

LCQ10: Prepayment mode of consumption

Following is a question by Dr the Hon Chan Han-pan and a written reply by the Acting Secretary for Commerce and Economic Development, Dr Bernard Chan, in the Legislative Council today (November 6):

Question:

It has been reported that earlier on, a chain fitness and beauty group announced its "temporary closure", and the Consumer Council subsequently received more than 1 700 complaints about prepayment mode of consumption, involving a total amount of about \$60 million. On the other hand, it is learnt that at present, different countries and regions have different protection for prepaid services contracts. For instance, it is stipulated in New York State of the United States that prepaid services contracts of health clubs must be with a duration of not more than 36 months, with the services fees capped at US\$3,600 (i.e. around HK\$28,000) per annum, and that consumers may terminate the contracts on health grounds and apply for refunds; in Ontario of Canada, it is stipulated that personal development services contracts for sports, fitness, martial arts and dance activities, etc, must last for only one year, with an instalment payment option for which a maximum premium of 25 per cent is charged; in Taiwan, fitness centres are required to provide contract performance guarantee (e.g. by opening dedicated trust accounts) for 50 per cent of the fees charged in the contracts signed between the centres and the consumers. In this connection, will the Government inform this Council:

(1) whether the authorities will consider (i) setting an upper limit on the contract period and the amount of prepayment for prepaid services contracts, and allowing consumers to terminate the contracts on specified grounds; (ii) drawing reference from the model of the levy contributed under the Travel Industry Compensation Fund and setting up a compensation fund by imposing a fixed fee for each prepaid service contract transaction; and (iii) requiring fitness centres to provide contract performance guarantee by opening dedicated trust accounts, so as to strike a balance between safeguarding the rights of consumers and the interests of operators; if so, of the details and timetable; if not, the reasons for that; and

(2) as it is learnt that at present, prepayment consumption cases in Hong Kong are primarily handled by the Commerce and Economic Development Bureau, the Hong Kong Customs and Excise Department and the Consumer Council under the Trade Descriptions Ordinance (Cap. 362) and other relevant consumer contract laws, whether the authorities will, by drawing reference from the practices in other regions, set up a dedicated department to deal with issues concerning consumer rights or enhance the functions of the Consumer Council; if so, of the details and timetable; if not, how the authorities will enhance consumer protection and consumer education?

Reply:

President,

The Government of the Hong Kong Special Administrative Region is highly concerned about the recent incident involving the temporary business suspension suddenly announced by a chain fitness and beauty group, and has formed an inter-departmental dedicated investigation team to follow up. The dedicated investigation team, which comprises the Commerce and Economic Development Bureau, the Security Bureau, the Customs and Excise Department (C&ED), the Hong Kong Police Force (Police) and the Consumer Council (Council), continues to closely monitor the developments of the incident. In particular, the C&ED and the Police are conducting intensive investigation from the perspectives of offences regarding the unfair trade practices under the Trade Descriptions Ordinance (Cap. 362) (the Ordinance) and whether other criminal offences are involved respectively.

The reply to the various parts of the question is as follows:

(1) We are aware that different sectors of the community have put forward various suggestions in respect of offering better protection to consumers who make prepayments (including imposing a cap on the length of prepayment contracts and prepayment amounts and setting up trust accounts), after this incident of the chain fitness and beauty group announcing temporary business suspension. We will conduct an in-depth study into different suggestions and consider their pros and cons and feasibility, with reference to the experience of this incident, other relevant factors (including the economic environment, the operating situation of relevant industries and relevant complaint and enforcement statistics) and the experience in other jurisdictions, with a view to formulating appropriate strategies to strengthen the protection of consumers' rights and interests.

(2) Currently, various laws in Hong Kong protect consumers' rights and interests. Among others, the Ordinance covers goods and services, and 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 is applicable to the trade practices of both physical and online traders.

The C&ED is the principal enforcement agency of the Ordinance, and adopts a three-pronged approach, covering enforcement actions, compliance promotion and publicity and public education, to combat unfair trade practices proactively. Meanwhile, the Council endeavours to study and promote the protection of consumers' rights and interests, and carries out its statutory functions in accordance with the Consumer Council Ordinance (Cap. 216), including handling complaints from consumers and resolving disputes between consumers and traders.

The C&ED and the Council have been maintaining close communication with each other, and have been collaborating with other government departments and social service organisations, etc. to jointly promote the protection of the

rights and interests of consumers. Currently the Government has no plan to change the relevant practices or expand the Council's statutory functions.

The C&ED and the Council will continue to adjust and strengthen the strategies and work in respect of protecting the rights and interests of consumers, having regard to the complaints and the enforcement situation. In particular, the publicity and public education work includes:

(i) Conducting talks and workshops for consumers, with a view to enhancing their understanding of common unfair trade practices and sharing with them tips about "smart consumption", so as to prevent them from falling into sales pitfalls.

In particular, targeting common unfair trade practices, the C&ED conducts talks for consumers (especially the elderly) and joins hands with the Police, District Councils and District Fight Crime Committees to carry out promotion by distributing promotional leaflets to the elderly, with a view to enhancing their understanding of the Ordinance and awareness of "smart consumption".

(ii) Conducting dedicated educational programmes to enhance the capability of different groups of consumers (especially the elderly, persons with special needs and students) to guard against unfair trade practices.

In particular, the Council conducts the Educator Scheme for Senior Citizens, which provides consumer education training to soon-to-be retirees or retirees so as to equip them to host consumer educational talks for other elderly in the community. The Council's Support Programme for Persons with Special Needs, through virtual reality role-play simulations that cover different scenarios (for example those about the sales pitfalls of fitness and beauty centres), allows persons with special needs to better grasp the skills for guarding against common sales pitfalls. In addition, the Council also organises consumer education programmes for primary school students and secondary school students respectively, including launching the brand new programme of Smart Consumption Academy (which comprises a project study, an online quiz, a social media post creation competition and an ambassador scheme) dedicated for secondary school students starting from the 2023/24 school year so as to cater to the evolving educational modes.

(iii) Disseminating consumer information to enable consumers to make informed consumption decisions.

In particular, the Council publishes product tests, service surveys, consumption tips and complaint case sharing, etc, in its CHOICE Magazine, providing practical consumer information to different groups of consumers. In addition, the C&ED and the Council have also been utilising social media, such as Facebook, Instagram, YouTube and WeChat, to issue timely consumer alerts and promotional videos, etc, so as to provide consumers with the latest consumer information.

Regarding consumption involving prepayments, the C&ED from time to time

reminds consumers to make purchases with reputable traders, give prudent consideration before making decisions for consumption involving prepayments and, after purchasing a service, keep the transaction receipts and relevant records, which can serve as the basic information for lodging a complaint if needed in the future.

In addition to the publicity and public education work above, the C&ED will continue to spare no efforts to strengthen the enforcement actions in respect of the Ordinance which, coupled with the sentences imposed by the court on prosecution cases, impose a deterrent effect on unscrupulous traders. The C&ED will at the same time continue to proactively carry out compliance promotion so as to enhance traders' understanding of the legal requirements under the Ordinance and the measures that should be taken for complying with the Ordinance. These efforts seek to combat unfair trade practices at source and to provide consumers with a safe consumption environment.