OFFICIAL RECORD OF PROCEEDINGS

Monday, 16 July 2012

The Council continued to meet at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT
THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

IR DR THE HONOURABLE RAYMOND HO CHUNG-TAI, S.B.S., S.B.ST.J., J.P.

THE HONOURABLE LEE CHEUK-YAN

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.M., G.B.S., J.P.

THE HONOURABLE FRED LI WAH-MING, S.B.S., J.P.

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, G.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

DR THE HONOURABLE PHILIP WONG YU-HONG, G.B.S.

THE HONOURABLE WONG YUNG-KAN, S.B.S., J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

THE HONOURABLE LAU WONG-FAT, G.B.M., G.B.S., J.P.

THE HONOURABLE MIRIAM LAU KIN-YEE, G.B.S., J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE TIMOTHY FOK TSUN-TING, G.B.S., J.P.

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

THE HONOURABLE ABRAHAM SHEK LAI-HIM, S.B.S., J.P.

THE HONOURABLE LI FUNG-YING, S.B.S., J.P.

THE HONOURABLE TOMMY CHEUNG YU-YAN, S.B.S., J.P.

THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

THE HONOURABLE VINCENT FANG KANG, S.B.S., J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

DR THE HONOURABLE JOSEPH LEE KOK-LONG, S.B.S., J.P.

THE HONOURABLE JEFFREY LAM KIN-FUNG, G.B.S., J.P.

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, G.B.S., J.P.

THE HONOURABLE CHEUNG HOK-MING, G.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, S.B.S., J.P.

THE HONOURABLE RONNY TONG KA-WAH, S.C.

THE HONOURABLE CHIM PUI-CHUNG

PROF THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE STARRY LEE WAI-KING, J.P.

DR THE HONOURABLE LAM TAI-FAI, S.B.S., J.P.

THE HONOURABLE CHAN HAK-KAN, J.P.

THE HONOURABLE PAUL CHAN MO-PO, M.H., J.P.

THE HONOURABLE CHAN KIN-POR, B.B.S., J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN, J.P.

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

THE HONOURABLE WONG KWOK-KIN, B.B.S.

THE HONOURABLE IP WAI-MING, M.H.

THE HONOURABLE IP KWOK-HIM, G.B.S., J.P.

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN, J.P.

THE HONOURABLE ALAN LEONG KAH-KIT, S.C.

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBER ABSENT:

DR THE HONOURABLE SAMSON TAM WAI-HO, J.P.

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE JOHN TSANG CHUN-WAH, G.B.M., J.P.
THE FINANCIAL SECRETARY, AND
SECRETARY FOR DEVELOPMENT

THE HONOURABLE GREGORY SO KAM-LEUNG, G.B.S., J.P.
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

CLERKS IN ATTENDANCE:

MR ANDY LAU KWOK-CHEONG, ASSISTANT SECRETARY GENERAL

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

MISS FLORA TAI YIN-PING, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

BILLS

Second Reading of Bills

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): Good morning. Council now continues with the resumption of the Second Reading debate on the Buildings Legislation (Amendment) Bill 2011.

(Bills originally scheduled to be dealt with at the last Council meeting)

BUILDINGS LEGISLATION (AMENDMENT) BILL 2011

Resumption of debate on Second Reading which was moved on 7 December 2011

PRESIDENT (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Development to reply. This debate will come to a close after the Secretary has replied.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I wish to express my heartfelt thanks to Mr IP Kwok-him, Chairman of the Bills Committee and other members for many invaluable views they expressed on the Buildings Legislation (Amendment) Bill 2011 (the Bill). The Bills Committee has held a total of seven meetings. In the course of scrutiny of the Bill, the Bills Committee has also invited views from and held in-depth discussions with many relevant organizations in the industry on various proposals and operational details set out in the Bill. Having listened to the views of the Bills Committee, we will propose certain amendments to the Bill.

The Bill proposes five measures to further enhance building safety. These legislative measures were proposed as a result of the policy review on building safety conducted after the building collapse incident in Ma Tau Wai in January 2010. The former Chief Executive had also announced in his policy address on 13 October 2010 that the Government would adopt a new multi-pronged approach, covering legislation, enforcement, support and assistance to owners as well as publicity and public education, to enhance building safety in Hong Kong.

In fact, our legislative work to enhance building safety has never stopped in the past few years. Between June 2008 and December 2009, the Legislative Council enacted the principal legislation as well as a number of regulations for the introduction of the Minor Works Control System (MWCS) to facilitate buildings owners in carrying out small-scale building works in a lawful, simple, safe and convenient manner. Since its implementation in the end of 2010, the MWCS has been working well and it is generally welcomed by both the industry and the public.

In June 2011, the Legislative Council enacted the principal legislation for the implementation of the Mandatory Building Inspection Scheme (MBIS) and the Mandatory Window Inspection Scheme (MWIS). After the enactment of the relevant subsidiary legislation in December last year, the Buildings Department (BD) immediately commenced the registration for registered inspectors under the MBIS. Full implementation of the two Schemes was commenced on 30 June 2012. The BD is now issuing pre-notification letters to owners of the first batch of target buildings.

Separately, in view of the emergence of "sub-divided units" in recent years, we presented an amendment regulation to the Legislative Council in early May this year to include building works associated with "sub-divided units" under the MWCS in order to enhance works quality control, and allow the BD a better understanding of the progress as well as the quantity of these works to facilitate effective monitoring. With the scrutiny process completed on 6 June 2012, the amendment regulation will come into operation on 3 October this year. The BD is now actively taking forward preparatory works for its implementation.

The objectives of the Bill under discussion today are to further enhance the capacity of enforcement and regulation of the enforcement departments, and

strengthen the deterrent effect on owners who fail to comply with legal requirements. This will help enhance building safety further.

One of the important legislative proposals of this Bill is to allow the BD to apply to the Court for warrants to enter private premises (the warrant proposal). We make this proposal because while section 22 of the Buildings Ordinance (BO) currently empowers the BD to break into any premises in the presence of a police officer for investigation and enforcement purposes, the BD, mindful of the need to respect private property rights, has only invoked this provision in extreme cases in the past. Due to the emergence of "sub-divided units" in recent years, there is an increasing need for the BD to enter private premises for investigation purposes. However, such actions are often frustrated by unco-operative owners or occupiers who refuse to grant entry to BD officers. The situation can be illustrated by some enforcement data. In the BD's operation against irregularities of building works associated with "sub-divided units" in the first four months of 2012, a total of 1 370 units have been inspected, and there is access problems in 875 units (that is, 64%). Hence, we propose to amend the legislation by introducing the Court as the gatekeeper and providing a number of safeguards in order to strike a balance between facilitating the BD's enforcement work and safeguarding private property rights.

Members have spoken about the warrant proposal which was also the most controversial issue discussed by the Bills Committee. Apart from the provisions in the Bill, Members have also expressed concern about the details of the BD's implementation procedures. I am going to explain briefly the several issues of concerns raised by Members.

In the Bills Committee's discussion, the greatest concern was raised on the grounds for application for warrant. As we have emphasized to Members time and again previously, the warrant proposal is not meant to expand the existing powers of the Building Authority (BA). Under the existing section 22, the BA may enter and where necessary, in the presence of a police officer, break into any premises to achieve specified purposes which include, *inter alia*, ascertaining whether the provisions of the BO or any notice order thereunder are being complied with. Under the Bill, we propose that except in case of emergency or with the permission of the owner or occupier, the BD must apply for a court warrant before entering the premises.

Before applying for a court warrant, the BD must have reasonable suspicion that the premises concerned relates to at least one of the five situations specified under the Bill. Of those five grounds, Members are particularly concerned about two, namely "building works have been or are being carried out to the premises or land in contravention of any provision of this Ordinance" and "the use of the premises or land has contravened any provision of this Ordinance". Members consider that given the wide coverage of these two grounds, privacy and private property rights cannot be protected properly. In order to address Members' concern, we will propose amendments accordingly. I will explain them in detail at the Committee stage later.

We propose that a magistrate may issue a warrant authorizing the BA or an "authorized officer" to enter and, if necessary, break into any premises for specified purposes. Regarding Members' concern about the meaning of "authorized officer", as provided under the Bill, "authorized officer" means a public officer authorized in writing by the BA for any of such specified purposes. In practice, "authorized officers" are BD officers who are professional grade officers of building surveyor or structural engineer ranks and above; and technical grade officers of survey officer or technical officer ranks and above, building safety officer rank, building safety assistant rank and building surveying graduate rank. These officers are also currently involved in different types of enforcement action including those that require entry into private premises. The ranks of officers mentioned above will be set out in the internal staff manual of the BD.

We propose under the Bill that the BD can only apply for a court order if the entry into the premises by the BA was refused or could not be gained despite a visit made to the premises on at least two different days. In the course of examination of the Bill, some members were concerned that the requirement for a visit on two different days might not be sufficient, and had suggested that a minimum interval between the two visits should be specified so as to give the owner or occupier ample chances to respond to the BD's requests to enter the premises for investigation.

When dealing with general cases, initial inspections in response to complaints or large-scale operations are carried out by the BD's outsourced consultants. Contact slips will be left at the premises if access is not available. According to the standard provisions of the consultancy agreements, the BD's

consultants are required to make at least three attempts on different days and during different times to gain access for inspection. If these attempts are unsuccessful, the consultant will report the case to BD officers for follow-up.

Under the proposed provision, the BA or an "authorized officer" is required to visit and make an attempt to enter the premises on at least two different days. According to the BD's current practice, the two visits will be made during two different times. In other words, for general cases, there will be at least a total of five visits by staff of the BD and its consultants before any application for a warrant is to be made to the Court. This arrangement will give ample chances to the owner or occupier to respond to the BD's requests for entry.

We consider that the Bill should not specify a minimum interval between the two visits by BD officers. We should allow certain flexibility to handle cases requiring prompt follow-up actions, such as cases involving serious contraventions and those of grave public concern. The Bills Committee agreed to this proposal.

In the course of the Bills Committee's discussion, many invaluable views have been expressed by members on the provisions of the Bill, as well as the BD's operation procedures which include the suggestion that the BD should make an effort to contact the owner or occupier both before and after applying for a warrant in order to minimize nuisance. Under the requirement of the Bill, a notice of the intention to apply for a warrant for entry into premises has to be served on the owner or occupier of the premises before the BD could make an application to the Court.

Taking into account members' suggestion, the BD will set out the contact means of the subject officer in the notice of intention to facilitate the owner or occupier in making enquiries on the request for entry and the details of the intended application for a warrant. Upon the issue of a warrant, the BD will make an effort to contact the owner or occupier concerned to inform him of the issue of the warrant and to arrange for entry into the premises. The above operation procedures will be clearly set out in the BD's internal staff manual.

The Bill contains two proposals which aim at strengthening the deterrent effect on owners who fail to comply with legal requirements. Under the relevant amendment legislation, these two measures already apply in respect of the MBIS

and MWIS. We propose to extend these two arrangements to cover all statutory orders and notices issued by the BD so as to induce owners to face their own responsibilities.

Under the first proposal, the BA is empowered to impose a surcharge of not exceeding 20% on the cost incurred by the BA to be recovered from an owner who has failed to comply with statutory orders or notices issued under the BO. The BD will have a discretionary power to determine the amount of surcharge which is capped at 20% of the total cost having regard to the circumstances of each case. The principles of determining the amount of surcharge will be laid down in the BD's internal guidelines.

According to our original proposal, for owners who have proved that practical difficulties were encountered in complying with the order or notice due to old age, infirmity, mental illness, tenant's refusal to grant access, obstruction of access to common parts of a building by unco-operative persons, and unsuccessful attempt in organizing the required works in the common parts of a building, and so on, they only need to pay a surcharge of 10%. Some members have expressed the concern that as owners who are old or infirm may have practical difficulties in arranging for the necessary works themselves, their cases merit special consideration. Taking on board this view, we agree to completely waive the surcharge for owners who are old, infirm or with disability or mental illness and also have practical difficulties.

As regards owners who have practical difficulties due to tenant's refusal to grant access, obstruction of access to common parts of a building by unco-operative persons, and unsuccessful attempt in organizing the required works in the common parts of a building, and so on, a surcharge of 10% will be imposed by the BD.

Under the second proposal, it is an offence if a person, without reasonable excuse, refuses to pay the relevant share of the inspection and repair costs for the common parts of the building for works being undertaken by owners' corporation for compliance with statutory orders or notices. Offenders are liable on conviction to a fine at level 4 (currently at the maximum of $25,000).

The Bill proposes to introduce a signboard control system to tackle the safety problem arising from the existing unauthorized signboards. Unauthorized

signboards joining the validation scheme must comply with the established specifications and have been tested for safety and technical standards. They may continue to be used unless they are rendered dangerous because of a change in circumstances. The safety checking has to be conducted once every five years. Unauthorized signboards not joining the scheme will be subject to the BD's enforcement action. While the legal framework of the control system is laid down primarily by the Bill, the relevant technical details will be set out in subsidiary legislation in due course.

In the course of scrutiny, some members suggested that the scope of the enabling provision should be narrowed to avoid possible disputes in future about the application of the validation scheme. In view of such concern, we will propose an amendment to add a schedule to the BO to prescribe the list of items subject to the validation scheme. I will explain in detail at the Committee stage later.

Lastly, under the legislation passed by the Legislative Council last year, a registered inspector appointed to carry out an inspection under the MBIS must notify the BD of any unauthorized building works (UBW) in the common parts or the external walls of the building identified during the course of inspection. To dovetail with the enforcement policy against UBW effective since 1 April last year, we propose under the Bill that a registered inspector must also report to the BD any UBW on the roof or podium of a building, or any yard, slope or street contiguous to a building. This will allow the BD to take action swiftly to implement the new enforcement policy and produce a stronger deterrent effect.

President, the Bill will help us implement a more comprehensive building safety control regime. Various proposals under the Bill have been discussed in detail and supported by the Bills Committee. Today, I want to take this opportunity to thank Members for their continuous support over the past few years in our work on enhancing building safety, including hectic legislative work. We could not have completed the scrutiny of the Bill within the current term of the Legislative Council without the close co-operation and participation of Members.

Nonetheless, I must stress that building safety in Hong Kong does not only rely on legislation and enforcement alone. We will mobilize various supporting organizations including the Hong Kong Building Society and the Urban Renewal

Authority to provide technical as well as financial support to those owners who are in need. However, ultimately, we need active support from members of the public, especially owners, in maintaining their properties properly so as to cultivate a culture of ensuring building safety.

Last but not least, I implore all Honourable Members to support this Bill as well as the amendments I will propose later. Thank you, President.

(Prof Patrick LAU indicated his wish to speak)

PRESIDENT (in Cantonese): Prof Patrick LAU, I have already declared just now that the resumption of Second Reading debate will come to a close after the Secretary has replied. If you want to express views on the contents of the Bill, please consider speaking during the Third Reading debate on the Bill.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Buildings Legislation (Amendment) Bill 2011 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): The Buildings Legislation (Amendment) Bill 2011.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Committee stage. Council is now in Committee.

BUILDINGS LEGISLATION (AMENDMENT) BILL 2011

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Buildings Legislation (Amendment) Bill 2011.

CLERK (in Cantonese): Clauses 4 and 7 to 10.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clauses 1, 2, 3, 5 and 6.

SECRETARY FOR DEVELOPMENT (in Cantonese): Chairman, I move that the clauses read out just now be amended as set out in the paper circularized to Members. I have already introduced some of the amendments during the resumption of Second Reading debate just now.

Clause 1 of the Buildings Legislation (Amendment) Bill 2011 (the Bill) provides for commencement. The Bill amends respectively the Buildings Ordinance (BO) and the Buildings (Amendment) Ordinance 2011 (B(A)O), with the latter being the amendment legislation to implement the Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme. Under the Bill, amendments to the B(A)O come into operation on the gazettal of the Bill, and amendments to the BO commence operation on a day to be appointed by the Secretary for Development by notice published in the Gazette. Given that the details of unauthorized signboard under the control system would be prescribed in the Building (Minor Works) Regulation (the Regulation), we propose to amend clause 1 to the effect that all provisions in the Bill come into operation upon gazettal except for those provisions relating to the signboard control system. This amendment was accepted by the Bills Committee.

Clause 3 of the Bill amends section 22 of the BO to provide for the issue of a magistrate's warrant authorizing entry into any premises or upon any land by the Building Authority (BA) or any public officer authorized by the BA. As I have just mentioned during the resumption of Second Reading debate, the Bills Committee was gravely concerned about the grounds for application for warrant under the new sections 22(1B)(a)(i) and (ii), *viz.* there are reasonable grounds for suspecting that buildings works in the premises or land, or the use of the premises or land has contravened any provision of the BO. Members took the view that the coverage of these two grounds was too wide, and urged the Administration to consider the need to protect privacy and private property rights while enhancing the building control regime.

Noting members' concern, we have considered the matter seriously and put forth the relevant amendments to the Bills Committee. We propose to revise the new section 22(1B)(a)(i) to the effect that a magistrate may only issue a warrant

when there are reasonable grounds for suspecting that the building works fall under one of the three specified scenarios.

Those three specified scenarios are respectively, (1) the buildings works are in contravention of section 14(1) of the BO; (2) the building works have a material divergence or deviation from any plan approved by the BA under the BO or required to be submitted to the BA under the simplified requirements; and (3) the building works are not in compliance with the standard of structural stability, public health or fire safety established by regulations.

The first scenario, that is, the building works are in contravention of section 14(1) of the BO, will cater for the situation where no plans have been submitted in respect of works requiring approval and consent by the BA under the BO.

The second scenario will cater for building works which have material divergence or deviation from the plan approved. In other words, while there is an approved plan for the building works originally, they have not been carried out accordingly, and even have material divergence or deviation from the said plan. The second scenario also covers minor works that require submission of plans (that is, classes I and II) and the works have material divergence or deviation from the plan submitted.

The third scenario mainly seeks to cater for exempted works (where no plans are required to be submitted) under the BO, as well as minor works commenced under the simplified requirements. In view of some members' concern that the grounds for applying for warrants in relation to minor works and exempted works items should be confined as far as possible, we propose to narrow the ground for application of warrant by the BA to cases where there is reasonable suspicion that the works are not in compliance with the standard of structural stability, public health or fire safety established by regulations. We consider that regardless of the nature and complexity of the works, the BD is duty-bound to ensure a safe and hygienic building environment.

While the Bills Committee considered the second and third scenarios stated above agreeable, a number of members still suggested that the first scenario should be deleted because there were many cases involving works which had been carried out without prior plan approval under section 14(1). As we have

explained to the Bills Committee, the first scenario covers cases which are blatant contraventions of the BO but fall outside the coverage of the second and third scenarios.

A vivid real example of such a scenario would be an entire building constructed without prior plan approval. As a result of geographical constraints or obstruction by trees, the building is not readily identified through inspection from the outside or even in an aerial photo. In the absence of an approved plan for the entire building, the second scenario does not apply. If the unauthorized building does not involve any apparent breach with the standard of structural stability, public health or fire safety under the BO, the third scenario likewise does not apply.

In other words, by deleting the first scenario, the BD cannot enter the premises to conduct investigation if the owner or occupier refuses to grant entry to the BD officers, and if the case does not involve any emergency situations. In such cases, there is no way the BD can gain entry into the premises to take enforcement action even if there is serious irregularity. This is an enforcement loophole, and it may even be exploited by building owners for they know that even though the BD has reasonable grounds for suspecting unauthorized works, it would not be able to conduct investigation and take enforcement action due to lack of means to gain entry into the premises. As a result, similar irregularities may flourish.

While the above problem merits attention, we appreciate the strong request made by members that the Bill should not create concern in respect of privacy protection when the warrant proposal is introduced initially, and that the grounds for application of warrants should be extended in a progressive manner in the light of operational experience and enforcement priority. Hence, we decide to accept members' suggestion and delete the first scenario from the proposed amendments. The amendments issued to members only cover the second and third scenarios stated above.

In order to ensure the upholding of law and order by the enforcement agencies and preserve the integrity of the building control regime, we will review the effectiveness of the warrant system periodically and introduce improvement measures when necessary.

Regarding the new section 22(1B)(a)(ii) about the use of the premises, on account of the views of the Bills Committee, we propose to limit the scope of the provision by setting out clearly that the BA could apply for warrant only if he has reasonable suspicion that the use of the premises has been changed in contravention of section 25(1) or (2) of the BO as sections 25(1) and (2) are the major provisions under which the BD enforces against the unauthorized change in use of premises.

Clauses 5 and 6 of the Bill are related to the signboard control system. As I have just mentioned during the resumption of Second Reading debate, on account of Members' views, we will add a schedule to the BO by way of Committee stage amendment to prescribe the list of items that are subject to the validation scheme. If the Administration proposes to add items other than signboards to the schedule in future, it would have to go through a positive vetting procedure. In other words, the list of items would have to be subject to the approval of the Legislative Council before it can take effect. Details of the items are to be prescribed in the Regulation.

Subject to the passage of the Bill, we will separately present an amendment regulation to the Legislative Council in due course to prescribe the technical details of unauthorized signboards that can fall within the signboard control system. We propose to amend clause 5 of the Bill to empower the Secretary for Development to prescribe the details in relation to any prescribed building or building works specified in the new Schedule 8. Clause 6 of the Bill amends section 39C of the BO to provide for the signboard control system. On account of the above amendments to add Schedule 8, clause 6 will have to be amended accordingly.

Chairman, the above amendments have been discussed by the Bills Committee in detail and they have the support of the Bills Committee. I implore Members to support and pass the amendments.

Thank you, Chairman.

Proposed amendments

Clause 1 (See Annex IV)

Clause 2 (See Annex IV)

Clause 3 (See Annex IV)

Clause 5 (See Annex IV)

Clause 6 (See Annex IV)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MS AUDREY EU (in Cantonese): Chairman, as I have not spoken during the resumption of Second Reading debate on the Buildings Legislation (Amendment) Bill 2011 (the Bill), I want to specifically speak on this group of amendments because the matters involved are really the crux of the entire Bill.

Many Honourable colleagues have mentioned the building collapse tragedy in Ma Tau Wai when they speak during the resumption of Second Reading debate of the Bill. Of course, even if the building collapse tragedy in Ma Tau Wai had not occurred, we all know that many people in Hong Kong have long been troubled by problems of building safety and maintenance. Many buildings in Hong Kong are multi-storey buildings. When buildings become dilapidated, many residents consider that everyone should bear responsibility. However, in saying that everyone should bear responsibility, it turns out that nobody will have to be responsible because they will shift their responsibility onto others, and claim that it is the Government's responsibility. However, the Government has always adopted the stance that it is the responsibility of every owner.

Hence, both the community and the Legislative Council have spent a long time arguing about this issue. Incidentally, this is not the only issue related to building safety and maintenance. As many Honourable colleagues have mentioned in their speeches, when the legislation on the Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS) was discussed previously, there were many divergent views in the community on the signboard control system as well as the warrant proposal, that is, whether the Administration should be allowed to apply for warrants for entry into private premises for inspection of unauthorized building works (UBW). The then

Secretary for Development, Mrs Carrie LAM, indicated that in order not to delay the passage of the legislation on the MBIS and MWIS, the said legislation should be enacted first. A new legislation would be introduced separately in due course to allow more comprehensive discussion on the signboard control system and the warrant proposal. Hence, the Government has introduced this Bill which resumed Second Reading today.

Just now, the Secretary talked about the amendments to clauses 3 and 6 of the Bill, which are in fact related to the provisions on signboard control system and the warrant proposal. I would like to discuss clause 3 in particular because the relevant arguments have persisted since the discussion on the legislation concerning the MBIS and MWIS. That provision is related to section 22 of the Buildings Ordinance (BO). Under section 22, the Buildings Department (BD) is empowered to break into any premises. Since 2006, the police and officers of the BD have conducted five break-in operations. Generally, such power is only exercised under extremely serious situations.

However, that is apparently inadequate in view of the emergence of many "sub-divided units" in Hong Kong. Many Members as well as members of the public have demanded the entry of government officers into private premises for inspection and enforcement in case there is safety concern for residents in "sub-divided units". However, what is the definition of "sub-divided units"? According to the Government, while it is necessary to empower law-enforcement officers to enter premises under a warrant, it is impossible to define "sub-divided units". Hence, an across-the-board approach is adopted such that the power of entry applies to all situations or premises with UBW. Members consider such power too wide. Of course, we accept that under some extremely serious cases with safety impact, government officers should enter the premises for prevention or rectification purposes. However, should the Government be allowed to apply for warrant to enter any premises for investigation so long as there are UBW, even if the works involved are just a laundry drying rack or a planter, or an enclosed balcony; or will the Government make use of the opportunity to conduct other kind of investigation? That is a matter of grave concern for Members.

Hence, if the Government can enter private premises for investigation in these two extreme cases, one being an unit involving safety risks or an industrial building being converted into "sub-divided units" for residential purpose, and the

other being private residential units with slight modifications, where should the line be drawn? That is exactly why there are disputes with these amendments.

First of all, under clause 3 of the Bill which amends section 22 of the BO, government officers can still enter premises without a warrant for investigation in situation of emergency. Moreover, under the proposed section 22(1B) in clause 3 which sets out the situations where the BA may apply for a warrant, the authorities must prove that there are grounds for reasonable suspicion before applying to Magistrates' Court for warrant.

Regarding "grounds for reasonable suspicion", five situations have been set out in the Blue Bill. I would like to talk about those five situations. Under the first situation, there are building works which contravene the BO. Under the second situation, the use of the premises or land has contravened any provision of the BO. Under the third situation, the premises have been, or the land has been, rendered dangerous, or the premises are, or the land is, liable to become dangerous. Under the fourth situation, the drains or sewers are in a defective or insanitary condition. Under the fifth situation, a notice or order served under the BO has not been complied with.

In fact, Members have no serious objection about the power to enter premises for investigation under the second, third, fourth and fifth situations set out in the Bill. The bone of contention is the first situation. As I have just mentioned, the first situation is related to building works which have been or are being carried out in contravention of any provision of the BO.

Members are concerned that the BO is a voluminous law which covers many other codes of practice and different scenarios. We know by experience that disputes would often arise. For example, some experts may consider the relevant building works in order, while other experts may have different views. Certain Directors of Bureaux or Members of the Executive Council may claim that the relevant building works in their properties are in order, but some experts have different views, saying that the works have contravened the BO. In other words, there may be grey areas in some situations which do not involve safety risks. Members are worried that if the Government can apply to Magistrates' Court for warrant even under those situations, the power is too wide. Hence, Chairman, from the previous discussion on the legislation about the MBIS and

MWIS to the present Bill, we have spent a lot of time arguing repeatedly about this issue.

The Government's stance is that — including the loophole just mentioned by the Secretary — in case there is a house in the New Territories constructed without prior plan approval and is not readily identified even in an aerial photo due to obstruction by trees, there is no way government officers can ascertain whether this building has contravened the BO if they cannot gain entry into the premises. As a result, the Government has expanded the power under the Bill considerably such that government officials are empowered to enter private premises so long as there are grounds for reasonable suspicion of any contraventions.

Nonetheless, Chairman, is it necessary to introduce such drastic changes from entering the premises in case of emergency to entering the premises for inspection when there are reasonable grounds for suspecting that any provision of the BO has been contravened? We are gravely concerned about this point. Chairman, while the Government is vested with the power of enforcement, we really hope that the Government will, first of all, take enforcement action against those apparent UBW which are visible even from the outside of the building. For buildings with "sub-divided units", the existence of hundreds of individual water meters and the indiscriminate connection of water pipes well reflected that all relevant fire safety requirements have been blatantly violated. If the Government genuinely sees the need to expand its power to cover other situations, can a progressive approach be adopted, so that such an expansion of power can be dealt with at the next stage? At least, it should first prove to us that the first part of the proposal has been enforced effectively, we can then consider further expanding the power, so as to cover the situations of an independent house being obstructed by trees, as previously mentioned by the Secretary and I. We do not intend to spare houses obstructed by trees from being monitored. Instead, we are worried that once the power is vested with the relevant authorities, it may give rise to abuse if any contravention of the BO is cited as a reason for application of a warrant for entry into the premises. As such, warrants might be granted for situations that do not need a warrant.

Chairman, after various meetings and repeated discussion, the Government finally agreed to introduce relevant amendments. In the amendments laid before us now, the first situation which I have just talked about has been deleted.

Instead, the provision specifies the type or seriousness of contravention that is subject to a warrant for entry as follows, "that there is a material divergence …… from any plan approved by the Building Authority under this Ordinance or required to be submitted to the Building Authority under the simplified requirements". A warrant will only be issued if "there is a material divergence". We consider that such a dividing line is relatively fair.

Moreover, the authorities can apply for warrant for entry if there are building works that "are not in compliance with the standard of structural stability, public health or fire safety established by regulations". Having discussed the matter in a number of meetings, we considered that such an amendment could restrict the relevant power. But that is not the end of the matter. As I have just said, we hope that after the enactment of the Bill, the authorities can first focus on handling cases with apparent building safety problems, such as the illegal conversion of "sub-divided units" in industrial buildings which we have just mentioned. If the legislation or amendments we now pass fail to meet the needs of the changing conditions in the community, we can then further discuss the need for additional powers.

Clause 3 of the Bill also contains the requirement just mentioned by the Secretary, that is, entry "could not be gained despite a visit made to the premises or land on at least 2 different days". Chairman, we had also discussed this issue at meetings. Many Honourable colleagues have expressed concern that if the Government can apply for a warrant for entry into premises so long as there are reasonable grounds for suspecting the existence of UBW in the premises, people who are always away from home, such as doing business or working in the Mainland, will be unduly affected, because after the first abortive visit, the Government may apply for warrant the following day. Is that making a mountain out of a molehill? Should the owner or occupier be given more chances? Hence, the Blue Bill has specified the requirement of "2 different days". Some colleagues have asked whether the Government can state clearly the minimum interval between these two days.

Nonetheless, Chairman, I also find the Government's explanation acceptable, that is, in the course of scrutiny of the Bill, Members would only consider the proposals *per se*, without getting to know the actual operation involved because it would also depend on the staffing situation. Regarding the requirement of at least two visits, the Secretary has just pointed out that the

intervening period could be quite long as a result of outsourcing, manpower, and so on. Due to manpower shortage, it may take three months, six months or even nine months to complete the number of mandatory visits before an application for warrant can be made. That will in turn lead to another problem, that is, the Government may procrastinate in cases with apparent UBW or safety risks, and then put the blame on the Legislative Council by claiming that the tedious and rigid procedures were requested by Members of the Legislative Council when passing the legislation. In fact, Members cannot predict the staffing support of the BD or the experts. If rigid requirements are stipulated in the legislation, enforcement can become extremely difficult.

Hence, Chairman, we consider it undesirable to state the number of visits rigidly in the law as the Government may need to allow more flexibility in this regard. Nonetheless, we also hope that a balance can be struck by the Government. What we do not want to see is that when something happens, a whole team of government officers suddenly break into a private premises; neither do we want this provision to be drafted in such a way as to allow the Government to procrastinate enforcement for a long period of time, which may cause resentment or dissatisfaction among members of the public.

Chairman, while the Government is empowered to apply for warrant to enter private premises, such power must be used properly. As far as I can see, various aspects in the entry process, such as the number of officers involved, the timing of entry, the attitude of staff, whether the opportunity will be taken to inspect other problems, and so on, can attract a lot of negative feedback, grievances or complaints. Hence, Chairman, while we pass the legislation to vest the power with the Government, we also hope that in the process of enforcement, the Government can maintain efficient enforcement against UBW on the one hand, and respect the owners and their private property rights on the other. When enforcing the law, the Government must exercise its power with proper sensitivity towards the development, feelings and sentiment of the community.

Chairman, the Civic Party supports the relevant amendments. Thank you, Chairman.

PROF PATRICK LAU (in Cantonese): Chairman, the Building Legislation (Amendment) Bill 2011 (the Bill) mainly seeks to amend the Buildings Ordinance and the Buildings (Amendment) Ordinance 2011, with a view to further ensuring and strengthening building safety through a series of new measures. This is one of the measures on building safety which the Administration has undertaken at the Subcommittee on Building Safety and Related Issues, of which I am the Chairman.

All along we have considered the Bill from the perspective of safety. Just now, many Members mentioned the building collapse incident in Ma Tau Wai Road and the blaze in Fa Yuen Street, which had incurred heavy casualties and generated much public concern over the issue of building safety. In view of this, the Administration has introduced legislative amendment proposals to improve building safety. Talking about application for warrants for entry into individual premises, as Ms Audrey EU and other Members have pointed out just now, our main concern is whether the warrant proposal will infringe on personal privacy and deviate from the original legislative intent.

I thank the Financial Secretary, who is now the Acting Secretary for Development, for proposing an amendment on this subject. Other colleagues and I attach great importance to the fact that a balance is struck so that personal privacy, private property rights and building safety are safeguarded. In the past two years, the issue of unauthorized building works has caught public attention. Senior officials and Members are all insecure and paranoid, forcing them to give due consideration to the Buildings Ordinance. Education in this regard is, in fact, very important. Many people do not understand that unauthorized building works, as prescribed in the Buildings Ordinance (Cap. 123), are illegal structures. They must be aware that any alteration to a building not conducted by an authorized person and without prior application violates the law. People often do something they should not have done because they do not understand the detailed provisions of the Buildings Ordinance.

To alleviate public concern, we must clearly specify under what circumstances the Building Authority (BA) can apply for court warrants. The Government has thus proposed an amendment, specifying that only under very urgent circumstances would the BA be allowed to break into premises. Unless there are grounds suspecting that any building works in a premises has deviated from any approved plan, or most importantly, is not in compliance with the

standard of structural stability, public health or fire safety, the BA cannot apply for a court warrant.

In other words, people are concerned that if a court warrant is applied in cases in which a certain building works is conducted without prior application, it will infringe on their personal privacy and will also deviate from the original legislative intent. Chairman, I am delighted to learn that the Government has proposed an amendment on this subject and that the Bill has passed through its Second Reading.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, I basically endorse and support the amendments introduced by the Bill, in particular, the proposal to increase the power of the Building Authority (BA) and authorized persons under clause 3. I want to speak about two points. Firstly, the amendments can rectify and improve the current situation of unfairness in enforcement. Secondly, there are concerns about the power conferred under the relevant amendment.

Regarding the problem of so-called unauthorized building works (UBW), the majority of cases requesting for assistance or complaints which we had handled in the past are basically related to the grassroots. Many of them live in six-storey old buildings, and they have been prosecuted by the Government for having UBW on the rooftop or podium. Many UBW are in fact problems left over from history, and the injustice, unfairness and bias involved in these cases are really a miniature of Hong Kong society. As a matter of fact, many people who are prosecuted for having UBW are themselves victims of the entire legal or conveyancing process. As we all know, many years ago, the conveyancing of these so-called unauthorized flats was basically conducted through formal sale and purchase agreements executed in law firms. Many of the buyers were new immigrants from the Mainland. As the transactions were conducted through law firms and the flats were issued with rate demands, water bills and electricity bills, many unsuspecting buyers might have purchased such flats in the belief that such

flats were tolerated or even permitted by law. The price paid for these flats might even be on a par with the then market price of lawful properties.

In one of the more ridiculous case which I have come across, the owner bought a flat directly from the developer. As the title owner of the rooftop, the developer built an additional flat thereon and sold it to the victim at the market price of a lawful property. That is really a most ridiculous case. Subsequently, the victim received a removal order, the reason is, like all other UBW, the flat is suspected to have contravened the Buildings Ordinance (BO), as the building works had deviated from the original plan. Although the victim had lived there for 30 years, he was eventually forced to comply with the removal order. In these unfair and unjust cases, all those who had made money out of these transactions could go scot-free, including lawyers as the formal sale and purchase agreements were executed by law firms, and estate agents who got their commissions as in other transactions. However, the authorities have enforced the law arbitrarily. Such unfair cases are commonly found.

This Bill was introduced by the Government because there were relatively fewer cases in the past involving prosecution of owners of luxury properties for suspected UBW and their removal. The legislative spirit of the Bill is to allow the authorities to gain entry into private premises formally for inspection. UBW in multi-storey buildings are more readily identifiable from the outside, such as UBW on the rooftop or podium, enclosed balconies with windows, and so on. However, I am told by some friends that UBW can be found in nine out of 10 luxury properties on the peak. In some extreme cases, large indoor swimming pool was constructed in the basement of the property. UBW were also found in the Chief Executive's house. In fact, rumours about UBW in luxury properties have been flying around over the years. Unlike Mr Abraham SHEK who often visits these luxury properties, I never have the opportunity to visit one myself.

I think government departments must know clearly or have heard about the prevalence of UBW in luxury properties. But as the BA has not been empowered by law to enter private premises for investigation or inspection, there are great difficulties in enforcement unless genuine risks of structural safety are involved. Hence, UBW in luxury properties are really common.

In the past enforcement actions, the grassroots, especially those who lived in rooftop houses, had been forced to demolish their only shelter, their only dwelling. However, the rich who seek to make their lives even more luxurious and extravagant by constructing UBW in their luxury properties can go scot-free. For that reason, when this Bill was first introduced by the Government — I recall that it was two years ago — many Members in this Council, particularly the representatives of the industrial and business sector, the property sector, and the wealthy, or those who own luxury properties themselves, had persistently voiced their opposition. After a lapse of two to three years, the Government finally decided to introduce this Bill again. I hope the Bill will be formally enacted today.

I hope that with the passage of this Bill, the unfairness and class bias in the enforcement against UBW over the years — at least over the past 20 to 30 years — can be rectified. After the enactment of the Bill, Members can seek information from the Government in due course to ascertain the number of cases involving UBW in luxury properties which have been investigated into and ordered to be rectified within the initial two to three years of actual implementation, and whether UBW are found in 99.5% of the luxury properties. I hope these problems can consequently be rectified.

Chairman, I also want to talk about my concerns about the amendments proposed by the Bill, which are related to some past experience. In the course of our district work, we often receive complaints from residents about forced entry. Hence, I am invariably worried about the matter. In most cases, I am absolutely certain that the officers concerned made the decision on the basis of certain factors. But after the forced entry, when the victim sought explanation, clarification and evidence from the relevant government department, no concrete reply would be given. The Government would invariably reply that the victim could institute legal proceedings if he considered that mistakes had been made by the authorities. That is the usual stance adopted by the Government. For example, in a recent case I received from a kaifong seeking assistance, the authorities broke into his flat probably because somebody detected the smell of gas in his flat. Yet he could not get any compensation for the loss he incurred as a result. He asked if there was any evidence to suggest a problem in his flat. While refusing to provide any evidence or information, the relevant authorities only told him: "You can sue me if you are not satisfied!" That is really the most powerful weapon of the Government.

