

立法會

Legislative Council

立法會CB(3) 939/11-12號文件

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電 話 : 3919 3306

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發文者 : 立法會秘書

受文者 : 立法會全體議員

2012年6月27日的立法會會議

《2012年商品說明(不良營商手法)(修訂)條例草案》

全體委員會審議階段修正案

本會將於2012年6月27日的會議上恢復二讀辯論上述條例草案。立法會主席已批准，倘此條例草案獲予以二讀，商務及經濟發展局局長可於該條例草案的全體委員會審議階段動議修正案。

2. 現按照立法會主席指示把修正案附上，供議員考慮。

立法會秘書

(林蔭傑代行)

連附件

立法會
Legislative Council

LC Paper No. CB(3) 939/11-12

Ref : CB(3)/B/CED/1 (11-12)

Tel : 3919 3306

Date : 19 June 2012

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 27 June 2012

**Trade Descriptions (Unfair Trade Practices)
(Amendment) Bill 2012**

Committee stage amendments

The Second Reading debate on the above Bill will be resumed at the Council meeting of 27 June 2012. Subject to the Bill receiving a Second Reading, the President has given permission for the Secretary for Commerce and Economic Development to move amendments to the Bill at its Committee stage.

2. As directed by the President, the amendments are attached for Members' consideration.

(Desmond LAM)
for Clerk to the Legislative Council

Encl.

《2012年商品說明(不良營商手法)(修訂)條例草案》

委員會審議階段

由商務及經濟發展局局長動議的修正案

<u>條次</u>	<u>建議修正案</u>
1	刪去第(2)款而代以 — “ (2) 本條例自局長以憲報公告指定的日期起實施。 (3) 在第(2)款中 — 局長 (Secretary)具有《商品說明條例》(第 362 章)第 2(1)條給予該詞的涵義。 ”。
3	加入 — “(5A) 第 2(1)條， 商品說明 的定義 — 廢除(e)段 。 ”。
3(6)	刪去“在(e)段之後”而代以“在(f)段之前”。
3(9)	在建議的 消費者 的定義中，刪去“是在該人的商業或業務範圍以外的目的”而代以“並不關乎該人的商業或業務”。
3(9)	在建議的 商品說明 的定義中，刪去(c)段。
3(9)	刪去建議的 局長 的定義。

- 3(10) 加入 —
“(6) 本條例文本中的附註僅供備知，並無立法效力。”。
- 8 將建議的第 7A 條重編為第 7A(1)條。
- 8 在建議的第 7A(1)條中，刪去附註。
- 8 在建議的第 7A 條中，加入 —
“(2) 在本條中 —
服務 (service)不包括附表 4 所涵蓋的服務。”。
- 9 刪去第(2)款而代以 —
“(2) 第 8 條 —
廢除第(2)款
代以
“(2) 有關商品說明 —
(a) 須為裁定是否有人犯第 7(1)(a)(i)或 7A(1)(a)條所訂罪行的目的；及
(b) 在有關類別貨品或服務是由發布或展示有關宣傳品的人供應或要約供應，或提供或要約提供的情況下，亦須為裁定是否有人犯第 7(1)(a)(ii)或 7A(1)(b)條所訂罪行的目的，而視為是指屬於該類別的所有貨品或服務，不論其在該項發布時是否存在。”。
- 9 刪去第(3)、(4)及(5)款。

- 13 在建議的第 13D(3)(a)條中，刪去“及”而代以“或”。
- 13 在建議的第 13D(3)(b)(ii)條中，刪去在“相當可能”之後的所有字句而代以“導致該群體(而非任何其他群體)的一般成員作出某項交易決定，而如該成員沒有接觸該營業行為，該成員是不會作出該項交易決定的。”。
- 13 刪去建議的第 13D(5)條。
- 13 在建議的第 13E(2)(b)條中，在中文文本中，刪去“瞞”而代以“藏”。
- 13 在建議的第 13E(4)(f)(ii)條中，在英文文本中，在“delivery”之後加入“of goods”。
- 13 在建議的第 13E(4)(f)(iii)條中，刪去“供應產品”而代以“提供服務”。
- 15 在建議的第 20(2)(a)條中，在“秘書”之前加入“公司”。
- 15 在建議的第 20(3)條中，在**主要人員**的定義中，在所有“僱用”之後加入“或聘用”。
- 15 在建議的第 20(3)條中，加入 —
“**公司秘書** (company secretary)包括擔任公司秘書職位的人(不論該人是以何職稱擔任該職位)；”。
- 18(1) 刪去“7A(b)”而代以“7A(1)(b)”。

