

立法會
Legislative Council

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From : Clerk to the Legislative Council
To : All Members of the Legislative Council

Council meeting of 6 January 2010

**Proposed amendments to motion on
“Establishing a comprehensive consumer protection regime”**

Further to LC Paper No. CB(3) 282/09-10 issued on 22 December 2009, four Members (Hon WONG Kwok-hing, Dr Hon Samson TAM Wai-ho and Hon Fred LI Wah-ming and Hon Vincent FANG Kang) have respectively given notice of their intention to move separate amendments to Hon Starry LEE Wai-king’s motion on “Establishing a comprehensive consumer protection regime” scheduled for the Council meeting of 6 January 2010. As directed by the President, the respective proposed amendments will be printed in the terms in which they were handed in on the Agenda of the Council.

2. To assist Members in debating the above motion and amendments, I set out below the procedure to be followed during the debate:

- (a) Hon Starry LEE moves her motion;
- (b) the President proposes the question on Hon Starry LEE’s motion, and orders a joint debate;
- (c) the President calls on the four Members, who intend to move amendments, to speak in the following order, but no amendment is to be moved at this stage:
 - (i) Hon WONG Kwok-hing;

- (ii) Dr Hon Samson TAM;
 - (iii) Hon Fred LI; and
 - (iv) Hon Vincent FANG;
- (d) the President calls upon the designated public officer(s) to speak;
 - (e) joint debate on the motion and the amendments follows thereafter;
 - (f) the President gives leave to Hon Starry LEE to speak for the second time on the amendments;
 - (g) the President calls upon the designated public officer(s) again to speak;
 - (h) in accordance with Rule 34(5) of the Rules of Procedure, the President has decided that he will call upon the four Members to move their respective amendments in the order set out in paragraph (c) above. The President invites Hon WONG Kwok-hing to move his amendment to the motion, and forthwith proposes and puts to vote the question on Hon WONG Kwok-hing's amendment;
 - (i) after Hon WONG Kwok-hing's amendment has been voted upon, the President deals with the other three amendments; and
 - (j) after all amendments have been dealt with, the President calls upon Hon Starry LEE to reply. Thereafter, the President puts to vote the question on Hon Starry LEE's motion, or her motion as amended, as the case may be.

3. For Members' ease of reference, the terms of the original motion and of the motion, if amended, are set out in the **Appendix**.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

(Translation)

**Motion debate on
“Establishing a comprehensive consumer protection regime”
to be held at the Legislative Council meeting
of Wednesday, 6 January 2010**

1. Hon Starry LEE Wai-king’s original motion

That, incidents of traders using misleading, deceptive, high-pressure, intimidating, harassing or other unfair means to market products or services are common in recent years, undermining the interests of consumers, and many people consider that consumer protection in Hong Kong is inadequate; in this connection, this Council urges the Government to establish a comprehensive consumer protection regime, including:

- (a) to require a cooling-off period be provided for agreements involving membership, package tickets and other pre-paid services to allow consumers to terminate such agreements within a specified period after signing an agreement to purchase the relevant goods or services without having to pay any fees or charges;
- (b) to require traders to issue in writing the terms and conditions within a specified period for any service agreement reached verbally through on-street promotion or over the telephone, and that the agreement will only be effective upon a signed confirmation by the consumer;
- (c) to monitor effectively the services provided by telecommunications service operators and those services provided by a third party through such operators, such as mobile messages and content services, etc. so as to ensure that the marketing practices, terms and conditions of services and charges are transparent and fair;
- (d) to extend the scope of the Unsolicited Electronic Messages Ordinance to include person-to-person commercial telemarketing calls, and require the caller to stop all marketing activities immediately upon a roaming signal coming from the telephone of the receiver;
- (e) to introduce legislative amendments to enhance the regulation of multi-level marketing;
- (f) to empower the Consumer Council to act as the proctor for consumers whose interests are undermined to initiate court proceedings to seek compensation from unscrupulous traders when required; and

- (g) to formulate a comprehensive Consumer Interests Protection Ordinance to plug the loopholes arising from the existing fragmented and discordant legislation, and to fully regulate unfair trade practices involving goods and services; and at the same time, in order to tie in with the implementation of the Consumer Interests Protection Ordinance, to confer administrative and law enforcement powers under the Ordinance to the Consumer Council, or establish the post of consumer protection commissioner to undertake the relevant administrative and law enforcement work.

