

LEGISLATIVE COUNCIL BRIEF

Trade Descriptions Ordinance
(Chapter 362)

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

Trade Descriptions (Provision of Information on Diamond) Order

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

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

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

Trade Descriptions (Definition of Platinum) (Amendment) Regulation 2008

INTRODUCTION

At the meeting of the Executive Council on 8 April 2008, the Council ADVISED and the Chief Executive ORDERED that the following subsidiary A to F legislation (at Annex A to F) should be made –

- (a) Trade Descriptions (Provision of Information on Natural Fei Cui) Order;
- (b) Trade Descriptions (Provision of Information on Diamond) Order;
- (c) Trade Descriptions (Provision of Information on Regulated Electronic Products) Order;
- (d) Trade Descriptions (Marking) (Gold and Gold Alloy) (Amendment) Order 2008;

- (e) Trade Descriptions (Marking) (Platinum) (Amendment) Order 2008; and
- (f) Trade Descriptions (Definition of Platinum) (Amendment) Regulation 2008.

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 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. To better protect our consumers, we intend to require retailers to issue 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. Also, we intend to require 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. In addition, to prevent retailers from misrepresenting white gold as platinum, we propose to change the Chinese translation of white gold and platinum.

THE REGULATIONS

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

3. **Section 3** requires retailers to issue an invoice or receipt containing specified particulars (including description of the article made of or consisting of natural Fei Cui and details of the transaction) at the time of the transaction. **Section 4** requires retailers to retain for at least three years a copy of the invoice or receipt so issued. **Section 5** requires retailers to display prominently a prescribed notice setting out the meaning of the term "natural Fei Cui" at the point of supply.

Trade Descriptions (Provision of Information on Diamond) Order

4. **Section 3** requires retailers to issue an invoice or receipt containing specified particulars (including description of the article made of or consisting of diamonds, the total weight in carat of all the diamonds, and details of the transaction) at the time of the transaction. **Section 4** requires retailers to retain for at least three years a copy of the invoice or receipt so issued. **Section 5** requires retailers to display prominently a prescribed notice setting out the meaning of the term "diamond" at the point of supply.

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

5. **Section 2** defines the five types of electronic products to which the order applies. **Section 3** requires retailers to issue an invoice or receipt containing specified particulars (including description of the electronic product, its core features, availability or otherwise of after-sale services and details of the transaction) at the time of the transaction. **Section 4** requires retailers to retain for at least three years a copy of the invoice or receipt so issued.

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

6. **Section 3** amends paragraph 5(3)(d) of the Trade Descriptions (Marking)(Gold and Gold Alloy) Order (the principal Order) to change the Chinese translation of white gold from “白金” to “白色黃金”. **Section 4** amends paragraph 6 of the principal Order to require retailers to provide specified particulars in an invoice or receipt, including the type of gold, fineness in both carat and parts by weight of gold per thousand parts the weight of the gold alloy, and weight of the article at the time of the transaction.

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

7. **Section 5** amends paragraph 6 of the Trade Descriptions (Marking)(Platinum) Order to require retailers to issue an invoice or receipt containing specified particulars (including the fineness and weight of the article of platinum) at the time of the transaction.

Trade Descriptions (Definition of Platinum)(Amendment) Regulation 2008

8. **Section 2** amends regulation 3 of the Trade Descriptions (Definition of Platinum) Regulation to change the Chinese translation of platinum to “白金” or “鉑金”, and to define the fineness of platinum when the term “足白金” or “足鉑金” is used.

LEGISLATIVE TIMETABLE

9. The legislative timetable is as follows –

Publication in the Gazette	18 April 2008
Tabling at the Legislative Council	23 April 2008

10. The negative vetting period will expire on 11 June 2008. The six regulations will come into effect on a date to be designated by the Secretary for Commerce and Economic Development.

IMPLICATIONS OF THE REGULATIONS

G

11. The six regulations have economic, sustainability, financial and civil service implications (at Annex G). 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

12. 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 six regulations.

13. 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.

14. 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

15. We will issue a press release on 18 April 2008 and a spokesman will be available to handle media and public enquiries.

ENQUIRIES

16. 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
16 April 2008

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.