- 23 在建議的附表 4 中，刪去“[第 2 及 37 條]”而代以“[第 2、7A 及 37 條]”。
- 23 在建議的附表 4 中，在中文文本中，刪去“及《證》”而代以“或《證》”。
- 24 刪去建議的**電管局局長**及**廣管局**的定義。
- 24 加入 —
“**通訊事務管理局** (Communications Authority)指由
《通訊事務管理局條例》(第 616 章)第 3 條設
立的通訊事務管理局；”。
- 27 在建議的第 16E(1)條中，刪去“電管局局長及廣管局各自均”而代以“通訊事務管理局”。
- 27 在建議的第 16E(2)條中，刪去“就電管局局長或廣管局指明該當局”而代以“指明通訊事務管理局”。
- 27 在建議的第 16E(3)條中，刪去“電管局局長或電管局局長”而代以“通訊事務管理局或該局”。
- 27 在建議的第 16E(3)條中，刪去在“而可由”之後的所有字句而代以 —
“該局行使的任何權力，但只有在有關營業行為是由屬《電訊條例》(第 106 章)或《廣播條例》(第 562 章)所指的持牌人作出，且該營業行為是直接與該持牌人根據相關條例提供電訊服務或廣播服務有關連的情況下，該局或該人員方可就該營業行為行使該等權力。”。

- 27 刪去建議的第 16E(4)、(5)及(6)條。
- 27 在建議的第 16E(8)條中，刪去“電管局局長、廣管局，或電管局局長或廣管局”而代以“通訊事務管理局或該局”。
- 27 在建議的第 16E(9)條中，刪去“電管局局長、廣管局，或電管局局長或廣管局”而代以“通訊事務管理局或該局”。
- 27 在建議的第 16F(1)條中，刪去在“關長”之後的所有字句而代以 —
“或通訊事務管理局正在根據本條例就某事宜執行職能，而另一方同時就該事宜具有管轄權，則他們可協議將該事宜移交其中一方，並由該方處理。”。
- 27 在建議的第 16F(2)條中，刪去在“關長”之後的所有字句而代以 —
“或通訊事務管理局正在或已經根據本條例就某事宜執行職能，則另一方即使同時就該事宜具有管轄權，亦不得就該事宜執行任何職能。”。
- 27 在建議的第 16G(1)條中，刪去“電管局局長，以及關長與廣管局，”而代以“通訊事務管理局”。
- 27 在建議的第 16G(5)條中，刪去自“第(1)款”起至“範圍內，”為止的所有字句而代以“關長與通訊事務管理局須在《2012年商品說明(不良營商手法)(修訂)條例》(2012年第 號)第 27 條實施後，在合理切實可行範圍內”。

- 27 在建議的第 16H(1)條中，刪去在“凡”之後而在“聯同”之前的所有字句，而代以“通訊事務管理局或該局以書面授權的任何公職人員可根據第 16E(3)條就某事宜行使權力，該局可就該事宜發出指引，該局”。
- 27 刪去建議的第 16H(2)條。
- 27 在建議的第 16H(3)條中，刪去在“為此”之後的所有字句而代以 —
- “目的 —
- (a) 在該條第(2)(a)款中提述獲授權人員，須視為提述通訊事務管理局，或該局以書面授權行使憑藉第 16E 條而可由該局行使的任何權力的任何公職人員；及
- (b) 在該條第(3)、(5)或(6)款中提述關長，須視為提述通訊事務管理局，或通訊事務管理局聯同關長(視情況所需而定)。”。
- 27 刪去建議的第 16H(4)條而代以 —
- “(4) 通訊事務管理局須在其辦事處提供所有指引及對指引的所有修訂的文本，供公眾於通常辦公時間內查閱。如通訊事務管理局聯同關長發出指引，則兩者均須就有關指引遵守本款上述規定。”。
- 29 刪去建議的第 30L(3)條而代以 —
- “(3) 在符合第(3A)款的規定下，已作出承諾的人可隨時在獲授權人員的同意下，撤回或更改該承諾，或作出新承諾以取代該承諾。

