

Executive Summary

Introduction

The Consumer Council ("the Council") is committed to safeguarding consumers' rights and interests. It is our belief that through the establishment of an effective and transparent system which is fair and equitable to both consumers and traders, not only can the rights and interests of consumers be enhanced, but also a favourable business environment can be fostered thereby promoting social harmony.

A cooling-off period is a useful tool to protect consumers by allowing them to cancel a purchase unilaterally and seek refund within a reasonable period of time after the conclusion of a contract. As there is no need to prove any wrongdoings on the part of the trader, this cancellation right enhances consumer protection in situations where unscrupulous and high pressure sales tactics were deployed. This in turn should act as a deterrent to traders or their representatives who have the intention to or habitually engage in such tactics.

Over the years, the Council strenuously advocated in favour of introducing a mandatory cooling-off period in Hong Kong. In addition to helping different industries develop and implement codes of practice which contains voluntary cooling-off provisions, the Council also advocated for the Government to legislate for a mandatory cooling-off regime. In 2010-11, the Government conducted a public consultation on the legislative proposals to strengthen consumer protection against unfair trade practices. Apart from amending the Trade Descriptions Ordinance ("TDO") to create new offences, the consultation report also recommended imposing a mandatory cooling-off period for 2 types of consumer transactions, namely contracts involving goods and/or services with a duration of not less than 6 months and transactions concluded during unsolicited visits to consumers' homes or places of work. Notwithstanding strong support of this proposal by the Council and the community as it was thought that imposing a mandatory cooling-off period on specific transactions would not only give consumers enhanced protection but also deter unscrupulous traders from engaging in malpractices, this recommendation was not included in the bill to amend the TDO in 2012 due to concerns expressed by the business sector and others.

In recent years, the Council observed that unfair trade practices in different sectors are still prevalent. Not only are there worrying incidents of high pressure selling by unscrupulous traders causing consumers to suffer loss financially, in some instances, consumers could also be hurt either physically or mentally. In May 2016, the Panel on Economic Development of the Legislative Council passed a motion

urging the Government to introduce legislation on the imposition of a mandatory cooling-off period, according priority to pre-paid services involving large volumes of complaints and large amounts of payment, such as those provided by fitness centres and the beauty industry, so that consumers may unconditionally receive a refund of the paid fees and cancel the contracts during the cooling-off period.

Learning from past experience, the Council renewed its efforts in its advocacy for the introduction of a mandatory cooling-off period, and decided to conduct an in-depth study on this subject. For this report, the Council identified common malpractices through analysing enforcement statistics relating to unfair trade practices and examining the Council's complaints cases. In addition, the Council reviewed the features and limitations of the various voluntary cooling-off regimes of different sectors in the market and made references to the Mainland and overseas mandatory cooling-off legislations and experience. Furthermore, the Council considered the views and concerns of businesses in relation to the proposed introduction of a mandatory cooling-off period. Taking into account all of the above, the Council formulated its recommendations in the Report.

The contents of this study include:-

- (1) A review of consumer complaints from recent years and identification of common malpractices in the market;
- (2) An evaluation of the effectiveness of a voluntary cooling-off period and analysis of the pros and cons of a mandatory cooling-off regime;
- (3) An exploration the need to impose a mandatory cooling-off period; and
- (4) Recommendations on the scope of application and the operational arrangements of a mandatory cooling-off regime.

Current situation in Hong Kong

At present, there is no legislation in Hong Kong mandating traders to provide a cooling-off period to consumers. Over the years, the Council continuously encouraged businesses to provide a voluntary cooling-off period to consumers. To this end, the Council worked closely with different industries to develop codes of practice and encouraged relevant industry players to follow the codes voluntarily. In response to competition or as a measure to enhance consumer confidence, some industries and individual traders also offer a cooling-off period on a voluntary basis. In the market, several regulated industries offer their customers a cooling-off period of differing durations for certain products. For example:-

- (1) As a self-regulatory measure, the Hong Kong Federation of Insurers implemented a 21-day¹ cooling-off period for life insurance products enabling a policyholder to cancel the policy within that time. The Government announced in March 2018 that the Voluntary Health Insurance