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

(Made by the Chief Executive in Council under section 4
of the Trade Descriptions Ordinance (Cap. 362))

1. Commencement

This Order 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. Interpretation

In this Order -

"article of natural fei cui" (天然翡翠製品) means any article -

(a) which is composed solely or principally of natural fei cui; or

(b) which is inlaid with natural fei cui;

"natural fei cui" (天然翡翠) means fei cui within the meaning of the Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation (L.N. 42 of 2008) which, pursuant to that Regulation, may be lawfully described as "natural" or "天然".

3. Supply to be accompanied by written particulars

(1) Any person who supplies any article of natural fei cui to another person ("the buyer") in the course of trade or business at retail level shall, at the time of supply, issue an invoice or receipt to the buyer.

(2) An invoice or receipt issued under subsection (1) shall contain -

- (a) the full name and address of the supplier;
- (b) the price at which the article is supplied;
- (c) the date of supply; and
- (d) a description of the article which shall describe the article as "natural fei cui" or "天然翡翠".

4. Supplier shall retain invoice or receipt for 3 years

(1) A supplier shall retain a copy of an invoice or receipt issued by him under section 3 for a period of not less than 3 years after the date of issue.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and imprisonment for 1 month.

5. Notice to be displayed

(1) No person shall supply or offer to supply any article of natural fei cui in the course of trade or business at retail level unless a notice in the form specified in the Schedule is displayed prominently to all customers at the point of supply or offer.

(2) A notice displayed under subsection (1) shall not be less than 210 mm x 297 mm in size.

(3) The letters and characters appearing on a notice displayed under subsection (1) shall not be less than 5 mm in height.

6. Position of auctioneer

(1) For the purposes of this Order, where an article of natural fei cui is sold by auction -

- (a) the auctioneer shall be regarded as the supplier of the article; and
- (b) it shall, in the absence of evidence to the contrary, be presumed to be supplied in the course of trade or business at retail level.

(2) For the purposes of this Order, where an article of natural fei cui is offered for sale by auction, it shall -

- (a) be regarded as being offered for supply by the auctioneer; and
- (b) in the absence of evidence to the contrary, be presumed to be offered for supply in the course of trade or business at retail level.

SCHEDULE

[s. 5]

NOTICE TO BE DISPLAYED UNDER SECTION 5(1)
OF THIS ORDER

NOTICE

告示

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

《商品說明(提供關於天然翡翠
的資料)令》

(第362章, 附屬法例)

(Chapter 362 subsidiary
legislation)

Under the laws of Hong
Kong -
(a) jade may be described as
"fei cui" only if it

根據香港法例 -

- (a) 玉石必須符合就其成分設定準則的
法律定義, 方可被稱為“翡翠”;
- (b) 翡翠必須沒有經過改變其晶體結構

falls within the
statutory definitions
which set criteria as
regards its composition;

- (b) fei cui may be described
as "natural" only if it
has not been subjected to
any treatment or process
which altered its
crystalline structure or
original colour.

A detailed invoice or
receipt shall be issued by the
supplier in respect of every
article of natural fei cui
supplied.

或原色的處理或工序，方可被稱為
“天然”。

供應人須就所供應的每件天然翡翠
製品發出詳細的發票或收據。

Clerk to the Executive Council

COUNCIL CHAMBER

2008

Explanatory Note

Section 4 of the Trade Descriptions Ordinance (Cap. 362)
empowers the Chief Executive in Council to require by order that
any specified goods shall be marked with or accompanied by any
information or instruction relating to the goods.

2. This Order is made under section 4 of the Trade Descriptions Ordinance (Cap. 362).

3. Section 1 empowers the Secretary for Commerce and Economic Development to specify the commencement date of this Order.

4. Section 2 defines the expressions used in this Order.

5. Section 3 requires any person who supplies an article of natural fei cui in the course of trade or business at retail level to issue an invoice or receipt to the buyer. The invoice or receipt must contain prescribed information. Section 4 requires suppliers to retain copies of invoices and receipts so issued for 3 years.

6. Section 5 requires suppliers of articles of natural fei cui to display a notice in the prescribed form to provide certain information to customers.

7. Section 6 provides that where an article of natural fei cui is sold by auction, the auctioneer shall shoulder the responsibility imposed by this Order.

