

立法會
Legislative Council

LC Paper No. CB(1)720/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/PL/EDEV/1

Panel on Economic Development

Minutes of meeting
held on Monday, 25 October 2010, at 10:00 am
in the Chamber of the Legislative Council Building

Members present : Hon Jeffrey LAM Kin-fung, SBS, JP (Chairman)
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon Fred LI Wah-ming, SBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Vincent FANG Kang, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Hon Starry LEE Wai-king, JP
Dr Hon LEUNG Ka-lau
Hon IP Wai-ming, MH
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP
Hon Tanya CHAN
Hon Albert CHAN Wai-yip

Members attending : Hon James TO Kun-sun
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat

**Public officers
attending**

: Agenda item IV

Mrs Rita LAU, JP
Secretary for Commerce and Economic
Development

Miss Yvonne CHOI, JP
Permanent Secretary for Commerce and Economic
Development (Commerce, Industry and Tourism)

Ms Linda SO, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)³

Mr YAU Kin-chung
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)
Special Duties

Agenda item V

Mr Gregory SO, JP
Under Secretary for Commerce and Economic
Development

Ms Linda SO, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)³

Mr YAU Kin-chung
Principal Assistant Secretary (Commerce and
Industry) Special Duties

Mr Richard YUEN, JP
Commissioner of Customs and Excise

Mr CHEUNG Sai-yan
Head of Trade Controls
Customs and Excise Department

**Attendance by
invitation**

: Agenda item V

The Cosmetic & Perfumery Association of Hong
Kong

Mr William TSUI
President

Hong Kong Small and Medium Enterprises
Association

Dr Stephen KWOK Chun-pong
President

The Y. Elites Group

Mr PAK Fu-hung
Chairman

Goal Seeker Education Centre

Mr CHAN Chung-yau
CEO

Hong Kong Small and Medium Enterprises
Development Association

Dr Edward LAM
President

Democratic Alliance for the Betterment and
Progress of Hong Kong

Mr Danny CHAN
Deputy Spokesman on Economic Policy

Architects Registration Board

Mrs Rita CHEUNG
Registrar

Federation of Beauty Industry (HK)

Mr IP Sai-hung
Founding Chairman

Consumer Council

Mr Simon CHUI
Head, Legal Affairs Division

The Hong Kong Chinese Importers' & Exporters'
Association

Mr SIN Chi-ming
Committee Member

Civil Force

Mr MAK Ping-fai
Executive Committee

New Forum

Mr Patrick TSANG
Member

Federation of Hong Kong Industries

Ms Katherine SIU
General Committee Member

The Hong Kong Federation of Electrical and
Mechanical Contractors

Mr K K FUNG
Committee Member

Tseung Kwan O Kai Fong Joint Association
Limited

Mr LEUNG Lok-sum
Action Committee

鳴不平

Mr WAN Shu-tak
Representative

The Hong Kong Retail Management Association

Ms Joey CHAN
Representative

Individual

Mr Bill TANG Ka-piu
Islands District Councillor

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (1)6

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Diana WONG
Senior Council Secretary (1)8

Ms Michelle NIEN
Legislative Assistant (1)9

Action

- I Confirmation of minutes of last meeting**
(LC Paper No. CB(1)135/10-11 - Minutes of meeting held on
14 October 2010)

The minutes of the meeting held on 14 October 2010 were confirmed.

- II Information papers issued since the last regular meeting on
19 July 2010**
(LC Paper No. CB(1)2680/09-10(01) - Tables and graphs showing
the import and retail prices
of major oil products from
July 2008 to June 2010
furnished by the Census and

Statistics Department

- LC Paper No. CB(1)2717/09-10(01) - Referral from the Public Accounts Committee on provision of postal services (PAC Report No. 54)
- LC Paper No. CB(1)2786/09-10(01) - Submission on new weather radar station at Tai Lam Chung
- LC Paper No. CB(1)2796/09-10(01) - Tables and graphs showing the import and retail prices of major oil products from August 2008 to July 2010 furnished by the Census and Statistics Department
- LC Paper No. CB(1)2948/09-10(01) - Tables and graphs showing the import and retail prices of major oil products from September 2008 to August 2010 furnished by the Census and Statistics Department)

2. Members noted the above information papers issued since the last regular meeting on 19 July 2010.

III Items for discussion at the next meeting

(LC Paper No. CB(1)95/10-11(01) - List of outstanding items for discussion

LC Paper No. CB(1)95/10-11(02) - List of follow-up actions)

3. The Chairman advised that he and the Deputy Chairman had held workplan meetings with the Secretary for Commerce and Economic Development (SCED) on 19 October 2010 and with the Secretary for Transport and Housing on 22 October 2010. Subsequent to the meetings, the Panel's "List of outstanding items for discussion" had been updated for members' reference.