At present, there is no mechanism in the entire Bill to deal with the problem, say, establishing an independent committee to conduct investigation, and so on, so that victims are given the opportunity to claim damages for loss incurred in forced entry operations. As I have pointed out time and again in recent debates, or even in the discussion on the Companies Ordinance, whenever the Government's administrative powers are involved in legislation, it will always give full protection to itself, through the legislation, so that it would not have to bear responsibilities for its administrative abuse and need not be accountable or give any explanation. That is the same in the case of land resumption by the Government, the enforcement of the Companies Ordinance as well as the present amendment to the Buildings Ordinance.

Of course, the Bill has provided the situations under which forced entry is permissible. But no sensible or reasonable arrangement has been made in respect of the handling of the aftermath of the break-in. In particular, members of the general public invariably need to resort to legal proceedings before they have the opportunity to seek justice. Chairman, I cannot agree to this situation. As we all know, when the executive departments exercise certain powers under some high-pressure situations, it is quite likely that mistakes and problems may arise, and enforcement may not be well conducted, yet the victims would suffer from losses due to bias or even wrongful enforcement by the relevant departments. It is extremely difficult for victims to collect evidence afterwards in order to sue the Government. Moreover, as we all know, risks are involved in legal actions against the Government. If a litigant loses his case, he must pay hundreds of thousands of dollars in legal fees alone, even though the loss involved is only several thousand dollars, that is, the cost of repairing the door. Intense dissatisfaction and anger may be generated among the general public. The Government neither gives any explanation to account for its action nor produces any evidence. Members of the public are most aggrieved by the fact that the authorities concerned are not required to produce any evidence or justification for breaking into the premises. The authorities concerned are not required to prove that the decision of forced entry was made out of reasonable professional judgment; it would just say that there is cause for suspicion or *prima facie* evidence. Chairman, the government departments can even say nothing and totally ignore the residents. No single department or officer will give a formal reply or response to the demand made by that member of the public. I think this is a problem which must be dealt with in the future.

Of course, I believe the operation of forced entry will not happen frequently. But once it happens, it can be a cause of dissatisfaction and complaint from members of the public. Through the complaints, the public will become increasingly aware of the administrative hegemony and abuse, as well as the violent use of administrative powers to the neglect of the public and the lack of accountability. Of course, I am not saying that this is the situation with each and every case. But I can tell from personal experience as well as the complaints lodged by members of the public …… Chairman, I hope you can relay to the Secretary that such cases do happen. The Administration must enhance control to prevent the occurrence of these problems and increase accountability by improving administrative management, introducing enforcement guidelines, and so on.

Chairman, there is another issue which relates to paragraph (b) under subsection (1A) proposed to be added after section 22(1) by clause 3 of the Bill. Subsection (1A) reads as follows, "Except in case of emergency, neither the Building Authority nor an authorized officer may enter or break into the premises, or enter upon the land under subsection (1) unless —", while paragraph (b) reads as follows, "a warrant is obtained under subsection (1B)". Chairman, the expression "in case of emergency" will create a lot of questions and disputes. For example, in case of fire or other problems, they are dealt with under other legislation; and under this provision, the authorities can exercise certain powers "in case of emergency". Yet, the scope of an "emergency" is basically unclear. As I have just said, when exercising the power, the executive officers can interpret and act according to their own standards. In the end, ordinary members of the public are still the ones who suffer. Hence, I have grave concerns about this matter and cannot accept the absence of a clear and concise definition and scope for the so-called "emergency". Chairman, I have already expressed my worries in this regard.

Chairman, I also consider the proposed surcharge unreasonable. Clause 4 of the Bill proposes to add the requirement that "the Building Authority may impose a surcharge of not exceeding 20% on the cost due" under section 33(1). I consider that the surcharge imposed for the exercise of certain powers is an unreasonable additional charge.

Thank you, Chairman.

MR IP KWOK-HIM (in Cantonese): Chairman, I have already expressed my views on this issue during the resumption of Second Reading debate on the Bill. Following the implementation of the Mandatory Building Inspection Scheme and the Mandatory Window Inspection Scheme, this Bill further enhances building safety. Ms Audrey EU has recounted in detail the formulation of these measures and has pointed out the most important issues.

I believe the main concern of Members about this Bill is the right to apply for warrant. Will this restrain or expand the Government's power as the Building Authority? A relevant mechanism has been provided under section 22(1) of the Buildings Ordinance. Despite Mr Albert CHAN's strong criticism just now, statistics shows that the Government has rarely invoked this mechanism and in invoking this mechanism, it has exercised great restraints. The follow-up work is conducted on a case-by-case basis. I hope that police officers will not be involved in this mechanism, as this gives people an impression of the application of force, and owners will be really worried. Hence, at the outset, we all think that it is more reasonable and civilized to apply to the Court for a warrant, which will only serve as the basis for law enforcement.

Members were initially worried whether a warrant authorizing entry into the premises for investigation will involve the issue of power expansion. For this reason, we had spent a lot of meeting time to discuss the circumstances under which a person can apply to the Court for a warrant. Mrs Sophie LEUNG had also expressed her strong views during the discussion. She worried that if the Buildings Department, upon receiving a complaint, applied to the Court for a warrant, it would cause great nuisance, and in particular personal privacy would be infringed upon.

I find that the Government is ready to listen to Members' views and it has made three requirements on this issue. Moreover, Members have expressed concern about the provision of "in contravention of any provision of this Ordinance" in the proposed clause 22(1B)(a)(i) because the provisions of this Ordinance may be contravened in many cases. The implementation of this requirement will expand the powers of the authorities in disguise. Hence, the Government has eventually narrowed down the scope of coverage of this provision to "a material divergence or deviation from any plan". This will not affect the police's implementation of the measure under section 22(1) and can effectively obtain a warrant issued by the magistrate.

After the passage of this Bill, I really hope that building safety can be enhanced while privacy would not be infringed upon; that is, a balance could be struck between the two. Thank you, Chairman.

DR RAYMOND HO (in Cantonese): Chairman, the Buildings Legislation (Amendment) Bill 2011 has been introduced into the Legislative Council and its passage is expected today. There is a high standard of building supervision in Hong Kong and many other countries and regions have drawn reference from what we have done. The enactment of the Buildings Ordinance (BO) is modelled on the 1955 London Bylaw. I moved a motion a year or so ago, proposing amendments to the BO. Even though the Government has constantly made suitable amendments to the BO, there are still many provisions that need to be improved. Regarding issues of concern in recent years such as sub-divided units and unauthorized buildings works (UBW), I think this is the right time to examine in-depth the amendments to the BO, with a view to more effectively monitoring the structural safety of buildings, and addressing fire safety and health issues.

I am an authorized person and a registered structural engineer, and I am also a member of the Bills Committee. In the course of deliberation, the issue that attracted the most discussion of the Bills Committee is probably the practice of forced entry into premises, which is rather controversial. If the Government can provide sufficient guideline, such that the authorities can, with reasonable doubt, enter the premises for inspection of contraventions or the presence of dangerous sub-divided units, I think actions should be taken immediately when required.

There are approximately 400 000 UBW in Hong Kong. In the 1970s, I had once explained to the public on a television programme about UBW on exterior walls. About 10 years ago, there were around 800 000 UBW of a wide variety in Hong Kong. Even though the number has reduced by half to 400 000 today, that is still a very large number. I think the Government should enhance publicity and education, so that the public would know which buildings have problems and which are safe. In that case, the public need not worry excessively and they just need to deal with buildings that really have problems. We should be more concerned about this issue and the Government should make greater efforts in this regard.

During our discussions on the Bill, we have also expressed concerns about privacy and private property rights. The Government's amendments reflect the spirit of co-operation between the Government and the Legislative Council in the scrutiny of this kind of bills, which is desirable. Although the cases of other bills may be different, when buildings or building safety issues are concerned, I think it is favourable for them to be handled in the conventional manner. One example is the Lifts and Escalators Bill passed earlier. The Development Bureau and members of the Bills Committee discussed the issues very harmoniously. After listening to the views of the public, they jointly worked out a suitable solution and proposed amendments that we all recognized and considered acceptable. Hence, I restate that I trust that this spirit should continue to be maintained and carried forward.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, I would like to say a few more words and make some analysis on the circumstances under which the Building Authority (BA) or an authorized officer may enter the premises or enter upon the land. Based on my experience, I would also like to propose some recommendations to the Secretary, so that the Government can avoid being accused of abusing power when it enforces the legislation in the future.

Under clause 3, the newly added subsection (1A) basically specifies that the BA or an authorized officer may enter the premises or enter upon the land under three circumstances: (a) the entry is permitted by the owner, occupier; (b) a warrant is obtained; and (c) in case of emergency.

Chairman, I certainly understand that, in most cases, the Government will surely try its best to enter the premises as permitted by the owner or occupier under the first circumstance. However, as we all know, many domestic premises have been rented out, and the attitudes of tenants and landlords towards problems of the buildings are obviously different. Many tenants are unwilling to co-operate and refuse the entry of government officials. As they may only live in the unit for a short time, say a period covering the term of one or two leases,

they may, for the sake of convenience, make changes to some facilities, water pipes or wiring in their unit without informing the landlord. These changes may cause certain problems with the unit, leading to complaints from neighbours, and the Buildings Department (BD) may then have to enforce the relevant legislation to carry out investigation.

I have handled similar problems before. For instance, some units in the old buildings in Yuen Long have been sub-divided. Each unit is divided into a few rooms and additional toilets are provided. In other words, there are additional flushing pipes and water mains, resulting in water seepage problems in the units on lower floors. I have frequently received such complaints and have handled these problems.

For such cases, the law-enforcement work of the Government certainly wins public applause. Nevertheless, in cases not involving such large-scale or illegal alterations, and the alteration works may be unilaterally carried out by the tenants without informing the landlord, the tenants will certainly refuse to let enforcement offices enter the premises for investigation. Hence, if it is legally provided that the entry shall be permitted by the owner or occupier, and when they are unco-operative or when they impede the law-enforcement work without reasonable justifications, the BD should, in the case of handling the tenants, first contact the landlords; that is, the "owners" as set out in the provision.

It is provided in law that the entry shall be permitted by the owner or occupier, and if an occupier refuses to permit entry, the authorities may have to apply to the Court for a warrant without notifying or contacting the landlord, that is the owner of the premises. In cases regarded by the authorities as emergency, the authorities may directly break into the premises under the third scenario mentioned above. Nonetheless, in actual implementation, I think the authorities should first contact the landlord, and the landlord should be given a reasonable period of time to respond and handle the cases. While tenants may often be unco-operative, landlords may react differently. In that case, the landlords can make arrangements with the tenants, such that BD officers may enter the premises for inspection.

Moreover, in contacting the landlord for entry into the premises, I think the authorities should, as far as possible, inform the landlord clearly of the reasons. In many cases, the BD may not be certain about the problems before the

investigations. Suspected alterations may be involved, and in most cases, the alterations are illegally conducted. In particular, multi-storey buildings often have water seepage or structural problems. Or when large-scale fitting-out works are carried out in the unit on the upper floor, the force generated from the use of pneumatic drills to remove the floor tiles or some parts of the walls may cause concrete spalling problem in the units on the lower floor. There were similar cases in the past where the force of pneumatic drills had caused spalling concrete and residents worried that the works might endanger their lives or building safety.

These cases may also be regarded as emergency. In any case, the problems involve two parties: on the one hand, the BD is under the pressure of expeditious law enforcement in response to complaints, and on the other hand, the parties concerned should be given reasonable notice. I admit that there are difficulties in balancing the needs of the two parties. If enforcement is not carried out expeditiously, the spalling concrete may endanger the safety of residents. Yet, if mandatory enforcement is taken without sufficient justifications and evidence, the persons affected may think that they have been unfairly treated. So, I think the officers concerned should provide information. For instance, if there are claims that the concrete spalling problems in the units on the lower floor are caused by works carried out in units on the upper floor, photographs can be provided to the tenants or landlords as proof. If there is formal evidence, I believe most people would be ready to co-operate.

However, very often the information provided is unclear. Enforcement officers only say that there are complains and suspected contraventions, yet they refuse to disclose more information about the contraventions. Consequently, those being complained against will think that the Government has abused power or caused unreasonable nuisance. Thus, the two parties will be in confrontation.

I have handled quite a number of cases in which government officers have repeatedly entered the unit alleged to have water seepage problem for inspection, and as they fail to identify the source of water seepage, they have to carry out more tests. The occupants of the unit concerned have co-operated with government officers for many times, and they are told that another inspection will be conducted two years later. Such kind of nuisance will cause public discontent.

Hence, if evidence and justifications can be presented, co-operation between the two parties can be strengthened. Unfortunately, some government officers, relying on the power conferred by the legislation, act indifferently in enforcing the law. Let me give a very simple example. I have recently provided assistance to some persons suspected of building hillside squatters. In enforcing the law, officers of the Lands Department pointed out that the structures were unauthorized building works, but they did not provide the previous plans and information concerning the structures to prove that certain provisions have been violated, or the sizes of the present structures were different from the requirements stipulated in the previous plans. If the Government could provide the relevant information, the persons alleged to have violated the law could not refute, and it would be easier to ask them to accept the enforcement actions taken by the departments concerned. Therefore, I think it is vital for the two parties to have communication and contacts during the law-enforcement process, and in particular, the provision of evidence by the relevant departments is extremely important.

Chairman, I would also like to discuss the newly added subsection (1C), specifying that a warrant issued under subsection (1B) must specify certain information. In terms of legal principles, I think there is a need to issue warrant, but as I have just mentioned, the release of the relevant information and the provision of information by government officers to the parties concerned are very important.

Basically, this provision only specifies that a warrant issued must specify "(a) the premises or land to be entered; (b) the purpose of the entry; (c) the name and capacity of the person authorized to enter the premises or land; and (d) the date of the issue of the warrant". Such information is superficial and general. I believe the Government has to provide detailed information and evidence when it applies to the Magistrates' Court for a warrant; or else, the magistrate will not hastily issue a warrant.

The information specified in a warrant may be provided to the person concerned; but information concerning the evidence provided in applying for a warrant, the justifications based on which the magistrate finally approved the issue of a warrant, as well as many other information will not be made known to the person concerned, unless there are legal proceedings in the future. When law-enforcement officers enter a premises with a warrant, if the Government

wants to convince the person affected that the issuance of a warrant is well justified, it should also provide the person concerned with the documents submitted to the Magistrates' Court for application of a warrant. I do not think this involves any special confidential information that cannot be disclosed, or the disclosure of which will expose the unprofessionalism or ugliness of the departments concerned.

As these are legal documents, I think the relevant information should be specified as the evidence and information to be provided to the person concerned when enforcement officers enter the premises for inspection, so that the persons concerned would understand clearly the basis for the Government's application for a warrant. Since it cannot be ruled out that the information may be wrong or outdated, and mandatory law-enforcement actions can be carried out based on such information, hence, if the information is not disclosed or provided, the person concerned will very likely be kept in the dark, resulting in some unfair and unreasonable situations.

Furthermore, if the information will be disclosed, the government departments concerned may enforce the law in a more stringent manner. With the accumulation of wrongful cases, the relevant departments may improve the standard and procedure adopted in law enforcement, and more factors may be taken into consideration. When a lot of information have been wrongly withheld or concealed, the departments concerned may not even be aware of the situation and may make the same mistakes over and over.

When I assisted residents of old buildings in handling maintenance problems years ago, some very ridiculous situations had arisen, all because of the lack of communication between different divisions and units of the BD. There are different divisions of the BD responsible for dealing with unauthorized building works (UBW) and building safety. In some ridiculous cases in the past, the building had, upon receipt of repair orders issued by the BD, carried out the maintenance works in accordance with the requirements, which included refurbishment of the external walls of the building, replacement of water pipes and so on. Nevertheless, three months after the completion of the maintenance works, another division of the BD responsible for UBW issued removal orders to dozens of units in the building, stating that there were illegal structures in these units.

Hence, the residents were extremely agitated and they questioned why the removal orders were not issued together with the repair orders. We subsequently found that two different divisions were responsible for repair and removal, and there was a lack of communication between the two. They operated and made decisions independently. I have subsequently suggested to the Government whether different divisions can communicate before issuing orders in the future, *(The buzzer sounded)* ……

CHAIRMAN (in Cantonese): Mr CHAN, your speaking time is up.

MR WONG YUK-MAN (in Cantonese): Chairman, I am pleased to see the Secretary today and I really think that he has a tough job. Originally, there would be an additional Deputy Secretary to lighten his workload. As it turns out, there is no Deputy Secretary and he is now undertaking the work of the Secretary for Development. It is a tough job for him but it also proves that he is so capable ……

CHAIRMAN (in Cantonese): Mr WONG, please speak on the contents of the provisions.

MR WONG YUK-MAN (in Cantonese): I would like to ask the Secretary if he knows that a phenomenon has arisen in Hong Kong in recent years, and more cases have recently been disclosed. I am referring to unauthorized building works (UBW). For the rich who live in a 3 000 sq ft luxury property on the Peak, the area can be expanded to 6 000 sq ft. For the middle class who tried hard to save up every penny for down payment, the 1 200 sq ft flat they bought only has an area of 800 sq ft. For those who do not have the money have to wait for seven years public housing. In the meantime, they have to live in cubicle apartments, sub-divided units, bedspace apartments or become street sleepers. Has the Financial Secretary who manages a large amount of fiscal reserve been indifferent?

CHAIRMAN (in Cantonese): Mr WONG, please speak on the details of the provisions.

MR WONG YUK-MAN (in Cantonese): Chairman, building safety is definitely important; or else amendments will not be made to the Buildings Ordinance. Concerning the Buildings Legislation (Amendment) Bill 2011 (the Bill), Members are more concerned about the safety of buildings, and in implementing the Mandatory Building Inspection Scheme (MBIS) and the Mandatory Window Inspection Scheme (MWIS), very often it is necessary to enter the premises for inspection.

There were cases of forced entry in the past, but it was not so easy to carry out such operation. If the Buildings Department (BD) is to carry out these tasks, they can hardly do anything if BD officers cannot enter the premises for inspection. Therefore, in implementing the MBIS and MWIS, the authorities should be empowered to break into the private property of the public for inspection, and the privacy of the public will be infringed upon. How can information be obtained beforehand? In the course of the Bills Committee's discussion, a number of Members had expressed their views and their wish that the Government would be prudent in handling these issues.

Four people died and many people lost their homes in the Ma Tau Wai Road building collapse incident in January 2010; which once again aroused public concern for building safety. There are many buildings in Hong Kong, some are constructed before the war and many of them aged 50 years or above. Owing to the lower building standards in the past, building safety has become the hidden concern of the community. The standard currently adopted by the BD for the removal of UBW is simple enough. If the buildings in question do not have safety issues, the UBW will not be demolished as there is insufficient manpower. I had once reported cases of UBW, but those UBW have not been removed after several years. We had recently bought an office unit on a certain floor and we found there are UBW outside the building. We had reported these UBW, demanding for their removal. It turned out that the UBW have existed for many years and despite the past complaints, the BD said that the UBW did not pose any safety hazard.

For old building with such problems, the Government cannot instantly resolve them all, but that does not mean that younger buildings do not have similar issues. Given the existing manpower and practice of the BD, I think the UBW problems in Hong Kong cannot be solved in 100 years. Even though officers can break into premises after the passage of this Bill, how many people can do so? What are the grounds of breaking into premises? These are issues of greater concern to us.

Clause 3(3) adds subsection (1A): "Except in case of emergency, neither the Building Authority nor an authorized officer may enter or break into the premises, or enter upon the land under subsection (1) unless — (a) the entry is permitted by the owner, occupier, or person who appears to have control or management of the premises or land; or (b) a warrant is obtained under subsection (1B).". I am more concerned about the expression "in case of emergency" in this provision. This provision has not been clearly drafted, can the Government tell us what a "case of emergency" is, and how the standard is set? Building collapse and casualties are definitely emergency cases. How about buildings that are about to collapse or windows about to fall down to the streets, what are the facts to be based on in determining whether it is a case of emergency?

Under the existing provision, the Building Authority (BA) or an authorized officer may enter the premises with a written authorization. Since the owner or occupier of a unit within the premises can disallow the Government's entry for various reasons, or they can intentionally leave the premises, if government officers cannot find the person after they have visited the premises for a few times, it is difficult for them to handle the case. The written authorization does not empower the officers to break into premises. There was such a problem in the past and it was very difficult for the Government to inspect the buildings or the structure of the buildings.

When an application is made to the Court for a warrant, the officers concerned can break into the premises with the backing of the Court. In fact, I do not like the expression "break into the premises" because it is a violent act, much more violent than our throwing things in the Chamber. I really have to thank Chairman for his remark in a radio programme the day before yesterday, he remarked that it would be exaggerating to say that our behaviours were acts of

violence. It is a pity that other Members from your party and the democrats are saying that I am using violence. Only our brilliant Chairman ……

CHAIRMAN (in Cantonese): Mr WONG, you have digressed from the subject.

MR WONG YUK-MAN (in Cantonese): …… has spoken for us, stating that these are not acts of violence.

"Forced entry" is a bit different from "break into the premises"; why should the expression "break into the premises" be used? That is a violent act indeed. In general, when the expression "break into the premises" is used in the news or in reporting breaking news or when I used this expression when I worked as a news editor, it is used to describe a very violent situation, which mostly involved a criminal behaviour. Sometimes, the police will also break into the premises to arrest suspects. This is basically an act of violence.

Why not change the expression "break into the premises" to "enter the premises without the consent of the owner or occupier but with the support of the Court"? Efficiency can be enhanced if there is a court warrant; there is a lesser chance of obstruction if it is necessary to break into the premises. But, this may also infringe on private property rights.

There is an expression "except in case of emergency" in subsections (1A)(a) and (b), which refers to the authority in subsections (1A)(a) and (b), that is, the BA has obtained the consent by the owner or occupier to enter the premises, or a warrant is obtained. This restriction can be exempted in case of emergency.

What is specifically meant by a case of emergency as I have just mentioned? That is not clearly stated in this provision. We can only rely on the government officers concerned to make a judgment before carrying out these tasks; yet, we may question the judgment. We have to find out the Government's grounds for exempting the restriction in case of emergency and breaking into the premises after the passage of the Bill. It depends on the actual cases; otherwise, it would be impossible for us to understand the expression "except in case of emergency" in this provision.

Many members addressed this point during the deliberation of the Bills Committee. As at March 2012, among the relevant cases handled by the BD in the past, about 70% of these cases have problems of entering the premises, which affected enforcement. Based on the data on the five-year period from 2006 to 2011, actions to break into premises had only been taken on five occasions. An owner will more readily co-operate if there is a court warrant; so the restriction on court warrants is essential. Using force to break into premises without a court warrant or the consent of the owner or occupier will cause serious problems.

Speaking of a warrant and a case of emergency …… perhaps let me talk about the issue of warrant first. The scope must be restricted to issues related to building safety, and there must be immediate danger. Otherwise, how can it be described as an exemption? There are strict restrictions on warrants; they must be related to building safety and there must be immediate danger. Warrant restrictions have such an explicit condition. How critical is a case of emergency?

There are three levels. Needless to say, the first level is to obtain the consent of the owner or occupier of the premises. Everything is fine if consent is given as it will be unnecessary to break into the premises and the officers will just be invited to enter the premises to carry out the inspection. The owner or occupier may take the initiative to ask for an inspection as he may also think that the building has structural problems; hence the officers will be invited to enter the premises. Second, the officers have a warrant. Yet, a warrant will only be issued when building safety and immediate danger are involved. The third level is a case of emergency. Does a case of emergency mean that a building has started to collapse?

We are rather worried even if the expression "except in case of emergency" is added to this provision after the amendments. I hope the Government can explain this point more clearly. Regarding the amendments, in additional to clause 3(3), Members will focus on many related provisions. These provisions also contain the basis adopted by the magistrate in issuing a warrant. Yet, we are not clear about the basis for a case of emergency. On the contrary, the reasons provided by the Court are clearly written in the Bill. I believe this is an inadequacy of the amendments to the Ordinance. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak? Mr Albert CHAN, you are speaking for the third time.

MR ALBERT CHAN (in Cantonese): Chairman, at the end of my previous speech, I mentioned that there is a lack of communication among different divisions of the Buildings Department (BD), which has caused a lot of trouble to owners and has incurred additional expenses. With the passage of this Bill, I really hope that …… according to my understanding, in the course of deliberation of the Bill, the Administration has not given a clear account or an explanation on issues such as the organization of the BD and its enforcement approach.

Chairman, I worry that the history of demolishing unauthorized building works (UBW) for the sake of building safety will happen again today. As the Government had not been asked to give a detailed account of the administrative arrangements at that time, there was a time gap in enforcement. As a result, the residents were greatly disturbed and the expenses had significantly increased.

After hearing the case I have just mentioned, Members should understand where the problems lied. After the Government had issued a repair order, the owners' corporation had to identify a consultant before inviting tenders and convening an owners' meeting. The repair work would only be formally launched after a few rounds of preparatory work. From the date the repair order was received, it took one or two years and sometimes even two to three years to complete the repair work.

Just think, after making so much effort to deal with the repair order, and all works had been conducted in accordance with the consultancy's proposal while the consultancy had to follow the instructions of the BD …… More often than not, the BD will issue a repair order because the pipe brackets and pipes of the building have rusted or the mosaic tiles on the external walls have fallen off. The consultant will provide advice to the owners, the owners' corporation or the management company on the repair projects stipulated in the repair order issued by the BD. The BD will officially confirm the completion of the repair works.

Regarding the case I cited, the residents might think that they had complied with the repair order issued by the BD and completed the repair works. Hence,

they celebrated happily for the completion of the works and had enjoyed a few peaceful days. To their surprise, some residents received, within a short period of three months, an order from the BD for the removal of UBW.

Chairman, as you may know, many old buildings have canopies, flower racks or split-type air conditioners installed on the external walls, and some buildings have small terraces built with iron bars on the external walls, which will undoubtedly pose danger. The authorities should give clear instructions and issue repair orders together with orders to remove UBW.

The amendments stated in this paper may be connected with the work of two other departments in the future. As I have just stated, it is provided that the BD may impose a surcharge of not exceeding 20% on the cost due after the completion of the works. When the Government, especially the BD, enforces the law after the passage of the Bill, I really hope …… I am not sure whether the department responsible for prosecuting offenders will be responsible for the implementation of this Ordinance but I think that it may be responsible. Alternatively, a new unit may be established for the purpose. Irrespective of the Government's arrangement, it is most important for enforcement officers and enforcement agencies to strengthen communication and contacts.

Chairman, you also know that there are cases enforced under the Buildings Ordinance in recent years, especially because Mr LEUNG Chin-man had made a public commitment at the time to deal with all the problems within five years. Thus, the Government commissioned many consultancies and surveying companies to inspect buildings and deal with the related issues. We have received quite a number of complaints about the carelessness of the consultancies in conducting inspection and their poor attitudes towards the residents; some owners are also dissatisfied with the inspection results. Since there are many such complaints over a certain period of time, conflicts between the Government and the residents have increased.

In enforcing the legislation after the implementation of the Bill, if the authorities can allow the affected owners (especially owners of multi-storey buildings) to address all the problems within a reasonable time, instead of asking the residents to deal with problem A today, problem B three months later and problem C half a year later, the residents may be thankful for this benevolent act. Nonetheless, in case of carelessness and omissions in enforcement, or the

government departments work in their own way for administrative convenience, and ignore the needs and sufferings of the public, the passage of this Bill will only bring in more chaos and trouble, and people will be more dissatisfied.

Lastly, I would like to talk about the reasons for imposing a surcharge of not exceeding 20%. There are basically two kinds of government charges: one kind of charge is collected under a cost recovery policy and I absolutely understand and support it. The departments concerned will first calculate the overall administrative expenses, and then, based on a certain percentage, arrive at the amount to be charged. I understand that this kind of charge which has been discussed by the Legislative Council for many years and has basically been accepted by the authorities. In particular, the administrative departments should recover the costs for licensing and law enforcement. The second kind of charge is a punitive fine such as a fine of $1,500 on littering. I objected to this fine of $1,500. At that time, I suggested that a community service order should be imposed instead, because $1,500 was just a small amount for rich people but an elderly CSSA recipient who was fined $1,500 might go without food for a whole month. I also expressed dissatisfaction with the provision on class discrimination in the law.

I really cannot figure out how this surcharge is calculated. First, it is not an essential surcharge because the word "may" is used in the provision "the Building Authority may impose a surcharge of not exceeding 20% on the cost due". It appears that this is a punitive charge because there is a 20% surcharge. Second, 20% more may be charged because of additional administrative fees.

The purpose and original intent of the surcharge are unclear. The surcharge will be the same as an additional administration fee if it is calculated on the basis of the actual costs. Just like the case of tax collection by the Inland Revenue Department; if taxes are paid after a certain deadline, there will be a surcharge at a certain percentage point. If there is a punitive provision such as a similar provision under the Companies Ordinance, there will be a daily fine. I have discussed these provisions many times. There are a number of provisions in the Companies Bill, specifying that a company that fails to comply with a requirement shall be liable to two kinds of fine. One of them is a fine for the failure to comply with a requirement, which may be a fine at level 3, 4, 5 or 6; another is a daily fine for failing to execute an instruction, which may be a fine of $300, $700 or $1,000.

Regarding this surcharge, I understand that the BD has the convention of making similar arrangements but I think the rationale and the relevant policies are not explicit enough and this may not be a good policy arrangement. The Bill has been scrutinized for quite some time and I believe the provisions on this point will be passed today. However, I wish to say at this final scrutiny stage that this surcharge policy is confusing and lacks clear objectives. That should be straightened out when the relevant provisions are made in the future. If it is an administrative fee, it should be collected in the form of administrative fees; if it is a punitive charge, it should be collected in the form of fines. Then, a person being charged will clearly know his responsibilities and the rationale of the charge. There should not be a general surcharge covering the charges for a wide range of work, which will give rise to public discontent ……

CHAIRMAN (in Cantonese): Mr CHAN, you have said a lot.

MR ALBERT CHAN (in Cantonese): Okay, thank you.

CHAIRMAN (in Cantonese): You are repeating the points you have already made. Also, the surcharge that you are now talking about is included in clause 4 which has already stood part of the Bill at the previous stage.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Development, do you wish to speak again?

(The Secretary for Development indicated that he did not need to speak again)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Development be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr Albert CHAN rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Dr David LI, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Emily LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan LEONG, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendments.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 43 Members present, 42 were in favour of the amendments. Since the question was agreed by a majority of the Members present, he therefore declared that the amendments were passed.

CLERK (in Cantonese): Clauses 1, 2, 3, 5 and 6 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1, 2, 3, 5 and 6 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr Albert CHAN rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Dr David LI, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung,

Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan LEONG, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 42 Members present, 41 were in favour of the motion. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese):	New Clause 2A	Section 2 amended (interpretation)
	New Clause 6A	Schedule 8 added
	Heading of New Part Before New Clause 6B	Part 2A Amendment to Building (Minor Works) Regulation
	New Clause 6B	Building (Minor Works) Regulation amended
	New Clause 6C	Section 62 amended (provisions relating to section 39C of Ordinance)

SECRETARY FOR DEVELOPMENT (in Cantonese): Chairman, I move the Second Reading of the new clauses and the heading of the new part read out just

now, as set out in the paper which has been circularized to Members. The new clauses and heading of new Part are related to the signboard supervisory regime. We propose to add clause 6A to the Bill to prescribe Schedule 8, and the Schedule only covers signboards at present. New clause 2A will amend section 2(3) of the Buildings Ordinance, and the Legislative Council may by resolution amend this new Schedule. In light of the above amendments, it is proposed that Part 2A be added to the Bill, which includes new clauses 6B and 6C, making corresponding technical amendments to the Building (Minor Works) Regulation.

Chairman, the above new provisions have been discussed in detail by the Bills Committee and have the support of the Bills Committee. I implore Members to support and pass these new provisions.

Thank you, Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 2A and 6A, heading of new Part before new clause 6B, and new clauses 6B and 6C be read the Second time.

Does any Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, the amendments are related to minor works and signboards. As a matter of fact, regarding these problems, the committees concerned (including panels) had …… Issues related to buildings will very often arouse controversies and public concern.

Chairman, these issues generally involve two aspects, first, enforcement conducted by the department and second, public understanding. In particular, in respect of minor works and signboards, there is a big gap between public understanding of the impacts of these works and the legislative amendments and the law-enforcement standards of the Government. Concerning minor works, people very often may not know that they are required by law to employ certain types of licensed contractors to carry out certain works, and they may not know that they must first apply to the Buildings Department before they can carry out certain kinds of works (such as the works involving signboards). Given the

differences in the understanding or awareness of the public and the law-enforcement standards, we do not rule out the possibility that contraventions or even violations may easily be resulted in the actual implementation of the works.

When these issues were discussed in the past, we proposed that the Government should step up publicity after the passage of the Bill to avoid affecting public interests. One-stop application procedures should be adopted as far as possible, so as to ensure that the public would not, in carrying out the works, break the law inadvertently due to the complicated application procedures or misunderstanding.

Chairman, as many recent legislative amendments involve an expansion of the authorities' power, there may be greater chances for people to be prosecuted. If there is inadequate publicity, innocent people will inadvertently break the law ……

CHAIRMAN (in Cantonese): Mr CHAN, please speak on the details of the provisions being examined by the Committee.

MR ALBERT CHAN (in Cantonese): Chairman, I understand that. I just want to express my worries about the direction of the provisions. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Development, please speak again.

(The Secretary for Development indicated that he did not need to speak again)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clauses 2A and 6A, heading of new Part before new clause 6B and new clauses 6B and 6C be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr Albert CHAN rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Mr CHIM Pui-chung, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Alan LEONG, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 39 Members present, 38 were in favour of the motion. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): New clauses 2A and 6A, heading of new Part before new clause 6B and new clauses 6B and 6C.

SECRETARY FOR DEVELOPMENT (in Cantonese): Chairman, I move the addition to the Bill of the new clauses and the heading of the new Part as read out just now.

Proposed additions

New Clause 2A (see Annex IV)

New Clause 6A (see Annex IV)

Heading of New Part before New Clause 6B (see Annex IV)

New Clause 6B (see Annex IV)

New Clause 6C (see Annex IV)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clauses and the heading of the new Part as just read out be added to the Bill.

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr Albert CHAN rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Prof Patrick LAU, Mr KAM Nai-wai, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Miss Tanya CHAN and Mr Albert CHAN voted for the motion.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 34 Members present, 33 were in favour of the motion. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bills: Third Reading.

BUILDINGS LEGISLATION (AMENDMENT) BILL 2011

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the

Buildings Legislation (Amendment) Bill 2011

has passed through Committee stage with amendment. I move that this Bill be read the Third time and do pass.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Buildings Legislation (Amendment) Bill 2011 be read the Third time and do pass.

Does any Member wish to speak?

MR ALBERT CHAN (in Cantonese): President, this is a highly controversial legislation. For such a highly controversial legislation, discussion has been held in the last two days of the current term of the Legislative Council. It is rare that Members seldom speak as if they were rushing to finish their work. The Secretariat has originally expected that the discussion would take five or six hours, but it will finish in just two hours.

President, I have expressed some views on the Bill at the Committee stage. Given that I did not speak on the resumption of the Second Reading of the Bill, I

would like to express my overall comments on the Bill as a whole as it will certainly be passed.

The Bill seeks to deal with problems related to unauthorized building works (UBW). As I pointed out when scrutinizing the Bill, the legislation was opposed by the business sector as a whole in a lopsided manner when it was proposed a couple of years ago. The business sector opposed it on the ground of privacy because staff of the Buildings Department (BD) can enter these super luxurious apartments, and the privacy of the tycoons may be infringed upon. According to the legislation, the authorities can break into premises or apply for a warrant. So, when the legislation was proposed, there were strong oppositions.

Now, the passage of the Bill clearly signifies the emergence of a certain political pressure because the problem of UBW involving the dignitaries and tycoons has been worsening. After the occurrence of a series of scandals, including the incidents involving the Chief Executive and the former Chief Secretary, UBW were found in the premises of many tycoons. As a result, opposition voice has almost died down when the legislation is to be passed today. Such spates of incidents have exemplified the seriousness of the problem and this Council should not turn a blind eye to it even though many dignitaries may think that the legislation will affect them.

I hope that with the passage of the Bill, the authorities will handle the cases of non-compliance and UBW fairly, and that the authorities would not, in consideration of the privacy of the rich, and due to the reluctance or insufficient power of BD officers to enter the premises, let the rich go scot-free. Under the new legislation and new powers, BD officers can, in case of emergency, enter premises under a warrant to conduct checks and inspections or even enforce the law. They are also authorized to remove the unauthorized structures and impose a surcharge of 20%. Therefore, the Bill is a breakthrough and I hope that the problem of UBW can be ameliorated through the passage of the Bill.

President, the many worries that I have expressed during the scrutiny of the Bill hold water. In the past, complaints lodged by the public would be submitted to the Director of Buildings. I hope that the relevant departments, by drawing on the experience of the past, can avoid the recurrence of the old problems in the enforcement process. For government officials, the recurrence of problems will not cause any loss to them because they will receive remuneration as usual and

even get promoted; but for the general public, small property owners or the aggrieved parties, they will suffer.

With the passage of this Bill, I really hope that the BD can publish the enforcement guidelines. Furthermore, I hope that the relevant committees, particularly the relevant panel, will conduct formal discussions on the BD's enforcement procedures and guidelines after the commencement of the new Legislative Session in October. Through the formulation of guidelines and reasonable arrangements, confusion in law enforcement and abuse of power can be avoided. Furthermore, unnecessary conflict between government departments and aggrieved citizens due to a lack of information will not occur.

