

# Advancing Legal Protection for Consumers

## 加強消費者的法律保障

During the year under review, the Council made 4 submissions to the Government and the Law Reform Commission on matters relating to periodical payments for future pecuniary loss in personal injury cases; reciprocal recognition and enforcement of judgments in civil and commercial matters between Hong Kong and the Mainland; statutory cooling-off period for beauty and fitness services consumer contracts and archives law.

### **The Law Reform Commission of Hong Kong (“LRC”) - Consultation Paper on Periodical Payments for Future Pecuniary Loss in Personal Injury (“PI”) Cases**

In its submission, the Council supported the LRC’s proposal that the court be given legislative powers to make periodical payment orders (“PPO”) in respect of damages for future pecuniary loss in PI cases to alleviate the problem of under or over compensation associated with lump sum awards for future pecuniary loss currently faced by injured plaintiffs (“Plaintiffs”). In order to safeguard the Plaintiff’s interest, the Council was of the view that the court’s power to award PPO should be irrespective of the consent of the parties to the proceedings and should be vested widely.

The Council recognised the importance of having an authority to fix and conduct periodical revision of the discount rate and the selection of a multiplier and agreed that the Chief Justice should be the one to do so in consultation with others. In addition, the Council backed the need for review of the discount rate at regular intervals.

年內，本會就四項諮詢向政府及法律改革委員會提交意見，包括有關人身傷害個案按期支付未來金錢損失賠款、內地與香港特別行政區法院相互認可和執行民商事案件判決、美容和健身服務消費合約設立法定冷靜期及檔案法。

### **香港法律改革委員會（「法改會」）—人身傷害個案按期支付未來金錢損失賠款諮詢文件**

本會支持法改會建議，同意法庭應獲立法賦予權力，在人身傷害個案中就未來金錢損失的損害賠償作出按期付款令，以解決整筆付款導致過度補償或補償不足的情況。本會認為，法庭作出按期付款令的權力不應受限於與訟雙方同意，並應廣泛適用，以保障原告人的利益。

本會同意有需要賦權某個主管當局，負責訂定及定期檢討折扣率及選取乘數，並由首席法官作為該主管當局和負責諮詢其他持份者。本會亦支持有需要定期檢討折扣率。

Laws and codes of practice are the mainstay of consumer protection. To make sure consumer interests are continually advanced at legislative and regulatory levels, the Council regularly conducts studies on consumer issues and concerns from a legal perspective. The results of these studies, along with the Council's views, are submitted to the Government, stakeholders and the public. This serves to encourage public discussion and keep consumer policy consideration at the front of mind of relevant parties, in order to constantly enhance consumer protection.

法例和操守準則是消費權益的支柱。為確保消費者權益在法例及規管層面與時進步，消委會定期從法律角度研究各項影響消費者權益的議題，並將研究結果連同本會意見呈交政府、相關持份者及向公眾發布，從而引起公眾討論及提醒各方制訂消費政策的重要性，從而加強對消費者的保障。

The Council also considered that the ability to review or vary the original PPO by either party to the proceedings was crucial, but advocated that such applications be allowed only in restricted circumstances. Although not discussed in the LRC paper, the Council proposed that should the review be in the Plaintiff's favour, the costs of such application be borne by the defendant unless it was shown that the application was based on fraudulent evidence; the Plaintiff contributed to the deterioration of his/her circumstances; or the application was plainly vexatious or frivolous.

## **The Department of Justice (“DoJ”) - Consultation Paper on Proposed Arrangement between Hong Kong and the Mainland on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters**

The Council supported the proposal of the DoJ for Hong Kong to enter into a more comprehensive arrangement with the Mainland on the reciprocal recognition and enforcement of judgments in civil and commercial matters (“Proposed Arrangement”) and agreed that the existing Choice of Court Arrangement, which had a more restrictive application, should be superseded upon the Proposed Arrangement coming into effect.

