

Statutory Cooling-Off Period

For Beauty and Fitness Services Consumer Contracts

Public Consultation Paper
January 2019



Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau

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The Commerce, Industry and Tourism Branch of the Commerce and Economic Development Bureau (CEDB) publishes this consultation paper to solicit public views on our proposal to stipulate a statutory cooling-off period for beauty and fitness services consumer contracts in order to protect the legitimate rights of consumers. The public views collected will assist the Government in formulating the way forward on the statutory cooling-off period arrangements.

Any individuals or organisations that would like to submit their views may do so through any one of the following means on or before 16 April 2019 –

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This public consultation paper can also be downloaded from CEDB's website (<http://www.cedb.gov.hk/citb/cooling-off>).

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submission. For access to or correction of personal data contained in your submission, please write to the CEDB via the above means.

Commerce and Economic Development Bureau
January 2019

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CHAPTER 1 INTRODUCTION

Consumer protection regime

1.1 The Government is committed to protecting the legitimate rights of consumers. We seek to put in place an effective, transparent and just regime under which both consumers and businesses can trade fairly.

1.2 At present, various Ordinances have been enacted to protect different aspects of consumer interests. Unfair trade practices (UTP), inaccurate measurement and misrepresentations are respectively regulated under the Trade Descriptions Ordinance (Cap. 362) (TDO), the Weights and Measures Ordinance (Cap. 68), and the Misrepresentation Ordinance (Cap. 284). The Unconscionable Contracts Ordinance (Cap. 458), the Sale of Goods Ordinance (Cap. 26) and the Supply of Services (Implied Terms) Ordinance (Cap. 457) deal with contract-related matters. The Consumer Goods Safety Ordinance (Cap. 456) and the Toys and Children's Products Safety Ordinance (Cap. 424) govern goods safety-related matters.

1.3 Over the years, the Government has, in light of the latest socio-economic developments, taken steps to improve these Ordinances. The Government amended the TDO in 2012 to prohibit UTP which harm consumer interests, including false trade descriptions, misleading omissions, aggressive commercial practices, bait advertising, bait-and-switch and wrongly accepting payment.

1.4 As the principal agency responsible for enforcing the TDO, the Customs and Excise Department (C&ED) has been proactive in combating UTP at source, by adopting a three-pronged approach, namely compliance promotion, enforcement actions as well as public education and publicity. Since the amended TDO has come into operation and up until end December 2018, C&ED has concluded investigation of 1,705 UTP cases and prosecution of

401 UTP cases. Among the cases, a total of 368 cases resulted in conviction, with the persons convicted in 41 cases sentenced to imprisonment or given suspended sentence, those in 315 cases were fined, and those in 27 cases sentenced to community service orders¹, representing a successful prosecution rate of over 90%².

1.5 All along, the Consumer Council (the Council) has been promoting the message of “smart consumption” through different means to remind and alert consumers to the risks relating to UTP, and to the need to protect their own interests. The Council also proactively handles complaints from consumers, striving to resolve their disputes with traders through conciliation.

1.6 Overall speaking, the multi-front efforts to combat UTP have been producing desired results. Members of the public have become more alert to the TDO, while traders are more familiar with and vigilant about their responsibilities under the TDO. Progressively more sectors are introducing codes of practices for their traders to follow.

Focus of the consultation exercise

1.7 The above notwithstanding, during the course of its TDO enforcement in recent years, C&ED has received numerous complaints involving beauty parlours and fitness centres, many of which concerned the use of aggressive tactics to sell services that involved large amount of pre-payments. Consumers felt aggrieved by being pressurised or forced into making purchases unwillingly. Some of these traders even targeted the disadvantaged groups in the community, aggressively selling their services to and entering into contracts with people who did not comprehend the contents of the contracts. These types of UTP have given rise to a widespread

¹ One case may involve more than one type of sanction.

² To encourage compliance, as an alternative to initiating prosecution, the amended TDO also provides that C&ED might accept an undertaking from a trader committing not to continue or repeat the unfair trade conduct concerned in lieu of prosecution. Since the amended TDO has come into operation and up until end December 2018, C&ED has accepted a total of 22 such undertakings from traders.

public outcry. Different quarters of the community, the Council and the Panel on Economic Development of the Legislative Council (LegCo ED Panel) all proposed for the Government to stipulate a statutory cooling-off period for certain consumer contracts.

1.8 The Government has considered the views of the various quarters of the community, the recommendations in the “Report to Advocate Mandatory Cooling-Off Period in Hong Kong” published by the Council in April 2018, market developments as well as relevant regimes in other jurisdictions. We consider that there is a need to stipulate by legislation a requirement on cooling-off period on those types of contracts that have given rise to more complaints, viz. consumer contracts of beauty services and fitness services (beauty and fitness services contracts), in order to protect the legitimate rights of consumers and suppress the spread of aggressive sales tactics.

