

LEGISLATIVE COUNCIL BRIEF

Trade Descriptions Ordinance
(Chapter 362)

Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation

Trade Descriptions (Definition of Diamond) Regulation

INTRODUCTION

At the meeting of the Executive Council on 19 February 2008, the Council ADVISED and the Chief Executive ORDERED that the Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation at Annex A and the Trade Descriptions (Definition of Diamond) Regulation at Annex B should be made.

A & B

JUSTIFICATIONS

2. The Trade Descriptions Ordinance (Cap. 362) (“the Ordinance”) is a major piece of legislation to protect consumers against false trade descriptions and misstatements made by deceitful traders. However, its provisions are not adequate in dealing with certain trade malpractices, where dishonest retailers induce consumers to enter into transactions by using misleading terminologies or false descriptions in relation to the sale of natural Fei Cui and diamond.

3. Section 33 of the Ordinance empowers the Chief Executive in Council to assign, by means of regulations, a definite meaning to any expressions used in relation to goods. We consider it necessary to introduce definition regulations to define “Fei Cui”, “natural Fei Cui” and “diamond” for better protection of consumers.

THE REGULATIONS

Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation

4. **Section 2** defines “Fei Cui” as an article having a granular to fibrous polycrystalline aggregate composed solely of or a combination of jadeite, omphacite or kosmochlor. **Section 3** defines “natural Fei Cui” as Fei Cui which has not been subjected to any treatment or process that alters its crystalline structure and original colour.

Trade Descriptions (Definition of Diamond) Regulation

5. **Section 2** defines “diamond” as a natural mineral consisting essentially of carbon crystallized in a specific form; and excluding artificial, man-made and synthetic diamonds.

LEGISLATIVE TIMETABLE

6. The legislative timetable is as follows –

Publication in the Gazette	29 February 2008
Tabling at the Legislative Council	5 March 2008

7. The negative vetting period will expire on 23 April 2008. The two regulations will come into effect on a date to be designated by the Secretary for Commerce and Economic Development.

IMPLICATIONS OF THE REGULATIONS

8. The two regulations have economic, sustainability, financial and civil service implications (at Annex C). They are in conformity with the Basic Law, including the provisions concerning human rights. They have no productivity and environmental implications, and will not affect the binding effect of the Ordinance.

PUBLIC CONSULTATION

9. Between August and September 2007, we consulted 132 trade associations. 17 of them¹ provided written comments, mostly in support of the legislative amendments in the Trade Descriptions (Amendment) Bill 2007 and its proposed subsidiary legislation, including the two regulations. In particular, the precious stones and metals industry considered that the proposals would effectively deter the sale of deceptive or fake Fei Cui and

¹ 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.

diamond.

10. After the consultation exercise and taking into account the views of stakeholders, we have reviewed and fine-tuned some proposals to better meet the needs of the industry.

11. We have briefed the Legislative Council Panel on Economic Development of the proposed legislative amendments and the outcome of the trade consultation on 22 October 2007. Members were generally supportive of our proposals.

PUBLICITY

12. We will issue a press release on 29 February 2008 and a spokesman will be available to handle media and public enquiries.

ENQUIRIES

13. Any enquiries on this brief can be addressed to Mr Luke AU YEUNG Ho-lok, Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry) 6 by telephone at 2918 7449 or by facsimile at 2530 2984.

Commerce and Economic Development Bureau
27 February 2008

**TRADE DESCRIPTIONS (DEFINITION OF FEI CUI
AND NATURAL FEI CUI) REGULATION**

(Made by the Chief Executive in Council under section 33
of the Trade Descriptions Ordinance (Cap. 362))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

2. Definition of “fei cui”

The expression “fei cui” or “翡翠”, when used in the course of any trade or business to describe an article, means the article is a granular to fibrous polycrystalline aggregate which is composed solely or principally of any of the following or any combination of the following –

- (a) jadeite;
- (b) omphacite;
- (c) kosmochlor.

3. Definition of “natural” when used to describe fei cui

The expression “natural” or “天然”, when used in the course of any trade or business to describe fei cui within the meaning of section 2, means the fei cui –

- (a) has not been subjected to any treatment or process which altered its crystalline structure; and
- (b) has not been subjected to any treatment or process which altered its original colour.

