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Panel on Economic Development Meeting on 24 November 2008

Background brief on Trade Descriptions (Amendment) Ordinance 2008 and eight items of subsidiary legislation

Purpose

This paper sets out the background to the enactment of the Trade Descriptions (Amendment) Ordinance 2008 and the eight items of subsidiary legislation. It also gives a summary of views raised by Members during previous discussions.

Background

2. In recent years, there have been wide public concern about repeated incidents in which unscrupulous retailers employ deceptive, misleading and unfair trade practices in conducting business. In order to protect both local consumers and tourists, and to uphold Hong Kong's reputation of a "Shoppers' Paradise", the Government considers it necessary to strengthen the consumer protection regime, to ensure effective protection to consumers and to cater for the wide array of new products and innovative advertisements and marketing.

3. The Financial Secretary announced in his Budget Speech of February 2007 that the Consumer Council (CC) would conduct a comprehensive review of existing measures to protect consumer rights. CC then set up a dedicated working group to take forward the task. On 25 February 2008, CC published the 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.

4. While examining the findings of the CC review, the Administration considers it necessary to take urgent action to strengthen the regulatory tools to tackle the prevalent malpractices of the unscrupulous shops and bring charges against them. These changes involve making relatively simple and straightforward amendments to existing legislation, concentrating on a few areas

which are major subjects of complaints received by CC and relevant Government departments in recent years.

The Amendment Ordinance and the subsidiary legislation

5. The Trade Description Ordinance (Cap 362) (TDO) is a major piece of legislation to protect consumers. It prohibits false trade descriptions and misstatements provided in the course of trade. 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. Before the enactment of the Amendment Ordinance in June 2008, the provisions of TDO were not adequate in dealing with certain trade malpractices where dishonest retailers induced consumers to enter into transactions by giving misleading price indications, making false or misleading representations, etc.

6. Since complaints against false or misleading representations by retailers could not be followed up easily in the absence of written records, particularly in the case of jewellery items and popular electronic products, the Administration introduced the following eight items of subsidiary legislation to enhance protection for consumers in the purchase of these products:

- (a) Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation;
- (b) Trade Descriptions (Definition of Diamond) Regulation;
- (c) Trade Descriptions (Provision of Information on Natural Fei Cui) Order;
- (d) Trade Descriptions (Provision of Information on Diamond) Order;
- (e) Trade Descriptions (Provision of Information on Regulated Electronic Products) Order;
- (f) Trade Descriptions (Marking) (Gold and Gold Alloy) (Amendment) Order 2008;
- (g) Trade Descriptions (Marking) (Platinum) (Amendment) Order 2008;
and
- (h) Trade Descriptions (Definition of Platinum) (Amendment) Regulation 2008.

7. The first two items of subsidiary legislation were tabled at the LegCo meeting on 5 March 2008 while the other six items were tabled at the LegCo meeting on 23 April 2008. A Subcommittee was formed to study the latter six items.

8. According to the Administration, it had consulted 132 trade associations between August and September 2007 on the legislative proposals in the Amendment Bill and the eight items of subsidiary legislation. Among the 17 written comments received, most were in support of the proposals. After the consultation exercise, taking into account the views of stakeholders, the Administration reviewed its original proposals and fine-tuned some proposals to better meet the needs of the industry.

9. The Amendment Ordinance and the eight pieces of subsidiary legislation are to take effect from a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

Major views and concern expressed by Members

10. At the meetings of the Panel on Economic Services¹ on 25 June and 22 October 2007, the Administration briefed members on its review of consumer protection laws, the legislative proposals in the Amendment Bill and the proposed subsidiary legislation as well as the outcome of the consultation with the trades. While members supported the legislative proposals in general, some members were keen to ensure that the proposals should target at combating unscrupulous malpractices of a small handful of retailers and would not affect the operation of honest traders. Views and concerns raised at the meetings of the Bills Committee on Trade Description (Amendment) Bill 2007 and the Subcommittee on the relevant subsidiary legislation are summarized in ensuing paragraphs.

