

立法會
Legislative Council

LC Paper No. CB(1)2641/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/11/2

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

**Minutes of the seventh meeting
held on Tuesday, 29 May 2012, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

- Members present** : Hon Fred LI Wah-ming, SBS, JP (Chairman)
Hon James TO Kun-sun
Hon Vincent FANG Kang, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Starry LEE Wai-king, JP
Hon Paul TSE Wai-chun, JP
Hon Tanya CHAN
- Members absent** : Hon WONG Kwok-hing, MH
Dr Hon LEUNG Ka-lau
- Public officers attending** : Agenda Item II
Mrs Alice CHEUNG
Deputy Secretary for Commerce and Economic
Development (Commerce & Industry)³

Mr YAU Kin-chung
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)
Special Duties

Mr CHEUNG Sai-yan
Head of Trade Controls
Customs and Excise Department

Mr LAM Po-chuen
Head of Consumer Protection Bureau 2
Customs and Excise Department

Mr Eamonn MORAN
Law Draftsman
Department of Justice

Mr Peter SZE Chun-fai
Government Counsel
Department of Justice

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Mr Joey LO
Senior Council Secretary (1)3

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)1944/11-12 -- Minutes of meeting held on
12 April 2012)

The minutes of the meeting held on 12 April 2012 were confirmed.

- II. Meeting with the Administration**
(LC Paper No. CB(1)2007/11-12(01) -- List of follow-up actions
arising from the discussion at
the meeting on 15 May 2012

LC Paper No. CB(1)2007/11-12(02) -- List of follow-up actions
arising from the discussion at
the meeting on 21 May 2012

- LC Paper No. CB(1)2007/11-12(03) -- Administration's paper on responses to outstanding issues
- LC Paper No. CB(1)2007/11-12(04) -- Administration's paper on marked-up version of the Bill showing the proposed Committee Stage amendments (CSAs) and the justifications for proposing the CSAs
- LC Paper No. CB(1)1824/11-12(03) -- Administration's paper in response to letter from Assistant Legal Adviser as set out in LC Paper No. CB(1)1321/11-12(03)
- LC Paper No. CB(1)1321/11-12(03) -- Letter from Assistant Legal Adviser to the Administration dated 15 March 2012
- LC Paper No. CB(3)511/11-12 -- The Bill
- File Ref: CITBCR 05/08/1 -- Legislative Council Brief issued by the Commerce and Economic Development Bureau
- LC Paper No. LS37/11-12 -- Legal Service Division Report
- LC Paper No. CB(1)1510/11-12(01) -- Latest marked-up version showing the proposed amendments to the Trade Descriptions Ordinance and the Telecommunications Ordinance prepared by the Administration)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

3. The Administration was requested to:
 - (a) propose a CSA to replace the expression "提出" with "提起" in the Chinese text of the proposed section 36 to tally with the wording used in other parts of the Bill;
 - (b) propose a CSA to amend the heading of the proposed section 30S by replacing the abbreviation "CFI" with its long form "Court of First Instance" for clarity purpose;
 - (c) provide a full set of CSAs to be moved by the Administration; and
 - (d) provide a written response to the views expressed by the Hong Kong Retail Management Association on the Bill in its letter dated 28 May 2012 (LC Paper No. CB(1)2032/11-12(01))

4. The Administration was also requested to include in the speech to be delivered by the Secretary for Commerce and Economic Development during the resumption of the Second Reading debate on the Bill the proposed commencement date of the amendments to the Trade Descriptions Ordinance (Cap. 362) (TDO), and the Administration's commitment and work plan to further examine the mandatory cooling-off period arrangement to ensure satisfactory implementation of the measure after the passage of the Bill.

III. Any other business

5. The Chairman reminded members that the eighth meeting would be held on 5 June 2012 at 10:45 am. The Bills Committee would discuss the outstanding issues and CSAs to be proposed by members, if any.

