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23 April 2008

Mr Luke Au Yeung  
Principal Assistant Secretary for  
Commerce and Economic Development  
(Commerce and Industry Special Duties)  
Commerce and Economic Development Bureau  
8/F West Wing  
Central Government Offices  
Ice House Street Central  
Hong Kong

**BY FAX**

Fax No. : 2530 2984

Dear Mr Au Yeung,

**Six items of subsidiary legislation made under the  
Trade Descriptions Ordinance (Cap. 362)  
and gazetted on 18 April 2008 (L.N. 79 to L.N. 84)**

I am scrutinizing the above subsidiary legislation with a view to advising Members and should be grateful if you would clarify the matters set out in the Annex.

I would appreciate it if you could let me have the Administration's reply in both languages at your earliest convenience.

Yours sincerely,

(Connie FUNG)  
Assistant Legal Adviser

Encl.

cc: DoJ (Attn: Mr Gilbert MO, DLD(BD&A)) Fax No. 2536 8126  
DoJ (Attn: Miss Karmen KWOK, GC) Fax No. 2536 8176  
LA  
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## Trade Descriptions (Provision of Information on Natural Fei Cui) Order (L.N. 79)

### Section 2

In the definition of “natural fei cui”, why is reference made to “lawfully described as “natural” or “天然””? To reflect the definition of “natural” in the Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation (L.N. 42 of 2008) (the Fei Cui Definition Regulation) more accurately, please consider revising the definition of “natural fei cui” in L.N. 79 along this line: ““natural fei cui” means “fei cui” within the meaning of section 2 of the Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation (L.N. 42 of 2008) and which falls within the definition of “natural” when used to describe fei cui under section 3 of that Regulation”.

2. While “鑲嵌” is used as the Chinese text of “inlaid” in the definition of “article of natural fei cui”, the Chinese text for the same word in the Trade Descriptions (Provision of Information on Diamond) Order (L.N. 80) is “嵌入”. Please make the Chinese texts for the same word match.

3. Is an article on which natural fei cui is mounted regarded as an article of natural fei cui? If so, please include this in the definition of “article of natural fei cui”. Please refer to the definition of “article of diamond” in section 2 of L.N. 80. Further, is it necessary to add “for the purpose of adornment” to the definition of “article of natural fei cui” having regard to the definition of “article of diamond” in L.N. 80?

### Schedule

4. In paragraph (a) of the notice to be displayed, please consider citing the name of subsidiary legislation in which “fei cui” is defined to provide greater clarity and to make the drafting of this paragraph consistent with that of a similar paragraph in the notice relating to diamond under L.N. 80.

5. Under section 3 of the Fei Cui Definition Regulation, to qualify as being natural, the fei cui has to satisfy two requirements, namely, it has not been subjected to any treatment or process which altered its crystalline structure and it has not been subjected to any treatment or process which altered its original colour. However, in paragraph (b) of the notice, reference is made to “which altered its crystalline structure or original colour”. Should paragraph (b) of the notice be amended to make it consistent with section 3 of the Fei Cui Definition Regulation?

## **Trade Descriptions (Provision of Information on Regulated Electronic Products) Order (L.N. 81)**

### Section 2

6. Is it necessary to make the drafting of the definition of “digital audio player” and “portable multimedia player” in L.N. 81 consistent with that of the same terms proposed in the Trade Descriptions (Amendment) Bill 2007 (the Amendment Bill)?

7. Regarding the proposed definition of “mobile phone” in the Amendment Bill, which is the same as the definition of the same term in L.N. 81, the Administration has informed the Bills Committee on the Bill that the word “and” will be added between paragraph (a) and (b) under the definition of “mobile phone by way of a Committee Stage amendment (LC Paper No. CB(1)1185/07-08(04). Should the same amendment be made to the definition of the same term in L.N. 81?

8. In section 2(2), should amendments be made to give the courts more flexibility in considering other factors when determining the principal function of a regulated electronic product?

9. In section 2(b), if it is intended that “document” should include document in forms other than in writing, please consider defining the word to reflect this intention clearly.

### Section 3

10. In section 3(2)(f) and (3), please replace “facilities” by “services” and “service of a/the product” by “maintenance of a/the product” to make the English and Chinese texts match.

11. In section 3(2)(f), is there any reason for not requiring to be included in the invoice or receipt information on the availability of spare parts, warranty given in respect of the facilities concerned and the charge or cost at which the facilities are available?

12. In section 3(3)(a) and (b), please explain how an invoice or receipt can show the relevant place. Is it by attaching a photograph of the place to the invoice or receipt or otherwise? Would it be more appropriate to adopt words like “an invoice or receipt shall at least contain information on the/that place”?

### Section 3(2)(h) and Schedule

13. The prescribed information set out in column 2 of the Schedule appears to relate to the technical features of the products concerned. Is the information easily available to retailers? Has the Administration consulted the retail trade on whether there would be compliance difficulties?