2. Motion as amended by Hon WONG Kwok-hing

That, *to safeguard Hong Kong's international reputation as a shopping paradise, the SAR Government must face squarely the fact that* incidents of *certain* traders using misleading, deceptive, high-pressure, intimidating, harassing or other unfair *and unjust* means to market products or services are common in recent years, undermining the interests of consumers, and many people consider that consumer protection in Hong Kong is inadequate; in this connection, this Council urges the Government to establish a comprehensive consumer protection regime *to enhance consumers' rights to knowledge, choice and protection*, including:

- (a) to require a cooling-off period be provided for agreements involving membership, package tickets and other pre-paid services to allow consumers to terminate such agreements within a specified period after signing an agreement to purchase the relevant goods or services without having to pay any fees or charges;
- (b) to require traders to issue in writing the terms and conditions within a specified period for any service agreement reached verbally through on-street promotion or over the telephone, and that the agreement will only be effective upon a signed confirmation by the consumer;
- (c) to monitor effectively the services provided by telecommunications service operators and those services provided by a third party through such operators, such as mobile messages and content services, etc. so as to ensure that the marketing practices, terms and conditions of services and charges are transparent ~~and fair~~, *fair and just*;
- (d) to extend the scope of the Unsolicited Electronic Messages Ordinance to include person-to-person commercial telemarketing calls, and require the caller to stop all marketing activities immediately upon a roaming signal coming from the telephone of the receiver;
- (e) ~~to introduce legislative amendments to enhance the regulation of multi-level marketing~~ *while stepping up supervision, publicity and education to promote legal and proper marketing, to expeditiously amend the Pyramid*

Selling Prohibition Ordinance (Cap. 355) to combat and eliminate all types of fraudulent multi-level marketing practices;

- (f) to empower the Consumer Council to act as the proctor for consumers whose interests are undermined to initiate court proceedings to seek compensation from unscrupulous traders when required; ~~and~~
- (g) to formulate a comprehensive Consumer Interests Protection Ordinance to plug the loopholes arising from the existing fragmented and discordant legislation, and to fully regulate unfair ***and unjust*** trade practices involving goods and services; and at the same time, in order to tie in with the implementation of the Consumer Interests Protection Ordinance, to confer administrative and law enforcement powers under the Ordinance to the Consumer Council, or establish the post of consumer protection commissioner to undertake the relevant administrative and law enforcement work; ***and***
- (h) ***to further increase publicity and education on protection of consumers' rights to raise consumers' alertness; to foster transparency of information on sales of commodities and services on all fronts, so as to enhance consumers' rights to knowledge, choice and protection.***

Note: Hon WONG Kwok-hing's amendment is marked in ***bold and italic type*** or with deletion line.

3. Motion as amended by Dr Hon Samson TAM Wai-ho

That, ***as*** incidents of ***some*** traders using misleading, deceptive, high-pressure, intimidating, harassing or other unfair means to market products or services are common in recent years, undermining the interests of consumers, and many people consider that consumer protection in Hong Kong is inadequate; in this connection, this Council urges the Government to establish a comprehensive consumer protection regime, including:

- (a) to require a cooling-off period be provided for agreements involving membership, package tickets and other pre-paid services to allow consumers to terminate such agreements within a specified period after signing an agreement to purchase the relevant goods or services without having to pay any fees or charges;
- (b) to require traders to issue in writing ~~the~~ ***or by electronic means a notice of*** terms and conditions within a specified period for any service agreement reached verbally through on-street promotion or over the telephone, and that the agreement will only be effective upon a ~~signed~~ confirmation by the consumer;

- (c) to monitor effectively the services provided by telecommunications service operators and those services provided by a third party through such operators, such as mobile messages and content services, etc. so as to ensure that the marketing practices, ~~terms and conditions of services and charges are transparent and fair~~ ***services and charging clauses etc. can protect consumers' rights***;
- (d) to extend the scope of the Unsolicited Electronic Messages Ordinance to include person-to-person commercial telemarketing calls, and require the caller to stop all marketing activities immediately upon a roaming signal coming from the telephone of the receiver;
- (e) to introduce legislative amendments to enhance the regulation of multi-level marketing;
- (f) to empower the Consumer Council to act as the proctor for consumers whose interests are undermined to initiate court proceedings to seek compensation from unscrupulous traders when required; and
- (g) to formulate a comprehensive Consumer Interests Protection Ordinance to plug the loopholes arising from the existing fragmented and discordant legislation, and to fully regulate unfair trade practices involving goods and services; and at the same time, in order to tie in with the implementation of the Consumer Interests Protection Ordinance, to confer administrative and law enforcement powers under the Ordinance to the Consumer Council, or establish the post of consumer protection commissioner to undertake the relevant administrative and law enforcement work.

Note: Dr Hon Samson TAM Wai-ho's amendment is marked in ***bold and italic type*** or with deletion line

4. Motion as amended by Hon Fred LI Wah-ming

That, *as the existing legislation on protection of consumers' interests is not comprehensive*, incidents of traders using misleading, deceptive, high-pressure, intimidating, harassing or other unfair means to market products or services are common in recent years; ***when shops having received prepaid service fees close down, it is often impossible for the consumers to recover the prepayments***, undermining the interests of consumers, and many people consider that consumer protection in Hong Kong is inadequate; in this connection, this Council urges the Government to establish a comprehensive consumer protection regime ***by amending and enacting legislation***, including:

