

Improving Legal Protection

加強法律權益保障

WHY THIS IS IMPORTANT

Consumers' legal rights should be protected by law. We kept abreast of developments in the law that may affect consumers' positions and welfare as users of goods and services. Also we took all the initiative to improve and protect consumers' legal rights by submitting our views in that regard to the Government and relevant bodies.

WHAT WE HAVE DONE

Regulation on the Property Management Industry

The Council responded to the public consultation of the Administration regarding regulation on the property management industry.

The Council supported the proposal to establish a mandatory licensing regime for the property management industry, which could regulate the discipline, raise the professional standard and promote the development of the industry.

It was agreed that the proposed regime should encompass both the corporate and individual levels. It would be worth considering, the Council opined, that the proposed regime should take the form of multi-tier licensing, while noting that the impact of which had yet to be assessed.

The Council opined that a transition period for the introduction of the proposed regime was necessary for the property management companies and practitioners to prepare themselves for fulfilling the licensing requirements, but should not take long. It further urged the Administration to provide, in any event, incentives to property management practitioners for professional self-development.

Submission on the Proposed Legislative Amendments to Eradicate Pyramid Schemes

The Council welcomed the recommendation to expand the existing prohibition under the Pyramid Selling Prohibition Ordinance to cover pyramid selling schemes irrespective of (i) whether or not the schemes involved the selling, licensing, leasing, supply or provision of any goods, services, rights or interest and (ii) whether or not these transactions were

加強法律權益保障的重要性

消費者的法律權益應受法律保障。本會一向關注影響消費者權益的法律發展，此外，本會向政府和有關機構表達意見，以改善及保障消費者的法律權益。

我們完成的任務

物業管理行業的規管

本會就政府有關規管物業管理行業的公眾諮詢作出回應。

本會支持物業管理行業設立一個強制發牌制度的建議，它可以規範行業的紀律，提升專業水平，以及促進行業的發展。

本會同意建議中的發牌制度應涵蓋公司及個人的層面；而多重發牌是一項值得考慮的模式；同時亦注意到其效果仍須進一步研究。

本會認為在推出建議中的制度前，須有一段過渡期，讓物業管理公司及從業員作充分準備，以便符合發牌要求。但這段過渡期不應太長。而本會亦促請政府提供誘因，鼓勵物業管理從業員為自身的專業發展。

就取締層壓式計劃修例建議提交意見

本會歡迎有關擴闊現時《禁止層壓式推銷法條例》中的規管範圍的建議，該建議把(i)不論是否涉及銷售，特許經營，租賃，供應或提供任何貨品，服務，權利或利益；以及(ii)不論所涉及的交易是由個人，計劃經營商或任何其他與計劃有關人士參與的層壓式推銷計劃納入管制。

conducted by a participant, a scheme operator or any person under such scheme.

Given that the social harms caused by the operation of the schemes could be enormous, the Council supported the proposal to increase the current maximum penalty under the Ordinance. The Council also supported the recommendation of making it an offence for participation in the schemes. It appeared to the Council that the attributes of the proposed participation offence were sufficiently specific and narrow to prevent an innocent participant from being convicted.

Report on Public Consultation on Review of the Personal Data (Privacy) Ordinance (“PDPO”)

The Council was pleased to find that the way forward proposed by the Administration in the above Report were substantially in line with the Council’s views made during the public consultation. That said, the Council invited the Administration to review some of its position enunciated in the Report to afford even better personal data protection to consumer under the PDPO.

The Council called for replacing the “opt-out” regime under s.34 of PDPO with an “opt-in” regime for the use of personal data for direct marketing purposes. Explicit consent of the data subject should be obtained prior to any use of his/her data for such purposes. It was submitted that an opt-in regime would be more likely to represent a true consent of consumer and generally more able to alleviate concerns about deceptive practices. It would also be more effective in addressing the problems arising from the use of personal data in direct marketing, such as nuisance caused by unsolicited calls. As a transitional arrangement before an opt-in regime was put in place, a territory-wide central do-not-call register might address the nuisances caused by unsolicited telemarketing calls.

It was also submitted that sale and disclosure of personal data without the consent of the data subject should be made an offence. And, the consent referred to must be the opt-in one given by the data subject explicitly.

