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**Panel on Economic Development
Meeting on 28 January 2019**

**Background brief on the proposed framework for
implementing a cooling-off period**

Purpose

This paper provides background information on the proposed framework for implementing a cooling-off period. It also summarizes the views and concerns expressed by Members of the Legislative Council ("LegCo") on relevant matters in previous discussions.

Background

2. On 6 January 2010, LegCo passed a motion not intended to have legislative effect urging the the Government to establish a comprehensive consumer protection regime to enhance consumers' rights to knowledge, choice and protection, including, inter alia, the provision of a cooling-off period for agreements involving membership, package tickets and other pre-paid services.

3. At the Panel on Economic Development ("the Panel") meeting on 24 May 2010, the Administration briefed members on the broad policy directions of measures to tackle unfair trade practices, including amending the Trade Descriptions Ordinance (Cap. 362) ("TDO") to deal with false representations in respect of service, misleading omissions, aggressive practices, bait-and-switch and accepting payment without the intention or ability to supply etc.. The Administration also proposed imposing mandatory cooling-off arrangements under which consumers might cancel the contracts within a specified period on transactions of time share rights in the light of their complexity and novelty to consumers in Hong Kong and on contracts made during unsolicited visits to consumers' homes or places of work since consumers might be caught off-guard in such situations.

4. The Administration published a consultation paper titled "Legislation to Enhance Protection for Consumers Against Unfair Trade Practices" on 15 July 2010 which included proposals to amend TDO to create new offences to tackle unfair trade practices, as well as to impose cooling-off periods on transactions of timeshare rights and long-term holiday products, and also on transactions concluded during unsolicited visits to consumers' homes and places of work.

5. Following the meeting on 25 October 2010 to receive public views on the related matters, the Administration briefed the Panel on 24 January 2011 on the consultation results. Regarding the cooling-off arrangements, the Administration advised that views were polarized on whether there should be mandatory cooling-off and, if so, the scope of application. On the one hand, some respondents considered that cooling-off was by nature problematic and any unfair trade practices should be tackled through the proposed offences to be created. On the other hand, there was an overwhelming call for an expanded scope of application to enhance protection on consumers. In the light of the consultation feedback, the Administration proposed that the scope of the cooling-off arrangements be expanded to cover consumer contracts involving goods and/or services with a contract duration of not less than six months, as well as consumer transactions concluded during unsolicited visits to consumers' homes and places of work.

6. The Panel was subsequently advised at the meeting on 14 October 2011 that trade associations and others had expressed concerns about practical arrangements for implementing the cooling-off arrangements, including the arrangements for consumers to exercise the right of cancellation, the refund arrangements and small-value transactions. As such, the Administration needed more time to study how to address these concerns properly. To ensure that consumer protection could be enhanced as soon as possible, the Administration would tackle unfair trade practices as top priority.

7. The Administration introduced the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 ("the Amendment Bill") into LegCo in February 2012 to amend TDO to extend its coverage to services, to prohibit certain unfair trade practices and to enhance enforcement mechanisms. However, the proposal on mandatory cooling-off period was not included in the Bill. A Bills Committee was formed to scrutinize the Amendment Bill. During the deliberations of the Bills Committee, some members expressed disappointment with the Administration's decision to shelve the earlier planned proposal on the mandatory cooling-off period. The Administration undertook

to continue to study how to address the concerns about the cooling-off period arrangements after the passage of the Bill.

The Panel's follow-up discussion after the passage of the Amendment Bill

8. The introduction of a mandatory cooling-off period has long been an issue of concern of the Panel. While some members called for the introduction of a mandatory cooling-off period to better protect consumers, especially for those with intellectual disabilities, some other members expressed concerns that such arrangement would have limited effect on tackling unfair trade practices while being unfair to business operators (in particular the small and medium enterprises) in relation to their operational efficiency, cash flow and additional administrative costs.

9. Since the full implementation of the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 on 19 July 2013, the Panel received briefings on the implementation progress of the Ordinance at the meetings on 24 March 2014, 22 June 2015, and 23 May 2016. At the last meeting, the Panel passed the following motion -

"That this Panel urges the Government to introduce legislation on imposition of mandatory cooling-off periods, and accord priority to implementing a statutory cooling-off period for pre-paid services involving a lot of complaints and large amount of payment, such as those provided by fitness centres and the beauty industry, so that consumers may unconditionally receive a refund of the paid fees and cancel the contracts during the cooling-off period with a view to protecting consumers' rights, thereby indirectly dampening the incentive to engage in unfair and high-pressure marketing practices, and ultimately safeguarding practitioners of the relevant trades as well."

