

**A brief discussion about Hong Kong consumer sales law's application to online shopping and digital content purchases, as well as possible reforms for better protection of online shopping in the context of digital content purchases**

Detailed topic: The development of digital technologies has brought about a rapid growth in online shopping worldwide. Nowadays, consumers are able to purchase a variety of services and products online. Among them is digital content (examples of which include software, music, computer games and applications or “apps”) which may simply be downloaded online upon purchase. Should consumer sales law in Hong Kong be reformed to address such inadequacies as may be identified to provide better protection for consumers shopping online, especially in the context of digital content purchases? If so, why and how? If not, why not?

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## **1. Introduction**

As digital world continues to develop, digital business had been blooming. Hong Kong's value of business receipt through electronic means amounted to HK\$491.7 billion in 2018, up by 73% over 2012<sup>1</sup>.

Simultaneously, the Consumer Council received a total of 5,403 complaints related to online shopping in 2014-2015, an 52% increase over the previous year<sup>2</sup>. It has become increasingly important for Hong Kong to take digital purchases seriously. The lack of a functioning legal framework to deal with disputes caused by digital content contracts might hinder the further development of market for such (Lucie Guibault et. al, 2011).

Through this essay, I wish to give some shallow insight on how the rights of consumers on e-commerce and digital content purchasing could be done and calls on law reform in this area of business. I would start by presenting a globally recognized structure of such protection; then the current position of Hong Kong in digital commerce fields; and finally, by making references to foreign jurisdictions' implementation of such law, suggests possible reforms that Hong Kong can take.

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<sup>1</sup> Census and Statistics Department (2020a).

<sup>2</sup> Consumer Council. (2015) *Consumer Council Annual Report 2014-15*.

## **2. Structure for comprehensive online consumer protection**

Suggested by World Economic Forum in 2019, in a consumer-business relationship, there are three stages, namely<sup>3</sup>:

- a. “Pre-purchase” (including provision of sufficient information for the products sold online) (**Stage a**);
- b. “Purchase” (including rights on contract termination and mandatory cooling-off period) (**Stage b**); and
- c. “Post-purchase” stage (including proper redress avenues, such as customer-friendly good-returning or refunding policies and low-cost dispute resolution mechanism) (**Stage c**).

Even though stage a) and c) may not necessarily be that important in purchasing physically, they are key for e-consumers as transactions are done virtually and the nature of e-purchasing made investigation of quality and suitability of products impossible until successful delivery of the product<sup>4</sup>. The former is important for reasonable expectation of product by consumers and the latter is crucial for refunding in case of poor goods.

## **3. Current position of Hong Kong**

Currently Hong Kong does not have specialized statutes to regulate the acts in E-commerce. Relevant generic contract laws include:

- Cap.26 Sales of Goods Ordinance (SOGO) for goods;
- Cap.457 Supply of Services (Implied Terms) Ordinance (SOSITO) for services; and
- Cap.362 Trade Descriptions Ordinance (TDO) for products, i.e., both goods and services

Under TDO, there are general sections where it stresses the importance of providing true and non-contravening information about the products<sup>5</sup>

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<sup>3</sup> Ioannis Lianos et.al, World Economic Forum. (2019, March). *The Global Governance of Online Consumer Protection and E-commerce: Building Trust, the White Paper*. p.8

<sup>4</sup> Legislative Council. (2020, June 11). *E-consumer protection*. ISE08/19-20

<sup>5</sup> Cap.362 Trade Descriptions Ordinance, Section 5

as well as in advertisements<sup>6</sup>. Moreover, it forbidden false trade descriptions and forged trademarks<sup>7</sup> as well as unfair trade practices<sup>8</sup> such as misleading omissions<sup>9</sup> and bait advertising<sup>10</sup>. Therefore, it is often claimed to be sufficient to cover Stage a). However, when compared to foreign jurisdictions such as United Kingdom, which listed out a list of required information under different circumstances, this ordinance may still be uncertain to a certain extent. This would be discussed later in this essay, in Part 5 UK.