4. Members agreed to discuss the following items at the next meeting to be held on 22 November 2010, at 10:45 am:

- (a) fitting-out works for Government facilities at new Air Cargo Terminal;
- (b) Mega Events Fund;
- (c) enhancing regulation of the receiving arrangement of the Mainland inbound tour groups; and
- (d) review of the operation of the Travel Industry Council of Hong Kong (TIC).

5. The Chairman informed members that pursuant to the discussion at the meeting on 14 October 2010, members of the Panel on Home Affairs would be invited to join the discussion on Mega Events Fund. On item 4(d), Ms Emily LAU suggested the Secretariat to invite public submissions on the review of the operation of TIC. As a number of items would be discussed at the next meeting, the Panel agreed that the meeting would be held from 8:30 am to 12:45 pm.

(Post-meeting note: An invitation for public submission on the review of the operation of TIC was posted on the Website of the Legislative Council on 27 October 2010.)

IV Proposed amendments to Pyramid Selling Prohibition Ordinance (Cap. 355)

LC Paper No. CB(1)95/10-11(03) - Administration's paper on review of Pyramid Selling Prohibition Ordinance (Cap. 355)

LC Paper No. CB(1)95/10-11(04) - Paper on review of Pyramid Selling Prohibition Ordinance prepared by the Legislative Council Secretariat (Background brief)

LC Paper No. CB(1)118/10-11(01) - Submission from Mr Bill TANG Ka-piu, Islands District Councillor

LC Paper No. CB(1)208/10-11(01)
(*issued on 26 October 2010*)

Letter from Hon WONG Kwok-hing to the Secretary for Commerce and Economic Development on the pyramid selling schemes)

Briefing by the Administration

6. At the invitation of the Chairman, SCED briefed members on the outcome of the review of the Pyramid Selling Prohibition Ordinance (Cap. 355) (the Ordinance) and outlined the Administration's initial proposals on how to strengthen the control over pyramid scheme as set out in its paper (LC Paper No. CB(1)95/10-11(03)). In gist, the Administration proposed to revise the definition of "pyramid scheme" and to increase the maximum penalty to imprisonment for 7 years and a fine of \$1 million on conviction upon indictment. Panel members were invited to consider whether persons who participated in pyramid schemes should shoulder criminal liability.

Discussion

7. Mr WONG Kwok-hing welcomed the Administration's initial proposals to tackle the problem of pyramid schemes. He said that he had received considerable requests for assistance in the past year from victims who had joined pyramid schemes, which cost them a loss of more than \$3 million in total. Noting that Macao had adopted a tougher law against pyramid schemes last year, Mr WONG urged the Administration to expedite the legislative process as the current Ordinance had not been updated for some 30 years.

8. Ms Starry LEE welcomed the much needed proposals since more and more youngsters and housewives fell prey to pyramid schemes. She urged the Administration to introduce the legislative amendments into the Council before the summer of 2011 so that students would be well-informed about the unlawful nature of the schemes before seeking summer jobs.

9. SCED pointed out that the Administration had exercised due prudence in reviewing the Ordinance with a view to working out comprehensive proposals to strengthen the control over pyramid schemes. She was confident that the public would support the proposals. The Administration would consider and take Panel members' views into account in finalizing the public consultation document. It was expected that the Amendment Bill would be introduced into the Council in the first quarter of 2011. Subject to Members' scrutiny, the Bill could be passed before the end of the current session.

10. The Chairman enquired about the difficulties in enforcing the existing Ordinance and how the proposed amendments would overcome the difficulties. SCED responded that as pointed out in two judgments in 2003 and 2004 (CACC 96/2003 and CACC 55/2004), there were problems in relation to the definition of "pyramid selling scheme" in the Ordinance. Under the current definition, a pyramid selling scheme must involve the sale of goods or services by participants. There were however schemes which adopted a pyramid structure but did not involve any sales activities. The proposed amendments would make it clear in the law that a scheme could be a "pyramid scheme" even if no sale of goods or services was involved.

