

For discussion
on 22 October 2007

Legislative Council Panel on Economic Development
Proposed Amendments to the
Trade Descriptions Ordinance and its Subsidiary Legislation
to Strengthen Consumer Protection

Introduction

This paper sets out the details of the proposed amendments to the Trade Descriptions Ordinance (Cap. 362) (TDO) to strengthen consumer protection and reports the outcome of the trade consultation conducted between August and September 2007.

Background

2. At the Economic Services Panel meeting on 25 June 2007, we informed Members of our plan to strengthen the consumer protection regime in Hong Kong and to consult the relevant trades on our proposals. Please refer to Panel paper CB(1)1924/06-07(04).

3. The objective of the legislative exercise is to strengthen our regulatory tools to protect consumers and tourists against certain malpractices in the retail trade, which have been the focus of complaints in recent years. We set up a Task Force, and together with the Consumer Council, the Travel Industry Council and the Hong Kong Tourism Board, have proposed amendments to the TDO.

4. Between late August and late September 2007, we consulted 132 trade associations on the legislative proposals. The list of trade associations is at the Annex. 17 of them¹ provided written comments,

¹ Of the 17 respondents, 9 are from the precious stones and metals industry, 5 are general trade associations, 1 from the electronic products industry, 1 from the tourist industry and 1 is the Hong Kong Productivity Council.

mostly in support of our proposals. In particular, the precious stones and metals industry strongly believes that the proposals would effectively deter the sales of deceptive or fake Fei Cui, diamond, platinum and gold. Some respondents are concerned about the cost involved in complying with the new requirements. Their key comments have been included in this paper.

Legislative Proposals

Amendments to the TDO

Misleading Price Indication

5. We plan to add two new provisions in the TDO to tackle the problem of misleading price indication. The first provision seeks to prevent retailers from deceiving consumers by using a misleading unit to which the price of the goods refers. It will require retailers to show the unit weight relating to the price clearly and conspicuously.

6. The respondents generally agree to the proposal. There is, however, a suggestion that the price list, conversion table and the unit price of all goods, should be posted at the entrance of a shop. We consider that this suggestion may not be effective in addressing our concern. One respondent considers that for low-value fast moving commodities with small price tags on the shelf, the unit need not be displayed as displaying the units will require reducing the size of the prices. We note this concern, but considering that the display of unit weights is already being done in some supermarkets, we believe the proposal should be practicable.

7. The second provision seeks to require retailers of five popular electronic products (see paragraph 27 below) to inform customers, before the latter make payment, whether the price of a product covers the essential accessories (such as chargers of mobile phones) or not. This proposal is generally supported.

Misrepresentation Related to After-sale Repair or Maintenance Service

8. We plan to amend the definition of “trade description” under section 2 of the TDO, such that information regarding the maintenance services, including its availability, scope, duration, cost, locations and persons providing such services, will also become a form of “trade description” and any misrepresentation will constitute an offence. This proposal is generally supported.

9. One association suggests including the duration of after-sale services for precious stones and metals in invoices. As there are not many complaints in this respect, we will take stock of this suggestion, but will not include it in the current exercise.

Misrepresentation Related to the Seller’s Connection to Reputable Individual or Organization

10. We plan to add a new provision to prohibit traders from making false or misleading representations regarding their connection to or endorsement by individuals or bodies of good standing and reputation so as to induce customers to enter into transactions. The proposal is generally supported.

11. One respondent however considers the provision too vague and comments that there is already legislation in place that forbids retailers to abuse the use of an individual’s name. On whether the reference to “good standing and reputation” is too vague, it must be noted that the provision will require application of an objective test to individual cases to determine if the individual or body in question is “of good standing and reputation” or not. As regards the abuse of an individual’s name, we believe that the respondent is referring to the Personal Data (Privacy) Ordinance. However, it serves a different objective i.e. not to protect consumers. In any event, it does not cover organizations and would not be adequate for our purpose.

Subsidiary Legislation

12. We plan to introduce five pieces of new subsidiary legislation under the TDO and amend three existing ones. The details are set out

below.