The Council also sought clarification as to the legal consequences of breaching the conditions for exemption from Data Protection Principle 3 for Transfer of Personal Data in Business Merger or Acquisition.

鑒於層壓式計劃的經營對社會造成巨大損害，本會支持提高現時條例中的最高罰款、及將參與層壓式計劃定為刑事罪行的兩項建議。本會認為建議中的參與罪行的屬性，已夠具體及精確，足以避免無辜的參與者被定罪。

檢討《個人資料(私隱)條例》的公眾諮詢報告

本會十分高興，政府於報告中提出的建議大致與本會於公眾諮詢期內發表的意見一致。然而，本會亦希望政府重新審視部份於報告內闡述的立場，在條例內為消費者提供最佳的個人資料保障。

就有關使用個人資料作直接促銷用途，本會要求以「選擇接受」機制取代條例第34條中的「選擇不接受」機制；本會認為在使用個人資料作該用途前，應先取得資料當事人的明確同意。「選擇接受」機制似乎更能代表消費者的真正同意，及釋除使用欺詐手法的疑慮。這亦能更有效地處理在直接促銷中使用個人資料的問題，例如未獲邀約的造訪所帶來的滋擾。在設立「選擇接受」機制之前，一個全港性的中央拒收訊息登記冊可作為一過渡性安排，以處理未獲邀約的電話促銷所帶來的滋擾。

本會亦認為，在沒有取得資料當事人的同意下出售或透露個人資料應列作刑事罪行，而這裏所指的同意必須是在「選擇接受」下由資料當事人明確給予的。

本會亦要求澄清有關在企業併購時的個人資料轉移中，違反免受保障資料第三原則管制的豁免條件之法律後果。

It was the concern of the Council that the proposed voluntary privacy breach notification system might not be adequate. Therefore, as submitted, a mandatory requirement should be imposed on data users to notify the affected individuals as soon as possible whenever there was a security breach which was likely to lead to or had led to leakage of personal data, so as to enable them to take appropriate remedial or precautionary steps.

As regards sensitive data such as biometric data, identity card number, health-related record, the Council urged the Administration to seriously consider taking forward the proposal to introduce more stringent protection.

The Council is of the view that the proposal for making repeated contravention a data protection principle on the same facts an offence is not supported by justification and should not be taken forward. Nevertheless, the Council supported the proposal that heavier penalties should be imposed on repeated non-compliance of enforcement notice.

While making no objection to the proposal that the Privacy Commissioner be empowered to provide legal assistance to aggrieved data subjects and conduct criminal investigation, the Council reiterated its position that the Department of Justice should remain to take charge of prosecution.

Submission on the Consultation Paper on Legislation to Enhance Protection for Consumers Against Unfair Trade Practices

The Council welcomed the recommendations made in the said Consultation Paper which had to a large extent responded positively to the Council's Report entitled "Fairness in the Marketplace for Consumers and Business" published in 2008.

While reiterating its call for introduction of a piece of comprehensive legislation addressing unfair trade practices, the Council understood that the proposed legal reform which included extending the scope of the Trade Descriptions Ordinance to cover services, conferring concurrent jurisdictions to Telecommunications Authority and Broadcasting Authority to enforce the proposed trade practice provisions, and giving consumers a private right to sue for contravention of those provisions would be a quick and expedient approach to combat the unfair trade practices that have aroused grave concerns.

本會亦關注到建議中的自願性個人資料外洩通報機制可能有所不足。故此本會建議，應強制規定資料使用者每當在出現保安漏洞，以致個人資料有機會或已導致洩漏時，儘快通知受影響人士，讓他們可採取適當的補救或預防措施。

至於敏感資料如生物辨識資料，身份證號碼，健康紀錄等，本會促請政府認真考慮推行引入更嚴格的保障措施的建議。

本會認為就同樣事實，重複違反保障資料原則的行為，訂為刑事罪行的建議沒有足夠理據支持，是不應推行的。然而，本會支持對重複違反執行通知加重刑罰的建議。

雖然本會不反對賦予私隱專員向受害資料當事人提供法律援助及進行刑事調查的權力，但本會重申有關檢控工作應交由律政司負責。

就打擊不良營商手法以保障消費權益的立法建議諮詢文件提交意見

本會歡迎諮詢文件所提出的建議。建議在很大程度上正面回應了本會於二零零八年發表題為《公平營商，買賣共贏》的報告。

雖然本會重申制訂一條全面性的法例以遏止不良營商手法的呼籲，但本會亦理解建議中的法律改革，包括：擴大《商品說明條例》的範圍以涵蓋「服務」、賦予電訊管理局和廣播管理局並行管轄權以執行建議中的營商手法條文、以及給予消費者私人訴訟權就違反該些條文的行為提出起訴等，能提供一個快捷及權宜的方法，去打擊引起重大關注的不公平營商手法。