I believe property owners and tenants are reasonable people. If law-enforcement officers can explain clearly the reasons and background for seeking entry into their premises, as well as the area to be inspected, I believe most of the law abiding citizens will accede to the request and grant entry to them. However, if law-enforcement officers fail to give a comprehensive explanation or bully the weak and the powerless, I am sure that disputes will arise. Should disputes arise in connection with entry into premises, it will lead to complaints lodged at the Office of The Ombudsman or unnecessary prosecution. In situations where the ordinary citizens have no knowledge …… we have handled many cases in the past, some members of the public were being charged with littering, and as they refused to present their identity cards, thinking that the charge was not appropriate, extra charges were imposed on them.

Therefore, in my opinion, the attitude of law-enforcement officers, and the relevant procedures and arrangements are extremely important. In particular, issues concerning entry into premises will result in serious dispute. Request for entry into premises due to leakage problem will give rise to disputes, let alone entering the premises for investigation of the so-called UBW. However, given the serious and rampant problem of UBW, we all agree that the legislation should be amended to strengthen the law-enforcement powers of the BD.

On the other hand, concerning the additional power provided by the amendment, if an owner refuses to pay the share of mandatory building inspection as directed by the owners' corporation, the owner will be liable on conviction to a fine of $25,000. I would like to express my concern in this regard. President, I support the provision because building safety is important.

But in my opinion, most owners' corporations will not just collect inspection and repair costs, instead a lump sum will be collected, covering various fees. If the costs for mandatory inspection of the building are collected separately, the problem will not be big, as owners share out the cost in proportion to the shares held by them. I believe such cost will not be too high, since consultants are engaged to conduct inspection as required by law, the cost to be shared by each flat owner will not be too high.

However, according to my experience and understanding, some owners' corporations collect from flat owners a lump sum covering various fees, such as management fees, building inspection fees, as well as maintenance fees. Very often, flat owners are willing to pay building inspection fees. As for other charges, they may refuse to pay if they consider such charges unreasonable in the light of the procedures of the owners' corporation or other problems. However, the owners' corporation or the management company may not allow flat owners to pay individual fees, as all fees, such as monthly management fees, building inspection fees and certain maintenance costs, are listed out in a demand note, and owners have to pay the fees before a specified deadline. Owing to the payment arrangements, flat owners may be alleged of refusing to pay the costs of mandatory building inspection. I hope such situations can be avoided. In the prosecution or investigation process, the authorities should ensure that the situation mentioned above will not be so chaotic, such that flat owners will easily be subject to prosecution for refusing to pay the costs for mandatory building inspection.

President, the legislation will confer unprecedented new powers on the BD, which include the powers to enter premises, apply for a warrant, break into premises, and implement the spirit and principles of the relevant legislation in case of emergency. However, as Mr WONG Yuk-man and I have pointed out, there is a lack of a clear and explicit definition of the so-called emergency situations. The BD officers will inevitably be accused of abusing their powers and invoking the legislation erroneously in future. I believe such cases will occur from time to time.

So, in my initial proposal, I consider that it is extremely important to implement the guidelines of the relevant departments. These guidelines should be clear, and information should be made public by all means to enhance transparency. Let us take a look at the definition of UBW stipulated by the BD.

I remember that there were a lot of controversies and protests when the BD dealt with UBW two decades ago. Firstly, it was due to the fact that many people were affected when the legislation was implemented; secondly, the guidelines were not clear enough. Later, the BD illustrated, through photos and pictures, what kinds of structures were considered to be illegal or unauthorized. Such information had been uploaded on the Internet and leaflets were extensively distributed to inform the public of the requirements. For instance, the width of canopies should not be more than 1.5 ft, or else it would be an offence. It was also clearly stated that flower racks were regarded as an unauthorized structure. After reading such information, the public can gradually have a clear picture. As a result, disputes and conflicts have reduced significantly in connection with the handling of UBW. Therefore, the standard of law enforcement and the relevant provisions as well as relevant information should be clear, specific and transparent to the public. This is most important.

I very much hope that the BD will clearly define the meaning of emergency situations and specify under what circumstances can enforcement officers break into premises. A clear explanation should be given. When the Legislative Council and relevant panels commence operation again after October, Members have the responsibility to push the Government to provide a precise definition. I believe many Members of the pro-establishment camp, particularly the representatives of bigwigs, will take the initiative to put forth this request because the luxurious apartments of the super rich will be mostly affected by this legislation, which involves …… Certainly, "sub-divided units" will also be affected. Therefore, there will certainly be disputes about the standard of law enforcement and how the standard should be laid down. I am sure that the media will be very interested to know how the Government will deal with these cases after the Ordinance has come into operation, and this will also give rise to widespread concern and discussion.

Finally, President, I would like to talk about the surcharge. Let me reiterate that the level of surcharge is neither appropriate nor reasonable. Policy-wise, it is an extremely ambiguous option. It will be more acceptable if it is divided into two parts: the first part is related to the recovery of actual administrative cost incurred while the second part is a kind of punitive provision. If it is a punitive provision, it should have a deterrent effect. In fact, regarding penalty on UBW in luxurious apartments — I think not only luxurious apartments, but also all kinds of premises — I do not think it is appropriate just to

impose a fine because the rich will regard the fine as a kind of rent which is insignificant to them. However, the fine is too exorbitant for the ordinary people. So, I found it unacceptable if the fine signifies any class discrimination.

MS AUDREY EU (in Cantonese): Originally I did not intend to speak again at the Third Reading as I had spoken on clause 3 at the Committee stage. But after listening to Mr Albert CHAN's speech, I think it is necessary to supplement some points.

The first point I wish to supplement is about his remark concerning entry into premises under a warrant, which is considered highly controversial. As unauthorized building works (UBW) have been found in the residences of the rich, in particular, there are a series of news reports on this issue in recent days, they thus oppose entry into premises under a warrant. President, regarding this issue, the Civic Party has also raised various concerns in our discussion on the clauses of the Blue Bill or in our last discussion on the Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme, not because we wish to protect the rich from law-enforcement agencies entering their premises for investigation, but because we know that illegal structures may exist in the residences of many people living on Hong Kong Island, in Kowloon and the New Territories. Sometimes, people do not even know that the structures are illegal. We are very concerned about this. Let us consider the situation that even the Chief Executive, who is a valuation surveyor by profession, does not know that there are illegal structures in his home, and whether we believe in what he said is another matter of concern. The ordinary citizens, who are not professionals in this field, really do not know that there are illegal structures in the flats that they buy.

Besides, there may be situation in which a person, after arguing with his neighbour, lodged a complaint against the neighbour, claiming that there are illegal structures in his premises. What should law-enforcement agencies do under such circumstance? Should they simply ignore the complaint? Should the law-enforcement agencies take no action despite the complaints lodged? This will also lead to public grievances.

We agree that if UBW will affect public safety, or if people have the impression that the law is enforced in a selective manner, the Government should

strive to make the legislation clear, objective and consistent. If the UBW in question have met certain objective criteria, law-enforcement officers should enter the premises to enforce the law, regardless of whether the owners of premises are rich or not.

However, how can people's privacy be protected? As I said just now, the neighbours can lodge a complaint. If law-enforcement officers come to my home every time upon receipt of complaints, and if they cannot gain entry after two visits and hence apply for warrant to enter the premises with a team of experts for inspection, I will be greatly disturbed. Hence, we should be very careful in drawing the line or setting the threshold; you cannot claim that we merely wish to protect the rich.

President, the second point I wish to supplement is the enhanced power conferred by the Bill on government officers or staff of the Buildings Department (BD) to enter premises for inspection, as mentioned by Mr Albert CHAN just now. As I have said in my speech earlier, under section 22 of the existing Buildings Ordinance (BO), BD officers are authorized to break into premises in the presence of police officers. Certainly, the provision has also stipulated that in case of emergency or hazardous situation, the relevant person can break into premises. But section 22(1)(c) also provides that one of the purposes of breaking into premises is to ascertain whether the BO has been complied with. In other words, the coverage can be very wide. As I said just now, the BO is rather complex and detailed, and there are many provisions which may give rise to disputes as to whether there are contraventions of the BO. According to the wordings of the existing section 22, law-enforcement agencies are authorized to break into premises even without the need to apply for a warrant if it is suspected that the BO has not been complied with. So, there is room for improvement indeed.

In his speech earlier, Mr IP Kwok-him asked whether the amendments to the Blue Bill seek to expand or narrow the powers. This will also give rise to certain disputes. Fortunately, despite the ambiguity of the existing legislation, the Government has so far been very cautious in exercising the powers under the BO. As I pointed out earlier, the Government has tried to break into premises only on five occasions since 2006. In the case involving Mr Henry TANG, who has such a high status, staff of the BD had not broken into his premises, even

though it was alleged that there was an underground palace in his residence. The staff of the BD only pressed the door bell to request for entry and they told the media that they could not gain entry into the premises; consequently law enforcement had been delayed for some time. Hence, we can see from this case that though the applicability of the BO is relatively wide and ambiguous, the law-enforcement agencies are cautious in exercising their powers.

Finally, I would like to reiterate some points in my first speech, that is, improvement has been made by the Bill when compared with the existing Ordinance. However, the authorities, in enforcing the law, should be flexible and sensitive in exercising the powers, and strike a balance between safeguarding building safety and protecting people's entitled privacy.

Thank you, President.

MS CYD HO (in Cantonese): Whenever some serious accidents have occurred, the Government has to do something, including the enactment of a new law to prevent the recurrence of serious accidents. Therefore, after the building collapse incident at Ma Tau Wai Road and the fire at Fa Yuen Street in which the units in the upper floors had been affected, the Government has a strong case to propose some amendments, including the power to enter the premises to inspect whether there is any unauthorized building works (UBW).

In our last amendment to the Buildings Ordinance, the Government proposed to add a provision at the final stage allowing the entry into premises for inspection. Certainly, we were gravely concerned and opined that the Government should not, without prior notice, add such provision to the Bill which was still under scrutiny. The former Secretary for Development, who is the incumbent Chief Secretary for Administration, accepted our advice and introduced the Buildings Legislation (Amendment) Bill 2011 (the Bill). We commend the Government's approach, which is in tandem with the relevant procedures. However, can the amendment guard against all problems?

Take unauthorized signboards as an example. Apart from enacting legislation, effective law enforcement is equally important. An unauthorized signboard has suddenly been erected between Percival Street and Lee Garden

Road in Causeway Bay. Although the plan for its erection has not yet been submitted to the authorities, its construction commenced. This signboard, which is more than 80 sq ft in size, has blocked the wind and light from nearby residents like a screen. Even though a complaint was lodged by residents expeditiously, law-enforcement action could not be taken immediately. The authorities had to wait until the completion of the signboard before they could enter the premises in accordance with the procedures prescribed in the amended Ordinance. However, residents living in the vicinity have been seriously affected.

Such examples often occur in many commercial and residential areas because there are lots of residential buildings in these old districts, which have now turned into commercial and consumers' zones. Those sizeable unauthorized signboards, which have blocked the wind and light from the residents, are erected from time to time. So, I would like to urge the authorities, apart from amending the legislation, it should follow up residents' complaints efficiently so that those who wish to erect signboards without submitting the plans to the authorities cannot commence such unauthorized works. The Government can stop such construction works.

Next, I would like talk about the safe living environment for residents. After the tragedy in Ma Tau Wai, we are, of course, aware of the potential hazard posed by "sub-divided units" to public safety. Therefore, this Bill is introduced so that the authorities can apply for a warrant from court to enter premises and check whether these structures will pose an immediate threat to the structural safety of buildings.

However, President, whenever a law is enacted, there will also be loopholes. The power of entering the premises for inspection will give rise to the concern about infringement of privacy. But in the end, can the safety of residents be effectively safeguarded? The Bill can immediately prevent people from living in illegal structures, which is the objective effect of the Bill. But this cannot ensure that people can live in a safe environment. Why? Because even though the Government has demolished these illegal structures or ordered the closure of these buildings, the residents have to look for a place live in. In the final analysis, this is a phenomenon of urban poverty in this metropolis. In view of the high property prices and traffic expenses, people with a meagre income have to live in places in the vicinity of their workplaces, thus we have such residential units. Though they are dangerous, they are affordable by these people.

Secretary, we really have to solve at root the problem of urban poverty and the problem of dangerous living environment. Secretary, there is only one solution, that is, to provide more public housing, particularly in urban areas which are close to the people's workplaces. So, we have strong demands on the new Government, they should deal with problems that have not been dealt with by the former Government, increase the supply of public housing expeditiously, and relax the eligibility for public housing. Of course, if the Government says that it is difficult to find lands in the urban areas, we may reconsider converting some industrial buildings in old districts such as Kwun Tong and San Po Kong for housing development. In doing so, we can provide safe living environment for low-income people in districts which are in the vicinity of the urban areas. Thus, they can be provided with safe and affordable shelters, which are also closer to their workplaces.

If this phenomenon can be changed at root, no one will rent and live in "sub-divided units", which will pose safety hazard to residents. If people have a choice, who will be willing to put the lives and property of their family members at risk? So, if the Government merely outlaws the "sub-divided units", what it can do is to order the closure of these buildings. But as there is a demand, similar facilities will soon appear in the neighbourhood and the rent may be more expensive, and the environment will become increasingly hazardous.

President, finally, I would like to point out that all are equal before the law. After the introduction of the Bill, which is concerned about entering premises for inspection and removal of UBW, we have found that there are illegal structures in the residences of some high-ranking officials, including the former and the incumbent Chief Executive. The same problem is found in the residences of the Director of Buildings and several other officials. After the commencement of the legislation, many "civilians" will be required to remove the racks for air-conditioners or flowers outside their tenements, after staff of the Buildings Department (BD) has conducted visual inspection on the street. We learn that in some cases, the flat owners were unemployed and their family members had also fallen ill; despite all that, they were fined more than $3,000 by court as they had not complied with the warning letters from the BD. However, when illegal structures are now found at the residences of some high-ranking officials or the rich and powerful, the Government simply said that they are "negligent" and let

them off lightly. Under such circumstances, the Government has failed to adhere to the principle of equality before the law. In view of this, after the commencement of the law, those who have been prosecuted by the Government and fined so heavily that they cannot afford to pay will be furious.

Therefore, we have to tell the Government that it has to treat everyone equally and cannot let off anyone lightly. Otherwise, public resentment will grow and the people will query whether the corrupt practices of the Mainland have spread to the Hong Kong SAR, and whether the rich and powerful are above the law.

President, although I support the passage of the Bill, I have to reiterate that the Bill cannot solve all problems at root. We still have to formulate a lot of law-enforcement details, relevant administrative and policy measures before we can genuinely attain a safe and harmonious society. Thank you, President.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR WONG YUK-MAN (in Cantonese): Mr LEUNG Chun-ying is coming to the Legislative Council in the afternoon, but he has indicated that he would not respond to the issue of unauthorized building works (UBW). I wonder if the Secretary would answer on his behalf.

The Government submitted the Buildings (Amendment) Bill 2010 last year with a view to implementing the Mandatory Building Inspection Scheme (MBIS) and the Mandatory Window Inspection Scheme (MWIS). The existing Buildings Legislation (Amendment) Bill 2011 (the Bill) further enhances the safety inspection system for buildings. We support this Bill in principle.

The Bill mainly contains five measures, including first, imposing surcharges on defaulted works; second, imposing penalties against people who refuse to share the cost of works by an owners' corporation for compliance with statutory orders or notices; third, issuing warrants for entry into premises; fourth, establishing a signboard control system; and fifth, requiring registered inspectors to comprehensively report exterior UBW under MBIS.

Concerning the surcharges on defaulted works, the Bills Committee pointed out the opinions of some deputations. These deputations opine that the surcharges on defaulted works should be imposed on unco-operative owners rather than on those who are willing to comply with the Buildings Department (BD)'s orders or notices. The Government replied that the surcharges were designed as an encouragement for owners to carry out the works on their own initiative rather than as a punishment.

According to the current proposal, the BD has the discretionary power, depending on each different case, to decide imposing a surcharge of not exceeding 20% of the total cost. A surcharge of not exceeding 20% of the total cost is the wordings used in the report. From the wordings, the 20% limit is adjustable according to the situation. But what criteria does the Government use when deciding to impose 20%, 15% or even 1% of the total cost as surcharges?

After reviewing the information, we learn that the Bills Committee had asked the authorities to clarify how the discretion was exercised. The authorities replied that, in imposing the surcharge, the BD would adopt the principles laid down in its internal office manuals. The reply brings out several issues. First of all, the principles provided by the authorities contain only four criteria on surcharges to be imposed, namely: (a) for the carrying out of emergency works where no order or notice under the Building Ordinance has been issued, no surcharge would be imposed; (b) in the case of default of a statutory order or notice, the BD would engage the service of an outsourced consultant and/or the Government contractor to carry out the required works. If the owner chooses to make arrangement for the works before the commencement of the required works by the BD and eventually the owner has complied with the order or notice, no surcharge would be imposed; and (c) owners who have proved that genuine practical difficulties were encountered in complying with the order or notice due to old age, infirmity, mental illness, tenant's refusal to grant access, obstruction of access to common parts of a building by unco-operative persons, and unsuccessful attempt in organizing the required works in the common parts of a building and so on, a surcharge of 10% on the cost of the required works would be imposed; and (d) for all other cases, a surcharge of 20% would be imposed.

As a matter of fact, the Government has laid down very clear criteria for the surcharges to be imposed and there are only two occasions on which specified surcharges would be imposed. Since there are very specific criteria, why does

the Government still have to decide the amount of surcharges case by case not exceeding 20% of the total cost? Why is the Government so ambiguous in its wordings?

Although the principles laid down in the BD's internal office manuals still have room for improvement in small details, the major principles are already very complete. Why do we not add this guideline to the Ordinance? On the one hand, it can serve as a firm guidance upon which the relevant officers can rely on when imposing surcharges. On the other hand, it can serve as a reference so that the public may have a better concept of the surcharges pertinent to the Ordinance.

Members are also concerned that some owners may encounter great difficulties in making arrangement for the necessary works, rather than being unco-operative. In response, the Government said that it will make an undertaking in its speech on the Second Reading debate of the Bill that owners will be fully exempted from the surcharge if they suffer from old age, infirmity, mental illness or encounter genuine practical difficulties. If the Government agrees with this approach and is willing to fulfil its pledge, we think the Government should include it in its amendment so that it will become a provision with legal effect. But the Government did not do so in the end.

I would also like to speak on the penalty against people who refuse to share the cost of works by an owners' corporation for compliance with statutory orders or notices. We support the penalty against people who refuse to share the cost of works by an owners' corporation for compliance with statutory orders or notices because if there is a lack of enforcement measures, these so-called MBIS and MWIS will exist in name only and their effectiveness will be greatly undermined. We agree that any person who refuses to share the cost of works will commit an offence and liable on conviction to a fine at level 4, that is, a maximum fine of $25,000. In view of the current situation, we consider the penalty reasonable. But it should be subject to review on regular basis. Meanwhile, we can see that under the existing legislation, the defaulted fine cannot be registered as an encumbrance on the property title of the relevant owners at the Land Registry. The authorities should consider whether it is necessary to amend the law in this regard. If the majority of the community also considers it necessary to strengthen the penalty against the parties concerned and

enhance the deterrent effect, the Government should consider including the defaulted fine as an encumbrance legally registrable on the title of the property.

What will happen if a property owner fails to pay a fine? Can the defaulted fine be registered as an encumbrance on the property title of the relevant owners at the Land Registry? In this connection, the Government in response said that according to the Buildings Ordinance or existing provisions concerning criminal sanctions, it is not stipulated that the arrears can be registered as a criminal liability on the property title of the offenders; second, according to section 2 of the Land Registration Ordinance, only instruments affecting land can be registered; and third, according to section 2(2) of the Land Registration Ordinance, any person who is liable on conviction to a fine will be personally liable to the fine.

The Government has pointed out that, owing to the aforesaid reasons, default of payment by the offenders cannot be regarded as an instrument affecting land, and cannot be registered as an encumbrance on the property title of the owners concerned at the Land Registry. But in our opinion, this should not be subject to the restriction of the laws. Rather, it is a question of necessity. If relevant amendment to the laws will make owners more responsible, we will consider it necessary and worthwhile to set this as an example of exception.

President, the People Power supports the Bill and considers that the scope of discussion at the Third Reading can be broader. But we will specifically express our concerns at several points.

The existing problem of UBW seems to be prevalent, and cannot be solved in a century. The first problem to be solved is the illegal structures at the residence of the Chief Executive. The Financial Secretary is also the Secretary for Development at this moment. I do not know what he will do in his capacity as the Secretary for Development. But I expect that he will not do anything, right? Mr LEUNG Chun-ying will come to the Legislative Council today, and it is said that he will not discuss the UBW in his residence. He is a person without integrity and fond of lying ……

PRESIDENT (in Cantonese): Mr WONG, you have strayed from the topic of the Third Reading of the Bill.

MR WONG YUK-MAN (in Cantonese): …… you have joined such a team and kept silent. The Bill we discuss today also seeks to deal with such illegal structures ……

PRESIDENT (in Cantonese): Mr WONG, you should speak on the Bill. You have strayed from the question.

MR WONG YUK-MAN (in Cantonese): We are now discussing the Buildings Legislation (Amendment) Bill 2011 and debating on the Third Reading of the Bill.

PRESIDENT (in Cantonese): You are not speaking on the Bill.

MR WONG YUK-MAN (in Cantonese): I am now discussing the Buildings Legislation (Amendment) Bill 2011. President, I support the Third Reading of the Bill and I do not support the Chief Executive who is a liar. I will give him a lesson when he comes to this Council this afternoon. Thank you, President.

MR FREDERICK FUNG (in Cantonese): President, the enactment of this legislation is certainly due to the existence of many "sub-divided units" and unauthorized building works (UBW). Very often, the Government is unable to tackle such illegal structures, making it necessary to strength regulation by means of legislation. Although details are set out in the Bill, I think the crux of the Bill is to allow staff of the Buildings Department or other relevant departments to enter premises for inspection.

President, I am forced to vote for this Bill although I am, in principal, extremely reluctant to do so. The Government has all along adopted the established rules and regulations to tackle UBW. Whenever new problems arise, new regulations will be enacted. For instance, concerning the issue of fire safety that has been discussed, it is stipulated that regular checks on fire installations are required. To address fires caused by faulty electrical wiring, it is required that electrical wiring should be checked on a regular basis. To tackle

illegal structures, it is required that buildings be inspected on regular basis. To tackle problems related to window frames, legislation has been enacted for window inspection on a regular basis. Similarly, to tackle hygiene problem, legislation has been enacted for hygiene inspections on a regular basis. The Government will constantly enact new legislation to tackle the prevalent problems and this has become an established practice. The Government stays in the same old rut in tackling these problems and such stop-gap measures can cure the symptoms only. In the end, the problems cannot be solved by following the rules and regulations of the previous Government.

In fact, we have put forth proposals on improving the management of private buildings, but the authorities did not take heed of our advice. The authorities are reluctant to listen to our views or accept our suggested practice. They insist on adopting their own way and new legislation has been enacted from time to time for public compliance. President, if I do not support this Bill and in case problems arise, what should we do? If I support this Bill, it cannot solve the problems at root. So, I have to vote for the Bill despite my reluctance. In this connection, I would like to explain the reasons why.

As I said just now, the problems I cited can hardly be understood or realized by a resident, whether he is a property owner or a tenant is insignificant. Concerning problems relating to fire safety, power supply, illegal structures and hygiene problem, we have to ask, firstly, whether the general public understand these problems. The answer is in the negative. Secondly, even though they are aware of these problems, do they understand the relevant legislation? The answer is also in the negative. Even though they have knowledge in the relevant legislation, how will they tackle these problems? Will all problems be solved properly by hiring an authorized person? Will these authorized persons genuinely assist the residents in tackling these problems?

In the old districts, these authorized persons and contractors always engage in collusive price fixing or bid-rigging. Can the general public tackle these problems? Do they know how to tackle them? In my opinion, the general public are unable to tackle such problems.

In my opinion, the legislation enacted by Government will only be effective for buildings which have set up owners' corporations or management committees, and the management companies they hired have a proven record of

good performance. Under such circumstances, I think it is effective to monitor the good performance of various parties by means of legislation and penalties.

However, the legislation will not be effective in situations where the buildings have formed their owners' corporations, hired their own watchmen and tackled problems as they arise, without engaging a management company. Another situation is that buildings, particularly those in the old communities or old tenements, have not hired any management companies at all. This is very common.

Not only are these buildings dilapidated, most of the tenants or owners are elderly people. Even though the legislation is passed today, they will never understand it. You can say that they are ignorant of property management or even the actual situation. In that case, how can the Government ensure that residents of these buildings would comply with the legislation after its enactment? However, they will be subject to penalty upon violation of the law. So, this is not a desirable approach.

President, in my opinion, these series of legislation as a whole seek to tackle building management problems in a negative way and it is difficult for the public to understand these problems, that is, the problems of managing the buildings they live in.

Sanctions will be imposed upon contravention of the legislation. Sometimes it may be a fine, and sometimes it may be the imposition of an encumbrance. In fact, the imposition of a fine or an encumbrance cannot ensure that the public will know how to rectify any UBW.

Of course, the Bill will confer additional power on the authorities so that public officers can enter premises for inspection. However, how many flats can they inspect? There are 40 000 buildings in Hong Kong. Problems may occur not only in the common areas of a building, but also in each unit of the building and problems may arise both inside and outside of the building. How many staff do the authorities need to conduct inspections?

Just now, I have omitted one point. As "Yuk-man" has mentioned, those who have no knowledge certainly do not know this legislation. However, those who are knowledgeable may not be aware of it. Even high-ranking officials in

Hong Kong may also have such problems in their own residence and the situation is more complex.

So, how many additional staff do the authorities need to recruit to gain entry into premises for inspection? How often should inspections take place to ensure that the legislation is effectively enforced and all properties in Hong Kong are managed in such a manner that they have effectively complied with all regulations that I mentioned just now, particularly the amended Ordinance proposed by the Government today? Theoretically speaking, as public officials are empowered to enter premises for inspection, the Government should all the more prove to the public in future that it can implement such legislation through effective governance and enforce the law against UBW.

However, President, I can tell the Secretary that he will definitely be doomed to fail. Surely, he can neither recruit so many staff nor easily gain entry into premises for inspection. Even though complaints have been lodged, the authorities are unable to deal with them.

Thus, all along we have regarded 24-hour monitoring as the fundamental solution to various building problems that I mentioned just now, such as UBW, fire safety, precaution against faulty electrical wiring, hygiene problem and window frames. It is impossible to request for 24-hour monitoring by the Government. Nor does the Government have so many manpower and resources, not to mention that it is not proper to spend public fund on monitoring private properties round the clock. Therefore, we have all along emphasized that regarding the two situations in which the Government cannot tackle the problems — first, owners' corporations have been formed but cannot afford to hire management companies; and second, old tenements in old districts which will not form any owners' corporations …… as to why they will not form owners' corporations, I will not repeat the details as I have discussed this issue before. To put it simply, sometimes it is because we cannot find the owners or because some owners have emigrated, left Hong Kong, gone missing or become senile. In Sham Shui Po, the district where I serve, there are some four-storey stand-alone old buildings with two units on each floor. In some of these buildings, there are two owners' corporations. However, how can an owners' corporation be formed with only four units as they cannot combine with units in the other block? These problems cannot be solved by legislation. This is not a grey area in legislation, but a major loophole. As a result, the problems of old

buildings remain unsolved. Hence, we have proposed the model of small district management.

In fact, the Government should seriously consider whether the Secretary for Home Affairs shall be empowered to take back the management rights of buildings which are in extremely poor sanitation condition because the problems — in my opinion, these are not only sanitation problems but also problems related to public interest, including the UBW we discuss today — so that managers can be commissioned to take up the management. If all buildings along the street are old, as in the case of many old urban areas, such as Kwun Tong, the old district of Hung Hom, Tai Kok Tsui, Sham Shui Po, Wan Chai, Western District, and even Tsuen Wan, such problems prevail. Should these districts be responsible by the Home Affairs Bureau …… or the Government should seriously consider how to amend this legislation and decide whether the Secretary for Home Affairs or the Secretary for Development should take up the responsibility. Further consideration may be allowed. A manager will be commissioned to manage all the buildings of a street under small district management.

Certainly, a building cannot afford to hire a management company. As there are only four households, how can it hire a management company? But it can do so under the model of small district management. Owners under the small district management scheme can hire a management company to provide 24-hour management. At present, management companies in general will provide 24-hour management. If these management companies are professional or operate on full-time basis, they can cope with and deal with the latest situation to comply with the new legislation enacted by the Government from time to time. The promulgation of new regulations is very complex and requires knowledge and skill in implementation. Only in doing so can Hong Kong …… Apart from new owners' corporations and management companies which are capable of dealing with the latest requirements, we should ensure that the requirements of legislation enacted by the Government, including today's amended Ordinance, will be complied with by all people in Hong Kong. The Government should not think that the problems can be solved by conferring more powers on the authorities so that public officers can enter premises to conduct inspection. Secretary, I can tell you affirmatively that when you come back to this Council to brief us your work next year, you will certainly be doomed to fail.

President, under such circumstances, I am helpless as I said just now. Should I support the Bill or not? I do not agree with the general direction, but the Government has never considered our proposed direction. Regarding the effect of these stop-gap measures, the only objective to be achieved is that some owners will comply with the new legislation as expected. But it is impossible to achieve total compliance by all owners. Is it true that doing something is better than doing nothing? Can the deterrent effect be achieved on some occasions to a certain extent so that small owners are forced to comply with the requirements of the authorities due to fear? However, compliance with the law may pose some problems for small flat owners.

President, just now I mentioned some districts with many old buildings. Some owners have asked me what they should do after passage of this legislation today. How can they, being owners of four residential units, form an owners' corporation? They simply do not know how to implement the requirements of the law. Should they just sit and wait for punishment? They do not want to be punished; they wish to abide by the law and they are good citizens. In view of the situation of these old districts, I opine that this series of legislation relating to illegal structures is not people-oriented. After the occurrence of a fire, the Government has enacted a piece of legislation to deal with fire hazards. After the occurrence of problems related to faulty electrical wiring, a relevant bill is passed. Owing to the existence of "sub-divided units", a relevant legislation is enacted to deal with the problem. The legislation is enacted without taking the actual situation into account. The problems I mentioned just now will not occur in high-rise buildings which are 30 or 40 storeys in height as the owners of these buildings have formed owners' corporations and the quality of property management is good. More than 90% of the problems I mentioned just now occur in old districts. But buildings in old districts cannot comply with the requirements of the law. It seems that the Government cannot see such contradiction and just cast the problem aside.

Finally, President, I think it is a correct approach of the legislation to request property owners to make improvement. But in what way should improvement be made? To impose penalties through various ordinances in a negative way is not appropriate. For a modern city, it is not …… how about those owners who cannot form an owners' corporation and cannot afford to hire a qualified management company …… Although Hong Kong is an international

city and ranks first in many respects, it may rank last in this regard. Therefore, President, I have to vote for the Bill reluctantly.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Buildings Legislation (Amendment) Bill 2011 be read the Third time and do pass. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr Albert CHAN rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms

Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Jeffrey LAM, Mr Ronny TONG, Mr CHIM Pui-chung, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that there were 42 Members present, 41 were in favour of the motion. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Buildings Legislation (Amendment) Bill 2011.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012. Please turn to page 131 of Part II of the script.

TRADE DESCRIPTIONS (UNFAIR TRADE PRACTICES) (AMENDMENT) BILL 2012

Resumption of debate on Second Reading which was moved on 29 February 2012

PRESIDENT (in Cantonese): Mr Fred LI, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

MR FRED LI (in Cantonese): President, in the capacity as Chairman of the Bills Committee on Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 (the Bills Committee), I report the deliberation of the Bills Committee as follows.

The Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 (the Bill) seeks to amend the Trade Descriptions Ordinance to extend its coverage to services, prohibit certain unfair trade practices and enhance the enforcement mechanism.

The Bills Committee has held eight meetings with the Administration and received views from the stakeholders, including trade associations and consumer advocates, at one of these meetings. The Bills Committee generally supports the legislative intent of the Bill to combat unfair trade practices and enhance the protection of consumers' right.

In the course of deliberation, some members have raised concerns about whether front-line salespersons failing to inform consumers of all the features and functions of certain products will commit the offence of misleading omissions. The authorities have stated that under the provision, in determining whether a commercial practice is a misleading omission, account has to be taken of all the features and circumstances of the commercial practice. The legislative intent is to guard against the omission of material information in relation to the commercial practice in question. In addition, the existing provision stipulates a defence in circumstances where the commission of the offence was due to a mistake or to reliance on information supplied to a trader or to the act or default of another person, an accident or some other cause beyond the trader's control.

Regarding the prohibition of the use of aggressive practices in consumer transactions, the Bills Committee has noted that the Court will take into account the factual context in determining whether a commercial practice has used harassment, coercion or undue influence. Some Members considers the expression "factual context" unclear, and may lead to abuse by unreasonable consumers against honest traders. The authorities have advised that the requirement of the relevant provision, including the factors which the Court must take into account, will provide protection to both consumers and traders.

The Bills Committee notes that advertising by a trader of products for supply at a specified price would constitute bait advertising if there are no reasonable grounds for believing that person will be able to offer for supply those products at the specified price, or that the trader fails to offer those products for supply at that price, for a period that is, and in quantities that are, reasonable, having regard to the nature of the market and the nature of the advertisement. Since the "while stocks last" promotion approach is very common in the market, a Member has called on the authorities to provide sufficient safeguards in the Bill to ensure that businesses acting in good faith would not be inadvertently caught by the offences concerned. The authorities have expressed that an additional defence has been included in the Bill, and if there is sufficient evidence indicating the trader concerned has immediately replenished the stock or offered to provide equivalent products or services on the same terms, where the offer is accepted by the consumer and the contrary cannot be proved, the trader will be entitled to be acquitted unless the contrary is proved.

The Bills Committee notes that the Bill stipulates that a trader will commit the offence "wrongly accepting payment" if, at the time of accepting payment for a product, he intends not to supply the product or to supply a materially different product. A trader will also commit an offence if there are no reasonable grounds for believing that he will be able to supply the product within the period specified or within a reasonable period. A Member has raised concern about the criminal threshold of the offence of wrongly accepting payment. The authorities has pointed out that an additional defence is provided in the Bill. If there is sufficient evidence indicating that the trader has offered to procure a third person to supply the products or equivalent products and, if that offer was accepted by the consumer, he will be entitled to be acquitted unless the contrary is proved by the prosecution.

The Bills Committee has raised concern about the use of note in the Bill. The authorities have advised that these notes serve as signposts to refer readers to the relevant provisions and will not affect the interpretation of the legislation. After consideration, the authorities will propose an amendment to clarify the legal status and legislative effect of these notes. Moreover, to improve clarity and consistency, the authorities have adopted the drafting proposals put forth by Members and the legal advisers and will put forth the relevant amendment.

Since the law-enforcement agency will draft the guidelines upon the enactment of the Bill to assist traders to comply with the fair trade provisions and to let consumers understand the scope of coverage, Members urge the authorities to consult stakeholders on the draft enforcement guidelines and seek the views of the Panel on Economic Development. Members have also requested the Secretary to give the specific timetable for the implementation of various amendments under the Bill during the resumption of the Second Reading debate of the Bill, to undertake to further examine the arrangement on the mandatory cooling-off period upon the passage of the Bill, and to state the work plan in this respect.

President, I will then give views on the Bill on behalf of the Democratic Party. First, I would like to declare that I am a member of the Consumers' Council.

The Democratic Party has all along been extremely concerned about the interests of consumers. Everyone is a consumer irrespective their age, nationality and gender. From birth till death, a person will get involved in different kinds of consumption, from consuming milk powder in infancy to home purchase upon getting married. The interest of consumers is a livelihood issue, which should absolutely be well protected. The Democratic Party supports the passage of the Bill to extend the regulation on unfair trade practices to sales services.

Offices of the Democratic Party in various districts, including my office, have often received a lot of complaints from consumers, which are mainly related to services provided. Some common subjects of complaints include beauty services, slimming, fitness, telecommunications and yoga. I believe Members will not find these complaints unfamiliar. I had handled many complaints in the past. Had this Bill been implemented at an earlier time, those cases would not have happened. However, it is no use crying over spilt milk. Hence, we hope that the Bill will be passed as soon as possible.

Secretary, when Rita LAU was the Secretary, I always showed her some magazines, and I think the official sitting next to you also know about that. The two bestselling magazines in Hong Kong are still stuffed with advertisements, such as "golden opportunity offer — $980 for unlimited times armpit hair removal" or "$3,800 for whitening, spot removal and youthful skin treatment for

three years". It will be terrible if consumers do believe in the advertisements. Yet, the advertisements are too attractive.

Secretary, one of these companies is most ridiculous. For years, it has been cheating consumers, claiming that, "no surgery required, no day-off required — permanent double eyelid in one go". I have asked doctors about this, and they say that is impossible. Why are we bombarded by these advertisements? It is because there is no regulation. Hong Kong is quite weak in consumers' rights protection.

While the Democratic Party supports this Bill, we are gravely disappointed that the arrangement on a cooling-off period has been shelved. During the consultation period, the Government had indeed proactively considered the arrangement, yet the proposal was shelved subsequently due to handling difficulties. However, we consider that without the cooling-off period, consumers will not be duly protected. In my view, a cooling-off period should be provided in the Bill, so that consumers can have time to think carefully whether they need the relevant products.

We are aware of such complaints. For example, in one case, a young woman, who has worked for a short period of time, has joined some plans at a cost that amounts to two to three times of her annual salary. It is utterly beyond her affordability. In property purchase, the bank will examine our income and the amount of instalment repayment should not exceed a certain level. When the instalment repayment exceeds 40% of the household income, the bank will be extremely cautious and it may not approve a high loan. How then can someone join a plan that costs two to three times of her annual salary? Under what circumstances is the consumer persuaded? Have tactics, such as locking the consumer up, providing her with misleading information, or having her identity card or credit cards seized, been employed?

I would like to provide some information for the Secretary. At present, most advanced countries have set up a cooling-off period. The Democratic Party has conducted some studies. In Canada, a cooling-off period of 10 days is provided for transactions involving time-share plans and membership of fitness and beauty parlours. In Britain, for transactions conducted via the Internet, by phone and mail; for transactions not carried out at operating venues of traders or for transactions conducted at exhibition venues or through door-to-door sales, a

seven-day cooling-off period is required by law. For time-share schemes, a 14-day cooling-off period is stipulated. In the United States, Europe and Australia, similar arrangement of a cooling-off period is provided. In Singapore, a place we often mention, there is a specific cooling-off period for beauty parlours.

