

Our Ref: S190411SN

16 April 2019

Miss Eliza Lee Man-ching, JP
Permanent Secretary
Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau
23/F, West Wing, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Miss Lee 

**Consultation Paper on Statutory Cooling-Off Period For Beauty and
Fitness Services Consumer Contracts**

The Hong Kong General Chamber of Commerce appreciates the opportunity of commenting on the subject consultation exercise. Our views on the Government's proposals are set out in the attached.

While we agree with the intent behind the proposed legislative exercise, which is to afford provide better protection to consumers, there are reservations about the associated measures that have been put forward to achieve such an outcome. These concerns are largely attributable to (1) the addition of another layer of legislation to an existing piece of law that already addresses aggressive trade practices, (2) the absence of efforts to consider other non-regulatory options, and (3) the lack of a rigorous review prior to assess the impact of introducing such a legislative regime. The suggestion of extending statutory cooling-off periods to other sectors and practices beyond the beauty and fitness services trades is also a real cause for concern.

We hope that you will give our comments due consideration.

Yours sincerely



Shirley Yuen
CEO

Encl.

**Response by Hong Kong General Chamber of Commerce (“HKGCC”) to
Consultation Paper (“CP”) by Commerce and Economic Development Bureau of
January 2019 “Statutory- Cooling Off Period for Beauty and Fitness Services
Consumer Contracts”**

Introduction

1. HKGCC welcomes this opportunity to respond to the CP.
2. We appreciate that the intent behind the Government’s proposals is to address questionable sales tactics through rebalancing the contractual relationship between traders and consumers by vesting the latter with the right to cancel unilaterally, and within a defined period, agreements that they have entered into. However, we are not completely satisfied that there are sufficient grounds for introducing a mandatory cooling-off period or if such an arrangement would bring about the desired outcome.

The Government’s justification

3. The Government’s justification for this proposal is to tackle aggressive and unscrupulous tactics that are purportedly most commonly found in the beauty and fitness services sectors.
4. It should be recalled that it was precisely such tactics, by businesses generally (not just in these sectors) that formed the justification for the Government’s controversial and much-debated amendments to the Trade Descriptions Ordinance (TDO) in 2012. These amendments created no less than six new criminal offences, punishable by substantial custodial sentences or financial penalties, one of which is “aggressive commercial practices”. Section 13F(2) of the TDO states that a commercial practice is aggressive if: *“in its factual context, taking account of all of its features and circumstances (a) it significantly impairs or is likely significantly to impair the average consumer’s freedom of choice or conduct in relation to the product concerned through the use of harassment, coercion or undue influence; and (b) it therefore causes or is likely to cause the consumer to make a transactional decision that the consumer would not have made otherwise”*.
5. A key question is therefore why the Government believes that this relatively new and potentially far-reaching criminal offence is insufficient to deal with aggressive commercial practices in the field of beauty and fitness services.
6. The CP appears to give three main justifications:

- statistically, in spite of the amendments to the TDO, customer complaints in these sectors have continued to increase, and are disproportionately high in relation to other sectors;
- customers in these sectors are particularly vulnerable to exploitation by unscrupulous traders; and
- customers are reluctant to engage in criminal proceedings, resulting in fewer convictions.

The Need for Rigorous Review

7. HKGCC believes that the Government's purported justifications as outlined above should be subject to rigorous review, and alternative approaches have to be examined to address any perceived problems, before resorting to the drastic step of introducing new sector-specific statutory cooling-off periods.
8. Questions that might be asked in such a review include:
 - Would further advocacy efforts by the Customs & Excise Department (C&ED) amongst businesses in these sectors, informing them of the severe potential consequences of misconduct help increase compliance, and reduce the number of consumer complaints in these sectors? We understand that such advocacy efforts have been an effective tool to increase compliance in other areas of regulation such as competition law, so why not here?
 - Would efforts to publish information on rogue traders through name-and-shame campaigns such as those conducted by the Consumer Council serve as a useful deterrent?
 - Would increased consumer education efforts, warning of the potential risks, help reduce the number of situations which may lead to subsequent complaints?
 - Would a re-examination and updating of the "Beauty Industry Code of Practice" to promote self-regulation help? This could involve adopting a mix of both best practices and prescribed standards, the latter which includes the installation of audio and visual recording devices to document the sales process?
 - Are beauty and fitness services really any different from many other services in terms of lack of third-party witnesses in some situations, or reluctance of customers to engage in criminal proceedings?

Potential Application to other Sectors

9. We are concerned about the suggestion in the CP, that, if this legislation were to go ahead, a "relatively simple arrangement" to apply mandatory cooling-off periods to

other sectors could be included in it. In our view, this would be manifestly unfair and inappropriate. In the same way that the application of this proposed legislation to the beauty and fitness sectors would be subject to intense scrutiny by LegCo, the same should apply to its potential application to any other sector.

Unintended Consequences

10. If the Government's proposals were to be implemented, these could give rise to moral hazard practices in consumers such as entering into contracts without examining contracts carefully. The proposals would also have a severe detrimental impact on traders who have not engaged in any aggressive trading practices, not just those who have. Consideration should therefore be given as to how to eliminate this unfairness. For example, instead of the automatic right to cancellation by the consumer, should the consumer first have to make a complaint to C&ED, which should be satisfied that there is a reasonable suspicion of breach of the TDO, before requiring the trader to cancel the contract?

Conclusion

11. Given the potentially far-reaching consequences of this proposed legislation, it has to be clearly and convincingly justified. As discussed above, on the basis of the information provided in the CP, we are not convinced as yet that legislation is necessary, or that other less drastic measures are not sufficient to deal with the perceived problem.