

CONSUMER LEGAL ACTION FUND

1. What is the Consumer Legal Action Fund?

The Consumer Legal Action Fund ("Fund") is a trust fund set up to give greater consumer access to legal remedies by providing financial support and legal assistance. The Fund aims to provide assistance in the following circumstances:

- (a) to assist consumers to bring or defend representative action. This type of action enables one consumer to act on behalf of a group of consumers with the same interest in the matter;
- (b) to assist consumers to pursue joint claims out of the same or same series of transaction with a common question of law or fact;
- (c) to group consumers with similar causes of action and claims together administratively and arrange for them to be heard at the same time or consecutively;
- (d) to bring action in the interest of the public; and
- (e) to handle cases of significant consumer interest.

The Consumer Council ("Trustee") is the trustee of the Fund and is advised by a Management Committee on the eligibility and merits of the cases seeking assistance under the Fund.

Legal assistance may be in the form of advice, assistance and representation by a solicitor and counsel.

2. Who can apply for legal assistance?

You can apply for legal assistance under the Fund if you are a consumer or a group of consumers involved in a matter which :

- (a) relates to consumer transactions, in particular :
 - (i) unmerchtable goods, including food and drugs;
 - (ii) sharp, unscrupulous or restrictive trade practices;
 - (iii) unfair and unconscionable contract terms;
 - (iv) exemption clauses in consumer contracts;
 - (v) false or misleading advertising claims;
 - (vi) false trade descriptions;

- (vii) misdescription or misrepresentation of goods, services or real property;
or
 - (viii) any other case of significant consumer interest; or
- (b) involves significant public interest or injustice,

and you have exhausted all other means of dispute resolution in this matter and you do not qualify for any form of legal aid. However, the Trustee has a discretion in granting or refusing assistance in appropriate cases.

3. What is the procedure for applying for the assistance?

- (a) You can first lodge your case with one of our Complaints and Advice Officers at one of our Advice Centres in person, in writing or by telephone. If the matter can be taken up by us, we will try to resolve it by appropriate dispute resolution methods. If these fail and you and your matter qualify for assistance under the Fund, you may fill in an Application for Legal Assistance ("Application"). Our Officers can help you fill in the Application and answer your enquiries. It is a serious matter using public funds to pursue your legal remedies, the Trustee expects you to disclose full, true and accurate information and to cooperate in full before, during and right up to the conclusion of your case.
- (b) There is a NON-REFUNDABLE application fee payable at the time of application. If your case is to be tried in the Small Claims Tribunal, the application fee is HK\$100. If your case is to be tried in the District Court or other higher courts, the application fee is HK\$1,000.
- (c) There is an Agreement with Assisted Consumer ("Agreement") which is in duplicate and accompanies each Application. This is an IMPORTANT document which governs your relationship with the Trustee, as and when legal assistance is granted to you. You must study its terms carefully. If you agree to its provisions, you are then to sign the Agreement and return both signed copies to the Trustee as soon as possible.
- (d) Please note that submitting the Application, paying the application fee and returning the signed Agreement give no guarantee that assistance under the Fund will be granted.

4. What other factors are considered by the Trustee?

When considering whether or not to grant you assistance, the Trustee may consider, in particular, the following :

- (a) whether a group has been or there is potential for a large group of consumers to be adversely affected;
- (b) whether court action is the most effective means of resolution in the circumstances;
- (c) the cost effectiveness of the action;

- (d) the chance of success of the matter;
- (e) your bargaining power;
- (f) the questions of fact or law common to your group (if a group is involved);
- (g) the size of your group (if applicable);
- (h) the financial security of the other party involved;
- (i) whether, if successful, the matter has publicity value and can promote the consumer cause and has deterrent effect on unscrupulous business practices;
- (j) whether the matter may create undue financial burden to the Fund; and
- (k) the practicality of the Fund offering timely assistance in the matter.

5. Is there a means test for applicants?

Applicants for assistance under the Fund need not undergo a mandatory means test in order to qualify for assistance. However the Trustee may take into account an applicant's financial resources in deciding whether to accept or reject a particular case. You may be asked to provide details of your financial resources.

6. What happens next?

You will be notified by the Trustee whether your application for assistance has been accepted. If legal assistance is granted to you, the Trustee will also execute the Agreement, date it and return one copy to you for safekeeping. Your matter is then assisted by the Fund.

7. Is there any payment other than the registration fee?

If your matter is unsuccessful, you need not make any further payment. The Fund pays for all your costs and expenses. It must be stressed that if your matter is unsuccessful because of your fault or your not providing full, true and accurate information to the Trustee when applying for assistance, you must cover the Trustee for all losses, costs, expenses, claims, damages and liabilities suffered in connection with your matter and the granting of assistance to you.

If your matter is successful, you pay a contribution to the Fund calculated as follows:

- (a) the actual legal costs and expenses paid in your matter LESS any costs payable by and recovered from the opposite party;
- (b) all other sums paid for your matter out of the Fund; and
- (c) 10% of the amount of money (not counting the costs recovered from the opposite party) received on your behalf, the value of property recovered or

preserved for you, the amount by which your liability is reduced or discharged or the value of any benefit gained by you in the matter ("Benefit Value").

This contribution is subject to a cap: 25% for matters that may be or are actually determined in the Small Claims Tribunal and 50% for all other matters, of the Benefit Value.

Your matter is considered successful in circumstances including money or property being received, recovered or preserved for you or allowed to be kept by you or any benefit being gained by you or any claim against you being dropped.

The Trustee may, in appropriate circumstances, reduce or waive the contribution payable.

8. How are the moneys paid?

All moneys payable to you in your matter are to be first paid to the Trustee. Any money received for costs will be used to cover the legal costs and expenses and other sums paid for your matter. All other moneys will cover such part of the contribution payable as the Trustee requires. The balance will be paid to you as soon as is possible. If your matter is successful but not by reason of money payable, you are to pay the contribution as and when the Trustee calls upon you to do so.

9. Can you choose a solicitor or barrister?

The Trustee will assign the solicitor and, if necessary, the barrister to handle your case.

10. Can legal assistance granted be terminated?

The Trustee may at any time by notice to you terminate its agreement to provide legal assistance to you. In such circumstances, the assistance will cease to be provided and both you and the Trustee will be under no further obligation or liability to the other.

If however the Trustee terminates the agreement to provide assistance because of your fault or your not providing full, true and accurate information to the Trustee when applying for assistance, you must cover the Trustee for all losses, costs, expenses, claims, damages and liabilities suffered in connection with your matter, the granting of assistance to you and the termination.

The information in this pamphlet is for reference only. Please refer to the Application and the Agreement for your and the Trustee's rights and obligations.