Hence, it is evident that a cooling-off period, either implemented across the board or trade-specific …… The Government often mentions the difficulties in setting a cooling-off period, and claims that we cannot target certain trades while a full scale implementation will be difficult. However, from the examples I cited earlier, certain countries adopt a cooling-off period across the board, while some countries only target at trades susceptible to abuse. In Hong Kong, there are many problems with trades engaging in beauty care, weight-losing and slimming. Why do we have to wait for such a long time? From these examples, it is evident that such problems are found everywhere around the world. How come other places can adopt such an arrangement but not us? The authorities need to give us an answer.

Regarding the cooling-off period, the Consumer Council will absolutely give its full support, and the proposed cooling-off period is seven working days. If a consumer cancels a contract within the cooling-off period, the supplier may charge an administrative fee of up to 7% of the contract price or $1,000, whichever is lesser. In fact, the Consumer Council's proposal is fair to traders and consumers, and it is worthy of consideration. The Democratic Party hopes that the Government will examine the arrangement on a cooling-off period and give an account at the next Legislative Council as soon as possible.

Apart from the cooling-off period, other aspects of consumers' rights should also be improved. One of the concerns is the issue concerning fair contract raised by the Consumer Council. A cooling-off period can safeguard the rights of consumers in making the decision of the transaction, yet it is meaningless if the sales contract is unfair. The Consumer Council points out that generally speaking, contracts are drafted by suppliers, such that the interest of suppliers will be better taken care of. It is possible that suppliers will make the contract favourable to them and undermine the interests of consumers.

The Consumer Council has provided some examples which I consider has seriously undermined consumers' rights and should be handled as soon as

possible. These examples include: first, suppliers can unilaterally change the contractual terms; second, suppliers can receive compensation under all circumstances for early cancellation of contracts by consumers; third, suppliers have the final say in any disputes arising from the contract; and fourth, the legitimate rights of consumers are unreasonably restricted. I have only set out four examples. There are copious examples of unfair contracts in reality. Hence, we have taken a big step forward in monitoring unfair trade practices.

Regarding the cooling-off period and unfair contracts, I can no longer follow up the issues at the Legislative Council, yet the Democratic Party will continue to follow up the work in this aspect. Though I will no longer stay in the legislature, I hope the Secretary would not be slackened. He should implement and enhance the legislation as soon as possible to protect consumers.

According to the Government, the Bill will only come into effect in 2013 even if it is enacted. I hope the Government will not keep us waiting for a long time. Otherwise, our delay in the implementation of protection will give rise to more unfortunate cases. How can we be so cruel and do nothing?

I so submit.

MR WONG KWOK-HING (in Cantonese): President, I speak in support of the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 (the Bill). During the few years of the current term of the Legislative Council, I have successfully strived for the enactment of three bills, including the present one, and I am extremely happy about this. The first bill is legislation on wage protection for workers. It ensures that workers who toil will get paid by criminalization of default on wages. The second bill amends the Personal Data (Privacy) Ordinance to safeguard the public's rights to privacy. Moreover, I have also campaigned for the formulation of the Mediation Ordinance. In view of the enactment of these three amendment bills, one of which is a new ordinance, I consider the current term fruitful.

President, in this current legislative term, this Bill has finally been introduced into this Council after a long and difficult process. Indeed, the amendment of the Trade Descriptions Ordinance is long overdue. On 29 October 2010, I negotiated with the Government and formally put forth a

proposal, hoping that the Government would make legislative amendments in respect of unfair trade practices. I am glad that the Secretary and the Bureau had, upon receiving my proposal, been aware of the severity of the problem immediately and had responded positively by undertaking to examine the issues concerned. Subsequently, they had contacted the relevant organizations to gauge their views. With the efforts made by the Bureau and the departments, some results have been seen today. I would like to take this opportunity to express my wholehearted gratitude to the Secretary and the authorities for their efforts made in amending the legislation.

President, on 29 October 2010, I pointed out to the Government that given the numerous number of complaints lodged by the people, the rights of consumers should be properly protected. My Member's Office have received many complaints which involve all kinds of trades, including telecommunications, television, fitness centre and club memberships, and even London gold trade. The unfair trade practices under complaint include bait advertising, misleading and aggressive practices, unauthorized alteration, extension or cancellation of contracts, exorbitant charges, difficulties in getting refund and lack of transparency in information provision, and so on. The unfair trade practices and misleading advertising recently adopted by several large supermarkets, as well as the problems relating to online group purchase recently revealed by the Consumer Councils, are really serious, which have significantly affected the rights of consumers.

Back then, we had pointed out that among the 34 000-odd complaints received by the Consumer Council in 2009, the number of cases involving unfair trade practices had increased significantly by 33% when compared with the previous year. We have reached a critical stage that the legislation should be amended. At that time, 9 165 complaint cases were related to telecommunication services, 4 968 cases were related to financial services, 1 344 cases were related to communication equipment services, 1 516 cases were related to broadcasting services and 1 335 cases were related to beauty parlours. The number of complaints had reached several thousand and close to 10 000. Hence, if the Government does not amend the legislation, Hong Kong's reputation of "a shopping paradise" can hardly be maintained; worse still, Hong Kong may be reduced to a swindlers' paradise.

On a whole, the public mainly complain that consumers' rights have been undermined in various aspects. First, it is the unfair trade practices of supermarkets. In fact, certain supermarkets have already taken up a monopolized position in Hong Kong. For instance, the two leading supermarkets in Hong Kong already have 500 distribution outlets. Regrettably, despite their monopolized position in the market, they fail to better serve the public through economies of scale, thereby alleviating the financial burden of the people. On the contrary, these supermarkets resort to bait advertising, false trade description and misleading tactics, incurring losses to the general public.

First, supermarkets often try to pass off the sham as the genuine by putting up some low-priced or expired goods for sale. Second, supermarkets often mislead consumers. For instance, by labelling the pork on sale as "local freshly slaughtered pork", the public would think that the pork comes from pigs reared in Hong Kong; yet, in fact, the pork comes from pigs reared in the Mainland but slaughtered in Hong Kong. Third, supermarkets often brag that their prices are "the lowest ever", "the lowest of all" or "gains every day". In reality, supermarkets gain profits every day while the public are being cheated every day. Fourth, supermarkets exploit the consumption cycle of the public in setting the price. Most people go to supermarkets on Friday nights with other family members; as they do not need to work or go to school the next day, they can help in the shopping. People may think that the prices of goods are the lowest on Friday, it is in fact just the other way round. The prices are the highest from Friday to Sunday, and the prices drop from Monday to Thursday. These malpractices have to be curbed by legislative amendment.

Concerning the second aspect, misleading, enticing and irresponsible sales practices are adopted. Many complainants point out that some salespersons disregard the interests of customers and lack credibility. When they knock on the door to promote telecommunication services or pay television service, they would, by misleading, enticing, concealing or threatening means, force residents to sign contracts. Some even tell residents that if they do not subscribe to pay television services, they cannot watch free television programmes. Hence, individual households are forced to sign contracts. If consumers want to cancel the contract, they have to overcome numerous barriers, and after making much effort, they still cannot cancel the contract. Hence, I think these misleading and concealing tactics should be stamped out and combated.

Concerning the third aspect, there is a lack of channel to seek compensation and the assistance provided is inadequate. Some consumers have pointed out that when they want to cancel the contracts with telecommunication service provider or television companies, they have encountered difficulties in getting the money back. Some companies keep delaying to refund the money on the excuse that "the case is being processed". Consumers can hardly get help via service hotlines, and they cannot claim the money through normal channels. If meditation is required, even the Consumer Council cannot help. Consumers have to make claims to the Small Claims Tribunal in their own capacity. Since only several hundred to several thousand dollars are involved, many deceived consumers are reluctant to spend the time and effort to go to court to make claims or collect evidence, or they simply cannot afford to do so. Eventually, many complaint cases are left unaddressed.

As for the financial sector, there are all kinds of suspected default cases involving off-market dealings of London gold. I have received over 70 complaints, the amount being deceived amounted to $17 million and over 18 intermediaries were involved. About 95% of the $17 million had been evaporated. Up until now, despite the complaints made over the years, the police have not been able to initiate even one prosecution. I consider this quite regrettable. The Chinese Gold and Silver Exchange Society has also urged the Government to set up a licensing system for operators. Unfortunately, by now, the Finance Services and the Treasury Bureau still refuses to do so. I have to express my deepest regret about this. Since the motion I moved in the Legislative Council has been passed, I will not give detailed explanation here.

The fourth aspect concerns problems with the prepayment mode of consumption. Many people will buy membership packages at fitness centres, yoga centres, slimming centres, beauty parlours or travel clubs, so that they may do exercises, body-building or beauty treatment during their leisure time. However, as the prepaid packages and monthly plans they signed usually last for a long period, there are many uncertainties whether the discount offers can be realized. There are cases in which customers had made a lump sum prepayment, amounting to millions of dollars, but the companies suddenly close down, and customers got nothing in return. The number of cases involved is numerous, and when companies closed down one after another, consumers went to the companies to seek compensation, but to no avail. Hong Kong definitely should not tolerate this problem any longer.

The fifth aspect concerns unequal contractual relationship. As many companies promote their services and products to potential customers over the phone by random sampling, the problem of "easy to enter into contract over the phone, but difficult to cancel a contract in written" has arisen. While customers' verbal confirmation of the content of the contract is accepted in telemarketing, cancellation of contract over the phone is not accepted. Consumers may agree to accept a contract upon intensive persuasion, but when they calm down and find that they have been tricked, it is not so easy to cancel the contract signed. The Government should consider how to protect the rights of these consumers.

Finally, I think the Government has to define the purview of the regulators clearly and allow consumers to take class action and claim compensation. At present, many complaints from the public are about loans and investment, such as London gold, but the Hong Kong Monetary Authority, the Securities and Futures Commission and the police refuse to investigate into the cases under all kinds of excuses. People who report a case to the Commercial Crime Bureau of the Police Force will face great difficulty. Why did I very often agree, upon the invitation of complainants, to accompany them to report the case to the police? Complainants told me that if they reported their case at police stations, they would be dismissed in a while, but if they were accompanied by Members, the police officer would handle the case more seriously and would open a case file as a gesture. That was just a gesture, for as I have mentioned earlier, so far there was not even one successful prosecution case. It is well evident that the legislation must be amended as soon as possible to protect the rights of consumers.

No matter what, today, on the second last day of this current legislative term — the current term will end tomorrow, it is desirable that we can have a discussion on this Bill. However, there are inadequacies with the Bill, that is, the arrangement on cooling-off period, which we have criticized. During the deliberation of the Bill, we strongly requested for the introduction of a cooling-off period, and the Government highlighted the complexity and difficulties involved and said that it would follow up on this issue after the passage of the Bill. I hope the Secretary will give us a definite response shortly, explaining how the authorities will follow up the arrangement on a cooling-off period and whether there is a timetable. It should not resort to procrastination.

Moreover, after the passage of the Bill today, it will only come into effect after a period of time. The Government should step up its efforts to educate consumers, so that they will be aware of their rights and know how to protect themselves. The Government should also educate traders not to violate the law blatantly, so as to practically safeguard Hong Kong's reputation as a "shopping paradise". Hence, the passage of the Bill today is only the first step of a long journey, and there is still a long way to go for follow-ups. I hope the Secretary will give a positive and proactive response later.

(THE PRESIDENT'S DEPUTY, MR FRED LI, took the Chair)

Thank you, Deputy President.

MR VINCENT FANG (in Cantonese): Deputy President, I would have thought that the deliberation on the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 would probably be deferred until the next Legislative Council. Fortunately, the several colleagues who have been filibustering decided to leave some time for the Legislative Council to scrutinize the Bill, probably because they are aware that on the one hand, the Government has stopped pushing forward its reorganization proposal while on the other hand, this Bill is of great importance to Hong Kong itself as well as to consumers.

In fact, I join the wholesale and retail industry in supporting strongly the resumption of the Second Reading debate of the Bill. We do not wish to defer the scrutiny until the next term Legislative Council. As reflected by the title, the Bill aims to tackle unfair trade practices. Since 99% of traders in our industry are law-abiding, how would we object to the Government's act of combating those black sheep which have marred Hong Kong's status as a shoppers' paradise and the reputation of our business sector? However, it is often the case that despite the Government's originally good intent of legislation, the proposed bills just turned out to be so stringent that even the room for law-abiding traders is confined, or that the enactment of legislation is fine but enforcement is ineffective. As a result, deceitful acts still go on while the public outcry cannot be pacified. So some colleagues may then propose to keep tightening the relevant legislation which would only further undermine the local business environment. The law-abiding traders can no longer survive while those who

are able to exploit loopholes in law are able to continue doing business. I really do not wish to see this happen.

I will speak on three aspects. First, it is about the current operation of the entire wholesale and retail industry; second, the industry's views on the contents of the Bill and third, my appeal to the Government to step up law enforcement to combat unfair trade practices adopted by shops to deceive customers. I implore the Government to review the effectiveness of the law first even if there is the voice demanding for further tightening of the relevant legislation.

The surge in the number of complaints about consumer fraud has directly prompted the Government to propose amendments to the Trade Descriptions Ordinance (TDO) aiming at prohibiting certain so-called unfair trade practices. However, I am of the view that unfair trade practices cannot be totally eradicated since it is impossible for the Government to prohibit every single unfair trade practice emerged in the market. Actually, it has already been expressly specified in the existing TDO that it is an offence if a trader provides false trade descriptions. Several years ago, the TDO was amended as there were cases in which the products sold to consumers differed from the descriptions provided by the salespersons. However, given that the return from frauds is so attractive, there are always some unscrupulous shops to reap profits. Therefore, as law-abiding traders, we strongly support the Consumer Council's practice of making public the names of the unscrupulous shops identified. Yet, traders intended to make huge profit from running unscrupulous shops are not scared since they can simply close down the shops and move to other places to continue their businesses. Hence, our industry supports the amendment Bill which criminalizes those unfair trade practices, hoping that it will deter those unscrupulous traders from adopting unfair trade practices.

During the public consultation on the Bill launched by the Government, the industry was more concerned with the issue of extending the TDO to cover the service industry and the introduction of a mandatorily cooling-off period. Although the Government finally recognized the special characteristics of prepaid services and did not include the cooling-off period arrangement in the Bill, many colleagues, including the Deputy President, have expressed their disappointment with the Government's decision during the scrutiny of the Bill, and they hoped that a cooling-off period will be included to the legislation at the next legislative amendment exercise.

One of the reasons for requesting an after-sale cooling-off period is that people became aware of the risks of using prepaid services with the closing down of a few beauty parlours after the outbreak of the financial tsunami and consequently, consumers could no longer enjoy the treatment programmes for which they had already subscribed. Moreover, some salespersons are very aggressive and in manipulating the weaknesses of their clients, they succeeded in convincing them to subscribe for numerous treatment programmes. Some salespersons of fitness centres or yoga centres may try by all means to attract customers to buy membership package that last for several years in order to earn more commission, without caring whether the customers really need that much prepaid services. In fact, most cases are related to aggressive salespersons trying to earn more commission instead of the business practices of traders. If traders are required to offer a seven-day cooling-off period, and credit cards transactions can be cancelled at any time, not only will this affect the relations between traders and their bankers, it will also be difficult to calculate the staff commission as well as the service fees charged on the customers. Worse still, consumers will become less prudent in signing the contract as they are aware that the transactions can be cancelled even after signing the bills. If so, the entire business environment will be upset and the situation will be more chaotic.

On the other hand, while the survival of all sales industry hinges on customers, ranging from selling residential properties to just a button, I absolutely oppose to naming customers as "God". To a certain extent, consumers should also be responsible for their consumption decision and should take into account their financial capability. Such an issue had been discussed repeatedly since the emergence of credit cards. Hence, the spirit of the legislation should focus on whether the selling party has adopted inappropriate sales practices that have caused consumers to suffer unnecessary losses rather than protecting consumers' imprudent consumption behaviours.

The industry is generally of the view that the modes of operation of every trade as well as the wholesale and retail industry varied greatly and an across-the-board cooling-off period arrangement is not a suitable option. If the Government is to set up a cooling-off period, it should consider the characteristics of different industries and formulate different provisions to cater for the specific needs of respective trades. Recently, according to the Consumer Council, it has received 2 100 complaints about online group purchases in the first half of this year, which marks an increase of 38 times of that for the same period of last year.

Will a cooling-off period help safeguard consumers of online group purchases? We all understand that it cannot serve this end. Are those consumers totally unaware of the possible risks involved in online group purchases that are similar to buying a pig in a poke? They just do that out of greed.

We believe that the Government's final decision of not introducing the cooling-off period to the Bill was made after studying the various special characteristics of industries providing prepaid services. Hence, the industry basically accepts the proposed expansion of the scope of application of the TDO to cover the service industry as well as the proposal of prohibiting the six undesirable trade practices, namely applying false trade descriptions to services intentionally, misleading omissions, aggressive commercial practices, bait advertising, bait and switch, and wrongly accepting payment.

After all, our industry has to deal with customers face to face most of the time and the behaviours of some of them are beyond the imagination of those government officials responsible for drafting the Bill. Inevitably, there are also some unreasonable customers. Thus, the industry also has the concern that the legislation prohibiting such trade practices will be abused after it comes into operation. Despite the repeated assurance of government officials at the meeting of the Bills Committee that no prosecution will be instituted if there is evidence to prove that the trader has no intention to adopt unfair trade practices, circumstances similar to the Competition Bill may appear during the course of collecting evidence. Secretary, what I mean is that the investigation officers and members of the legal profession will benefit while the industry will have to bear unnecessarily higher expenses.

Hence, the industry had proposed certain amendments for the Government's consideration in the hope of providing greater protection to traders in respect of defence. For example, regarding misleading omission, it is possible that a salesperson has omitted certain information when describing the products due to the rapid changes in technological products and thus inadvertently commits an offence. Regrettably, the Government did not accept our proposals and so I have no choice but to propose amendments to two of the prohibited trade practices which will more likely cause people to breach the law inadvertently. I will elaborate further on the specific reasons during the debate on the relevant amendments.

Finally, I wish to repeat my words which I keep saying all the time, "laws can only deter good people, rather than bad elements". For this reason, I do not believe that undesirable trade practices in Hong Kong will perish even if this Bill aiming to tackle unfair trade practices is enacted and comes into operation, because unscrupulous traders will always come up with new tricks. Therefore, if we propose to further tighten the room for business only because of the presence of unfair trade practices as well as complaints on consumer fraud in the market, this will not be conducive to the wholesale and retail industry, the service industry and even Hong Kong's economic and social developments.

Hence, I hope the authorities will hold discussions with the industry and draw up complementary measures for effective enforcement, so as to deter unscrupulous traders in the market. Only with the imposition of penalties on them will there be deterrent effect. If the Government has to tighten relevant legislation due to external pressure, a comprehensive consultation is necessary so as to gain a clear picture of the actual circumstances of the industry. I learnt that some complainants have ulterior motive in lodging complaints and the information provided is misleading. Thus, we must find out how many of those complaints are really justified instead of simply look at the number of complaints.

Deputy President, I so submit and support the resumption of the Second Reading of the Bill.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, in a consumer society, I think the most important thing is to protect consumer rights. This issue has always been discussed in the community in the past, but regrettably, no definite result has been obtained.

Just now, Mr Vincent FANG mentioned that certain practices of consumers have caused some difficulties and problems to traders. I believe those practices are usually deceptive in nature and there are certain legal provisions which forbid or curb such behaviour. To our regret, with respect to consumer rights, though there are laws or statutory bodies to help consumers, these laws and bodies, in particular the Consumer Council, are in fact "toothless tigers", as the role they play in safeguarding consumer rights is very limited. Therefore, I consider it

necessary to amend the Trade Descriptions Ordinance to combat unscrupulous trade practices.

Many Honourable colleagues have mentioned earlier that trades which attract the most complaints are telecommunications, beauty care, slimming, and so on. In addition, I have also received complaints concerning travel club membership, English learning, and so on. What are some of the most common trade practices? One of them is aggressive practices, which is to be combated in this legislative exercise.

What is meant by aggressive practices? First, an element of enticement is involved. For example, someone may tell the victim over the phone that he had won a prize as he had previously answered some questions and he should go a certain office at a certain place to collect his prize. After that person has arrived at the office, two or three staff members would talk to him and keep persuading him to buy a travel club membership package. In the process of selling the membership package, those staff members would entice the victim, by saying, for example, that they have asked the manager to give him the best offer. Even if the victim has indicated that he is not interested, he will still be surrounded and "bombarded" by two or three staff members, trying hard to tiring him out. If the victim still says no, he will be detained in that office. Many people complained to me that they arrived at that office at about 6 pm and Deputy President, can you guess how long they had been detained in that place? Right up till 11 pm or 12 midnight. Under such long hours, these people are at a loss as to what they should do.

Very often, the targets of these companies are young people who are in their twenties and who have just stepped into the society. As these young people are rather inexperienced in life, they are not emotionally strong enough to stand the repeated persuasion and be firm enough to say no. Hence, the unscrupulous traders will exploit this kind of mentality and carry out deceptive and aggressive practices. As a result, many people give in under such circumstances. In some extreme cases, when the victims say that they only have credit cards but no cash in hand, two staff members of the company will escort the victims to draw out cash from the automatic teller machines.

If we do not combat this kind of practice, young people who have just graduated and started their career will be seriously affected. They would completely lose confidence in society and suffer from great monetary losses as

well, ranging from ten thousand dollars to even more than one hundred thousand dollars. After a cooling-off period, they may come to realize that they have been cheated and have signed the contract or paid the first instalment involuntarily. And if they stop making instalment repayment, they may be threatened by some debt collection firms. Various means of intimidation may be made by debt collectors, such as posting notices on the streets or on the door of their residence, making threatening calls to them or their family members, or worse still, visit their workplace. Eventually, they have to submit. These debt collectors would even sue the victims till they go bankrupt. Many young people who have just stepped into society are very worried when they have to face such problems. Such malpractices are not only adopted in the sale of travel club membership that I have just mentioned, but also in English learning classes. If we do not stop these malpractices, many people will certainly be affected.

As Mr WONG Kwok-hing has pointed out, we had once assisted the victims to seek help from the Consumer Council but the Consumer Council said that it could not help. Why? It is because the victims are adults and if they have signed a contract, they cannot rescind. Nothing can be done. They may lodge a complaint to the Commercial Crime Bureau, but the police will say that there is no evidence that someone have violated any existing laws or regulation. So nothing can be done to help these young people and they are greatly affected. If we do not address these problems, the situation will aggravate, and malpractices in the name of marketing tactics will be adopted. Young people are not the only target; many other people will also be cheated by these enticement or aggressive practices.

Hence, we strongly support the introduction of a cooling-off period, as mentioned by some Honourable colleagues. The reason is that a person may have signed a contract because at that time he did not know what to do. And after he had cooled down, he realized that he did not want the services prescribed under the contract. However, he could do nothing to change the fact that he had signed the contract. In some cases brought before the Small Claims Tribunal, the Adjudicator may query why the litigant, as an adult, did not know what had happened. The adjudicator may say that if the litigant considered that something had gone wrong, he did not have to sign the contract, but after he had signed the contract, he had to honour it. So the litigant has to pay the so-called damage to the company concerned. But the company has never incurred any loss and it only makes profits. Therefore, these problems can never be solved.

However, as we all know, some consumers have signed the contract under different circumstances. They might sign the contract unwillingly and irrationally, not knowing what has actually happened. A cooling-off period is the best option for them to get out of this predicament. Unfortunately, the Government does not want to introduce a cooling-off period, saying that this will not be of considerable help to consumers. Certainly, the legislative amendments may in some way help the consumers, but there are always ways to get over the law and when traders do not coerce, entice or mislead consumers, they may still cheat them in other ways. If consumers are being deceived, they do not know what to do. If a cooling-off period is provided, they can discuss the matter with their family members or friends, and the result may be very different.

Recently, I have handled a case concerning a certain fitness club. In that case, staff members kept on persuading the victim to join some courses, telling the victim how these courses might maintain the fitness of the body. The staff in question pointed at a certain part of his body, saying that he did not feel pain. Then he hit the nerve of the victim's body, making him feel painful and by doing so, persuaded him to join a course. Was that a kind of enticement? The staff's persuasion was properly conducted, even though we do not know whether his remarks were true or not; the question is, he arranged someone to do a demonstration to illustrate the effectiveness of the training course. The victim was persuaded, but he later found out the course would cost him over one hundred thousand dollars. This is because there were successive courses and the total amount involved was over one hundred thousand dollars. So what can he do? He signed a contract in a confusing state and when he realized later that things had gone wrong and he did not want the service, there was nothing he could do because he had signed the contract.

Hence, under this situation, a cooling-off period is really necessary. As pointed out by some Honourable colleagues just now, some government officials talked about the complexity in introducing a cooling-off period, I do not know the rationale behind. Mr Fred LI has stated clearly that many countries have introduced a cooling-off period, why can we not follow suit? I really do not know. Very often, when the Government is not willing to address certain issues, it would justify its act by citing the example of other countries that adopt the same stance of not addressing certain issues. In the present case, many countries have handled the issue, but the Government does not cite the practice of these

countries. The Government is selective in citing examples that serve its purpose and ignore those that do not fit in.

This is not fair because in a consumer society, the prime concern is to protect and safeguard consumer rights. This is of vital importance. Our laws and the relevant agencies should not be "toothless tigers", it is meaningless if they do not have real powers. It will only be meaningful if concrete assistance are given to consumers. I support the passage of this Bill today and, like many other Honourable colleagues, I also hope that the Government can come up with a proposal to introduce a cooling-off period in order to protect consumer interest.

Deputy President, I so submit.

MISS TANYA CHAN (in Cantonese): Deputy President, whenever I read newspaper, I would find advertisements attracting readers to try some services at super-low prices. When I walk in a pedestrian precinct, someone would persuade me to accept some special offers. When I pick up my cell phone, at times I will get some calls, saying that after answering a questionnaire, I may get a souvenir. All these are baits, the aim of which is to attract the unwary. When consumers fall into such traps, it is the beginning of their nightmare. Many of these consumers may lose a good part of their savings. Some even go heavily in debts. To our regret, the existing law can hardly help them.

Some time ago, there are media reports about some unfair practices in beauty parlours. Offices of Members, including those of the Deputy President or mine, have all followed up such cases. I had once lined up some victims to hold a press conference. These ladies then sought help from the Consumer Council for legal advice and they even reported the cases to the police. In some cases, while arrangements have been made for mediation, no definite results have been reached so far, and these beauty parlours have not contacted every one of the victims.

Why am I so impressed by this incident? The marketing practices mentioned by Mr LEUNG Yiu-chung just now, such as detaining the victims in the office and persuading them to join travel club packages, as well as the marketing practices of beauty parlours are in fact tantamount to confinement selling. I can tell the Secretary that in some cases, the situation is very serious.

As a matter of fact, these victims have patronized the beauty parlour for a long time. They are in their twenties and have worked for quite a long time, they are not ignorant people without independent thinking. After work, the victim went to a beauty parlour. For fear of dirtying her clothes, she got changed and then laid on the beauty bed. Then, as depicted by Mr LEUNG Yiu-chung, people took turn to persuade her. First, two staff members of the beauty parlour came into the room and said that a beauty contest — bust augmentation or skin care — was recently held, and they asked the victim whether she was interested in buying certain treatment. One of the staff member also said that she had worked in that beauty parlour for a long time and she had many coupons which could all be given to the victim to buy a treatment programme at concessionary prices.

Then some other staff members came in and told the victim that she had won a prize. When the victim asked what the prize was, they said that they had to check the records of her credit cards. When the victim said that she had several credit cards, the staff asked her to give them all her credit cards for checking. The staff then took the opportunity to swipe the cards to conduct some transactions. Each transaction may involve as much as some hundred thousand dollars. The staff will swipe the cards for more than 10 times, four or five times for one card and four or times for another. The amount of money involved is also different. Some transactions might be a few thousand dollars or some might be over ten thousand dollars. There were altogether a few dozen invoices and the victim, who was lying on the beauty bed, was asked to sign on each one of the invoices.

In some other cases, staff members persuaded the victim, who was waiting for beauty treatment, to join a breast augmentation competition. The staff also said that photos should be taken before and after the breast augmentation, and the staff took photos of the victim using the mobile phone. Although the beauty parlour has later confirmed that all these photos have been deleted, the victims are still very worried that such photos may be used recklessly.

Such sales practices are really outrageous. As we can see, irrespective of the service or product sold, the methods used by traders are similar. Therefore, I hope that after the passage of the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012, the unfair sales practices can be curbed to a certain extent and fewer consumers will be cheated.

I have handled some cases and the victims involved well deserve our sympathy. They are the underprivileged who may have mental or emotional problems, and they may even be slightly mentally retarded. When these people have been cheated by some unfair sales practices, not only they themselves will have to bear extreme pressure, their family members will also suffer. When these people sign the contract, they do not quite understand their responsibility. If they cannot repay the money owed, which may be huge in amount, their family members will have to repay for them. In some cases, the matter was finally settled with the help of the Consumer Council or a Member's Office.

Regarding the practices commonly used, the first tactic is taking turns to tire one out, and the second tactic is prolonged persuasion. As Mr LEUNG Yiu-chung has said, the victim was already tired after work …… In the case concerning the beauty parlour, the victim arrived at the parlour after 7 pm, and she was held up there until 11 pm or 12 midnight before she was allowed to leave. Do not forget that she was wearing a robe provided by the beauty parlour, but not her business suit. As staff took turn to persuade her, she finally agreed to sign the service contract.

As I have just said, I hope that after the Bill is enacted, such kind of unfair trade practices can be eliminated. If these practices are not regulated by law, there may be another disadvantage, that is, these cases will have to be settled by mediation or even resort to legal proceeding. Then the victims will have to spend a lot of time and money before the problems can be settled. This process is painful to those who have to work hard to earn a living.

Regarding one of the cases that we have handled, although the problem can finally be settled by mediation, the process took three months or even half a year. That is because the trader in question kept stalling the process, saying that the person in charge was not in Hong Kong, or the company had yet to make the final decision. Please take note that since the victim had already entered into a service contract and money had been paid through the credit card, she still have to make repayment to banks every day or every month, even if the transaction is disputable. The longer period the mediation takes, the financial pressure exerted on the victims will increase. Some victims even say to the Member's Office that they suffer from emotional problems due to such heavy financial pressure.

Even if a victim intends to take legal action to claim the losses incurred, it would not be so easy. If the money involved is less than $50,000, the victim may lodge a claim with the Small Claims Tribunal. I think the Secretary may well understand, although the victim does not have to hire a lawyer and the process of adducing evidence is relatively simple, for those people who are not familiar with the law, they have to bear great pressure, considering the requirement to give oral statement and adduce evidence on his own initiative, not to mention that the dispute cannot be settled after one or two hearings at the Tribunal.

After the Bill has been enacted, I hope that at least two achievements can be resulted. First, even if unfair trade practices cannot be totally eliminated, I hope traders would at least be more restrained. Second, if traders think that their acts are somewhat unjustified, they are willing to speed up the reconciliation process. For cases that involve a considerable amount of money, it should be handled at the District Court. Both parties may then need to have legal representation. All in all, I hope that legislative amendment can have some positive effects on the victims.

The Bill extends the scope of regulation to include the service industries and explicitly prohibits various kinds of unfair trade practices, such as deliberate omissions to mislead customers or adoption of aggressive practices to promote sales, and so on. Matters addressed in the Bill have actually covered most of the unfair trade practices found in the market and so the Bill should be passed as soon as possible. However, the passage of the Bill is only the first step taken to protect consumer rights. There are still many kinds of follow-up work that should be taken.

Although the amendment Bill cannot be said to be novel, its scope of regulation has been extended. In the public hearings held by the Bills Committee, the Government might have heard about the worries expressed by many representatives from the business sector. Mr Vincent FANG has just said that at present, some sales practices are rather aggressive, how aggressive are these sales practices? Will traders easily fall into the long arm of the law as claimed by Mr FANG? If the new regulation will lead to excessive worries by the business sector, the Government will have to explain to the sector. It also has to explain the new law to consumers through Announcement of Public Interest or short films so that they can be aware of their rights.

Next, I would like to talk about the role played by the Consumer Council. For consumers, if they have any problems, apart from seeking help from Members, they would seek help from the Consumer Council. However, victims often have an impression that the Consumer Council is merely a toothless tiger which may not be able to offer any help. I think this comment is not fair to the Consumer Council. If the Government can make up its mind and vest greater powers in the Consumer Council so that it can at least adduce evidence from businesses offering the service or product concerned, I think this is desirable for the consumers.

On the other hand, the enforcement mechanism should also be made perfect so as to avoid another toothless tiger. In many consumer disputes, the consumers do not know which agency or people will follow up their cases. I hope the Government can set up a user-friendly complaint mechanism to facilitate the implementation of this new law as well as the effective handling of complaints. This can avoid delays in making timely reconciliation owing to a sense of helplessness of the victims. So the Government will need to do more work in this respect.

As many Honourable colleagues have said just now, the introduction of a cooling-off period has not been mentioned in the amended legislation. Truly, the introduction of a cooling-off period may not be made under the framework of the Trade Descriptions Ordinance. However, since most of the consumer disputes are related to services provided under the mode of prepaid consumption agreements, I hope that the Government can start a new round of study after the passage of this Bill, in particular on the question mentioned earlier, that is, whether a cooling-off period should be imposed for different services or businesses, or whether an across-the-board cooling period should be imposed. Regarding this issue, I believe that more views can be gauged during the next round of consultation to be conducted soon.

I have also pointed out previously that the role played by the Consumer Council should be enhanced, so that consumers would not think that the Consumer Council does not have any credibility and cannot offer any help. This is unfortunate. Actually the Consumer Council has all along been working very hard and it has done a lot of work for the people. In the case of beauty care, for example, the Consumer Council has published a report and a sample service agreement is provided for reference by the trades. The agreement has clear provision stating the obligations of the service provider and the customer, and

safeguarding the benefits of both parties. At the same time, the language used in the agreement is not too difficult. For consumers, the agreement sets out the service they purchase and the conditions for making claims. For the law-abiding beauty parlours, the agreement protects them from having disputes with those difficult customers as mentioned by Mr Vincent FANG.

Deputy President, it is the hope of the Civic Party that after the passage of the Bill, consumers can have better protection of their rights. We do not want to see members of the public being cheated and harassed by these unfair sales practices.

I hope that this amendment Bill can send a clear message to unscrupulous traders, reminding them that while it is hard to build up the brand of Hong Kong, the brand can be destroyed very easily. Since we have a quality brand in Hong Kong, workers in various trades should show respect and try their best to uphold the reputation of their respective trades. I do not consent to the idea that there are bound to have black sheep in any trade and I think these black sheep should all be eliminated. I hope that the Bill can be passed smoothly today.

I so submit. I also speak on behalf of the Civic Party to support the resumption of the Second Reading of the Bill.

DEPUTY PRESIDENT (in Cantonese): Does any other Member wish to speak?

MS STARRY LEE (in Cantonese): Deputy President, as more and more unfair sale practices have been exposed, the more outrageous they turned out to be. A woman was persuaded by staff members of a fitness centre to renew her contract for two years at a concessionary monthly fee, but without her knowledge, her contract was renewed for 20 years. A fitness centre persuaded a mentally handicapped middle-aged man in his sixties to buy a membership for a fitness club and enrol into a private training course at a cost of $140,000 in total, thus using up all his lifelong savings and his severance pay. A slimming company used the pretext of looking for a speaker for the company and claimed falsely that such a speaker would be offered a free slimming package as well as additional remuneration. In the end, the "speaker" had to pay 24 months of slimming fees amounting to $28,400 in total.

Although the aforesaid incidents have happened time and again and they have been the subject of discussions for a long time, every now and then, similar cases are again exposed by the mass media, so it can be seen that unscrupulous traders can always come up with new deceptive tactics. Moreover, they particularly like to prey on weak people with little power of resistance, so there is little wonder why some people liken the conduct of these unscrupulous traders to snatching money from consumers.

The figures speak for themselves. In recent years, the complaints received by the Consumer Council has remained at a high level and complaint cases involving package tickets for beauty care and fitness, telecommunications and pay television have become commonplace. Take beauty care services as an example, the Consumer Council received a total of 886 complaint cases in 2011, a rise of 12 cases over 2010 and 26% of them involved unfair sale practices. Since many consumers are afraid of getting into even greater trouble, they would not lodge any complaint even though they have been deceived, merely considering themselves to have learnt a lesson, so the foregoing figures only represent the tip of the iceberg in real life.

Deputy President, the wrongdoings of unscrupulous traders certainly cannot be condoned but the Government cannot absolve itself from the blame either, as it did not amend the legislation as soon as possible, so as to do a proper job in keeping the gate for consumers. As early as February 2008, the Consumer Council published a report entitled "Fairness in the Marketplace for Consumers and Business", in which it was pointed out that with the rapid changes in the market, there was a proliferation of unfair trade practices but the various laws upholding consumer rights could not keep abreast with the times, thus making consumers fall prey to scams all the time and suffer losses in time and money. In addition, the DAB also published a report entitled "Protection for Consumers and Regulations for Businesses" in August 2009 in which it urged the Government to implement a number of short-term and medium-term measures as soon as possible, so as to establish a comprehensive consumer protection regime.

After numerous appeals and exhortations, the Government finally introduced the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 (the Bill) to criminalize a number of unfair trade practices, such as misleading omissions, aggressive commercial practices and bait advertising. At the same time, the coverage of the legislation is expanded to cover services in

addition to goods. Enhanced law-enforcement measures are also introduced, which includes introducing private actions, so that a fairer trade environment for traders and consumers can be provided.

Deputy President, the DAB supports the Bill proposed by the Government to strengthen consumer protection. The following is some of my specific responses to the Bill.