¹ Unless otherwise specified, "day" refers to a calendar day

- Scheme will also have a 21-day cooling-off period.
- (2) The Communications Authority of Hong Kong promulgated the Industry Code of Practice for Telecommunications Service Contracts, which is a self-regulatory initiative aimed at drawing up contracts that are balanced, fair and reasonable for both consumers and the industry. The Code stipulates that a cooling-off period of no less than 7 days shall apply to telecommunications service contracts concluded during an unsolicited visit to a consumer's home. Since 2011, all major fixed and mobile network operators have implemented this code.
 - (3) The Hong Kong Monetary Authority has required retail banks to provide a pre-investment cooling-off period of at least 2 days when selling unlisted derivative products and debentured with special features to certain retail customers, so that they have sufficient time to understand the product and consider the appropriateness of the investment before subscription.
 - (4) The Securities and Futures Commission's ("the SFC") Code on Unlisted Structured investment Products requires issuers of any unlisted structured investment products authorized by the SFC with a scheduled tenor of more than 1 year to provide investors a cooling-off period of at least 5 business days after the investor places an order for the relevant product.
 - (5) The Code of Conduct issued by the Direct Selling Association of Hong Kong Limited requires its member companies and direct sellers to offer a cooling-off period allowing their customers to withdraw from the order within a minimum of 7 days.
 - (6) For the purposes of encouraging self-regulation, the Council worked with representatives from the beauty industry to develop a Beauty Industry Code of Practice which was issued in June 2006. It recommends beauty services providers to offer a cooling-off period to consumers. However, to date, the Council is not aware of any quantitative data in respect of the implementation of this voluntary cooling-off period in the beauty industry.

As can be seen from the above, any voluntary cooling-off scheme relies on the initiative and self-discipline of the individual industry and its will and determination to build a better reputation. In addition, the presence of a credible and dominant trade representative in the establishment, maintenance and management of a voluntary cooling-off regime is also a key factor for success. Furthermore, even if there are established codes of practice or cooling-off policies in some industries, their voluntary nature cannot compel compliance nor can they prohibit unscrupulous traders from deliberately indulging in malpractice.

Where individual traders offer voluntary cooling-off periods to consumers, the study shows that unfortunately, there are many different terms and conditions, which from time to time, cause confusion and disputes. From a review of complaint cases relating to the cooling-off period, the Council notes that indeed, some of these terms are unfair and unreasonable to consumers. For example, a cooling-off

period of only 24 hours; consumers losing the right to cancel after either commencement of services, or acceptance of gifts; and the failure to disclose the substantial administrative fee charged if the consumer were to cancel the contract etc. These unreasonable terms would deter consumers from exercising their cancellation rights. Some sales representatives may even use a cooling-off period as a marketing tactic to attract consumers, and improperly induce him to enjoy the services immediately after the conclusion of the transaction, thereby defeating the cancellation right of the consumer and ultimately undermining the spirit of having a voluntary cooling-off period in consumer protection. As can be seen, consumer protection afforded by voluntary cooling-off in Hong Kong still has a way to go and there is much room for improvement.

Meanwhile, although the effectiveness of the Trade Descriptions (Unfair Trade Practices)(Amendment) Ordinance 2012 has gradually become evident, enforcement and prosecution under the TDO take time and are not without challenge. For example, the standard of proof in these criminal prosecutions is "beyond reasonable doubt". As these high pressure sales tactics are usually carried out in a private setting, prosecution has to rely on the accuracy and precision of the consumer's evidence, including his ability to recount meticulous details of the sales pitch. Quite often, the emotional distress suffered by consumers when subjected to such malpractices, affects the quality of their evidence. This is particularly so in cases where consumers are vulnerable or disadvantaged. In reality, given that what most consumers ultimately want is to get their money back, once a settlement has been achieved, often times, the consumer loses interest in continuing with the investigation. According to the Customs and Excise Department, more than 70% of the complaints involving the service sector could not be pursued due to the withdrawal of complaints and the refusal by complainants to assist in investigations. Even if the delinquent trader is successfully convicted, considerable time has to be spent to recover the prepayment or compensation. The introduction of a mandatory cooling-off period would enable aggrieved consumers to cancel the transaction without reason and recover their payments, as well as allowing traders' to mitigate any risks associated with litigation, and is therefore a scheme worth exploration.