(Post-meeting note: The eighth meeting was subsequently rescheduled to 4 June 2012 at 8:30 am.)

6. There being no other business, the meeting ended at 5:36 pm.

**Proceedings of the seventh meeting of
Bills Committee on
Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012
on Tuesday, 29 May 2012, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 - 000144	Chairman Administration	Opening remarks by the Chairman	
000145 - 000700	Chairman Ms Starry LEE Administration	In response to Ms Starry LEE's request, the Administration agreed to include in the speech to be delivered by the Secretary for Commerce and Economic Development ("SCED") during the resumption of the Second Reading debate on the Bill the Administration's commitment and work plan to further examine the mandatory cooling-off period arrangement to ensure satisfactory implementation of the proposed measure after the passage of the Bill.	The Administration to follow up as stated in paragraph 4 of the minutes.
000701 - 002300	Chairman Administration Mr James TO	<p><u>Briefing by the Administration on its responses to outstanding issues (LC Paper No. CB(1)2007/11-12(03))</u></p> <p>Discussion on the definition of "exempt person".</p> <p>In response to Mr James TO's enquiry, the Administration advised that "exempt person" referred to a person who was <u>acting in the capacity of</u> a person described in an item of the proposed Schedule 3 to the Trade Descriptions Ordinance (Cap. 362) ("TDO"). While the existing section 7 (on false trade descriptions of goods) applied to any person "in the course of trade or commerce", any practice in which the exempt person was engaged that was not in the person's registered professional capacity would be subject to the control of the TDO. In actual practice, the Customs and Excise Department could refer (with the complainant's consent) a complaint against an exempt person acting in his/her registered professional capacity (and not subject to the control of the TDO) to the relevant regulatory body.</p>	
002301 - 002627	Chairman Administration	Briefing by the Administration on the Customs and Excise Department's compliance and enforcement policy and the draft framework of the "General Guidelines on Implementing of the Fair Trading Sections of the Trade Descriptions Ordinance" (LC Paper No. CB(1)2007/11-12(03), Annex A).	

Time marker	Speaker	Subject(s)	Action required
002628 - 003330	Chairman Assistant Legal Adviser (ALA) Administration	<p>In response to ALA's enquiry on the meaning of "financial loss" under the proposed new section 18A, the Administration advised that liquidated or quantifiable expenses such as medical expenses resulting directly from unfair trade practices would be covered by "financial loss", whereas indirect loss or damage (such as those arising from mental distress) would not.</p> <p>In response to ALA's enquiry about legal professional privilege and the privilege against self-incrimination relating to the proposed section 15(1)(ca), the Administration advised that where a person merely produced to an authorized officer a book, a document or a record required to be kept under the TDO (usually consisting of invoices and receipts of transactions), there was no issue of self-incrimination because the act or the failure did not constitute answering any question or giving any information which might incriminate the person or confessing guilt. ALA also pointed out that section 17(4)(b) of TDO merely exempted a solicitor from producing a privileged document, but did not exempt the solicitor's client (e.g. the trader) from doing so.</p> <p>In response to ALA's suggestion, the Administration agreed to amend the wording used in various parts of the draft framework of the "General Guidelines on Implementing of the Fair Trading Sections of the Trade Descriptions Ordinance" in accordance with the wording to be used in the CSAs proposed by the Administration (e.g. substituting "outside" by "unrelated to" in the definition of "consumer" and deleting the reference to "economic behaviour").</p>	
003331 - 003450	Chairman Administration	Discussion on the proposed commencement date of the amendments to TDO.	The Administration to follow up as stated in paragraph 4 of the minutes.
003451 - 003500	Chairman Administration	Briefing by the Administration on the marked-up version of the Bill showing the proposed CSAs and the justifications for proposing the CSAs (LC Paper No. CB(1)2007/11-12(04), Annex B and Annex C).	
003501 - 003800	Chairman Administration Mr James TO	<p><u>Clause 1– Short title and commencement</u></p> <p>Members raised no query.</p>	