As for SOGO and SOSITO, they are generic contract laws that provide regulation for sales of goods and services respectively. However, it had been identified that they do not address the distant nature of an online transaction. Together with TDO, they did not require online retailers to provide information such as contact details, procedures of order cancellation and goods refunding or returning policy, as problems arising from this information are only present for virtual transactions, where the consumer and any representatives from the retailers do not meet each other face-to-face. Such is very important as research shows consumers found most problematic in e-commerce is lack of information and unclarity or complexity of information<sup>11</sup>. This is lacking according to Stage a) for insufficient information<sup>12</sup>. Moreover, it doesn't set out mandatory cooling-off period<sup>13</sup>, which means a period after conclusion of contract where a supplier allows its customers to unilaterally cancel the contract without having to provide a reason or pay remedies (Lucie Guibault et. al, 2011, 3.3.1). As to Stage c), there is no standardized goods refunding or returning polices for online shopping<sup>14</sup> and so far, this relies heavily on the e-commerce platforms themselves, for example Taobao and Carousell.

Hence, it can be said more has to be done to regulate such field. There aren't clear and enough information requirement in Stage a), lacking

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<sup>6</sup> Ibid, Section 6

<sup>7</sup> Ibid, Part 2

<sup>8</sup> Ibid, Part 2B

<sup>9</sup> Ibid, Section 13E

<sup>10</sup> Ibid, Section 13G

<sup>11</sup> Europe Economics. (2011) *Digital Content Services for Consumers: Assessment of Problems Experienced by Consumers (Lot 1), Report 4: Final Report, London*. Pp.74-75

<sup>12</sup> See footnote four.

<sup>13</sup> For more discussion about why mandatory cooling-off period is important, see Part 4

<sup>14</sup> See footnote four.

mandatory cooling-off period in Stage b), and non-standardized Stage c) made it a possible victim to exploitation. It is necessary to fill in the holes to safeguard the rights of the online consumers.

#### **4. Necessity of such reform**

Other than the reason of possible exploitation of existing law, there are a couple more reasons that such reform is necessary.

It is necessary for the government to lay out mandatory details the online retailers must provide in an organized and clear manner, as currently there are a lot of uncertainties. Take e-book as an example. Its physical counterpart after bought or borrowed from libraries can be read or lending it to a friend without anyone noticing. This is rarely the case for e-books as there may be different limitations set by the e-book platforms (Lucie Guibault et. al, 2011). There may exist limitation on number of copies it can be made, devices it can be played on, whether it can be printed or lent to others and how long the consumer can access the file of the book from the platform. Even though it can be usually found in the terms and conditions, this led to another problem of boilerplate implied terms. Their effectiveness and presence is questioned by many, and would be extremely complex and impractical for consumers to read through all of them, especially in today's day and age where digital purchases sped up the process of purchasing (Purchasing online only means pressing a few buttons). What's worse is that such terms can vary from different publishers and platforms, leading to further confusion within the consumer group. Hence, just in the scenario of e-books, it already causes extreme confusion for consumers that uses different platforms and may led to "mis-consumption" and errors.

Additionally, there are existing issues to apply generic contract law to digital content contracts. For instance, formation of contract online are often non-negotiated and of unfair bargaining power. A prime example can be seen within the European Union (EU). Usually, either there is no contract, or the consumer is simply ignored or prevented from using the service even if the contract has been concluded<sup>15</sup>. Even though the

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<sup>15</sup> Lucie Guibault, Natali Helberger, Marco B.M. Loos, *The Regulation of Digital Content Contracts in*

existing contract laws extensively regulates Stage a) and b), it rarely regulates what amounts as a valid contract or decides when a term is effectively included in an online contract. Without a resolution method provided at the discretion of respective service provider or sound, definite and certain legal intervention, consumers are exposed to unfair online trading without remedy.

As discussed in Part 3, existing legislation did not make cooling-off period mandatory. However, this is necessary as this right of withdrawal gives buyers a time for reflection. In physical purchase, purchasing means thinking through whether it suits one's need, and performing actions such as swiping one's credit card to finish the purchase; in digital purchasing, all the purchasing procedures includes merely viewing several images, comments from other buyers, and pressing several buttons, then the hard-earned money of the public goes directly into the pockets of the retailers. Thus, all the above made legal reform necessary and urgent.

## **5. Foreign development of relevant laws and respective supporting measures**

As HK currently lack its own e-commerce legislation, a major part of the reform would involve in legislation establishments. There are different approaches around the world and the following will discuss the part that is worth our attention or can even serve as a primary blueprint for local legislation.