CHAPTER 2 BACKGROUND TO THE PROPOSAL ON STIPULATING A STATUTORY COOLING- OFF PERIOD FOR BEAUTY AND FITNESS SERVICES CONTRACTS

Aggressive commercial practices (ACP)

2.1 Since the amended TDO has come into operation and up until end December 2018, C&ED has received a total of 1,124 complaints involving suspected ACP¹. According to C&ED's statistics, these cases are not widespread across the board, but are rather concentrated on individual service sectors. Among the complaints, those relating to beauty and fitness services total 374 and 489 respectively, making up 77% of all ACP complaints. According to C&ED's statistics, most ACP complaints are against those beauty parlours or fitness centres that offer a variety of beauty or fitness services. They are accused of engaging in unscrupulous tactics, including arranging multiple salespersons to prevent consumers from leaving for conducting incessant sales pitch; withholding the personal belongings of consumers; obtaining consumers' credit cards under pretext and collecting payments without prior authorisations; using threatening or demeaning language; telling consumers that they would suffer from serious illnesses if they do not get treatment; and even targeting consumers' social or physical weaknesses, such as selling beauty services to disabled persons suffering from brain injuries. These practices have caused widespread concerns and discontent in our community.

Present control

Common law and regulation under the TDO

2.2 Existing common law and various statutory criminal

¹ ACP refers to the use of harassment, coercion or undue influence to significantly impair the average consumer's freedom of choice or conduct in relation to the product concerned, which causes the consumer to make a transactional decision that the consumer would not have made otherwise.

regimes tackle varying degrees of acts of intimidation, threat, false imprisonment or fraud etc.² The amended TDO that took effect in 2013 prohibits traders from engaging in ACP on any consumers. Upon conviction, traders are liable to a maximum penalty of a fine of HK\$500,000 and imprisonment for five years.

Threshold for criminal prosecution

2.3 According to the enforcement experience of C&ED, many of the consumers that encountered ACP wished only to obtain refunds as soon as possible and were unwilling or even refused to participate in the criminal investigation procedures (for example taking statements, participating in identification parade or testifying in court). Moreover, since ACP usually take place in enclosed business premises without third party witnesses, it is relatively difficult to overcome the threshold for criminal prosecution under the TDO, making investigation of ACP cases more difficult and resulting in a relatively low number in prosecution cases.

Views on using statutory cooling-off period to combat aggressive sales tactics

The Council

2.4 As pointed out by the Council in its “Report to Advocate Mandatory Cooling-Off Period in Hong Kong” published in April 2018, quite a number of ACP complaints related to transactions involving pre-paid mode of consumption; and transactions involving large amount may easily incentivise salespersons to deploy unfair aggressive sales tactics in order to increase their sales volume or commission income. A cooling-off period is a useful tool to protect consumers by allowing them to cancel a contract and seek refund

² For example, if violence is applied on a consumer (or the consumer is threatened that violence will be applied on him), the offences of common assault or related offences may be applicable. If a consumer is threatened verbally, the offence of criminal intimidation may be applicable. If a consumer is detained without his/her consent, the offence of false imprisonment may be applicable. If property is obtained by deception or fraud, the various provisions relating to deception and fraud under the Theft Ordinance (Cap. 210) and the common law offence of conspiracy to defraud may apply.

within a reasonable period of time after the conclusion of a contract, without having to prove any improper sales tactics on the part of the trader. Not only would a cooling-off period enhance consumer protection, it would also indirectly reduce the incentives for traders or salespersons to deploy unfair aggressive sales tactics. The Council however considers that an across-the-board legislative approach may not be practical, as it may affect the operational efficiency of enterprises or hinder their reasonable business operations. A more balanced and practical option would be to implement a cooling-off period on specific transactions and sectors, and formulate appropriate measures to mitigate the impact on the relevant businesses. The Council recommends that the Government should legislate for the implementation of a statutory cooling-off period on certain contracts, including beauty and fitness services contracts.

2.5 In addition, focusing on the pre-paid fitness centre membership and beauty and slimming services that caused particular public concern, the Council formed a task force that comprised a number of beauty trade representatives and published the “Beauty Industry Code of Practice” for the beauty industry in June 2006, which included a recommendation for the trade to provide a cooling-off period. However, the Council is not aware of any quantitative data in respect of the implementation of the relevant recommendation by the trade. The Council considers that unscrupulous traders who deliberately employ aggressive sales tactics would unlikely offer any cooling-off period to consumers. For those traders that do offer cooling-off period, some may impose certain terms and conditions in the contracts to deter contract cancellation (for example, a cooling-off period of only 24 hours; consumers losing the right to cancel contracts after either commencement of services or acceptance of gifts; and substantial cancellation fee). From the Council’s experience, in an industry that has many traders with varying scales of operations³ and without powerful trade associations, reaching an agreement within the trade on a uniform implementation of any cooling-off period arrangement would be extremely difficult.

³ According to the “Number of establishments, persons engaged and vacancies analysed by industry sub-class (2017 Edition)” published by the Census and Statistics Department, there were over 6,000 establishments engaging in the provision of beauty services, and over 600 establishments engaging in the provision of fitness services.