11. As it would still take some time for the legislative amendments to take effect, Mr WONG Kwok-hing queried how the Administration would tackle pyramid schemes in the interim. Noting that pyramid scheme operators often colluded with certain financing agents to tempt new recruits to borrow substantive sums, he enquired whether assistance from the Police and Hong Kong Monetary Authority would be enlisted to effectively tackle these operators. Ms Starry LEE said that certain pyramid scheme operators who were forced to shut down their operations in Macao and the Mainland had turned to Hong Kong. She urged the Administration to take a tough stance against these operators to deter them from operating in the territory.

12. SCED advised that the Commerce and Economic Development Bureau would step up public education, draw the public's attention to related scams and advise the public to refrain from borrowing in order to participate in illicit schemes. Separately, the Police would continue to tackle these schemes and institute prosecution when there was sufficient evidence showing offences of fraud. As regards whether participants should be held liable for taking part in pyramid schemes, SCED highlighted that as a pyramid scheme could not be sustained if existing participants would not recruit new members, participants should be treated on par with persons who established the scheme. It was also suggested to make available defences for participants so as to protect those innocent participants who had no knowledge that the benefits they might get from joining the scheme were entirely or substantially derived from the introduction of further new participants.

13. Ms Starry LEE considered that in addition to the United Kingdom, Ireland and Australia, the Administration should also make references to the regulatory regimes in Macao and Mainland when considering how to improve the Ordinance. Sharing similar views, Ms Miriam LAU also asked the Administration to examine relevant legislative provisions in other places, such as the Mainland, Japan, Taiwan, Singapore and South Korea, and

provide information on their regulatory regimes to facilitate discussions.

14. SCED clarified that under the relevant legislative provisions in Macao, pyramid selling was defined to mean marketing and sale of goods or services organized in the form of pyramids, in a line broadly similar to the current law in Hong Kong. In the Mainland, multi-level marketing schemes were generally prohibited altogether. Such a total ban approach might not be compatible with the free trade policy adopted in Hong Kong. The Deputy Secretary for Commerce and Economic Development (Commerce and Industry)³ (DSCED) supplemented that Singapore prohibited all types of direct selling and multi-level marketing schemes, whereas Hong Kong aimed at targeting unlawful pyramid schemes without intervening in normal business activities. In fact, the Administration had reviewed the regulatory regimes of a number of jurisdictions, including those of neighbouring places, and proposed to revise the definition of "pyramid scheme" along the same line adopted by most of them. The Administration also suggested drawing references from Australia and Ireland in respect of participants' liability in pyramid schemes.

15. Mr CHAN Kam-lam welcomed the proposals. He urged the Administration to differentiate clearly pyramid schemes from other concession schemes under which existing members could enjoy a discount by introducing new members. It was of paramount importance for the Administration to disseminate appropriate information to the public so that normal business practices would not be hindered.

16. SCED remarked that the initial proposals were targeted only at pyramid schemes, not legitimate business activities such as direct selling. The defining characteristic of pyramid schemes was that participants were required to pay a participation fee to join such schemes in return for the right to receive benefits on the introduction of further new participants. The primary incentive for joining such schemes was to make money by recruiting new participants. SCED undertook to address this issue in the upcoming consultation.

V Legislative proposals to enhance protection for consumers against unfair trade practices

(LC Paper No. CB(1)95/10-11(05) - Administration's public consultation paper on legislation to enhance protection for consumers against unfair trade practices

LC Paper No. CB(1)95/10-11(06) - Paper on legislative proposal to enhance consumer protection against unfair trade practices prepared by the Legislative Council Secretariat (Updated background brief)

Submissions from organizations/individuals not attending the meeting

LC Paper No. CB(1)118/10-11(03) - Submission from The Chinese Manufacturers' Association of Hong Kong

LC Paper No. CB(1)118/10-11(04) - Submission from Central & Western District Council

LC Paper No. CB(1)118/10-11(05) - Submission from The Chinese General Chamber of Commerce

LC Paper No. CB(1)174/10-11(02) - Submission from Small and Medium Enterprises Committee

LC Paper No. CB(1)182/10-11(05) - Submission from Hong Kong Institute of Certified Public Accountants

LC Paper No. CB(1)182/10-11(06) - Submission from Mr Paul ZIMMERMAN, Southern District Councillor

LC Paper No. CB(1)194/10-11(03) Submission from the Hong Kong Chamber of Small and Medium Business Ltd
(tabled at the meeting and subsequently issued via e-mail on 25 October 2010)