**TRADE DESCRIPTIONS (PROVISION OF INFORMATION
ON DIAMOND) ORDER**

(Made by the Chief Executive in Council under
section 4 of the Trade Descriptions
Ordinance (Cap. 362))

1. Commencement

This Order 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. Interpretation

In this Order -

"article of diamond" (鑽石製品) means any article -

- (a) which is composed solely of diamond;
- (b) which is inlaid with diamond for the purpose of adornment; or
- (c) on which diamond is mounted for the purpose of adornment;

"diamond" (鑽石) has the meaning given to it under the Trade Descriptions (Definition of Diamond) Regulation (L.N. 43 of 2008).

3. Supply to be accompanied by written particulars

(1) Any person who supplies any article of diamond to another person ("the buyer") in the course of trade or business at retail level shall, at the time of supply, issue an invoice or receipt to the buyer.

(2) An invoice or receipt issued under subsection (1) shall contain -

- (a) the full name and address of the supplier;
- (b) the price at which the article is supplied;
- (c) the date of supply;
- (d) a description of the article which shall describe the article as -

- (i) being composed solely of diamond;
- (ii) being inlaid with diamond; or
- (iii) one on which diamond is mounted, as may be appropriate; and

(e) where -

- (i) the total weight of the diamond supplied is known to the supplier, such total weight expressed in carats; or
- (ii) the total weight of the diamond supplied is not known to the supplier, a statement that the total weight of the diamond supplied is unknown.

4. Supplier shall retain invoice or receipt for 3 years

(1) A supplier shall retain a copy of an invoice or receipt issued by him under section 3 for a period of not less than 3 years after the date of issue.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and imprisonment for 1 month.

5. Notice to be displayed

(1) No person shall supply or offer to supply any article of diamond in the course of trade or business at retail level unless a notice in the form specified in the Schedule is displayed prominently to all customers at the point of supply or offer.

(2) A notice displayed under subsection (1) shall not be less than 210 mm x 297 mm in size.

(3) The letters and characters appearing on a notice displayed under subsection (1) shall not be less than 5 mm in height.

6. Position of auctioneer

(1) For the purposes of this Order, where an article of diamond is sold by auction -

(a) the auctioneer shall be regarded as the supplier of the article; and

(b) it shall, in the absence of evidence to the contrary, be presumed to be supplied in the course of trade or business at retail level.

(2) For the purposes of this Order, where an article of diamond is offered for sale by auction, it shall -

(a) be regarded as being offered for supply by the auctioneer; and

(b) in the absence of evidence to the contrary, be presumed to be offered for supply in the course of trade or business at retail level.

NOTICE TO BE DISPLAYED UNDER SECTION 5(1)
OF THIS ORDER

NOTICE

告示

TRADE DESCRIPTIONS
(PROVISION OF INFORMATION
ON DIAMOND) ORDER

《商品說明(提供關於鑽石的資料)令》

(第362章, 附屬法例)

(Chapter 362 subsidiary
legislation)

Under the laws of Hong Kong, only diamond that falls within the definition in the Trade Descriptions (Definition of Diamond) Regulation (Cap. 362 sub. leg.) can be described as "diamond".

根據香港法例, 只有符合《商品說明(鑽石的定義)規例》(第362章, 附屬法例)中的定義的鑽石, 方可被稱為“鑽石”。

供應人須就所供應的每件鑽石製品發出詳細的發票或收據。

A detailed invoice or receipt shall be issued by the supplier in respect of every article of diamond supplied.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

Explanatory Note

Section 4 of the Trade Descriptions Ordinance (Cap. 362) empowers the Chief Executive in Council to require by order that any specified goods shall be marked with or accompanied by any information or instruction relating to the goods.

2. This Order is made under section 4 of the Trade Descriptions Ordinance (Cap. 362).

3. Section 1 empowers the Secretary for Commerce and Economic Development to specify the commencement date of this Order.

4. Section 2 defines the expressions used in this Order.

5. Section 3 requires any person who supplies an article of diamond in the course of trade or business at retail level to issue an invoice or receipt to the buyer. The invoice or receipt must contain prescribed information. Section 4 requires suppliers to retain copies of invoices and receipts so issued for 3 years.

6. Section 5 requires suppliers of articles of diamond to display a notice in the prescribed form to provide certain information to customers.

7. Section 6 provides that where an article of diamond is sold by auction, the auctioneer shall shoulder the responsibility imposed by this Order.