### **a. Mainland China (Liabilities of parties in digital transactions; Information provision in Stage a))**

In the recent E-commerce law coming into effect from 1 January 2019 in Mainland China, it gives light to a viable way on how liabilities are distributed to different service providers on digital transactions, which is beneficial to the consumer as they would understand where the responsibility is in case when transaction failures and mistakes occur. It

firstly classifies them into three distinct categories, namely<sup>16</sup>:

- i. E-commerce operators: persons, entities or associations selling products online on any website or platforms. Examples include WeChat, a messaging, social media and mobile payment app.
- ii. Platform operators: persons or associations providing the platform for digital business. Examples include Taobao, a platform with third-party businesses selling products
- iii. E-commerce operators on platforms: sellers selling products on e-commerce platforms. Examples include merchants on Taobao.  
**(Third-party operators)**

Under such law, *platform operators are to provide open, fair, and just services to third-party operators*<sup>17</sup> as well as *provide transparent service agreements and transactions rules, in the case of attempts to change said rules, comments should be sought seven days prior to the change being implemented*<sup>18</sup>. This puts statutory responsibility for providing transparent and consulted rules for the platform operators, rather than the current system in Hong Kong, where the establishment and amendments of said rules can be done directly without notifications.

Additionally, the legislation requires *e-commerce operators to provide comprehensive, accurate and timely information of commodities or services; false or misleading publication related to the product is strictly forbidden*<sup>19</sup>. Equally, *comments on products provided by third party operators cannot be deleted by the platform operators*<sup>20</sup>. This ensures that consumers are entitled to the *right to know* and *right of choice*. Any information provided by the third-party operators cannot be sabotaged or censored by platform operators under any circumstances, even if the description included external links provided to better showcase the product, which is often unfavourable for platform operators as they wish

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<sup>16</sup> The Square, HORIZONS Corporate Advisory. (2018, October 29). *China's first e-commerce law to go into effect from 1 January 2019*. [http://www.thesquare.blog/2018/10/29/chinas-first-e-commerce-law-to-go-into-effect-from-1-january-2019/?utm\\_source=mondaq&utm\\_medium=syndication&utm\\_term=Consumer-Protection&utm\\_content=articleoriginal&utm\\_campaign=article](http://www.thesquare.blog/2018/10/29/chinas-first-e-commerce-law-to-go-into-effect-from-1-january-2019/?utm_source=mondaq&utm_medium=syndication&utm_term=Consumer-Protection&utm_content=articleoriginal&utm_campaign=article)

<sup>17</sup> E-Commerce Law of the People's Republic of China (Adopted at the Fifth Session of the Standing Committee of the 13<sup>th</sup> National People's Congress on August 31, 2018. Article 32.

<sup>18</sup> Ibid. Article 34.

<sup>19</sup> Ibid. Article 17.

<sup>20</sup> Ibid. Article 39(2)

to keep their users on their own platforms for as long as possible<sup>21</sup>. However, such regulations echo with Article 32 which states *platforms should provide open services to third-party operators*. In fact, this is quite a crucial regulation to balance the bargaining power between consumer and the platform, as consumer would be able to hold the *right to know* everything the third-party operator wishes to demonstrate on the product, avoiding the platform operator abusing their power to amend the information without limitations.

b. United Kingdom (British legal definition for e-commerce contracts and digital content; Information provision detailed requirement; Cooling Period; Enforcement methods)

In 2013, the British parliament passed the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations (CCR). It gives out a possible definition of e-commerce contracts and digital content, as well as a strict statutory requirement of information online retailers ought to provide, and possible enforcement methods of such law.

Under CCR, digital content is defined as *data which are produced and supplied in digital form*<sup>22</sup>. This definition may suffice general judiciary usages but in specific case may turn out to be uncertain. For example, synthetic music that adopts recordings of physical instruments may be debatable on whether it falls under digital content using this definition, as it is not completely produced in digital form.

In CCR, it gives its definition for distance contract (essentially treated as digital contract definition in UK), that is<sup>23</sup>

*“a contract concluded between a trader and a consumer under an organized distance [product] scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.”*

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<sup>21</sup> This is shown by policy of Microsoft Bing. Instead of purely presenting website results, in some cases they will give a definite answer in several words. This is viewed as attempts to keep users on Bing and maintain longer usage time.

