



# 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. Consumers are better protected if their rights are stipulated in law or codes of practice.

消委會深信如消費者權益在  
法律或實務守則中列明，消費者會得到更好的保障。所以本會就可能影響消  
費者權益的法律發展、監管制度及守則積極向政府和有關機構表達意見。

## Submissions on Legal Protection

During the year, the Council made five submissions from the perspective of consumer legal protection on matters relating to third parties' rights under contract law, land titles system, private columbaria and stored value facilities. The Council also commented on the draft code of practice for holder of wholesale poisons licence and draft code of conduct for holder of certificate of registration as an importer and exporter of pharmaceutical products.



## 就法律保障提出意見

過去一年，本會從法律上保障消費者的角度，就著不同的事宜向政府及相關機構提交5份意見書。涉及的範疇，包括合約法下的第三者權利、土地業權制度、私營骨灰安置所的規管以及儲值支付產品的規管。本會亦就毒藥批發牌照持有人、及註冊為藥劑製品進口商及出口商的證明書持有人的執業守則草擬本，提供意見。

### Submission on the Contracts (Rights of Third Parties) Bill

Under the Bill, a third party will only be entitled to enforce a benefit conferred on him under a contract in very limited circumstances. In most of the consumer transactions, it is likely that the intention to confer benefit on a third party may not be manifested and the intended beneficiary may not be identified in the contracts.

The Council proposed that the two-limb test of enforceability provided in s.4 of the Bill should be relaxed specifically for consumer third party to the effect that a consumer third party may enforce a contract when he justifiably and reasonably relies on it or when it actually confers a benefit on him.

### Consultation on Draft Code of Practice for Holder of Wholesale Poisons Licence and Draft Code of Practice for Holder of Certificate of Registration as an Importer and Exporter of Pharmaceutical Products

In a submission to the Department of Health, the Council was supportive of the objectives of the Draft Codes to improve the standards for distribution activities of pharmaceutical products and ultimately enhance the safety and reliability of pharmaceutical products.

### 合約（第三者權利）條例草案意見書

本會在向立法會法案委員會提交的意見書中指出，條例草案只容許合約外的第三者，在非常有限的情況下，才可行使合約賦予他的權利。然而，絕大部分涉及消費者的合約，都不會明示給予第三者權益的意圖，亦不會指明誰是合約的意向受益人。

本會建議，在消費者作為第三者的情況下，條例草案第四條，有關執行合約的雙重要求應予放寬。當消費者作為第三者，並有理由和合理地依據該合約，或該合約實際上賦予他權益時，該消費者作為第三者可執行有關合約。

### 《毒藥批發牌照持有人執業守則》及《註冊為藥劑製品進口商及出口商的證明書持有人執業守則》草擬本的諮詢

本會認同訂立這些執業守則之目的，即提升藥劑製品分發活動的水平，以達致加強產品安全，及提高藥劑製品的可靠程度。

To better achieve the objectives, the Council submitted that the Draft Codes should offer concrete measures to be taken by the licence or certificate holders to prevent contamination of pharmaceutical products and mixing up of different products. The Council also suggested that the licence or certificate holders should provide guidance and instructions on proper storage of pharmaceutical products through the product label, package and written instructions, enabling consumers to properly store and use the pharmaceuticals. In addition, the Council called for a prudent review by the licence or certificate holders before destruction of any records. The Pharmacy and Poisons Board is also urged to consider whether a longer period of time for keeping records and documentation should be imposed to cater for pharmaceuticals with product life span of over two years.



為更有效達致該些目的，本會建議，執業守則應就牌照或證明書持有人，如何防止藥劑製品受到污染，及避免混淆不同產品，提供具體措施。而牌照或證明書持有人，亦應透過產品標籤、包裝及說明書，提供指引，以確保消費者能正確儲存及使用產品。此外，本會亦建議，牌照或證明書持有人，應在銷毀任何紀錄前，作出審慎的檢核。另一方面，藥劑業及毒藥管理局亦應考慮，就壽命期超過兩年的藥劑製品，應否施行較長的存檔記錄期。

### Latest Proposal for the Implementation of the Land Titles Ordinance - Rectification and Indemnity Issues & Indeterminate Ownership Registers

In response to the Land Registry's latest proposal regarding the implementation of the Land Titles Ordinance, the Council reiterated the importance of ensuring that the public have correct understanding of all key features, application and implementation of the Ordinance, such as the scope, applicability and limitation of the Indemnity Fund.

