

立法會

Legislative Council

LC Paper No. CB(1)1939/08-09(08)

Ref : CB1/PL/EDEV

Panel on Economic Development Meeting on 22 June 2009

Background brief on review of consumer protection legislation

Purpose

This paper provides background information on the review of consumer protection legislation and summarizes concerns raised by Members on the subject matter.

Background

Need to strengthen the consumer protection regime

2. In recent years, there have been changes in the local consumer market including a fast-growing service sector, increasingly aggressive marketing and sales practices for products and services, as well as significant growth in the number of inbound tourists, especially those from the Mainland, who are not fully aware of their rights and less informed. There is a need to review the adequacy of the existing regulatory 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 in February 2007 that the Consumer Council (CC) would conduct a comprehensive review of existing measures to protect consumer rights. In early 2007, while the review was being conducted, there were several widely reported retail scams involving Mainland tourists, where deceptive, misleading and unfair trade practices were employed by unscrupulous retailers in conducting their business. In order to protect both local consumers and tourists, the Administration identified some priority legislative changes for early implementation to tackle the more prevalent malpractices. The Trade Descriptions (Amendment) Bill 2007 was introduced into the Legislative Council (LegCo) on 9 January 2008, and was enacted on 18 June 2008 following scrutiny by a bills committee. The Administration also

introduced eight items of subsidiary legislation under the Trade Descriptions Ordinance (Cap. 362) (TDO) in early 2008 to enhance protection for consumers in the purchase of jewellery items and popular electronic products. The Amendment Ordinance and the eight pieces of subsidiary legislation came into operation on 2 March 2009.

The comprehensive review

4. To follow up the initiatives announced by the Financial Secretary in February 2007, a Working Group on Improvement of Consumer Protection Laws was set up under CC, with input from relevant government departments, to identify areas for improvement in consumer protection. CC has reviewed a wide range of issues, including:

- (a) regulation of misleading and deceptive advertisements;
- (b) enhancing protection in consumer goods and service market;
- (c) specific consumer protection measures for individual sectors taking into account their specific nature and characteristics;
- (d) examining the merits of enacting a comprehensive law on trade practices and the implementation of the proposed legislation.

5. On 25 February 2008, CC published the review 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 Statute in Hong Kong to prohibit unfair trade practices of all types of goods and services. The press release of CC is in **Appendix I**. In the Policy Agenda of the 2008-2009 Policy Address issued in October 2008, the Administration indicated that it was reviewing the existing consumer protection legislation in the light of the recommendations by CC, with a view to better protecting consumer rights and combating misleading and undesirable sales practices. The Administration planned to consult the public on the way forward in the first half of 2009.

Previous discussions

6. At the meeting of the former Panel on Economic Services¹ held on 25 June 2007, members expressed the need to tighten the regulation of pre-paid and contractual services, and provide a "cooling-off period" for consumers to safeguard their interests. As the service providers being complained refused to attend the mediation meetings arranged by CC or provide CC with the requested information, members considered that CC should be provided with more power for enhancing consumer protection. Panel members also saw the need to regulate contents of

¹ The Panel on Economic Services was renamed as the Panel on Economic Development from the 2007-2008 session.

advertisements delivered through both electronic and print media, require return arrangements for products sold at discounted prices and enforce relevant legislation such as the Unconscionable Contracts Ordinance (Cap. 458) more effectively. They also considered that various consumer protection legislation should be incorporated into one single ordinance to help facilitate law enforcement and enhance consumers' understanding of their rights and interests.

7. At the Council meetings on 9 May 2007 and 4 July 2007, the motions on "Combating unscrupulous shops" and "Strengthening the regulation of unscrupulous business practices in pay television, telecommunications and internet services" were passed respectively.

8. Questions were also raised at Council meetings on the subject of consumer protection. At the Council meetings on 4 February and 13 May 2009 and at the special meeting of the Finance Committee on 23 March 2009, when responding to Members' questions, the Administration advised that CC had recommended, inter alia, to enact a cross-sector statute to prohibit the use of unfair trade practices by traders for all products, services and industries before, during and after transactions. As CC's recommendations involved complex issues and affected many pieces of existing legislation and codes of practices, these would have to be examined in detail. These issues included the definition of inappropriate sales practices, the scope of misleading representations and material omissions, implementation problems, and interface with existing laws and other regulatory regimes.

Latest development

9. At the Panel meeting held on 25 May 2009, members requested the Administration to brief the Panel on the proposed way forward to regulate inappropriate trade practices on 22 June 2009.