LC Paper No. CB(1)194/10-11(07) - Submission from the Hong Kong Bar Association
(tabled at the meeting and subsequently issued via e-mail on 25 October 2010)

LC Paper No. CB(1)194/10-11(08) - Submission from the Medical Council of Hong Kong
(*tabled at the meeting and subsequently issued via e-mail on 25 October 2010*)

LC Paper No. CB(1)194/10-11(09) Submission from Mr YEUNG Wai-sing, Eastern District Councillor
(*tabled at the meeting and subsequently issued via e-mail on 25 October 2010*)

LC Paper No. CB(1)194/10-11(10) Submission from Mr Andrew CHIU Ka-yin, Eastern District Councillor
(*tabled at the meeting and subsequently issued via e-mail on 25 October 2010*)

Presentation by the deputations

17. The Chairman welcomed deputations attending the meeting and invited them to present their views. Members noted that 11 deputations which did not attend the meeting had submitted their views to the Panel.

The Cosmetic & Perfumery Association of Hong Kong (CPA)
(*LC Paper No. CB(1)174/10-11(01)*)

18. Mr William TSUI, President, CPA, said that the Association supported the Government's initiative to tackle unfair trade practices. However, CPA had reservation about the proposal of empowering the Customs and Excise Department (C&ED) to enforce the proposed offences and considered that their power to inspect and take copies of books and documents should be exercised under a court warrant.

Hong Kong Small and Medium Enterprises Association (SMEA)
(*LC Paper No. CB(1)194/10-11(01)*)
(*tabled at the meeting and subsequently issued via e-mail on 25 October 2010*)

19. Dr Stephen KWOK, President, SMEA, agreed that it was necessary to enhance protection for consumers against unfair trade practices while at the same time ensuring a level playing field for business. He also expressed concern about the definition of the proposed offence of "bait advertising", sectors exempted from the legislative proposals and cooling-off arrangements as set out in the submission.

*Mr Bill TANG Ka-piu, Islands District Councillor
(LC Paper No. CB(1)194/10-11(12))
(tabled at the meeting and subsequently issued via e-mail on 26 October 2010)*

20. Mr Bill TANG Ka-piu, Islands District Councillor, held the view that the financial services sector should be brought under the ambit of the proposed legislation, and that the cooling-off period should not be deemed to be curtailed by reason of the commencement of the services, such as telecommunications services.

*The Y. Elites Group
(LC Paper No. CB(1)194/10-11(02))
(tabled at the meeting and subsequently issued via e-mail on 25 October 2010)*

21. Mr PAK Fu-hung, Chairman, the Y. Elites Group, expressed the views of the Group in respect of false trade descriptions, pre-payment mode of services, cooling-off periods and so on as set out in its submission.

Goal Seeker Education Centre (GSEC)

22. Mr CHAN Chung-yau, CEO, GSEC, commented that unfair trade practices were commonly seen, in particular among beauty care services. He welcomed the imposition of cooling-off arrangements and urged the Administration to set the cooling-off period at two weeks so as to give consumers ample time to think through. He also urged the Administration to implement the legislative proposals as soon as possible.

*Hong Kong Small and Medium Enterprises Development Association
(LC Paper No. CB(1)194/10-11(04))
(tabled at the meeting and subsequently issued via e-mail on 25 October 2010)*

23. Dr Edward LAM, President, Hong Kong Small and Medium Enterprises Development Association, said that the Association supported the proposed legislation. However, in order not to hinder business operation, it was necessary to define clearly the scope of "bait-and-switch", and to prevent possible abuse of the cooling-off arrangements.

Democratic Alliance for the Betterment and Progress of Hong Kong (DAB)

24. Mr Danny CHAN, Deputy Spokesman on Economic Policy, DAB, spoke on behalf of the members of the 纖體瘦身苦主大聯盟. He

expressed grave concern that the beauty and slimming industries were not covered in the cooling-off arrangement as stated in the Public Consultation Paper on "Legislation to enhance protection for consumer against unfair trade practices" (LC Paper No. CB(1)95/10-11(05)). He considered that the proposed arrangement was insufficient to protect consumers since the beauty and slimming service industries were only encouraged to offer cooling-off period voluntarily. He hoped that the Consumer Legal Action Fund could be enhanced to help more victimized consumers.

