For information

PANEL ON ECONOMIC DEVELOPMENT

**Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012
Non-application on Professional Practices Regulated by Regulatory
Bodies Established or Sanctioned by Statute**

PURPOSE

Pursuant to the Panel's List of Follow-up Actions (LC Paper No. CB(1)1600/11-12(02)), this paper explains the non-application of the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 ("the Bill") to professional practices regulated by regulatory bodies established or sanctioned by statute.

BACKGROUND

2.   In 2010, we completed a review of the existing consumer protection legislation and consulted the public on a package of legislative proposals to tackle unfair trade practices.   In gist, we proposed to amend the Trade Descriptions Ordinance (Cap. 362) ("the TDO") to prohibit false trade descriptions of services, misleading omissions, aggressive commercial practices, bait advertising, bait and switch, and wrongly accepting payment.   Overall, our legislative proposals received public support.

PROFESSIONAL PRACTICES

3.   Regulation over professional practitioners requires specialist knowledge in the respective fields.   Major professional sectors (such as medical practitioners and legal practitioners) are currently governed by statute.   Through professional bodies established or sanctioned by the relevant ordinances, registration and conduct of members are regulated. We consider that these professional practices should continue to be

regulated by these Ordinances and need not be brought under the ambit of the expanded TDO.   The non-application of the expanded TDO to professional practices regulated by regulatory bodies established or sanctioned by statute is effected through the proposed Schedule 3 to the Bill in the form of "exempt persons".

4.   We have reviewed the extent of consumer protection provided in these professional practices.   Generally speaking, the relevant regulatory bodies issue codes of practice or rules of conduct (such as the Code of Ethics for Professional Accountants, the Code of Conduct of Barristers and the Code of Practice of Chiropractors) to govern the professional performance of the professionals (from the perspectives of integrity, dignity, honesty and fairness) for protecting consumers.   Furthermore, the current law commonly stipulates that a professional commits a disciplinary offence if he commits misconduct or neglect in any professional respect.   Depending on the circumstances of individual cases, the deployment of unfair trade practices may be considered as misconduct in a professional respect.   The relevant regulatory body for the profession (such as registered engineers, planners, social workers and nurses) may set up an inquiry committee or refer the case to the disciplinary tribunal concerned (solicitors and barristers) to investigate the subject conduct.   If the inquiry committee or disciplinary tribunal finds that the allegation against a professional is substantiated and to a serious extent, the regulatory body may, among other things, order the registrar to remove the name of the registered professional from the register.

5.   Generally speaking, registered professionals have to undergo a long period of training for acquiring the relevant professional qualification.   The removal of the name of the registered professional in the case of serious misconduct or neglect in his professional respect is a heavy penalty, as it does not only damage the reputation of the professional, but may also affect his long-term economic well-being.   It imposes significant deterrent effect on the relevant professionals from engaging in unfair trade practices.

6.   While the expanded TDO will not be applicable to the aforementioned professional practices, the Government will continue to encourage the relevant professional bodies to step up measures, whenever necessary, to enhance consumer protection against unfair trade practices in their professional services.

Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau
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