References

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

Council Business Division 1
Legislative Council Secretariat
16 June 2009

Press Release

A comprehensive Trade Practices Statute to usher in a new era of fairness for all in the marketplace (February 25, 2008)

The Consumer Council has put forward a package of recommendations for a new cross-sector legislative framework in a significant boost to consumer protection against unfair, misleading or deceptive marketplace conduct as well as to enable fair competition among traders.

It has recommended the creation of a comprehensive Trade Practices Statute administered by a public enforcement body in the new regulatory regime.

The proposed Statute will combine a 'catch all' prohibition provision against unfair trade practices to cover all manners of consumer goods and services, from low-cost items to valuables such as car, private residential property, and contractual rights and obligations.

Under the Statute, offenders will be sanctioned mainly by a combination of administrative measures and civil liabilities. Only if the unfair practices are so morally reprehensible or have caused so great a social harm will criminal sanction be considered, such as coercive sales tactics.

The law will apply to only business (a trader) to consumer transactions.

Existing sector-specific legislations, industry self-regulation, and common law rights currently available to consumers will remain unaffected, to operate alongside the proposed Statute within the recommended framework.

The Government has already taken the initiative to rectify deficiencies in the existing Trade Descriptions Ordinance (TDO). It is hoped that the TDO Amendment Bill presently before Legco will soon be approved and implemented as an expeditious and practical tool to address the problem.

The Council's recommendations - altogether 12 in total - were contained in a 180-page report entitled "Fairness in the Marketplace for Consumers and Business", and submitted to the Commerce and Economic Development Bureau for consideration.

The report was initiated in response to the then Financial Secretary's call in his 2007-08 Budget: "To review existing measures to protect consumer rights, including ways to improve the relevant legislation to combat misleading and undesirable sales practices".

Releasing the report at a press conference today (February 25), the Chairman of Consumer Council, Prof. Anthony CHEUNG, urged all stakeholders to give their views and opinions in a public debate of the various issues involved in this proposed legislative reform.

"The report is intended to serve as a useful document and as the basis on which to hold wide public discussion on such important issues as the scope, the enforcement, and the sanctions of such legislation," he said.

"We firmly believe that fairness in the marketplace serves the interests of not only consumers but those of business. It's a win-win situation for all, and for the ultimate well-being of the Hong Kong economy".

"The Council is fully committed to improving legal consumer protection to all members of the public, including our visitors. We will be canvassing for your support, the support of the community as a whole, to turn this into reality in the very foreseeable future," pledged the Chairman.

The report seeks to focus, for the purpose of maintaining a fair marketplace, on establishing a mechanism in the new legislative regime that is more flexible and inclusive in sanctioning unfair trade practices.

The current legislative framework is regarded as sector-specific, piecemeal and unco-ordinated, leaving gaps for unscrupulous practices to slip through the net.

The recommended framework will serve effectively as a basic 'safety net' that can adapt to the many situations that arise in a vibrant and creative economy.

A broad range of areas of long-standing unfair trade practices that need urgently to be addressed, has been identified in the report:

- false or misleading descriptions of goods and services
- insufficient information
- misleading advertisements
- aggressive or high pressure tactics
- bait and switch
- accepting payment without ability or intention to supply
- adopting unfair terms in standard contracts

On the issue of an appropriate enforcement mechanism, the Council considers that it should seek the most cost-effective outcomes for the enforcement agency and be responsive to the needs of consumers for a swift resolution to their problem.

This mechanism should also, at the same time, offer traders who find themselves at risk of a breach of law, an uncomplicated way to resolve the issue.

The report notes that both the Consumer Council and the Customs and Excise Department (C&ED) possess the experience and resources to take on the role of enforcing the proposed Statute.

But it gives no hint on whether the Council, as a strident advocate for consumers, should assume an enforcement role.

As the author of this report, the Council believes that in order to avoid criticisms of conflict of interests and perceptions of bias, the matter is best left open for further public deliberation.

With regard to sanction power, the Council recommends a measured approach that relies heavily on administrative measures to secure improvements in marketplace behaviour, with court sanction as the backing.

To improve consumer access to legal redress, the Council also suggests that consideration should be given to a number of options, for example, establishing a Consumer Tribunal to consider matters under the proposed Statute and existing legislation that currently provides rights of private action regarding consumer transaction disputes.

Alternatively, other options are to expand the scope of the Supplementary Legal Aid Scheme, or enhance the availability of the Consumer Legal Action Fund to a wider range of consumers.

It is the Council's view that the establishment of the proposed Statute should not affect trade practices provisions in existing statutes regulating specific sectors which offer similar level of protection, parallel to and compatible with the proposed Statute, and the relevant enforcement agencies have the expertise and resources to administer the law.

Secondly, professional bodies (not trade associations) with existing self-regulatory regimes will continue to be regulated by their respective rules and regulations because enforcement requires specific professional and specialized knowledge that the new enforcement agency under the proposed Statute would not have.

