Annex

Key Points of the Policy Proposals for Strengthening the Protection of Consumers

(i) *Application Scope of the Statutory Cooling-off Period, Limit on Contract Duration and Other Restrictions*

(1) Contracts for beauty services[1] provided at or to be provided at beauty parlours[2]; and

(2) Contracts for fitness services[3] provided at or to be provided at fitness centres[4].

However, premises that only provide one single type of fitness service and beauty or fitness services provided at specific premises[5] will be exempted.

(ii) *The Proposed Operational Arrangements of the Statutory Cooling-off Period*

Monetary Threshold

(1) To set up a regulatory threshold based on the contract amount. The proposed thresholds for consideration include (i)$3,000 or above; (ii)$8,000 or above; or (iii)$15,000 or above.

Cooling-off Period and Refund Period

(2) Seven-calendar-day cooling-off period with 14-calendar-day refund period.

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1 Beauty services include various chemical, mechanical or energetic procedures for beautifying purpose, cosmetic surgery, nail treatment services, massage services, hair loss improvement services etc.

2 Including premises, where one or more beauty services are provided, except those specific premises proposed for exemption.

3 Fitness services include the provision of exercise machines for use, provision of training on improving physical fitness and body-building and weight control.

4 Including premises, where more than one fitness services are provided, except those specific premises proposed for exemption.

5 Including premises managed by the Government, the Hospital Authority and its subsidiary (including public hospitals/clinics), the Board of Governors of the Prince Philip Dental Hospital, schools and education institutions, charitable organisations, national sports associations, and in clubhouses on private recreational leases, hotels and residential properties.

Traders to Provide Information Note and Model Cancellation Notice

(3) A trader should provide a consumer with an information note containing relevant information before entering into a contract, along with a model cancellation notice.

(4) Failure to comply with the requirement to provide the information note and relevant information and the model cancellation notice would result in the cooling-off period being extended to, at maximum, six months after the contract is entered into.

Exercise of the Cooling-off Right

(5) Any mutual agreement between a consumer and a trader to curtail the cooling-off period, or waive, restrict or modify the statutory right of the consumer to cancel the contract shall have no legal effect.

(6) A consumer may use the model cancellation notice provided in the future legislation or use the cancellation notice in any other format to inform traders of their decision of contract cancellation, provided that there is sufficient information for identifying the contract purported to be cancelled and their decision to cancel the contract is clearly stated. The contract cancellation notice will be regarded as having been delivered to the traders upon its issuance, thereby the traders must make refunds to consumers in accordance with the requirement of cooling-off period. Nevertheless, the burden to prove that the notice has been issued rests with the consumer. Hence, it is advisable to issue to traders the cancellation notice using a method that could record the date on which the notice is issued.

Refund Arrangement

(7) The refund should be made by the same means of payment as that used by the consumer when entering into the contract or in cash or cash equivalents[6].

(8) A trader may deduct a charge for the services consumed by the consumer during the cooling-off period. The charge for the services should make reference to the unit price calculated on a pro-rata

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6 Cash equivalents may include any cheque, bank draft, cashier order or bank transfer, etc.

basis of the total amount of transaction, or is equivalent to the actual price of the services already consumed. If consumers have purchased the services at a discounted price, the deductible charge may be based on the marked price prior to any discounts for a single service, subject to a cap of 150% of the unit price calculated on a pro-rata basis or actual price of the services already consumed as mentioned above. Relevant charge must be set out in the information note.

(9) A trader may deduct an administrative fee if a consumer uses a non-cash payment method. The amount of administrative fee will be up to 2% of the non-cash transaction amount for one-off payment, and up to 5% of the non-cash transaction amount if transaction is settled by instalment payment plan.

(10) Traders, who do not provide to consumers the information note, or the information about the charge for the services already consumed and the administrative fee, will not be eligible to deduct the charge for services consumed and the related administrative fee from the refund amount.

(11) All ancillary contracts shall become void automatically upon cancellation of the main contract during the cooling-off period.

Redress Mechanism and Enforcement

(12) A consumer could initiate civil action to recover losses or claim damages arising from a trader's failure to make refunds upon contract cancellation.

(13) Consumers will be encouraged, through publicity and public education, to approach the Council for assisting in conciliation.

(14) The Commissioner of Customs and Excise may investigate cases of non-compliance, and, if he is satisfied that a trader has contravened the requirement to provide the information note and relevant information, or the model cancellation notice and/or the refund, he may issue an enforcement notice to the trader to require him to remedy the contravention or desist from any recurrence.

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

(16) Upon conviction of the criminal offence in relation to the non-compliance with the enforcement notice, the trader will be liable to a maximum fine at level 6 (i.e. $100,000) on first conviction, and a maximum fine at $200,000 for each subsequent conviction. In the case of a continuing offence (i.e. no remedial action is taken), a further daily fine of $1,000 may be imposed.

(iii) *Proposed Operational Arrangements for the Statutory Limit on Contract Duration and Other Restrictions*

Scope of Application

(1) The statutory limit on contract duration and other restrictions are applicable to all types of beauty and fitness services pre-paid consumer contracts, including but not limited to fixed sessions, top-up balance, etc.

Limit on Contract Duration

(2) The limit on contract duration is two years. A trader will be prohibited from entering into a contract with consumer with indeterminate duration (i.e. no expiry date).

(3) An extension of the contract beyond two years, for a maximum period of six months, is permissible with the mutual consent of a trader and a consumer in writing.

Other Contract Restrictions

(4) A trader will be prohibited from entering into a contract with a consumer that commences later than three months after the contract is entered into.

(5) If a trader has already entered into a contract with a consumer, the trader will be prohibited from entering into a new contract with that consumer for the same services that are covered by the existing contract, unless one of the following conditions is met –

(a) the existing contract is due to expire in less than three months;

(b) the relevant services set out in the existing contract are used up; or

(c) the remaining balance in the existing contract is insufficient for the consumer to receive a single service.

(6) The statutory limit on contract duration and other contract restrictions could not be waived, except the scenario that allows extension as mentioned in (3) above.

Proposed Penalty

(7) It will constitute an offence if a trader violates the requirements in (2), (3), (4) or (5) above.

(8) Upon conviction of the offence in (7) above, a trader will be liable to a maximum fine at level 6 ($100,000) on first conviction and a maximum fine of $200,000 on each subsequent conviction.

(9) The main contract in relation to the conviction and the ancillary contracts shall become void automatically upon conviction

(10) The Court may order the convicted trader to pay a reasonable amount of compensation to any person who has suffered financial loss resulting from that offence.

(11) The amount of compensation is recoverable as civil debt.

(iv) *Conferring Additional Investigation and Enforcement Powers to C&ED officers*

(1) Propose to include Section 13I of the Trade Descriptions Ordinance pertaining to the offence of wrongly accepting payment into Schedule 1 to the Organized and Serious Crimes Ordinance, with a view to providing additional investigatory and enforcement powers to Customs and Excise officers to follow up on relevant suspected cases.