Definition of "trade description"

11. Members noted the trade's concern that it would be cumbersome for retailers, in particular small-sized ones, to provide information on the availability or otherwise of after-sale services for goods. The requirement would also increase their compliance cost. The Administration explained that to allow the retailers to prepare for the new requirements, a grace period of about six months would be provided before its implementation.

12. As the availability of spare parts or otherwise was an important component in the after-sale services for goods, the Administration has taken on board members' suggestion to include information relating to the provision of spare parts in the definition of "trade description".

Price signs for goods

13. Members were concerned that the proposed legislation sought to regulate price signs set by reference to weight unit, unscrupulous retailers might circumvent

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

the requirement by using other units of measurement in the price signs. In response, the Administration has expanded the legislation to cover all units of quantity, including length, width, height, area, volume, capacity, weight and number.

Specified electronic products

14. Members noted that if the price of the five types of electronic products² did not include any "basic accessories" (i.e. accessories essential for the effective performance of the principal function of the goods) that were reasonably expected to be included in the price, the sellers were required to inform customers accordingly. In response to members' view, the Administration has included "other factors" as a relevant consideration in determining the principal function of the goods.

15. On the trade's concern whether the aforesaid requirement would have impact on the retailers if they offered goods at reduced prices by excluding basic accessories or after-sale services for the goods, the Administration advised that the provision would not affect proper sales strategy as long as it was made known to the consumers.

Sellers' connection with or endorsement by other persons

16. Members expressed concern about the wide scope of the provision concerning sellers' connection with or endorsement by other persons. They also considered it an onerous burden for sellers to take steps to prevent customers from misunderstanding that they were connected with or endorsed by the reputable individual or body. The Administration has subsequently limited the application of this provision to representations made in connection with the supply or promotion of the supply of goods.

Responsibilities to provide information on products to consumers

17. Members noted the trade's concern about the difficulties for retailers³, especially small traders, to provide the technical information on products in invoices or receipts. They considered that manufacturers and/or importers should also assume such responsibilities. The Administration advised that while the offence under TDO in respect of trade descriptions applied to manufacturers, importers, and retailers, the information required was very basic and should be readily available to retailers.

Retailers of specified electronic products to provide prescribed information

18. Members shared the trade's concern that due to rapid changes in the

² The five types of electronic products are digital audio players, digital camcorders, digital cameras, mobile phones and portable multimedia players.

³ Retailers here refer to retailers of articles of natural fei cui, diamond, gold or gold alloy, platinum or platinum alloy, and five types of electronic products.

features and functions of the electronic products, substantial work would be involved for retailers to provide the prescribed information in invoices and receipts. They suggested that product specifications and user manuals should be accepted as satisfying the legal requirement of providing detailed information. The Administration however pointed out that with prescribed information provided in the invoices or receipts, consumers could read the information at the time of transaction and raise enquiries with the retailers in a timely manner.

19. To address members' concern about the compliance burden on small retailers selling second-hand products, the Administration has stipulated that the requirement would only apply to retailers whose trade or business was conducted on premises included in the valuation list under the Rating Ordinance (Cap.116). As such, retailers operating small stalls on the streets would be exempted from the requirement.

Protection for retailers in the course of trade or business

20. Members were concerned that the subsidiary legislation would only govern the sale of jewellery articles and electronic products at retail level, but failed to protect retailers who were supplied with these articles in the course of trade or business. The Administration stressed that the objective of the subsidiary legislation was to protect consumers, and hence manufacturers or wholesalers would not be precluded from following the requirements when supplying the articles or products to retailers. Nonetheless, the Administration assured members that it would review the subsidiary legislation and consider the need to enhance the protection for retailers in the light of implementation of the new requirements.