LegCo ED Panel

2.6 The LegCo ED Panel passed the following motion on 23 May 2016, “That this Panel urges the Government to introduce legislation on imposition of mandatory cooling-off periods, and accord priority to implementing a statutory cooling-off period for pre-paid services involving a lot of complaints and large amount 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 with a view to protecting consumers’ rights, thereby indirectly dampening the incentive to engage in unfair and high-pressure marketing practices, and ultimately safeguarding practitioners of the relevant trades as well.”

Other members of the public

2.7 There have been constant calls from the community for the Government to introduce further measures to combat UTP. Many consider that as beauty and fitness services often involve the deployment of aggressive sales tactics and large amount of pre-payments, imposing a cooling-off period on these contracts would help consumers obtain a refund and is hence an effective means to protect the rights of consumers.

Government’s position

2.8 The Government concurs that, given the seriousness of ACP complaints involving beauty and fitness services, and considering the views from various sectors of the community, it is advisable to examine the proposal for stipulating by legislation a requirement on a cooling-off period in respect to beauty and fitness services contracts. Following consultation with the public and the affected trades, we hope to put forward a proposal within the current term of the Legislative Council (LegCo) for its consideration.

CHAPTER 3 POLICY PRINCIPLES UNDERLYING A STATUTORY COOLING-OFF PERIOD

Cooling-off period arrangement

3.1 Cooling-off period refers to the period of time following conclusion of a contract whereby a trader allows its customers to unilaterally cancel the contract without having to provide a reason. Following contract cancellation, the trader needs to refund the amount paid by the customer and the customer's other payment obligations in the contract are also cancelled.

Underlying policy principles

3.2 A requirement on cooling-off period cuts into the substance of contracts. Based on the fundamental principle of the freedom of contract, both contracting parties should enjoy the freedom to determine the terms and conditions of a contract. Providing consumers with a statutory right to cancel contracts unilaterally is, to an extent, an interference into the terms of contracts through a legislative means, which also gives rise to moral hazard, as consumers may be less cautious than in making purchasing decisions.

3.3 At the same time, the calls for imposition of a cooling-off period requirement stem primarily from the hope that such a requirement could counter aggressive sales tactics deployed by traders to unduly influence consumers. Under undue pressure, consumers' freedom of choice may be undermined. Requiring traders to provide a cooling-off period would enable consumers to reconsider their decisions during the period, and this should lower traders' incentives to engage in aggressive sales practices. This is of paramount importance to the protection for the groups that are more vulnerable to ACP.

3.4 Separately, businesses that are required by law to provide a cooling-off period would need to shoulder additional

compliance costs, including the administrative and staff expenses arising from contract cancellation and refund processing. These would have some impact on the normal business operation of the affected businesses.

3.5 Overall speaking, in determining whether to stipulate by legislation a cooling-off period, it is necessary to examine carefully as to how to strike a proper balance between protecting consumers from aggressive sales practices and respecting the freedom of contract. The freedom of contract is an important bedrock of commercial transactions and innovation, which should be respected and preserved. Legislative intervention is resorted to only when there is sound policy rationale and that it represents a proportionate solution to the specific problem identified. While striving for consumer protection, it is vital that we continue, at the same time, to provide a business-friendly environment in Hong Kong.

3.6 Against the above considerations, a statutory cooling-off period that covers all sectors is not a practicable way forward, as it neither focuses on nor is it proportionate to the specific problem identified. A more appropriate approach would be to target the specified problem in applying the cooling-off period requirement to only those specific contracts which are most subject to aggressive sales tactics. This targeted approach would provide the protection where most needed without affecting the overall business environment, minimising the regulatory impact on small and medium enterprises.

3.7 Some advocate that a voluntary cooling-off period arrangement should first be adopted to tackle the concern over aggressive sales tactics. We appreciate that most traders are honest businessmen, but the experience shared and concerns raised by the Council should not be overlooked and taken lightly (see paragraph 2.5): unscrupulous traders who deliberately employ aggressive sales tactics would unlikely offer any cooling-off period to consumers; and it would be difficult to implement a voluntary cooling-off period arrangement effectively in the beauty and fitness services sectors.

CHAPTER 4 PROPOSED SCOPE OF APPLICATION OF THE STATUTORY COOLING-OFF PERIOD

Scope of application

4.1 Based on the principles set out in Chapter 3 and taking reference from the practices of other jurisdictions, we do not consider it appropriate to impose a cooling-off period requirement on all goods and services contracts. It is noted that other major jurisdictions (namely Australia, Canada, Singapore, the United Kingdom, and the United States of America) also only require the provision of cooling-off periods on contracts of specific products or contracts concluded under specific circumstances, and not across the board on all transactions. Considering the need to strike a balance between protecting consumer interests and respecting the freedom of contract, we **propose** to adopt a focused approach by applying the cooling-off period requirement to contracts that involve large amount of pre-payments, and to sectors that give rise to more consumer complaints involving the use of aggressive tactics, so as to provide additional protection for consumers.