Time marker	Speaker	Subject(s)	Action required
003801 - 003843	Chairman Administration	<u>Clause 3 – Section 2 amended (interpretation)</u> Members raised no query.	
003844 - 004100	Chairman Administration	<u>Clause 8 – Section 7A added (Offences in respect of trade description of services)</u> Members raised no query.	
004101 - 004137	Chairman Administration	<u>Clause 9 – Section 8 amended (trade descriptions used in advertisements)</u> Members raised no query.	
004138 - 004300	Chairman Administration	<u>Clause 13 – Part IIB added (Unfair Trade Practices)</u> Members raised no query.	
004301 - 004550	Chairman ALA Administration	<u>Clause 15 (Section 20 substituted – Liability of directors, partners, etc.)</u> Discussion on the rationale behind the Administration's decision not to propose CSAs to replace "the directors" with "all the directors" in the definitions of "principal officer" and "shadow director" under the proposed section 20(3), and to replace the expression "一眾董事" with "所有董事" in the Chinese text accordingly. The Administration considered that there would be no misunderstanding in the context that "the directors" would mean anything other than "all the directors" in the definitions, and that it was more important for the wording to be in line with the Companies Bill, rather than the Competition Bill as cited by ALA. ALA agreed that references to "the directors" in the context of the proposed definitions should be clear enough to mean "all the directors".	
004551 - 004600	Chairman Administration	<u>Clause 23 – Schedules 3 and 4 added (Schedule 3 – Exempt Persons, Schedule 4 – Excluded Products)</u> Members raised no query.	
004601 - 004630	Chairman Administration	<u>Clause 24 – Section 2 amended (definitions relevant to enforcement)</u> Members raised no query.	

Time marker	Speaker	Subject(s)	Action required
004631 – 004740	Chairman Administration	<p><u>Clause 27 – Sections 16E to 16I added</u></p> <p>Members raised no query.</p>	
004741 - 005400	Chairman ALA Administration	<p><u>Clause 29 – Part IIIB added (Enforcement (Undertakings and Injunctions))</u></p> <p><u>Proposed section 30N – Withdrawal of acceptance of undertaking</u></p> <p>Discussion on the syntactic difference between the English version of the proposed section 30N(2) and the proposed Chinese version as amended by the proposed CSA.</p> <p>In response to ALA's enquiry, the Administration advised that there was no need to propose a CSA to the English version to ensure that the syntax of the English and Chinese versions corresponded.</p> <p><u>Proposed section 30S – CFI may exercise powers of District Court in certain cases</u></p> <p>Discussion on the need to replace "CFI" with its long form "Court of First Instance". The Administration agreed to propose a further CSA to amend the heading for clarity purpose.</p>	<p>The Administration to follow up as stated in paragraph 3(b) of the minutes.</p>
005401 - 010000	Chairman Administration ALA	<p><u>Clause 31 – Section 36 added (Actions for damages)</u></p> <p>ALA suggested that the Administration should propose a CSA to replace the expression "提出" with "提起" in the Chinese text of the proposed section 36 to tally with the wording used in other parts of the Bill.</p>	<p>The Administration to follow up as stated in paragraph 3(a) of the minutes.</p>
010001 - 010224	Chairman Mr Vincent FANG Administration	<p>In response to the Chairman's enquiry, the Administration advised that it would provide a full set of CSAs to be moved by the Administration, and a written response to the submission from Hong Kong Retail Management Association on the Bill in its letter dated 28 May 2012 (LC Paper No. CB(1)2032/11-12(01)).</p>	<p>The Administration to follow up as stated in paragraphs 3(c) and (d) of the minutes.</p>
010225 - 010842	Chairman Mr Vincent FANG Administration	<p>Meeting arrangement</p> <p>The Chairman reminded members to inform the Bills Committee by 5 June 2012 if they wished to propose CSAs to the Bill.</p>	

Council Business Division 1
Legislative Council Secretariat
27 September 2012