(3A) 獲授權人員須獲律政司司長書面同意該人員根據第(3)款同意撤回、更改或取代承諾，方可根據該款同意撤回、更改或取代該承諾。”。

29 在建議的第 30N(2)條中，在中文文本中，刪去在“獲授權人員”之後而在“，方”之前的所有字句，而代以“須獲律政司司長書面同意該人員根據本條發出通知”。

29 在建議的第 30N(3)(b)條中，在“提起”之後加入“或繼續進行”。

29 在建議的第 30S 條中，在英文文本中，在標題中，刪去“CFI”而代以“**Court of First Instance**”。

31 在建議的第 36 條中，在中文文本中，刪去所有“提出”而代以“提起”。

31 在建議的第 36 條中，加入 —
“(3) 凡合約條款看來是用以排除或限制申索人根據第(1)款針對任何人提起訴訟的權利，該條款不具效力。”。

34 在英文文本中，刪去所有“等”。

Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012

Committee Stage

Amendments to be moved by the Secretary for Commerce and Economic
Development

<u>Clause</u>	<u>Amendment Proposed</u>
1	By deleting subclause (2) and substituting— “(2) This Ordinance comes into operation on a day to be appointed by the Secretary by notice published in the Gazette. (3) In subsection (2)— <i>Secretary</i> (局長) has the meaning given by section 2(1) of the Trade Descriptions Ordinance (Cap. 362).”.
3	By adding— “(5A) Section 2(1), definition of <i>trade description</i> — Repeal paragraph (e). ”.
3(6)	By deleting “after paragraph (e)” and substituting “before paragraph (f)”.
3(9)	In the proposed definition of <i>consumer</i> , by deleting “outside” and substituting “unrelated to”.
3(9)	In the proposed definition of <i>trade description</i> , by deleting paragraph (c).
3(9)	By deleting the proposed definition of <i>Secretary</i> .
3(10)	By adding— “(6) A note located in the text of this Ordinance is provided

for information only and has no legislative effect.”.

8 By renumbering the proposed section 7A as section 7A(1).

8 In the proposed section 7A(1), by deleting the note.

8 In the proposed section 7A, by adding—

“(2) In this section—

service (服務) does not include any service covered by
Schedule 4.”.

9 By deleting subclause (2) and substituting—

“(2) Section 8—

Repeal subsection (2)

Substitute

“(2) The trade description is to be taken as referring
to all goods or services of the class, whether or
not in existence at the time the advertisement
is published—

(a) for the purpose of determining whether
an offence has been committed under
section 7(1)(a)(i) or 7A(1)(a); and

(b) where goods or services of the class are
supplied or offered to be supplied by a
person publishing or displaying the
advertisement, also for the purpose of
determining whether an offence has been
committed under section 7(1)(a)(ii) or
7A(1)(b).”.

9 By deleting subclauses (3), (4) and (5).

- 13 In the proposed section 13D(3)(a), by deleting “and” and substituting “or”.
- 13 In the proposed section 13D(3)(b)(ii), by deleting “materially distort the economic behaviour only of that group” and substituting “cause the average member of that group only to make a transactional decision that the member would not have made otherwise”.
- 13 By deleting the proposed section 13D(5).
- 13 In the proposed section 13E(2)(b), in the Chinese text, by deleting “瞞” and substituting “藏”.
- 13 In the proposed section 13E(4)(f)(ii), in the English text, by adding “of goods” after “delivery”.
- 13 In the proposed section 13E(4)(f)(iii), by deleting “performance” and substituting “supply of service”.
- 15 In the proposed section 20(2)(a), by adding “company” before “secretary”.
- 15 In the proposed section 20(3), in the definition of *principal officer*, by adding “or engaged” after “employed” (wherever appearing).
- 15 In the proposed section 20(3), by adding—
“*company secretary* (公司秘書) includes any person occupying the position of company secretary, by whatever name called;”.
- 18(1) By deleting “7A(b)” and substituting “7A(1)(b)”.

