

Advancing Legal Protection for Consumers

加強消費者的法律保障



The Council advances legal protection for consumers by submitting views to the government and other relevant bodies regarding legal developments, regulatory regimes and codes that may affect the position and welfare of consumers. Consumer rights are better protected if such rights are stipulated in law or codes of practice.

消委會就可能影響消費者權益的法律發展、監管制度及守則向政府和有關機構表達意見，以加強對消費者的法律保障。本會深信如消費者權益在法例或實務守則中列明，消費者會得到更好的保障。

Submissions on Legal Protection

During the year, the Council made five submissions from the perspective of consumer legal protection to the government and relevant bodies on matters including ad valorem stamp duty for flat buyers, land titles system, legal protection rendered to consumers as unsecured creditors and the regulation of stored value facilities. The Council also made recommendations on the draft code of practice for Listed Sellers of Poisons (LSP).

Submission on the Stamp Duty (Amendment) Bill 2013 - Increase of the Ad Valorem Stamp Duty on Residential Property Transactions

The Council supported the proposed amendment, which aimed to address the overheated property market, to substantially increase the ad valorem stamp duty on all residential property transactions except where the purchaser(s) is a Hong Kong Permanent Resident (HKPR) and does not own any other residential properties in Hong Kong at the time.

就法律保障提出意見

過去一年，本會從消費者法律保障角度，就著不同的事宜向政府及有關機構提交五份意見書。涉及的範疇，包括住宅物業交易的從價印花稅、土地業權制度、向消費者作為無抵押債權人提供的法律保障以及儲值支付產品的規管。本會亦就有關列載毒藥銷售商執業守則草擬本提供建議。

2013年印花稅(修訂)條例草案—增加住宅物業交易的從價印花稅意見書

為針對過熱的物業市場，有關修訂建議大幅增加所有住宅物業交易中的從價印花稅稅率，但在購買物業時沒有擁有任何香港住宅物業的香港永久居民則不受修訂影響，本會對此表示支持。



The Council was also in support of the refund mechanism proposed within the Bill which was catered for HKPR residential property owners who purchased properties not for investment purposes. Under the proposed arrangement, purchaser would initially have to pay the increased stamp duty, but would have the extra stamp duty paid refunded if they disposed of their original property within six months of the transaction.

However, the Council was concerned that the six month time limit may not be adequate and realistic given that the disposal of properties could be subject to market volatility and conveyance regulations. Therefore, the Council called on the Bills Committee of the Legislative Council to consider whether the administration should be empowered to amend or extend the proposed time limit so as to allow the targeted purchasers an adequate period of time to sell their original property at a reasonable market price.

Consultation on the Revised Proposal of Two-Stage Conversion Mechanism

In response to the Land Registry's revised proposal of a Two-Stage Conversion Mechanism for the implementation of the Land Titles Ordinance, the Council suggested that the Land Registry should provide a clear explanation to the general public on important issues such as the indefeasibility of title conferred by the proposed mechanism, the scope and limitation of the indemnity fund available to innocent parties for loss of title by reason of fraud under the proposed conversion scheme, and the circumstances where the indemnity would be capped or without cap.

Proposed Regulatory Regime for Stored Value Facilities (SVF) and Retail Payment Systems in Hong Kong

The Council made further response to the Hong Kong Monetary Authority's public consultation regarding the subject matter. The Council reiterated its support of the proposal to establish a mandatory licensing regime for SVF, in the belief that it could ensure the safety and soundness of the operation of SVF related products and services. Such regime, in the Council's view, should be built on clearly defined and adequately disclosed rights and obligations of all the stakeholders of the SVF.

Meanwhile, the Council noted the growing use of non-card based SVF such as those in electronic form stored on computers or mobile networks. However, as these products are currently beyond the scope of the regulatory framework, the Council suggested that the regulatory framework be expanded to ensure users of such SVF be adequately protected.

本會亦支持草案中為置業自住而非投資的香港永久居民所設的退稅款機制。根據建議，如香港永久居民在置業時已擁有住宅物業，他們須繳付額外印花稅。但如果他們能在有關交易後六個月內把原有的物業出售，他們將獲退回已繳交的額外印花稅。

然而，出售物業受制於市場情況及樓宇買賣規範，本會關注到建議中的六個月時限未必足夠或符合現實情況。為使有關買家能有足夠時間以合理市價售出原有物業，本會在意見書中向立法會的法案委員會提議，應考慮賦予行政機關修改或延長建議中的時限的權力。