The Council acknowledged that screening of registers for each existing property to identify indeterminate ownership cases for the purpose of implementing the proposed Two-stage Conversion Mechanism would be both important and challenging. The Council suggested that all existing properties should undergo primary conversion at the same time after completion of the entire screening process in order to enhance clarity and certainty to the general public. Further and concurrently, title registration can be implemented on new land as the problem of indeterminate ownership would not arise in the case of new land, enabling the public to enjoy the benefit of the new title registration system earlier.

### Submission on Private Columbaria Bill

The Council supported the proposed establishment of a licensing regime to regulate private columbaria and introduction of detailed requirements on their operation, sale of interment rights and ash disposal procedure. At the same time, we also raised various concerns on the potential risks to consumers in purchasing the right to inter ashes in private columbaria.

In particular, the Council called for a mandatory cooling-off period of 21 working days in contracts of sale of interment rights in view of the long-term commitment and high contract value usually involved. To deter misleading sale tactics of unscrupulous sales agents for interment rights, the Council suggested that licensed columbaria operators should be obligated to take reasonable care and diligence to ensure that their agents comply with all the applicable law and act in a fair and honest manner. The Council further proposed a ban on services bundling and called on the Bills Committee to consider the establishment of a compensation fund.

### 實施《土地業權條例》的最新建議 — 更正及彌償安排、及未能確定物業擁有權的登記冊

在回應土地註冊處就上述事宜作出的最新建議時，本會重申確保公眾正確瞭解條例的所有特點、適用範圍及實施安排的重要性，例如彌償基金的賠償範圍、適用性及限制。

本會認同在實施先前建議的兩階段轉換機制的過程中，檢查每個現存物業的登記冊，以找出未能確定擁有權的登記物業，是既重要又富挑戰的工作。可是，為提高新註冊制度的明確性和確定性，本會建議，應在完成整項檢查工作後，才讓所有現存物業於同一時間一併進行第一階段轉換。另外，本會亦提議，為讓公眾能更早受惠於新註冊制度，可先就新土地上的物業實施業權註冊，因它們並不受到未能確定擁有權的問題影響。

### 私營骨灰安置所條例草案意見書

本會支持設立發牌制度作為規管私營骨灰安置所的建議，並同意就營運、出售龕位及處理骨灰程序等方面訂明詳細規定。同時，本會就消費者在購買私營龕位時，可能面對的潛在風險，表達關注。

考慮到買賣龕位的合約，通常涉及較長的合約期，及較大的金額，本會主張買賣龕位的合約，應提供21個工作天的冷靜期；為防止不良銷售代理，採用具誤導性的銷售手法，本會建議持牌骨灰安置所，應以合理的謹慎和努力去確保他們的代理人，遵守一切適用的法律，並以公平及誠實的方式行事；本會亦建議禁制細綁式服務套餐，及促請法案委員會考慮成立賠償基金。



## Submission on Clearing and Settlement Systems (Amendment) Bill 2015

The Council submitted its views to the Bills Committee of the Legislative Council on the issues relating to stored value facilities (SVF). Whilst supporting the establishment of a mandatory licensing regime for SVF by way of legislative amendment, the Council called for an expansion of the scope of the regulatory framework to include single-purpose SVF involving substantial amounts of money, for enhancement of consumer protection.

The Council also submitted that the licensing criteria and conditions for SVF issuers should ensure a sufficient level of consumer protection and fairness in the contract between the SVF issuers and the SVF users. In particular, users should be able to redeem the outstanding stored value without unfair barriers and gain access to their payment/transaction records in a cost efficient manner.



## 2015年結算及交收系統(修訂)條例草案意見書

本會就有關儲值支付產品(簡稱SVF)事宜，向立法會法案委員會提供意見。本會支持透過修訂現行法例，就SVF設立強制發牌制度，並促請擴大監管制度的範圍，以涵蓋涉及重大金額的單一用途SVF，從而確保消費者能得到足夠保障。

本會亦建議，SVF發行人的發牌準則及條件，應包含對消費者的保障，及SVF發行人與SVF使用者之間合約的公平性，尤其是SVF發行人不應設下不公平的障礙，妨礙使用者贖回餘下的儲值，並應讓使用者能以符合成本效率的方式，取閱他們的付款/交易記錄。