<sup>22</sup> Consumer Contracts (Information, Cancellation and Additional Charges) Regulation Part 1 Section 5

<sup>23</sup> See footnote twenty-two.

This gives a definition we can use to distinguish whether generic contract law or e-commerce law shall be adopted. However, this definition requires the *exclusive use* of distance communication, adopting a reasonable interpretation, this forbids any chance for physical meetups to satisfy such definition. Admittedly, if the transaction is purely digital, such as purchasing video games online, there are no problems about such definitions. Yet, in specific case, this may be lacking.

Take the popular HKTV mall online shopping service as example. After purchasing goods on their respective app and paying the amount, the courier then delivers the physical good purchased by digital means to the customer's home and confirms the delivery. In this case, all the contract procedures are done virtually, thus should be a distance contract. Yet, it can be argued that the courier, as the representative from HKTV mall platform and the seller, requires physical meet-up with the customer to deliver the goods, thus the definition of distance contract fails. Similar "representative" argument had been suggested before when justifying the postal rule and had been widely accepted<sup>24</sup>. If this argument is valid, then the above transactions would not be defined as distance contracts and not under the coverage of said law. Thus, the definition may require further polishing in Hong Kong.

The statute also states that the trader must give the consumer a list of information stated in Schedule 2 of said statute in a *clear and comprehensible* manner before the consumer is bound<sup>25</sup>. Other than some generic information, some specific to digital contract includes

- the functionality, including technical protection measures (TPM) of digital content<sup>26</sup>; and
- any relevant compatibility of digital content with hardware and software the trader should have known<sup>27</sup>.

These are extremely important in digital content transactions. The trader ought to inform the consumer *any digital management tools used*

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<sup>24</sup> *Bryne & Co v. Van Tiehnhoven & Co* [1880] 5 CPD 344

<sup>25</sup> *Ibid.* Section 13(1a)

<sup>26</sup> *Ibid.* Schedule 2(v)

<sup>27</sup> *Ibid.* Schedule 2(w)

to restrict what they can do with the digital materials (TPM)<sup>28</sup>, to avoid confusion of consumers, when they found out they cannot download the file as an example<sup>29</sup>. Moreover, compatibility should be clearly provided before the consumer ever consider purchasing the product, as this is also an important factor to determine whether the consumer would need and willing to purchase such product. Without giving such information, the consumer may feel scammed as they purchased such services but end up unable to use it on their own device due to mere technical issues.

CCR also states that it is mandatory for the trader to provide a cancellation period that lasts for 14 days for any service or digital content contracts<sup>30</sup>. This can serve as a reference for establishment of similar period in Hong Kong. However, it is noted by critics that this does not necessarily equals that the consumer can use the goods however they wish and return it within 14 days. An example given by BEB Consultancy illustrates best that an unpicked and scratched toy purchased online would not be entitled to a refund under cancellation period<sup>31</sup>. Such an idea may be stressed when legislating relevant laws in Hong Kong.

In Britain, the regulations are enforced by the Competition and Markets Authority (CMA), together with the Trading Standards Departments of the local authorities. They are responsible for many, including breaches of consumer protection law as well as solving problems existing in digital markets. Usually, they would first notify the breacher and ask them to remedy the breach. If such breach is serious or a warning has been ignored, an undertaking may be asked to observe the regulation for future breaches. Only *as a last resort*, proceedings be taken in court to force one to comply with the regulation upon repeated breaches<sup>32</sup>. This can be served as a part of the blueprint to reform the local Consumer Council.

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<sup>28</sup> Donald Taylor, Simon Fraser University Library. (2022, April 4<sup>th</sup>). *Technological Protection Measures (TPM) – Fact Sheet*. <https://www.lib.sfu.ca/help/academic-integrity/copyright/technological-protection-measures>

<sup>29</sup> See e-book illustration in Part 4 for more examples.

