



**CONSULTATION ON THE DRAFT ENFORCEMENT
GUIDELINES FOR THE TRADE DESCRIPTIONS
(UNFAIR TRADE PRACTICES)(AMENDMENT) ORDINANCE
2012 (“the Ordinance”)**

SUBMISSIONS

The Law Society has reviewed the draft enforcement guidelines (“Guidelines”) for the Ordinance. In respect of the compliance-based enforcement mechanism set out in the Guidelines, we have the following comments.

1. More emphasis should be made in the Guidelines on the following principles:
 - a. notwithstanding the introduction of a compliance-based enforcement mechanism, the Enforcement Agency has not softened its stance on criminal prosecution against offending traders;
 - b. the decision to prosecute will not be fettered by any offer of an undertakings by offending traders;
 - c. offending traders have no right of election over enforcement measures;
and
 - d. undertakings should not be regarded as a “soft option”

2. Section 30L(5) of the Ordinance empowers the Enforcement Agency to cause an undertaking to be published. The draft guideline should provide more details on the following:
 - a. Who is going to publish the undertakings given by offending traders?
 - b. Who is going to maintain and update the database of undertakings after publication?

- c. Will the public be able to have free access to any database e.g. on the internet?
 - d. If a database of undertakings is to be maintained, who will be responsible for the administrative costs of updating the same?
 - e. Will the Enforcement Agencies advertise the database at the airport and border crossings into Hong Kong so that foreign visitors/tourists will have information on the existence of this database?
3. The contents of any undertaking should be tailored to individual circumstances. As undertakings can be imposed on individuals, such parties should receive information on the potential consequences arising from any breach.

The Law Society of Hong Kong

19 March 2013