Misrepresentation Regarding Natural Fei Cui

13. We plan to introduce the Trade Descriptions (Definition of Natural Fei Cui) Regulation under section 33 of the TDO to prevent the deceptive use of the term “natural Fei Cui” in transactions. The Regulation will define “natural Fei Cui” as Fei Cui with certain specified physical properties and not having been chemically treated.

14. We will also introduce the Trade Descriptions (Provision of Information on Natural Fei Cui) Order under section 4 of the TDO to require traders to issue invoices specifying the description of the article and details of the transaction. The Order will also require traders to display prominently a notice measuring 210 mm x 297 mm at the point of supply to inform customers of the definition of “natural Fei Cui” and the supplier’s duty to produce an invoice or receipt when a transaction is concluded, to retain a copy of the invoice or receipt, as well as the details to be included in the invoice or receipt.

15. The industry welcomes the proposal to restrict the use of the term “natural Fei Cui”. One trade association even suggests expanding the scope of the control by introducing different definitions for different types of chemically treated Fei Cui.

16. However, there are diverse views regarding the display of notices. While one respondent feels that the size of the notice should not be smaller than 210mm x 297mm, two respondents consider that, together with that for the supply of gold², platinum³ and diamond (see paragraph 18 below), there would be too many notices to be displayed. We consider that it should not be too onerous for retailers to display four notices of this size in a shop. The current proposal should represent a good balance in protecting the interests of retailers and customers.

² Paragraph 7 of the Trade Descriptions (Marking) (Gold and Gold Alloy) Order (Cap. 362A)

³ Paragraph 7 of the Trade Descriptions (Marking) (Platinum) Order (Cap. 362C)

Misrepresentation Regarding Diamond

17. We plan to introduce the Trade Descriptions (Definition of Diamond) Regulation under section 33 of the TDO to define “diamond” as precious stones with certain specific physical properties.

18. We also intend to introduce the Trade Descriptions (Provision of Information on Diamond) Order under section 4 of the TDO to require traders to issue invoices specifying the description of the article made of or consisting of diamonds, including the total weight (in carat) of all the diamonds mounted on the article. The Order will also require traders to display prominently a notice measuring 210 mm x 297 mm at the point of supply to inform customers of the definition “diamond” and the supplier’s duty to produce an invoice or receipt when a transaction is concluded, to retain a copy of the invoice or receipt, as well as the details to be included in the invoice or receipt.

19. The proposals are generally supported by the industry. One association suggests providing testing results, including the specification of colour, cut, clarity and weight of the diamonds. We have reservations on this suggestion as there are no universally accepted standards on the colour, cut and clarity of diamonds. There are also suggestions that the definition should differentiate natural diamonds from man-made diamonds or processed diamonds. On this point, it must be noted that our proposed definition of diamonds only covers natural diamonds, and where man-made diamonds are involved, retailers must state so clearly.

20. A respondent suggests limiting the requirements to fine jewellery but not costume jewellery, watches, pens etc. Another is concerned that the total weight of diamonds might not always be available from manufacturers. One association also opines that tolerance should be given to the accuracy in representing the weight of diamonds. It further suggests that the information on the total weight of diamonds should be required only when the number and weight of the diamonds exceed a threshold. On the suggestion about not extending the requirements to costume jewellery, watches, pens, etc, we wish to point out that this is precisely the area where complaints from tourists are received. Hence, we consider that this must feature in our legislative proposals. As regards the various suggestions on weight, we understand from the trade that the technical issues can be overcome and hence the proposal is feasible.

Moreover, in cases where the total weight is not available from the manufacturer, the legislation would only require the retailer to specify the absence of such information in the invoice or receipt.

Misrepresentation Regarding Platinum

21. To rectify the ambiguities of the Chinese translation of “platinum” and “white gold”, we plan to amend paragraph 5(3) of the Trade Descriptions (Marking) (Gold and Gold Alloy) Order (Cap.362A) to change the Chinese translation of white gold from “白金” to “白色黃金”. In addition, we will amend regulation 3(1) of the Trade Descriptions (Definition of Platinum) Regulation (Cap.362B) such that the Chinese translation of platinum will be amended to “白金” or “鉑金”.