The first relates to the issue of private actions. The Bill permits aggrieved consumers to take private actions against conduct that violates fair trade practices. Although this represents a kind of progress, I wonder if the Government knows that many deceived consumers, to avoid the hassle and the waste of time, effort and money, often prefer to adopt a pacifist approach by refraining from lodging a complaint or pursuing responsibility, not to mention expending a great deal of money and effort to take private actions. In addition, in some situations, a large number of consumers have suffered losses due to the unfair trade practices of a business but the loss suffered by each of them is actually quite small, so it is not worthwhile to take legal action just for the sake of recovering several hundred dollars or one thousand dollars. Moreover, one may stand to lose more than one would gain by initiating a lawsuit. As a result, unfair trade practices are indirectly encouraged, thus leading to a proliferation of scams.

(THE PRESIDENT resumed the Chair)

In October 2010, the DAB conducted a public opinion poll on consumer rights and it also attested to this claim. Among the respondents who suffered financial losses due to unfair trade practices, about half of them suffered losses amounting to less than $2,000. To address this issue, I propose that the Government, apart from enacting legislation to combat unfair trade practices, should also strengthen its support for the Consumer Legal Action Fund. At the same time, it should examine conferring power on the Consumer Council to act as the proctor and represent consumers in taking legal actions, so as to encourage aggrieved consumers to come forward and recover their losses, so that by taking another approach, the deterrent effect against unscrupulous business operators can be enhanced.

Although taking legal action is undoubtedly the last effective recourse for consumers to recover their losses, if the traders concerned have already ceased operation, such an approach would not be adequate. According to the legislation, a business operator that still accepts payment from consumers despite the full knowledge that the business is about to close down commits the offence of "wrongly accepting payment" and may be brought to justice. Even so, we understand that putting these unscrupulous business people in jail cannot completely compensate for the financial losses suffered by consumers due to the closure of these businesses.

In order to boost the protection for consumer rights, we call on the Government to take a two-pronged approach. Apart from strengthening the statutory regime, it is also necessary to examine various measures and mechanisms, including levying part of the money prepaid by consumers to establish a compensation fund, so that in the event that a business closes down, consumers can be compensated, as well as considering the establishment of a trust fund for pre-payments and transferring payments to the businesses concerned only after they have provided the relevant services to a certain extent. If the traders concerned fail to provide the relevant services, consumers can stop their payments, so as to reduce the losses suffered by them as a result of the closure of the company involved in providing the prepaid services. According to the public opinion poll on consumer rights mentioned just now, 56% of the respondents actually supported the establishment of a compensation fund, so this reflects the fact that this proposal is supported by a great majority of members of the public.

Lastly, I wish to talk about the issue of introducing a mandatory cooling-off period. At present, among the complaint cases involving beauty care and slimming companies, model agencies and overseas resorts, many of them involved errant traders who use misleading, harassing or high-pressure marketing practices to lure consumers into signing contracts. Often, consumers made wrong decisions under strong coercion, thus signing contracts that they were unwilling or unable to honour. Therefore, the DAB has all along urged the Government to establish cooling-off periods for the mode of pre-payment for goods and services, so that after signing contracts to buy certain products or services, consumers can think carefully within a specified period of time before their contracts take effect. Moreover, the cooling-off period can also encourage

companies to do business in an upright manner rather than promoting their business by hook or by crook.

Unfortunately, although the SAR Government proposed that a cooling-off period be made mandatory for certain types of transactions, due to the divergent views received during the consultation period, it considers that more time is needed to conduct a careful study, so as to address properly the issues arousing great concern by way of legislation. As a result, the proposal of a cooling-off period was shelved. The DAB wishes to express its disappointment over this.

In fact, at present, individual industries have already taken the initiative to put in place similar cooling-off period arrangements. For example, the Travel Industry Council of Hong Kong introduced the Refund Protection Scheme for Inbound Tour Group Shoppers. Under this scheme, overseas visitors who are dissatisfied with their purchases can request a full refund within 14 days, whereas the time limit for refund for Mainland visitors is 180 days. In addition, the Life Insurance Council under The Hong Kong Federation of Insurers also introduced the cooling-off period arrangement to give policy holders more time to consider their decisions. Therefore, it is entirely practicable to put in place cooling-off periods having regard to the actual experience. In addition, according to the surveys on consumer rights conducted by the DAB on a number of occasions, the proposal to introduce cooling-off periods is supported by more than 60% of the respondents, so this reflects the fact that the majority of the public also agree that a cooling-off period would help protect consumer rights.

However, the existing Trade Descriptions Ordinance is no longer up-to-date, so it is necessary to amend it expeditiously. To prevent the discussion of a mandatory cooling-off period from affecting the timely implementation of other amendment proposals, the DAB agrees to handle the issue of a cooling-off period separately and pass the amendments on which consensus has been reached first, so as to criminalize the most commonplace unfair trade practices. In these circumstances, the DAB requests that after the passage of the Bill, the Administration undertake to study how to deal with the arrangement of a cooling-off period immediately and give a detailed account of the relevant work plan and timetable, so as to ensure the early implementation of a cooling-off period. In addition, during this period of time, the Administration should also let various sectors take part in the formulation of voluntary guidelines with the assistance of the Consumer Council.

President, in sum, the DAB believes that the amendment proposals in the Bill only represent a small step forward for the existing system. Although there are more than 10 pieces of legislation on the protection of consumer rights, are they adequate for dealing with the present situation and targeting the existing issues? We must conduct a comprehensive review and formulate a comprehensive piece of legislation on the protection of consumer rights to plug the loopholes arising from the existing fragmented and inconsistent legislation. I hope that the passage of the Bill will represent the first step towards establishing a comprehensive legal framework, so that unfair trade practices can be combated and consumer rights protected more effectively.

With these remarks, President, I support the Bill.

MR WONG TING-KWONG (in Cantonese): President, the provisions in the existing Trade Descriptions Ordinance do not cover services. In July 2010, the authorities carried out a public consultation on "Legislation to Enhance Protection for Consumers Against Unfair Trade Practices" and based on the views collected, it introduced the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 (the Bill) to extend the coverage of the Trade Descriptions Ordinance to services and bring such business practices as misleading omissions, aggressive commercial practices, bait advertising and bait and switch into the scope of regulation.

As a consumer, I certainly support the Bill, in the hope that I will be given greater protection. Recently, the Consumer Council announced that a total of 13 900 complaints were received in the first half of this year. Although the increase in the number of cases was only a slight 5% year on year, the number of complaint cases involving online group purchases increased drastically from 56 cases to 2 149 cases year on year, representing a 38-fold increase. Among them, 1 056 cases were related to beauty care and entertainment services, accounting for 70% of the cases, a drastic increase from nine cases to 154 cases year on year. Among them, 58% of the complaints were related to invalid discount coupons and 84% of the complainants were dissatisfied with the failure of the traders concerned in providing goods or services.

It can be seen from the foregoing figures that group purchases are increasing common. At present, it is an offence for any locally-registered group

purchase websites to deceive customers intentionally. However, it is no easy task to gather evidence on transactions carried out online and it is also necessary to make payments in advance when making online group purchases. If such intermediaries as group purchase websites are involved, the risks associated with such purchases are also relatively higher. Therefore, it is indeed necessary to amend the existing Trade Descriptions Ordinance.

If the Bill is passed, the scope of unfair trade practices targeted will extend from goods to services, and online transactions — including prepaid consumption — will also be regulated to prevent group purchase companies or traders from selling goods or services in large quantities even though they know full well that they will be closing down soon and will not be able to provide the products specified in the contracts. This is the proposed offence of "wrongly accepting payment".

As a representative of the commercial sector, I am concerned that with more restrictions under the legislation and when provisions become more complicated, there will be greater inconvenience to businesses, thus giving rise to uncertainties in business operation. At a meeting of the Bills Committee, I raised queries concerning bait advertising. According to the relevant provisions, advertising by a trader of products for supply at a specified price would constitute bait advertising if there are no reasonable grounds for believing that a person acting in the capacity as a trader will be able to offer for supply those products at that price, or the trader fails to offer those products for supply at that price, for a period that is, and in quantities that are, reasonable, having regard to the nature of the market and the nature of the advertisement.

Let me give an actual example. A cake shop claims that specified products can be purchased at $1 in a credit card promotion. However, members of the public find that the specified products have already been sold out only after they have entered the cake shop. Although the Administration explained that if this cake shop still had stock in other nearby branches, it could avoid criminal liability by citing the defence under section 26A, this aroused disagreement in the sector because if this cake shop does not have any other branches or its customers are unwilling to accept the products offered by nearby branches, it is still likely that this cake shop has to assume criminal liability.

President, Mr Vincent FANG intended to propose amendments to sections 26A and 26B by prescribing additional defences for the offences of bait advertising and wrongly accepting payment, so as to clarify the liability of business operators. This will help eliminate the uncertainties in business operation, so the DAB and I support this move.

In addition, the Bills Committee is also concerned about the excessive discretion exercised by officers of law-enforcement agencies in ensuring compliance with this regime. The authorities said that the proposed section 16BA(6) further provides that the Commissioner ― that is, the Commissioner of Customs and Excise ― must consult any persons that he considers appropriate before issuing any guidelines or amendments of the guidelines. Furthermore, any decision of the enforcement agency to prosecute or to resort to the compliance-based mechanism must subject to the consent of the Secretary for Justice. The Administration has subsequently provided for Members' information a draft framework of the guidelines proposed to be issued under the new section 16BA. The draft contains a statement of enforcement policy and chapters on the scope of application of the fair trade provisions, the interpretation of important terms, the operation of an offence provision and the sanctions available. However, it is still necessary for the authorities to hold internal discussions on the draft or make changes to its contents before stakeholders can be consulted on the draft.

I believe the enforcement guidelines should contain more actual examples to provide useful reference to front-line workers in the sector. The authorities should also consult the sector on the formulation of the guidelines. Since there are still many queries in the sector, for example, whether or not offering discounts on newly launched goods to attract customers would violate the legislation; in what circumstances products other than the ones sought by customers can be recommended, and if a business operator states clearly that the product promoted is the last item of its kind but due to a problem in its quality, other more expensive products are recommended, whether or not this would constitute the act of bait and switch, and so on. I call on the Administration to clarify clearly in the guidelines what conduct would constitute an offence, so that business operators can understand how the authorities would enforce the relevant legislation, so as to prevent them from violating the legislation and breaking the law inadvertently.

With these remarks, President, I support the Bill and the various amendments proposed by the Administration and Members respectively.

PRESIDENT (in Cantonese): Since the Chief Executive's Question and Answer Session will be held in this Council at 2.30 pm, the meeting will now be suspended, to be resumed 15 minutes after the end of the Chief Executive's Question and Answer Session.

1.54 pm

Meeting suspended.

4.25 pm

Council then resumed.

PRESIDENT (in Cantonese): We will continue with the debate on the resumption of the Second Reading of the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012. Does any Member wish to speak?

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Commerce and Economic Development to reply. This debate will come to a close after the Secretary has replied.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President ……

(Mr Albert CHAN rushed into the Chamber and raised his hand to indicate his wish to speak)

PRESIDENT (in Cantonese): Secretary, please hold on. Mr Albert CHAN, do you wish to speak?

MR ALBERT CHAN (in Cantonese): President, the Question and Answer session ended several minutes or so.

PRESIDNET (in Cantonese): This meeting should be resumed 15 minutes after the Question and Answer session, and the Questions and Answers session ended at 4.10 pm. Do you wish to speak now?

MR ALBERT CHAN (in Cantonese): Yes. President, sorry about that, I was told earlier that the meeting would resume at 4.30 pm, and I had come a few minutes earlier. President, please give me some time to catch my breath, for I have just dashed back to the Chamber.

PRESIDENT (in Cantonese): Mr CHAN, you may settle yourself first, and then start speaking.

MR ALBERT CHAN (in Cantonese): President, the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 can be regarded as a long-awaited legislative amendment. I believe that over the past many years, both Members and the Consumers Council had been receiving complaints incessantly, and there had been numerous cases where the public were deceived by these unfair trade practices. Each year, during the summer holiday spanning July and August, we receive many complaints. In Mong Kok, Wan Chai and Causeway Bay, a lot of promotion and recruitment advertisements are put up to attract Form Six and Form Seven students, as well as undergraduates and fresh university graduates ……

(Mr WONG Yuk-man stood up)

MR WONG YUK-MAN (in Cantonese): President, it is really too disappointing. When the Chief Executive was here, the Chamber was full of Members, but now, only a few of them stay behind. A quorum is not present.

PRESIDENT (in Cantonese): Clerk, please ring the bell to summon Members to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

PRESIDENT (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): President, we should not blame "Yuk-man" for being furious, for when the Chief Executive was with us for the Question and Answer Session, the seats in the Chamber were mostly filled. But when it comes to the scrutiny of bills relating to livelihood issues, Members only return to the Chamber when the question is put to vote. All Members are present during voting. But at other time, President, like just now, I wonder if the number of Members present will add up to six.

Regarding this Bill, the public, particularly the victims and consumers, have waited for many years. In every summer vacation, there are cases involving students being deceived. We have received a lot of complaints relating to students purchasing goods, seeking jobs, or being enticed to take part in multi-level marketing activities. They are asked to pay a certain amount of money in advance. At first, they will be asked to pay $10,000 to $20,000. More often than not, it seems quite easy for them to get the first bucket of gold, but then, they have to pay $20,000, $50,000, $100,000 and $200,000, and so on. They have to make such payments continuously. Eventually, these young people will be enticed to take out loans from finance companies — they have to take out loan if they want to get the goods — and then debt collection companies will seek repayment from their family members. We have received such complaints every year, and the situation has never stopped. In the past two years, the number of these complaints was relatively small, but similar cases were found occasionally.

Regarding the several areas involved in the Bill, the primary purpose is to rectify these unfair trade practices so as to enhance the protection for consumers. The Bill imposes regulation on various unfair trade practices, such as false trade descriptions of services, misleading omissions, aggressive commercial practices, bait advertising, bait and switch, and wrongly accepting payment, and so on. These practices include deception tactics similar to London gold trade or multi-level marketing activities. In some cases, traders may lie to consumers about the opening date of their centres. The opening date will be delayed again and again, but they will continue with the promotion despite knowing the delay, and they will continue to bait consumers to join membership to defraud them of their money.

These cases are still found in recent years. This problem continues to be found in centres providing services, such as fitness centres. The service contracts of beauty parlours are often the subject of complaints, and the amount involved in each contract often amounts to hundreds of thousands of dollars. The people affected often sign the service contract when they are not sober or they are being misled. The number of such cases is significant.

President, speaking of contracts signed, I would like to point out that the greatest problem with the Bill is that various services will not be subject to regulation, including those which fall within the scope set out in Schedule 4. For instance, goods and services related to the Insurance Companies Ordinance (Cap. 41), the Banking Ordinance (Cap. 155), the Mandatory Provident Fund Schemes Ordinance (Cap. 485) or the Securities and Futures Ordinance (Cap. 571) may not necessarily be subject to the regulation of the present Bill, for they are subject to the regulation of the relevant ordinance concerned.

We have examined the issue and repeatedly pressed the Government to confirm whether practices similar to London gold trade defraud or deception practices will be subject to the regulation of the new legislation. However, as far as I know, the Government has not yet given a 100% confirmation. I will wait and see whether the Secretary will give any new remarks.

Indeed, we have kept receiving complaints about telecommunication companies recently. The complaints involve Internet services, mobile phone services and fixed telecommunication network services, and the common problem is that contracts are renewed automatically without prior consent of clients, and if

the clients disagree, they will be asked to pay the charges involved. As in the case of a client who has signed a 18-month contract, the service provider may renew the contract automatically without any agreement with the client on the false claim that the company cannot find or contact the client, and the service provider may demand the client to pay the charges involved later.

In some cases, a contract has been signed …… I am now handling a case involving the largest consortium and the company of the wealthiest person in Hong Kong. The company had signed a contract with the client and scheduled to carry out the installation on 1 July at his home, but no one came on the scheduled time. After a few days' delay, the provider eventually told the client, "We found out that we cannot connect our network to your building, for we have no way to get a line." We often come across similar cases in the districts.

As for large consortia or companies owned by influential people, if their clients default on paying charges, even a small amount of a hundred to two hundred dollars is involved, they will ask debt collection companies to disturb the clients or their families. However, when these companies fail to comply with the contracts, they will simply ignore it. Therefore, the purpose for formulating legislation on consumer protection is to impose punishment on these unscrupulous traders through legislation with view to enhancing the protection for consumers.

Regarding this Bill which has been long-awaiting for years, I agree that some of the provisions will surely offer protection. However, I think they can only catch "flies", while the "tiger" can still go scot-free. For most common problems which I have mentioned earlier, such as multi-level marketing activities, enticing people to join membership with goods and then defraud them of their money, the contracts offered by slimming or fitness centres and misleading sale practices at drug stores, and so on, I believe most of them will be subject to regulation. Even if not most of such cases, at least a significant part of them, will be subject to regulation. Primarily, practices involving deception, defraud or misleading of consumers in the aforementioned cases will be addressed.

However, for the "predators" — the real estate hegemony and financial hegemony, companies owned by real estate hegemony and finance hegemony, as well as telecommunication hegemony — the practices of concealing, misleading and deceiving adopted by these companies may not necessarily be covered by this

Bill, for these trades may be subject to the regulation of the various ordinances set out in Schedule 4 to the Bill.

Our worries about these ordinances and criticisms against the Government are very often originated from the past approach of the Government of having "all thunder and no rain" in the formulation of legislation. According to the Government, the legislative intent is to protect consumers in response to the complaints received from the public. Indeed, the Office of the Telecommunications Authority receives thousands of complaints every year. The Government may also ask the Consumer Council about complaints against telecommunication companies, which is definitely not a small number.

When services provided by these large corporations, consortium or their subsidiary companies are found to be misleading, not tallying to the claims or deceiving, the cases will eventually be left unaddressed. When being pressed, they will give vague answers, and keep on turning a blind eye to the plight of the public.

Exemption is provided under the Bill, in particular, the exemption for telecommunication operators is set out in Schedule 3 …… Telecommunication operators are not included in the list of exemption in Schedule 3, yet it is doubtful whether the practice of services provision is subject to regulation, and whether the practices involve deliberate omissions, false declarations and deliberate aggressive actions.

Therefore, I hope that the Secretary will explain later in his response why the automatic renewal of contracts, which I mentioned earlier, is not regarded as a deceiving, misleading or deliberate omission practices. Since the contractual period signed is 18 months, the contract should not be automatically renewed after the 18-month contractual period. It is only reasonable that the contract can only be renewed with the approval or permission of the client concerned.

Moreover, Schedule 3 sets out a large number of exempt persons, including accountants, corporate practices and accountants practice on their own accounts, and persons whose names are entered in the register under the Pharmacy and Poisons Ordinance, registered dentists, ancillary dental workers, barristers, solicitors and registered medical practitioners, and so on. Many people in these trades have been stipulated as exempt persons under the Bill.

Understandably, complaints involving professionalism is a separate kind of complaints. However, many clinics now operate in the corporate mode. More often than not, these clinics do not only provide medical services or professional services, some will also provide a basket of services, including medical examination, plastic surgery may also be included, and certain healthcare groups will also provide health maintenance services. In view of these, I am worried about the board coverage of the exemption. Since complaints relating to those persons may involve areas other than professional ethics, professional misconduct or professional malpractices, and as the rights of consumers are affected, these areas should also be included in the Bill.

Despite the many inadequacies of the Bill, the six areas which I mentioned earlier have been put under the regulation of the Bill, and I think this is an improvement to consumers. Regarding law enforcement, investigation and prosecution, the crux is whether improvement or enhancement can be made. More often than not, the authorities may not be able to obtain the details of the practices of service provision by solely relying on the complaints from the public. Very often, the work concerned, particularly the collection of information, has to be carried out by means of "snaking" operation.

Finally, I would like to talk about compensation claims. According to the provision on criminal prosecution stipulated in the Bill, a person committing an offence may be liable to imprisonment and fines, and in more serious cases, the offender may be liable to five years' imprisonment and a fine of $500,000. The amount of $500,000 is but a small sum to large consortia, yet imprisonment term will have some deterrent effect. The question is, whether the large consortia will find a scapegoat to undertake responsibility and be imprisoned, for defraud involves individual conduct. However, it is unreasonable that similar defraud conduct is found in the same company for several days in a row. Regarding the cases involving telecommunication services, which I have mentioned earlier, such problems occur in Sheung Shui, Tin Shui Wai, Tung Chung and Mong Kok. If similar cases related to misleading conduct of staff happen in shops of the same company at different districts, it means there is a problem with the company. Under such circumstance, prosecution should not be initiated against the four staff members, but the directors or the licensees of the company. The deterrent effect will only be brought into play by doing so. If only front-line staff will be prosecuted, the company may find a few scapegoats at anytime to take the blame,

whereas the company will escape the long arm of law and continue to defraud consumers of their money by these practices.

As for claims for compensation through civil litigation, the Government should set up a fund to help victims claim compensation. If victims initiate the claim on their own accord, more often than not, they will not pursue to the end, and the cases will be left unaddressed. Therefore, if the Government is sincere in helping consumers, it should provide assistance in various aspects, particularly appropriate legal assistance in civil claims, so that justice will be done for the public. Thank you, President.

MR LEUNG KWOK-HUNG (in Cantonese): President, credibility is of utmost importance to a person. Otherwise, a crisis would not have happened just now. To say that "political pledges that cannot be materialized will not be made for the sake of winning votes" is tantamount to saying that "services that cannot be provided will not be committed for the sake of making profit" in the context of the business sector. It is meaningless. The crux lies in one single word: credibility. Credibility can be most easily attained, it is no use to say an extra word. Naturally, there is no comparison between politicians and businessmen.

Back to the subject, credibility is the most important attribute of a person. Without credibility, nothing is worth mentioning. The same applies to unfair trade practices. It does not matter whether one knows clearly that he cannot get the work done, or one can easily get the work done but he deliberately takes no action, or one declares that he will not lie knowing full well he is an "expert liar". These scenarios are not uncommon. I should not talk about the Chief Executive, for he has left, both body and soul. Let me talk about the unscrupulous traders.

President, you should remember the advice you gave me about the "Words of the Mandarin Orange Vendor", that is, the essay which you said I had mispronounced a Chinese word. Thank you for your teaching. Indeed, "Words of the Mandarin Orange Vendor" is about this question. The vendor considered himself clever for he could cheat people by selling mandarin oranges that look pretty good in appearance but taste bad in reality. Honestly, under the current regulation of unfair trade practices, people like the mandarin orange vendor will get trapped, but those selling London gold can go scot-free, leaving the victims to be seriously affected. People selling mandarin oranges with soft texture but

little juice will be prosecuted, while those selling London gold will not be subject to the regulation of the legislation. The regulation on unfair trade practices are not applicable to these people, they may only be charged for defraud, which is regulated under another legislation.

Why would I say so? In 1998, when I protested against the perverse acts of TUNG Chee-hwa *(a phone rang)* …… that is not my phone, do you want me to go to switch it off? It is switched off now. At that time, I was arrested by a policeman, and he said to me, "Mr LEUNG, if you really want to do something, you should request the Government to enact legislation to deal with the trading of London gold." I then started working on the issue until the time I was almost elected as a Member, which spans a period of six years. At present, London gold activities are still prevalent. If you watch television, you will see this advertisement once in a while. An actor says, "Listen to me, listen to others, what you do not have now, you will get it in future." This is an advertisement about investing in the gold trade.

Why will there be such a weird phenomenon? During my schooldays, my teacher told us that the definition of capital was the accumulation of a large volume of goods, this point was mentioned in the book *Capital* by Karl Marx. The large volume of goods accumulated is definitely sold for profit but not for helping the needy. It is called "buying for selling". "Selling for buying" is not the practice of us as consumers, it is something that they will do. We are consumers. When we buy something, say an iPhone, we just want to use it to browse the Internet or make phone calls. To consumers, goods and services brought only have a use-value but not an exchange-value. However, for certain people, things are brought for their higher exchange-value, which they consider as the use-value. This is the dual nature of commodities.

There is no way to prohibit this. To prohibit, first *(noise came out from the amplifier)* …… What? It does not matter. It is my microphone. The Government can only do one thing, that is, to help consumers from different social strata buy all kinds of commodities, and to impose immediately stringent measures so that unscrupulous traders will get frightened upon learning the consequences. Just now, I threw the cardboard "head" of the Chief Executive onto the ground, symbolizing that he could no longer play dirty tricks. With a "pang" sound, his "head" was thrown onto the ground.

Recently, two credit card companies — it is better not to disclose their names — have joined hands with banks to bully consumers. Shops have to give special benefits to credit card companies when consumers pay by credit cards, and as shops are not allowed to deduct the handling charges, the credit card companies force supermarkets or traders to shift the burden onto consumers. The two credit card companies are now being prosecuted. There is hearsay that the compensation will amount to several billions US dollars. At present, Hong Kong has to enact legislation, yet no mechanism is put in place to reinforce the investigation, enforcement and prosecution work. In the event that the case is handled through civil proceedings but not criminal prosecution, is there any chance that a consumer can represent other consumers in claiming compensation? Automatic contract renewal, is that kidding?

President, you and I had been divorced. A marriage is valid by the signing of a certificate of marriage, yet when it comes to divorce, we have to pay $20,000 to this person and that. Do you think this is ridiculous? It is unfair, is it not? When I signed the contract, the trader said to me, "Long Hair, take this card, and I will give you a free gift of a two-day Phuket tour." However, when I left, I could not find him. No one answered my call and I could not complete the process on the Internet. President, tell me, do you think this is reasonable? We can apply for the Government's handout of $6,000 on the Internet — I do not know whether you have collected the handout — we just need to make some clicks and can get $6,000. However, when consumers want to cancel a transaction, they cannot do so on the Internet. Is that not an act of a swindler as consumers are trapped. It is unreasonable. Consumers fall prey easily to these traps, and they can hardly get away once trapped. It is absolutely and utterly unfair. How will the Government handle this?

The second issue is about capital, which is the huge accumulation of commodities in this commodity world. What is most important in this context? We have discussed this during the deliberation of the company law. Credibility is the most important element to a company. By the same token, credibility is the most important element in the commodity world, that is, words said should be kept. It means that disclosures made should be completely true. My decision is made out of my trust in you, President. For instance, when you said, "Mr LEUNG, I am impartial in handling this issue," I trust that you are impartial. If I do not trust you, I would have turned over the table. The same applies in this

Council. I will only trust a person's integrity. I do not care who you are, and I will only trust you base on your integrity.

Among the billions of transactions which vary in thousands of ways, it will bring serious consequence if the legislation aiming to regulate unfair trade practices involving commodities does not include the provision that "it is an offence not to make a true disclosure about the products." Why? There was a special product called the Lehman Brothers bonds. Lehman Brothers bonds belong to a category under the "Securities Law" passed by the Legislative Council — they do not know what they are selling — which is divided into two parts. The first part is disclosure-based CDS and CDO, which no one in the world knows about it — you and I know nothing about it, and even when I asked Joseph YAM, he gave me a wrong answer. What is meant by disclosure-based? It after all means that "all facts are disclosed and all facts disclosed are complete." However, I must make it clear that it is referring to promotion leaflets but not the product itself. It is impossible for us to invoke the Securities and Futures Commission Ordinance with plain fact. For instance, if someone says that there is a bronze mine worth $50 million, it is impossible for me to examine whether it is really of a worth $50 million. This is not how it works. Compensation is made according to claims.

President, thanks to these financial products, our subcommittee on Lehman Brothers had held meetings for four years. Eventually, it is said that officials should not be condemned. Do you think it is a significant issue?

Since this Bill serves as a framework, I think we are caught in a dilemma, for it is undesirable to vote it down, yet it is also undesirable to have it passed. This should be likened as the "chicken bone", should it not? The provision of a framework is somehow an improvement. However, good deeds should be carried out to completion, just as the common saying goes, "if you escort the Buddha, escort him till he reaches the West". In the present case, the authorities have only escorted the Buddha to Shau Kei Wan, the Buddha has reached the East and not the West. The authorities say that since the food has reached the East, it is time to serve them. However, the pork is only half-cooked, should I eat it or not? Eat it or leave it, I will die all the same. If I do not eat it, I will be starved to death, but if I take the half-cooked pork, I will be affected by pig's worm.

Our legislation is enacted in this way. In fact, during the enactment of the lame Company Law, some Members said that the provisions should be handled separately, but not in entirety. Use a small plate to steam the pork, and serve the food when it is well-cooked. But now the Government aimed at entirety, broadness, greatness and grandness, everything is mixed together now. We cannot separate them clearly. The good, the bad are all mixed together. We are given "a mouthful of sugar and then a mouthful of faeces". President, this is "steaming faeces with sugar". Can you eat the food? The two can hardly be separated once they melt together. You cannot tell what you are eating, is it sweet or smelly?

Our legislative process works the same way. The Government takes the initiative and gathers a group of Members together. It then looks for faeces in the big toilet of the functional constituencies. It will then ask Members to sprinkle sugar on top and say that it is kind of improvement. Perhaps it will give us some sugar, so that we can add more sugar.

President, this is the problem now faced by Hong Kong. The Hong Kong Government does not have to shoulder responsibility, for a ruling party does not exist. At present, people with potential in various political parties are recruited to join the Government as a kind of political reward, so integrity is never a concern. Upon the enactment of the legislation, the legislation will not be named as "The TSANG Yok-sing Code" or "The LEUNG Kwok-hung Code" as in the case of The Napoleonic Code, where his name will be passed down through generations.

After the enactment of the legislation, no one knows who the bad guys are. So, President, I think the objectives laid down in the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 are very high sounding, yet in handling the actual situation in Hong Kong to fight against the "predators", the effect is only minimal. As such, the claim to be on a par with the United States and European countries is only castle in the air.

In Hong Kong, trade practices naturally include the tactics adopted in European countries and the United States in promoting various commodities, yet there is also a tinge of local characteristics. When you are in the United States and European countries, you may be stopped by someone who says to you, "President TSANG, I know you, you are the President of the Legislative Council.

I will give you a good offer today if you submit to me the application for two credit cards. Please help me, for I really need to make a living." This situation does happen in reality. President, he says he knows you and asks you to help him by applying for credit card, and he will give you medicine for relieving rheumatic pain, which is suitable for people aged 60 or so like you. How can he insult our President? Usually, he will say to me, "Long Hair, I know you like drinking, so you will get wine as a free gift." This kind of behaviour is unacceptable, is it not?

My opinion is extremely simple, if the powers of prosecution and investigation are not enhanced, and if an organization concerned is not set up …… At present, corruption cases are investigated by the Independent Commission Against Corruption, and for such an important issue, how come there is no organization to take charge? Even in the case of the Competition Ordinance, the Competition Commission and the Competition Tribunal will be set up. Now, we do not know whether the Consumer Council will take charge.

President, I really can say nothing. In my view, without an enhanced authority and financial support, nothing can be done.

The commissioner in charge has one more duty. He should follow the example of Mr LEUNG Chun-ying by taking a folding chair, a notebook pad and a pen to go to the district and ask the public if they have been cheated, and how they have been cheated. This task should be done. Being a member of the public, the commissioner should go into the public, and that will bring life to the rigid legal frameworks. Knowing how people are being cheated, we know how to curb those deceptive practices, heavier penalty should be imposed, and thorough investigation should be conducted. We should not simply assign someone to be the keeper, as in the case of brothels. When brothels are being inspected, the keeper will stand forward to admit the act of running establishments for immoral purposes. Buddy, at present, a lot of managers in large companies cannot do so ……

I have one more concern, President, as I said in the investigation of the Lehman cases, that is, the authorities have no way to charge the organizations concerned with a criminal offence. Since these organizations are legal persons, even if we know which organizations have defrauded, we can in no way know who has forged the signature, for the consumer has contacted tens of dozens of

people. According to law, a legal person cannot be charged for a criminal offence. Buddy, what are you saying? The authorities should directly combat organizations adopting unfair trade practices. Thank you, President.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Commerce and Economic Development to reply. This debate will come to a close after the Secretary has replied.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, first of all, I would like to express my heartfelt gratitude to the Chairman of the Bills Committee, Mr Fred LI, as well as members of the Bills Committee, for their valuable views on the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 (the Bill). During the scrutiny of the Bill, the Bills Committee has invited the public and the trades to voice their views and discuss in detail the implementation and operation of the Bill.

The object of the Bill is to amend the Trade Descriptions Ordinance (Cap. 362) to step up the clampdown on unfair trade practices, so as to enable consumers to make informed decisions on transactions according to their free will and with adequate and accurate information. The Bill aims to protect consumers in three aspects: the introduction of new offences, the enhancement of the effectiveness in law enforcement and consumer redress, so as to enhance consumer protection through various approaches. The various legislative proposals in the Bill won general support in the public consultation conducted by us in 2010.

First of all, the Bill introduces a number of new offences to tackle some common unfair trade practices. First, we propose to expand the coverage of the legislation by applying the prohibition on false trade descriptions to services provided to consumers.

Second, we propose to add a new offence of "misleading omissions". A commercial practice is a misleading omission if, in its factual context and taking into consideration all relevant matters (such as the written or spoken language used in promoting sales), it omits or hides material information, provides material information in a manner that is unclear, unintelligible, ambiguous or untimely, or fails to identify its commercial intent (that is, the so-called "supporters"), and as a result causes or is likely to cause the average consumer to make a transactional decision that the consumer would not have made.

Third, we propose to prohibit the use of aggressive practices in consumer transactions. A commercial practice is aggressive if it significantly impairs the average consumer's freedom of choice or conduct through the use of harassment, coercion or undue influence, thereby causing or is likely to cause the consumer to make a transactional decision that the consumer would not have made otherwise and the trader commits the offence of "aggressive commercial practices".

Fourth, to combat bait advertising. Advertising by a trader of products for supply at a specified price will commit an offence if there are no reasonable grounds for believing that he will be able to offer for supply those products at that price, or the trader fails to offer those products for supply at that price, for a reasonable period and in reasonable quantities.

We also propose to prohibit the practice of "bait-and-switch". This offence prohibits a trader from making an offer to sell a product at a specified price with the intention of promoting a different product through any of the defined tactics (such as refusing to show the product to a consumer and showing a defective sample).

Lastly, we propose to create an offence in the legislation to directly combat the problems arising from prepayments for goods and services. We propose that a trader will commit the proposed offence of "wrongly accepting payment" if, at the time of accepting payment for a product, he intends not to supply the product or to supply a materially different product. A trader will also commit an offence if there are no reasonable grounds for believing that he will be able to supply the product within the period specified or within a reasonable period.

Offenders of any of the foregoing new offences are liable to a maximum fine of $500,000 and imprisonment for five years.

In respect of enforcement, we propose that the Customs and Excise Department should be the mainstay in law enforcement in relation to the new offences, with concurrent enforcement powers to be conferred on the Telecommunications Authority in respect of the trade practices of holders of telecommunications and broadcasting licences.

At the same time, we consider that the enforcement agencies should be given more tools of regulation to respond to different situations, so that commensurate and appropriate actions can be taken. The Bill proposed to establish a compliance-based enforcement mechanism to encourage compliance by traders and facilitate faster settlement of disputes with consumers. Under the proposed mechanism, the enforcement agency is empowered to seek undertakings from traders suspected of deploying any unfair trade practices to stop and not to repeat an offending act, and, where necessary, seek injunctions from the Court for the purpose. This mechanism is expected to be able to deliver faster and better settlement of disputes with consumers and together with criminal sanctions, the rights of consumers can be better protected.

The Bill also seeks to assist aggrieved consumers in seeking restorative justice. The Bill proposes that an express right be created to allow any person who suffers loss or damage because of unfair trade practices to institute private actions for damages. We also propose that when convicting a person of any of the offences, the Court may order the convicted person to compensate any person for financial loss resulting from the offence.

In the course of the scrutiny by the Bills Committee, we listened to the views of the Bills Committee and proposed the relevant technical amendments to enhance the Bill and reflect its original policy intent more appropriately. I will later give a detailed account of the amendments at the Committee stage. All proposed amendments have won the support of the Bills Committee.

We fully understand the concerns of the retail sector about the operation of some of the provisions in the Bill. I wish to reiterate that the aim of this legislative proposal is to deter the black sheep in the trades from engaging in unfair trade practices that undermine consumer confidence and even Hong Kong's reputation. Not only would these new measures not curtail the scope of business operation for traders, they would even provide a fairer environment to honest traders, so that they would be benefited just like consumers.

During the scrutiny of the Bill, having regard to some current practices, Mr Vincent FANG, Mr WONG Ting-kwong and representatives of the trades cited some examples and asked us if they would lead to violations of the law. We understand the legitimate concerns of the trades but in fact, most of the examples can be attributed to a misunderstanding about the operation of the Bill. It is not likely that traders and front-line workers would break the law inadvertently. The existing way of drafting of the provisions and various defence clauses can already provide adequate protection to honest traders, so we believe that the trades do not have to be unduly concerned.

President, the Legislative Council has resumed the Second Reading debate of the Bill today. If the Bill is passed, it will lay down the cornerstone for enhancing the protection for consumer rights. Nevertheless, our efforts will not stop here.

We will issue enforcement guidelines to assist the trades and consumers in understanding the operation of the legislation. The draft framework of the relevant guidelines has been submitted to the Bills Committee for discussion and the final version of the guidelines will also be publicized in the future. In accordance with the Bill, enforcement agencies will also invite the public, including the relevant Panels of Legislative Council, consumer right advocacy groups and the trades to take part in the process of formulating the guidelines, with a view to tapping into collective wisdom. In this process, we will continue to collect examples provided by the trades on the current practices in the trades and consider citing some examples with reference value in the enforcement guidelines.

We will step up publicity and public education, so that on the one hand, traders will understand how to comply with the requirements of the new legislation and apart from the aforementioned enforcement guidelines, we will also have exchanges and discussions with the retail sector on an ongoing basis, so as to assist them in rectifying and avoiding acts that may violate the law at an early date; on the other hand, we will educate consumers on the details of the legislation, so that they can have an even better understanding of the scope of protection for them. At the same time, we will continue to promote the idea of spending money smartly and remind consumers not to over-rely on the regulation of legislation; instead, they should be responsible for themselves by thinking carefully before deciding how to spend their money.

The foregoing measures will be introduced as soon as possible after the passage of the Bill. Concurrently, we will undertake the training of law-enforcement officers and carry out co-ordination among various relevant units, including various law-enforcement agencies, the Consumer Council, and so on, with regard to their division of labour and referral mechanisms. We will reserve adequate time for these efforts to ensure the smooth implementation of the Bill. In this connection, if the Bill is passed, we hope that it can be fully implemented in 2013.

