

**For discussion on
22 June 2009**

**Legislative Council
Panel on Economic Development**

The Consumer Protection Regime in Hong Kong

PURPOSE

This paper sets out the current consumer protection regime in Hong Kong.

POLICY OBJECTIVE

2. We are committed to protecting the legitimate interests of consumers. The primary objective of our consumer protection policy is to ensure that the products and services procured by consumers are safe and of reasonable quality, and that consumers are treated fairly.

EXISTING LEGISLATION

3. There are several pieces of legislation in place to protect consumers. The Trade Descriptions Ordinance (Cap. 362) is the key legislation in this respect. It prohibits false trade descriptions, false marks and mis-statements in respect of goods sold in retail shops, and requires specific information to be provided to consumers for specified products. The Consumer Goods Safety Ordinance (Cap. 456) and the Toys and Children's Products Safety Ordinance (Cap. 424) protect the safety of general consumer goods and toys and children's products. Briefly, they impose a duty on manufacturers, importers and suppliers of general consumer goods and toys and children's products to ensure that the goods they supply in Hong Kong must be reasonably safe. The Weights and Measures Ordinance (Cap. 68) defines units and standards of measurement, and prohibits short measure.

4. The Customs and Excise Department (C&ED) is responsible for enforcing the above legislation. C&ED conducts spot checks, covert operations and surprise checks proactively to see if any retailers have contravened any of the provisions of the Ordinances. C&ED also takes or procures product samples for testing by the Government Laboratory for law enforcement purpose. In addition, C&ED closely monitors local and overseas media reports, as well as reports published by safety organizations on safety issues and potential hazards related to products available in Hong Kong.

5. Several other pieces of legislation are in place to protect consumers in their contractual relationship with suppliers. Examples are the Sale of Goods Ordinance (Cap. 26) and the Supply of Services (Implied Terms) Ordinance (Cap. 457). Under the former, suppliers have an implied undertaking that the goods supplied are of merchantable quality and fit for the particular purpose that the buyer has made known to the supplier, and that the buyer can enjoy quiet possession of the goods etc. The latter legislation focuses on contracts for the supply of services, and imposes implied terms that the supplier will carry out the service with reasonable care and skill and within a reasonable time.

6. The Control of Exemption Clauses Ordinance (Cap. 71) limits the extent to which civil liability for breach of contract, or for negligence or other breach of duty, can be avoided by means of exemption clauses, except when such clauses satisfy the requirement of reasonableness. The Unconscionable Contracts Ordinance (Cap. 458) empowers the court to refuse to enforce any consumer contracts, or any part of such contracts, which are found to be unconscionable.

RECENT DEVELOPMENTS

7. Arising from a review in 2007, we introduced the Trade Descriptions (Amendment) Bill and eight related pieces of subsidiary legislation in late 2007 / early 2008. The objective of the exercise was to outlaw the more prevalent unfair trade practices at that time, such as misleading price indications, false representations regarding after-sale

services and warranties for goods, and false and misleading representations regarding connection with and endorsement by third persons. The opportunity was also taken to clarify the definitions of several precious metals, such as fei cui, platinum etc, to protect consumers. The Amendment Bill and the subsidiary legislation were enacted in mid-2008 and came into operation on 2 March 2009. C&ED has been carrying out enforcement actions in regard to the new offences. A number of arrests have been made and the prosecution work is in progress. C&ED will continue its enforcement work in connection with this new legislation and other legislation set out in paragraph 3 above.

8. Separately, we invited the Consumer Council (the Council) to conduct a review of the consumer protection regime in Hong Kong. The Council submitted a report entitled “Fairness in the Marketplace for Consumers and Business” in 2008. The Council’s main recommendation is that a cross-sectoral legislation should be enacted to prohibit unfair trade practices in the supply of all goods and services, private residential properties and contractual rights and obligations.

9. We are now examining the Council’s recommendations in detail, in consultation with other government bureaux / departments, and making reference to the legislative and institutional arrangements adopted in overseas economies. While we agree in principle that we should strengthen regulation of unfair trade practices, we are mindful that the Council’s recommendations are wide-ranging and complex, entailing very substantial changes to the existing legal and enforcement framework in our consumer protection regime. The Council’s recommendations would also have extensive impact on and interface with many other general and sectoral regulatory systems and legislation already in place. In examining the recommendations, we consider it important to strike an appropriate balance between the protection of consumer rights and the avoidance of regulatory overreach, and to examine whether there are other alternatives to achieve the same objectives. We will report to this Panel and consult the public once we have formulated our initial views on the way forward.

10. In addition, we are updating the standards set out in the Toys and Children’s Products Safety Ordinance to facilitate compliance by

suppliers and provide more protection for consumers. Our target is to introduce the proposed legislative amendments by late 2009/early 2010.

ENHANCING TRANSPRENCY AND ACCESS TO INFORMATION

11. While legislation and vigorous law enforcement are essential, we believe that enhancing transparency and consumers' access to information are equally important, as it would enable consumers to have better knowledge of the market and make informed decisions when purchasing goods or services. In this connection, the Council has for years been our key partner, as one of its key tasks is to provide market information to consumers, including information on product performance, shopping tips and price information.