4.2 As mentioned in Chapter 2, ACP complaints are not widespread across all sectors; of them, 77% concentrate on beauty and fitness services. The median monetary value of the contracts involved in beauty services-related ACP complaints received by C&ED is \$34,280, and the highest contract value is \$1.5 million. The corresponding values for fitness services contracts are \$20,000 and \$430,000 respectively. In view of the larger numbers of ACP complaints (a total of 863 cases) and the large amount of pre-payments involved, we **propose** to stipulate a statutory cooling-off period requirement on beauty and fitness services contracts.

Beauty services

4.3 Complaint statistics reveal that most beauty services-related ACP complaints were against those beauty parlours that offer a variety of beauty services, including various procedures of

the face or body for beautifying purposes, hair-removal, cosmetic surgery, nail treatment, massage, and hair loss improvement services. Therefore, we **propose** to apply the cooling-off period requirement to contracts involving the provision of the above beauty services.

4.4 As the proposal aims to reduce the incentives for traders to deploy aggressive sales tactics, a more appropriate approach would be to exempt services provided by establishments that are seldom associated with such tactics. We note that traders that only provide nail treatment, massage, or hair loss improvement services were rarely involved in ACP complaints, we therefore **propose** to exempt places that provide only one of the following three types of services (namely nail treatment, massage, and hair loss improvement). We also **propose** to exempt services provided by or in public hospitals/clinics, facilities operated by the Government, schools and education institutions, charitable organisations and clubhouses in hotels and residential properties, as they are not commonly associated with ACP.

Fitness services

4.5 Complaint statistics reveal that most fitness services-related ACP complaints were against those fitness centres that are equipped with exercise machines¹ and provide a variety of fitness services. We therefore **propose** to apply the cooling-off period requirement to contracts involving membership for using facilities of, as well as services offered at fitness centres, including personal training, yoga and dance classes, martial arts training and advice on diets for body-building and weight control.

4.6 In other words, under the proposal, statutory cooling-off period would not be applicable to fitness services provided by establishments that are not equipped with exercise machines, such as ballet schools, dance studios and Tai Chi studios, as these establishments are rarely involved in ACP complaints. We also

¹ Examples of exercise machines include treadmills, rowing machines, stationary bikes, weight machines, and climbing machines etc.

propose to exempt fitness services provided by or in public hospitals/clinics, facilities operated by the Government, schools and education institutions, charitable organisations, national sports associations, and clubhouses on private recreational leases and in hotels and residential properties, as they are not commonly associated with ACP.

4.7 We have considered whether to exempt beauty or fitness services provided by registered healthcare professionals or in private healthcare facilities, such as training involving the use of exercise machines provided by a physiotherapist, or skin treatments provided by a dermatologist, etc. However, if exemptions are provided solely on the grounds that the services are provided by registered healthcare professionals or in private healthcare facilities, loopholes may be created. For instance, beauty parlours or fitness centres may circumvent the cooling-off period requirement by hiring registered healthcare professionals to provide services, or by applying for licenses to operate as private healthcare facilities, while continuing to engage in aggressive sales. We therefore **propose not** to exempt beauty and fitness services provided by registered healthcare professionals or in private healthcare facilities. Nevertheless, it is noted that the majority of services provided by registered healthcare professionals or in private healthcare facilities are paid for after service delivery. The impact of the proposed cooling-off period requirement on these services is believed to be minor.

Pre-payment amount of contracts

4.8 C&ED's statistics reveal that over 90% of ACP complaints involved beauty and fitness services contracts that were worth \$3,000 or above. We **propose** that the cooling-off period requirement applies to any beauty or fitness services contract that involves a pre-payment of \$3,000 or above (that is, the consumer's total potential payment obligation under the contract is \$3,000 or above, where all or part of the services are to be provided in future). Excluding small-value contracts would help to minimise disruption to normal business operation, in particular that of small and medium

enterprises.

Other transactions

4.9 Some are of the view that the statutory cooling-off period could apply to other types of transactions, for example contracts concluded during unsolicited door-to-door sales, timeshare, distance, telecommunications and travel services contracts etc. After thorough consideration, we are of the view that there is a lack of justification for subjecting these contracts to a statutory cooling-off period, for they are less involved in ACP complaints², and it seems not quite possible to deploy aggressive sales tactics for distance contracts. Moreover, telecommunications and travel services are already subject to other more comprehensive regulatory regimes. Considering the principle to balance between consumer protection and respecting the freedom of contract, we **do not propose** to legislate for a cooling-off period on these contracts.

4.10 As statutory cooling-off period for consumer contracts would be a new measure to regulate private contracts in Hong Kong, it should be appropriate to take a progressive approach, to first focus on trades most commonly associated with aggressive sales practice and involving large amount of pre-payments, so as to accumulate enforcement experience. If the community considers that the scope of application should remain flexible to cater for changing market practice in the future, we could consider, when drafting the legislation, adopting a relatively simple arrangement for amending the scope of application (for example through amending subsidiary legislation), so as to enable the Government, when necessary and after thorough consultation, to amend the scope of application for the cooling-off period more expeditiously.