Architects Registration Board (ARB)

25. Mrs Rita CHEUNG, Registrar, ARB, declared that ARB was one of the regulatory bodies listed in Annex G of the Consultation Paper. She welcomed the Administration's proposal that professional practices regulated by regulatory bodies established by statute needed not be brought under the ambit of the to-be-expanded Trade Descriptions Ordinance (TDO) (Cap. 362) since regulation over professional practitioners required specialist knowledge in the respective fields. She agreed that they should continue to be regulated under the existing sector-specific regimes.

Federation of Beauty Industry (HK) (FBI(HK))
(LC Paper No. CB(1)182/10-11(01))

26. Mr IP Sai-hung, Founding Chairman, FBI(HK), said that FBI(HK) supported the need to tackle unfair trade practices but expressed reservation on some of the Government's proposals. For example, given the different nature of services and products, it might not be appropriate to extend the coverage of TDO to include trade descriptions in respect of services. It would also be difficult to prove that a service provider had no intention or ability to supply the service. FBI(HK) did not support in principle the imposition of cooling-off arrangements as long as the consumers had entered into a transaction/an agreement based on sufficient information.

Consumer Council (CC)
(LC Paper No. CB(1)182/10-11(02))

27. Mr Simon CHUI, Head, Legal Affairs Division, CC, welcomed the Government's initiative in reviewing and consulting the public on consumer protection legislation. The CC urged that a comprehensive statutory regime for protection of consumers against unfair trade practices should be developed in the long run. The CC also welcomed the establishment of a steering committee to discuss specific issues on regulating the sale of first-hand residential properties by legislation, and supported that consumers should be given a private right to seek remedies for contravention of the

proposed fair trade provisions under the TDO. While CC was pleased to play an active role in the mediation as part of the proposed compliance-based mechanism, it suggested reinforcing the mechanism by adding more appropriate enforcement tools and/or sanction options. CC also strongly called for the extension of the cooling-off arrangements to the pre-payment mode of transactions which were commonly used in beauty care, slimming, fitness and yoga services.

*The Hong Kong Chinese Importers' & Exporters' Association (CIEA)
(LC Paper No. CB(1)194/10-11(11))
(tabled at the meeting and subsequently issued via e-mail on 25 October 2010)*

28. Expressing support for the legislative proposals to tackle unfair trade practices, Mr SIN Chi-ming, Committee Member, CIEA, highlighted the Association's views in its submission regarding false trade descriptions in respect of services, the practices of "bait-and-switch" and misleading omissions, cooling-off arrangements and effective enforcement.

Civil Force

29. Mr MAK Ping-fai, Executive Committee, Civil Force, commented that there was a lack of clear guidelines to regulate private columbaria, such as the illegal operation of columbarium niches in breach of land use requirements. He urged the Government to address the concern of the residents in the vicinity of the private columbaria and to enact specific legislation to regulate private columbaria and enhance consumer protection in this respect.

*New Forum
(LC Paper No. CB(1)182/10-11(03))
(LC Paper No. CB(1)194/10-11(05))
(tabled at the meeting and subsequently issued via e-mail on 25 October 2010)*

30. Mr Patrick TSANG, Member, New Forum, suggested that the Competition Law and the proposed fair trade provisions under TDO should be administered by the same enforcement agency. He also considered that C&ED had no experience in implementing the proposed compliance-based mechanism and hence, it should be handled by some other specialized enforcement agency. The New Forum also considered that the financial services, property transactions and professional practices regulated by regulatory bodies established by statute should not be excluded from the ambit of the to-be-expanded TDO.

Federation of Hong Kong Industries (FHKI)
(LC Paper No. CB(1)118/10-11(02))

31. Ms Katherine SIU, General Committee Member, FHKI, agreed with the policy direction and supported enhancing consumer protection through legislation. She took members through FHKI's submission in respect of misleading omissions and compliance-based enforcement mechanism.

The Hong Kong Federation of Electrical and Mechanical Contractors (FEMC)

(LC Paper No. CB(1)194/10-11(06))

(tabled at the meeting and subsequently issued via e-mail on 25 October 2010)

32. Mr K K FUNG, Committee Member, FEMC, said that while supporting the spirit of the proposed legislation, FEMC was concerned that small and medium enterprises (SMEs) which carried out small contracts in electrical and mechanical fitting out works had little legal knowledge over the proposed fair trade provisions, and might contravene the proposed offence inadvertently.

