

**For discussion on  
24 November 2008**

**LEGISLATIVE COUNCIL PANEL ON ECONOMIC  
DEVELOPMENT**

**IMPLEMENTATION OF TRADE DESCRIPTIONS  
(AMENDMENT) ORDINANCE 2008 AND SUBSIDIARY  
LEGISLATION**

**PURPOSE**

The Trade Descriptions (Amendment) Ordinance 2008 (the Amendment Ordinance) was enacted on 18 June 2008. Eight related pieces of subsidiary legislation were also made in the 2007-08 legislative session<sup>1</sup>. This paper informs Members of our plan to bring the legislation into operation on 2 March 2009 and the preparatory work for the commencement of the legislation.

**BACKGROUND**

2. To strengthen our protection for consumers and tourists against certain malpractices in the retail trade, legislative provisions were introduced in early 2008 to prohibit certain misleading and deceptive sales practices. The provisions are now contained in the Amendment Ordinance and the aforesaid subsidiary legislation. Their key features are set out in the *Annex*. They are to commence operation on a date to be appointed by the Secretary for Commerce and Economic Development.

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1 The eight pieces of subsidiary legislation are-  
Trade Descriptions (Marking) (Gold and Gold Alloy) (Amendment) Order 2008;  
Trade Descriptions (Definition of Platinum) (Amendment) Regulation 2008;  
Trade Descriptions (Marking) (Platinum) (Amendment) Order 2008;  
Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation;  
Trade Descriptions (Definition of Diamond) Regulation;  
Trade Descriptions (Provision of Information on Natural Fei Cui) Order;  
Trade Descriptions (Provision of Information on Diamond) Order; and  
Trade Descriptions (Provision of Information on Regulated Electronic Products) Order.

## **ENFORCEMENT PLAN**

### Enforcement Strategy

3. The Customs and Excise Department (C&ED) is responsible for enforcing the Trade Descriptions Ordinance. C&ED plans to take a three-pronged approach. First, C&ED will establish a hotline for members of the public to report suspected breaches of the legislation. C&ED will then conduct investigations, such as taking evidence from the complainants, collecting product samples and checking on site if the statutory requirements concerning price indications or display of notices have been complied with. As some complaints will be lodged by tourists who will only stay in Hong Kong for a short period of time, it will be necessary for C&ED to take prompt follow-up actions. C&ED will therefore establish rapid squads and on-call teams to handle complaints from these complainants.

4. Second, C&ED also plans to conduct regular spot checks on jewellery and electrical appliance shops. In addition, based on intelligence and past complaint statistics, C&ED has identified a number of high-risk traders for targeted enforcement. C&ED will conduct surprise raid and covert operations, with a view to deterring unscrupulous traders from employing dishonest practices.

### Publicity

5. The new legislation will achieve its purpose better if consumers are aware of their rights. We will carry out publicity campaigns to alert consumers of their rights and remind retailers of the new statutory requirements and the need to comply with them. In this connection, we are now preparing leaflets introducing the new requirements. There will be two sets of leaflets: a shorter version for easy reference by consumers and a longer version, emphasizing traders' obligations, for the trades. Copies of the shorter version will be distributed at border crossing points and at public enquiry counters at departments and districts. We will also produce posters and will consider using announcements of public interest to reach out to the public.

6. For the trades, we have already written to over 130 business chambers and trade organizations, briefing them on the new statutory requirements and informing them of the intended commencement date. We will conduct seminars with the relevant trade associations so as to familiarize employees of their member companies with the new legislation. In addition, we will organize workshops for the Consumer Council (CC) and Travel Industry Council of Hong Kong (TIC), as their staff will need to handle enquiries and complaints of tourists. A referral system is also in place for the CC and TIC to refer to C&ED cases of suspected breaches of the law.

## **WAY FORWARD**

7. Subject to Members' views, we will appoint 2 March 2009 as the date of commencement for the new legislation. We plan to publish the commencement notices in the Gazette in December 2008.

**Commerce and Economic Development Bureau  
Customs and Excise Department  
November 2008**



## **MAIN FEATURES OF NEW LEGISLATION**

The Trade Descriptions (Amendment) Ordinance 2008 (the Amendment Ordinance) seeks to prohibit four types of unscrupulous trade practices.

### **False Representations Regarding After-sale Services and Warranties for Goods**

2. The Amendment Ordinance prohibits false representations on matters regarding after-sale services and warranties for goods. Specifically, it prohibits misrepresentations on –

- (i) the place at which after-sale services or spare parts are available;
- (ii) warranties given for after-sale services or spare parts;
- (iii) the parties providing after-sale services or spare parts;
- (iv) the scope of after-sale services; and
- (v) the period for which and the charge at which after-sale services or spare parts are available.

### **Misleading Price Indications**

3. The Amendment Ordinance also prohibits misleading price indications by requiring that, when a trader displays in the course of trade or business a sign to indicate the price of goods that is set by reference to a unit of quantity (which includes length, width, height, area, volume, capacity, weight and number), he must indicate the price per unit of quantity in a readily comprehensible manner.