² For example, since the amended TDO has come into operation and up until end December 2018, C&ED has received a total of 107 ACP complaints involving timeshare contracts. The number of ACP complaints involving telecommunications and travel services are 3 and 128 respectively.

Advice sought

4.11 Please provide your views on the following questions –

- (a) Do you agree that a statutory cooling-off period requirement should be imposed on beauty and fitness services contracts with the proposed exemptions?
- (b) Do you agree that a statutory cooling-off period requirement should apply to any beauty or fitness services contract that involves a pre-payment of \$3,000 or above (that is, the consumer's total potential payment obligation under the contract is \$3,000 or above, where all or part of the services are to be provided in future)?
- (c) Do you agree that beauty and fitness services provided by registered healthcare professionals or in private healthcare facilities should not be exempt from a statutory cooling-off period requirement?

CHAPTER 5 PROPOSED OPERATIONAL ARRANGEMENTS FOR THE STATUTORY COOLING-OFF PERIOD

Cooling-off and refund periods

5.1 We consider that the cooling-off period should not be too short, and should be of a sufficient length for consumers to calmly reflect on their decisions and to cancel contracts as necessary in accordance with their wish. At the same time, we are mindful that a longer cooling-off period would affect the cash flow of traders. As to the length of the refund period, it should dovetail and be proportionate to the length of the cooling-off period.

5.2 As noted from the legislation of other jurisdictions concerning cooling-off periods, the lengths of the cooling-off periods differ from one place to another, ranging from 3 working days to 14 calendar days; whereas the deadlines for traders to refund vary from “immediate upon being notified of contract termination” to 60 calendar days. Arrangements in other jurisdictions are set out in Appendix 1. Taking into account Hong Kong’s circumstances and practices in other jurisdictions, we **propose** the following two options –

- (a) A 3-working-day¹ cooling-off period with a 7-working-day refund period

Liquidity is important for business operation. A shorter cooling-off period would minimise any adverse effect of contract cancellation on the cash flow of traders. If the cooling-off period is 3 working days, it would be fair to have a shorter refund period such that consumers would receive their refund sooner; and

¹ ‘Working day’ means any days except Saturdays, Sundays, and public holidays.

- (b) A 7-calendar-day cooling-off period with a 14-calendar-day refund period

A longer cooling-off period would allow more time for consumers to reflect and act on their right to cancel the contracts, but it may have more impact on the cash flow of traders. With a 7-calendar-day cooling-off period, traders should correspondingly be allowed a longer refund period of 14 calendar days.

Traders must provide specified information

5.3 Consumers need to be aware of their right to cancel contracts within the cooling-off period so that they could exercise such right effectively. For this reason, and taking reference from the arrangements in other jurisdictions, we **propose** to require traders to, before concluding the contracts, inform their customers of their right to cancel the contract within the cooling-off period and provide the information as set out in Appendix 2.

5.4 Taking reference from other jurisdictions' practices, the information in Appendix 2 should be provided in writing² to minimise the chance of disputes arising from provision of such information orally or in other format where no record can be kept. Traders' failure to provide the information in Appendix 2 will hinder the exercise by consumers of their right to cancel the contract within the specified time. Therefore, we **propose** that if the trader fails to provide the specified information, the cooling-off period would be extended to a maximum of 3 months after the contract is concluded.

5.5 If a consumer decides to exercise his/her right during the cooling-off period, he/she should inform the trader concerned on his/her contract cancellation. We **propose** to provide a sample cancellation form in the proposed legislation for use by consumers,

² An electronic record also satisfies the requirement if the information contained in the electronic record is accessible so as to be usable for subsequent reference.

and traders may also provide their own cancellation forms. Consumers may choose to use the sample cancellation form provided in the legislation or the form provided by the trader for informing the trader. The cancellation form is deemed to have been received by the trader when the consumer sends it; but the consumer would have the burden to prove that the notice has been sent. Therefore, the consumer should send the cancellation form using a method that could record the date on which the notice is sent, such as by registered post.

No curtailment of cooling-off right

5.6 It is a common feature of cooling-off period arrangements in other jurisdictions that curtailment or waiver of cooling-off periods is not allowed. We **propose** to adopt the same arrangement, that is, any waiver, restriction or modification of consumers' statutory contract cancellation right by mutual agreement between a consumer and a trader would not have any legal effect. This is to guard against unscrupulous traders using various tactics to induce, mislead, or pressurise consumers into waiving or restricting the contract cancellation right, nullifying the effect that the cooling-off period requirement is supposed to achieve.

Refund arrangement

5.7 When concluding a contract, a consumer may choose to settle payment using cash or non-cash means according to personal preference. In making a refund, we **propose** to require traders to use the same means as that used by the customer in effecting payment when the contract is concluded, unless the customer has expressly agreed otherwise. While making a cash refund is relatively straightforward, in case of refund using non-cash means, the timing for the refund to be reflected in the consumers' accounts depends on a number of factors that are outside the traders' control, including the time taken by payment service providers (such as banks) to process the refund instructions. We therefore **propose**

that, for refund by non-cash means, the refund would be regarded as being made by traders at the time when they have given the refund instruction to the relevant payment service providers.