Accordingly, they will be exempted from the proposed Statute.

Nonetheless, the Council also sees the need for improvements in the current legislative and regulatory frameworks of some sectors, for example, in the telecommunications and broadcasting industries which attracted a consistently high level of consumer complaints over recent years with a total of 15,634 cases in 2007.

The Council and both the Telecommunications Authority (TA) and the Broadcasting Authority (BA) are concerned with the prevalence of unfair sales tactics involving aggressive, harassing and deceptive practices being perpetrated on consumers by sales people in these sectors.

Urgent action is needed to stop the problems, and in view of the pending creation of a Communications Authority (merging the TA and BA), the Council is proposing a number of short-term measures.

The Council recommends the expansion of the s.7M of the Telecommunications Ordinance to expressly cover all unfair trade practices as prohibited under the proposed Trade Practices Statute before, during and after transaction, and that it covers the conduct of the licensees and their agents.

The same legislative provision is recommended to be extended to cover the broadcasting sector.

The Council is also concerned that given the rapid growth of the service economy and proliferation in the use of standard-form consumer contracts, the rights and interests of consumers have been seriously jeopardized by the inclusion of unfair terms in this type of contracts, such as unilateral price variation in fixed-term contract.

Notwithstanding the existence of the proposed Statute that will regulate unconscionable conduct, the Council recommends that separate legislation be introduced to regulate unfair terms in standard consumer contracts (i.e. those contracts not individually negotiated).

Such legislation may be modeled upon the UK Unfair Terms Regulations, with an indicative and non-exhaustive list of potential unfair terms.

An Executive Summary of the report in both English and Chinese can be viewed on the Consumer Council website www.consumer.org.hk. Copies of the report are available for distribution at the press conference.

Background brief on review of consumer protection legislation

List of relevant papers

Panel/Committee	Date	Paper
Council Meeting	13 October 2004	LegCo question: Service Items Covered by Management Fees (Page 79-80) http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm1013ti-translate-e.pdf
Council Meeting	20 October 2004	LegCo question: Complaints About Services Provided by Beauty or Slimming Centres (Page 90-93) http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm1020ti-translate-e.pdf
Council Meeting	2 February 2005	LegCo question: Unscrupulous Practices of Hotels to Promote Memberships (Page 61-62) http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm0202ti-translate-e.pdf
Council Meeting	9 March 2005	LegCo question: Substandard Services of Telecommunications Service Providers (Page 99-102) http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm0309ti-translate-e.pdf
Council Meeting	25 May 2005	LegCo question: Restraining Mis-selling Behaviour of Telecommunications Service Operators (Page 23-32) http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm0525ti-translate-e.pdf
Council Meeting	15 June 2005	LegCo question: Broadband Internet Access Service (Page 87-89) http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm0615ti-translate-e.pdf
Council Meeting	2 November 2005	LegCo question: Sale of Counterfeit Goods (Page 74-76) http://www.legco.gov.hk/yr05-06/english/counmtg/hansard/cm1102ti-translate-e.pdf LegCo question: Monitoring of Low-priced Outbound Tours (Page 76-77) http://www.legco.gov.hk/yr05-06/english/counmtg/hansard/cm1102ti-translate-e.pdf
Council Meeting	9 November 2005	LegCo question: Regulation of Services Provided by Beauty Salons (Page 60-67) http://www.legco.gov.hk/yr05-06/english/counmtg/hansard/cm1109ti-translate-e.pdf

