

For discussion on
24 March 2014

**LEGISLATIVE COUNCIL
PANEL ON ECONOMIC DEVELOPMENT**

**Implementation of the Trade Descriptions
(Unfair Trade Practices) (Amendment) Ordinance 2012**

Purpose

This paper updates Members on the progress of the implementation of the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (“the Amendment Ordinance”).

The Amendment Ordinance

2. The Amendment Ordinance came into full implementation on 19 July 2013. The Trade Descriptions Ordinance (Cap. 362) (“the Ordinance”) as amended by the Amendment Ordinance now covers both goods and services. Unfair trade practices that are prohibited include false trade descriptions, misleading omissions, aggressive commercial practices, bait-and-switch, bait advertising and wrongly accepting payment. Traders convicted of the “fair trading sections”¹ may be liable to a maximum penalty of imprisonment for five years and a fine of \$500,000.

3. A civil compliance-based mechanism has also been introduced to encourage compliance by traders and to stop prohibited unfair trade practices expeditiously, thereby enhancing enforcement efficiency. The enforcement agencies may, instead of initiating criminal prosecution, accept an undertaking from a trader whom the enforcement agencies believe has engaged in a prohibited unfair trade practice to stop and not to repeat that practice.

¹ Including sections 4, 5, 7, 7A, 13E, 13F, 13G, 13H and 13I of the Ordinance.

4. The Customs and Excise Department (“C&ED”) is the principal agency responsible for enforcing the Ordinance. The Communications Authority (“CA”) has concurrent jurisdiction to enforce the fair trading sections in relation to the commercial practices of licensees under the Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106) that are directly connected with the provision of a broadcasting service or telecommunications service under the respective Ordinances.

5. To facilitate compliance and enhance transparency, C&ED and the CA published the Enforcement Guidelines on 15 July 2013, which provide guidance on the operation of the relevant provisions of the Ordinance and state the manner in which the enforcement agencies exercise their powers. The Enforcement Guidelines have suitably incorporated the views and suggestions put forward by traders and the public during the consultation on the draft Guidelines conducted between December 2012 and March 2013.

Enforcement Strategy and Implementation Progress

6. The enforcement agencies adopt a three-pronged approach in enforcing the fair trading sections of the Ordinance:

- (a) compliance promotion – by conducting briefings for and proactive visits to different business sectors, the enforcement agencies provide traders with advice and guidance on the legal requirements under the Ordinance as well as measures that should be taken for complying with the Ordinance;
- (b) enforcement – the enforcement agencies take necessary and timely enforcement actions to combat non-compliant conducts and thereby instill public confidence; and
- (c) public education and publicity – the enforcement agencies in coordination with the Consumer Council (“CC”) have launched extensive publicity and education programmes (which include broadcasting Announcement in the Public

Interest on television and radio, launching dedicated webpages, publicising posters and pamphlets, arranging roving exhibitions, conducting seminars, etc.). Not only can these programmes empower consumers by raising their awareness of the prohibited unfair trade practices and promoting the concept of “shopping smart”, they also promote good practices amongst traders.

7. The enforcement agencies have been actively handling relevant enquiries and complaints. As the Ordinance covers a wide range of goods and services, in order to facilitate compliance and optimise the use of enforcement resources, the enforcement agencies have adopted a risk-based approach under which priority is accorded to handling cases that may have significant implications on consumers, the trade or the community at large. Factors to be considered include public concerns, identified risks and intelligence, new or emerging market trends, and the existence of repeated or serious malpractices.

8. From 19 July 2013 to 28 February 2014, C&ED, the Office of the Communications Authority (“OFCA”) and the CC received 2,786, 298 and 1,120 complaints respectively. A breakdown of the complaints according to the offences involved is set out below.

Offence	C&ED	OFCA	CC
False Trade Descriptions	1,763	104	579
Misleading Omissions	478	172	146
Aggressive Commercial Practices	81	5	164
Bait Advertising	107	2	49
Bait-and-switch	23	2	38
Wrongly Accepting Payment	267	62	144
Others (e.g. cases outside the scope of the Ordinance)	67	73	N.A.

Note: As some complaints received involve more than one accusation of the suspected breach of the Ordinance, the total number of cases according to the offences involved might be greater than the total number of complaints received.

Moreover, the CC received more than 30,000 complaints in 2013, the majority of which are merely consumer disputes outside the scope of the Ordinance. The figures are thus not included in the table.

9. As at 28 February 2014, C&ED has, upon preliminary examination of 977 complaints, found no contravention of the Ordinance and closed the cases. For another 474 complaints, although evidence of breaching the Ordinance was not found, C&ED has reminded the traders of the need to comply with the relevant provisions of the Ordinance. Besides, C&ED has launched detailed investigation into another 896 complaints. The remaining complaints are either under initial examination or have been referred to other relevant parties for follow-up actions.

10. The 896 complaints, together with the cases proactively developed by C&ED, were consolidated into 724 detailed investigation cases (more than one complaint might be involved in certain cases). 311 of these investigation cases have been completed. Amongst them, C&ED has issued warning or advisory letters to the owner and sales staff concerned in 27 cases, urging them to comply with the statutory requirements. C&ED has also instituted prosecution of another 13 cases. With the written consent of the Secretary for Justice, C&ED has accepted the traders' written undertakings of ceasing the trade conduct concerned in 2 cases.

11. As at 28 February 2014, OFCA has, upon preliminary examination of 127 complaints, found no contravention of the Ordinance and closed the cases. For another 3 complaints, although evidence of breaching the Ordinance was not found, OFCA has reminded the traders to comply with the statutory requirements. Besides, OFCA is investigating into another 166 complaints. Two complaints have been referred to other relevant parties for follow-up actions. OFCA has not initiated prosecution or accepted undertakings from traders yet.

12. Regarding the CC, out of the 1,120 complaints received, 866 complaints have been considered pursuable, among which 477 have been closed (327 have been settled upon CC's conciliation, another 107 have been referred to C&ED, OFCA or other relevant organisations for follow-up actions.). The remaining 389 complaints are still in the process of conciliation.

Way Forward

13. The Amendment Ordinance is a significant step in enhancing consumer protection, tackling commonly seen unfair trade practices at source. The enforcement agencies will continue to enforce the Ordinance vigorously.

**Customs and Excise Department
Office of the Communications Authority
Commerce, Industry and Tourism Branch,
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March 2014**