Mainland and overseas experience

This Report examines the mandatory cooling-off legislations in the various jurisdictions, including the United Kingdom ("UK"), the United States ("USA"), Australia, Canada, Mainland China, Taiwan, Singapore and South Korea. The Council observed that all these jurisdictions have imposed mandatory cooling-off periods on specific types of contracts or in selected sectors to protect consumers. In summary, most of these jurisdictions provide mandatory cooling-off for unsolicited sales, while some do so for distance sales. In light of the popularity of e-commerce, some jurisdictions have legislated mandatory cooling-off for online shopping, including the UK, Latin America, Mainland China, Taiwan and South Korea. Furthermore, mandatory cooling-off is also applicable to timeshare

products in the UK, the USA, Australia, Canada and Singapore, while in Australia (Queensland), Canada (Ontario) and the USA (New York), there are legislations imposing a cooling-off period on the fitness industry.

Most of the above mandatory cooling-off legislations have a minimum transaction requirement, for example, in the UK it is £42; in Singapore, SG\$50; which is equivalent to about HK\$300 to HK\$500. Furthermore, any waiver, restriction or curtailment of the cancellation right is prohibited in all of the above researched jurisdictions.

In terms of operational arrangements, different jurisdictions have formulated their own operational arrangements according to their local circumstances. For example, the duration of a cooling-off period varies from 3 to 14 days, and the duration for refund varies from 3 to 60 days (please refer to chapter 4 for details). Of the jurisdictions reviewed, the Council observed that the mandatory cooling-off legislation in the UK is the most comprehensive. It clearly sets out the rights and obligations of traders and consumers, for example, traders are required to provide consumers certain information prescribed by the legislation before the conclusion of a transaction; consumers can cancel the contract within 14 days in writing and any ancillary contract will be terminated automatically. In addition, consumers have to bear the cost of return generally; and traders have 14 days to refund to the consumers. If goods have been damaged due to mishandling by the consumer, he would have to pay a reasonable amount of compensation. If the consumer enjoyed the services during the cooling-off period, he would have to pay for the service used. In Mainland China, traders are allowed to deduct a handling fee if such fee was paid by consumers in a purchase made by credit card. Moreover, the relevant legislation in Australia (Queensland) allows fitness centres to charge AUD\$75 or 10% of the membership fee (whichever is lower) as administrative fee on cancellation.

In terms of enforcement, the Council looked into a number of jurisdictions which have similar legal systems to that of Hong Kong, including the UK, Australia and Singapore. Broadly speaking, their enforcement regimes share points of commonality, namely, the adoption of a compliance-based civil enforcement mechanism. Under this mechanism, law enforcement agencies are empowered to require traders who are suspected of violating the cooling-off legislation to undertake to stop and refrain from repeating the infringing acts. If traders do not cooperate, as a last resort and in serious breaches, law enforcement agencies can apply to the court for an injunction or impose a fine. Failure to comply with court orders constitutes contempt of court which is punishable by a fine or imprisonment. Apart from the civil compliance mechanism, criminal sanctions are also provided for in the legislation in the UK and Australia under which offending traders could be prosecuted and fined.

Benefits and risks of a mandatory cooling-off period

An assessment based on Council's research and taking into account stakeholders' views raised on this issue, it is clear that there are both pros and cons to a mandatory cooling-off period. First of all, there is worry that the introduction of a mandatory cooling-off period allowing consumers to cancel a transaction unconditionally would undermine the spirit of freedom of contract and be open to abuse by consumers. Secondly, a cooling-off period would increase the operation costs of businesses and could affect their cash flow, putting pressure on SMEs. These increased costs would also likely be transferred to consumers. Finally, the diverse mode of operation of different industries in the market could give rise to implementation difficulties, for example, how should credit card transactions and related credit arrangements be handled in case of cancellation?

