

**List of Proposals contained in
Public Consultation Paper on
Legislation to Enhance Protection for Consumers
Against Unfair Trade Practices**

1. To extend the coverage of the Trade Descriptions Ordinance (TDO) to prohibit false trade descriptions in respect of services made in consumer transactions, and to define “services” as including “any rights, benefits, privileges or facilities that are, or are to be, provided, granted, conferred or offered” under any consumer contract but excluding rights, privileges or facilities that are, or are to be, provided under a contract of employment (paragraph 2.3 of the Consultation Paper).
2. To broaden the existing definition of trade description in respect of goods to mean any indication, direct or indirect, and by whatever means given, with respect to any goods or parts of goods (paragraph 2.4 of the Consultation Paper).
3. To adopt a non-exhaustive definition of trade description in respect of services made in consumer transactions to mean any indication, direct or indirect, and by whatever means given, with respect to any services or parts of services (paragraph 2.5 of the Consultation Paper).
4. To create a strict liability offence under the TDO prohibiting misleading omissions in consumer transactions. A commercial practice is considered as a “misleading omission” if, in its factual context, it omits or hides “material information”, provides material information in an unclear or ambiguous manner, and as a result, it causes the average consumer to take a transactional decision he would not have taken otherwise. When deciding on whether a practice is a misleading omission, all the features and circumstances of the commercial practice should be taken into account (paragraph 2.8 of the Consultation Paper).

5. To create a strict liability offence under the TDO prohibiting aggressive practices in consumer transactions. A commercial practice will be considered as aggressive if, in its factual context, taking into account all relevant circumstances, it significantly impairs the consumer's freedom of choice through the use of harassment, coercion or undue influence and it thereby causes him to take a transactional decision he would not have taken otherwise. Also to be included in the TDO will be a non-exhaustive list of factors which should be taken into account when determining whether a practice uses harassment, coercion or undue influence (paragraph 2.13 of the Consultation Paper).
6. To create a strict liability offence under the TDO of "bait advertising" in consumer transactions prohibiting a person from advertising for the supply of products at a specified price if there are no reasonable grounds for believing that he will be able to offer those products for sale at that price for a reasonable period and in reasonable quantities, having regard to the nature of the market and the nature of the advertisement (paragraph 2.16 of the Consultation Paper).
7. To create an offence under the TDO of "bait-and-switch" in consumer transactions prohibiting a person from making an offer to sell products at a specified price with the intention of promoting a different product. The enforcement agency is required to prove the existence of an intention of promoting a substitute (paragraph 2.16 of the Consultation Paper).
8. To provide additional defences in proceedings for the proposed offences of "bait advertising" and "bait-and-switch" viz. it will be a defence for the accused to prove that it has taken immediate remedial action by either replenishing the stock, causing another supplier to supply the same goods or service on the same terms, offering equivalent goods or service on the same terms, or it has stated clearly and truthfully in the relevant advertising materials the size of stock available at the specified price and offered all of them for sale (paragraph 2.17 of the Consultation Paper).

9. To create an offence under the TDO prohibiting the practice of “accepting payment without the intention to supply the contracted products” in consumer transactions, where the prosecution is required to prove a prescribed intention, and to create a strict liability offence prohibiting the practice of “accepting payment without the ability to supply the contracted products” in consumer transactions (paragraph 2.20 of the Consultation Paper).
10. To apply the maximum penalty prescribed under section 18(1) of the TDO to the proposed offences, i.e. on conviction on indictment, a fine of \$500,000 and imprisonment for 5 years, or on summary conviction, a fine at Level 6 (presently at \$100,000) and imprisonment for 2 years to all proposed offences (paragraph 2.21 of the Consultation Paper).
11. To make available due diligence defences (as set out in sections 26 and 27 of the TDO) in proceedings for the proposed offences. Under section 26, it is a defence for the accused to prove that the commission of the offence was due to, among other things, a mistake or information supplied by a third party or an accident, and that he had exercised due diligence to avoid committing the offence. Section 27 provides defences for publishers (paragraph 2.22 of the Consultation Paper).
12. To designate the Customs and Excise Department (C&ED) as the primary enforcement agency in respect of the proposed offences under the TDO (paragraph 3.4 of the Consultation Paper).
13. To introduce a compliance-based mechanism to complement criminal sanctions to promote adherence to the TDO. The enforcement agency will be empowered to seek undertakings from businesses, as appropriate, to stop or refrain from continuing an offending act. The enforcement agency will be empowered to publish the undertakings, and to apply to the court for an injunction if a business has breached any undertaking it has given, or in other circumstances as the enforcement agency sees fit (paragraphs 3.7 to 3.8 of the Consultation Paper).

14. To establish a referral mechanism under which the enforcement agency and the Consumer Council can coordinate with each other on actions to be taken on consumer complaints (paragraph 3.9 of the Consultation Paper).
15. To amend section 15(1)(b) of the TDO to empower the C&ED to inspect books and documents at non-domestic premises and take copies of them for the purpose of ascertaining whether an offence under the TDO has been or is being committed (paragraph 3.14 of the Consultation Paper).
16. Not to apply the fair trade provisions in the TDO to services and products provided by institutions regulated under the Insurance Companies Ordinance (Cap. 41), the Banking Ordinance (Cap. 155), the Mandatory Provident Fund Schemes Ordinance (Cap. 485), the Securities and Futures Ordinance (Cap. 571), and the Financial Reporting Council Ordinance (Cap. 588), property transactions and professional practices regulated by regulatory bodies established by statute (paragraphs 4.3 to 4.10 of the Consultation Paper).
17. To give concurrent jurisdiction to the Telecommunications Authority and Broadcasting Authority to enforce the fair trade provisions in respect of telecommunications services and broadcasting services under the TDO (paragraphs 3.4, 3.8, and 4.11 to 4.12 of the Consultation Paper).
18. To expressly provide in the TDO that a person who suffers loss or damage by conduct of another person that was in contravention of the fair trade provisions may recover the amount of loss or damage by action against that other person or against any person involved in the contravention. Where a person is convicted of an offence relating to unfair trade practices under the TDO, the court may, in addition to passing a sentence, order the person so convicted to pay to any aggrieved person such compensation for loss or damage sustained as a result of the offending conduct as the court thinks appropriate, or make any other orders as it thinks fit (paragraph 5.4 of the Consultation Paper).

19. To impose cooling-off periods on transactions of timeshare rights and long-term holiday products, and transactions concluded during unsolicited visits to consumers' homes and places of work (paragraph 6.7 of the Consultation Paper).
20. To further develop detailed arrangements for implementing cooling-off period in the light of public views and suggestions (paragraph 6.10 of the Consultation Paper).