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

(Made by the Chief Executive in Council under
section 4 of the Trade Descriptions
Ordinance (Cap. 362))

1. Commencement

This Order 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. Interpretation

(1) In this Order, unless the context otherwise requires -
“digital audio player” (數碼音響播放器) -

- (a) means any portable device the principal function of which is playing digital audio files in one or more audio encoding formats from any storage medium;
- (b) includes products commonly known as MP3 player; and
- (c) does not include portable optical disc player;

“digital camcorder” (數碼攝錄機) means any portable device the principal function of which is making a recording in digital format on any medium from which a moving image may by any means be reproduced;

“digital camera” (數碼相機) means any portable device the principal function of which is recording and storing an image in digital format on any medium from which a still image may by any means be reproduced;

“mobile phone” (手提電話) means any portable device the principal function of which is for mobile communication through a

cellular radio network with -

- (a) standard voice function of a telephone;
- (b) interconnection to the public switched telephone network (PSTN);

"portable multimedia player" (便攜式多媒體播放器) -

- (a) means any portable device the principal function of which is playing digital multimedia files in one or more media recording formats from any storage medium;
- (b) includes products commonly known as MP4 player; and
- (c) does not include portable optical disc player;

"regulated electronic product" (受規管電子產品) means -

- (a) digital audio player;
- (b) digital camcorder;
- (c) digital camera;
- (d) mobile phone; or
- (e) portable multimedia player.

(2) In determining the principal function of a product for the purposes of this section, regard shall be had to -

- (a) the description applied to the product on its package;
- (b) the description applied to the product in any document relating to the supply of the product; and
- (c) the description applied to the product in any promotional material and advertisement concerning the product.

3. Supply to be accompanied by written particulars

(1) Any person who supplies any regulated electronic product in the course of trade or business at retail level shall, at the time of supply, issue an invoice or receipt to the person to whom the product is supplied.

(2) An invoice or receipt issued under subsection (1) shall contain -

- (a) the full name and address of the supplier;
- (b) the price at which the product is supplied;
- (c) the date of supply;
- (d) the brand name of the product;
- (e) the model number of the product (if any);
- (f) the following information as regards facilities for the inspection, repair or service of the product -
 - (i) such facilities are available free of charge or such facilities are not so available, as may be applicable; and
 - (ii) where such facilities are available -
 - (A) subject to subsection (3), the place at which such facilities are available;
 - (B) the identity of the provider of such facilities; and
 - (C) the period for which such facilities are available;
- (g) the place of manufacture of the product or, where the place of manufacture is unknown to the supplier, a statement that the place of manufacture

is unknown; and

(h) the information prescribed in relation to the product in column 2 of the Schedule.

(3) For the purposes of subsection (2)(f)(ii)(A), where facilities for the inspection, repair or service of a product are available in more than one place, an invoice or receipt issued under subsection (2) shall at least -

(a) where the supplier has made a representation to the purchaser that such facilities are available in any particular one of those places, show that place;

(b) where the supplier has not made any representation to the purchaser that such facilities are available in a particular place, show the place -

(i) in which it is, having regard to all information available to the supplier, most likely that the purchaser will avail himself of such facilities; and

(ii) in which such facilities are available.

4. Supplier shall retain invoice or receipt for 3 years

(1) A supplier shall retain a copy of an invoice or receipt issued by him under section 3 for a period of not less than 3 years after the date of issue.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and imprisonment for 1 month.

5. Position of auctioneer

(1) For the purposes of this order, where a regulated electronic product is sold by auction -

- (a) the auctioneer shall be regarded as the supplier of the product; and
- (b) it shall, in the absence of evidence to the contrary, be presumed to be supplied in the course of trade or business at retail level.

(2) For the purposes of this order, where a regulated electronic product is offered for sale by auction, it shall -

- (a) be regarded as being offered for supply by the auctioneer; and
- (b) in the absence of evidence to the contrary, be presumed to be offered for supply in the course of trade or business at retail level.