On the other hand, a mandatory cooling-off period can help combat unfair trade practices. This is especially important for the protection of vulnerable consumers such as the elderly, students, people just started working in society and the disadvantaged such as those with lower education, people who suffer from mental or emotional illnesses. For industries or traders with tarnished reputation, a cooling-off period can possibly boost consumer confidence and help restore a positive image for the industry or trader, which in turn could improve its business and reduce costs related to handling consumer disputes. For traders who value goodwill and quality customer services, the Council is of the view that the implementation of a cooling-off period would have limited impact as there is unlikely to be a large number of cancellations.

Drawing on the Mainland and overseas experiences, and taking into consideration local circumstances, the Council believes that an "across the board" legislative approach may not be practicable. A more balanced and practical option would be to implement a mandatory cooling-off period for specific transactions and industries, and formulate appropriate measures to mitigate the impact on the relevant affected businesses. The Council believes that such approach would allow the community to gradually adapt to the changes brought about by having such a cooling-off period, observe its effectiveness, and ensure that proper balance is struck between enhancing consumer rights and maintaining a viable business environment.

Scope of application

The Council recommends introducing a mandatory cooling-off period for the following types of consumer transactions:-

- (1) Unsolicited off-premises contracts;
- (2) Distance contracts (other than online shopping);
- (3) Fitness services contracts;

- (4) Beauty services contracts; and
- (5) Timeshare contracts.

Unsolicited off-premises contracts

As mentioned above, most overseas jurisdictions have already imposed a mandatory cooling-off period on unsolicited transactions. It is widely recognised that when consumers are approached away from business premises by traders on an unsolicited basis, they are generally psychologically unprepared to make a purchase or indeed at times they have no intention of making any purchases. Where unsolicited sales happen at the consumers' home, overseas research reveal that consumers are under even greater psychological pressure because they cannot choose to leave. As such, they are more prone to making involuntary and irrational purchase decisions.

It is for this reason that the Council recommends that a mandatory cooling-off period be imposed on unsolicited transactions concluded away from traders' business premises. A cooling off period does not apply to "on-premises" transactions and business premises usually include temporary shops in shopping malls and booths set up at an exhibition venue, such as at wedding expos and book fairs. However, mobile premises set up in the street with the use of pull-up or roller display banners should not be regarded as business premises. If a transaction is concluded in an unsolicited manner, mandatory cooling-off should be applicable. In summary, the following examples illustrate what usually constitutes unsolicited off-premises transactions:-

- (1) A consumer transaction concluded during an uninvited visit to the consumer's home or workplace;
- (2) A consumer receives a "cold-call" from a direct seller and permits its representative to carry out a home visit for product demonstration. The consumer purchases the product during the home visit;
- (3) Unsolicited sales conducted and concluded in the street or other public places like the common area in a shopping mall; and
- (4) Contracts concluded at the trader's business premises immediately after an uninvited approach by the trader's representative in the street.

Distance contracts

In the context of distance sales, consumers are unable to inspect the products prior to their purchase; they can only rely on the written description of the products, or by reference to images or videos, perhaps also by reference to online peer reviews and opinions from social media. Depending on the circumstances, that information may not always be reliable and sufficient and consumers could easily be misled. The imposition of a mandatory cooling-off period for distance transactions would provide consumers an opportunity to inspect the product after delivery and mitigate the problems caused by information asymmetry.

The Council recommends imposing mandatory cooling-off period on distance contracts, including telephone, fax, and mail order, but does not recommend imposing cooling-off on online shopping. The application of a mandatory cooling-off period for online purchases is comparatively more controversial. Supporters opine that Hong Kong should follow the examples of some overseas jurisdictions such as Europe and South Korea and impose mandatory cooling-off on online shopping in order to offer adequate protection to e-consumers. In addition, having a cooling-off period could boost consumer confidence and online sales, so it is not necessarily more harmful than beneficial to online businesses. On the other hand, opponents argue that the competition in the online retail market is extremely fierce. The profit margin of SMEs is very limited, and any imposition of a mandatory cooling-off period would greatly increase their burden. Furthermore, as online shoppers were in the main satisfied with their online shopping experience², legislating a cooling-off period for e-commerce is not the most pressing issue. Given that there is no legal definition of “online shopping”, plus the fact that this often involves cross-border transactions, the legal issues involved should not be ignored. For example, should overseas traders and cross-border transactions be regulated? Would orders by emails or other electronic messages be covered? How would Hong Kong enforcement authorities enforce against overseas traders? Taking into account the above factors, the Council believes that given the enforcement issues of cross-border transactions, legislating under such circumstances to impose mandatory cooling-off may mislead consumers into thinking that they are protected. More time should be given to the community to discuss the need, the feasibility, and the pros and cons of providing a mandatory cooling-off period for online shopping.