22. All respondents agree that the Chinese translation of “white gold” should be amended although there are different suggestions as to what the Chinese term should be. As regards the Chinese translation of “platinum”, all agree to the use of “鉑金”. There is also no objection to the use of “白金”. We intend to adopt both translations to allow for more flexibility for the trade.

Unclear / Inadequate Information Provided in Invoices for Gold

23 To provide better clarity to consumers, we plan to amend paragraph 6(1) of the Trade Descriptions (Marking)(Gold and Gold Alloy) Order (Cap.362A) to require traders to state in the sales invoices or receipts particulars including:

- (a) the type of gold of which the article is made;
- (b) where the article consists of different parts which are of different finenesses of gold or gold alloy, the fineness of each part of the article, which is to be expressed both in carat and in parts per thousand; and
- (c) where the whole article is made of gold of the same fineness not less than 990 in 1,000 parts by weight, the weight of the article.

24. While the industry generally agrees to the proposal, two respondents consider that traders may face difficulties in providing the exact weight of gold articles if the articles consist of parts of different finenesses. We have addressed the concern and would now only require the weight of gold articles of the same fineness not less than 990 in 1,000 parts by weight. Hence, the concern may not be valid as the traders can ascertain the weight accurately by weighing the articles concerned.

Unclear / Inadequate Information Provided in Invoices for Platinum

25. Similarly, in the case of platinum, we intend to amend paragraph 6(1) of the Trade Descriptions (Marking)(Platinum and Platinum Alloy) Order (Cap.362C) to require traders to state in the sales invoices or receipts particulars including:

- (a) where the article consists of different parts which are of different finenesses of platinum, the fineness of each part of the article; and
- (b) where the whole article is made of platinum of the same fineness not less than 990 in 1,000 parts by weight, the weight of the article.

26. One association claims that whether traders can comply with the requirement for disclosing information on platinum (as well as gold) depends much on the cooperation of overseas suppliers. It suggests that a tolerance level of plus or minus 5% to 10% should be given as it is difficult to provide the exact weight of every part of platinum in the article. We have addressed the concern and would now only require the weight of platinum articles of the same fineness not less than 990 in 1,000 parts by weight. Hence, the concern may not be valid as the traders can ascertain the weight accurately by weighing the articles concerned.

Misinterpretation Regarding the Core Features of Electronic Products

27. To discourage retailers from misrepresenting the core features of five popular electronic products i.e. digital camcorder, digital camera,

mobile phone, digital audio (MP3) player and portable multimedia (MP4) player, we intend to introduce a new Trade Descriptions (Provision of Information on Regulated Electronic Products) Order under section 4 of the TDO. The Order will require retailers to include in the sales invoice:

- (a) the date of the transaction;
- (b) the full name and address of the supplier;
- (c) the price at which the product is supplied;
- (d) the brand name of the product;
- (e) the model number of the product (if any);
- (f) the quantity of the product supplied;
- (g) the place of manufacture, or where such is not known, a statement that such is not known; and
- (h) the availability or otherwise of after-sale inspection or repair services, and if such are available, the location and duration of such services and the identity of the service-provider.

28. The industry is generally supportive of the proposal. However, one respondent is concerned about the need for retailers to enhance their computer systems and that existing invoices may not have enough space to accommodate the additional information. Another respondent is concerned about the increase in the waiting time for customers. We note these concerns, and will provide a grace period of, say, six months to enable retailers to do the preparatory work, such as upgrading their computer systems.

29. One association considers that retailers may not be able to provide accurate information if the suppliers change the service arrangements, while another suggests attaching the warranty certification to the invoice to save the trouble and cost of including the information in the invoice. Another respondent suggests the provision of information of importers if they are providers of the after-sale services, adding that small

retailers may face difficulties in providing information on warranty services because of the large number of products and suppliers involved. We have reservations on these suggestions and consider that the retailers do have a duty to check the after-sale service arrangements at least up to the time of the transaction. Merely attaching the warranty to the invoice or providing the name of the importers may not be adequate to protect consumers against deceptive or misleading verbal representation by retailers.

Penalties

30. Failure to comply with the new requirements above will constitute an offence under sections 4 or 7 of the TDO. The penalty levels are set out under section 18 of the TDO.