Panel/Committee	Date	Paper
Council Meeting	23 November 2005	LegCo question: Monitoring Sale of Hairy Crabs (Page 28-35) http://www.legco.gov.hk/yr05-06/english/counmtg/hansard/cm1123ti-translate-e.pdf
Council Meeting	18 January 2006	LegCo question: Monitoring of Medical Centres Operating as Conglomerate (Page 84-87) http://www.legco.gov.hk/yr05-06/english/counmtg/hansard/cm0118ti-translate-e.pdf
Council Meeting	15 February 2006	LegCo question: Regulation of Slimming Services (Page 92-94) http://www.legco.gov.hk/yr05-06/english/counmtg/hansard/cm0215ti-translate-e.pdf
Council Meeting	8 March 2006	LegCo question: Regulating Body-slimming Advertisements (Page 17-26) http://www.legco.gov.hk/yr05-06/english/counmtg/hansard/cm0308ti-translate-e.pdf
Council Meeting	10 May 2006	LegCo question: Medical Discount Cards (Page 100-102) http://www.legco.gov.hk/yr05-06/english/counmtg/hansard/cm0510ti-translate-e.pdf
Council Meeting	21 June 2006	LegCo question: Regulation of Spa Treatment and Massage Services (Page 92-94) http://www.legco.gov.hk/yr05-06/english/counmtg/hansard/cm0621-translate-e.pdf
Council Meeting	1 November 2006	LegCo question: Safety of Cosmetic Products (Page 57-60) http://www.legco.gov.hk/yr06-07/english/counmtg/hansard/cm1101-translate-e.pdf
Council Meeting	8 November 2006	LegCo question: Protection of Consumers' Rights and Interests (Page 26-35) http://www.legco.gov.hk/yr06-07/english/counmtg/hansard/cm1108-translate-e.pdf LegCo question: Regulation of Colon Hydrotherapy (Page 64-66) http://www.legco.gov.hk/yr06-07/english/counmtg/hansard/cm1108-translate-e.pdf
--	28 February 2007	The 2007-08 Budget (Pt. 34 and 35) http://www.budget.gov.hk/2007/eng/budget09.htm
Council Meeting	9 May 2007	Motion on "Combating unscrupulous shops" moved by Hon LAU Kong-wah http://www.legco.gov.hk/yr06-07/english/legco_rpt/legco_motion0510-e.pdf

Panel/Committee	Date	Paper
		<p>Progress Report http://www.legco.gov.hk/yr06-07/english/counmtg/motion/cm0509-m1-prpt-e.pdf</p>
Council Meeting	23 May 2007	<p>LegCo question: Sale of Spurious Proprietary Chinese Medicine (Page 60-62) http://www.legco.gov.hk/yr06-07/english/counmtg/hansard/cm0523-translate-e.pdf</p>
Council Meeting	13 June 2007	<p>LegCo question: Complaints About Telecommunications or Subscription Television Services (Page 71-74) http://www.legco.gov.hk/yr06-07/english/counmtg/hansard/cm0613-translate-e.pdf</p>
Panel on Economic Services	25 June 2007	<p>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</p> <p>Minutes of the Meeting LC Paper No. CB(1)2268/06-07 http://www.legco.gov.hk/yr06-07/english/panels/es/minutes/es070625.pdf</p>
Council Meeting	4 July 2007	<p>LegCo question: Owners Stipulating Bundled Lease Terms (Page 98-101) http://www.legco.gov.hk/yr06-07/english/counmtg/hansard/cm0704-translate-e.pdf</p> <p>LegCo question: Sale of Uncompleted Units (Page 102-105) http://www.legco.gov.hk/yr06-07/english/counmtg/hansard/cm0704-translate-e.pdf</p> <p>Motion on "Strengthening the regulation of unscrupulous business practices in pay television, telecommunications and internet services" moved by Dr Hon YEUNG Sum http://www.legco.gov.hk/yr06-07/english/legco_rpt/legco_motion07051-e.pdf</p> <p>Progress Report http://www.legco.gov.hk/yr06-07/english/counmtg/motion/cm0704-m1-prpt-e.pdf</p>

Panel/Committee	Date	Paper
Council Meeting	17 October 2007	LegCo question: Sale of Drugs (Page 93-98) http://www.legco.gov.hk/yr07-08/english/counmtg/hansard/cm1017-translate-e.pdf
Council Meeting	30 January 2008	LegCo question: Control on Sale of Unregistered Drugs (Page 90-93) http://www.legco.gov.hk/yr07-08/english/counmtg/hansard/cm0130-translate-e.pdf
--	25 February 2007	"Fairness in the Marketplace for Consumers and Business" - Executive Summary http://www2.consumer.org.hk/2008022501/exec_sum_e.pdf
Council Meeting	5 March 2008	LegCo question: New Measures to Safeguard Rights and Interests of Consumers (Page 102-104) http://www.legco.gov.hk/yr07-08/english/counmtg/hansard/cm0305-translate-e.pdf
Panel on Economic Development (Special meeting)	24 October 2008	The 2008-09 Policy Address - "Policy Agenda" (Page 50) http://www.legco.gov.hk/yr08-09/english/panels/0809agenda_e.pdf Minutes of the Meeting (LC Paper No. CB(1)324/08-09) http://www.legco.gov.hk/yr08-09/english/panels/edev/minutes/edev20081024.pdf
Council Meeting	4 February 2009	LegCo question: Regulation of Advertisements (Page 38-44) http://www.legco.gov.hk/yr08-09/chinese/counmtg/floor/cm0204-confirm-ec.pdf
Finance Committee (Special Meeting)	23 March 2009	Minutes of the Meeting (to follow)
Council Meeting	13 May 2009	LegCo question: Monitoring of dishonest trade practices of retailers http://www.info.gov.hk/gia/general/200905/13/P200905130181.htm