Publication of "Choice"

12. The Council has been publishing the "Choice" magazine every month since 1976. In this popular magazine, the Council publishes product testing findings and provides independent and impartial information on the performance, safety and other aspects of products and services for consumers' reference. In recent years, the Council has also taken the initiative to publicize regularly consumption tips such as typical consumer scams and steps to avoid them, advertising bluffs, means to save electricity, as well as issues of concern in special types of contracts, like pre-paid services.

Price Surveillance Projects

13. In mid-2008, we provided the Council with additional resources to undertake three price surveillance projects i.e. "Weekly Price Survey", "Internet Price Watch" and "Daily Wet Market Report". These projects seek to enhance price transparency and facilitate the flow of market information, thereby alerting consumers to possible price differentials among retail points and helping customers make better choices.

Weekly Price Survey

14. Under the Weekly Price Survey project, the Council surveys the prices of some 40 popular food and household items in a district every week. Each survey covers some 20 retail outlets of different nature, including supermarkets, pharmacies, frozen food shops, beauty product chains and groceries. The survey findings are disseminated through the Council's "Pricewatch" website and its Consumer Advice Centres, the relevant District Office, as well as the printed and electronic media.

Internet Price Watch

15. In its Internet Price Watch portal, the Council surveys the prices of some 500 retail items available on the internet by four supermarkets. The price information is updated on a daily basis and consumers are able to view the price trend in the previous five days.

Daily Wet Market Report

16. Under the Daily Wet Market Report, the Council selects two districts every day from Monday to Friday and surveys the prices of some 16 popular fresh food items available in two major markets in each district. Results are announced each day through a radio station and a TV programme, and are uploaded onto the Council's "Pricewatch" website.

Auto Fuel Surveillance

17. Another new initiative is to keep a close watch on retail auto fuel prices. In February this year, the Council launched an interactive Auto Fuel Price Calculator on its website, which enables motorists to compare the net cash pump unit prices of three auto-fuel products (regular petrol, premium petrol and diesel) of all five oil suppliers in Hong Kong.

LIAISON WITH THE TRADE

18. Both C&ED and the Council maintain liaison with the trade

to improve trade practices and minimize the opportunities for individual practitioners to take advantage of common misconception or misunderstanding. For instance, the legal definitions of various precious metals set out in the subsidiary legislation of the Trade Descriptions Amendment Ordinance have been worked out in collaboration with the relevant trade associations. The Council also cooperates with sectoral trade bodies, such as the beauty industry, in developing codes of practices or guidelines for best practices for practitioners to follow.

19. Apart from liaising with trade associations, the Council also liaises with individual companies and mediates in consumer complaints, whether they are lodged to the Council direct, or through the Hong Kong Tourism Board or other channels. In cases where a large number of complaints are directed towards a company, the Council would not only mediate in the cases concerned, but also discuss with the company's management its marketing practices or staff training issues so as to improve consumer protection. In cases where there is blatant violation of consumer rights, the Council may consider releasing the name of the company to the media.

CONSUMER EMPOWERMENT

20. Educating consumers their rights and obligations is another important element of our consumer protection work. For this reason, the Council places much emphasis on its publicity and public education programmes. For instance, it regularly organizes or participates in talks, visits, workshops and seminars on consumer-related themes, such as consumer rights and responsibilities, consumer protection laws, consumer scams and traps, advertising bluffs, high pressure sales tactics, as well as means to achieve sustainable consumption.

21. For the younger generation, the Council organizes the annual Consumer Culture Study Award for secondary school students. Through researches on the culture, attitudes and values of consumers, students are given the opportunity to reflect on their own consumption behaviour.

22. For tourists from the Mainland, we have provided additional

resources to enable the Council to establish a dedicated “Shopsmart” website in September 2007, in which there are useful shopping tips and advice on the purchase of products that are most popular among Mainland tourists. The website is hyperlinked to consumer welfare organizations and tourism websites in the Mainland. Since its establishment, the website has recorded a hit rate of over 52 million.

CONSUMER LEGAL ACTION FUND

23. Access to legal remedies is equally important. In 1994, we established the Consumer Legal Action Fund with an initial injection of \$10 million and appointed the Council as trustee and manager of the Fund. The Fund aims to provide consumers easier access to legal remedies by providing them financial and legal assistance in meritorious cases, particularly those where a number of complainants have similar grievances.

NEXT STEPS

24. In the coming months, our consumer protection work will focus on the following:

- (a) strengthening enforcement actions under the Trade Descriptions Ordinance, Consumer Goods Safety Ordinance, Toys and Children’s Products Safety Ordinance and the Weights and Measures Ordinance;
- (b) considering the way forward in tackling unfair trade practices;
- (c) introducing amendments to the Toys and Children’s Products Safety Ordinance;
- (d) continuing the various price surveillance initiatives and examining ways to enhance their effectiveness;

- (e) carrying out more publicity and public education work, particularly in regard to advertising bluffs, consumer scams and traps, as well as high pressure sales tactics, with a view to strengthening the awareness of consumers;
- (f) strengthening our liaison with consumer protection organizations in the Mainland, so as to enable Mainland tourists to be aware of unlawful sales tactics (like misleading price indications) and their rights under various legislation, as well as the complaints mechanism; and
- (g) injecting further funding to the Consumer Legal Action Fund when such is needed, so that it could continue to assist consumers to take legal actions in meritorious cases.

ADVICE SOUGHT

25. Members are invited to take note of the existing legislation and measures in consumer protection and our planned actions in the coming few months.