Next Step

31. We plan to introduce the Trade Descriptions (Amendment) Bill into this Council in January 2008.

Advice Sought

32. Members are invited to comment on the legislative proposals.

**Commerce and Economic Development Bureau
October 2007**

Annex

List of Trade Associations

Submissions Received

1	Association of Hong Kong Photographic Equipment Importers Ltd	
2	Belgium - Luxembourg Chamber of Commerce in Hong Kong	
3	Century Small and Medium Business Association	
4	Chinese Medicine Merchants Association Ltd	
5	Danish Chamber of Commerce Hong Kong	
6	Diamond Federation of Hong Kong, China Ltd	X
7	Eastern District Industries & Commerce Association Ltd	
8	Federation of Hong Kong Industries	X
9	Finnish Business Council in Hong Kong	
10	Five Districts Business Welfare Association Ltd	
11	German Chamber of Commerce, Hong Kong	
12	German Industry and Commerce Hong Kong, South China, Vietnam	
13	GS1 Hong Kong	
14	Guangdong - Hong Kong Association for the Promotion of Technology Enterprise (HK) Ltd	
15	H.K. & Kln. Chinese Medicine Merchants Assn. Ltd	
16	Hong Kong - European Union Business Co-operation Committee	
17	Hong Kong - United States Business Council	
18	Hong Kong & Kowloon Electrical Appliances Merchants Association Ltd	
19	Hong Kong & Kowloon Jade Merchants Union Association	
20	Hong Kong & Kowloon Mineral Product Merchants Association Ltd	
21	Hong Kong (SME) Economic and Trade Promotional Association	
22	Hong Kong Association for Customer Service Excellence	
23	Hong Kong Association For Promotion & Development Of SMEs	

24	Hong Kong Association for Testing, Inspection and Certification Ltd	
25	Hong Kong Association of China Business Ltd.	
26	Hong Kong Association of Registered Tour Co-ordinators Ltd	
27	Hong Kong Bar Association	
28	Hong Kong Brand Development Council	
29	Hong Kong Chiu Chow Chamber of Commerce Ltd	
30	Hong Kong Coalition of Service Industries	
31	Hong Kong Commerce and Industry Associations Ltd	
32	Hong Kong Direct Marketing Association	
33	Hong Kong Dried Sea Food and Grocery Merchants Association Ltd	
34	Hong Kong Economic and Trade Association	
35	Hong Kong Electrical Appliances Manufacturers Association	
36	Hong Kong Electrical Contractors' Association Ltd	
37	Hong Kong Electronics Industry Council	
38	Hong Kong Gemstone Manufacturers' Association Limited	
39	Hong Kong General Chamber of Commerce	X
40	Hong Kong General Chamber of Pharmacy Ltd	
41	Hong Kong Gold & Silver Ornament Workers and Merchants General Union	X
42	Hong Kong Import & Export Trade Employee Association	
43	Hong Kong Industrial Production Trading Association Ltd	
44	Hong Kong Information Technology Federation Ltd	
45	Hong Kong Information Technology Industry Council	
46	Hong Kong Jade Wholesalers & Retailers Association Ltd	X
47	Hong Kong Jewellers' & Goldsmiths' Association	X
48	Hong Kong Jewellery & Jade Manufacturers Association	X
49	Hong Kong Jewellery Industry Technology Centre	
50	Hong Kong Jewelry Manufacturers' Association	X
51	Hong Kong Jockey Club Institute of Chinese Medicine Ltd	