14. One of the items of information prescribed for digital camera and mobile phone is the type and storage capacity of support memory card. This seems to assume that a support memory card must necessarily come together with the digital camera or mobile phone as one set when it is supplied by the manufacturer/wholesaler to a retailer. In cases where no memory card is so included in the products concerned, while it may still be possible for the retailer to provide information on the type of memory card that may be used, please explain how he is able to provide information on the storage capacity of the card. The same question applies to information prescribed in paragraph (b) in relation to digital camcorder. There may be cases where no storage media is included in the digital camcorder. In such cases, how is a retailer able to give information on the capacity of the storage media?

15. In respect of digital cameras, mobile phones and digital camcorders, instead of requiring information on the storage capacity of support memory card or storage media, would it be more appropriate to require information on the built-in storage capacity of the products concerned?

16. Please amend the Chinese text of paragraph (c) in relation to digital camcorder to reflect the meaning of “in terms of pixels” in the English text.

17. In the Chinese text of paragraph (a) in relation to digital camera, please replace “鏡頭” by “相機” as it should be the camera, not the lens, which has resolution in terms of pixels. Indeed, the English text refers to “resolution of the camera”. Please make both texts match.

18. In the Chinese text of paragraph (d) in relation to mobile phone, please delete “鏡頭”.

#### **Trade Descriptions (Marking) (Gold and Gold Alloy) (Amendment) Order 2008 (L.N. 82)**

19. In section 4(2)(d)(i) and (ii) of L.N. 82, why is it necessary to include the corresponding fineness of the gold content specified in the First Schedule as a separate item of information to be provided in an invoice or receipt when the information concerned should have already been included in the mark required under paragraph 4 of the Trade Descriptions (Marking) (Gold and Gold Alloy) Order (Cap. 362 sub. leg. A) (the principal Order)?

20. It is noted that the requirement that each part of an article of gold or gold alloy is to be marked when the article consists of different parts which are of different fineness is provided in paragraph 5(1) of the principal Order. Accordingly, is it appropriate to refer to the “mark required under paragraph 4 borne on each such part of the article” in section 4(2)(d)(ii)? Please consider adding “by virtue of paragraph 5(1)” after “such part of the article” in that section.

21. In the Third Schedule to the principal Order, should the reference to the “Trade Descriptions (Marking) (Gold and Gold Alloy) Order 1984” in the relevant notice be replaced by “Trade Descriptions (Marking) (Gold and Gold Alloy) Order (Cap. 362 sub. leg. A)”?

**Trade Descriptions (Marking) (Platinum) (Amendment) Order 2008  
(L.N. 83)**

22. In paragraph 4(1) of the Trade Descriptions (Marking) (Platinum) Order (Cap. 362 sub. leg. C) (the Platinum Marking Order), apart from adding “at retail level”, is it necessary to replace “in the course of any trade or business” by “in the course of trade or business” to make the said reference consistent with a similar reference used in the new regulation 7(1) of the Platinum Marking Order?

23. In section 5(2)(d)(ii) of L.N. 83, please consider adding “by virtue of paragraph 5(1)” after “such part of the article” for the same reason set out in paragraph 20 above.

**Trade Descriptions (Definition of Platinum) (Amendment) Regulation 2008  
(L.N. 84)**

24. Please clarify whether any sanction is available under the Trade Descriptions Ordinance if there is a contravention of the provisions of the Regulation.

**References to “in the course of trade or business at retail level” in L.N. 79 to 83**

25. Under what circumstances is a person regarded as supplying goods at retail level? If a person’s business is primarily wholesale but he occasionally sells goods to consumers, will he be regarded as supplying the goods in the course of trade or business at retail level? Is it necessary to include a provision in the relevant subsidiary legislation setting out the factors that the courts may take into account when considering whether a person is supplying goods in the course of trade or business at retail level?

**Requirement for retailers to provide information under L.N. 79 to L.N. 83**

26. It seems that some of the information required to be provided under L.N. 79 to L.N. 83 does not fall within the definition of “trade description” under the Trade Descriptions Ordinance (Cap. 362). In the event that a retailer gives false or misleading information on matters not covered by the said definition, what sanction, if any, is available under the Trade Descriptions Ordinance and the relevant Orders? For better enforcement, is it necessary to provide for an offence of giving false or misleading information under the above items of subsidiary legislation pursuant to section 28(1)(e) of the Interpretation and General Clauses Ordinance (Cap. 1)?

27. If a retailer of parallel imported electronic products covered by L.N. 81 issues an invoice or receipt giving the required information in the language of the country or place of manufacture, say Japanese, is he regarded as having complied with the requirement provided in L.N. 81? Is it necessary to stipulate a language requirement for the information required to be given in L.N. 79 to 83?

28. Please also consider whether it is necessary to provide that the information given must be clearly legible.