COUNCIL CHAMBER

2008

Explanatory Note

Section 33 of the Trade Descriptions Ordinance (Cap. 362) empowers the Chief Executive in Council to assign, by means of regulations, a definite meaning to any expression used in relation to goods. Once such a meaning is assigned to an expression, it shall be deemed for the purposes of that Ordinance to have that meaning when used in the course of a trade or business or when used in the circumstances specified in the regulations.

2. This Regulation is made under section 33 of the Trade Descriptions Ordinance (Cap. 362). The purpose is to define the expression “fei cui” and the expression “natural” when used to describe fei cui. An article that does not fall within the definition cannot be described as “fei cui” or “natural fei cui”, as the case may be.

TRADE DESCRIPTIONS (DEFINITION OF DIAMOND) REGULATION

(Made by the Chief Executive in Council under section 33
of the Trade Descriptions Ordinance (Cap. 362))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

2. Definition of diamond

(1) Subject to subsection (2), the expression “diamond” or “鑽石”, when used in the course of any trade or business to describe an article, means the article is a natural mineral consisting essentially of carbon crystallized in the isometric (cubic) crystal system which has the physical properties specified in the Schedule.

(2) Subsection (1) does not apply –

(a) in relation to the expression “diamond” where it is a part of an expression –

(i) of which the expression “artificial”, “man-made”, “synthetic” or another similar expression is also a part; and

(ii) which, taken as a whole, clearly indicates that the article concerned is not natural diamond;

(b) in relation to the expression “鑽石” where it is a part of an expression –

(i) of which the expression “人工”, “人造”, “合成” or another similar expression is also a part; and

(ii) which, taken as a whole, clearly indicates that the article concerned is not natural diamond.

SCHEDULE

[s. 2]

PHYSICAL PROPERTIES OF DIAMOND

Hardness on Moh's Scale:	10
Specific Gravity:	not lower than 3.51 but not higher than 3.53
Refractive Index:	2.417
Dispersion:	0.044

Clerk to the Executive Council

COUNCIL CHAMBER

2008

Explanatory Note

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2. This Regulation is made under section 33 of the Trade Descriptions Ordinance (Cap. 362). The purpose is to define the expression "diamond". An article that does not fall within the definition cannot be described as "diamond". However, it is permissible to describe artificial diamond as such provided that the description clearly indicates that the article concerned is not natural diamond.

**Implications of the
Trade Descriptions (Amendment) Bill 2007 and
its proposed subsidiary legislation**

Economic Implications

The legislative amendments will serve as effective measures to combat unscrupulous trade practices and are expected to have long-term deterrent effect. Apart from strengthening the enforcement capability of the Police and the Customs and Excise Department (C&ED), the proposals will also help restore the confidence of consumers in the retail industry. They will help maintain Hong Kong's reputation as a "Shoppers' Paradise", and enhance the competitiveness of our retail and tourist industries. This in turn will be conducive to the long-term sustainable development of the Hong Kong economy.

2. The proposals may incur some compliance costs for the stakeholders, such as the need to enhance computer systems to enable detailed information to be printed on sales invoices. However, such additional costs should not be substantial. Moreover, affected stakeholders can choose to hand-transcribe details of transactions onto the invoices in order that the existing computer systems do not need to be changed and no added compliance cost will be incurred.

Financial and Civil Service Implications

3. C&ED will require additional resources to assume extra enforcement responsibilities upon implementation of the new provisions in the Ordinance and its subsidiary legislation, mainly for handling complaint cases and conducting spot checks on retailers that are subject to control under the new legislative provisions. Assuming that there will be about 800 complaint cases received per year and 4 300 retailers need to be spot checked, C&ED estimates that it will require a total of 34 posts at a staff cost of \$16.99 million per annum. Since it is anticipated that the complaint cases will decrease gradually upon effective enforcement action, 12 out of the 34 posts proposed at a staff cost of \$6.31 million per annum will be required on a time-limited basis for the first two years only. C&ED will bid for the additional resources required through the existing mechanism.

Sustainability Implications

4. The proposals will contribute to the vibrancy of Hong Kong's economy by enhancing the confidence of consumers and tourists in the integrity of the retail trade in Hong Kong.