SCHEDULE

[s. 3]

PRESCRIBED INFORMATION

Regulated
electronic product

Information prescribed for the purposes
of section 3(2)(h) of this Order

Digital audio
player

- (a) memory capacity
- (b) availability of radio function
- (c) availability of voice recording
function
- (d) availability of line-in recording
function

Digital camcorder

- (a) optical zoom range of the lens
- (b) the type and capacity of storage media
- (c) resolution for still picture in terms of pixels
- (d) the type and storage capacity of support memory card

Digital camera

- (a) resolution of the camera in terms of pixels
- (b) the type and storage capacity of support memory card
- (c) (where the camera is fitted with built-in lens or the lens is sold together with the camera as a single item) optical zoom range of the lens
- (d) (where the camera is fitted with built-in lens or the lens is sold together with the camera as a single item) maximum aperture of the lens

Mobile phone

- (a) network frequency or operating frequency or band
- (b) the type and storage capacity of support memory card
- (c) data transfer/network connectivity protocol
- (d) (where the phone has a built-in camera) resolution of the camera in

terms of pixels

- | | |
|------------|---|
| Portable | (a) memory capacity |
| multimedia | (b) availability of radio function |
| player | (c) availability of voice recording
function |
| | (d) availability of line-in recording
function |

Clerk to the Executive Council

COUNCIL CHAMBER

2008

Explanatory Note

Section 4 of the Trade Descriptions Ordinance (Cap. 362) empowers the Chief Executive in Council to require by order that any specified goods shall be marked with or accompanied by any information or instruction relating to the goods.

2. This Order is made under section 4 of the Trade Descriptions Ordinance (Cap. 362).

3. Section 1 empowers the Secretary for Commerce and Economic Development to specify the commencement date of this Order.

4. Section 2 defines the expressions used in this Order. This Order applies to any "regulated electronic product", which is defined to include digital audio players, digital camcorders, digital cameras, mobile phones and portable multimedia players.

5. Section 3 requires any person who supplies a regulated electronic product in the course of trade or business at retail level to issue an invoice or receipt to the purchaser. The invoice or receipt must contain prescribed information. Section 4 requires suppliers to retain copies of invoices and receipts so issued for 3 years.

6. Section 5 provides that where a regulated electronic product is sold by auction, the auctioneer shall shoulder the responsibility imposed by this Order.

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

(Made by the Chief Executive in Council under
section 4 of the Trade Descriptions
Ordinance (Cap. 362))

1. Commencement

This Order 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. Articles to be marked

(1) Paragraph 4(1) of the Trade Descriptions (Marking)(Gold and Gold Alloy) Order (Cap. 362 sub. leg. A) is amended by adding "at retail level" after "or business".

(2) Paragraph 4(1)(c) is amended by repealing "(Chuk Kam)".

3. Articles of differing fineness

(1) Paragraph 5(3)(a) is amended by repealing "Chuk Kam standard" and substituting "a standard of not lower than 999".

(2) Paragraph 5(3)(d) is amended in the Chinese text by repealing "白金" and substituting "白色黃金".

4. Supply to be accompanied by written particulars

(1) Paragraph 6(1) is amended by repealing ", in the course of trade or business, supplies any article of gold or gold alloy shall, at the time of supply, deliver" and substituting "supplies any article of gold or gold alloy in the course of trade or

business at retail level shall, at the time of supply, issue".

(2) Paragraph 6(1) is amended by repealing everything after sub-subparagraph (a) and substituting -

- "(b) the price at which the article is supplied;
- (c) the date of supply;
- (d) the details of -
 - (i) where the whole article is of gold or gold alloy of the same fineness, the mark required under paragraph 4 borne on the article and the corresponding fineness of the gold content specified in the First Schedule; or
 - (ii) where the article consists of different parts which are of different finenesses of gold or gold alloy, the mark required under paragraph 4 borne on each such part of the article and the corresponding fineness of the gold content specified in the First Schedule;
- (e) where the article consists of different parts which are of gold or gold alloy and other metal -
 - (i) a description of the type of gold or gold alloy and the relevant parts; and
 - (ii) a description of the type of such other metal and the relevant parts;
- (f) where appropriate, a description of any article or part of any article exempted by virtue of the Second Schedule; and
- (g) where the whole article is of gold or gold alloy

the fineness of which is not less than 999 parts by weight of gold in 1 000 parts by weight of alloy, the weight of the article."

(3) Paragraph 6 is amended by adding -

"(1A) For the purposes of subparagraph (1)(d), where -

(a) an article has been subjected to soldering; and

(b) by virtue of paragraph 5(3), the article is marked with the standard of fineness of its main body,

the whole article is regarded as being of gold or gold alloy of the same fineness.

