

# ADVANCING LEGAL PROTECTION FOR CONSUMERS

## 加強消費者的法律保障

During the year under review, the Council advocated 2 major legal protection issues.

### Consumer Protection on Prepayment and Retailer Insolvency - Review of Chargeback and Beyond

Consumers often prepay significant sums of money to retailers for goods or services. Should the retailer close down, consumers, as unsecured creditors, are left with a slim chance of recovery of the prepayments from the winding-up process. Consumers could face a double loss: the loss of enjoyment of the goods or services purchased and also the inability to recover the payment.

In Hong Kong, payment by credit cards is common. In 2016, the total expenditure of retail sales on Hong Kong-issued credit cards amounted to HK\$470 billion. When consumers pay by credit cards, there is in fact a long established (but not so well known locally) chargeback mechanism which potentially allows consumers to recover their payments in the event of retailer insolvency. The Council's survey revealed among other issues, a lack of clear and consistent application methods and procedures for chargeback protection, no transparency in the chargeback mechanism, uncertainty in the outcome of chargeback application, and a lack of protection for credit card instalment payment plans (IPPs).

Drawing reference from overseas experience, the Council suggested that in order to enhance consumer protection in retailer insolvency, card issuers should provide more information and greater transparency of this mechanism

年內，本會倡議2項重要的消費保障議題。

### 信用卡退款保障機制及法律保障的研究 - 預繳式消費與商戶倒閉

消費者往往在商戶購買貨品或服務時預付不菲的金額。然而一旦商戶倒閉，消費者作為無抵押債權人在清盤過程中，能夠成功討回預繳款項的機會相當渺茫。消費者既不能享用所購買的貨品或服務，亦不能討回款項，可謂蒙受雙重損失。

信用卡在香港是非常普遍的消費支付工具。2016年，香港發行的信用卡零售銷售的交易總額高達港幣4,700億元，當中不少涉及預繳式消費。當商戶倒閉時，以信用卡付款的消費者其實有機會可透過一個設立已久的信用卡退款保障機制，取回預付的款項。本會（但鮮為本地人士所知）的調查發現多個問題，當中包括：退款申請的方法及程序不夠清晰明確和一致；退款保障

的資訊透明度不足；消費者不易確定退款申請成功與否，以及信用卡分期付款計劃不受保障等。

汲取海外經驗，本會建議發卡機構增加退款保障機制的透明度，向消費者提供更多相關資訊，協助消費者提出申請，改善消費者在商戶倒閉時所得的保障。此外，



Laws and codes of practice are the bulwark of consumer protection. To ensure that there is continued advancement of consumer rights and interests at the legislative and regulatory levels, the Council undertakes the ongoing task of conducting studies on consumer issues and concerns from a legal perspective, submitting its views and results to the Government, stakeholders and the public, with the aim of stimulating consumer policy consideration and encouraging public discussion in order that consumer protection can be enhanced.

法例和守則是消費權益的壁壘。為確保消費者權益在法例及規管層面不斷發展，消委會將繼續從法律角度研究各項影響消費者權益的議題，並將研究結果及意見呈交政府、相關持份者和向公眾發布，從而引發公眾討論，促進政策制定，加強對消費者的保障。

to assist consumers in filing a chargeback claim. In addition, the Council also suggested that the Hong Kong Monetary Authority should consider issuing regulatory guidance to card-issuing banks to ensure they implement the improvement measures recommended. Furthermore, the Council recommended that liquidators and other related professional members provide the public with more information about chargeback in the course of liquidation. As chargeback protection is generally not available to IPPs, the Council also recommended the Government to introduce connected lender liability by legislation in order to allow consumers to recover credit card prepayments from card issuers directly in the event of retailer insolvency, without the need to resort to the winding-up process.

### **Submission to the Bills Committee on Stamp Duty (Amendment) Bill 2017 and Stamp Duty (Amendment) (No. 2) Bill 2017**

In this submission, the Council pledged support to the Government's proposal to amend the Stamp Duty Ordinance to tighten the exemption arrangements for Hong Kong permanent residents in the wake of an emergence of a growing trend for local buyers to acquire multiple residential properties under a single instrument to avoid payment of ad valorem stamp duty (AVD) under the New Residential Stamp Duty (NRS) regime. Under the Bill, only acquisition of a single residential property under a single instrument by a local buyer acting on his own behalf and not being a beneficial owner of any other residential property in Hong Kong at the time of acquisition can continue to enjoy payment of the lower AVD.

Related to the NRS but on a separate issue, the Council reiterated its concern on the statutory limit of 6 months within which a purchaser of a new residential property needs to dispose of his original property so that he can recoup a refund on the AVD. It usually takes months from the listing of the property to finding a buyer. This coupled with the time required to complete the property transaction and subsequent arrangements for the move means that the current 6 months' limit for the purchaser will be tight. In the submission, the Council again advocated a slightly longer statutory time frame and urged the Government to reconsider extending it.

本會建議金管局向發卡銀行發出監管指引，確保銀行推行改善措施。另一方面，本會建議清盤人及相關專業人士在清盤過程中，向公眾提供更多關於信用卡退款保障的資訊。有見信用卡退款保障機制一般不適用於信用卡分期付款計劃，本會建議政府立法引入關連貸款人責任，令使用分期付款計劃購物的消費者在商戶倒閉後直接向發卡銀行提出申索，以討回付款，而毋須訴諸清盤程序。

### **向《2017年印花稅(修訂)條例草案》及《2017年印花稅(修訂)(第2號)條例草案》委員會提交意見**

鑑於越來越多本地物業買家以一份文書購入多個住宅物業的手法，迴避繳付新住宅印花稅機制下之從價印花稅，在意見書中，本會支持政府提出的建議，透過修訂《印花稅條例》，收緊該機制下的豁免安排。根據條例草案，只有在買家以一份文書取得單一住宅物業，加上買家本身是代表自己行事的香港永久性居民，並在取得有關住宅物業時，不是任何其他香港住宅物業的實益擁有人情況下，有關交易才可繼續按較低的從價印花稅稅率繳稅。

除此之外，本會亦就另一與新住宅印花稅相關的議題表達意見。本會對新住宅買家須於6個月內出售原有物業，才可取回支付從價印花稅的款項之法定時限，表示關注。由放售物業至覓得買家一般需時數月，加上物業交易程序及後續搬遷安排亦需時完成，現行6個月的法定時限對新住宅買家而言相當緊迫。意見書中，本會再度提倡放寬時限，並促請政府重新考慮。