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Panel on Economic Development Meeting on 24 May 2010

Updated 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

Existing legislation

2. There are several pieces of legislation in place in Hong Kong 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. The Weights and Measures Ordinance (Cap. 68) defines units and standards of measurement, and prohibits short measure.

3. 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). 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.

Need to strengthen the consumer protection regime

4. With 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, the Administration considers that 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.

5. 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

6. 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; and
- (d) examining the merits of enacting a comprehensive law on trade practices and the implementation of the proposed legislation.

7. 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.

Concerns and issues raised during previous discussions

Discussions by the Panel

8. At the meeting of the former Panel on Economic Services¹ held on 25 June 2007, members expressed the view that the regulation of pre-paid and contractual services should be tightened, and that a "cooling-off period" should be provided to safeguard consumers' 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 considered it necessary to regulate contents of 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 legislations should be incorporated into one single ordinance to help facilitate law enforcement and enhance consumers' understanding of their rights and interests.

9. When the subject of "Review of consumer protection legislation" was discussed at the meeting of the Panel on Economic Development on 22 June 2009, members expressed grave concern on the proliferation of advertising bluffs and consumer scams in the print media, especially the weekly magazines, which had existed for a long time but was not subject to any regulatory control. They were very dissatisfied about Government's inaction which had led to the present flourishing of advertising bluffs. While noting that the Administration was exploring the possibility of extending the scope of TDO to cover the supply of services, members urged that the Consumer Legal Action Fund should be deployed more widely to deter unscrupulous trade practices in the interim.

10. During the policy briefing at the Panel meeting on 16 October 2009, members again expressed serious concerns about advertising bluffs. Some Panel members pointed out that the situation had worsened as consumer scams affected not only Hong Kong people but also Mainlanders and other visitors. They requested the Administration to combat unscrupulous sales practices by means of legislation.

Discussions by the Council

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

12. At the Council meeting on 4 February 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

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

all products, services and industries before, during and after transactions. As a cross-sector statute had a wide coverage and affected many pieces of existing legislation and codes of practices, the Administration had to examine the issue meticulously, including the impact of the proposed statute on the business sector and consumers.

13. During the debate on the motion of thanks to the Chief Executive for the 2009-2010 Policy Address at the Council meeting on 28 October 2009, some Members expressed concern that CC had received more than 3 000 complaints related to beautification, slimming, travel club membership and pay television in the first nine months of 2009. Since most of these complaints were about false advertisements, false declaration, high-pressure tactics and failure to deliver pre-paid services, Members urged the Administration to expedite the consultation on the proposed amendments to the consumer protection legislation.

14. At the Council meeting on 16 December 2009, Hon Fred LI raised a question on the regulation of undesirable sale of beauty care and slimming services, and considered that the contracts concerned should contain a cooling-off period clause, and a specific legislation should be enacted to regulate advertisements which promoted beauty care and slimming services.

15. A motion on "Establishing a comprehensive consumer protection regime" was passed at the Council meeting on 6 January 2010, urging the Government to establish a comprehensive consumer protection regime to enhance consumers' rights to knowledge, choice and protection.

Examination of Estimates of Expenditure

16. In examining the Estimates of Expenditure 2010-2011, Hon Fred LI and Hon Starry LEE raised written questions about the progress of reviewing consumer protection legislation and the timeframe for conducting public consultation. The Administration advised that the policy review on consumer protection legislation had come to a final stage and it had developed broad directions of legislative proposals to tackle unfair trade practices that were commonly seen in the market. The intention was to expand the coverage of TDO to cover false representations in respect of services, as well as to create new criminal offences in TDO to prohibit misleading omissions, aggressive practices and the practices of "bait-and-switch" and "accepting payment without intending or being able to supply" by making reference to relevant legislation in the United Kingdom and Australia.

Latest development

17. The Administration has indicated that it will brief members on the broad directions of the review of strengthening consumer protection against unfair trade practices at the Panel meeting on 24 May 2010. In this connection, Hon Albert HO raised concern about the consumer complaints associated with multi-level marketing and requested the Administration to cover the issue in the discussion paper.

References

18. A list of the relevant papers with their hyperlinks is in http://www.legco.gov.hk/database/english/data_es/es-consumer-protection.htm.

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