The Bills Committee requested that we should explain the arrangement of a cooling-off period here. As we said at the meetings of the Bills Committee, in the public consultation report published in early 2011, we proposed to expand the coverage of the cooling-off period. Subsequently, we communicated and examined this matter carefully with the trades and considered it necessary to deliberate some issues relating to the actual operation more carefully. In order to deal with unfair trade practices as soon as possible, this Bill does not include provisions on the mandatory imposition of a cooling-off period.

After devoting all our effort to completing all the aforementioned preparatory work, we will explore and study other issues concerning consumer rights that arouse public concern, such as the arrangement of a cooling-off period, with various stakeholders in greater detail and focus.

President, in protecting consumers, the Bill also clamps down on traders who adopt undesirable trade practices, so as to provide an environment of fair competition to honest traders and enable the consumer protection regime in Hong Kong to catch up with the standard of other advanced economies. We believe that the Bill will help strengthen consumer confidence and at the same time, strike a balance between protecting consumer rights and preserving the room for business operation for honest traders. In fact, this policy has been mooted for many years and has been the subject of extensive consultation and discussion, and the public and Legislative Council Members in general have expressed their support for the early implementation of the relevant proposals.

I implore Members to support the Bill and the amendments to be proposed by me later on. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr Albert CHAN rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr Raymond HO, Mr Fred LI, Dr Margaret NG, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan LEONG, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that there were 42 Members present and 41 were in favour of the motion. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Committee Stage. Council is now in Committee.

TRADE DESCRIPTIONS (UNFAIR TRADE PRACTICES) (AMENDMENT) BILL 2012

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012.

CLERK (in Cantonese): Clauses 2, 4 to 7, 10, 11, 12, 14, 16, 17, 20, 21, 22, 25, 26, 28, 30, 32, 33 and 35 to 42.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, clause 4 of the Bill is related to the power of the Chief Executive in Council. Chairman, earlier someone said that the Executive Council was an advisory body but if we look at this provision, in fact, this is not so. The Executive Council has real power and statutory powers and it can make many decisions with its executive powers.

After reading the provisions under this Bill, Members will know clearly that the Executive Council is definitely not an advisory body. The original section 4(1) reads, "…… may by order require that any goods specified in the order must be marked with or accompanied by any information (whether or not amounting to or including a trade description) or instruction relating to the goods," and it is substituted with "…… may by order require that any goods specified in the order must be marked with or accompanied by any information …… relating to the goods,". Part of what I have just read out is newly added, the part preceding "may by order" was deleted and the ensuing part was added. Basically, the Government's amendment provides that the Chief Executive in Council may prescribe certain requirements by order and these requirements can specify that the relevant information on certain goods forms the description for them.

Chairman, another even more important point is "services specified in the order", that is, not only goods are covered by the orders but services as well. Moreover, the order has legal effect. That is to say, after the passage of this Bill, the Chief Executive in Council can specify by order that the information relating to goods or services form the trade descriptions regulated by this piece of legislation. As I said in the debate on the resumption of Second Reading, if this kind of information belongs to those areas, including false descriptions and misleading omissions, or if there are problems in other areas, so long as they fall within the scope of the goods or services regulated by this piece of legislation, they are all subject to the regulation of this piece of legislation, except the exemptions mentioned in Schedules 3 and 4.

Chairman, concerning this amendment and the formulation of the relevant provisions and in respect of the issues relating to the scope of services and goods, of course, efficiency will be enhanced. After the passage of this Bill, if we find that there are problems with the relevant goods, information relating to the goods, services or information relating to the services, in the future, the Government can exercise the power under this provision to request the Chief Executive in Council to make orders to bring the relevant services or the relevant information under the coverage of the legislation.

In terms of the principle and rationale, I cannot say that this is undesirable but there is often a major problem in the relationship between the executive and the legislature or in the exercise of executive power, that is, first of all, has the

exercise of executive power lived up to the spirit of the relevant legislation? Of course, if it has not, it will face legal challenges. However, in respect of implementation, is there any abuse of power, or abuse in the exercise of the power conferred by the relevant legislation, and is it used for inappropriate or improper purposes?

Chairman, what comes to my mind immediately is that this Bill can be used to regulate the services of Falun Gong after its passage. This whimsical thought or association occurred to me, that is, if Falun Gong is regarded as a kind of service — its services are very diverse — if the power under this piece of legislation is invoked and an order is made by the Chief Executive in Council on matters that the Government or the Central Government does not want to see, and in accordance with this piece of legislation, this order also has legal effect and is binding, the relevant services may constitute violations of the law.

Of course, people may say that I am being very far-fetched, and as the Commissioner of Police said, if the police have to apologize for discharging their duties, this would be something very bizarre. However, on the indiscriminate use of pepper spray, he should bow three times and kowtow in apology. Even so, people would not accept his apology and he must resign. The "hawk" must step down to appease the public. However, in the future, if the Chief Executive not only regulates goods but also services through the power conferred on him by this piece of legislation …… Chairman, this piece of legislation does not specify seriously the scope of "service". Except the services provided by certain exempt people and the exempt products specified in Schedules 3 and 4, for example, the services provided by doctors, lawyers and accountants, with regard to services that are not exempted, Chairman, Falun Gong can also be considered one of them. With regard to religious bodies such as Falun Gong, first of all, from the viewpoint of the Hong Kong Government, Falun Gong may not be considered a religion. Therefore, I am somewhat worried that if the definition of "service" is not clear …… the same applies to political parties, for example, "Yuk-man" and I are preparing to establish a "political institute for the general public" and in the future, we will offer some classes that may not be among those recognized by the Education Bureau because they may cover political activities and services. Later on, it is also possible that we may arrange students to take internships in Taiwan or Singapore. If our great Motherland finds it acceptable, it is possible for students to take internships on the Mainland — however, this is just a dream.

Nevertheless, concerning the scope of service of this kind of political groups, in the future, there is the likelihood that the Chief Executive — we have such great antagonism for LEUNG Chun-ying, this "wolf-like hawk". When he was leaving just now, I pointed my finger at him and called him a big liar who deceived the elderly. Why did I say that he deceived the elderly? Initially, when he promised to issue $2,200 to them, he did not say that a means test would be conducted, but now, all of a sudden, he has put in place a means test. Therefore, since the scope of "services" can be very broad and any political party — be it the Civic Party or the People Power — may provide many types of services. In the future, if these services are covered by the relevant orders, I can imagine how great the chain reaction and political fallout would be ……

CHAIRMAN (in Cantonese): Mr CHAN, I do not understand your argument. You say that services are included, but what do the orders say specifically?

MR ALBERT CHAN (in Cantonese): Chairman, the relevant provision says: "…… may by order …… regulate or prohibit the supply of goods or services with respect to which the requirements are not complied with; and the requirements may extend to the form and manner in which the information or instruction is to be given". Section 4(1) states that regulation or prohibition can be imposed by order. This is a kind of order and if such orders are prescribed by the executive authorities, since it is only necessary to …… this is just like the police saying that members of the public were staging a demonstration and that the Administration had already designated a protest zone, then, they kept spraying pepper spray inside the protest zone — those people were just standing still and were already using their hands to cover their heads, but police officers still held cans of large-sized pepper spray in their hands, spraying towards the crowd continually and saying that there was nothing wrong.

Therefore, with regard to executive orders, since we can see a series of actions taken by the Government nowadays and the dominance and abuse of power by the police, how can we not be worried about the extraordinary and unreasonable nature of these so-called executive orders, and that deeds disregarding human rights and human dignity would occur? He can say in the future that Falun Gong does not comply with this requirement, and in this connection, he can regulate or prohibit by order the supply of goods or services

not in compliance with those requirements. Why not? The Government has so many clever people with a flair in advancing specious arguments and making misrepresentations, and in the implementation of national education, they can sing praise of all sorts of achievements and virtues, as well as the greatness of the Communist Party and the four modernizations, but there is no mention whatsoever of the casualties in the Cultural Revolution. Recently, when we asked the Chief Executive and the Secretary about the 4 June incident and the issue relating to LI Wangyang, they could advance specious arguments and even though they had given a reply, it was as though no reply had been given.

Therefore, it can be seen that the various Secretaries of Departments and Directors of Bureaux in the executive departments of the Government, including the Chief Executive, have all acted against the dictates of their conscience and refused to face the reality. Just now, he was asked by many Members, including ……

CHAIRMAN (in Cantonese): Mr CHAN, you have strayed from the subject matter.

MR ALBERT CHAN (in Cantonese): Sorry, Chairman, because I am talking about the orders ……

CHAIRMAN (in Cantonese): The orders that you are talking about specify that services must come with the information relating to them. This is what the orders are about and it is only non-compliance with such orders that would result in prohibition. You have strayed too far.

MR ALBERT CHAN (in Cantonese): Chairman, I absolutely understand your kind reminder. Basically, under the legislation, it is unlikely that the situation mentioned by you and the extreme situation mentioned by me would occur; such situations may not necessarily occur. I absolutely understand your comments and your interpretation of the spirit of this piece of legislation.

However, I only wish to point out an extreme situation. This is just like the excessive use of pepper spray by the police mentioned by me just now. For example, prior to 1997, who could foresee the emergence of such a situation? This is totally unforeseeable. I only wish to point out some situations that you, many people and I cannot foresee.

However, Chairman, I only wish to point out why I make such comments. I suggest that in respect of those regulations and orders, a more reasonable approach would be to adopt the form of subsidiary legislation, so that the Legislative Council has the opportunity to scrutinize, monitor, overturn and negative it. Chairman, if nothing other than the form of an order is adopted and such orders can really be so very over the top — of course, I admit that I have exaggerated this and I admit that I have blown the issue completely out of proportion — however, you cannot deny that the kind of situations described by me definitely would not and cannot possibly occur.

Chairman, I only wish to point out that in the future, when scrutinizing the relevant Bill — of course, Mr WONG Yuk-man and I could not possibly join so many committees, particularly given that the Government introduced so many bills towards the end of the session, so we could not join so many committees. However, recently, when reading the provisions, I noticed the kind of situation described by me just now. The scope on which the Chief Executive in Council can make orders is not confined to goods alone, yet the definition of service is so broad and loose. For this reason, I think that evoking the powers conferred by the relevant regulation is a cause for concern.

Chairman, I have no intention of negativing this Bill, nor would I attempt to do so. I only wish to say that I hope the situation described by me would not occur and I also hope that the principle of fairness, impartiality and justified exercise of power would be followed when the relevant orders are implemented. Thank you, Chairman.

DR PRISCILLA LEUNG (in Cantonese): Chairman, today, I speak in support of the Government's Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012.

Chairman, I hope you would allow me to make some comments on the general principles because I could not come back in time earlier to give my comments. However, in the entire presentation, concerning the first few provisions amended just now, Members can certainly see that, with regard to "trade descriptions used in advertisements", the word "services" is added in many places, so today, I wish to talk about the consumers to whom I have rendered assistance. Of the services accepted by them, some involved unfair trade practices ……

CHAIRMAN (in Cantonese): Dr LEUNG, as we are now in the Committee stage, you should comment on the details of the provisions being deliberated now. The fact that you could not come back in time during the Second Reading of the Bill is not a reason for you to express your views in question now. Please comment on the details of the provisions being deliberated in accordance with the Rules of Procedure.

DR PRISCILLA LEUNG (in Cantonese): Chairman, I have already started to talk about some of the details, saying why I support the addition of "services" to clause 9 (section 8 amended) ……

CHAIRMAN (in Cantonese): The amendment to clause 9 (section 8 amended) proposed by the Government will be debated later. As regards the provisions being deliberated now, they are displayed on the screen, so please take a look.

DR PRISCILLA LEUNG (in Cantonese): Chairman, I hope that you would allow me to voice some of my views in my speech now because I found that when other Members missed the chance to speak in the Second Reading, they would ask you to permit them to ……

CHAIRMAN (in Cantonese): Dr LEUNG, please make your comments in accordance with the Rules of Procedure. Since the Committee will debate each provision, you will have the opportunity to comment on those provisions later on. At this stage, we are discussing the provisions in the Bill that have not been

amended. Next, we will debate the amendments proposed by the Administration. Please focus your comments on this group of provisions.

DR PRISCILLA LEUNG (in Cantonese): Chairman, in that case, I will wait and speak later on.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, I wish to comment further on the provisions mentioned just now. Just now, I talked about clause 4 and now, I wish to talk about clause 5.

Clauses 4 and 5 are related. Section 5 as amended would read, "The Chief Executive in Council may by order require that any description of advertisements of any goods or services specified in the order shall contain or refer to information (whether or not amounting to or including a trade description) relating to such goods or services and subject to the provisions of this Ordinance impose requirements as to the inclusion of that information or of an indication of the means by which it may be obtained.".

Chairman, when drawing up this provision, it should be stated that political advertisements are exempted but this provision does not say so. It covers all kinds of services. If it is specified in the legislation or Schedules that political advertisements and activities are exempted, my concern would somewhat be allayed.

Judging from this provision, materials for political publicity can also be regarded as a kind of service (of course, those relating to elections are another matter). If they relate purely to non-electoral activities …… recently, a number of Members were banned from putting up posters in premises under the management of the Housing Department, which alleged that our posters carried political messages or criticisms of the Government. In the past, it was possible to put up posters criticizing the Government but at present, putting up this kind of posters to criticize the Government in premises under the management of the Housing Department is not allowed ……

CHAIRMAN (in Cantonese): Mr CHAN, what is the relevance of the comments made by you now to the provisions? On the provisions mentioned by you, after amendment, it is still required that no matter what kind of advertisements are involved, they all have to contain information relating to the goods or services. I cannot see what relevance this has on the issue of prohibiting Members from putting up posters criticizing the Government raised by you just now.

MR ALBERT CHAN (in Cantonese): Chairman, they are not relevant to the prohibition of the Housing Department on putting up posters. I am only saying that the conduct of the Government is changing and this has led to restrictions on the freedom of political expression.

CHAIRMAN (in Cantonese): Please focus on the details of the provisions.

MR ALBERT CHAN (in Cantonese): Chairman, I am only using this example to elaborate the possibility that the Government may make use of this provision to prohibit some Members or political groups from spreading their political messages because according to the wording of this provision, "advertisement" may refer to the advertisement for certain services. In respect of the advertisements for certain services, that is, any political advertisement, the situation described by me in my comments on clause 4 may arise. Of course, I think the Chairman believes that it is unlikely this kind of situation would occur but I only wish to take this opportunity to apply the logic in my discussion of clause 4 to clause 5 because clause 4 does not mention "advertisement" and it is mainly related to information on goods and services, whereas the focus of clause 5 is to cover the information found in advertisements. I have only applied to clause 5 my comments in relation to clause 4, and I am expressing my concerns again. Chairman, I am only voicing a little bit more of my views and will not repeat at length the arguments presented by me just now.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR WONG YUK-MAN (in Cantonese): Chairman, in the course of the rewrite of the Companies Ordinance, the Government stated that legislation would be drafted in a modernized way. The Department of Justice made public this policy in March 2011 and submitted a paper on "Modernization of drafting". During our deliberations on the Companies Bill last week, we noticed some improvements in the drafting of the Bill, and one of the improvements is made in respect of the wording. Legal provisions should be drafted in modern language to facilitate comprehension by the public. Let me cite some examples from this paper. For instance, in the English text, the word "must" is used to impose an obligation rather than "shall" as in the Companies Ordinance, and the offence provisions use the modern expression of "commits an offence and is liable" rather than "shall be guilty of an offence and liable" which is now obsolete.

The Bill proposes to amend section 4(1) by adding the requirements for the relevant services under "Marking and provision of information, etc. orders". The Bill is also amended to the effect that the word "shall" is replaced by "must". We agree to this proposed amendment. Like the use of modern drafting in the rewrite of the Companies Bill, similar amendments are made to this effect in this Bill.

However, we have noticed that the word "shall" is still used in other parts of the Ordinance to which no amendment has been made. This will result in inconsistency in the wording of the provisions and cause confusion and doubts about whether the provisions carry a different legal meaning. Chairman, these examples abound, such as sections 3(2)(a), 3(3)(b)(ii) and 6(3). These are just a few sections cited randomly as examples to illustrate our point, but many of these examples can be found in the Ordinance. Why did people in the Law Drafting Division not conduct an overall review of the Trade Descriptions Ordinance through this amendment exercise? Judging from the wording alone, we can see that the Administration was perfunctory in handling these amendments. This has aroused concerns about whether these proposed amendments will be in conflict with the other parts of the Ordinance. Other than this defect in the wording used in drafting — let us take it as a defect — we support the incorporation of "services" into the scope of regulation of the Trade Descriptions Ordinance by the Government.

As early as 1994, the then Hong Kong-British Government enacted the Supply of Services (Implied Terms) Ordinance. That was almost two decades

ago, and the then Government already imposed regulation on contracts for the supply of services. Well, it should not be two decades, which is an exaggeration, but 18 years have passed before the Government proposed to expand the application of the Trade Descriptions Ordinance to cover services.

Since many years ago — or over the past decade — the economy of Hong Kong has continued to be led by real estate development, which obviously points to the failure of restructuring. But in spite of this, the service industry has remained to be a most vibrant industry. Given the extensive coverage and varieties of the service industry, the Consumer Council receives a large number of complaints against the service industry every year, and some sectors have even been hit hard.

My district office often receives complaints, and we have dealt with many of these cases. I have tried to send some people to distribute pamphlets in front of the company being complained, because you can do nothing about it when the police is in no position to deal with it and nothing is done to stop it even if several credit cards are charged in excess of the credit limits. The complainant came to us after his credit cards were swiped for payment in several hundred thousand dollars. I could do nothing about it. The only thing that could be done is to stand in front of the company to badmouth it, warning people not to go in. That company that we targeted in our actions was eventually warned and named by the Consumer Council. It may act less recklessly in future but still, nothing can be done about it.

In this connection, with regard to membership of beauty parlours or fitness centres or cases of beauty parlours repeatedly charging their customers on their credit cards, our district offices have received plenty of these complaints, and there are also complaints against marketing practices. There is a wide variety of undesirable sales practices …… It is indeed very strange in Hong Kong, because while some practices are obviously meant to be rip-offs, so many people have still fallen prey to them. Even though the Consumer Council has launched extensive publicity to remind the public to be alert and cautious of such loopholes in law, we still see a large number of cases in which members of the public are made victims every year. Therefore, we fully support the enactment of legislation by the Government to monitor these service providers and their undesirable trade practices.

Under section 4(2) of the Ordinance, any person who, in the course of any trade or business, supplies or offers to supply goods of that description in contravention of the order commits an offence. Section 4(4) provides that an order "may provide that a contravention of any provision of the order is an offence punishable with a fine at level 6 and a term of imprisonment for 3 months". Judging from section 4(4), an order made under section 4(1) may or may not provide that a contravention of the order is an offence. Section 4 does not set out the criteria for making such a provision by the Chief Executive in Council.

I wonder if the Government can explain why the Chief Executive in Council does not have to make this provision when making an order. Why do I ask this question? Chairman, it is because this will affect the effectiveness of the enforcement of section 4 and turn it into a "toothless tiger". So, turning back to these sections, sections 4(4) and 4(1) stipulate that an order "may provide" that a contravention is an offence, but the Government has not drawn up the criteria to be adopted by the Chief Executive in Council in making this provision. Therefore, this is an inadequacy of these sections.

With regard to clause 4 of the Bill, our view is that its wording can be improved in a way as the Companies Bill was improved and this aside, although we agree that the penalty should be set out, the problem is that it gives the impression of being a "toothless tiger". If the Government can draw up the criteria to be adopted by the Chief Executive in Council in making this provision, the enforcement of section 4 can then give effect to the provisions in this section.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, I would like to discuss the addition of section 7A in the Bill, which involves false trade description. The heading of section 7A is "Offences in respect of trade description of services". Under this section, "a trader who — (a) applies a false trade description to a service supplied or offered to be supplied to a consumer; or (b) supplies or offers

to supply to a consumer a service to which a false trade description is applied, commits an offence."

Chairman, as you may recall, the provisions regarding the supply of information to the Companies Registry in the Companies Bill have also made it an offence to supply false information. But in the Companies Bill, the two relevant provisions are very interesting, as they provide for an exemption in respect of the provision of false information. They provide that a person does not commit an offence if he honestly believes the information supplied by him to be true. However, such an exemption is not found in this section. Therefore, in these two different bills, even though they involve the same question of the supply of false information, the provision of information relating to false trade descriptions, including information on a service, constitutes an offence under this Bill that we are now discussing with no exemption provided. No exemption is provided even though the false information is honestly believed to be true.

Why do I have to specifically raise this point? During the discussion on the Companies Bill, I pointed out that the Government had skewed to one side in making the legislation and that it was biased in treating different classes in society. Under general circumstances, there is a high chance for front-line staff to be accused for supplying false information, particularly in respect of service provision. For example, if I made enquiries to a subscription television operator about the renewal of my subscription contract and the person answering my enquiries claimed that they would definitely show the matches of certain football clubs but if, a few months later, I found that this is not the case, will it involve a false trade description when that employee gave me an undertaking at the time concerning the details of the service to be provided? This has aroused doubts in me, because what he said at that time is far different from what actually happened afterwards.

However, that employee may honestly believe what he said to be all true, because according to the circumstances of the company and the information available at the time, what he said is partly a description of facts and partly based on inference and prediction but there are certain differences between the actual services being provided and what he first said. This is likely to constitute an offence under the provisions of the Bill because there is a discrepancy between the information that he supplied to consumers, that is me, and the actual contents

of the service being provided, and there is indeed a chance for such discrepancy to constitute a false description.

Having said that, I believe this employee absolutely had no intention to supply false information when he gave me the information. In this connection, Chairman, I wish to point out that while I do agree to the principle and direction of this Bill, if, in implementing the Bill in future, it is found that the relevant information is provided by the company to the front-line staff who subsequently supplied the information to consumers, and if such information is ultimately proven to be false, the target of prosecution should be the person who was responsible for planning and who supplied the original information to the employees who subsequently provided the information to consumers. This is the logical thinking that should be adopted and the principle for tracing legal liabilities. My concern is that insofar as this section is concerned, after the enactment and commencement of the Bill, the chance for front-line employees to be held legally responsible and prosecuted may really increase accordingly in future.

Moreover, as I said earlier, certain exemptions can be found in other provisions, especially in respect of insurance services. We have received a lot of complaints in districts about insurance premium or insurance coverage, alleging that the contents of the documents signed by the complaints are often different from what they were told by the insurance agents verbally. However, it is immensely difficult to lodge complaints and seek justice through the Office of the Commissioner of Insurance. It is because these cases often involve details of conversations conducted many years ago and in some cases, the insurance practitioners have even retired. So, when a problem is subsequently discovered and the complainant wants to pursue responsibility, it will be basically difficult to do justice. This is another problem that this provision may not be able to address.

Furthermore, I would also like to talk about clause 14 which is related to penalty. All penalties are a matter of relativity and comparison. During the discussion on the Companies Bill a few days ago, I repeatedly criticized that the punitive provisions cannot create sufficient deterrence and are biased. Comparing to many ordinances or bills which were passed over the last few days, the penalty as provided for in this Bill can be regarded as comparatively appropriate and stern. It cannot be considered as harsh though, just that it carries a stronger deterrent effect as the Bill has provided in express terms that

any person who commits an offence under sections 4, 5,7, 7A, 9, 13E, 13F, 13G, 13H and 13I is liable on conviction on indictment to a fine of $500,000 or imprisonment for five years.

I think it is most important to provide for a term of imprisonment. As I said during the discussion on the company law, it is actually meaningless to provide for a fine at level 3 or 4 as stipulated in many ordinances. If a term of imprisonment is not included in the punitive provisions, many people who committed these so-called "white-collar offences" and commercial crimes will only be fined and they will then take it as part of the investment and consider the fine a loss in investment. Moreover, a fine at level 3 or 4 often involves only $10,000, $15,000, or $25,000 at most, which basically carries no deterrent effect. Therefore, the penalty of a fine of $500,000 and imprisonment for five years as provided for in the Bill is relatively more reasonable and will create a stronger deterrence to offenders of these commercial crimes and "white-collar offences".

Of course, with regard to the penalty under two ensuing sections, a person who commits an offence under section 16A(3) is liable to a fine at level 2 and imprisonment for three months, whereas an offender under section 17 is liable to a fine at level 3 and imprisonment for one year. A fine at level 3 is, of course, still small, but there is still the deterrent effect of imprisonment. It is strange that in these sections, a fine at level 2 corresponds with imprisonment for three months whereas a fine at level 3 corresponds with imprisonment for one year. But in other bills that we have discussed before, especially the Companies Bill, even though a fine at level 3 or 4 or even a fine at level 6 is stipulated, no corresponding imprisonment is stipulated. This is proof that the Government has indeed given preferential treatment to company bosses.

I believe that under this Bill, a majority of the offenders will be front-line employees because the promotion of goods is involved, and the offenders should be the small companies or wage earners. The Government is always happy to put wage earners to jail but only imposes a fine on the big bosses in most cases. This has again shown that the Government had skewed towards a certain class in drawing up legislation and punitive provisions, and its protection of the privileged classes is revealed all the more clearly. Chairman, no wonder the major consortiums are so fond of those people in the high echelons of the Government. I think this is precisely the main reason.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR WONG YUK-MAN (in Cantonese): Chairman, I will now speak on clause 5 of the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 (the Bill). This clause is related to information to be given in advertisements. As I already pointed out when I discussed clause 4 earlier, we support the incorporation of "services" into the scope of regulation of the Trade Descriptions Ordinance (the Ordinance). Advertisements are considered as offers in common law, but the details of an offer do not constitute part of the contract. According to many case laws, the contents of advertisements had been ruled by the Court as advertising languages for the purpose of boasting and so, they carry no legal effect. Even if the relevant goods or services are actually different from the contents of the advertisements, the vendors or service providers will not be held legally liable. For this reason, it is necessary for us to impose regulation on advertisements for goods and services in law.

Speaking of this point, Chairman, we must cite property sale advertisements as an example, for they truly represent a case of goods being inconsistent with the specifications. We sometimes describe the goods as being inconsistent with the specifications and we sometimes describe them as genuine goods with fair prices. Those property sale advertisements are a case of goods being inconsistent with the specifications.

Chairman, what are the specifications? They are the advertisements. Very often, when we eat out in a restaurant, the waiter will give us a menu. The menus nowadays are different from those in the past as there are certainly attractive pictures on them. For all kinds of food on the menu, whether it be noodles or pasta, their pictures are colorful and mouth-watering. But a responsible restaurant may sometimes put down a note that the pictures are "for reference only".

Chairman, you must have such experience, right? High-class restaurants do not show any picture and do not need to provide samples, because customers of high-class restaurants are people who are either wealthy or snobbish. Even if the food served to them is inconsistent with the specifications, they are still willing to be cheated. For food like big shark's fin, abalone, and so on, even though no picture is shown on the menu, they must be expensive dishes.

I studied communication, and I have taught communication. I very much like to use advertisement …… Students who study communication nowadays have a subject called advertisement. Advertisement is a medium. It contains messages and it needs the media. We often talk about "3M", which is precisely the process of communication. Chairman, as I am speaking to you now, I am the person who sends out a message and you are the one who receives it, but we need a medium to connect us and the microphone is that very platform. We sometimes make use of newspaper, television or radio as a medium and this is why there is a saying that the medium is the message.

Advertisements or the wording of advertisements are usually exaggerated. You see a thick, loaded hamburger in an advertisement on television but the one that you can get in a café is thin and flat. Advertisements will certainly sing the praises for baby formulas or diapers, and they must be praising this and that. They will certainly incite people's feelings and are meant to be exaggerations. Therefore, we must ensure that consumers clearly understand that it is just an advertisement solely for the purpose of advertising, and that they must not believe everything that it says. But if you believe it, you only have yourself to blame, and it serves you right even if you are cheated. The common law cannot be of any help to you because as we said earlier, the contents of advertisements are referred to advertising languages for the purpose of boasting. According to some case laws in court, advertisements usually have no legal effect. Even if the goods are inconsistent with the specifications and are a lot different from the contents of the advertisements, the vendors or service providers do not have to bear any legal liability. The provision on "information to be given in advertisements" (section 5 of the Ordinance) is made under the spirit that one must be held responsible for supplying goods that are inconsistent with the specifications.

Advertisements are more important to services than goods. As such, which is more important, goods or advertisement? In providing services or goods, the shop operator often spends much on advertisement. The cost of the goods may sometimes be even lower than the cost of advertisement. However, what the customers buy is the goods, not the advertisement.

In the process of the sale of goods …… For the general goods, I will buy them directly. Assuming that I have not seen the advertisement and buy the goods from a shop direct …… I always say that it is best to buy food in the

market because it is direct and no advertisement is needed. Vegetable or meat stalls attach importance to a good reputation. For instance, when I need to buy beef in the Kowloon City market, I will definitely go to a certain stall on the second floor because I always patronize it, so why should I need it to promote its goods to me? To promote its goods, it probably counts on its reputation. Besides, I have patronized it myself and I think the price is not too expensive and the goods are of good quality. I do not need any advertisement to learn about its goods. I can simply go there to buy the goods and inspect the goods there. I can see for myself the beef which is hung in the stall and I can tell from my experience whether the beef is fresh or not. The chance for me to be cheated is, therefore, lower.

The case of services is just the opposite. Services are not goods, and in the course of the sale of services, most customers often rely on the trade descriptions to know about the services. Customers must have read the trade descriptions before they patronize fitness centres or beauty parlours. But customers generally may not know that very often, the trade descriptions are actually advertisements, and it is even impossible to distinguish between trade descriptions and advertisements. Advertisements are usually more eye-catching and more attractive. Customers are often attracted by advertisements and then patronize the shops and use their services.

Section 5(3) of the Ordinance provides that "where an advertisement …… fails to comply with any requirement imposed under this section, any person who publishes the advertisement commits an offence". Under section 18(1) of the Ordinance, any person who commits an offence is liable "on conviction on indictment, to a fine of $500,000 and to imprisonment for 5 years" and "on summary conviction, to a fine at level 6 and to imprisonment for 2 years". These penalties no doubt carry a deterrent effect, but section 18 of the Ordinance has not provided for a daily fine for continuous offence.

As many people know, the operators actually treat the fine as the cost. If the law does not provide for a daily fine, the operators will take the one-off fine as part of their operational cost. Such being the case, should a new clause be proposed for cases of continuous offence? This is consistent with the penalties under many existing ordinances. Similar provisions can also be found in the Personal Data (Privacy) (Amendment) Bill 2011 and the Companies Bill, which have been passed recently, but not in this Bill.

Insofar as penalties are concerned, it is very important to provide for a daily fine. The Bill has incorporated services into the scope of regulation of the Ordinance. This is a correct concept, and it is necessary to do so. As we can see nowadays, the service industry in Hong Kong is multifarious and covers a wide spectrum of services. We talk about beauty services most often. In respect of the marketing trade, services are also involved in some cases as this is a way to persuade other people to accept services. Since services are incorporated into the scope of regulation, the relevant provisions must be made in greater detail.

The clause under our discussion now concerns information to be given in advertisements. It seeks to amend section 5(1) of the Ordinance by adding "or services" after "goods" wherever it appears to enhance clarity of the Ordinance.

At present, many of the so-called advertisements for services do not provide a full and truthful account of all the details, and as I said earlier, most of the services are inconsistent with their descriptions. Therefore, it is indeed necessary to legislate on the regulation of the information given in advertisements, but there are two problems. The first is the question of penalties that I have just mentioned; and second, the Bill has not clearly stated the criteria for an advertisement to be considered misleading; nor has it specifically specified which types of advertisements will be regarded as not reflecting the truthful information of the services. The amended clause only provides that it "shall contain or refer to information relating to such goods or services", which is rather abstract. The Bill should specifically point out …… In fact, the problem boils down to what I have just talked about — inconsistency with the specifications. What does it mean by inconsistency with the specifications? It means that the services are inconsistent with the specifications, or they are totally different from the descriptions in the advertisements. However, the Bill has not made specific provisions in this regard, except for that line that I have just cited, and this seems to have made the scope too wide. Despite that heavy penalties with deterrent effect are provided for in the Bill, if no specific provision is made, it is likely for arguable points to be raised in court.

Some companies in the service industry are financially strong, so how will they be afraid of settling their case in court? After we received a complaint, we usually advised the complainant to take their case to court but we eventually found that this is not viable. Even for cases involving $100,000 or $80,000 only, the victims were unable to recover the loss, not to mention cases in which

several hundred thousand dollars are involved. If lawyers are engaged in proceedings for compensation claims, the lawyer's fee may well exceed …… For instance, if I was cheated out of $100,000, could it be that I should spend $300,000 to get back that $100,000? This is so difficult. Therefore, sometimes we really do not have the slightest clue as to what we can do when we received these cases.

Sometimes I may refer to the law or seek advice from friends who are lawyers, asking them how these cases can be handled generally. In handling these cases, we do feel frustrated because there are numerous similar examples, especially in my constituency. Hung Hom has the greatest number of these cases, but we really cannot do anything to help. The most passive thing to do is to demonstrate in front of the beauty parlour and distribute pamphlets to badmouth it. They do not dare to sue me for libel, because they have indeed done those bad things. But this is still a very passive thing to do.

So, although we support the incorporation of services into the scope of regulation of the Ordinance by the Government — this is a general principle and I do not see any problem — with regard to the information to be given in advertisements, clause 5 of the Bill cannot just mention "information relating to goods or services". What does it refer to? Take a look at those advertisements! I wonder if the Secretary has looked into them. We should collect the advertisements of a few major companies in Hong Kong and make a comparison to see what information is contained in them. Therefore, there is actually still room for improvement in the Bill.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, you have made arrangements for the meeting to be held continuously and cancelled the dinner break. This is not fair to some people.

(Mr WONG Yuk-man stood up)

MR WONG YUK-MAN (in Cantonese): Chairman, a quorum is lacking.

CHAIRMAN (in Cantonese): Clerk, please ring the bell to summon Members to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Mr Albert CHAN, please go on with your speech.

MR ALBERT CHAN (in Cantonese): Chairman, Mr WONG Yuk-man mentioned just now the importance of the information given in advertisements in clause 5. This is actually a very important addition and amendment. In the cases that I have handled before, many involved problems with the information in advertisements, and this is most clearly shown in fitness and beauty services. When these fitness and beauty centres launched their publicity campaigns, they would continuously promote their services at major MTR exits for successive months. They would claim in November that the centre would open during Christmas in December and after Christmas, they would say that the centre would open around New Year but after New Year, they would say that the centre would open in Chinese New Year. They would continuously conduct publicity, continuously collect fees and continuously recruit new members, but when we actually went to the centre to find out what was going on, we did not see any sign of renovation works in progress. Finally, we could only make enquiries with the management company and owners but we were told that they could not divulge information on the tenants on the ground that this was the company's privacy. Therefore, we could only lodge a report to the police but the police would not pay much attention to us, saying that this was a civil dispute. But what actually happened was that false publicity was conducted continuously for a few months with the purpose of recruiting as many members as possible and collecting membership fees from them immediately and then they ran away with the money and eventually failed to provide any service.

The addition of these provisions will, I believe, help prevent these problems and reduce cases in which members of the public are deceived. In this connection, there will be a need to institute prosecution in one or two cases in future in order to make improvement, because without one or two cases in which prosecution is instituted to set an example, the lawless elements can continue to go scot-free without having to take any criminal liability. This situation absolutely should not occur in Hong Kong.

Chairman, clause 6 of the Bill provides that section 6A be added to apply a trade description to services. This, I welcome. But as I have just said, the only imperfection is that some commercial issues which may not belong to any trade will be inadvertently caught by the law because of uncertainties in the definition.

Section 6A(1) provides that "a person is to be regarded as applying a trade description to a service if the person gives (by whatever means" — let me stress "whatever" here — "and whether direct or indirect) an indication of any kind with respect to the service or any part of the service including — (a) where the indication is given in such a manner that it is likely to be taken as referring to the service; and (b) where the person makes in any affidavit, declaration or writing a statement to the effect that the indication is applicable to the service.". This is followed by subclauses (2) and (3), and I am not going to read them out.

In fact, if the Bill can provide that religious and political affairs are not included in the "services" as stated, I think this section will be more appropriate and comprehensive in its application, and the problem that I have just mentioned can also be prevented.

On the other hand, I would like to say that I have certain concerns about clause 17 of the Bill and I wish to point out that there may be difficulties in its enforcement in future. Clause 17 provides for the addition of section 21A, which concerns extra-territoriality.

Chairman, there are a few points about this section that warrant attention. Section 21A, which concerns extra-territoriality, provides that "A trader may commit an offence under this Ordinance with respect to a commercial practice even if the practice is directed to consumers who are outside Hong Kong if, at the time of engaging in the practice, the trader is in Hong Kong or Hong Kong is the

trader's usual place of business.". Chairman, the problem mainly lies in "if, at the time of engaging in the practice, the trader is in Hong Kong".

Chairman, I think you must know that many overseas emigrants frequently travel to and from Hong Kong, and Hong Kong is also a shipping centre and a transit centre for air passengers. The Hong Kong Airport is, I believe, a place frequented by many people who live and work overseas. As they travel to and from Hong Kong frequently, they will naturally engage in many contacts and practices locally, just as what is described in section 21A: "at the time of engaging in the practice, the trader is in Hong Kong".

However, whether it be companies, goods, services or people with whom they come into contact, it is possible that people's living or contacts in foreign countries are often involved. For instance, if two people who have frequent contacts with each other overseas happen to be in Hong Kong at the same time for holiday or they run into each other in Hong Kong, they will inevitably greet each other as a matter of courtesy and catch up with each other, and during their casual chat they may even find out that they work in the same trade and that there is a chance for them to make certain commercial agreements and arrangements.

I think in a great majority of these cases, their negotiations, communications, discussions or commercial decisions are intended to be followed up after they go back to the overseas countries where they come from. But under this section, if both parties made certain decisions in Hong Kong, or if they made certain oral undertakings or provided certain information in respect of an understanding reached by them mutually, there is a chance for them to be in breach of this section.