Tseung Kwan O Kai Fong Joint Association Limited (TKOKFJAL)

33. Mr LEUNG Lok-sum, member of the Action Committee of TKOKFJAL, urged the Government to impose cooling-off periods and enact legislation to enhance consumer protection. He commented on the unfair trade practices that paid television service providers and credit card service providers typically deployed on the elderly and people of low education levels. These practices included forcing consumers to sign contracts during unsolicited visits or explaining the contract terms unclearly, and cancellation of such contracts often proved to be unfairly cumbersome.

鳴不平

34. Mr WAN Shu-tak, Representative, 鳴不平, urged the Government to adopt stringent measures to tackle unfair trade practices. He shared his own experience about a telecommunications service provider treating him unfairly by imposing monthly fees different from the contract terms. Money was returned to Mr WAN only after a press conference was held with regard to the matter.

*The Hong Kong Retail Management Association (HKRMA)
(LC Paper No. CB(1)182/10-11(04))*

35. Ms Joey CHAN, Representative of HKRMA, said that the Association supported the Government's overall objective of targeting specified unfair trade practices, whilst at the same time avoiding over-regulation for the majority of businesses which traded honestly. HKRMA considered that no new criminal offences were necessary under the compliance-based mechanism. She also expressed concern about the lack of clarity and certainty of the proposals, for example, it was not clear which of the proposed new offences were "strict liability" ones; there was a lack of clarity regarding the concept of "average consumer"; and it was unclear who would be liable for the new offences.

Preliminary responses provided by the Administration

36. The Under Secretary for Commerce and Economic Development (USCED) highlighted that the policy objective of the proposed legislation was to enhance protection for consumers against unfair trade practices and, at the same time, ensuring a level playing field for business. In order to deter and penalize those who engaged in unfair trade practices, the Administration proposed to create new criminal offences under the TDO to prohibit commonly seen unfair trade practices, namely, misleading omissions, aggressive practices, "bait-and-switch", and the practice of accepting payments without the intention or ability to supply the contracted goods or services. The present prohibition of false trade descriptions of goods in the TDO would be extended to cover trade descriptions of services. He said that the public consultation on legislation to enhance protection for consumers against unfair trade practices would end on 31 October 2010. The Administration had set up a Facebook page and met with the District Councils, industry and trade organizations and various associations to solicit views on the proposals. In addition to the submissions provided for the Panel meeting, the Administration had also received 60 written submissions, and they generally supported the proposal to enhance legislative control over unfair trade practices. The Administration would carefully analyze and consider the submissions in finalizing the legislative proposals, especially with regard to cooling-off arrangements. USCED said that the Administration planned to introduce an Amendment Bill into the Council within the current legislative session.

Discussion*Sector-specific regimes*

37. Mrs Regina IP enquired why the financial services sector and property transactions were excluded from the ambit of the to-be-expanded TDO. Although they were regulated under existing sector-specific regimes, the situation had left too much to be desired and the present framework could not deal with the ever emerging malpractices. She also expressed concern that both the Telecommunications Authority (TA) and the Broadcasting Authority (BA) were proposed to be given concurrent jurisdiction under the TDO to enforce the fair trade provisions in the TDO in respect of telecommunications services and broadcasting services. Mrs IP urged the Administration to provide the justification in subjecting different sectors to different controls. The Administration should also explain how the TA and BA could exercise enforcement powers under the TDO. Ms Emily LAU echoed the view and relayed the grave concern of potential property buyers about the Administration's proposal of excluding property transactions from the ambit of the to-be-expanded TDO. In response, USCED said that regulation over financial services sector and property transactions required specialist knowledge and expertise in respective fields, and they should continue to be regulated under existing sector-specific regimes.

38. Mr Albert CHAN remarked that while the Administration had proposed not to bring certain professional practices under the ambit of the to-be-expanded TDO, consumers' right in these areas might not be fully protected as regulatory bodies were not established for most of these sectors which might trick consumers into transactions through the legal loopholes. Referring to Annex G of the consultation document, USCED said that the regulatory bodies listed therein would be exempted from the proposed legislation as they were currently governed by other statutes. Mr CHAN requested the Administration to explain the rationale of the proposal and to demonstrate the extent of consumer protection provided by the relevant ordinances. He also requested the Research Division of the Secretariat to conduct a comparison study of the Administration's current proposals for Hong Kong and the relevant legislation in overseas jurisdictions (including the United Kingdom and Australia) on (a) whether sectors with regulatory regimes (in particular financial services sector and property sector) in overseas jurisdictions were also regulated by the consumer protection legislation; and (b) whether cooling-off arrangements under the consumer protection legislation in overseas jurisdictions were imposed for a limited scope only.