In view of the above, the Council recommends the imposition of a mandatory cooling-off period on distance contracts including telephone, fax and mail order, but excluding online shopping. For the purpose of imposing mandatory cooling-off, distance selling should be the usual sales channel of the trader and the whole process must be conducted by means of distance communications. In summary, it is intended to cover business transactions conducted through telephone or mail order, except for the following situations:-

- (1) Upon consumer’s request, a trader sells a product by distance communications on one-off basis;
- (2) A contract which is negotiated at the business premises of the trader but finally concluded by telephone; and
- (3) A contract initiated at a distance by telephone but finally concluded at the business premises of the trader.

² In the Council’s study report titled “Online Retail – A Study on Hong Kong Consumer Attitudes, Business Practices and Legal Protection” which was published in 2016 (“the Online Retail Report”), 98% of consumers who have shopped online found the experience of online shopping satisfactory.

Fitness services contracts and beauty services contracts

According to the Council's complaint statistics, the total number of consumer complaints dropped from around 30,000 in 2013 to around 25,000 in 2017. Similarly, complaints relating to sales practices decreased from 3,970 in 2013 to 3,514 in 2017. Notwithstanding such a reduction, the percentage share of complaints relating to sales practices remains at more or less 12-14% of the total number of complaints.

Insofar as the fitness industry is concerned, there were more than 200 sales practices related complaints every year for the fitness clubs, on average representing about 40% of all complaint cases in the fitness industry. The total complaint amount involved reached \$14 million, i.e. averaging about \$36,000 per case. In order to protect consumers, the Council publicly named California Fitness in April 2016 for their aggressive and misleading sales practices.

Apart from the fitness clubs, various unfair trade practices also appeared in the beauty industry. According to the Council's statistics, the number of sales practices related complaints increased from 225 in 2013 to 373 in 2017, on average, representing over 30% of all complaint cases in the beauty industry. The total amount involved increased from \$4 million to \$13 million, i.e. averaging about \$33,000 per case.

Of the complaints in the fitness and beauty industries, consumers indicated that the purchase of fitness club memberships or beauty packages involved large prepayments and long contract durations. Some consumers even applied for instalment loans from banks to make these purchases due to his own impecuniosity or upon the persuasion of sales representatives. Whereas initially, some consumers made these purchases because they were attracted by the discounts or marketing tactics, however, there are cases where consumers ended up signing these contracts involuntarily due to traders employing certain malpractices on them such as aggressive and prolonged sales pitches up to several hours; or even withholding the identity cards or credit cards of the consumer. All these tactics were designed to exert great psychological pressure on consumers to sign the contracts.

In view of the above situations, and considering the fact that the beauty and fitness industries have large number of complaints which involve high monetary value, and that the complaints often relate to sales practices, especially high pressure sales tactics, the Council recommends imposing mandatory cooling-off on these two types of contracts to strengthen consumer protection. Specifically, the Council recommends that a mandatory cooling-off period be imposed for fitness services contracts and beauty services contracts with a duration of not less than 6 months or involving prepayment. The Council proposes that fitness services contracts should cover the provision of advice, instruction, training or assistance in bodybuilding, exercise, yoga and weight management; and also the provision of fitness facilities at a fitness centre. But fitness services supplied by sporting clubs, clubhouses of residential properties, registered schools and licensed hotels etc. should be excluded. For beauty services, it should cover procedures used or

intended to be used to maintain, restore, correct, modify, or improve the physical appearance of the human body, irrespective of whether it is a general beauty service or a medical beauty procedure. But some special situations like plastic surgery or orthodontic treatments should be excluded (please refer to chapter 5 for details).