修改兩階段轉換機制諮詢

土地註冊處就有關實施《土地業權條例》而作出的兩階段轉換機制提出修改。在回應最新版本的修訂時，本會指出土地註冊處應就其中的重要事項向公眾作出明確說明，包括建議機制授予的不可廢除業權、在建議的轉換機制下，彌償基金向因欺詐而無辜損失業權的人士所作出的賠償範圍及限制，以及在彌償金會設有或不會設上限的情況。

香港儲值支付產品 (SVF) 及零售支付系統的建議監管制度

本會就香港金融管理局有關建議監察制度的公開諮詢文件進一步提供意見。本會重申對儲值支付產品 (簡稱SVF) 設立強制發牌制度的建議表示支持，認同有關制度可確保與SVF有關的商品及服務能安全及穩健地運作。本會認為有關制度應建基於所有SVF 持份者的權利及責任均得到明確界定和充分披露。

同時，本會留意到無卡式SVF如儲值於流動電話或網絡的產品的使用日趨普遍。可是這類產品並不受現行制度的監管。本會提議擴大監管架構的範圍，使這些產品的使用者得到充分的保障。

Furthermore, the Council was aware that single-purpose SVF, including pre-paid coupons and stored value membership cards, are not regulated under both the existing framework and the proposed regime. The Council therefore urged that the single-purpose SVF, in particular those involving substantial amounts of money, should be regulated.

Legislative Proposals on Improvement of the Corporate Insolvency Law

The Council appreciated the intent of the legislative proposals to improve the efficiency of winding up process, but also expressed concerns over the consumers' position as unsecured creditors in the event of corporate insolvency.

It was submitted that consumers share similar vulnerability as employees as they both lack the bargaining power and information enjoyed by other creditors. The existing redress mechanism for consumers, in the Council's view, was also limited in scope and failed to provide a comprehensive and adequate safety net. The Council called for consideration of a more fundamental change and reform in the corporate insolvency regime in Hong Kong, in particular, moving up consumers, who have made prepayment for goods or services, on the priority list for payment of debts.

Consultation on Draft Code of Practice for Listed Sellers of Poisons (LSP)

In its submission to the Department of Health, the Council expressed support for the requirements imposed by the Draft Code, including that a LSP must ensure that nothing on the premises may carry any suggestion that any employee is a registered pharmacist. This is to differentiate a LSP from an Authorised Seller of Poisons (ASP) who can sell a wider scope of drugs, including dangerous drugs, in the presence of a registered pharmacist. LSPs are also prohibited from pretending to, confusing or misleading consumers that they are an ASP.

The Draft Code also requires that LSP must cooperate with inspectors from the Department of Health during their regular inspections, comply with a specific set of storage requirements to ensure product safety and reliability and retain all sale documents for a specific period of time as this may help ensure the quality, safety, efficacy and genuineness of the pharmaceutical products as well as assisting in tracing problematic products.

另外，本會留意到單一用途SVF，如禮券或儲值會員卡等，均不受到現有或建議中的制度監管。本會促請規管單一用途SVF，特別是涉及龐大金額的。

優化公司破產法例立法建議

本會認同改善清盤程序的效率的立法建議原意。但另一方面，本會亦對消費者作為無抵押債權人在企業破產中的權益，表達關注。

本會在意見書指出，消費者與僱員同樣處於弱勢，因為兩者均無討價還價能力，以及缺乏其他債權人所享有的資訊。此外，本會認為目前為消費者提供的補償機制的作用有限，未能為消費者提供全面及足夠的安全網。本會倡議考慮為香港的公司破產制度作出一個根本性的改變及改革，並認真考慮為消費者，特別是那些以預繳方式購買貨品或服務的消費者，提升他們在債權人的名單上享有較高的優先排次。

有關列載毒藥銷售商執業守則草擬本的諮詢

在本會向衛生署提交的意見書中，本會支持守則草擬本所訂定的各項要求，包括列載毒藥銷售商必須確保處所內沒有任何會令人誤會其員工為註冊藥劑師的指示，以分辨列載毒藥銷售商與獲授權毒藥銷售商，因後者可售賣範圍較廣泛的藥物，包括在有註冊藥劑師駐場的情況下可售賣危險藥物。此外守則禁止列載毒藥銷售商假裝為獲授權毒藥銷售商，混淆或誤導消費者，讓消費者誤會它是該等銷售商。

守則草擬本亦要求列載毒藥銷售商必須在衛生署職員進行例行檢查時保持合作、遵守一系列特定的儲存要求以確保產品的安全及可靠性，及列載毒藥銷售商必須在特定時間內保留所有銷售文件，以確定藥劑產品的質素、安全、效能和真確性，及協助追蹤有問題的產品。