(*Post-meeting note: As agreed, the Administration and the Research Division would provide the requested information by end February/early March 2011.*)

"Bait advertising" and "misleading omissions"

39. Citing an example where a family had paid a substantial sum to an education service provider to enrol their child in an overseas exchange programme only to end up their child being expelled from the American school due to sub-standard English and the lack of knowledge about American history, Mrs Regina IP expressed concern whether the proposed offences of misleading omissions and "bait advertising" etc could effectively deter these practices.

40. USCED replied that the present prohibition of false trade descriptions of goods in TDO would be extended to cover trade descriptions of services. Whether the example which Mrs IP cited would constitute an offence under the proposed legislation would depend on the facts of the case and require further examination.

41. Mr Albert CHAN also shared about a case where a student had paid full fare to an education service provider to go overseas but only found out later that his application for visa was denied by the consulate. He urged the Administration to introduce effective measures to protect the interests of consumers who should not be required to shoulder the burden of proof. USCED said that in order to enhance the deterrence effect and facilitate enforcement, the Administration proposed to create strict liability offences under TDO for certain new offences.

42. Mr Vincent FANG said that he and SMEs were in support of the policy objective of enhancing consumer protection. However, he expressed concern about the lack of certainty in the proposed offences, for example, the meaning of "misleading omissions" was unclear. He urged the Administration to be mindful in providing clear definitions when drafting the legislation. Mr FANG said that he had reservation regarding the proposal to extend the coverage of TDO to include trade descriptions in respect of services made in consumer transactions as the nature of "services" was different from goods and regulation might be difficult.

43. In response, USCED said that the Administration had taken reference of the legislative provisions of overseas places, including the UK and Australia before drawing up the Consultation Paper. He undertook that the Administration would set out the proposed new offences as clearly as possible to address members' concerns when drafting the legislation.

USCED further pointed out that at present, the existing TDO only applied to goods but not services. To plug the gaps, the Administration therefore proposed to extend TDO's coverage to include "services". The Chairman asked how the proposed offences could apply to different industries and transactions. USCED said that a forward-looking and general approach would be adopted so that the fair trade provisions could apply in different situations.

44. Highlighting some advertisements about beauty services in popular weekly magazines, Mr Fred LI expressed concern on the proliferation of advertising bluffs and consumer scams in the print media and stressed that unfair trade practices badly needed to be tackled. Sectors providing beauty care services, and fitness and slimming services were especially problematic due to large pre-payment involved and the lack of professional bodies to regulate the industry. As the bluffs had existed for a few years, he hoped that legislation to implement the proposals could be introduced as soon as possible so as to address the problems. Taking note of his concern, USCED responded that the Administration would endeavour to introduce the legislative amendments as soon as possible.

Accepting payment without the intention or ability to supply

45. Mr LEE Wing-tat raised concern about pre-payment mode of transactions. He noticed that some of the businesses, such as yoga parlors, were highly-leveraged operating with small amount of capital and tried to entice large number of consumers to join as members. Referring to the meetings he had with the Hong Kong Monetary Authority, he learnt that some economies adopted the "retention money" approach, under which companies accepting pre-payment were required to deposit money in a certain account. In Taiwan, a portion of the pre-payment would be deposited with an intermediary company. In dealing with consumers who were left out of pocket with the closed down of yoga parlors, Mr LEE observed that different banks in Hong Kong dealt with the pre-payment mode of transactions differently. In view of the high risk nature of the pre-payment mode of transactions, Mr LEE urged the Administration to consider following overseas practices to protect consumers who pre-paid in advance by requesting the service providers to deposit a portion of the pre-paid money into a trustee account. Such an arrangement would be similar to buying flats in Hong Kong where buyers would first deposit the payment with a law firm which would pay the developer or seller upon completion of the purchase procedure.

46. Mr Ronny TONG considered that consumers having made pre-payment were more concerned whether they could take back the money they pre-paid, rather than the penalties imposed on the trader who had wended up his business. He suggested setting up a trust account for depositing the pre-paid sums and in the event that traders winding up their operation, consumers would have a higher legal claim on the fund in the trust account when compared to other creditors. While noting that such practice might create cash flow problems for the business operators and thus increase cost of operation, Mr TONG asked Mr IP Sai-hung of FBI(HK) about the feasibility of such practice. While considering the establishment of a trust account holding the pre-paid sums a more preferred option than cooling-off arrangements, Mr IP stressed the need to carefully consider the proportion of the amount to be retained in the account. Mr IP also concurred with Mr TONG that if such practice was adopted, it should provide that service providers could withdraw money from the account every time when the consumers used the service.