<sup>30</sup> Consumer Contracts (Information, Cancellation and Additional Charges) Regulation Section 30(2)

<sup>31</sup> Kerry Gibbs, BEB Consultancy. (2018, December 19). *Understanding the “14 day Cooling Off period” when purchasing goods*. <https://bebconsultancy.co.uk/understanding-the-14-day-cooling-off-period-when-purchasing-goods/>

<sup>32</sup> MyLawyer UK. *Consumer contract regulations*. <https://www.mylawyer.co.uk/consumer-contract-regulations-a-A76064D77391/>

c. South Korea (Enforcement and power allocation; Broader definition of e-commerce transaction)

Speaking of enforcement, the approach South Korea take is also similar. In South Korea, the relevant legislation is Act on the Consumer Protection in Electronic Commerce and is enforced by the Korean Fair Trade Commission (KFTC).

The power granted by the statute<sup>33</sup> is like that of Britain, where it can investigate<sup>34</sup> and mediate<sup>35</sup>, disclosing necessary information to the public<sup>36</sup> and encourage businesses to protect their userbase<sup>37</sup>, as well as enter litigation in case of disputes on their decision. An example can be seen in a dispute between KFTC and GTT<sup>38</sup>.

Moreover, in the same act, South Korea provided us with their own definition involving digital transactions. They define *electronic commerce transaction* as<sup>39</sup>

*“commercial activity in the trade of [products], fully or partially conducted by means of electronic document (information in electronic form in an information processing system)”*

This definition is simple, what this definition essentially grants us is to classify any transaction as e-commerce transaction if an electronic document is used in any phase of ordering, making payment or performance, without many uncertainties.

Admittedly, this definition serves for *e-commerce transactions* while that in Britain serves for *distance contract*, which in nature is different. However, we can still compare whether which one grants fewer uncertainties in their own context<sup>40</sup>. As discussed in the Britain part, the

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<sup>33</sup> Act on the Consumer Protection in Electronic Commerce, Etc. Act No.14142.

<sup>34</sup> Ibid. Article 9(1)

<sup>35</sup> Ibid. Article 9(2)

<sup>36</sup> Ibid. Article 13

<sup>37</sup> Ibid. Article 24(1)

<sup>38</sup> GTT. (2022, February 12). *Korea Fair Trade Commission (KFTC) – Appeal Proceedings Update*.

<https://gtt.fr/news/korea-fair-trade-commission-kftc-appeal-proceedings-update>

<sup>39</sup> Ibid. Article 2.

<sup>40</sup> In practical sense, they are treated similarly. South Korea does not legislate on distance contract as e-commerce transaction satisfies the practical usage of the former and vice versa.

definition for *distance contract* is complicated with some potential points that can be exploited, in contrast to the South Korean one that is simple and easy to interpret as they adopt a '*if present, then included*'<sup>41</sup> attitude.

d. Germany (Defects; obligation of seller)

In the latest Bürgerliches Gesetzbuch (Civil Code) that came into force on January 1, 2022, Section 327e provided us a method of determination whether a digital product (including digital content) has any defects under three requirements, which only certain amount of them ought to be satisfied. Other than the generic ones, some specific to digital contents include:

- subjective requirement: necessary accessories, instructions, customer services or updates agreed in the agreement must be provided;
- objective requirement: the product should correspond with the nature of a test version or preview of the same and the most recent version should be available to all; and
- integration requirements: the product must be integrated and if lacking may not be due to improper integration of the organization. Integration means the connection and incorporation of the digital product with or into the components of the consumer's digital environment so it can be used. (i.e., optimization of the software).

While a defect may be spotted very easily on a physical product, such on digital product is often hard to define. The German Civil Code gave us a very good example to what amounts as defect in digital products and even adopted the idea of integration or optimization, which can be viewed as an extension of an objective requirement, that it must have a merchantable quality, for instance, a lagging computer game that can only run at 5 frames per second is not a merchantable game and does not satisfy the integration requirement.

The Code also states that the seller's obligation to update the digital product extend to updates including function-maintaining updates and security updates and they must be provided free of additional charges. Even though this had been a social responsibility of game studios, the

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<sup>41</sup> If e-documents are *present* in any stages, *then* it is *included* in the definition.