(1B) The fineness of gold and gold alloy contained in an invoice or receipt required under subparagraph (1) shall be expressed -

(a) in number of parts by weight of gold in 1 000 parts by weight of alloy;

(b) in number of carats; and

(c) where the fineness is not less than 999 parts by weight of gold in 1 000 parts by weight of alloy, as "足金".

(4) Paragraph 6 is amended by adding -

"(3) Any person who contravenes subparagraph (2) commits an offence and is liable on conviction to a fine at level 2 and imprisonment for 1 month."

5. Paragraph substituted

Paragraph 7 is repealed and the following substituted -

"7. Notice to be displayed

(1) No person shall supply or offer to supply any article made of gold or gold alloy in the course of trade or business at retail level unless a notice in the form specified in the Third Schedule is displayed prominently to all customers at the point of supply or offer.

(2) A notice displayed under subparagraph (1) shall not be less than 210 mm x 297 mm in size.

(3) The letters and characters appearing on a notice displayed under subparagraph (1) shall not be less than 5 mm in height."

6. Surface treated articles

(1) Paragraph 8 is amended by renumbering it as paragraph 8(1).

(2) Paragraph 8(1) is amended by repealing everything after "other words in" and substituting -

"the description -

(a) shall be in English; and

(b) shall not be less prominent than the word "gold"."

(3) Paragraph 8 is amended by adding -

"(2) If an article with a surface treatment of gold is marked with words describing such treatment which include the characters "黃金" or "金", the other words in the description -

(a) shall be in Chinese; and

(b) shall not be less prominent than the characters "黃金" or "金", as the case may

be.".

7. Paragraph added

The following is added -

"9. Position of auctioneer

(1) For the purposes of this order, where an article to which this order applies is sold by auction -

(a) the auctioneer shall be regarded as the supplier of the article; and

(b) it shall, in the absence of evidence to the contrary, be presumed to be supplied in the course of trade or business at retail level.

(2) For the purposes of this order, where an article to which this order applies is offered for sale by auction, it shall -

(a) be regarded as being offered for supply by the auctioneer; and

(b) in the absence of evidence to the contrary, be presumed to be offered for supply in the course of trade or business at retail level."

8. Standards of fineness

(1) The First Schedule is amended by repealing "& 4]" and substituting ", 4 & 6]".

(2) The First Schedule is amended by repealing -

"Chuk Kam (足金) 990"

and substituting -

"足金 (Chuk Kam) 999".

9. Exempted articles

The Second Schedule is amended by repealing "6(1)(e)]" and substituting "6(1)(f)]".

10. Third Schedule amended

(1) The Third Schedule is amended in the English version of the Notice by adding "at retail level" after "or business".

(2) The Third Schedule is amended in the English version of the Notice by repealing -

"Chuk Kam (足金) 990"

and substituting -

"足金 (Chuk Kam) 999".

(3) The Third Schedule is amended in the Chinese version of the Notice by adding "零售層面的" before "營商過程".

(4) The Third Schedule is amended in the Chinese version of the Notice by repealing -

"足金 (Chuk Kam) 990".

and substituting -

"足金 999".

Clerk to the Executive Council

COUNCIL CHAMBER

2008

Explanatory Note

This Order amends the Trade Descriptions (Marking)(Gold and Gold Alloy) Order (Cap. 362 sub. leg. A) ("the principal Order")

to enhance the protection offered by the principal Order to purchasers of articles made of gold or gold alloy. This Order also introduces certain technical amendments. The major amendments are highlighted below.

2. Section 1 empowers the Secretary for Commerce and Economic Development to specify the commencement date of this Order.

3. Section 2 amends paragraph 4(1) of the principal Order to limit the scope of application of the principal Order to sale at retail level.

4. Section 3 replaces the Chinese equivalent of "white gold" in paragraph 5(3) of the principal Order so that it will not be mistaken for the Chinese equivalent of "platinum".

5. Section 4(2) amends paragraph 6(1) of the principal Order to expand the list of information to be provided to purchasers.

6. Section 4(4) adds a provision to provide that failure to comply with paragraph 6(2) of the principal Order is a criminal offence. That paragraph requires suppliers to retain copies of invoices and receipts for 3 years.

7. Section 6 amends paragraph 8 of the principal Order so that the paragraph applies more effectively in relation to bilingual markings.

8. Section 8 amends the First Schedule to the principal Order to raise the standard of fineness required for the description "足金" (Chuk Kam).