Timeshare contracts

Timeshare contracts are different from general consumer contracts in that their terms and conditions are more complicated and usually involve large prepayments or lengthy financial commitments. The fact that the property is located outside Hong Kong, means that consumers may not have sufficient information to make an informed decision before the conclusion of a transaction. Hence, most overseas jurisdictions, including the USA, Australia, the UK, Canada, Singapore etc. have already implemented mandatory cooling-off periods for timeshare contracts.

Locally in Hong Kong, with the joint efforts of the Council and the enforcement authorities, the number of complaints in relation to timeshare products dropped for a time, but unfortunately it climbed back up recently. According to Council statistics, the sales practices related complaints of timeshare products soared from 16 cases in 2013 to 82 cases in 2017, on average representing about 80% of the total timeshare complaints. The total amount involved also increased from about \$730,000 to \$ 3.7 million, i.e. averaging about \$49,000 per case. In September 2017, the Council carried out a name and public reprimand exercise against Great Time Universal, a timeshare company, for its persistent use of misleading and high pressure marketing tactics in the promotion of timeshare products, causing serious damage to consumer interest. In view of the above, the Council, by reference to the relevant UK legislations, recommends the imposition of a mandatory cooling-off period for timeshare contracts with a duration of over 1 year.

Exemptions

Notwithstanding the above recommendations, not all types of consumer transactions falling within the scope of application need to have cancellation rights. Suitable exemptions are required. After examining the practices in other jurisdictions, the Council proposes that a cooling-off period should not apply to the following contracts:-

- (1) Financial services such as banking, credit, insurance;
- (2) Property transactions, such as the sale of immovable property and tenancies;
- (3) Passenger transport services such as flight/train/bus/ferry tickets;
- (4) Professional services such as legal services, accounting services, and healthcare services such as plastic surgery and physiotherapy;
- (5) Utility services, including the supply of gas, electricity and water; and
- (6) Public services provided by the Government and public bodies.

In addition to the above, the following transactions should also be exempted:-

- (1) Purchases involving not more than \$500;
- (2) Custom-made goods;
- (3) Food and drinks;
- (4) Books and magazines;
- (5) Goods received sealed for health protection or hygiene reasons once unsealed;
- (6) Sealed audio, video and software products once unsealed;
- (7) Audio, video, computer software or other digital content products which are not supplied on a tangible medium;
- (8) Supply of accommodation, catering or vehicle rental services, transportation and leisure activities if the contract provides for a specific date of performance;
- (9) Urgent household repairs;
- (10) Fully performed service; and
- (11) One-off fitness services or beauty services with specific date of performance (such as wedding make-up).

Operational arrangements

In addition to determining the scope of application, a comprehensive cooling-off regime must also lay down operational arrangements, including the duration of the cooling-off period, information disclosure, method of exercising the cancellation right, refund and return arrangements, handling of ancillary contracts after cancellation and enforcement matters. Taking into account the Mainland and overseas experiences and local circumstances, the Council proposes the following in relation to the operational arrangements (please refer to chapter 6 for details).

Duration

Insofar as the proposed scope of application is concerned, the Council recommends that the duration of a cooling-off period should not be less than 7 days. For service contracts, the cooling-off period should end 7 days after the date of transaction. For sales contracts (for goods, or both goods and services), the cooling-off period should end 7 days after the date of delivery of goods to consumers.

Information disclosure

To ensure that a consumer has sufficient knowledge about his cancellation right and the method of exercising it, the Council recommends that traders be required to provide certain essential information to consumers before the completion of a transaction, including the trader's identity and contact information, the consumer's cancellation right, the method of exercising and the required procedures (with an

accompanying cancellation form), refund and return arrangements, fees involved as a result of the cancellation etc. In addition, if traders fail to inform the consumer of his cancellation right, the cooling-off period will not commence until the consumer receives such information, subject to a limit of 3 months from the date of the transaction.

Exercise of the cancellation right

In order to minimise unnecessary disputes, the Council recommends that consumers should, if so decided, effect cancellation of the contract within the cooling-off period in writing. As the trader is obliged to provide a cancellation form to the consumer prior to the conclusion of the transaction, the consumer should use that form to exercise his cancellation right. If no cancellation form is provided by the trader, the consumer can use the form as prescribed by legislation.