Code essentially included this as a mandatory statutory obligation. An example of such can be seen in the popular game CyberPunk 2077, which is often joked as CyberBug 2077<sup>42</sup>, for its vast number of errors in game physics and lightings etc. throughout the gameplay. Free updates are later provided to the public to patch the buggy game<sup>43</sup>. However, not all companies are responsible like CDProjectRed (Creator of CyberPunk 2077). In 2016, a console company called Fuze Technology published their own gaming console called Fuze F1. The console requires full connection to their own servers through the internet to maintain normal operation. However, the company wind up in November 2016 and the servers closed in 2019, rendering Fuze F1 a complete piece of junk that is incapable of entering its system<sup>44</sup>. Therefore, it may still be necessary to make it a statutory requirement.

e. European Union (Alternative Disputes Resolution (ADR))

The EU launched a free Online Dispute Resolution (ODR) platform, operated by the European Commission, where EU consumers and retailers can submit their disputes arising from online purchases to ADR online. It is mandatory for online retailers in EU to provide a link to ODR platform on their websites<sup>45</sup>.

A consumer who has disputes with online retailer can fill out a complaint form that will be sent to the retailer in question. If both parties can agree on an ADR entity, the ODR platform will automatically transfer the complaint to an independent third party to resolve the dispute and reach an outcome within 90 days.

This lowers the cost for resolving disputes rather than having to go through costly procedures. Redress can be easily sought even for low-value daily purchases. Retailers could also avoid excessive cost to settle potential disputes and avoid further damage to reputation if they had to enter litigation.

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<sup>42</sup> stevenposting. (2020, December 16). *CyberBug 2077*.

[https://www.youtube.com/watch?v=2SmDUHekjMc&ab\\_channel=stevenposting](https://www.youtube.com/watch?v=2SmDUHekjMc&ab_channel=stevenposting)

<sup>43</sup> CDProjectRed, Steam. (2021, January 23). *Patch 1.1*.

<https://store.steampowered.com/news/app/1091500/view/3056223484251004469>

<sup>44</sup> Wikiwand. 戰斧 F1 Fuze F1. <https://www.wikiwand.com/zh-hk/%E6%88%98%E6%96%A7F1>

<sup>45</sup> Legislative Council. (2016, October 25). *Consumer protection in electronic commerce*. ISE01/16-17

f. Oceania (Classifying digital content as goods or services)

In Australia, Justice Edelman declared that computer software was ‘goods’, together that ‘non-executable data (music and html images) was not computer software’ in 2016<sup>46</sup>. New Zealand took a similar approach. However, there exist a legal gap. E-books and digital music, among others, require executable files to work, but aren’t themselves executable files, thus would not constitute as computer software, hence not goods, and not under the protection of Australian consumer law. Hence, when legislating local e-commerce law, it is recommended to avoid this issue of having to classify digital content as either goods or services before the legislation can be applied.

6. **Conflict of possible stakeholders and possible reforms**

Parties that may be involved in this legal reform, including but not excluding, consumers, business operators and platform operators.

While there had been extensive discussion about why the consumers require sufficient protection, the protection of rights of business and platform operators (BPOs) is often neglected. BPOs can also be separated based on their sizes as well. Larger BPOs tend to care less about such reform as they are willing to do a bit more procedures in order to better their users’ experience on their platform and earn a better word-of-mouth in the process. However, it may be difficult for smaller BPOs, especially those that are small and medium enterprises. They often lack resources of all kinds including financial, thus introducing new complicated legislations they must follow, undoubtedly increased their operation cost, such as finding legal advisory firms to provide guidance in this field, to make sure they did not accidentally breach the law. This increases the entrance level for doing digital business and would be a possible hinderance to the e-commerce industry.

Moreover, the provision of cooling-off period may be another key concern of the BPOs, especially in the context of digital content purchases. Either the legislation should give clear instruction on what can and should be done within the period or it should not be adopted as it may

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<sup>46</sup> *Valve Corporation v. Australian Competition and Consumer Commission* [2017] FCAFC224 (Dec 17)

cause confusion in implementation. An example can be seen whether computer games can be made downloadable for customers during the period. If no, then this may frustrate them as they cannot enjoy what they had purchased immediately. If yes, then this period has essentially no difference with short-term refunding policies in digital content purchases, such as the current two hours free refunding policy of computer games done by Steam platform and would only lead to excessive operation cost to BPOs.