Charges for services consumed

5.8 We note that individual jurisdictions prohibit traders from supplying services or accepting payment during the cooling-off period, which may reduce possible disputes concerning the amount of refund. However, some consumers may prefer to receive services immediately after concluding a contract, but traders in general would unlikely provide service before payment is made. Therefore, if traders are not allowed to accept payments, it may result in inconvenience to consumers. Having considered various factors, we **propose** that traders be allowed to accept payment and supply service during the cooling-off period. At the same time, if consumers have received services prior to contract cancellation, traders may deduct a charge for the services rendered. To prevent the scenario where a trader charges front-loaded or even excessive fees to deter consumers from exercising their contract cancellation right during the cooling-off period, we **propose** that such charges should be calculated on a pro-rata basis on the total contract sum.

Administrative fee

5.9 Currently, traders generally need to pay a fee to the payment service providers when using non-cash methods to receive payment, such as credit cards and EPS, commonly known as the merchant discount rate (MDR). In addition, traders may need to bear other administrative costs, including administrative and staff expenses arising from contract cancellation and refund processing. Hence, there is a legitimate argument in favour of allowing traders to deduct an administrative fee to recover part of the costs upon contract cancellation during the cooling-off period. The Council proposes, after taking into account the market situation, to allow traders to deduct a fee for credit card refunds, capped at 3% of the

transaction value. The Council considers that for consumers who exercise their right to cancel contracts during the cooling-off period, the charge is not high compared to the transaction value, yet it will have an effect of discouraging abuse. At the same time, this charge may not completely offset all of the traders' costs of contract cancellation, thereby providing incentives for traders to improve their sales practices.

5.10 While we generally agree with the Council's observation, our understanding is that MDR is determined based on commercial negotiations between traders and the relevant payment service providers. For pre-paid services such as those provided by beauty parlours and fitness centres, it is quite common for consumers to pay by instalment payment plans (IPP) via credit cards. MDR for IPP is generally higher than that for one-off credit card payment, and the difference could be significant. Separately, if the deduction of administrative fee is applicable to all non-cash payments, it would not be necessary to define what constitutes a credit card transaction. Also, emerging payment services would also be catered for. Taking into account the above and the Council's views, we **propose** to allow traders to deduct an administrative fee when arranging refund for a contract which is paid for by non-cash means. If the consumer makes one-off payment using non-cash means, the level of administrative fee should be up to 3% of the transaction amount, and up to 5% for payment by non-cash IPP. For payments that are settled by cash, traders are not allowed to deduct any administrative fee.

Ancillary contracts

5.11 An ancillary contract refers to a contract entered into between the consumer and the trader or a third party arranged through the trader for the provision of goods or services that are related to the main contract. In the case of beauty and fitness services contracts, credit card IPP is a common ancillary contract. Taking reference from the practices of other jurisdictions, we **propose** that any ancillary contract, including IPP contract, should

be cancelled automatically when the main contract is cancelled within the cooling-off period. Operationally, a trader should have the obligation to cancel, or inform relevant third party to cancel, all related contracts upon being informed by a consumer of his/her decision to cancel the main contract.

Redress mechanism

5.12 The Council makes reference to the practices of some jurisdictions and proposes that the mandatory cooling-off period regime should be civil in nature. However, there is feedback that a civil regime may not provide sufficient deterrence, and given the high costs and long time required to complete the judicial processes, a civil regime may render the statutory cooling-off period ineffective.

5.13 We generally agree that a civil regime should form the basis for the cooling-off period requirement, considering that the purpose of a statutory cooling-off period requirement is to provide an expeditious way for consumers to seek redress (for example, by obtaining a refund). That said, we are mindful that sufficient deterrence must be provided to ensure compliance by traders lest the regime would not be effective. We therefore **propose** the following arrangements –

- (a) to create a right to private action in the proposed legislation to enable consumers to take civil actions to recover loss or claim damages arising from traders' failure to refund upon contract cancellation;
- (b) to encourage, through publicity and public education, consumers who intend to seek enforcement by public authority to first attempt alternative dispute resolution, for example conciliation through the Council or application for refund through the credit card chargeback protection mechanism; and
- (c) to empower the Commissioner of Customs and Excise

to conduct investigations and issue enforcement notices to direct traders to remedy or desist from any recurrence, if he/she is satisfied that there is non-compliance with the requirements to provide information or refund. If a trader disagrees with the enforcement notice, he/she may appeal to the Administrative Appeals Board. Contravention of enforcement notices will be a criminal offence and liable to a fine on conviction.

This arrangement would encourage conciliation or other methods of alternative dispute resolution to settle disputes, provide traders with ample opportunities to comply with the requirements of cooling-off period at different stages, and provide for expeditious intervention by enforcement agency as a last resort to prevent non-compliance.