As regards the level of courts to be covered, the Council invited the DoJ to consider the inclusion of claims awarded by the Small Claims Tribunal. As a matter of principle, consumers should not be precluded from being able to enforce an award from the Small Claims Tribunal against a trader's assets located in the Mainland, if they so wished, even though this might be infrequent in practice. Currently only awards in the District Court and above are included in the Proposed Arrangement. In the same vein and in the spirit of reciprocity, the Council submitted that it would be appropriate to extend coverage to judgments made by any Mainland courts at any level.

本會認為與訟雙方應有權覆核或更改原來的按期付款令，而有關申請應限於特定情況。縱然在諮詢文件中未有提及，本會建議若覆核結果對原告人有利，除非該申請是基於虛假證據、原告人自行造成的狀況惡化或該申請顯然是無理或瑣屑無聊，否則該申請之費用應由被告承擔。

## **律政司—關於香港與內地訂立安排以相互認可和執行民商事判決的建議諮詢文件**

本會支持律政司建議，香港與內地就相互認可和執行民商事判決應有更全面的安排（「建議安排」）。本會亦同意現行的《選擇法院安排》的適用範圍有限，應被將來生效的建議安排取代。

至於涵蓋的法院級別，本會建議律政司考慮納入小額錢債審裁處頒下的賠償。原則上，雖然在實際情況下並不常見，消費者亦應有權向商戶位於內地的財產執行小額錢債審裁處的判令，但現行的建議安排只涵蓋區域法院或以上法院的判令。同樣地，基於相互精神，本會認為建議安排亦應擴展至涵蓋內地各級別法院的判決。

## Consultation Paper on Statutory Cooling-Off Period for Beauty and Fitness Services Consumer Contracts

The Council welcomed the legislative priority and timeline accorded by the Government in enacting the cooling-off legislation in the present Legislative Council term. In its submission in response to the Consultation Paper, the Council supported the Government's proposal that for the time being, a progressive approach should be taken to focus on trades most commonly associated with aggressive commercial practices and involving large amounts of prepayments, i.e. beauty and fitness services contracts.

Although the time-share industry did not fall within the proposed legislation at this stage, the Council suggested that proposed legislation be drafted so that there was a principal legislative framework, with the types of contracts/trade; the amount of prepayment; other operational arrangements, etc. to be included in a subsidiary legislation so that the Government could react in a timely manner should aggressive commercial trade practices appear or emerge in a particular trade or contract.

The Council also supported the Government's proposed exemptions but noted the following needs: to clarify the definition of 'massage services' and 'exercise machines' and to keep under review the charitable organisation exemption to prevent this being used by collaborating profit-making entities; so that abuse of these exemptions could be prevented.

## 就美容和健身服務消費合約設立法定冷靜期諮詢文件

本會對政府把法定冷靜期事宜列作優先事項並期望於本立法年度通過立法表示歡迎。在意見書中，本會支持政府所建議現時宜以循序漸進的方式，首先集中處理最常使用具威嚇性營業行為的行業及涉及大金額預繳款項的合約，即美容和健身服務合約。

雖然現階段的建議法例並不包括時光共享服務，本會建議在一主體法例下擬訂附屬法例，列出合約/行業的類型、預繳款項的金額、其他運作安排等，讓政府可以在某一行業或某類合約出現具威嚇性的營業行為時作出適時的回應。

本會亦支持政府建議的豁免，但注意到以下需要：釐清「按摩服務」和「運動器械」的定義；以及檢討慈善團體的豁免以防範牟利機構藉著與慈善團體合作模式而取得豁免，防止濫用情況。



Furthermore, the Council supported all the other operational proposals and in addition, suggested the following for further consideration: i) specific provisions should be inserted to cater for instances when the last day of the cooling-off/refund period falls on a public holiday or black rainstorm/gale warning so that both consumer and traders' rights would be preserved; ii) traders should be required to explain to consumers the administrative charge difference between payment by instalment payment plans or one-off payment to enable an informed decision to be made on the choice of payment method; iii) criminal sanctions including imprisonment be imposed for failure to comply with an enforcement notice; iv) the Court be empowered to award compensation to consumers; v) criminal liability be imposed on delinquent directors, shadow directors, etc. in line with similar provisions in the Trade Description Ordinance; and vi) the threshold level of beauty and fitness services contracts and the levels of fines or other penalties be put in the subsidiary legislation so that expeditious amendments can be achieved when necessary.