Platform operators may also be concerned that as the Chinese approach forbidden them to edit information provided by business operators, may lead to a hard time for them to keep their platform free from undesired content such as sex and violence.

Therefore, when legislating the local e-commerce law, it can be done in a couple of stages. The initial legislation, as a compromise, can introduce laws that covers most of the sectors discussed above but with a shallower degree of regulation, such as adopting the Chinese approach about information provision in Stage a), before the British approach on clear instructions after the industry understand a brief idea on what they need to do. Same can be performed with the mandatory cooling off period, to make it optional but encouraged before making it mandatory after analyzing the effectiveness of the initial legislation. As to the concern about information editing, the statute may offer a list of items that can be deleted, such as suicidal encouragement texts and bloodstain violence. However, these compromises may render lower degree of protection offered to consumers as parts are changed to optional. Yet it is expected that both BPOs and consumers would welcome such changes as this provide clear liability differentiation and avoids costly disputes on legal issues without such legislation for the former and is an important recognition of rights for the latter.

As regarding the enforcement of such law, the British and South Korean fair-trade commissions and authorities are all entitled to investigate, mediate, advise and enter litigations. However, the local Consumer Council has limited power granted by Cap.216 Consumer Council Ordinance. They remain as an advisory body as its power is

limited to matters of itself<sup>47</sup> and testing of special goods and services to see whether it is up to international standards<sup>48</sup>. Therefore, if the legal reform is to grant Consumer Council the capability to enter proceedings, Cap.216 s.5 needs amendment in order to catch up with the international standards.

Additionally, Consumer Council has a Legal Action Fund, but that is solely for assisting the general public to enter litigation against other parties rather than themselves. Even so, the action fund had been under heavy deficit for the past few years as seen in Figure 1. It is also worth noting that the income of the Consumer Council relies heavily on government subventions as seen in Figure 2. Therefore, they may not be able to financially support additional fees to enter litigations. Without sufficient financial resources, it would be impractical for the Council to exercise their power. There shows that they need some reform on financial spendings as well if they are given such power.

As for ADR, it may be necessary to establish online mediation methods as soon as possible for digital purchase disputes like that of EU. Unlike the costs for carrying out litigation, ADR especially something similar to ODR are usually much more affordable given the tight budget of Consumer Council. Similar to ODR, they can establish an online platform where third party independent mediator would be assigned to cases with trade disputes. Forms including the details of the dispute from the view of the consumer, such as items purchased and reasons of disputes (unsatisfactory quality etc.) Then the mediator would contact the online retailer and acquire information from the online retailer's perspective and make his decision to resolve the dispute within a certain period. The Consumer Council can consider this first before determining whether it is necessary to amend relevant legislation to give them the power to enter litigation.

## **7. Conclusion**

After the pandemic which rises the prevalence of online shopping and the continual developments of digital content markets, there is an

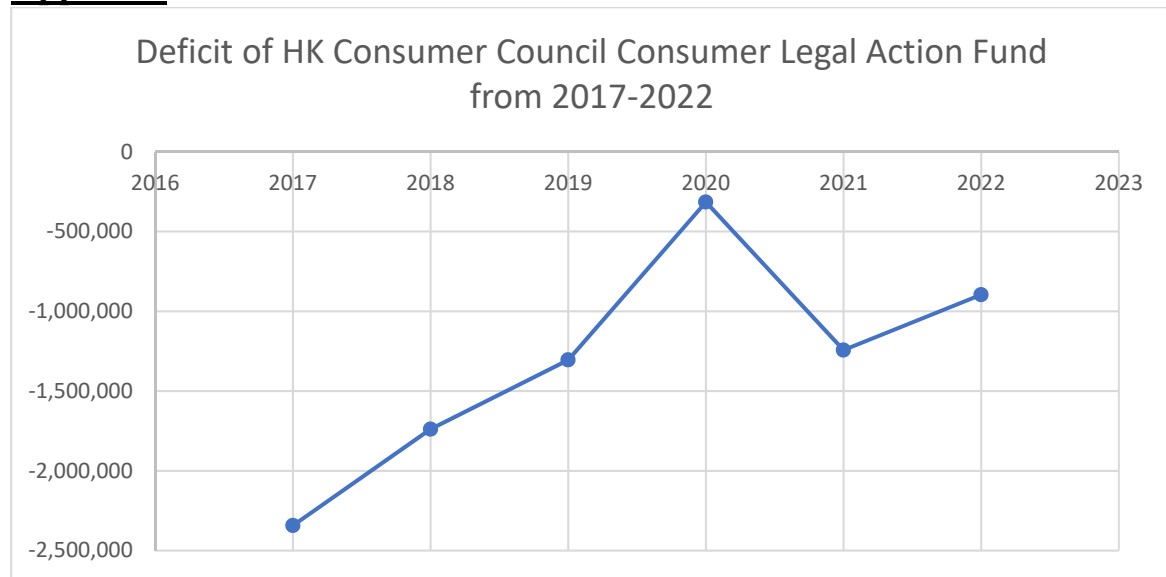
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<sup>47</sup> Cap.216 Consumer Council Ordinance section 5(2a,b,d,e,f,g)