Advice sought

5.14 Please provide your views on the following questions –

(a) Do you think that the cooling-off and refund periods should be –

- (i) 3-working-day cooling-off period with 7-working-day refund period; or
- (ii) 7-calendar-day cooling-off period with 14-calendar-day refund period?

(b) Do you agree with the other proposed operational arrangements?

CHAPTER 6 CONCLUSION AND ADVICE SOUGHT

Conclusion

6.1 This paper sets out the Government's proposed framework for implementing a statutory cooling-off period on beauty and fitness services contracts. We welcome views and comments from the public. We trust that the proposal provides additional protection for consumers against aggressive sales practice, while preserving an environment that is facilitating to business operation.

6.2 The proposed scope of application and operational arrangements of the statutory cooling-off period are summarised below –

Scope of application of the cooling-off period

- (1) Cooling-off period requirement applies to the following consumer contracts –
 - (a) Beauty services¹; and
 - (b) Fitness services².

With exemptions for places that only provide one of the following three types of services: nail treatment, massage, or hair loss improvement services; places that provide fitness services but are not equipped with

¹ Beauty services include various procedures of the face or body for beautifying purposes, hair-removal, cosmetic surgery, nail treatment, massage, and hair loss improvement services.

² Fitness services include membership for using facilities of fitness centres that are equipped with exercise machines, as well as services offered at these fitness centres, including personal training, yoga and dance classes, martial arts training and advice on diets for body-building and weight control.

exercise machines; and beauty³ or fitness⁴ services provided by specific establishments.

- (2) Cooling-off period is applicable to any beauty or fitness services contract that involves a pre-payment of \$3,000 or above (that is, the consumer's total potential payment obligation under the contract is \$3,000 or above, where all or part of the services are to be provided in future).

Length of cooling-off and refund periods

- (3) Two options –
- (a) 3-working-day⁵ cooling-off period with 7-working-day refund period; or
 - (b) 7-calendar-day cooling-off period with 14-calendar-day refund period.

Traders to provide specified information

- (4) A trader must provide the specified information to a consumer before entering into a contract, along with a contract cancellation form. The cooling-off period shall commence on the day immediately after the trader provides the specified information.
- (5) Failure to provide the specified information would result in the cooling-off period being extended to a maximum of 3 months.

³ Including beauty services provided by or in public hospitals/clinics, facilities operated by the Government, schools and education institutions, charitable organisations, and clubhouses in hotels and residential properties.

⁴ Including fitness services provided by or in public hospitals/clinics, facilities operated by the Government, schools and education institutions, charitable organisations, national sports associations, and clubhouses on private recreational leases and in hotels and residential properties.

⁵ 'Working day' means any days except Saturdays, Sundays, and public holidays.

Prohibit curtailment of cooling-off period

- (6) Any agreement between a consumer and a trader to waive, restrict or modify the right of the consumer to cancel the contract would have no legal effect.

Contract cancellation form

- (7) A consumer may use the sample cancellation form in the proposed legislation or the cancellation form provided by the trader to inform the trader in writing of the decision to cancel the contract. If a consumer uses any of the above forms, the trader will be obliged to accept and arrange for contract cancellation.
- (8) The cancellation form is deemed to have been received by the trader when the consumer sends it. The consumer has the burden to prove that the notice has been sent, hence the cancellation form should be sent using a method that can record the date on which the notice is sent, such as by registered post.

Refund arrangement

- (9) Unless the consumer has expressly agreed otherwise, the refund should be made by the trader by the same means of payment as that used by the consumer in effecting payment when the contract is concluded.

Charges for services consumed

- (10) A trader may accept payment and supply service during the cooling-off period.
- (11) A trader may deduct the cost of the services consumed by the consumer during the cooling-off period, but the cost must be calculated on a pro-rata basis on the total contract sum.

Administrative fee

- (12) If a consumer makes a one-off payment by non-cash means, the trader may deduct an administration fee of up to 3% of the transaction amount, or up to 5% of the transaction amount for payment by non-cash IPP.
- (13) If a consumer pays by cash, the trader is not allowed to deduct any administrative fee.

Ancillary contracts

- (14) All ancillary contracts will be automatically cancelled upon cancellation of the main contract.

Redress mechanism

- (15) A consumer may take civil action to recover loss or claim damages arising from a trader's failure to comply with the refund requirement.
- (16) A consumer who is aggrieved by a trader's non-compliance with the information provision and/or refund requirements would be encouraged, through publicity and public education, to first attempt alternative dispute resolution, for example conciliation through the Council or application for refund through the credit card chargeback protection mechanism.
- (17) The Commissioner of Customs and Excise may investigate cases of non-compliance, and, if he/she is satisfied that a trader has contravened the information provision or the refund requirement, he/she may issue an enforcement notice to the trader to require him/her to remedy the contravention or desist from further contravention.

- (18) If a trader disagrees with the enforcement notice, he/she may appeal to the Administrative Appeals Board. Non-compliance with the enforcement notice is a criminal offence and liable to a fine on conviction.