Retailers of natural fei cui to display notice and issue invoices or receipts

21. According to the subsidiary legislation, retailers of natural fei cui are required to display prominently at the point of supply a notice in the prescribed form informing customers of the definition of natural fei cui and fei cui, and the suppliers' obligation to issue a detailed invoice or receipt to consumers on the sale of natural fei cui. As the requirement would not apply to the supply of fei cui articles, members were concerned about the lack of protection for consumers purchasing these articles. The Administration pointed out that applying the requirement also to the sale of fei cui articles would affect the operation of small traders, in particular those running small stalls on the streets and that the present proposal already struck an appropriate balance between enhancing protection for consumers and avoiding unnecessary compliance burden on small traders.

Publicity and enforcement

22. Members considered it necessary to step up publicity and consumer education on the new requirements, in particular, consumers' understanding of "fei cui" and "natural fei cui". Members welcomed the trade's initiative to strengthen training for sales representatives on their knowledge of the terms and CC's measures in strengthening consumer education to facilitate them to make informed purchases of the articles.

23. At the Council meetings on 11 and 18 June 2008, members considered that the Government should roll out publicity and education programmes for the retail industry as well as local consumers and tourists to tie in with the implementation of the new requirements. They also called on the Administration to step up enforcement against unscrupulous retailers making deliberate attempts to cheat consumers.

Latest development

24. The Amendment Ordinance and the eight items of subsidiary legislation will come into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette. The Administration will update members on the implementation of the Amendment Ordinance and the subsidiary legislation at the Panel meeting on 24 November 2008 before publishing the commencement notice in the Gazette.

References

25. A list of relevant papers is set out in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
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and eight items of subsidiary legislation**

List of references

Council/Panel/ Bills Committee/ Subcommittee	Date of meeting	Paper
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 meeting (LC Paper No. CB(1)2268/06-07) (paragraphs 15 to 42) http://www.legco.gov.hk/yr06-07/english/panels/es/minutes/es070625.pdf</p>
Panel on Economic Development	22 October 2007	<p>Administration's paper on proposed amendments to the Trade Descriptions Ordinance and its subsidiary legislation to strengthen consumer protection (LC Paper No. CB(1)76/07-08(02)) http://www.legco.gov.hk/yr07-08/english/panels/es/papers/edev1022cb1-76-2-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)458/07-08) (paragraphs 73 to 80) http://www.legco.gov.hk/yr07-08/english/panels/es/minutes/ev071022.pdf</p>
Bills Committee on Trade Descriptions (Amendment) Bill 2007		<p>Report of the Bills Committee on Trade Descriptions (Amendment) Bill 2007 (LC Paper No. CB(1)1738/07-08) http://www.legco.gov.hk/yr07-08/english/bc/bc02/reports/bc020618cb1-1738-e.pdf</p>

Council/Panel/ Bills Committee/ Subcommittee	Date of meeting	Paper
Subcommittee to Study Six Items of Subsidiary Legislation under the Trade Descriptions Ordinance Gazetted on 18 April 2008		Report of the Subcommittee to Study Six Items of Subsidiary Legislation under the Trade Descriptions Ordinance Gazetted on 18 April 2008 (LC Paper No. CB(1)1665/07-08) http://www.legco.gov.hk/yr07-08/english/hc/papers/hc0530cb1-1665-e.pdf
Council meeting	9 April 2008	Minutes of meeting (Hansard p.101) http://www.legco.gov.hk/yr07-08/chinese/counmtg/floor/cm0409-confirm-ec.pdf (English version not yet available)
Council meeting	11 June 2008	Minutes of meeting (Hansard p.79) http://www.legco.gov.hk/yr07-08/chinese/counmtg/floor/cm0611-confirm-ec.pdf (English version not yet available)
Council meeting	18 June 2008	Minutes of meeting (Hansard p.169) http://www.legco.gov.hk/yr07-08/chinese/counmtg/floor/cm0618-confirm-ec.pdf (English version not yet available) Bill passed http://www.legco.gov.hk/yr07-08/english/ord/ord019-08-e.pdf