Section 21A will certainly be passed today, but I think the drafting of this section is quite loose and the scope covered may be too general. This section should more clearly provide that for agreements that may be made or practices that may be carried out in places outside Hong Kong, they must clearly be and are intended to be commercial practices carried out in Hong Kong in order for them to be brought under the scope of this section.

I believe the situation that I have just described may arise in future and that is, people will not be aware, nor will they ever think that these types of

agreements or commercial practices are regulated by the Ordinance. It is because the people concerned may have no idea about the laws of Hong Kong and they entirely do not understand what this Ordinance may possibly cover. Think about this: Two visitors who have engaged in practices or made business decisions during their stay in Hong Kong will stand a chance of breaching this Ordinance and hence committing an offence. I think this may not be the original intent of the legislation because it is very likely that the original intent is to impose regulation on commercial practices intended to be carried out in Hong Kong, without expecting that some incomprehensive, informal contacts may constitute a breach of this section. In view of this, Chairman, I only wish to express my concerns in this regard.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR WONG YUK-MAN (in Cantonese): Chairman, what happens now is again just the two of us speaking one after another. As a quorum is lacking, would you, Chairman, please summon them back.

CHAIRMAN (in Cantonese): Clerk, please ring the bell to summon Members to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Members, we originally decided not to suspend this meeting for Members to take meals in order to allow more time for the completion of deliberations of bills, but it seems that we may not be able to save much time in doing so. I have, therefore, decided to suspend the meeting for Members to have dinner and this meeting will resume after the dinner break.

Committee will resume at 8 pm sharp and please return to the Chamber on time.

6.54 pm

Meeting suspended.

8.00 pm

Committee then resumed.

CHAIRMAN (in Cantonese): Committee will continue with the deliberations on clauses to which no amendment is proposed in the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012.

Mr WONG Yuk-man, please.

MR WONG YUK-MAN (in Cantonese): Chairman, clause 6 of the Bill proposes to add a section 6A on "Applying a trade description to services". The new sections 6A(1)(a) and (b) proposed in the Bill are linked by the word "and". The relevant parts of section 6 of the principal ordinance (Applying a trade description, trade mark or mark to goods), namely, subsections (1)(a)(i) and (ii), are linked by the word "or".

I do not quite understand why there is such a difference. Chairman, perhaps you can refer to the original sections and you will understand what I am trying to say. If "and" is used in a provision whereas "or" is used in another provision, is that a typo or do they carry different meanings? Because if "and" is used in the Bill to link up two provisions, it means that the requirements in both paragraphs (a) and (b) must be complied with at the same time in order for a trade description to be considered to be applying to services.

I think an indication, whether direct or indirect, may not necessarily be made in an affidavit, declaration or writing a statement. Therefore, I think the Government should answer this question and tell me whether I have got it wrong, because if it is a typo, it is possible that the provisions may completely fail to serve their intended purposes ……

CHAIRMAN (in Cantonese): Mr WONG, do you mean the word "and" between sections 6A(1)(a) and (b) in the Bill?

MR WONG YUK-MAN (in Cantonese): Yes. The word "and" is used in this provision in the Bill, whereas "or" is used in the other provision, and please take a look at section 6(1)(a)(i).

CHAIRMAN (in Cantonese): Are you referring to section 6A?

MR WONG YUK-MAN (in Cantonese): Yes, of course, I mean section 6A.

CHAIRMAN (in Cantonese): Please take a look at how the provisions are worded. The word preceding paragraph (a) is "including", and generally speaking, the word "and" is used after "include" to show that a number of things as set out in the following are included.

MR WONG YUK-MAN (in Cantonese): Chairman, but "or" is used in the other provision.

CHAIRMAN (in Cantonese): Which provision are you referring to?

MR WONG YUK-MAN (in Cantonese): "Or" is used between sections 6(1)(a)(i) and (ii).

CHAIRMAN (in Cantonese): You are talking about section 6 of the Trade Descriptions Ordinance, not section 6A in the Bill, right?

MR WONG YUK-MAN (in Cantonese): Right, I mean section 6 of the principal ordinance. I already made it clear that it is section 6, just that you did not catch

it. I first pointed out that the word "and" is used between sections 6A(1)(a) and (b), right? But the word "or" is used as a link between the corresponding parts of section 6, and I cannot distinguish between ……

CHAIRMAN (in Cantonese): They are different in the way that the provisions are worded. Section 6A(1) of the Bill that you are referring to "includes" paragraphs (a) and (b), but section 6(1) of the Trade Descriptions Ordinance does not have the word "include".

MR WONG YUK-MAN (in Cantonese): I think there is something wrong here, and it beats me. But the Government may be able to explain this more clearly than you do because you, like me ……

CHAIRMAN (in Cantonese): I only wish to make clear what you are trying to say.

MR WONG YUK-MAN (in Cantonese): Never mind. This is not the point that I wish to stress, and I am going to speak for 15 minutes anyway. I wish to mainly point out that new section 6A(2) proposed in the Bill provides that "an oral statement may amount to the use of a trade description", whereas section 6(2) of the principal ordinance provides that "an oral statement may amount to the use of a trade description or trade mark or mark". I think these two provisions relating to an oral statement should be incorporated into the part of Interpretation under section 2, which is the part involved in the amendments to be discussed later on. This can ensure the relevance of the provisions and avoid repetition. As the provisions on oral statement are very important, I think they should be incorporated into the part of Interpretation under section 2 in order to enhance the relevance of the provisions and avoid repetition.

Moreover, section 6 of the principal ordinance and proposed section 6A serve to explain the application of a trade description to goods and to services, but the wordings used in the two provisions are different. During the deliberations of the Bills Committee, the Legal Adviser of the Legislative Council raised a question in this connection, especially on the use of "to be regarded as" and

"deemed" in drafting these sections. The Government pointed out in reply that the different formulations arise from the use of gender-neutral language in drafting legislation. However, I hope that the provisions can be consistent, rather than using different wordings separately. This is the same as the case of clause 4 that I have mentioned.

Chairman, I also wish to talk about clauses 10 to 11 of the Bill, as I still have plenty of time. Clause 11 of the Bill proposes to repeal the entire section 13 of the principal ordinance (Power to exempt goods sold for export), whereas clause 10 of the Bill proposes amendments to section 12 which are consequential to the repeal of section 13 of the ordinance. Section 13 of the principal ordinance provides a legal basis for granting exemption from trade descriptions to goods which are intended for despatch to a destination outside Hong Kong.

Chairman, like other sections, section 13 of the ordinance is drafted in a way which is extremely difficult to understand. Perhaps let me read it out to the Chairman: "In relation to goods which are intended for despatch to a destination outside Hong Kong, section 7 shall apply as if there were omitted from the matters included in the definition of trade description in section 2 those specified in paragraph (a) thereof, and, if the Chief Executive by order specifies any other of those matters for the purposes of this section with respect to any description of goods, section 7 shall apply, in relation to goods of that description which are intended for despatch to a destination outside Hong Kong, as if the matters so specified were also omitted from those included in the definition of trade description in section 2.".

Chairman, I would say that I am already quite eloquent and I have read it out clearly with right pauses between the lines, but after reading it over, I still have no idea what this section means. Others who listen to me or who read it themselves must feel puzzled. It is indeed difficult to understand the provision simply by reading the words in it. One must make painstaking effort to study it and slowly work out the meaning of each and every line of it. Section 13 actually means that goods which are intended for despatch to a destination outside Hong Kong can be exempted from the requirements for "trade description" in section 2 in respect of quantity (which includes length, width, height, area, volume, capacity, weight and number), size or gauge. One who reads this provision will really feel as if he is lost in a thick fog. As the saying goes, "Do

not do to others what you do not want others to do to you". As Hong Kong is an international economic and trading centre and a major entreport, the requirements on goods for export are of great importance. Since we have set stringent restrictions on trade descriptions, these requirements should also apply to goods for export in order to maintain the reputation of Hong Kong.

The requirements on trade descriptions are a very important part of international trade. Any uncertainty in the requirements may cause disputes between the two trading parties and in more serious cases, no business deal will be secured and agreements will be called off halfway. The business environment in Hong Kong and the business reputation long enjoyed by Hong Kong all hinge on people's trust and confidence. Therefore, the abolition of exemption from trade description will be conducive to upgrading Hong Kong's position as an international economic and trading centre and a major entreport. For this reason, we support clauses 10 and 11 of the Bill.

Having said that, the drafting of section 13 of the principal ordinance that I have just mentioned has really rendered me speechless. Of course, I can still barely understand its meaning but the drafting of this section has problems indeed. We have had more opportunities to read legal provisions word by word recently as I seldom take part in bills committees. It is because we have only two Members in this Council and it is impossible for us to take part in all the bills committees and so, we can only join the bills committees selectively. But as some bills committees held very long meetings, it was impossible for us to attend each and every meeting. A case in point is the Bills Committee on Competition Bill. This is why we think that we truly need to learn more in this respect. But in the course of our learning we found that the Chinese texts of the legislation are indeed a shame, which forced us to turn to the English texts.

In a society where the rule of law prevails, everyone is equal before the law. Therefore, when dealing with proposals on the granting of exemption in the course of deliberations on legislation, the Legislative Council must exercise extra caution. Arrangements for granting exemption can be supported only when there is a genuine need. So, this is our understanding of and position on these two clauses.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Commerce and Economic Development, do you wish to speak?

(The Secretary for Commerce and Economic Development shook his head to indicate that he did not wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: Clauses 2, 4 to 7, 10, 11, 12, 14, 16, 17, 20, 21, 22, 25, 26, 28, 30, 32, 33 and 35 to 42 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr WONG Yuk-man rose to claim a division.

CHAIRMAN (in Cantonese): Mr WONG Yuk-man has claimed a division. The division bell will ring for five minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr Raymond HO, Mr Fred LI, Dr Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 33 Members present and 32 were in favour of the motion. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Clauses 1, 3, 8, 9, 13, 15, 18, 23, 24, 27, 29, 31 and 34.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, I move the amendments to the clauses just read. The content of the amendments is set out in papers issued to Members earlier. Most of the amendments that I move are technical in nature with a view to improving the drafting of the clauses or clarifying the original meaning. Quite a number of amendments are proposed in response to the suggestions of the Legal Adviser or Members of the Bills Committee. Let me briefly introduce some of the amendments.

Regarding clause 3, I suggest amending the definition of "trade description" of the goods and services concerned. One of the paragraphs is deleted to make the meaning clearer. I also suggest amending the proposed definition of "consumer" to be in line with the terminology used in the definition of "trader". I also add a provision to clearly explain the nature of the notes in the text of the Ordinance.

Regarding clause 13, I move to amend the proposed new clause 13D(3)(a) to clearly expound that clauses 13D(3)(a) and 13D(3)(b) do not need to be interpreted together. I also suggest amending the proposed new clause 13D(3)(b)(ii) and deleting clause 13D(5). These two provisions are related to what can be regarded as specified consumer groups. The proposed amendments are submitted in response to the suggestions of the Legal Adviser in order to simplify the drafting of the provisions.

Regarding clause 15, my proposed amendment aims to state clearly that the reference of "secretary" means "company secretary", while the person employed by the body corporate can also be regarded as "principal officer".

Since the Communications Authority was formally established on 1 April this year, I move amendment to clause 24 to delete the proposed definitions of the "Telecommunications Authority" and the "Broadcasting Authority", and substitute with "Communications Authority". Consequential amendments will also be made to the proposed new sections 16E, 16F, 16G and 16H in clause 27.

Finally, it is related to clause 31. The amendment that I move aims to stipulate that a term of a contract drawn between a trader and a consumer that purports to exclude or restrict the right of a claimant to bring an action under the newly added provision against any person is of no effect.

Chairman, all my proposed amendments have already been deliberated by the Bills Committee and have its support. I implore Members to vote for the amendments concerned.

Proposed amendments

Clause 1 (see Annex V)

Clause 3 (see Annex V)

Clause 8 (see Annex V)

Clause 9 (see Annex V)

Clause 13 (see Annex V)

Clause 15 (see Annex V)

Clause 18 (see Annex V)

Clause 23 (see Annex V)

Clause 24 (see Annex V)

Clause 27 (see Annex V)

Clause 29 (see Annex V)

Clause 31 (see Annex V)

Clause 34 (see Annex V)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, I have just expressed some concerns about the clauses passed earlier and these worries are closely related to the wording in the amendments proposed now. One of them is the word "service".

Chairman, the worries which I have mentioned earlier are about definitions. There are many kinds of practices which are not normally regarded as commercial practices, such as religious activities and politics, and they may be regarded as service or part of the publicized service. As a result, such activities may be unduly regulated or prosecuted. So this is the kind of worries I have just talked about.

The clauses presently under discussion are all related to what I have said earlier. The first is about the definition of "service" in clause 3. In the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012, the definition of "service" is quite ambiguous. But there are reasons and purposes for doing so. It is because the more ambiguous something is, the wider the scope it covers.

However, there is the possibility that some practices which are not intended to be covered by the provisions are also targeted and hence the mark is missed.

If we look at the provision on interpretation, we will find that "service" includes any right, benefit, privilege or facility that is offered other than one arising under a contract of employment as defined under section 2(1) of the Employment Ordinance (Cap. 57). But the provision does not state what are not included or what are necessarily included under the term "service". In the scope covered by other provisions, apart from Schedules 3 and 4 which provide for some exemptions, it is not clear whether services related to politics, religion or non-profit-making organizations would be included since the definition of "service" is unclear. There is a grey area and problems may arise.

The second definition is related to "consumer". It is proposed in the amended clause 3 that "consumer means an individual who, in relation to a commercial practice, is acting, or purporting to act, primarily for purposes that are outside the person's trade or business". As compared to the scope covered by the definition of "service", the scope covered by "consumer" belongs to another extreme. Under the definition of "consumer" as set out in clause 3, the meaning derived is extremely narrow and it is stated that "for purposes that are outside the person's trade or business". If we take this definition, only commercial practices and practices primarily for purposes that are outside the person's trade or business will meet the definition of "consumer". Of course, the Chinese wording is fragmented and very difficult to understand. But clearly, only commercial practice which is outside a person's trade or business will meet the definition of "consumer".

As for the definition of "commercial practice", it means any act by a trader which is directly related to the promotion of a product. If we take this definition, traders who engage in practices outside their trade or business can be called consumers. This is an inverse inference. Some practices are regarded as practices of traders, yet if traders do not engage in such practices, they will be regarded as consumers. This kind of explanation is very different from what the ordinary people would understand, that is, the status of consumers is determined on the basis of whether the person makes the purchase. As stated in the definition, a consumer does not only mean a person who buys some commodities, but also means a person who accepts services. Regarding the issue of definition, this is different from our normal understanding of the term "consumer".

Thirdly, the definition for "trader". There is no amendment made to the term "trader" in clause 3. If the original text is passed, the situation would be like the definition of "commercial practice" which is not amended. But if we look at the definition of "trader" and "commercial practice", we will find that they are rather difficult to understand. Chairman, this may be due to the fact that the Bill does not only cover products, but also services and publicity, as well as other scopes related to commercial practice, traders and consumers. If these definitions are set according to the scope included in the Bill, there will be discrepancies in understanding.

Chairman, according to the provisions as amended, "trade description" means: "in relation to a service, means an indication, direct or indirect, and by whatever means given, with respect to the service or any part of" and these items include what are described in paragraphs (a) and (b). Paragraph (c) is deleted and that means items described in paragraphs (a), (b), (d), (e), (f), (g), (h), (i), (j) and (k). There are many aspects, which include "nature", "scope", "fitness for purpose" and "method and procedure by which, manner in which, and location at which, the service is supplied or to be supplied".

The coverage of the term "trade description" is very broad and I think it is quite comprehensive. But there is a problem and that is, the coverage is too comprehensive and universal. That is to say, if in future there is a need to address a certain specific scope, and identify false or misleading situations, that can be a great challenge to the person who provides the trade description. This is because if the description is too detailed — of course, the relevant trade description has to be accurate — and if they are alleged to be false or misleading as stated in the provision, then the allegation can easily be established.

Let us take the example of paragraphs (j) and (k) under the term "trade description", (j) is about "after-sale service assistance concerning the service" and (k) is about "price, how price is calculated or the existence of any price advantage or discount". Chairman, some misunderstandings may arise, especially in relation to price advantage or after-sale service assistance. This is because as we know, after a customer has bought a product, the after-sale service may not be provided by the company which sells that product. Very often, after removing the packaging of the product, we can find some documents provided by the manufacturer, listing out the details of the after-sale service for that product and some kind of legal basis would be provided.

However, when people buy certain products, they will very often rely on the explanation and information provided by retailers. With respect to the information and explanation provided by retailers, my experience is, in many cases, the information found on the packaging of the product is quite different from the information provided inside the packaging. And if that is the case, the salesperson concerned may be accused of misleading or providing false information. In this connection, after the passage of this Bill, I think the relevant companies or service providers must be very careful to handle this problem, otherwise they would easily be accused of misleading customers or providing false information, and thus violate the law. I think this situation is prevalent in retail shops selling electrical appliances or daily necessities.

Clause 9 of the Bill is to amend section 8 (trade descriptions used in advertisements) by repealing section 8(1) "all goods of the class" and substituted by "all goods or services of the class". In many ensuing provisions, the amendment is to put "goods" and "services" together. I will not repeat them here. Regarding all these amendments, we would support them.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR WONG YUK-MAN (in Cantonese): Chairman, I would like to discuss clause 3 "Section 2 amended (interpretation)". The Bill amends the definition of false trade description. First of all, it proposes to repeal paragraphs (c), (d) and (e) and amends the wording for paragraph (b). In the amended interpretation, what is meant by false trade description? It means "a trade description which is false to a material degree;" or "a trade description which, though not false, is misleading, that is to say, likely to be taken for such an indication of any of the matters specified in the definition of trade description as would be false to a material degree".

We agree that paragraphs (c) to (e) should be repealed in the Bill. The original interpretation, that is, paragraphs (c), (d) and (e), are very complicated and some of the principles stated are ambiguous. An example is what is meant by anything which, though not a trade description, is likely to be taken for a trade description? This kind of interpretation in law, that is, anything which, though not a trade description, is likely to be taken for a trade description, is very odd.

The universal suffrage in 2017 could become anything which, though not a universal suffrage, is likely to be taken for a universal suffrage. So things can be said in this way.

The amendment to paragraph (b) has simplified the expression of the original provision, but the principle is still unclear. What is meant by "is likely to be taken for"? Or what is meant by "false to a material degree"? Have objective or subjective standards been stipulated? This is not clearly stated. We think some relevant factors should be set out for this set of standards so that the public can understand how cases related to these matters would be considered and ruled in court.

We are sure that such standards should have been defined in local or overseas jurisdictions. But ordinary members of the public may not understand precedents of common law. Perhaps the Consumer Council may have to make effort to publicize or explain these terms.

Besides amending section 3, the Bill proposes an amendment to trade descriptions. The Bill adds paragraphs (ea) to (ed), as well as (ga) and (gb) which are on trade descriptions, that is, on the interpretation for the term "trade description" which is an indication of any goods or parts of goods. There are views that the definition for trade description of goods is somewhat too narrow and the explanation for that is not included. For example, price affixing is not subject to the regulation of the Bill. In the amended clause 2, the interpretation for trade description is very comprehensive and any false indication related to any goods is prohibited. For example, in paragraph (ec), "price, how price is calculated or the existence of any price advantage or discount". The Bill also adds a new paragraph on the definition for trade description and that is about a certain class of service. If we read the clause carefully, we will find that the definition here is different from the definition of another type of trade description. One is about goods or parts of goods, the other is about service. The wording used in the two types of trade description and their English terms are all similar. Unless we read these definitions very carefully, it would be difficult for us to distinguish between the two. Therefore I think greater prudence should be exercised in the definitions of terms.

In paragraph 11 of the Bills Committee report, it is stated that the Administration concurs with the view of Members and it has undertaken to

propose amendments to the definitions. We notice that in the amendments proposed by the Administration, the definition for trade description is amended. We fail to see from the amendments what kind of trade description is being targeted. This is what we consider as ambiguous.

Let us look at the provisions, if they are not clearly stated, especially in terms of the terminology used, it would easily cause confusion. We are not going to quote these provisions because it can be clearly reflected in the part on trade description. After making the amendments, the inconsistencies in the original provisions have been slightly improved.

Chairman, my comments on this part will stop here.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I wish to discuss clause 3 of the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 …… Well, maybe I talk about clause 1 first. The amendment to clause 1 is to repeal "Secretary for Commerce and Economic Development" by substituting "Secretary". This is indeed baffling. Which Secretary is being referred to here? A Secretary means a Secretary. I have pondered over this for a long time and I do not understand why such amendment is made. If it is because of textual fluency, there is no such need. I then realize that is my fault. It is because we do not know which post Mr Gregory SO will take up. If the motion on five Secretaries of Departments and 14 Directors of Bureaux is passed, he would assume the post of Secretary A. But under the present circumstances, he assumes the post of Secretary B.

So the amendment repeals subclause (2), that is, "This Ordinance comes into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.", and substitute it by "This Ordinance comes into operation on a day to be appointed by the Secretary by notice published in the Gazette.". This is certainly a minor amendment. However, I think there should be a plan B for everything. Chairman, you might be plan B and you might be not.

This is a good example of taking good advice and not adhering to wrong practices, treating this Council as a rubber stamp and deciding beforehand the Policy Bureau to be established. I think it is desirable to make an amendment as I have suggested. I have said to him, when we live in Hong Kong and under the system of "one country, two systems", and Chairman, speaking on the question of fairness in the death of the Mainland dissident LI Wangyang ……

CHAIRMAN (in Cantonese): Mr LEUNG, what you are saying seems not very accurate.

MR LEUNG KWOK-HUNG (in Cantonese): Why? Please enlighten me.

CHAIRMAN (in Cantonese): You are saying that in the amendment to section 1, it is proposed that the full title of "Secretary for Commerce and Economic Development" found in subsection (2) is repealed and to be substituted by "Secretary". However, the term "Secretary" here has the meaning given by section 2(1) of the Ordinance. And clause 3 of the Bill which is section 2 amended (interpretation) defines the meaning of "Secretary" as the Secretary for Commerce and Economic Development.

MR LEUNG KWOK-HUNG (in Cantonese): Yes, of course.

CHAIRMAN (in Cantonese): Then what is the point of your argument?

MR LEUNG KWOK-HUNG (in Cantonese): I suspect …… The Secretary can respond to this point later. I suspect that he has repealed this section and explained later in the section on interpretation. Should anything happen, he can just delete the definition in the interpretation. This is as simple as that. Of course, this is only a speculation ……

CHAIRMAN (in Cantonese): This is more of a question of drafting than the implication that you have said.

MR LEUNG KWOK-HUNG (in Cantonese): I get it. You have corrected me. I will stop talking about this point. This is only what I think, thus …… I am only praising the Government. If the motion on five Secretaries of Departments and 14 Directors of Bureaux cannot be passed, then simply use the term "Secretary". It turns out that this is not the case. Maybe you are right. I do not know if this is the reason behind.

Since the Chairman has pointed out that I have been talking nonsense, I will stop speaking on this point. Next, I will talk about clause 3 of the Bill. In clause 3, the definition for "consumer" is "an individual who, in relation to a commercial practice, is acting, or purporting to act primarily for purposes that are". The amendment deletes the words that follow: "outside the person's trade or business" and substituted by "unrelated to the person's trade or business". Chairman, can you see that? Is this so? I think so.

I think this is right and reasonable. Just try to read out this sentence: "an individual who is acting, or purporting to act, primarily for purposes unrelated to the person's trade or business". It is all right if it is written in that way. But if the expression "outside the person's trade or business" is added, then it is meaningless. This is because in the sentence before it, that is, "an individual who is acting primarily for purposes", the expression "or purporting to act" is meaningless and it only serves to avoid disputes when someone argues that he is not doing so. The deletion of this expression is in line with the rules of grammar.

Actually, I want to say that even if this expression is deleted, the interpretation is very narrow. Chairman, this is very simple and let me give you an actual example. Last night I went home very late and I saw on the television something about "light bulbs". Please do not be mistaken. I am not talking about being a "light bulb", an unwanted third person before a dating couple, as the term is used 50 years ago. I am only talking about myself, not you. I do not dare to offend you. Now the question is, in providing some service, an association has applied for funding …… if you only target this …… this Bill is not related to the trade or business of an individual, maybe it is related …… About fixing light bulbs, buddy, I think you remember the issue of energy-saving

light bulbs …… People said that Donald TSANG was greedy. I want to say, the terms "greedy" and "cheap" cannot describe Donald TSANG well enough.

CHAIRMAN (in Cantonese): Mr LEUNG, you have digressed.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, please remind the Secretary to pay attention to my speech, do not sit there idling the time away.

Suppose a political party has obtained some money to fix light bulbs for residents, or that political party has not obtained public funds for fixing light bulbs for residents, but someone wearing clothing bearing the name of a certain political party …… I am a frank person, I do not talk behind others' back; I am pinpointing the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). Then can the Bill be applied? I really want to seek your advice.

They have formed a society and whatever its name is, this society fixes light bulbs for old folks, and they are all very grateful. The old folks say, "Young men, you are really nice." These young men wear clothing bearing the name of the DAB, is that a kind of trade description?

In fact, I know the answer. If the service provided is not commercial in nature or if it serves a purpose that is unrelated to that person's trade or business and is outside that person's trade or business, such service is of course permitted.

If someone wears clothing bearing the name of the DAB and fixes light bulbs for other people, he will certainly not contravene this clause, because that is obviously not a commercial activity. The association has obtained a funding from the Government and it uses the money to buy some light bulbs and fix them for people.

Honestly, Chairman, on second thought, I think I am wrong. This is because the association may get involved in some business. Chairman, I know that Secretary Gregory SO is a member of the DAB. Formerly, he was the vice-chairman of the DAB. Being young and promising, he is a policy secretary now. I really want to ask him, is this Bill applicable in this situation? If it is, then it is a piece of good legislation.

However, with regard to such commercial practices which are confusing in nature, and which involve the application for public funds as well as false trade description in activities conducted after the approval of public funds …… To be honest, Chairman, I am not accusing the DAB. If the light bulb is not properly fixed by someone wearing clothing with the logo of DAB and consequently, someone was electrocuted, should the DAB have to pay for the compensation?

If, after providing the service of fixing light bulbs or after providing the after-sales service, some old folks say: "Long Hair, the light bulbs you fixed for us no longer work after switching on and off for some time". They hence try to fix the problem by themselves and they do not request any after-sales service. In the end they are electrocuted. What should we do about this? Or they may ask for after-sales service — that is because there are some changes in the part that follows — and when they use the after-sales service, they are electrocuted and died. It turns out that this is not related to the DAB. Then what should be done? This is because now ……

CHAIRMAN (in Cantonese): Mr LEUNG, what you have said has nothing to do with the provisions.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, they are certainly related to the provisions.

CHAIRMAN (in Cantonese): You have digressed from the subject.

MR LEUNG KWOK-HUNG (in Cantonese): I am talking about whether a person's uniform can be regarded as trade description. This has not been provided in the Ordinance. The Ordinance is badly written with various restrictions imposed.

If someone wears a shirt bearing the name — I do not want to use the DAB as an example because it is sensitive — bearing the name of the League of Social Democrats (LSD), that is, I have applied for funding to do some business and I have got a batch of light bulbs, and I would I fix these light bulbs for other

people. If I use the name of Long Hair Company, this is clear enough. If the name of the LSD is used and if someone is electrocuted, will the LSD have to pay for the compensation? Is it a false statement? Buddy, there is no mention of the LSD in applying for funding and just the name of Long Hair Company or Long Hair Co-operative is used; and the aim of this activity is to let young people have some work to do and care about their community. But that is not really a kind of service which is profit-making and where some charges may be collected. Is that right, buddy?

Chairman, I do not want to talk about the DAB because it is really too sensitive. It is my fault and I should not badmouth it. Well, Chairman, I wish to ask the Secretary, if it so happens that LEUNG Kwok-hung has formed a company and has applied for government funding to purchase a batch of light bulbs. Then some people are employed, which involves profit-making, and business are conducted. If I ask my employees to wear clothing with the logo of the LSD and the words "helping the poor and the needy", can this be regarded as false trade description? I think so, hence I will not take such action.

Chairman, I have almost come to the end of my speech. I ask the Secretary to comment on my speech when he gives a reply later, he can make comments such as "talking nonsense", "asking pointless questions", "speaking the truth", "to be followed up" or "the matter has not been considered in enacting the legislation" and so on. He can give such comments. I really want to be held accountable to him and I ask him to reply. If there is a person called LEUNG Kwok-hung who conducts business in light bulbs and wears clothing with the logo of the LSD when he fixes light bulbs for people, can this case comes under the regulation of the Bill?

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR WONG YUK-MAN (in Cantonese): Clause 23 of the Bill proposes the addition of Schedules 3 and 4. We oppose the addition of Schedule 3 which exempts professionals and financial products from being subject to the regulation of trade description.

I remember when clause 399 of the Companies Bill was being scrutinized, the amendment had aroused a lot of controversy. There were many Members speaking on clause 399 in this Chamber. Mr Paul CHAN was particularly concerned and had proposed an amendment, which was opposed by many Members.

The same situation had also arisen with regard to the Legal Practitioners (Amendment) Bill 2010, which was related to professionals. I remember that during the deliberation of the Legal Practitioners (Amendment) Bill 2010, in response to the views of some Members that the mode of so-called limited liability partnership would gradually extend to other professions or industries, we insisted on our opposing views. From the stance of ordinary members of the public and consumers, we strongly oppose Schedule 3 which allows professionals to be exempted. In our opinion, professionals and other traders or so-called service providers should be regulated under the same law.

The Bill proposes to add Schedule 3 in which certain categories of professionals will be exempted from the regulation of the Trade Descriptions Ordinance. We think this exemption is unnecessary. The professionals listed in Schedule 3 include professionals from 24 different fields like certified accountants, pharmacists, dentists, legal practitioners, registered medical practitioners, registered midwives, registered nurses, registered architects and so on. We understand that each profession has its own regulatory system. For instance, if a professional has violated the rules of his profession, he will be subject to punishment. This is very clear to us. However, consumers cannot be equally safeguarded under the Trade Descriptions Ordinance. We cannot see any grounds to exempt the professionals that I mentioned earlier from the Trade Descriptions Ordinance.

Some people say that the professional associations concerned have already formulated some rules to prohibit their members from making false descriptions, and thus theoretically, the Trade Descriptions Ordinance will not impose extra burden on them. Since they are already subject to restrictions, why do we have to grant them extra exemption? This is reasonable, and in fact, this should be the case. The profession itself has already stipulated a lot of rules, and false descriptions are not allowed. If that is the case, the Trade Descriptions Ordinance basically will not impose extra burden on professionals. Then what are the grounds for granting them exemption? If these professionals are within the ambit of regulation, the Ordinance can then provide the minimum safeguard

to consumers. When other sectors have more stringent rules, the effectiveness of the Trade Descriptions Ordinance will also not be affected.

Some arguments supporting the exemption are very weak. For example, why are registered nurses being exempted? It is very rare that nurses will provide healthcare services or engage in related commercial practices in the capacity of professionals. Even if there are such cases, the Ordinance may have its definition on "service" — with the exception of employment contracts — and not subject to regulation of the Trade Descriptions Ordinance. Why do we have to grant exemption to registered nurses? Let us look at the Nurses Registration Ordinance. It has no stipulation on false descriptions. If we pass the amendment and accept Schedule 3, the profession of nurses will basically not be subject to any regulation in respect of false descriptions.

In some situations, it is very difficult to distinguish whether a person provides certain services or engages in certain commercial practices in his professional capacity. If a doctor opens a so-called healthy restaurant in his professional capacity, and during operation, the doctor emphasizes that the food of his restaurant is chosen by him in his professional capacity and in accordance with his professional knowledge, is he providing certain services or engaging in certain commercial practices in his professional capacity?

Of course, there are some people who are now engaging in some commercial practices or providing certain services in their professional capacity or based on their professional experience. Such situations do exist. The justifications for exempting professionals in Schedule 3, in my opinion, are not strong enough. For some professionals, the regulation is mostly in the form of the so-called professional conduct. If a professional is ruled to have breached the professional conduct, he may have to face the penalty of being reprimanded, fined or suspension of licence. However, consumers may not get any compensation. Hence, the regulation of members of a professional association is different from the monitoring of the Ordinance that we talk about today. Therefore, we oppose the addition of Schedule 3. This is our stance. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, Mr WONG Yuk-man has just mentioned one point, and when I spoke earlier, I have also pointed out that the definition of scope of service is too general, and it is unfair to grant exemption. I have already voiced some of my views, now I would like to say more on the professional aspect.

Professional services are, of course, being regulated under the ordinance of the profession concerned. However, the biggest problem at present is that under the new legislation, the penalty for making false descriptions or violating the law is very heavy. The maximum penalty is a fine of $500,000 or imprisonment for five years. In many professions, the level of penalty is different if similar offence is involved. Hence, for a person who has committed a crime, he would be punished under the legislation governing his profession as exemption is granted by this Ordinance, and the level of penalty varies. This will give rise to legal injustice.

Moreover, in cases involving professional accusation and false statements, very often the reasons given are "professional negligence" or "professional mistake", instead of "false" or "misleading" statements. However, whether the professional advice is false or misleading will often depend on the motive. A professional might tell his friend in private that one of his clients was very foolish and asked silly questions. However, when talking face to face to the client, a lawyer may tell his client that he is an expert in dealing with tricky cases and the chance to win the lawsuit is very high; or a doctor may claim that he can cure every illness.

Therefore, in handling the situation, as Mr WONG Yuk-man has just said, granting exemption is not only unfair in the moral sense, but will also create legal injustice in view of the different level of punishment. Chairman, I only want to add this point.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Commerce and Economic Development, do you wish to speak again?

(Secretary for Commerce and Economic Development shook his head to indicate that he did not wish to speak again)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Commerce and Economic Development be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr Albert CHAN rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr Raymond HO, Mr Fred LI, Dr Margaret NG, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming,

Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Ms Starry LEE, Mr CHAN Hak-kan, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendments.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 37 Members present and 36 were in favour of the amendments. Since the question was agreed by a majority of the Members present, he therefore declared that the amendments were passed.

CLERK (in Cantonese): Clauses 1, 3, 8, 9, 13, 15, 18, 23, 24, 27, 29, 31 and 34 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1, 3, 8, 9, 13, 15, 18, 23, 24, 27, 29, 31 and 34, as amended, stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr LEUNG Kwok-hung rose to claim a division.

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr Raymond HO, Mr Fred LI, Dr Margaret NG, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LAU Wong-fat, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Ms Starry LEE, Mr CHAN Hak-kan, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 35 Members present and 34 were in favour of the motion. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Clause 19.

CHAIRMAN (in Cantonese): Mr Vincent FANG has given notice to move two amendments to clause 19. The first amendment aims to delete the proposed section 26A in clause 19 and substitute with new clause 26A. The second amendment aims to delete the proposed section 26B in clause 19 and substitute with new clause 26B.

MR VINCENT FANG (in Cantonese): Chairman, I propose to amend clause 19, that is, the Government's newly added section 26A concerning additional defence

for bait advertising and section 26B concerning additional defence for wrongly accepting payment, for the sake of providing law-abiding traders with additional safeguards. When law-abiding traders are unable to provide consumers with goods as advertised or have to refund the deposit or payment already received as a last resort, they hope that they can be safeguarded in dealing with stubborn customers, so that they need not engage legal advisors to prove that they are not engaging in bait advertising.

As I pointed out during the debate on the resumption of the Second Reading of the Bill, 99% of traders are law-abiding and they will definitely not adopt unscrupulous practices to boost business. Although commodities are the most basic attraction to customers, the retail industry has now put more emphasis on sales and after-sale services. While the quality of products depend mainly on manufacturers and suppliers, retailers very often have to rely on better services to retain their customers, so as to sustain their operation and enjoy a thriving business.

In spite of this, advertising is still an essential channel to promote goods and services. Apart from promoting sales, advertising can build a good image and boost popularity. Serving a variety of purposes, advertising generally seeks to present the most attractive aspect. In my opinion, except for the Government's requirement to use negative publicity on cigarette packets, no one in the world would put negative elements in advertisements. Some stubborn consumers, however, would compare advertisements with real objects. I believe Members still recall the complaints lodged by consumers that what was shown by fast food shops on their posters — in terms of both the presentation and size — was inconsistent with the real object. Hence, posters nowadays will specify that they are used for "reference only". Nevertheless, this practice has again been criticized for being manipulative and irresponsible. Doing business is really very tricky.

Certainly, there are some traders acting in bad faith in society who will use advertisements to lure consumers. For instance, some traders will exaggerate the benefits of their goods or services, for they think that there must be a way to do business so long as they can lure consumers into their shops. In this connection, the Bill proposes that bait advertising should be prohibited. The Government is concerned that traders acting in bad faith will use advertisements to lure consumers into their shops and then rip them off.

The Government has indicated in its consultation paper that regulation, if tightened excessively, will affect the flexibility and creativity of advertising, and this view is shared by the trade too. Fortunately, the Bill has eventually not put graphics and contents under regulation as the main target is to regulate price and quantity.

Nevertheless, traders will still be affected if price and quantity are regulated, because they might have already started advertising before pricing and shipment of products to Hong Kong. Colleagues who are users of Apple electronic telecommunications products would understand that the prices of Apple products will only be determined a couple of days before the official sale and the quantity of products to be supplied to Hong Kong will also be determined by then. Currently, more and more international brands have opened their stores in Hong Kong. Despite the agreements signed between these stores and agents over the supply volume, agents will get a reduced supply if the business is doing well. Hence, very often, agents only know the quantity of goods supplied to them at the last minute. I believe many colleagues are not entirely clear about these details in doing business. Hence, the trade is very concerned that, under the aforesaid circumstances, they will be complained by consumers for engaging in unfair trade practices, thereby adversely affecting their reputation.

The Bill has originally provided a disclaimer that so long as it is proved that a retailer is capable of doing what is claimed on the advertisement at the time it is placed or a retailer is capable of supplying the relevant commodities to consumers some time later, he can be exempted from prosecution.