- (a) *to expeditiously amend the Trade Descriptions Ordinance to extend the prohibition of making false or misleading descriptions in the course of trade to services;*
- (b) *to enact legislation which stipulates that traders who do not provide services after receiving prepaid service fees will be subject to criminal prosecution, so as to protect consumers' interests;*
- ~~(a)~~(c) to require *by legislation* a cooling-off period be provided for agreements involving membership, package tickets and other pre-paid services, *such as telecommunication, beauty care and slimming services*, to allow consumers to terminate such agreements within a specified period after ~~signing an agreement to purchase~~ *making prepayments for* the relevant goods or services without having to pay any fees or charges *or undertake any other responsibilities;*
- ~~(b)~~ to require traders to issue in writing the terms and conditions within a specified period for any service agreement reached verbally through on-street promotion or over the telephone, and that the agreement will only be effective upon a signed confirmation by the consumer;
- ~~(e)~~(d) to monitor effectively the services provided by telecommunications service operators and those services provided by a third party through such operators, such as mobile messages and content services, etc. so as to ensure that the marketing practices, terms and conditions of services and charges are transparent and fair;
- ~~(d)~~(e) to extend the scope of the Unsolicited Electronic Messages Ordinance to include person-to-person commercial telemarketing calls, and require the caller to stop all marketing activities immediately upon a roaming signal coming from the telephone of the receiver;
- ~~(e)~~(f) to introduce legislative amendments to enhance the regulation of multi-level marketing;
- ~~(f)~~(g) to empower the Consumer Council to act as the proctor for ~~consumers whose interests are undermined~~ *the relevant consumers* to initiate court proceedings to seek compensation from *the* unscrupulous traders ~~when required~~ *concerned when significant public interests or the interests of a large number of consumers are undermined;* and
- ~~(g)~~(h) to formulate a comprehensive Consumer Interests Protection Ordinance to plug the loopholes arising from the existing fragmented and discordant legislation, and to fully regulate unfair trade practices involving goods and services; and at the same time, in order to tie in with the implementation of the Consumer Interests Protection Ordinance, to confer ~~administrative and~~ law enforcement powers under the Ordinance to the Consumer Council, or

establish the post of consumer protection commissioner to undertake the relevant administrative and law enforcement work.

Note: Hon Fred LI Wah-ming's amendment is marked in *bold and italic type* or with deletion line.

5. Motion as amended by Hon Vincent FANG Kang

That, *as incidents of some unscrupulous traders using misleading, deceptive, high-pressure, intimidating, harassing or other unfair means to market products or services are common in recent years, undermining the interests of consumers, and many people consider and damaging Hong Kong's reputation as a shopping paradise and affecting an absolutely large majority of the traders who conduct business honestly in the market, as well as giving rise to views that consumer protection in Hong Kong is inadequate; in this connection, this Council urges the Government to establish a comprehensive consumer protection regime, including comprehensively review the existing system, enhance measures to severely punish unscrupulous traders and actively consider the following measures to enhance protection of consumers' legitimate interests while maintaining a reasonable business environment:*

- (a) *only where it is fully justified*, to require a cooling-off period be provided for *certain* agreements ~~involving membership, package tickets and other pre-paid services~~ to allow consumers to terminate such agreements within a specified period *and under reasonable circumstances* after signing an agreement to purchase the relevant goods or services without having to pay any *additional* fees or charges;
- (b) to require traders to issue in writing the terms and conditions within a specified period for any service agreement reached verbally through on-street promotion or over the telephone, and that the agreement will only be effective upon a signed *or other forms of* confirmation by the consumer;
- (c) to monitor effectively the services provided by telecommunications service operators and those services provided by a third party through such operators, such as mobile messages and content services, etc. so as to ensure that the marketing practices, terms and conditions of services and charges are transparent and fair;
- (d) to ~~extend the scope of the Unsolicited Electronic Messages Ordinance to include~~ *appropriately regulate* person-to-person commercial telemarketing calls, and ~~require the caller to stop all marketing activities immediately upon a roaming signal coming from the telephone of the receiver~~ *such as designating prefix for those calls so that people can identify them readily and decide whether or not to answer them;*

- (e) to introduce legislative amendments to enhance the regulation of multi-level marketing;
- (f) *to perfect the mechanism of publishing the list of unscrupulous traders to enhance protection for consumers;*
- (~~f~~)(g) *to review the role and functions of the Consumer Council, including the need* to empower the Consumer Council to act as the proctor for consumers whose interests are undermined to initiate court proceedings to seek compensation from unscrupulous traders when required; and
- (~~g~~)(h) *to expeditiously review the existing relevant legislation on protection of consumers' interests to plug the loopholes in provisions under such legislation, and when necessary,* formulate a comprehensive Consumer Interests Protection Ordinance ~~to plug the loopholes arising from the existing fragmented and discordant legislation, and~~ to fully regulate unfair trade practices involving goods and services; and at the same time, in order to tie in with the implementation of the Consumer Interests Protection Ordinance, to ~~confer administrative and law enforcement powers under the Ordinance to the Consumer Council, or~~ *examine the need to* establish the post of consumer protection commissioner to undertake the relevant administrative and law enforcement work.

Note: Hon Vincent FANG Kang's amendment is marked in *bold and italic type* or with deletion line.