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

(Made by the Chief Executive in Council under
section 4 of the Trade Descriptions
Ordinance (Cap. 362))

1. Commencement

This Order 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. Interpretation

Paragraph 2(2)(b) of the Trade Descriptions (Marking)(Platinum) Order (Cap. 362 sub. leg. C) is amended by repealing "(Chuk Pak Kam)" and substituting "or "足鉑金"". .

3. Prohibition on supply of unmarked articles

Paragraph 3 is amended by adding "at retail level" after "or business".

4. Marking of articles

(1) Paragraph 4(1) is amended by adding "at retail level" after "or business".

(2) Paragraph 4(1)(b) is amended by repealing "(Chuk Pak Kam)" and substituting "or "足鉑金"". .

5. Supply to be accompanied by written particulars

(1) Paragraph 6(1) is amended by repealing ", in the course of trade or business, supplies any article of platinum shall, at the time of supply, deliver" and substituting "supplies any article of platinum in the course of trade or business at retail

level shall, at the time of supply, issue".

(2) Paragraph 6(1) is amended by repealing everything after sub-subparagraph (a) and substituting -

"(b) the price at which the article is supplied;

(c) the date of supply;

(d) the details of -

(i) where the whole article is of platinum or platinum alloy of the same fineness, the mark required under paragraph 4 borne on the article and the corresponding fineness of the platinum content specified in Schedule 1; or

(ii) where the article consists of different parts which are of different fineness of platinum or platinum alloy, the mark required under paragraph 4 borne on each such part of the article and the corresponding fineness of the platinum content specified in Schedule 1;

(e) where the article consists of different parts which are of platinum or platinum alloy and other metal -

(i) a description of the parts which are of platinum or platinum alloy; and

(ii) a description of the type of such other metal and the relevant parts;

(f) where appropriate, a description of any article or part of any article exempted by virtue of Schedule 2; and

(g) where the whole article is of platinum or platinum alloy the fineness of which is not less than 990 parts by weight of platinum in 1 000 parts by weight of alloy, the weight of the article."

(3) Paragraph 6 is amended by adding -

"(1A) For the purposes of subparagraph (1)(d), where -

(a) an article has been subjected to soldering; and

(b) by virtue of paragraph 5(4), the article is marked with the standard of fineness of its main body,

the whole article is regarded as being of platinum or platinum alloy of the same fineness."

(4) Paragraph 6 is amended by adding -

"(3) Any person who contravenes subparagraph (2) commits an offence and is liable on conviction to a fine at level 2 and imprisonment for 1 month."

6. Paragraph substituted

Paragraph 7 is repealed and the following substituted -

"7. Notice to be displayed

(1) No person shall supply or offer to supply any article of platinum in the course of trade or business at retail level unless a notice in the form specified in Schedule 3 is displayed prominently to all customers at the point of supply or offer.

(2) A notice displayed under subparagraph (1) shall not be less than 210 mm x 297 mm in size.

(3) The letters and characters appearing on a notice displayed under subparagraph (1) shall not be less than 5 mm in height."

7. Surface treated articles

(1) Paragraph 8 is amended by renumbering it as paragraph 8(1).

(2) Paragraph 8(1) is amended by repealing everything after "words in the" and substituting -

"description -

(a) shall be in English; and

(b) shall not be less prominent than the word "platinum".

(3) Paragraph 8 is amended by adding -

"(2) If an article with a surface treatment of platinum is marked with words describing the treatment which include the characters "白金" or "鉑金", the other words in the description -

(a) shall be in Chinese; and

(b) shall not be less prominent than the characters "白金" or "鉑金", as the case may be."

8. Paragraph added

The following is added -

"9. Position of auctioneer

(1) For the purposes of this order, where an article of

platinum is sold by auction -

- (a) the auctioneer shall be regarded as the supplier of the article; and
- (b) it shall, in the absence of evidence to the contrary, be presumed to be supplied in the course of trade or business at retail level.

(2) For the purposes of this order, where an article of platinum is offered for sale by auction, it shall -

- (a) be regarded as being offered for supply by the auctioneer; and
- (b) in the absence of evidence to the contrary, be presumed to be offered for supply in the course of trade or business at retail level."

9. Standards of fineness

(1) Schedule 1 is amended by repealing "& 4]" and substituting ", 4 & 6]".

(2) Schedule 1 is amended by repealing "Chuk Pak Kam (足白金)" and substituting "足白金 or 足鉑金 (Chuk Pak Kam)".

