence (other than the offence for failing to comply with the requirement to retain invoices and receipts) 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.
 - (ii) The maximum penalty for failing to comply with the requirement to retain the invoice or receipt for three years is a fine of level 2 (\$5,000) and imprisonment for one month.

7. According to the Administration, it has consulted 132 trade associations between August and September 2007. 17 of these associations³ provided written comments which were mostly in support of the proposals. 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

8. At the meeting on 22 October 2007, the Panel was briefed on the outcome of the trade consultation and the Administration's legislative proposals. While members supported the legislative proposals in general, some members were keen to ensure that the proposals should target at combating unscrupulous malpractices of a small handful of retailers and would not affect the operation of honest traders.

9. In the course of scrutinizing the Amendment Bill 2007, concern has been raised about the requirement for retailers to provide information on the availability or otherwise of after-sale services for goods. The Bills Committee was concerned whether retailers would also be required to state whether the services were subject to charges or otherwise. The Administration explained that such requirement would be provided in the subsidiary legislation to be made. Members may wish to note that a similar requirement is imposed on retailers by the subsidiary legislation on provision of information on five regulated electronic products.

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.

References

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

Council Business Division 1
Legislative Council Secretariat
5 May 2008

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Trade Descriptions Ordinance Gazetted on 18 April 2008**

List of references

Council/Panel	Date of meeting	Paper
Panel on Economic Services	25 June 2007	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 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
Panel on Economic Development	22 October 2007	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 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
Press release	21 December 2007	" Trade Descriptions (Amendment) Bill 2007 to be introduced" http://www.info.gov.hk/gia/general/200712/21/P200712210102.htm
Press release	29 February 2008	" Gazettal of Trade Descriptions (Definition of Fei Cui and Natural Faei Cui) and Trade Descriptions (Definition of Diamond) Regulations " http://www.info.gov.hk/gia/general/200802/29/P200802290076.htm)

Council/Panel	Date of meeting	Paper
Press release	18 April 2008	" Gazettal of six regulations under the Trade Descriptions Ordinance " (http://www.info.gov.hk/gia/general/200804/18/P200804180102.htm)

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