47. On the setting up of a trust account, USCED said that it involved complicated issues, such as determining which business sectors should be covered, setting up objective principles to determine how traders could have access to the fund as well as the criteria for allowing disbursement should dispute arise. As the administration cost would be quite substantial, he considered that the proposed new offence of "accepting payment without the intention or ability to supply" should be a more effective option to tackle the problems arising from the pre-payment mode of consumer transactions.

Cooling-off arrangements

48. Mrs Regina IP said that she did not agree to impose cooling-off arrangements as it would have limited effect on tackling unfair trade practices while being unfair to business operators. Expressing reservation on the imposition of mandatory cooling-off arrangement, Mr Vincent FANG considered it necessary to protect the interest of SMEs as long as the contract was entered in a lawful and reasonable manner. He was concerned whether cooling-off arrangements would be applied to all business sectors.

49. In response, USCED advised that the Administration proposed to target cooling-off requirements at a limited number of transactions where additional protection was required. On Mr Fred LI's concern about imposing cooling-off arrangements for certain pre-payment services, USCED agreed to review the suggestion together with other views received during public consultation.

50. Ms Emily LAU declared that she was the Deputy Chairman of the Business Facilitation Advisory Committee. She considered that establishing a fair business environment was utmost important for Hong Kong. She stressed that the proposal should strike a fair balance between protecting the legitimate interest of consumers and preserving operational efficiency for businesses. She invited SMEs to provide their views on the proposals to the Panel. In this connection, Ms LAU invited Mr IP Sai-hung, Founding Chairman of FBI(HK) to elaborate his views that the imposition of cooling-off arrangements was ineffective and would create hardships for SMEs.

(Post-meeting note: The Hong Kong Chamber of Small and Medium Business Ltd subsequently provided its submission to the Panel vide LC Paper No. CB(1)194/10-11(03) issued on 26 October 2010.)

51. Declaring that he did not run any beauty salon nor providing pre-payment beauty services, Mr IP Sai-hung of FBI(HK) responded that the imposition of cooling-off periods would not effectively tackle the malpractice of "bait" marketing as shrewd businessmen tended to defraud the customers after the expiry of the cooling-off period. Furthermore it would be unfair to business if the consumers could cancel the contract at will thereby forfeiting the trades' marketing effort. Instead, Mr IP suggested adding terms and conditions in the contract to which both consumers and service providers had to adhere. Mr IP pointed out that the business had been experiencing hardship due to banks withholding credit card payment from customers, and shops were often forced to close down due to cash flow problems.

Compliance-based enforcement

52. The Chairman was concerned about the appropriateness of the proposal to empower C&ED to inspect and take copies of books and documents for the purpose of ascertaining whether any offence had been or was being committed.

53. In response, the Commissioner of Customs and Excise said that at present, unfair trade practices relating to supply of services could only be caught by criminal offences under the current Theft Ordinance (Cap. 210) and the common law offence of "conspiracy to defraud". However, the evidential threshold required was high. As such, the Administration proposed to create new offences to protect consumers' rights. To enforce the new law, the power for C&ED to inspect books and document during spot checks would allow it to take proactive and pre-emptive action to inspect and ascertain whether a business had in place suitable arrangements for the supply of services. Respective guidelines would be drawn up in

consultation with the industries to facilitate compliance and prosecution.

54. USCED supplemented that the Administration proposed to introduce a compliance-based enforcement mechanism. It was expected that the effectiveness of the Consumer Council's mediation work would be enhanced with the back up of the mechanism, and ultimately criminal prosecution under the charge of the enforcement agency. Furthermore, the Administration proposed to establish a referral mechanism under which the enforcement agency and the Consumer Council could coordinate with each other on the actions to be taken on consumer complaints received at their respective ends.

55. Summing up, the Chairman requested the Administration to take note of the concerns expressed by Panel members and deputations at the meeting, including the need for the proposed legislation to protect consumers' interests and ensure a level playing field for business. He also requested the Administration to provide responses on the views given by the deputations.

Admin

VI Any other business

56. There being no other business, the meeting ended at 12:35 pm.

Council Business Division 1
Legislative Council Secretariat
13 December 2010