



21 October 2010

By email (hysiu@legco.gov.hk) and by fax (2978 7569)

Your Ref.: CB1/PL/EDEV
Our Ref.: C/GEN, M73315

Hon Jeffrey Lam Kin-fung
Chairman, Panel on Economic Development
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mr. Lam,

Re: Public Consultation Paper on Legislation to Enhance Protection for Consumers against Unfair Trade Practices

The Hong Kong Institute of CPAs is generally in support of the enhancement of consumer protection against unfair trade practices. We offer a few further, specific comments on the proposals for the consideration of the Legislative Council Panel on Economic Development:

- We agree that professional practices already regulated by a statutory regulatory body need not in addition be brought under the ambit of the Trade Descriptions Ordinance (TDO) (paragraph 4.10 of the consultation paper).
- If the Telecommunications Authority and the Broadcasting Authority are to be given concurrent jurisdiction with the Customs and Excise Department (C&ED) under the TDO, in relation to telecommunications and broadcasting services, respectively, a clear operational framework should be established to avoid any overlapping of roles. It should be made clear to the public and the service providers, and between the authorities themselves in those sectors, when C&ED will take the lead and when the relevant sector regulator will take the lead (paras. 4.11-4.12).
- We note that it is not proposed to bring the financial services or property sectors under the ambit of the expanded TDO, given the existing regulatory regime and/or enhancement measures taken in these sectors, which include the existence of, for example, industry codes of practice in relation to dealings with consumers. We understand the rationale for this proposal. From the consumers' point of view, it will be important to ensure that, in addition to codes of practice and guidelines, adequate enforcement mechanisms are also available (paras. 4.4-4.9).
- We note that for some of the proposed offences, e.g., misleading omissions and aggressive practices, it is apparently an element of the offence that "it causes the average consumer to take a transactional decision he would not have taken otherwise". While the proposed legislation must consider the



interests of both legitimate businesses acting in good faith and consumers who have acted with due caution and common sense, it is not explained how the important element referred to above can be established. Some clarification of this issue would be helpful (paras. 2.8 and 2.13).

I believe the above views should be self explanatory. We thank you for giving the Institute the opportunity to present its views to the panel on economic development but we do not propose to send a representative to the meeting on 25 October 2010.

If you have any questions on this submission, please contact Peter Tisman, the Institute's director of specialist practices (on 2287 7228 or at peter@hki CPA.org.hk).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Winnie C.W. Cheung', written in a cursive style.

Winnie C.W. Cheung
Chief Executive

WCC/PMT/ay