52	Hong Kong Photo Marketing Association Ltd	
53	Hong Kong Photographic and Optics Manufacturers Association	
54	Hong Kong Productivity Council	X
55	Hong Kong Promotion Association for Small and Medium Enterprises Ltd	
56	Hong Kong Q-Mark Council, Federation of Hong Kong Industries	
57	Hong Kong Quality Assurance Agency	
58	Hong Kong Quality Management Association	
59	Hong Kong Retail Management Association	X
60	Hong Kong Small & Medium Enterprises General Association	
61	Hong Kong Small And Medium Enterprise Development Association	
62	Hong Kong Small and Medium Enterprises Association	
63	Hong Kong Society for Quality	
64	Hong Kong Suppliers Association	
65	Hong Kong Tour Guides General Union	
66	Hong Kong Tourism Board	
67	Hong Kong Tourism Industry Employees General Union	
68	Hong Kong Tourists Shops Association Ltd	
69	Hong Kong Trade Development Council	
70	Hong Kong Travel Agent Owners Association Ltd	
71	Hong Kong Tsuen Wan Industries and Commerce Association Ltd	
72	Hong Kong Watch & Clock Council	
73	Hong Kong Watch & Clock Technology Centre	
74	Hong Kong Watch Manufacturers Association Ltd	
75	Hong Kong Wong Tai Sin Industry & Commerce Association Ltd	
76	Hong Kong Yee Yee Tong Chinese Medicine Merchants Association Ltd	
77	Italian Chamber of Commerce in Hong Kong	
78	Japan External Trade Organization (JETRO), Hong Kong	
79	Ka Ying Chow Commercial Association Ltd	
80	Kowloon Chamber of Commerce	
81	Modernized Chinese Medicine International Association	

82	New Territories General Chamber of Commerce	
83	New Zealand Chamber of Commerce in Hong Kong	
84	Norwegian Chamber of Commerce, Hong Kong	
85	Po Sau Tong Ginseng & Antler Association Hong Kong Ltd	
86	Po Yick General Chinese and Foreign Goods Import and Export Commercial Society of Hong Kong	
87	Quality Tourism Services Association	X
88	Sham Tseng Trade Association Ltd	
89	SME Mentorship Association	
90	Swedish Chamber of Commerce in Hong Kong	
91	Swiss Business Council in Hong Kong	
92	Tai Po Merchants Association Ltd	
93	Taiwan Business Association (HK) Ltd	
94	The American Chamber of Commerce in Hong Kong	
95	The Australian Chamber of Commerce in Hong Kong	
96	The Austrian Chamber of Commerce and Association	
97	The British Chamber of Commerce in Hong Kong	
98	The Canadian Chamber of Commerce in Hong Kong	
99	The Chinese General Chamber of Commerce	X
100	The Chinese Manufacturers' Association of Hong Kong	
101	The Direct Selling Association of Hong Kong Ltd	
102	The Dutch Business Association	
103	The Federation of Hong Kong Watch Trades & Industries Ltd	
104	The French Chamber of Commerce and Industry in Hong Kong	
105	The Gemmological Association of Hong Kong Ltd	
106	The Hong Kong & Kowloon Electric Trade Association	
107	The Hong Kong Association of International Co-operation of Small & Medium Enterprises	
108	The Hong Kong Association of the Pharmaceutical Industry	
109	The Hong Kong Chamber of Small and Medium Business Ltd	
110	The Hong Kong Chinese Enterprises Association	
111	The Hong Kong Chinese Importers' & Exporters' Association	
112	The Hong Kong Electronic Industries Association Ltd	X

113	The Hong Kong Exporters' Association	
114	The Hong Kong Japanese Chamber of Commerce & Industry	
115	The Hong Kong Medicine Dealers' Guild	
116	The Hong Kong Sze Yap Commercial & Industrial Association	
117	The Hongkong Hainan Commercial Association	
118	The Hongkong Watch Importers' Association	
119	The Indian Chamber of Commerce Hong Kong	
120	The Joint Council of the Travel Industry of Hong Kong	
121	The Korean Chamber of Commerce in Hong Kong	
122	The Kowloon Pearls, Precious Stones, Jades, Gold And Silver Ornament Merchants Association	X
123	The Law Society of Hong Kong	
124	The Nam Hoi Traders' Association Ltd	
125	The Singapore Chamber of Commerce (Hong Kong)	
126	The Spanish Chamber of Commerce	
127	The Wah On Exporters & Importers Association	
128	The World Chinese Traders General Association (Hong Kong) Ltd	
129	Travel Industry Council of Hong Kong	
130	Tsang Shing Commercial Association Ltd	
131	Tsing Yi Trade Association Ltd	
132	Tsuen Wan Trade Association Ltd	

Other organizations or bodies having made submissions

1	Chow Sang Sang Holdings International Ltd.	X
2	Hong Kong Trade Services Council (under FHKI)	X
3	Platinum Guild International Representative Office (Shanghai)	X