Advice sought

6.3 In the light of the information and recommendations set out in this consultation paper, we would like to invite your views on the following questions –

- (a) Do you agree that a statutory cooling-off period requirement should be imposed on beauty and fitness services contracts with the proposed exemptions?
- (b) Do you agree that a statutory cooling-off period requirement should apply to any beauty or fitness services contract that involves a pre-payment of \$3,000 or above (that is, the consumer's total potential payment obligation under the contract is \$3,000 or above, where all or part of the services are to be provided in future)?
- (c) Do you agree that beauty and fitness services provided by registered healthcare professionals or in private healthcare facilities should not be exempt from a statutory cooling-off period requirement?
- (d) Do you think that the cooling-off and refund periods should be –
 - (i) 3-working-day cooling-off period with 7-working-day refund period; or
 - (ii) 7-calendar-day cooling-off period with 14-calendar-day refund period?
- (e) Do you agree with the other proposed operational arrangements?

6.4 We will study and consolidate the views received during the consultation period, and publish a report on the results of the consultation. Depending on the outcome of the public consultation, we aim at introducing the relevant bill providing for a statutory cooling-off period into the LegCo in the 2019-20 legislative session.

Appendix 1

Length of cooling-off periods in other jurisdictions

Jurisdiction (contract type)	Length of cooling-off period	Refund period
Commonwealth Australia (unsolicited contract)	ten working days ^[Note 1]	Immediately upon being notified ^[Note 2]
Australian Capital Territory (fitness services contract)	seven days	seven days
Ontario, Canada (personal development services agreement)	ten days	15 days
New York (health club services contract)	three working days ^[Note 1]	15 working days
USA (door-to-door sales)	three working days ^[Note 1]	10 working days
The Mainland (distance contract)	seven days	seven days
UK (distance / timeshare contract)	14 days	14 days
Singapore (unsolicited / timeshare contract)	five working days ^[Note 1]	60 days

Note 1: Working day is classified as Mondays to Fridays and does not include public holidays.

Note 2: The Australian Consumer Law (ACL) prohibits traders from accepting any payment during the cooling-off period. However, the ACL also provides that, if any payment is ever received, the trader must refund to the consumer concerned immediately upon being notified of the contract termination.

Information provision requirement on traders

- (a) Trader's identity;
- (b) Trader's business address and contact details (including phone and fax number, email address etc.) for consumers to send the cancellation notice;
- (c) Date on which the contract is concluded (and the end date of the cooling-off period);
- (d) Product information (e.g. items of services purchased, contract duration);
- (e) Payment method;
- (f) Consumer's right to cancel the contract during the cooling-off period;
- (g) Cancellation procedures, including the provision of a contract cancellation form (either the standard form in the legislation or a form devised by the trader);
- (h) Total price payable by consumer and the pro-rata unit price that consumer needs to bear for the service(s) consumed upon contract cancellation; and
- (i) The administration fee that needs to be paid by consumer upon contract cancellation if the payment is settled by non-cash means.

**Response Form
Statutory Cooling-Off Period
For Beauty and Fitness Services Consumer Contracts**

Question 1:

Do you agree that a statutory cooling-off period requirement should be imposed on beauty and fitness services contracts with the proposed exemptions?

Agree Disagree Neutral

Question 2:

Do you agree that a statutory cooling-off period requirement should apply to any beauty or fitness services contract that involves a pre-payment of \$3,000 or above (that is, the consumer's total potential payment obligation under the contract is \$3,000 or above, where all or part of the services are to be provided in future)?

Agree Disagree Neutral

Question 3:

Do you agree that beauty and fitness services provided by registered healthcare professionals or in private healthcare facilities should not be exempt from a statutory cooling-off period requirement?

Agree Disagree Neutral



Question 4:

Do you think that the cooling-off and refund periods should be –

- (a) 3-working-day cooling-off period with 7-working-day refund period; or
- (b) 7-calendar-day cooling-off period with 14-calendar-day refund period?

(a)

(b)

Question 5:

Do you agree with the other proposed operational arrangements?

Agree

Disagree

Neutral

Other views and suggestions:



Please submit your views through one of the following means on or before 16 April 2019 –

Mail: Special Duties Division
Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau
23/F, West Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong

Fax: 2869 4420

Email: cooling-off@cedb.gov.hk

This is a:

- Corporate response
(representing the views of a group or an organisation) or
- Individual response
(representing the views of an individual)

Name/ Name of organisation: _____

Note: We will treat the submissions received as public information, which may be reproduced and published in any form for the purposes of the consultation exercise and any directly related purposes without seeking permission of or providing acknowledgement to the respondents.

It is voluntary for any respondent to supply his or her personal data upon providing comments. The names and background information of the respondents may be posted on the website of CEDB, referred to in other documents published for the same purposes, or transferred to other relevant bodies for the same purposes. If you do not wish your name and/or your background information to be disclosed, please state so when making your submission.