4. Under the Amendment Ordinance, the following scenarios amount to misleading price indications:

- (i) partial or total obscuring of any letter, word, numeral or character that indicates the price of goods, or the quantity unit to which the price relates;
- (ii) use of different manners in the presentation of letters, words, numerals or characters to indicate the price and the quantity unit,

such that consumers will be unable to get a clear idea about the accurate price; and

- (iii) separating unreasonably far apart the letters, words or characters that indicate respectively the unit of quantity and the price.

### **Misleading Pricing for Electronic Products**

5. The Amendment Ordinance imposes new requirements in relation to the sale of the following five types of electronic products:

- (i) digital audio player (including MP3 player);
- (ii) digital camcorder;
- (iii) digital camera;
- (iv) mobile phone; and
- (v) portable multimedia player (including MP4 player).

The Amendment Ordinance provides that if the prices at which these products are sold do not include any basic accessories<sup>1</sup> that are reasonably expected to be included in the price, traders are required to inform potential purchasers of the same before the latter pay for the products.

### **False or Misleading Representations regarding Connection with and Endorsement by Another Person**

6. The Amendment Ordinance also prohibits false and misleading representations relating to third-party endorsements. It is an offence for a trader to make a false or misleading representation regarding his connection with or endorsement by an individual or body.

### **Definitions of Fei Cui, Diamond and Platinum**

7. The Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation and the Trade Descriptions (Definition of Diamond) Regulations assign definitive meanings to “fei cui” and “diamond” respectively when the expressions are being used in any trade or business. “Fei cui” (“翡翠”) is defined as an article which is a granular to fibrous polycrystalline aggregate composed solely or principally of jadeite, omphacite or kosmochlor or a combination of any of the three substances. The expression “natural” or “天然”, when used in any trade or business

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<sup>1</sup> The Amendment Ordinance defines “basic accessories” as accessories that are essential for the effective performance of the principal function of the products.

to describe fei cui, means that the fei cui has not been subjected to any treatment or process which altered its crystalline structure and original colour. “Diamond” or “鑽石” is defined as an article which is a natural mineral consisting essentially of carbon crystallized in the isometric (cubic) crystal system which has specified physical properties<sup>2</sup>. The above requirement does not apply when there is an expression “artificial”, “人工”, “man-made”, “人做”, “synthetic”, “合成” or another similar expression in the description which clearly indicates that the article concerned is not natural diamond.

8. Under the Trade Descriptions (Definition of Platinum) Regulations, the Chinese rendition of “platinum” is “白金”. The Trade Descriptions (Definition of Platinum) (Amendment) Regulation 2008 provides that “platinum” can also be rendered as “鉑金”. The Amendment Regulation also specifies that when used in any trade or business, the expression “足白金” or “足鉑金” means platinum or a platinum alloy of a fineness of not less than “990”.

### **Provision of Information on Natural Fei Cui, Diamond and Electronic Products**

9. The Trade Descriptions (Provision of Information on Natural Fei Cui) Order, the Trade Descriptions (Provision of Information on Diamond) Order and the Trade Descriptions (Provision of Information on Regulated Electronic Products) Order impose certain disclosure requirements in relation to the retail sale of natural fei cui, diamond and the five types of electronic products referred to in paragraph 5 above. Under these Orders, a retailer who supplies any article of natural fei cui or, diamond, or any of the five types of electronic products, must issue, at the time of supply, an invoice or receipt to the buyer containing the following pieces of information:

- (a) the full name and address of the supplier;
- (b) the price and date of supply; and
- (c) a description of the article/product.

The retailer must retain a copy of the invoice or receipt for not less than three years.

10. In relation to the sale of natural fei cui, the description in the

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<sup>2</sup> The properties are stated in the Schedule to the Trade Descriptions (Definition of Diamond) Regulations.

invoice or receipt must state, as appropriate, whether the article is composed solely or principally of natural fei cui or inlaid with other jade. In relation to diamond, the invoice or receipt must state, as appropriate, whether the article is composed solely of diamond or inlaid with diamond only or with other precious stones. The invoice or receipt must also state the total weight of the diamond (in carats), or if the total weight is unknown to the retailer, a statement to that effect.

11. With regard to the five types of electronic products, the invoice or receipt must state the brand name, model number, details of after-sale services, place of manufacture, and the main features and specifications (as defined in the Order).

12. Retailers of fei cui and diamond should, in addition, display a prescribed notice prominently at their retail outlets informing customers of the statutory requirement for the retailers to issue an invoice or receipt.

### **Marking of Gold, Gold Alloy and Platinum**

13. The Trade Descriptions (Marking) (Gold and Gold Alloy) (Amendment) Order 2008 and the Trade Descriptions (Marking) (Platinum) (Amendment) Order 2008 mainly impose additional requirements on the information to be contained in the invoices or receipts issued in the retail sale of gold, gold alloy and platinum. A retailer of articles of gold, gold alloy or platinum must issue at the time of supply an invoice or receipt containing its full name and address, the price and date of supply, and the description, fineness and weight of the article. The former Order also raises the standard of fineness from “990” to “999” that would qualify an article of gold to be described as “Chuk Kam” (“足金”), and amends the Chinese rendition for white gold to “白色黃金” (in order to avoid confusion with platinum (“白金” or “鉑金”)).

**Commerce and Economic Development Bureau  
Customs and Excise Department  
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