10. Exempted articles

Schedule 2 is amended by repealing "6(1)(iii)]" and substituting "6(1)(f)]".

11. Schedule 3 amended

(1) Schedule 3 is amended in the English version of the Notice by adding "at retail level" after "or business".

(2) Schedule 3 is amended in the English version of the Notice by repealing -

“Chuk Pak Kam
(足白金)”

and substituting -

“足白金 or 足鉑金
(Chuk Pak Kam)”.

(3) Schedule 3 is amended in the Chinese version of the Notice by adding “零售層面的” before “營商過程”.

(4) Schedule 3 is amended in the Chinese version of the Notice by repealing -

“足白金
(Chuk Pak Kam)”

and substituting -

“足白金 或 足鉑金”.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

Explanatory Note

This Order amends the Trade Descriptions (Marking)(Platinum) Order (Cap. 362 sub. leg. C) (“the principal Order”) to enhance the protection offered by the principal Order to purchasers of articles made of platinum. This Order also introduces certain technical amendments. The major amendments are highlighted below.

2. Section 1 empowers the Secretary for Commerce and Economic Development to specify the commencement date of this Order.

3. Sections 2, 4(2) and 9(2) add “足鉑金” as an alternative to “足白金” in several provisions of the principal Order.

4. Section 3 amends paragraph 3 of the principal Order to limit the scope of application of the principal Order to sale at retail level.

5. Section 5(2) amends paragraph 6 of the principal Order to expand the list of information to be provided to purchasers.

6. Section 5(4) adds a provision to provide that failure to comply with paragraph 6(2) of the principal Order is a criminal offence. That paragraph requires suppliers to retain copies of invoices and receipts for 3 years.

7. Section 7 amends paragraph 8 of the principal Order so that the paragraph applies more effectively in relation to bilingual markings.

**TRADE DESCRIPTIONS (DEFINITION OF PLATINUM)
(AMENDMENT) REGULATION 2008**

(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 platinum

(1) Regulation 3(1) of the Trade Descriptions (Definition of Platinum) Regulations (Cap. 362 sub. leg. B) is amended by repealing "or the Chinese characters "足白金" (Chuk Pak Kam)" and substituting ", "白金" or "鉑金"".

(2) Regulation 3 is amended by adding -

"(1A) The expression "足白金" or "足鉑金", when used in any trade or business other than for articles described in the Second Schedule, means platinum or a platinum alloy of a fineness of not less than 990 parts in 1 000 parts by weight of alloy.".

(3) Regulation 3(2) is amended by repealing "Chinese characters "足白金" (Chuk Pak Kam)" and substituting "expression "足白金" or "足鉑金"".

(4) Regulation 3(3) is amended by repealing "or "platinum alloy"" and substituting ", "platinum alloy", "白金", "白金合金", "鉑金" or "鉑金合金"".

(5) Regulation 3(4) is amended by repealing "Chinese characters "足白金" (Chuk Pak Kam)" and substituting "expression "足白金" or "足鉑金"".

(6) Regulation 3(5) is amended by repealing everything after "words in the" and substituting -

"description -

(a) shall be in English; and

(b) shall not be less prominent than the word "platinum".

(7) Regulation 3 is amended by adding -

"(6) If an article with a surface treatment of platinum is marked with words describing the treatment which include the characters "白金" or "鉑金", the other words in the description -

(a) shall be in Chinese; and

(b) shall not be less prominent than the characters "白金" or "鉑金", as the case may be."

3. Standards of fineness

The First Schedule is amended by repealing "Chuk Pak Kam (足白金)" and substituting "足白金 or 足鉑金 (Chuk Pak Kam)".

4. Exempted articles

The Second Schedule is amended by repealing "3(1)]" and substituting "3]".

Clerk to the Executive Council

COUNCIL CHAMBER

2008

Explanatory Note

This Regulation amends the Trade Descriptions (Definition of Platinum) Regulations (Cap. 362 sub. leg. B) ("the principal Regulations").

2. One of the purposes of the amendments is to add "鉑金" as an alternative to "白金", the Chinese equivalent of "platinum".

3. Section 2(6) and (7) amends regulation 3(5) of the principal Regulations and adds a new regulation 3(6) respectively so that the provision applies more effectively in relation to bilingual markings.

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.