Nevertheless, as I pointed out earlier, some consumers are quite stubborn. Furthermore, nowadays, the prices of some commodities fluctuate like sea food. If the product can be resold one day earlier, a better price will be offered. Hence, some consumers may insist on having the goods delivered to them on the specified day. I have discussed with the trade about this issue, and we all share the view that the safeguards proposed by the Government are inadequate. During the final stage of scrutiny of the Bill by the Bills Committee, the trade conveyed its wish to the Government that the relevant defence should be strengthened. If there are reasonable grounds for a trader placing an advertisement not to provide the relevant commodity as advertised, but an equivalent commodity can be provided to the consumer some time later, the

trader can be exempted from being held liable for a criminal offence even if the consumer refuses to accept. This is the reason for me to propose an amendment to section 26A.

As regards section 26B concerning additional defence for wrongly accepting payment, the main reason for proposing an amendment to this provision is broadly similar to the amendment proposed to section 26A. The main focus of my amendment is subsection (2)(a), that is to say, if a consumer has made payment for a commodity, be it a full payment or the first installation, if there are reasonable grounds for a trader not to provide the relevant commodity, he can be exempted, even if the consumer refuses to accept, so long as he is willing to make a refund in full of the payment or other consideration for that product.

Chairman, the trade has originally hoped to add a disclaimer that a trader can be exempted so long as a refund of the payment will be made if the commodity cannot be provided. Nevertheless, I am also concerned that this disclaimer is too lax and might be exploited by traders in bad faith to lure consumers into their shops and sell them other commodities instead. Hence, I propose the aforesaid additional defence in order to achieve a win-win situation, whereby no losses will be incurred by consumers and the provision will not be abused.

Chairman, the two amendments proposed by me will not run contrary to the spirit of enacting the Bill or affect the enforcement of the legislation. It will merely provide an additional defence for law-abiding traders, particularly small and medium enterprises (SMEs), to enable them to prove that they are not engaging in unfair trade practices without the need to engage legal advisors to respond to the complaints lodged by relatively stubborn consumers.

Nowadays, all retail traders take their sales volume or turnover very seriously. Traders with a high sales volume will have a much greater power to bargain with suppliers. When more commodities are supplied by manufacturers or suppliers, prices will become more favourable. SMEs in general have to survive at the mercy of suppliers, for they may, at any time, be unable to meet their customers' orders because of an inadequate supply of goods. Hence, I very much hope that these two amendments can help SMEs by providing them with greater protection. What is more, I hope colleagues can sympathize with the

operational difficulties encountered by SMEs and support these two amendments on additional defence.

I so submit. Thank you, Chairman.

Proposed amendment

Clause 19 (see Annex V)

CHAIRMAN (in Cantonese): This Council will now proceed to a joint debate on the original provision of clause 19 and the amendment to that clause. After the debate, the Committee will first vote on the first amendment of Mr Vincent FANG. Regardless of whether the first amendment is passed or not, he may move his second amendment later.

Does any Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, the amendment proposed by Mr Vincent FANG is concerned with the provision of a reasonable defence to traders for any deviation in the products bought by consumers from the relevant promotional materials.

I absolutely appreciate the difficulties encountered by small and medium enterprises (SMEs) in operation and the procurement of goods, and that the implementation of law may give rise to conflicts and requires different solutions. Since I am not a member of the Bills Committee, I hope that Mr Vincent FANG will further elaborate his actual proposal and why the relevant provision can be seen as a reasonable defence.

Chairman, if we just look at the provisions, Mr Vincent FANG's amendment suggested that in case there is a problem with the business trading, the trader concerned can raise a defence by providing the consumer with a reasonable quantity of product within a reasonable time. This is the original intent and spirit of the amendment as perceived by me. All in all, so long as the trader has supplied products in a reasonable quantity, even if it was not accepted

by the consumer, the trader can still enjoy immunity from prosecution or being accused of contravention of the law.

And yet, are the reasonable quantity, price and other aspects completely the same as those advertised? We have received many complaints from different districts over the past years, mainly against traders of furniture and air-conditioners. People usually complained that upon delivery of furniture, fungi were found in some timber panels and the air-conditioners are rusty, and replacements were only available three months later. Given that Hong Kong is small and densely populated, the living environment is pretty crowded, it would be very inconvenient for consumers to keep the defective furniture at home for weeks, which will incur losses.

When people argue with the trader concerned, they may not be so smart as to ask the latter to either remove the product within three days or they will arrange to have the product removed or stored somewhere and charge the trader with the relevant cost incurred. People would file the case in court only if they are well-versed in the complicated legal proceedings and the relevant arrangements, and are ready to bear the legal and pre-payment risks ― the amount of pre-payment is usually higher than the value of the product. Therefore, the provisions must have sufficient deterrent effect to prevent any organization or company from acting in defiance of the law.

Regarding the counter-proposals put forward by Mr Vincent FANG, I think there are two issues to address. Firstly, is the actual arrangement consistent with the promotional claims, and has any basic criteria been put in place to ensure their consistency? Secondly, will the new arrangement provide a leeway for traders to shirk their responsibilities and thereby undermine the deterrent effect of the Ordinance?

People Power certainly hopes that the Bill will not contain any unreasonable provision, but will safeguard consumers' interests without imposing inappropriate and additional pressure on SMEs. Neither do we want to have provisions that pamper SMEs and introduce arrangements unfavourable to consumers. I hope that Mr Vincent FANG will provide further information and explanation on this. Mr WONG Yuk-man and I have yet to decide whether to support or oppose his CSA.

As I have pointed out when discussing other issues earlier, imposing regulation on promotion bear resemblance to the mandatory submission of documents as required under other ordinances. In the Companies Bill which I have mentioned time and again — the bill was passed two days ago — a person will enjoy immunity from the exemption clauses if he genuinely believes that the information provided is accurate when registering with the Companies Registry. Yet, the present Bill has not provided the relevant protection. If a certain SME genuinely believes that the information is accurate and used it for promotion, but the relevant information was later alleged to be misleading or inaccurate, the SME or trader concerned should not necessarily be held responsible.

Recently, we have received a number of requests for assistance from members of the public concerning the trading of handbags. The traders concerned gain profits from engaging in fashion trading and re-selling of handbags. They sell handbag buckles — not handbags but handbag buckles — of a certain handbag brand, but have been sued by that prestigious brand company for breaching the law relating to the registration of trade marks. It claims that the buckles are plagiarism of its product design. As these traders engage in the trading of handbags, they may procure different handbags, shoes or goods from various channels and may not be familiar with all the designs of famous brands, and the product in question is just a handbag buckle of a prestigious brand. And yet, they received a letter from the solicitor, claiming that they have breached the law on trade mark registration, and have to compensate tens of thousands of dollars.

Noting the numerous operational problems faced by SMEs, I absolutely understand Mr Vincent FANG's concern that they are more prone to criminal prosecution. If the relevant provision can protect consumers on the one hand and provide a defence to SMEs on the other hand without prejudicing the legislative intent or undermining consumers' interests, People Power will support Mr Vincent FANG's amendment, which is nonetheless subject to clarification.

Thank you, Chairman.

CHAIRMAN (in Cantonese): I do not think that Mr Albert CHAN understands Mr Vincent FANG's amendments. Anyway, I will leave it for Mr FANG to decide if he wants to make a response.

MR FRED LI (in Cantonese): Chairman, being the Chairman of the Bills Committee, I am aware that Mr Vincent FANG's amendments were proposed at a very advanced stage, and the specific provisions were only available for circulation after all meetings of the Bills Committee had been completed. Therefore, the Bills Committee had not made any serious consideration of the amendments during the period of scrutiny. The amendments are concerned with the defence provided to traders, and members have already expressed their concern in the earlier discussions.

The Democratic Party understands that in safeguarding consumers' interests, consideration should also be given to the actual operation and restrictions of traders. I had expressed my concern at the Bills Committee meetings and cited one example: After receiving payment from a consumer, the fast food shop owner found that the ordered food (say drumstick) was sold out. Being a responsible owner, he should inform the consumer that he could either ask for refund or order other food. I had asked during the meeting if the fast food shop owner had "wrongly accepted payment" under this circumstance. If the owner knew right at the beginning that the food was sold out but he still touted consumers with such food and received payment, expecting them to change their order afterwards, this was certainly not right.

The drumstick case, in which a certain product is found to be sold out after receipt of payment, is indeed very common. However, if the shop owner keeps publicizing the drumstick, though knowing that the food has already been sold out, in the hope of luring consumers to buying chicken wings of the same price, this is a problem for the two goods are greatly different.

I am also aware that sometimes the demands of consumers are so high that even the most honest traders find them unbearable. For example, certain product of a shop has been sold out but some consumers, who have paid a deposit, refuse, for no reason at all, to buy the product from another shop on the other side of the road or from other retail outlets that are under the same trader. The customers insist to buy the product from that shop; and if the trader fails to supply the product, he will be sued. This sounds pretty unreasonable. In this case, we do not support offering protection to these consumers.

Furthermore, I have carefully studied Mr Vincent FANG's amendments and even passed them to the Consumer Council to seek its views on whether the

relevant amendments would undermine the protection offered by the original provisions to the consumers. In the written reply given by Ms Connie LAU, Chief Executive of the Consumer Council, she advised that Mr Vincent FANG's amendments will not undermine the protection of the original provisions and thus the Consumer Council considers them acceptable.

I have also consulted the Secretary and government officials on the Government's views on the relevant amendments. The reply of the Government was pretty skilful as it has not opposed Mr Vincent FANG's amendments — there is no indication of support or opposition — meaning that we have to make our own decision. The Government has not lobbied us to oppose the amendments, which is tantamount to asking us to make our own decision whether or not to support the amendments.

Therefore, we have listened to the views of the Government and the Consumer Council, which we highly respect. Above all, the Consumer Council has assisted us in examining the relevant amendments. In fact, there is no apparent deviation of the amendments, and traders cannot evade the responsibility of willful negligence. Therefore, the Democratic Party supports Mr Vincent FANG's amendments.

DR MARGARET NG (in Cantonese): Chairman, I would like to take this opportunity to express my views on the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 (the Bill) and the relevant amendments. Chairman, the amendments proposed by Mr Vincent FANG earlier have basically reflected the mixed feelings of the small and medium enterprises (SMEs) towards the Bill. They support the imposition of penalty on unfair trade practices on the one hand, but worry about the ambiguous provisions on the other, which may place them in a very difficult position if consumers are unreasonable.

Chairman, why does Mr Vincent FANG need to amend section 26A? Because he considers that the original section 26A has failed to meet the traders' needs. The defence provided under section 26A is derived from clause 8, which proposes to add section 7A to the Trade Descriptions Ordinance and introduce a series of offences. We learn from the report submitted by the Legal Adviser to the Bills Committee that the Bill has two major objectives: firstly, to amend the Trade Descriptions Ordinance so as to extend its coverage to services, and create

new offences such that a trader would commit an offence if he contravenes the relevant provisions. Secondly, apart from sanction by the Court, consumers who suffer losses may also commence civil actions to recover any losses.

Chairman, an issue has arisen, the Consumer Council has raised this issue for many years, not just one or two years, but many years before this Bill was introduced. The Consumer Council has all along requested to prohibit unfair trade practices and services under the Trade Descriptions Ordinance. Chairman, it sounds good to impose a heavier penalty and add a cause of action under the Bill to highlight that certain illegal acts must be penalized. However, from the consumers' angle, this is not practical at all.

The Bill has therefore created a scenario. While traders are worried, as Mr Vincent FANG has pointed out earlier, consumers may not necessarily be benefited. Why is that so? Chairman, firstly, when law-enforcement officers take actions against criminal offences, minor irregularities may not be dealt with given the limited time. Secondly, the prosecution must prove that there is no reasonable doubt. Although it is desirable to impose criminal offences, the burden of proof is so heavy that it sometimes becomes impractical. On the other hand, Chairman, regarding the civil claims, we have heard Members querying time and again over the past few weeks how ordinary citizens can afford to engage lawyers to take court actions. If they lose the case, they will lose everything. Therefore, civil claim is not very practical as well.

Chairman, we have recently squeezed some time to convene a meeting of the Panel on Administration of Justice and Legal Services on 10 July, during which we discussed a report on class actions recently released by the Law Reform Commission of Hong Kong (LRC). The report has looked into the relevant issues. Chairman, if a large number of consumers suffered losses for the same reason but the amount claimed by each of them is negligible, the prosecution may be rendered impractical. Rather, class actions will be more helpful to them.

Also, we have previously asked if the Supplementary Legal Aid Scheme could be expanded to enable consumers to apply for legal aid. The authorities refused back then, arguing that the amount claimed was too small. Chairman, according to the justifications given by Members, as the Bill proposes to prohibit traders' unfair trade practices, if a consumer who has suffered losses do not have money to bring the case to court, the Legal Aid Department should expand the

scope of legal aid services with a view to promoting the legislation to make it genuinely effective. And yet, the authorities maintained that the granting of legal aid must comply with some basic statutory principles. If the amount claimed is too small, legal aid will not be granted as the result will be unproportional. Even if the claimant may win the lawsuit, but if the amount claimed is less than $50,000, for example, the application for legal aid will generally not be approved. Therefore, Chairman, the amended legislation is meaningless after all.

The third way is mediation. Chairman, we have just passed the Mediation Bill which offers three options for consideration. Firstly, expanding the Supplementary Legal Aid Scheme; secondly, promoting mediation; thirdly, seeking class actions when legal aid is not available.

Chairman, perhaps I should say a few more words about class action. According to LRC's report and recommendations, given the importance of the relevant procedures, provisions have to be made in the principal ordinance for simple prosecutions instituted by consumers, so as to establish the relevant procedures and identify the consumers who need help. As the LRC considered that certain practices may not be suitable to seek class action for the time being, it has narrowed the cause of class action to the losses suffered by consumers.

Actually, we have also come across the definition of "average consumers" when we discussed clause 13D. Chairman, I have to beef up myself in the course of discussion because I had difficulties reading the provisions on "average consumers" though I have been a lawyer for quite some time, not to mention Mr Albert CHAN and Mr WONG Yuk-man.

Why do we still have to pay attention to this point? Because the proposal on class action has highlighted the need to enact legislation to provide for the general application of class action to average consumers. In that case, can the definition of the present provision also apply to class action? Chairman, the Bill has mainly set out which service or trade practices are unfair and illegal. While a lot has been done in this regard and the Bill has already contained a great deal of such information, Chairman, not much consideration has been given as to how we can ensure that the implementation of the legislation is fair to both the traders and consumers, such that Mr Vincent FANG needs not worry so much, and consumers can, at the same time, be benefited. In fact, not much consideration

has been made in this regard. Therefore, I am taking this opportunity to talk about it.

Concerning the Bill, as noted from the report prepared by the Legal Services Division, many new offences have been introduced. The Government explained that similar offences are also found in the United Kingdom and Australia, and the major difference is that the United Kingdom has adopted a different approach in law enforcement. In the United Kingdom, there is a Fair Trade Commission — I wonder if this is the proper name — which has a Commissioner. If a consumer suspects that a transaction involves unfair trade practice or service, he may lodge a complaint to the Commissioner. Various options are available for consumers and there is no need for court actions. Neither is there a need to treat such illegal acts as criminal offences.

Chairman, this approach does not only facilitate members of the public, but will not arouse the concern of traders. What is more, it can positively promote good trading practices rather than merely combating unfair trading practices. I wonder why the HKSAR has not considered this approach at all. Perhaps the Secretary should make a response when he gives a reply later on. Even if the Government intends to first endorse the Bill at this stage in view of its importance, I still hope that the authorities will continue with the study.

I want to tell Mr Vincent FANG that it is too passive to introduce a defence provision because traders would have to pay a high price in face of prosecution. It is therefore not satisfactory to place the onus of proof on traders when claiming the defence.

Chairman, as the Civic Party does not think that Mr Vincent FANG's amendments will undermine the interests of consumers, we will therefore support them. We nonetheless consider this a passive way of addressing the issue. An active way is to request the authorities to genuinely consider creating a Commissioner, who will explore new ways to more practically safeguard the interests of consumers. Thank you, Chairman.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I understand why Mr Vincent FANG did so. This is because the passage of the Bill would probably be the cause of headache for people who cannot afford to take court action.

Therefore, the drafting of the bill must take into account several important principles: Firstly, it should be easily comprehensible and not too difficult to understand. Honestly speaking, it is nothing but a joke to consult the small and medium enterprises (SMEs) on this Bill. How can they understand it?

On the defence provision, it provides that if I buy something but the vendor gives me something else, it would be acceptable so long as the two things are more or less the same. Let me illustrate with a real life example. I queue up for buying ox offal rice, but as the food has been sold out, the trader asks me if I will take the beef brisket rice instead. I have nonetheless indicated clearly that I wanted a box of ox offal rice. Another example is concerned with shops adopting unfair trade practices. Chairman, you may also know that some popular shops along Nathan Road always claim to sell television at $1, but after you have gone inside the shop, the salespersons will apologize, saying that the television is out of stock, and then force you to buy other products. Am I right? There are cases in which the goods delivered did not meet the descriptions, and the shop would tell you that the goods which you bought were sold out. How will benefits be offered for no reason? You would then be forced to buy other goods. That happens.

Such unfair trade practices existed long ago but the current situation is worse than before. Numerous organized and planned dishonest practices are currently found in the business world, and I also have one such experience. After you bought an air-conditioner, for example, the shop would arrange delivery and installation of another model because the one you bought was out of stock. Many consumers have fallen into such traps. Chairman, a pretty common example is that you bought a Hitachi air-conditioner, but Hitachi products can be produced in different places, such as Vietnam, Laos or Japan, which may have great differences. Buddy, just the quality control alone can be very different. Hence, considering from this angle, Mr Vincent FANG's proposal may sound pretty unreasonable to a certain extent as Hitachi air-conditioners produced in Laos and Japan can be greatly different. The shop may argue that this is a Hitachi air-conditioner, only the place of origin is different. The issue is therefore subject to great variations. As I have said time and again, the business world is very cunning.

What is my point of view then? If we follow the concept of Mr Vincent FANG, traders will enjoy a defence by providing a similar product. This will

nonetheless give rise to a scenario, and that is, the consumer may say "no". What if the consumer actually says "no"? The consumer concerned can certainly file the case in court for there is a cause for action — he has made the payment. To put it simply, the product does not meet the descriptions and what shall we do then? In my opinion, first of all, if the consumer …… Honestly speaking, to initiate class action, a large number of people are required. How can one person constitute a class action? Even two persons cannot constitute a class action. It involves at least three persons, right?

If our target is a major enterprise, only class action can threaten it. First of all, class action does not require the claimants to share the cost — I had to raise money for my court case in Kai Yip Estate, but this only happened to me as I had lost the case and had to pay $200,000. I therefore need to raise money — class action is indeed very simple. One suggestion is to amend the law to enable the legal sector to explain to their clients how much lawyers would get if they win the case by taking class action. If this does not sound good, the only way is for the Government to finance or sponsor those disadvantaged consumers from the public coffers, so that they can seek restorative justice from those powerful vendors through legal proceedings, am I right?

The second approach is very simple. The Chairman should know how the guillotine was invented. Why did I use guillotine to describe the situation? During the French Revolution, many people had to be killed. Guillotine was invented because firstly, it caused too much pain to the person being executed, which was inhumane; secondly, how many people could be executed in this way? Even the executioner would get tired. This is why the guillotine was invented, which served as a very good example. Given the great variations in the market and the co-existence of numerous unscrupulous and good traders, it would be best to employ a guillotine for execution. This is similar to what Dr Margaret NG has suggested — I simply borrowed her remark — to employ a Commissioner. What can the Commissioner do? To enact the relevant law, or else who will delegate power to him. Chairman, you have also advised me that under the interpretation, the "XX Bureau" will delegate power to the Commissioner.

One problem with the existing law of Hong Kong is, Chairman, why the Government only copied half — I used to copy homework on geometric questions when I was a kid, and I had mixed up questions one and two. This is disastrous because the proofs would be all wrong. Therefore, from the legislative point of view, if we have to deal with problems that keep occurring in

society, judicial relief is objectively warranted. In order to enable different interested parties to receive the necessary relief, we must make it happen, especially when the issue under discussion is consumer interest, right? Certainly, there are different types of consumers. End consumers — buyers of one Vietnam-produced Hitachi air-conditioner or buyers of many Vietnam-produced Hitachi air-conditioners for re-sale are all consumers, because people who buy in bulk are also consumers.

What is my suggestion then? We must provide relief to the end consumers, who are the most helpless. There are certainly different forms of relief. First of all, according to the teaching of my mother, we should avoid arbitrarily filing a case in court, right? You may create a Commissioner, or you may call it a conductor — there are actually many good names in China, like conductor — to carry out investigations if there is any breaching of the law. The Commissioner can perform the function of mediation. I am currently handling a privacy case, which colleagues of the Legislative Council should be aware. Over the past six months, I felt dizzy having to deal with government officials.

The Government could expeditiously establish a guillotine system …… The first thing I would like to ask them is that they provide the defence on the one hand, but highlight the cause of action on the other. So, what should we do? On the first level, the delegated Commissioner should be responsible for providing the relief from the administrative perspective. In case this is not possible, the Commissioner should assess which party should be supported. If Party A should be supported, the Commissioner is empowered to call on the Government to provide assistance in the form of, for example, relief — like the guillotine — to provide the necessary financial assistance to help people file their case in court and pursue class action. In other words, various claims have been consolidated into one lawsuit, through which the case will be settled.

I therefore consider that the present enactment by the SAR Government merely "has the form but not the essence". While it is good to be overjoyed from a philosophical point of view, we should not be overwhelmed and neglected how other places tackle the issue. Since Mr Vincent FANG is a Member from functional constituencies, it is therefore right for him to represent the interests of various organizations and serve his voters. He will be most willing to do so, especially because this year ……

CHAIRMAN (in Cantonese): Mr LEUNG, you have digressed from the topic.

MR LEUNG KWOK-HUNG (in Cantonese): Then, I will stop talking about Mr Vincent FANG.

The entire problem lies in the fact everyone has a point when we review the legislation by weighing the interests of different parties of the community. I have no idea why Mr Vincent FANG has to wait till today to propose his amendments. Is it because the Government has not taken heed of his advice? The Government practices the marital arts of absorption, whenever Members express any views, the Government will absorb them as if those are its views. But it will not absorb my views. Yet, Mr Vincent FANG and the Government should be on speaking terms, so why did the Government not apply the martial arts to absorb Mr Vincent FANG's ……

CHAIRMAN (in Cantonese): Mr LEUNG, you should better speak on the provision than expressing views like these.

MR LEUNG KWOK-HUNG (in Cantonese): No, I am speaking on the provision. You are wrong, Chairman, because this is a very special point. I heard this when I was having tea some time ago. Many people queried why Mr Vincent FANG did not propose his amendments during the deliberation of the Bills Committee. I also share the same query and it seems to me that Mr Vincent FANG is pretty unreasonable. I do not know the truth and would like to ask the Secretary why Mr FANG's views have not been incorporated in formulating the amendments.

My advice is very simple indeed. I think the illegal acts of small traders can be classified by the amount of money involved. Do you understand? I have to spend so much time on this because I have a poor sense of logic. I mean that the illegal acts can be divided into classes like class 1 and class 2. If the amount involved is small, the trader concerned may enjoy the defence and there should not be any problem. But if the amount involved is $5,000 or $5 million, the Government should spare no mercy in handling cases involving $5 million ……

CHAIRMAN (in Cantonese): Mr LEUNG, your speech has completely digressed from Mr Vincent FANG's amendments and the original provision of clause 19.

MR LEUNG KWOK-HUNG (in Cantonese): I am speaking on the amendment and the original provision.

CHAIRMAN (in Cantonese): Please focus on clause 19 and Mr Vincent FANG's amendment.

MR LEUNG KWOK-HUNG (in Cantonese): That is why I want to support Mr Vincent FANG, but I nonetheless think that my proposal is the best. May I ask the Secretary if I can still propose an amendment? I think different levels should be set up. If I am not allowed to do so, I would be forced to abstain from voting as I cannot tell which is good or bad — I am indicating my voting preference.

I think it would be best for the legislation enacted to have an objective. To tackle problems of a lack of supply faced by SMEs, or shops only left with brisket with rice after I paid for rice with chicken and goose or rice with ox offal — If I consider it unreasonable to be given rice with roast pork and chicken when I ordered rice with chicken and goose and refused to accept any replacement, I can file a case in court against that shop.

According to Mr Vincent FANG's proposal, a person should accept rice with chicken and goose though he has ordered roast pork and chicken, and should not take any court action because it is reasonable for the shop to do so. However, if a consortium which charges the most exorbitant rental on Nathan Road but often offers goods and services that do not meet the descriptions, how can the Government refrain from taking any court action? Its failure to do so will let Hong Kong people down.

Therefore, I always maintain that different issues must be dealt with at different levels. Chairman, it was right for you to say that I have digressed from the subject as the Government has digressed from the subject as well. It has not considered the proposed creation of the post of a Commissioner. If there is a Commissioner, who is specifically empowered to deal with the matters, people

will naturally be more harmonious. Instead of getting caught in endless quarrels, everything goes well in harmonious families ― as said by the supporters of the Democratic Alliance for the Betterment and Progress of Hong Kong. But since the post of a Commissioner has not been established by the Government, how can we end the endless quarrels? The Government is so incapable that it merely copied from other places when formulating the law …… Chairman, I know that you are going to say that I have digressed from the subject. Accusing the Government of copying the laws of other places has certainly digressed from the subject, so I would say no more. I just want to ask Mr Vincent FANG to further elaborate when he rises to speak later, or else his amendments may not get passed. I do wish to listen to his points. I have spoken for so long simply because I want to throw …… What? To throw a sprat to catch a herring, and now the sprat has been thrown.

SUSPENSION OF MEETING

CHAIRMAN (in Cantonese): I am going to suspend the meeting until 9 am tomorrow morning.

Suspended accordingly at six minutes past Ten o'clock.

Annex IV

Buildings Legislation (Amendment) Bill 2011

Committee Stage

Amendments moved by the Secretary for Development

Clause	Amendment Proposed
1	By deleting subclause (2) and substituting— "(2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.".
1	By deleting subclause (3) and substituting— "(3) Sections 2A, 5, 6, 6A, 6B and 6C come into operation on a day to be appointed by the Secretary by notice published in the Gazette.".
1	By adding— "(4) In subsection (3)— ***Secretary*** (局長) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123).".
2	By deleting "sections 3 to 6" and substituting "sections 2A to 6A".
New	By adding— "**2A. Section 2 amended (interpretation)** Section 2(3)— **Repeal** "Schedule 4 or 5"

Substitute

"Schedule 4, 5 or 8".".

3(3) In the proposed section 22(1B)(a), in the English text, by deleting "that".

3(3) By deleting the proposed section 22(1B)(a)(i) and substituting—

"(i) with respect to building works that have been or are being carried out to the premises or land—

(A) that there is a material divergence or deviation from any plan approved by the Building Authority under this Ordinance or required to be submitted to the Building Authority under the simplified requirements; or

(B) that they are not in compliance with the standard of structural stability, public health or fire safety established by regulations;".

3(3) By deleting the proposed section 22(1B)(a)(ii) and substituting—

"(ii) that the use of the premises has been changed in contravention of section 25(1) or (2);".

3(3) In the proposed section 22(1B)(a)(iii), in the English text, by adding "that" before "the premises have".

3(3) In the proposed section 22(1B)(a)(iv), in the English text, by adding "that" before "the drains".

3(3) In the proposed section 22(1B)(a)(v), in the English text, by adding "that" before "a notice".

5 By adding—

"(ic) the prescription of the details in relation to any prescribed building or building works specified in

Schedule 8;".

6 By deleting subclauses (8) and (9) and substituting—

"(8) Section 39C(6)—

Repeal paragraph (b)

Substitute

"(b) ***prescribed building or building works*** (訂明建築物或建築工程)—

(i) in relation to subsection (1), means a building or building works prescribed in the Minor Works Regulation as prescribed building or building works;

(ii) in relation to subsection (1A), means a building or building works specified in Schedule 8; and

(iii) in relation to subsection (2) or (4), means a building or building works falling within subparagraph (i) or (ii).".".

New By adding immediately after clause 6—

"6A. Schedule 8 added

At the end of the Ordinance—

Add

"Schedule 8 [ss. 2, 38 & 39C]

Prescribed Building or Building Works

Item	Description
1.	Signboard of a kind prescribed under section 38(1)(ke)(ic).".".

New By adding—

"Part 2A

Amendment to Building (Minor Works) Regulation

6B. Building (Minor Works) Regulation amended

The Building (Minor Works) Regulation (Cap. 123 sub. leg. N) is amended as set out in section 6C.

6C. Section 62 amended (provisions relating to section 39C of Ordinance)

Section 62(1)—

Repeal

"in section 39C(6)(b)"

Substitute

"given by section 39C(6)(b)(i) of the Ordinance in relation to section 39C(1)".".

Annex V

Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012

Committee Stage

Amendments moved by the Secretary for Commerce and Economic Development

Clause	Amendment Proposed
1	By deleting subclause (2) and substituting— "(2) This Ordinance comes into operation on a day to be appointed by the Secretary by notice published in the Gazette. (3) In subsection (2)— ***Secretary*** (局長) has the meaning given by section 2(1) of the Trade Descriptions Ordinance (Cap. 362).".
3	By adding— "(5A) Section 2(1), definition of ***trade description***— **Repeal paragraph (e).**".
3(6)	By deleting "after paragraph (e)" and substituting "before paragraph (f)".
3(9)	In the proposed definition of ***consumer***, by deleting "outside" and substituting "unrelated to".
3(9)	In the proposed definition of ***trade description***, by deleting paragraph (c).
3(9)	By deleting the proposed definition of ***Secretary***.
3(10)	By adding— "(6) A note located in the text of this Ordinance is provided

for information only and has no legislative effect.".

8 By renumbering the proposed section 7A as section 7A(1).

8 In the proposed section 7A(1), by deleting the note.

8 In the proposed section 7A, by adding—

"(2) In this section—

service (服務) does not include any service covered by Schedule 4.".

9 By deleting subclause (2) and substituting—

"(2) Section 8—

Repeal subsection (2)

Substitute

"(2) The trade description is to be taken as referring to all goods or services of the class, whether or not in existence at the time the advertisement is published—

(a) for the purpose of determining whether an offence has been committed under section 7(1)(a)(i) or 7A(1)(a); and

(b) where goods or services of the class are supplied or offered to be supplied by a person publishing or displaying the advertisement, also for the purpose of determining whether an offence has been committed under section 7(1)(a)(ii) or 7A(1)(b).".".

9 By deleting subclauses (3), (4) and (5).

13 In the proposed section 13D(3)(a), by deleting "and" and substituting "or".

13 In the proposed section 13D(3)(b)(ii), by deleting "materially distort the economic behaviour only of that group" and substituting "cause the average member of that group only to make a transactional decision that the member would not have made otherwise".

13 By deleting the proposed section 13D(5).

13 In the proposed section 13E(2)(b), in the Chinese text, by deleting "瞞" and substituting "藏".

13 In the proposed section 13E(4)(f)(ii), in the English text, by adding "of goods" after "delivery".

13 In the proposed section 13E(4)(f)(iii), by deleting "performance" and substituting "supply of service".

15 In the proposed section 20(2)(a), by adding "company" before "secretary".

15 In the proposed section 20(3), in the definition of ***principal officer***, by adding "or engaged" after "employed" (wherever appearing).

15 In the proposed section 20(3), by adding—

"***company secretary*** (公司秘書) includes any person occupying the position of company secretary, by whatever name called;".

18(1) By deleting "7A(b)" and substituting "7A(1)(b)".

23 In the proposed Schedule 4, by deleting "[ss. 2 & 37]" and substituting "[ss. 2, 7A & 37]".

23 In the proposed Schedule 4, in the Chinese text, by deleting "及《證" and substituting "或《證".

24 By deleting the proposed definitions of ***Broadcasting Authority*** and ***Telecommunications Authority***.

24 By adding—

"***Communications Authority*** (通訊事務管理局) means the Communications Authority established by section 3 of the Communications Authority Ordinance (Cap. 616);".

27 In the proposed section 16E(1), by deleting "Telecommunications Authority and the Broadcasting Authority may each" and substituting "Communications Authority may".

27 In the proposed section 16E(2), by deleting everything after "specify" and substituting "powers covered by subsection (1) that are not exercisable by the Communications Authority.".

27 In the proposed section 16E(3), by deleting "Telecommunications Authority" and substituting "Communications Authority".

27 In the proposed section 16E(3), by deleting everything after "practices of" and substituting—

"licensees under the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) that are directly connected with the provision of a

telecommunications service or broadcasting service under the relevant Ordinance.".

27 By deleting the proposed section 16E(4), (5) and (6).

27 In the proposed section 16E(8), by deleting everything after "commercial practice by the" and before "does not" and substituting "Communications Authority or any public officer authorized in writing by that Authority".

27 In the proposed section 16E(9), by deleting everything after "this Ordinance the" and before "does not" and substituting "Communications Authority or any public officer authorized in writing by that Authority".

27 In the proposed section 16F(1), by deleting everything after "Commissioner" and before "bodies" and substituting—

"or the Communications Authority is performing a function under this Ordinance in relation to a matter over which the other has concurrent jurisdiction, the 2".

27 In the proposed section 16F(2), by deleting everything after "Commissioner" and before "has concurrent" and substituting—

"or the Communications Authority is performing or has performed a function under this Ordinance in relation to a matter over which the other".

27 In the proposed section 16G(1), by deleting "Telecommunications Authority, and the Commissioner and the Broadcasting Authority," and substituting "Communications Authority".

27 In the proposed section 16G(5), by deleting "Each set of parties referred to in subsection (1)" and substituting "The Commissioner and the Communications Authority".

27 In the proposed section 16H(1), by deleting "Telecommunications" (wherever appearing) and substituting "Communications".

27 By deleting the proposed section 16H(2).

27 In the proposed section 16H(3), by deleting everything after "For this" and substituting—

"purpose—

(a) the reference in subsection (2)(a) of that section to authorized officers is to be taken to be a reference to the Communications Authority or any public officer authorized in writing by that Authority to exercise any of the powers that by virtue of section 16E are exercisable by that Authority; and

(b) any reference in subsection (3), (5) or (6) of that section to the Commissioner is to be taken to be a reference to the Communications Authority, or the Communications Authority jointly with the Commissioner, as the case requires.".

27 By deleting the proposed section 16H(4) and substituting—

"(4) The Communications Authority or, in the case of jointly issued guidelines, both the Communications Authority and the Commissioner must make copies of all guidelines and amendments of guidelines available to the public for inspection at their office during ordinary business hours.".

29 By deleting the proposed section 30L(3) and substituting—

"(3) Subject to subsection (3A), a person who has given an undertaking may, with the consent of an authorized officer, withdraw or vary it, or give a new undertaking in substitution for it, at any time.

(3A) An authorized officer may only consent under subsection (3) to the withdrawal of, or a variation of or substitution for, an undertaking if the officer has obtained the consent in writing of the Secretary for Justice to doing so.".

29 In the proposed section 30N(2), in the Chinese text, by deleting everything after "獲授權人員" and before "，方" and substituting "須獲律政司司長書面同意該人員根據本條發出通知".

29 In the proposed section 30N(3)(b), by adding "or continue" after "bring".

29 In the proposed section 30S, in the English text, in the heading, by deleting "**CFI**" and substituting "**Court of First Instance**".

31 In the proposed section 36, in the Chinese text, by deleting "提出" (wherever appearing) and substituting "提起".

31 In the proposed section 36, by adding—

"(3) A term of a contract that purports to exclude or restrict the right of a claimant to bring an action under subsection (1) against any person is of no effect.".

34 In the English text, by deleting "等" (wherever appearing).

Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012

Committee Stage

Amendments moved by the Honourable Vincent FANG

Clause	Amendment Proposed

19 By deleting the proposed section 26A and substituting—

"**26A. Additional defence (bait advertising)**

Without limiting section 26, in any proceedings for an offence under section 13G the person charged is entitled to be acquitted if—

(a) sufficient evidence is adduced to raise an issue that—

(i) the trader offered to supply, or to procure a third person to supply, products of the kind advertised to the consumer within a reasonable time, in a reasonable quantity and at the advertised price and—

(A) if that offer was accepted by the consumer, the trader so supplied, or procured a third person to so supply, the products; or

(B) if that offer was not accepted by the consumer, the trader would have been able to so supply, or procure a third person to so supply, the products had the offer been accepted at the time it was made; or

(ii) the trader offered to supply immediately, or to procure a third person to supply within a reasonable time, equivalent products to the consumer in a reasonable quantity and at the price at which the advertised products were advertised and—

(A) if that offer was accepted by the consumer, the trader so supplied, or procured a third person to so supply, the equivalent products; or

(B) if that offer was not accepted by the consumer, the trader would have been able to so supply, or procure a third person to so supply, the equivalent products had the offer been accepted at the time it was made; and

(b) the contrary is not proved by the prosecution beyond reasonable doubt.".

19 By deleting the proposed section 26B and substituting—

"**26B. Additional defence (wrongly accepting payment)**

(1) Without limiting section 26, in any proceedings for an offence under section 13I the person charged is entitled to be acquitted if—

(a) sufficient evidence is adduced to raise an issue that—

(i) the trader offered to procure a third person to supply the products and—

(A) if that offer was accepted by the consumer, the trader procured a third person to supply the products; or

(B) if that offer was not accepted by the consumer, the trader would have been able to procure a third person to supply the products had the offer been accepted at the time it was made; or

(ii) the trader offered to supply, or to procure a third person to supply, equivalent products—

(A) within the period specified by the trader at or before the time at which the payment or other consideration was accepted; or

(B) if no period was specified at or before that time, within a reasonable period,

and—

(C) if that offer was accepted by the consumer, the trader so supplied, or procured a third person to so supply, the equivalent products; or

(D) if that offer was not accepted by the

consumer, the trader would have been able to so supply, or procure a third person to so supply, the equivalent products had the offer been accepted at the time it was made; and

(b) the contrary is not proved by the prosecution beyond reasonable doubt.

(2) Without limiting section 26, in any proceedings for an offence under section 13I(2)(c), the person charged is entitled to be acquitted if—

(a) sufficient evidence is adduced to raise an issue that a refund in full of the payment or other consideration for the product was made within a reasonable period after the expiry of the period referred to in section 13I(2)(c)(i) or (ii), as the case may be; and

(b) the contrary is not proved by the prosecution beyond reasonable doubt.".