

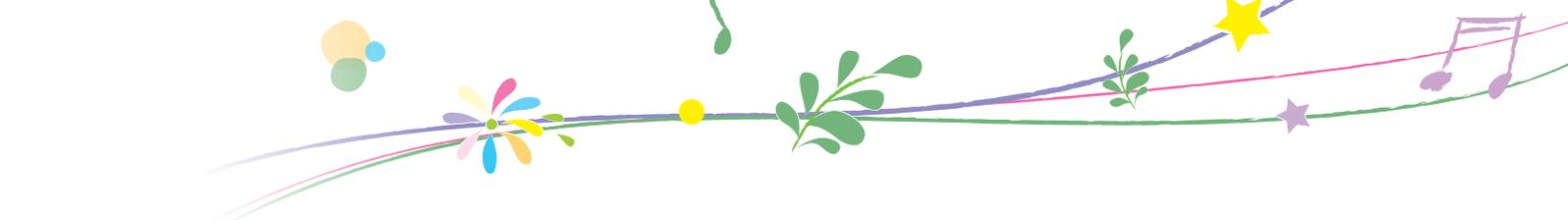
# ADVANCING LEGAL PROTECTION FOR CONSUMERS

## 加強消費者的法律保障

The Council has been a long-time champion of industry codes of practice and legislation to protect the rights of consumers. It regularly conducts studies on consumer protection issues from a legal perspective, making carefully drafted recommendations to the Government. Over the decades, these efforts have resulted in numerous amendments to current laws or the introduction of new legislation, and ensured that consumer protection remains firmly in the minds of all parties involved. During the year under review, the Council made submissions to the Law Reform Commission (LRC) in response to its recommendation to permit outcome-related fee structures for arbitration. It was unfortunate, however, that the bill for mandating a cooling-off period for consumer contracts relating to fitness and beauty industries, which has long been advocated by the Council and was scheduled to be presented to the Legislative Council in early 2020, was postponed owing to the drastic deterioration of business environment caused by social unrest and the COVID-19 pandemic.

本會多年來，一直是制定行業營商守則及倡議立法保障消費者權益的先驅。本會定期從法律角度研究跟消保權益相關的議題，並向政府提出審慎的建議，數十年來付出的努力獲得豐碩的成果，促成修改多項現行法例或訂立新法，確保有關方面以考慮保障消費者權益為依歸。年內，本會就准許與仲裁結果有關的收費架構的建議向法律改革委員會（法改會）提交意見。然而不幸的是，本會多年來倡議就健身和美容服務消費合約設立法定冷靜期的法案，原訂於 2020 年初提交立法會審議，鑑於社會事件和 2019 冠狀病毒肆虐導致營商環境陷入深度衰退，法案須押後提交立法會作審議。





## Submission to the Law Reform Commission — Consultation Paper on Outcome-Related Fee Structures for Arbitration (“ORFS”)

In December 2020, the LRC issued a consultation paper on ORFS. It recommended that the relevant legislation should be amended to permit lawyers to use ORFS for arbitration cases taking place both in and outside Hong Kong. As consumer disputes usually involve relatively smaller amounts than commercial disputes, consumers have a tendency not to use arbitration as a means for resolution. Nevertheless, for disputes relating to higher-value goods and services, as well as customised products, consumer arbitration could be a useful option. The Council made submissions that reflected principles and considerations known to be of concern to consumers, but refrained from commenting on the LRC's technical recommendations for legal practitioners, believing that the input on such matters is best left to the expertise of the Law Society and the Bar Association.

In the main, the Council supported the LRC's recommendations that lawyers should be permitted to use ORFS to enhance accessibility to legal services in a reasonable and affordable way, and that consumers be allowed to make informed and varied choices, so long as sufficient safeguards were in place to protect them. The Council stressed that such safeguards would include legal professionals adhering to their own codes of conduct, and being totally clear and transparent in explaining the terms and conditions of ORFS to their clients. The Council also favoured necessary amendments to the relevant professional guides and codes of conduct to achieve this outcome. Furthermore, the Council supported the placing of an appropriate cap on legal professionals' reward from the outcome of arbitration, taking into account consumers' expectations that the process would be affordable with a proportionate return.

In addition, the Council advocated for a mandatory cooling-off period for consumers entering into an ORFS contract. This is in line with the Council's consistent view that a mandatory cooling-off period for consumer contracts in general would prevent unscrupulous traders from using undesirable trade practices or high pressure to induce the buyers to enter into such contracts. The Council did not object to legal practitioners charging separately for work done in relation to separate but related aspects of the arbitration, as this would offer consumers more options and flexibility when their cases were being handled. As to whether personal injury claims should be treated differently from other claims in arbitration, the Council was of the view that consumer arbitration could increase in the long run and the market would constantly evolve, so it was important that such a decision should be reviewed from time to time.

## 向法律改革委員會就《與仲裁結果有關的收費架構》的諮詢文件提交意見

法改會於 2020 年 12 月就與仲裁結果有關的收費架構發表諮詢文件，建議修訂相關法例，准許律師就處理在香港及香港以外地方進行的仲裁，採用與結果有關的收費架構。由於消費者糾紛中所涉及的金額一般較商業糾紛少，因此，消費者都一般傾向不採用仲裁方式解決糾紛。然而，若糾紛涉及高昂價值的商品及服務，或是訂製產品，消費爭議仲裁是個可考慮的選擇。本會提交的意見僅旨在反映消費者關注的原則和考慮因素，至於法改會提出的技術性建議，應留待由香港律師會和香港大律師公會提供專門意見。

總括而言，本會支持法改會的建議，准許律師應在收費合理和消費者可負擔的水平下，採用與仲裁結果有關的收費架構，讓法律服務能夠更普及，亦讓消費者在充足的保障下，可作出知情和不同的選擇。本會強調法律專業人士必須遵守相關行為守則，並以清晰和具透明度的方式，向客戶解釋與仲裁結果有關的收費架構的條款和細則，以保障消費者利益。就此，本會歡迎對相關的行業指引和操守守則作出必要的修改，以達致以上目的。另外，本會支持就法律專業人士按仲裁結果可獲取的報酬設置一個適當上限，以符合消費者的期望，將仲裁收費定在可負擔的水平，和有合理比例的回報。

此外，本會倡議於《與仲裁結果有關的收費架構》的合約中引入強制性冷靜期。一直以來，本會認為強制性冷靜期能防止無良商戶以不良營商手法，或高壓手段來誘使消費者簽訂合約。本會不反對法律執業者就關乎仲裁的各項獨立但相關範疇的工作，分開收取費用，以讓消費者能在法律執業者處理其案件時，獲得更多選擇和靈活性。至於就應否對人身傷害申索與其他仲裁申索作不同的處理，本會認為長遠來說，消費爭議仲裁將會增加，加上市場正不斷演變，故此應定期檢討相關決定。