10. In response, the Administration advised that certain fundamental issues had to be considered in relation to implementing a mandatory cooling-off period. These included whether a mandatory 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; whether consumers having enjoyed part of the goods and services concerned during the cooling-off period should be required to pay for the enjoyed part if they request to cancel the transaction; and how the payment should be computed etc.. Some practical issues also could 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. As imposing a mandatory cooling-off period would change the course of transactions and had significant and profound implications on both traders and consumers, it was necessary to consider the matter carefully.

11. To facilitate further deliberation, the Administration advised that it had provided resources to the Consumer Council ("CC") to conduct research on various legal issues concerning cooling-off period. In parallel, the Panel requested the Research Office of the LegCo Secretariat to conduct a study on the overseas consumer protection regimes with special reference to the provision of mandatory cooling-off arrangements for prepaid services contracts (LC Paper No. IN19/16-17).

12. On 19 April 2018, CC released "A Report to Advocate Mandatory Cooling-Off Period in Hong Kong".¹ CC stated in the Report that an "across the board" legislative approach might not be practicable, and that a more balanced and practical option would be to implement a mandatory cooling-off period for specific transactions and industries, and formulate appropriate measures to mitigate the impact on the relevant affected businesses. CC recommended introducing a mandatory cooling-off period of not less than 7 days on unsolicited off-premises contracts; distance contracts (other than online shopping); fitness services contracts; beauty services contracts; and timeshare contracts.

13. On 15 January 2019, the Administration published the "Public Consultation Paper on Statutory Cooling-Off Period For Beauty and Fitness Services Consumer Contracts", launching a three-month public consultation on the proposal until 16 April 2019. The Administration will study and consolidate the views received during the consultation period, and publish a report on the results of the consultation. Depending on the outcome of the public consultation, the Administration aims at introducing the relevant bill to implement a statutory cooling-off period into LegCo in the 2019-2020 legislative session.

Council questions

14. At the Council meetings of 4 May 2011, 22 May 2013, 24 February and 23 November 2016, 9 and 30 May 2018, Hon Andrew LEUNG, Hon Starry LEE, Hon TANG Ka-piu, Hon Holden CHOW and Hon SHIU Ka-fai raised

¹ The Report is available at https://www.consumer.org.hk/ws_en/competition_issues/reports/cooling-off.html.

questions relating to the introduction of a mandatory cooling-off period for consumer transactions. Hyperlinks to the Council questions and the Administration's responses are provided in the **Appendix**.

Latest developments

15. At the Panel meeting on 28 January 2019, the Administration will consult members on the proposed framework for implementing a cooling-off period.

Relevant papers

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

Council Business Division 4
Legislative Council Secretariat
24 January 2019

List of relevant papers

Issued by	Meeting date/ Issue date	Paper
Panel on Economic Development	24 May 2010 (Item IV)	Administration's paper Minutes
	25 October 2010 (Item V)	Minutes
	24 January 2011 (Item IV)	Administration's paper Minutes
	14 October 2011 (Item I)	Administration's paper Minutes
	24 March 2014 (Item VI)	Administration's paper Minutes
	22 June 2015 (Item VI)	Administration's paper Minutes
	23 May 2016 (Item IV)	Administration's paper Administration's response to the motion passed Administration's follow-up paper Minutes
Council meeting	6 January 2010	Motion passed Progress report
	4 May 2011	Council question on "The scope of consumer transactions to be covered by the proposed mandatory cooling-off arrangements" raised by Hon Andrew LEUNG

Issued by	Meeting date/ Issue date	Paper
	22 May 2013	<u>Council question on "Provision of a cooling-off period clause in consumer contracts" raised by Hon Starry LEE</u>
	24 February 2016	<u>Council question on "Provision of cooling-off periods for consumer contracts involving pre-payment for services" raised by Hon TANG Ka-piu</u>
	23 November 2016	<u>Council question on "Unscrupulous sales practices and contracts involving pre-payment for services of fitness centres" raised by Hon Holden CHOW</u>
	9 May 2018	<u>Council question on "Introduction of a mandatory cooling-off period to protect consumers" raised by Hon SHIU Ka-fai</u>
	30 May 2018	<u>Council question on "Introduction of a mandatory cooling-off period to protect consumers" raised by Hon SHIU Ka-fai</u>
Bills Committee on Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012	21 June 2012	<u>Legal Service Division Report</u> <u>Report</u>

Issued by	Meeting date/ Issue date	Paper
Research Office	9 October 2017	<u>Information Note on "Consumer Protection for prepaid services contract"</u>