

立法會
Legislative Council

LC Paper No. CB(4)993/15-16(04)

Ref : CB4/PL/EDEV

Panel on Economic Development
Meeting on 23 May 2016

Updated background brief on
Implementation of the Trade Descriptions
(Unfair Trade Practices) (Amendment) Ordinance 2012

Purpose

This paper provides background information on the implementation of the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 ("the Amendment Ordinance") and summarizes the concerns expressed by members of the Panel on Economic Development ("the Panel") on related issues.

Background

2. The Amendment Ordinance was passed by the Legislative Council on 17 July 2012 and came into effect on 19 July 2013. It extends the coverage of the Trade Descriptions Ordinance (Cap. 362) ("the Ordinance") so as to prohibit specified unfair trade practices deployed by traders against consumers, including false trade descriptions of services, misleading omissions, aggressive commercial practices, bait advertising, bait-and-switch and wrongly accepting payment. It also introduces a civil compliance-based mechanism to encourage compliance by traders and to stop identified non-compliant practices, under which the law enforcement agencies may, as an alternative to criminal prosecution, accept an undertaking from a trader whom the enforcement agencies believe has engaged in a prohibited unfair trade practice to stop that practice.

3. The Customs and Excise Department ("C&ED") is the principal agency to enforce the Ordinance, while the Communications Authority ("CA") has concurrent jurisdiction in relation to the commercial practices of licensees

under the Telecommunications Ordinance (Cap. 106) and the Broadcasting Ordinance (Cap. 562) that are directly connected with the provision of a broadcasting service or telecommunications service. To enforce the Ordinance effectively and ensure that every case is taken up by the appropriate enforcement agency, C&ED and CA have entered into a Memorandum of Understanding for the purpose of coordinating the performance of their functions.

4. As the enforcement agencies of the Ordinance, C&ED and CA adopt a three-pronged approach –

- (a) compliance promotion – conducting briefings for and proactive visits to different business sectors to explain the legal requirements under the Ordinance and to provide guidance on measures that should be taken for complying with the Ordinance;
- (b) enforcement – actively handling enquiries and complaints, conducting regular surveillance and spot checks, and taking timely enforcement actions in cases with significant implications on consumers, the trade or the community at large; and
- (c) public education and publicity – coordinating with the Consumer Council ("CC") in launching extensive publicity and education programmes to raise consumers' awareness of the prohibited unfair trade practices, promote the concept of "shopping smart", and promote good practices amongst traders.

5. Statistics¹ on C&ED's enforcement of the amended Ordinance are as follows:

	2013 (from 19 July)	2014	2015	2016 (up to 29 February)	Total
No. of spot checks	2 163	4 052	4 128	888	11 231
No. of complaints received	2 051	6 447	6 088	944	15 530
No. of complaints with investigations launched	622	3 105	3 832	665	8 224

¹ Source: Controlling Officer's Reply on the Examination of Estimates of Expenditure 2016-2017 (Reply Serial No. CEDB(CIT)264).

	2013 (from 19 July)	2014	2015	2016 (up to 29 February)	Total
No. of self-initiated investigations	23	91	40	1	155
No. of prosecution cases	9	74	112	8	203
No. of cases with written undertakings accepted	1	5 (<i>Note</i>)	4	0	10

(*Note*) – Written undertakings were received from 2 traders in one of the cases.

Previous discussions

6. The Panel discussed the implementation of the Amendment Ordinance at its meetings on 24 March 2014 and 22 June 2015. Panel members also expressed views on the Ordinance at the Policy Address briefings on 2 February 2015 and 26 January 2016. Members' main views and concerns are summarized in the ensuing paragraphs.

Provision of cooling-off period

7. Some members expressed concern about the absence of "cooling-off period" provisions in the Amendment Ordinance. They had, on various occasions, urged the Administration to introduce such provisions for better protection of consumers, in particular those who had difficulty in providing evidence to prove that they had been harassed or threatened when purchasing a product or service.

8. The Administration has recently advised² that the issue of imposing a mandatory cooling-off period was widely discussed in the community during the public consultation on the legislative proposals to combat unfair trade practices in 2010 to 2011, and the Administration had communicated with different stakeholders on the topic. On the one hand, consumers generally had aspirations for a cooling-off period. On the other hand, certain fundamental issues that should be considered in relation to implementing a cooling-off period were not simple and were controversial, such as whether a mandatory

² Source: Controlling Officer's Reply on the Examination of Estimates of Expenditure 2016-2017 (Reply Serial No. CEDB(CIT)178).

cooling-off period should generally apply to all goods and services, how small-value transactions should be handled, whether consumers could enjoy the goods and services concerned during the cooling-off period, and whether consumers had enjoyed part of the goods and services concerned during the cooling-off period should be required to pay for the enjoyed part if they requested to cancel the transaction, and how the payment should be computed etc. Some practical issues also should not be disregarded, including how consumers should exercise the contract cancellation right and how refund should be made etc. Some trades considered that a mandatory cooling-off period would only increase the costs for honest traders but would have little deterrent effect on unscrupulous traders. Following discussion with stakeholders and careful consideration, the Administration considered that imposing a mandatory cooling-off period would change the course of transactions and had significant implications on both traders and consumers. The matter should be considered carefully. The Administration would continue to keep a close watch on the community's views in this regard.

