



## Wait a minute – introducing mandatory cooling-off period

11 February 2019

On 15 January 2019 the Hong Kong government issued a consultation paper to seek views on the introduction of a statutory cooling-off period for beauty and fitness services consumer contracts. The consultation period ends on 16 April 2019. We have summarized the key features of the proposal below.

While the scope of the proposal is confined to specific contracts in the beauty and fitness service industries, what are the potential wider complications?

- The government's initiative is yet another signal that consumer rights are on the rise. In recent years, the government has introduced legislative reforms (e.g., Competition Ordinance, unfair trading practices under the Trade Descriptions Ordinance) that, to various extents, enhance consumer rights.
- This also means businesses and trades must pay more attention to compliance with the increasingly complex consumer regulatory regime.
- The government has left open the possibility of expanding the mandatory cooling-off period to other industries, to cater for changing market practice. Indeed, some businesses are already thinking ahead and voluntarily offer customers cooling-off periods in their contracts.
- When introducing a cooling-off period, apart from reviewing and revising the relevant contract terms, businesses should also consider payment /refund /chargeback issues with banks and credit card companies.

### Summary of key points under the proposal

- *Proposed scope of application:* certain beauty and fitness services consumer contracts (see below our summary table on the applicable contracts).
- *Value of prepayment of contract:* HK\$3,000 or above.
- *Cooling-off and refund periods – two options:* three-working-day cooling-off with seven-working-day refund period; or seven-calendar-day cooling-off period with 14-calendar-day refund period.

- *Information to be provided:* traders are required to inform customers in writing of their right to cancel the contract within the cooling-off period; otherwise, the cooling-off period will be deemed a maximum of three months after the contract is concluded.
- *Contract cancellation forms:* forms provided in the legislation or by traders.
- *Contracting-out/waiver:* not allowed for cooling-off period.
- *Refund arrangement:* refund by the same means as that used by the customers for payment; refund is done when refund instruction is given to the relevant payment service providers for noncash transactions.
- *Deduction from refund:* traders are allowed to deduct from the refund sum:
  - Charges for services provided, calculated on a pro rata basis.
  - Administrative fee up to 3 percent of the transaction amount for non-cash refunds.
  - Administrative fee up to 5 percent of the transaction amount for non-cash installment payment plans.
- *Ancillary contracts:* automatic cancellation when main contract is canceled.
- *Enforcement regime:* civil but not criminal sanctions. Customs and excise may conduct investigations and issue enforcement notices. Appeals may be made to the Administrative Appeals Board.

<b>Proposed targetservices</b>	<b>Proposed exempted services</b>
<i>Beauty services</i>	
Beauty parlors that provide a variety of beauty services, i.e., procedures of the face or body for the following: <ul style="list-style-type: none"> <li>• Beautifying purposes.</li> <li>• Hair removal.</li> <li>• Cosmetic surgery.</li> <li>• Nail treatment.</li> <li>• Massages.</li> <li>• Hair loss improvement.</li> </ul>	Places that provide only one of the following types of services: <ul style="list-style-type: none"> <li>• Nail treatment.</li> <li>• Massage.</li> <li>• Hair loss improvement.</li> </ul> Services provided by: <ul style="list-style-type: none"> <li>• Public hospitals/clinics.</li> <li>• Facilities operated by the government.</li> <li>• Schools and education institutions.</li> <li>• Charitable organizations.</li> <li>• Clubhouses in hotels and residential properties.</li> </ul>
<i>Fitness services</i>	
Fitness centers with exercise machines and provide a variety of fitness services:	Establishments without exercise machines:

<ul style="list-style-type: none"> <li>• Personal training.</li> <li>• Yoga and dance classes.</li> <li>• Martial arts training.</li> <li>• Advice on diets for bodybuilding and weight control.</li> </ul> <p>Services provided by registered health care professionals or private health care facilities are not exempted.</p>	<ul style="list-style-type: none"> <li>• Ballet schools.</li> <li>• Dance studios.</li> <li>• Tai chi studios.</li> </ul> <p>Services provided by:</p> <ul style="list-style-type: none"> <li>• Public hospitals/clinics.</li> <li>• Facilities operated by the government.</li> <li>• Schools and education institutions.</li> <li>• Charitable organisations.</li> <li>• National sports associations.</li> <li>• Clubhouses in hotels and residential properties.</li> </ul>
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