- 23 In the proposed Schedule 4, by deleting “[ss. 2 & 37]” and substituting “[ss. 2, 7A & 37]”.
- 23 In the proposed Schedule 4, in the Chinese text, by deleting “及《證》” and substituting “或《證》”.
- 24 By deleting the proposed definitions of *Broadcasting Authority* and *Telecommunications Authority*.
- 24 By adding—
“*Communications Authority* (通訊事務管理局) means the Communications Authority established by section 3 of the Communications Authority Ordinance (Cap. 616);”.
- 27 In the proposed section 16E(1), by deleting “Telecommunications Authority and the Broadcasting Authority may each” and substituting “Communications Authority may”.
- 27 In the proposed section 16E(2), by deleting everything after “specify” and substituting “powers covered by subsection (1) that are not exercisable by the Communications Authority.”.
- 27 In the proposed section 16E(3), by deleting “Telecommunications Authority” and substituting “Communications Authority”.
- 27 In the proposed section 16E(3), by deleting everything after “practices of” and substituting—
“licensees under the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) that are directly connected with the provision of a

telecommunications service or broadcasting service under the relevant Ordinance.”.

- 27 By deleting the proposed section 16E(4), (5) and (6).
- 27 In the proposed section 16E(8), by deleting everything after “commercial practice by the” and before “does not” and substituting “Communications Authority or any public officer authorized in writing by that Authority”.
- 27 In the proposed section 16E(9), by deleting everything after “this Ordinance the” and before “does not” and substituting “Communications Authority or any public officer authorized in writing by that Authority”.
- 27 In the proposed section 16F(1), by deleting everything after “Commissioner” and before “bodies” and substituting—
“or the Communications Authority is performing a function under this Ordinance in relation to a matter over which the other has concurrent jurisdiction, the 2”.
- 27 In the proposed section 16F(2), by deleting everything after “Commissioner” and before “has concurrent” and substituting—
“or the Communications Authority is performing or has performed a function under this Ordinance in relation to a matter over which the other”.
- 27 In the proposed section 16G(1), by deleting “Telecommunications Authority, and the Commissioner and the Broadcasting Authority,” and substituting “Communications Authority”.

27 In the proposed section 16G(5), by deleting “Each set of parties referred to in subsection (1)” and substituting “The Commissioner and the Communications Authority”.

27 In the proposed section 16H(1), by deleting “Telecommunications” (wherever appearing) and substituting “Communications”.

27 By deleting the proposed section 16H(2).

27 In the proposed section 16H(3), by deleting everything after “For this” and substituting—

“purpose—

(a) the reference in subsection (2)(a) of that section to authorized officers is to be taken to be a reference to the Communications Authority or any public officer authorized in writing by that Authority to exercise any of the powers that by virtue of section 16E are exercisable by that Authority; and

(b) any reference in subsection (3), (5) or (6) of that section to the Commissioner is to be taken to be a reference to the Communications Authority, or the Communications Authority jointly with the Commissioner, as the case requires.”.

27 By deleting the proposed section 16H(4) and substituting—

“(4) The Communications Authority or, in the case of jointly issued guidelines, both the Communications Authority and the Commissioner must make copies of all guidelines and amendments of guidelines available to the public for inspection at their office during ordinary business hours.”.

- 29 By deleting the proposed section 30L(3) and substituting—
- “(3) Subject to subsection (3A), a person who has given an undertaking may, with the consent of an authorized officer, withdraw or vary it, or give a new undertaking in substitution for it, at any time.
- (3A) An authorized officer may only consent under subsection (3) to the withdrawal of, or a variation of or substitution for, an undertaking if the officer has obtained the consent in writing of the Secretary for Justice to doing so.”.
- 29 In the proposed section 30N(2), in the Chinese text, by deleting everything after “獲授權人員” and before “，方” and substituting “須獲律政司司長書面同意該人員根據本條發出通知”.
- 29 In the proposed section 30N(3)(b), by adding “or continue” after “bring”.
- 29 In the proposed section 30S, in the English text, in the heading, by deleting “CFI” and substituting “**Court of First Instance**”.
- 31 In the proposed section 36, in the Chinese text, by deleting “提出” (wherever appearing) and substituting “提起”.
- 31 In the proposed section 36, by adding—
- “(3) A term of a contract that purports to exclude or restrict the right of a claimant to bring an action under subsection (1) against any person is of no effect.”.

34

In the English text, by deleting “等” (wherever appearing).