Refund arrangements

The Council recommends that the time limit for refund should not be more than 14 days. Unless otherwise agreed, traders should reimburse the consumer using the same payment method as the consumer used in the purchase transaction. For service contracts, traders should reimburse the consumer within 14 days from the day after the consumer exercises his cancellation right. For sales contracts (for goods, or both goods and services), traders should make a refund within 14 days from the day after receipt of the returned goods.

If proper disclosure is made by traders prior to the conclusion of the transaction, they are allowed to make the following deductions from the refund:-

- (1) If service is provided upon the request of the consumer during the cooling-off period, the trader can deduct the value of service used. The amount should be in proportion to the full contract price.
- (2) A reasonable amount of compensation caused by the mishandling of goods by the consumer. Improper handling means any handling beyond what might reasonably be allowed in a shop. Reasonable compensation depends on different factors, for example, the severity of damage, the cost of repairing, the presence of secondary market and the second-hand price etc.
- (3) If the consumer paid by way of credit card, an administrative fee of not more than 3% of the credit card transaction value; and
- (4) If the consumer opted for express delivery, such express delivery charge.

Return arrangement

The Council recommends that consumers should return the goods within 14 days after cancellation. The cost of return should be borne by the consumer. Furthermore, consumers should be allowed to choose the method of return.

Ancillary contracts

Ancillary contracts means a contract by which the consumer acquires goods or services related to the main contract, where those goods or services are provided (a) by the trader, or (b) by a third party on the basis of an arrangement between the third party and the trader. A common example is when an instalment payment plan was entered into between the consumer and the bank via the trader. The Council proposes that if the consumer cancels a main contract within the cooling-off period, any ancillary contracts should also be terminated automatically.

Curtailement

Some consumers may be very familiar with the subject products and therefore are willing to give up their cancellation rights in return for a better bargain. However, the Council observed that one of the major problems of voluntary cooling-off is that consumers could unknowingly lose their cancellation rights, for example, upon commencement of services or acceptance of gifts offered by traders. To prevent unscrupulous traders from using various means, whether legitimate or not, to induce consumers to waive their cancellation rights, the Council recommends that the mandatory regime does not allow waiver or curtailment of this right under any circumstances. Without this stipulation, the intended effect of providing a mandatory cooling-off period for combating unfair trade practices would be greatly undermined.

Enforcement matters

The Council proposes that the mandatory cooling-off period should be a civil regime, and failure to comply could attract civil sanctions. The Council also proposes that a designated public body be appointed or established to take charge of investigation and enforcement matters. This body should be empowered to seek undertakings from traders in order to stop or refrain them from continuing a breach of the law. If the trader is uncooperative or is in repeated breach of the legislation, the enforcement body could apply to the court for an injunction. Failure to comply with a court order constitutes a contempt of court which would attract criminal sanctions including fines or imprisonment. In tandem, the legislation should also expressly provide a private right to the consumer to take civil proceedings against the trader to recover compensation. The Government should review the mandatory cooling-off regime after implementation. If there is evidence to show that civil sanctions are inadequate, serious consideration should then be given as to the need to introduce criminal liability.

Conclusion

A mandatory cooling-off period is a useful tool for the protection of consumer interests and for the combating of unfair trade practices, in particular high pressure sales tactics. Notwithstanding the complexity of and the controversy surrounding this subject and in light of the Mainland and overseas experience and local circumstances, the Council recommends the Government to introduce a mandatory cooling-off period to prescribed consumer transactions and industries. In formulating its recommendations, the Council has carefully considered and taken into account concerns expressed by business sectors, and sought to strike a reasonable balance between the interests of consumers and traders. By publishing this report, the Council hopes that the Government and other stakeholders can have an in-depth discussion on the imposition of a mandatory cooling-off period from the perspective of wider consumer protection, build consensus, and work together to create a fairer and healthier consumer market for Hong Kong.

The Chinese translation is for reference only. In case of any discrepancy between the Chinese and English version, the latter prevails.