## Submission to the LRC of Hong Kong on Archives Law

In its submission, the Council supported the LRC's proposal to introduce an archives law to strengthen and monitor the current public records and archives management framework.

In addition, the Council was of the view that the current placement of Government Records Service (Hong Kong) (GRS) should continue to be within the Government, and should be headed by a Chief Archivist. An advisory body should be established to give advice and guidance on the management of archival matters while GRS should be responsible for the operational aspects. The Council also proposed that GRS should be empowered to ensure compliance by the Government bureaux and departments (B/Ds) and impose proper sanctions upon the B/Ds in case of breach; and investigate suspected breaches and issue enforcement notices requiring remedy of the breach, with non-compliance constituting an offence for which the B/Ds would be subject to fines or more stringent penalties.

As this new law could create administrative burden on smaller bodies/organisations, the Council suggested that these smaller entities should be given the necessary and/or additional resources and support to enable them to comply with the new law, with pragmatic guiding codes to be drawn up by the new advisory body to give proper guidance and assistance especially during the implementation stage.

Notwithstanding the concerns of the conflict between archives law and privacy protection, the Council agreed that data protection principles should be strictly adhered to save for the exceptions stated in the current Personal Data (Privacy) Ordinance ("PDPO") and reminded the Government that when drafting any future amendments to PDPO, there is a need to maintain, reflect and incorporate the same balance into the new legislation.

此外，本會支持所有其他運作安排的建議，並提出以下建議作進一步的考慮：i)應加插特定條文，以應對當冷靜期或退款期的時限的最後一天為公眾假期、黑色暴雨警告日或烈風警告日的情況，以維護消費者和商戶雙方的權益；ii)規定商戶須向消費者解釋分期付款和一筆過付款在行政費上的差別，讓消費者可以在決定付款方式前充分掌握資訊；iii)對違反執行通知者施加包括監禁的刑事處罰；iv)授權法院下令，向消費者作出賠償；v)對犯罪的董事、幕後董事等人施加與《商品說明條例》條文類似的刑事責任；及vi)將美容和健身服務合約的門檻和罰款級數或其他懲處放至附屬法例中，以便在有需要時可迅速修訂。

## 就檔案法向法改會提交意見

在意見書中，本會支持法改會推行檔案法的建議，以加強及監察現時公共檔案及歷史檔案的管理架構。

此外，本會提出檔案處在政府內的現行編設位置應維持下去，以一名總檔案主任為首，並成立諮詢機構就檔案管理事宜作出建議及指引，而檔案處則負責營運事宜。本會亦建議檔案處應有以下職權：確保政府各局/部門遵從檔案法及對違例的局/部門予以制裁；及調查各局/部門的懷疑違例個案及發出要求修正的執行通知。不遵守執行通知將構成罪行，並設有罰款或更嚴厲的刑罰。

有見新法例的推行會加重規模較小的團體/機構的行政負擔，本會建議政府向這類小型機構提供所需或額外的資源及支援以助其遵從新法例。尤其於立法初期，新成立的諮詢機構亦應制定實務指引以提供合適的指導及協助。

縱使檔案法與私隱保障之間有存在衝突的疑慮，本會同意除了現有《私隱條例》的豁免外，個人資料的保障原則必須確實實行。本會亦提出，將來政府如對《私隱條例》作出修訂，修訂法例必須維持及反映現有平衡。