Complaints and enforcement actions

9. In response to members' enquiry on the nature of complaints received by C&ED, the Administration advised that most complaints on goods were connected with food and beverage, telecommunication equipment and electronic products, whereas those on services were about education, beauty and travel. The predominant nature of offence was suspected false trade description of place of origin and/or product ingredients.

10. In respect of enforcement difficulties encountered, C&ED responded that investigating complaints on services was invariably complex due to absence of physical commodities, and transgressions did not manifest at the outset. Since unscrupulous traders would pick their prey selectively, undercover operations had to be launched to gather evidence.

11. A member considered that sales staff who acted upon instructions from employers should not shoulder the full burden of law compliance and their liabilities should be clearly defined and explained. C&ED explained that the definition of "trader" under the law had been broadened to include any persons acting in the name of or on behalf of a trader like marketing agents, frontline practitioners and their supervisors, etc. It would adopt an impartial approach in determining the culpable parties before initiating prosecution.

12. Noting the small number of cases that could be successfully prosecuted after the full implementation of the Amendment Ordinance, a member expressed doubt on the effectiveness of the Ordinance in tackling unfair trade practices. The Administration considered that the most effective ways to

combat irregularities against unfair trade practice were public education and publicity and compliance promotion. It was noted that the business sectors had raised their awareness about the legal requirements of the Ordinance and taken measures for complying with it.

Unfair trade practices related to different sectors

13. A concern was raised on whether local people joining overseas tour services were protected by the amended Ordinance. C&ED responded that consumers should be circumspect when making use of online platforms to procure tour services because the amended Ordinance was not applicable to foreign companies that did not have a presence in Hong Kong. On the other hand, if consumers signed contracts with local travel agents for services provided by an overseas third party, the amended Ordinance might still be applicable subject to circumstances of the individual case.

14. There was a concern about financial companies using aggressive commercial practices to make property owners conduct second mortgage for their properties. C&ED advised that complaints related to financial intermediaries and fell within the ambit of the Money Lender Ordinance (Cap. 163) had been referred to the Police for in-depth investigation. It would collaborate with relevant bureaux and departments to step up the vigilance among property owners.

Publicity and public education

15. There was a request for C&ED or CC to step up publicity and public education, particularly on those sectors subject to frequent complaints on unfair trade practices, such as the beauty industry. C&ED remarked that public education in the past two years was slanted towards awareness on the Ordinance, due emphasis would henceforth be placed upon the concept of "smart consumption".

Council questions

16. At the Council meetings on 22 January 2014, 22 April 2015 and 24 February 2016, Hon Ronny TONG, Hon Paul TSE and Hon TANG Ka-piu raised questions relating to the enforcement of the Amendment Ordinance and provision of a mandatory cooling-off period for consumer contracts involving pre-payment for services. Hyperlinks to the Council questions and the Administration's responses are provided in the **Appendix**.

Latest development

17. Hon TANG Ka-piu wrote to the Panel on 6 April 2016 requesting for discussion on the provision of a mandatory cooling-off period for consumer contracts involving pre-payment services. The Administration will update the Panel on the progress of the implementation of the Amendment Ordinance and related issues at the meeting on 23 May 2016.

Relevant papers

18. A list of relevant papers which are available on the Legislative Council Website (<http://www.legco.gov.hk>) is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
17 May 2016

List of relevant papers

Issued by	Meeting date/ Issue date	Paper
Panel on Economic Development	24 March 2014	Background brief Minutes
	2 February 2015	Minutes
	22 June 2015	Administration's paper Background brief Minutes
	26 January 2016	Minutes
Council Meeting	22 January 2014	Council question on "Enforcement of Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012" raised by Hon Ronny TONG
	22 April 2015	Council question on "Offences in Trade Descriptions Ordinance relating to unfair trade practices" raised by Hon Paul TSE
	24 February 2016	Council question on "Provision of cooling-off periods for consumer contracts involving pre-payment for services" raised by Hon TANG Ka-piu