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**Bills Committee on Trade Descriptions (Unfair Trade Practices)
(Amendment) Bill 2012**

Background Brief

Purpose

This paper provides background information on the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 ("the Bill") and also a summary of the views and concerns expressed by Members on the Bill and related issues.

Background

2. At present, certain undesirable trade practices are prohibited under the Trade Descriptions Ordinance (Cap 362) ("TDO"). These include false trade descriptions, false marks and mis-statements in respect of goods provided in the course of trade. Currently, there are no provisions under TDO dealing with other types of unfair trade practices such as false descriptions of services, misleading omissions, aggressive commercial practices or bait advertising.

3. The emergence of certain unfair trade practices in recent years calls for a review of the existing regulatory regime. To follow up the initiatives announced by the Financial Secretary in February 2007, the Consumer Council (CC) conducted a comprehensive review of existing measures to protect consumer rights. In February 2008, CC published the review report entitled "Fairness in the Marketplace for Consumers and Business", which recommended, inter alia, the introduction of a comprehensive Trade Practices Statute in Hong Kong to prohibit unfair trade practices of all types of goods and services. Meanwhile, the Government introduced and enacted the Trade Descriptions (Amendment) Bill 2007 and eight pieces of subsidiary legislation under TDO in 2008 to prohibit misleading price indications and to require trades to disclose critical pieces of product information in the sale of

precious metals and stones.

4. Having considered the recommendations in the review report and examined proposals raised in the community, the latest development in the market and overseas consumer protection regimes, the Government recognized that the safeguards under current legislation were inadequate in tackling certain unfair trade practices. The Government subsequently set out the broad policy directions for strengthening consumer protection legislation and conducted a consultation on a package of proposed legislative amendments to TDO to tackle commonly seen unfair trade practices in July 2010. In the light of the wide public support for these legislative proposals, the Government subsequently introduced the Bill into the Legislative Council on 29 February 2012.

The Bill

5. The Bill seeks to amend TDO to extend its coverage to services, to prohibit certain unfair trade practices and to enhance enforcement mechanisms. The practices to be prohibited under the Bill are –

- (a) false trade descriptions of services;
- (b) misleading omissions;
- (c) aggressive commercial practices;
- (d) bait advertising and bait-and-switch; and
- (e) wrongly accepting payment.

Previous discussions

Council questions and motion debates

6. Issues relating to unfair trade practices have all along been the subject of wide public concern. Members have raised Council questions in connection with unfair trade practices in various fields, including property transactions, pricing frauds of supermarkets, telecommunications, travel and body care services. They urged the Government to consider, inter alia, requiring the contracts concerned to include a cooling-off period clause, and enacting specific legislation to regulate advertisements.

7. On 9 May and 4 July 2007, the Council passed the motions "on Combat unscrupulous shops" and "Strengthening the regulation of unscrupulous business practices in pay television, telecommunications and internet services" respectively. A motion on "Establishing a comprehensive consumer protection regime" was passed at the Council meeting on 6 January 2010, urging the Government to, inter alia, establish a comprehensive consumer protection regime to enhance consumers' rights to knowledge, choice and protection.

Panel discussions

8. At the meeting of the former Panel on Economic Services¹ held on 25 June 2007, members expressed the view that a "cooling-off period" should be provided to safeguard consumers' interests as it was widely adopted in European Union and the United States etc. 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 more effectively.

9. When the subject of "Review of consumer protection legislation" was discussed at the meeting of the Panel on Economic Development (the Panel) on 22 June 2009, members expressed grave concern about 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 due to the Government's inaction. 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 (CLAF) should be deployed more widely to deter unscrupulous trade practices in the interim. They also asked whether consideration would be given to providing a cooling-off period for consumers who acquired services under high pressure sales tactics.

10. The Panel received a briefing by the Administration on 24 May 2010 on the broad directions of the review of the consumer protection legislation against unfair trade practices. The Panel noted that the Government intended to expand the coverage of TDO to include indications in respect of services in consumer transactions. Apart from combating false indications on services, the improvement proposals would also tackle other unfair trade

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

practices, i.e. misleading omissions, aggressive or high-pressure practices, "bait-and-switch" and "accepting payment without the intention or ability to supply the contracted goods or services". Panel members generally agreed with the broad policy directions but some members were concerned about enforcement, the application of cooling-off arrangements and difficulties in providing sufficient evidence to prove that the traders had accepted payment "without the intention to supply the contracted goods or services".

11. Some Panel members did not agree with the exclusion of financial services products and property from the proposed TDO amendments, as transactions in these two sectors involved substantial amount of money and required greater consumer protection. The Administration stressed that it had no intention to "exempt" the two sectors which were covered under regulatory frameworks outside TDO. The Administration indicated that it would launch a public consultation on the legislative proposals in the third quarter of 2010. On 15 July 2010, the Government issued a three-month consultation document setting out the detailed legislative proposals to solicit public views.

12. At the Panel meeting on 25 October 2010, members received views from 18 deputations and met with the Administration on the proposals. Some members had reservation about the proposal of extending the application of TDO to cover trade descriptions in respect of services, were concerned about the proposal of imposing cooling-off arrangements. There were also concerns that consumers should not be required to shoulder the burden of proof, and the appropriateness to empower the Customs and Excise Department (C&ED) to inspect and take copies of books and documents for the purpose of ascertaining an offence. The Administration advised that strict liability offences would be proposed for certain new offences, including the use of aggressive practice, "bait advertising", and accepting payment without the intention or ability to supply.

13. The Administration briefed the Panel on 24 January 2011 on the outcome of the public consultation and two revised proposals. The C&ED would be empowered to inspect books and documents at non-domestic premises and take copies of them without being subject to the threshold of suspicion. Such requirement would only apply to those books and documents required to be kept under TDO and its subsidiary legislation, but not other books and documents relating to a supplier's trade or business. The Administration would modify its original proposal by expanding the scope of mandatory cooling-off arrangements to cover consumer transactions involving goods and/or services with a duration of not less than six months. The cooling-off period could be waived or curtailed by mutual agreement of the consumer and the supplier, and contract performance could not commence within the cooling-off period.

14. Regarding the implementation of cooling-off arrangement, some Panel members considered that it would have adverse impact on the trade, especially the small and medium enterprises which might encounter cash flow problems. These members urged the Administration to strike a balance in tackling dishonest traders and preserving operational efficiency for businesses. Some other members expressed concerns that traders might adopt contracts with duration of less than six months to circumvent the imposition of the cooling-off periods. They opined that traders should be prohibited from incorporating in standard contracts default clauses for waiving the cooling-off rights. To protect consumers who entered into the pre-payment mode of transaction, there was a suggestion of allowing such consumers to have a high priority in the legal claim against the business should it go bankrupt. There was also call for the Government to step up enforcement against false trade descriptions in advertising bluffs and consumer scams in print media.

Recent development

15. At the House Committee meeting on 2 March 2012, a Bills Committee was formed to scrutinize the Bill.

Relevant papers

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

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