

LCQ1: Protecting the rights and interests of consumers

Following is a question by the Hon Chan Han-pan and a reply by the Acting Secretary for Commerce and Economic Development, Dr Bernard Chan, in the Legislative Council today (December 13):

Question:

Over the past three financial years, the number of complaints about unfair trade practices received by the Consumer Council has remained above 1 400. Regarding protecting the rights and interests of consumers, will the Government inform this Council:

(1) whether there are new measures to combat the use of unfair trade practices (such as aggressive commercial practices and bombardment) by education centres, beauty parlours or fitness centres to obtain service contracts involving pre-paid mode of consumption; if so, of the details and timetable, including whether it will implement a statutory cooling-off period through legislation within next year and introduce a class action regime in the near future; if there are no new measures, how the authorities will step up efforts to combat such unfair trade practices;

(2) whether it will, by drawing reference from the practice of the Mainland in implementing the Law of the People's Republic of China on the Protection of Consumer Rights and Interests, stipulate that consumers who purchase goods by means of remote shopping may return the goods within seven days without the need for giving any reasons; if so, of the details and timetable; if not, the reasons for that; and

(3) given that consumers will be considered unsecured creditors and have a lower priority in receiving compensation after a trader's business has been closed down, whether the authorities will consider amending the legislation to give consumers who have purchased pre-paid goods or services from traders a higher priority in receiving compensation; if so, of the details and timetable; if not, the reasons for that?

Reply:

President,

Having consulted the Department of Justice and the Financial Services and the Treasury Bureau, our reply to the various parts of the question is as follows:

(1) Currently, various laws in Hong Kong protect consumers' rights and interests. Among others, the Trade Descriptions Ordinance (Cap. 362) (the Ordinance) prohibits traders from subjecting consumers to unfair trade practices, including false trade descriptions, misleading omissions,

aggressive commercial practices, bait advertising, bait-and-switch and wrongly accepting payment. The Ordinance covers goods and services, and is applicable to the trade practices of both physical and online traders. Traders who contravene the relevant provisions of the Ordinance are liable to a maximum penalty of imprisonment for five years and a fine of \$500,000.

The Customs and Excise Department (C&ED) is the principal enforcement agency of the Ordinance. The C&ED adopts a three-pronged approach, which covers enforcement actions, compliance promotion and publicity and public education, to combat unfair trade practices proactively.

On enforcement actions, the C&ED is given the authority to conduct criminal investigations into and prosecutions on unfair trade practices. During the period from 2020 to the end of October 2023, the C&ED completed the investigation of 477 cases and completed 284 prosecution cases, among which 258 cases were convicted, representing a successful prosecution rate of over 90 per cent and covering different industries. The court imposed imprisonment in 79 cases, with 41 persons sentenced to imprisonment. One of the cases concerned the staff of a fitness centre having engaged in aggressive commercial practices in the course of selling fitness service contracts, with one of the staff concerned sentenced to imprisonment of 27 months, which is the heaviest prison sentence since the Ordinance came into operation. In addition, the court also imposed fines in 155 cases, with the amount ranging from \$500 to \$160,000. The sentences imposed by the court are able to cause deterrent effects on unscrupulous traders.

In addition, on compliance promotion, during the period from 2020 to the end of October 2023, the C&ED held a total of 81 outreach talks, seminars and meetings for various sectors to strengthen their understanding of the legal requirements under the Ordinance and the measures that should be taken for complying with the Ordinance. The C&ED also carries out publicity and education proactively, including sending personnel to conduct patrols and distribute promotional leaflets at tourism and shopping hotspots during festive seasons as well as publishing tips on "smart consumption" and promotional videos on its official social media platforms (including its Douyin and WeChat accounts), with a view to strengthening consumers' understanding of unfair trade practices and promoting the concept of "smart consumption".

According to the figures compiled by the Consumer Council for the past three financial years, the total number of complaints it received concerning the unfair trade practices prohibited under the Ordinance had dropped from over 1 600 cases to around 1 400 cases in 2022-23. Among the complaints, the number of complaints involving aggressive commercial practices had declined over the past three financial years consecutively. These numbers illustrate that the measures aforementioned are effective in combatting unfair trade practices.

The Government notes that unfair trade practices involving pre-paid mode of consumption, in particular the situation of fitness centres and beauty parlours using aggressive tactics to sell services that involve large amount of pre-payments, is a matter of concern in society. In this regard, the

Government launched a three-month public consultation in 2019 to solicit views on the proposal to stipulate a statutory cooling-off period for beauty and fitness services consumer contracts through legislation. However, shortly after the completion of the public consultation, there have been drastic changes in the social environment, economic situation and consumption sentiment since the second half of 2019. As Hong Kong has only started resuming normalcy in full this year, enterprises (especially small and medium enterprises) are still facing various challenges in their operations. We will continue to, having regard to the prevailing circumstances including the economic situation and relevant complaint and enforcement statistics, critically review the relevant proposal before deciding the way forward.

In addition, the cross-sector Working Group on Class Actions established by the Government has commissioned a consultant to study the economic and other related impacts on Hong Kong that will be brought about by the introduction of a class action regime.

(2) As regards the Law of the People's Republic of China on the Protection of Consumer Rights and Interests mentioned in the question, one of its clauses concerns goods that are purchased through the channels of online network, television, telephone, mail order, etc. The clause specifies the rights of consumers to return the relevant goods within seven days upon receipt of the goods without the need to specify the reasons.

In recent years, with the rapid development of e-commerce, different modes of remote transaction (including through online network, television, telephone, mail order, etc) have become very common. In particular, online transaction has become an indispensable component among different industries in Hong Kong. If the aforementioned regime of returning goods without the need to specify reasons is put in place, the business operation of different industries will be severely affected, leading to additional costs, including those administrative and staff expenditure arising from contract cancellation and refund handling, to be borne by numerous traders, adding burden to the business community.

We have to exercise caution when weighing up the pros and cons, including the rights and interests of consumers as well as the impacts on traders and the development of relevant modes of consumption. In fact, whether consumers make a purchase through a physical trader or a mode of remote transaction, they are both protected by the existing legislation (including the Ordinance) in Hong Kong. Considering the current economic environment in Hong Kong as well as the deep impact that would be posed to different industries in Hong Kong if a regime of returning goods without the need to specify reasons was imposed on remote transaction, we have no plan to put in place the relevant regime.

(3) As regards the priority of creditors in receiving compensation when a company is wound up, with the main objective of giving protection and confidence to investors and creditors and promoting the business environment, Hong Kong's corporate winding-up regime serves to ensure that the value of the remaining assets of the insolvent company will be preserved as far as possible and that the assets will be distributed amongst the creditors of the

company, including its employees, suppliers and contractors, in a fair and orderly manner. In general, except for secured debts (e.g. mortgage loan) and preferential debts (including wages/salary, severance payments, long service payments, as defined under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)), other creditors have the same priority and will be paid in accordance with the pari passu principle, i.e. dividend will be paid to creditors pro-rata in accordance with the amount of their admitted claims.

The regime was formulated taking into account the Law Reform Commission's recommendations that the principle of pari passu distribution should not be lightly altered unless the alteration is necessary to prevent systematic failure or to maintain public order. The position is in line with comparable jurisdictions.