Nevertheless, the Council urged that unfair trade practices regarding property transaction and unfair terms in standard consumer contracts should not be overlooked. They should be addressed duly through further legal reform.

It was submitted that the proposal of mandatory cooling-off periods, though welcomed, was too narrow in scope. It was confined only to the sale of timeshare rights and long-term holiday product and the consumer transactions concluded during unsolicited visits to consumer's home or places of work. The Council strongly suggested that the proposal should be extended to consumer contracts with prepaid arrangements.

At the time of writing this report, the Government revised the proposal. It further proposed that mandatory cooling-off periods be imposed on contracts, involving goods and/or services with a duration of not less than six months, while the two types of transactions covered by the original proposal should remain to be subject to cooling-off arrangements irrespective of their contract duration.

Submission on the Legal Practitioners (Amendment) Bill 2010 – Limited Liability Partnership for Legal Practice

Having expressed its views on the introduction of limited liability partnership ("LLP") for legal practice in Hong Kong in the preceding year, the Council made submission on the said Bill which provided for the introduction and regulation of this new business model.

The Council reiterated that it would not oppose the introduction of LLP for legal practice provided that consumer interest would be sufficiently safeguarded.

Support was expressed for the proposed provision excluding from the protection of limited liability a LLP partner who knew or ought reasonably to have known of the default of any other party at the time of its occurrence, and failed to exercise reasonable diligence to prevent its occurrence. The Council also welcomed the proposed provisions preserving property of a LLP to meet its liabilities and limiting the protection of limited liability to a partner who was a member of a LLP when the claim arose and where the client concerned knew or ought reasonably to have known that the partnership was a LLP at that time.

然而，本會促請政府不應忽視有關物業交易的不良營商手法，以及標準消費者合約中的不公平條款，這些問題都應以進一步的法律改革來妥善解決。

本會歡迎有關強制冷靜期的建議，但本會認為其適用範圍過於狹窄；它只局限於共度時光使用權和長期度假產品的銷售，以及在未獲邀約到訪消費者住所或工地點期間訂立的消費交易。本會強烈促請政府將有關建議擴展至預繳式消費交易。

在編寫此年報期間，政府提出修訂建議。貨品及/或服務合約如有效期不少於六個月，則需強制包括冷靜期條款。原先建議中涵蓋的兩種交易，不論合約長短，維持需加入冷靜期條款。

就有關《2010年法律執業者(修訂)條例草案》—法律執業的有限責任合夥事宜提交意見

於去年就香港引入法律執業的有限責任合夥(「限責合夥」)事宜提出意見後，本會再就引入及規管這種嶄新經營模式的草案表達意見。

本會重申，在消費者權益得到充份保障的情況下，不反對引入法律執業的「限責合夥」。

本會支持建議條文中訂明，當一名「限責合夥」的合夥人在失責行為發生時是知情或理應知情，且並無用合理努力去防止失責行為發生時，則該合夥人不可享有有限責任的保障。對保存「限責合夥」資產以應付法律責任，以及限責保障祇適用於合夥人在索償因由出現時，已是「限責合夥」的成員及有關客戶已經知悉或合理地應當知悉該合夥當時已是一「限責合夥」的建議條文，本會亦表示歡迎。

To facilitate a layman consumer to enforce his/her rights to seek redress against a LLP, the Council suggested that a direct and express provision clearly spelling out the liability of a LLP should be embodied in the Bill.

The Council recognised that the Professional Indemnity Scheme did render certain protection to consumer of a LLP in certain circumstances. But the statutory indemnity limit might not be adequate in view of the change of circumstances. Therefore, the Council suggested that it should be reviewed on a regular basis.