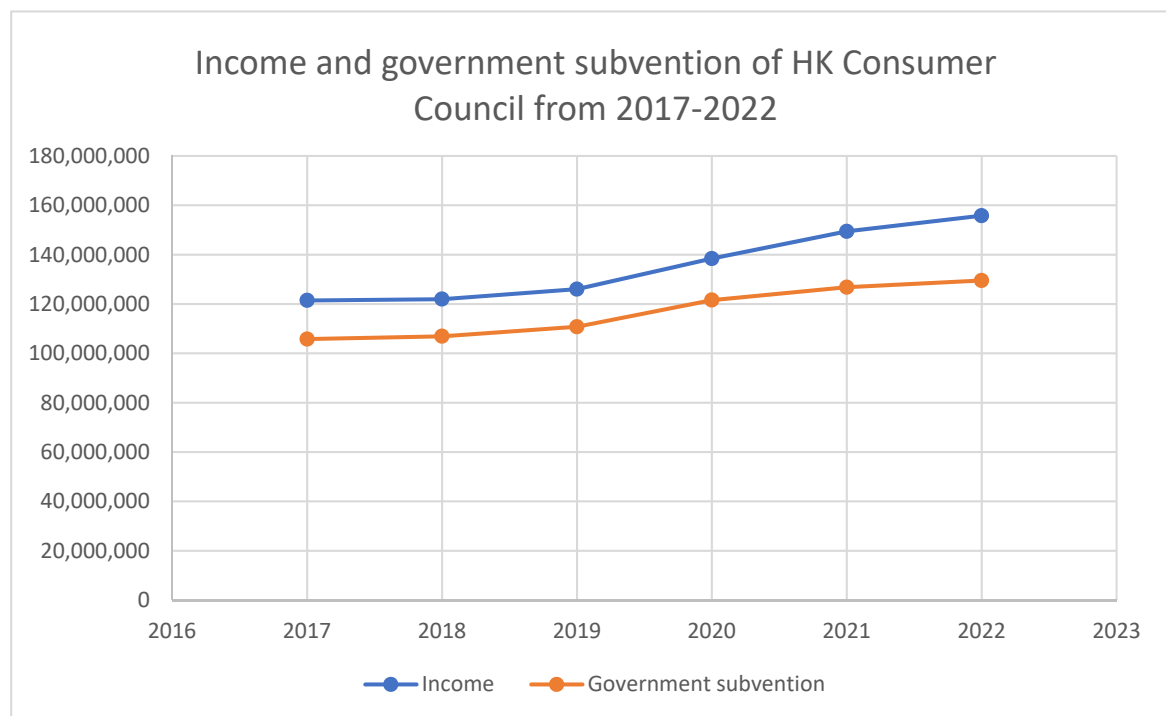
<sup>48</sup> Ibid. section 5(2c)

impending need for the government to create, improve and amend the current laws for e-commerce and digital purchases. As to how, in light of examples provided by foreign jurisdictions as blueprints, some examples and key takeaways from statutes and enforcement methods around the world had been listed out and can be a valuable reference for us to learn and localize, so as to better safeguard consumer rights.

## Appendix



**Figure 1** Source: Consumer Council. *Annual Reports*. <https://www.consumer.org.hk/en/annual-report>



**Figure 2** Source: Consumer Council. *Annual Reports*. <https://www.consumer.org.hk/en/annual-report>