

LCQ10: Protecting consumers who make prepayment for services

Following is a question by the Hon Fred Li and a written reply by the Acting Secretary for Commerce and Economic Development, Mr Gregory So, in the Legislative Council today (June 24):

Question:

About protecting consumers who purchase pre-paid services, will the Government inform this Council:

(a) given that currently, the contracts for pre-paid services (such as body-building, slimming, beauty care and car washing) generally do not contain a cooling-off period clause which allows consumers to cancel the contracts and get back the entire pre-paid amounts unconditionally, whether the Government will follow the practice of foreign countries (such as Singapore) and introduce legislation to require that contracts for pre-paid services shall contain such a clause, so as to protect the interests of consumers;

(b) whether it will make reference to the mode of operation of the Travel Industry Compensation Fund and collect a levy from pre-paid service operators and set up a compensation fund, so that consumers will be compensated for the pre-paid amounts by the compensation fund in the event that the service operators concerned close down their businesses or fail to provide the relevant services; and

(c) of the measures in the short term to protect consumers who purchase pre-paid services before the compensation fund is set up?

Reply:

President,

Accepting prepayment for goods and services is a fairly common business practice. Consumers would normally enjoy discounts under such an arrangement, and traders may also strengthen their cashflow. In deciding whether to opt for prepayment, consumers should consider carefully the advantages and potential risks associated with such an arrangement.

Our reply to the three parts of the question is set out below:

(a) At present, some industries have voluntarily put in place arrangements similar to cooling-off periods. For instance, the Travel Industry Council

of Hong Kong has introduced the "Refund Protection Scheme (Registered Shops) for Inbound Tour Group Shoppers". Under this scheme, overseas visitors who are dissatisfied with a purchase can request for a full refund within 14 days after the transactions, and Mainland visitors may do so within 180 days. Separately, the Life Insurance Council of the Hong Kong Federation of Insurers has introduced a cooling-off period to allow more time for policy holders to consider their decisions.

We are aware that in some overseas countries, cooling-off arrangements are provided for in certain types of transactions. We are examining the feasibility of introducing cooling-off periods, as well as the criteria to determine the types of transactions that should have such an arrangement.

(b) Given the different nature and modes of operation of different industries, and the fact that establishing compensation funds would involve administrative costs and moral hazards, we have no intention at the moment to establish compensation funds for the services industries. We are however examining how the existing legislation can be amended to tackle specifically unfair trade practices in the services industries.

(c) Currently, the Unconscionable Contracts Ordinance (Cap. 458) empowers the court to refuse to enforce the unconscionable part of a contract. In determining whether a contractual provision is unconscionable, the court may consider relevant circumstances, such as whether the concerned clause is necessary to protect the legitimate interests of the trader, and whether the consumer has been subject to any undue influence, pressure or unfair tactics. In addition, the Supply of Services (Implied Terms) Ordinance (Cap. 457) stipulates that a supplier should provide its service with reasonable care and skill. Where the time for the provision of services is not set out in the contract, the supplier should provide the service within a reasonable time. As set out in part (b) of my reply, we are examining how the existing legislation can be amended to tackle unfair trade practices in the services industries.

Apart from legal protection, consumer education is equally important. The Consumer Council regularly provides consumer information to the public through publicity, the media and the "Choice" magazine, advising consumers the benefits and risks involved in prepayment arrangements, and reminding them to consider not only the quality of the goods and services, but also their personal financial situation, the credibility of the traders and their own needs.

Ends/Wednesday, June 24, 2009