Report of the Working Group on Mediation

In response to the above Report, the Council expressed support to the use of mediation in dispute resolution. It proposed the ways it might promote awareness and understanding of the general public regarding the role mediation could play in resolving consumer complaints.

The Council noted that mediation had been applied to certain types of disputes. Given the merits of mediation, the Council supported the recommendation to organise pilot schemes for other types of disputes which may be suitable for mediation such as disputes in the workplace, land use and re-development. It also shared the view of the Report that promotion of mediation should be launched by a three-stage approach with multi-pronged tasks.

It was appreciated that training and accreditation of mediators supported by a robust disciplinary mechanism were the keys to the assurance of the quality of mediation service. In this regard, the Council submitted that a single mediation accrediting body should be established.

A standardised Code of Conduct was also a means to assure quality of mediation service. It should be widely promulgated and enforced by a robust complaint and disciplinary process.

The Council also emphasised that transparency and accessibility of information should be afforded to users of mediation to help them make informed choice.

The proposal to establish a proper legal framework for mediation was welcomed as it would provide a good platform for further development of mediation in Hong Kong. Nevertheless, the Council emphasised that such a legal framework should not hamper the flexibility in the process of mediation.

為方便未經專業法律訓練的消費者行使其權利，向「限責合夥」追討，本會建議法案應加入條文，直接及明確地說明「限責合夥」的法律責任。

本會亦理解專業彌償計劃確實能在某些情況下為「限責合夥」的消費者提供一定程度的保障。但由於環境的變遷，法定彌償的限額未必足夠。因此，本會建議應定期檢討專業彌償的限額。

調解工作小組報告

回應這報告，本會對於以調解解決爭議表示支持。本會亦提出一些方案，以提高大眾對於調解在解決消費者投訴中的角色之認知及理解。

本會注意到某些類別的糾紛已經採用調解。鑒於調解的優點，本會支持為其他可能適合調解的糾紛類別，例如在工作間、土地使用和重建方面的糾紛，舉辦試驗計劃的建議。本會亦贊同報告所提出，以三階段兼多管齊下的方式為調解推廣。

本會認同輔以一嚴格紀律處分機制的調解員培訓及認可制度是確保調解服務質素的關鍵。關於這點，本會認為應成立單一的調解員資格評審組織。

一套統一的調解員行為守則亦是確保調解服務質素的工具。該守則應被廣泛發佈，並由一個強而有力的投訴及紀律處分機制執行。

本會亦強調應向調解服務使用者提供透明及可接觸的資訊，以協助他們在選擇調解服務時作出明智的決定。

本會歡迎為調解設立一個合適的法律架構的建議，它可為調解服務在香港的進一步發展提供一個良好平台。然而，這法律架構不應影響調解程序之靈活性。

Land Titles Ordinance

The Council submitted its views to the Land Registrar in regard to the Law Society's stance on the proposed changes to the rectification and indemnity arrangements under the Lands Titles Ordinance.

It was submitted that the mandatory rectification rule would defeat the very purpose for which a title registration system sought to achieve. Therefore, the Council supported the mechanism of immediate indefeasibility with discretion being given to the court in very limited circumstances to rectify the register in favour of an innocent displaced owner.

In case the mandatory rectification rule was to be retained, the Council agreed that there should be exceptions to the rule. The Council gave its views on the three exceptions proposed by the Administration.

As regards indemnity, the Council reiterated that it should cover pre-conversion fraud. While the proposed cap of HK\$30 million was considered enough to cover most consumer transactions, it was proposed that it should be reviewed from time to time.

土地業權條例

本會就律師會有關《土地業權條例》中，更正及彌償安排的建議修訂所發表的立場，向土地註冊處處長提交意見。

本會認為「強制更正規則」會令到土地註冊制度無法達致原來的目的。因此，本會支持即時及不可推翻機制，並賦予法庭酌情權，在十分有限的情況下為無辜失去業權的擁有人更正註冊。

若強制更正規則獲得保留，本會贊同該規則應容許例外情況。並就政府建議的三項例外情況提供意見。

關於彌償方面，本會重申應涵蓋轉換前發生的欺詐。雖然三千萬元的建議彌償限額被視為足以涵蓋大部份的消費者交易，但本會建議政府應不時對此作出檢討。