



ADVANCING LEGAL PROTECTION FOR CONSUMERS

加強消費者的法律保障

Consumers are better protected if their rights are stipulated in law or codes of practice and in this regard 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.

消委會深信，如果消費者權益在法律或實務守則中列明，消費者就會得到更好的保障。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 under review, the Council made five submissions to enhance legal protection of consumers to the Government and relevant bodies on matters relating to the legislative proposal to encourage making of apologies, legal protection rendered to consumers as unsecured creditors, and third party funding for arbitration. The Council also commented on the draft code of practice for pharmaceutical manufacturers and authorized persons.

Consultation on the Draft Code of Practice for Licensed Manufacturers and Registered Authorised Persons

In its submission to the Pharmacy and Poisons Board, the Council was supportive of the objectives of the Draft Code to ensure the entire manufacturing process of pharmaceutical products in Hong Kong would meet public expectations of safety and that the products would meet consumer expectations of efficacy.

To better achieve these objectives, the Council suggested addition of a requirement for licensed manufacturers to manage the transportation process of pharmaceutical products, as well as a requirement for timely reporting of any suspected and proven serious adverse drug reactions to the Drug Office. The Council also proposed that the exact requirements for an individual to be eligible for registration as an Authorised Person, for example professional qualifications and minimum years of experience, should be clearly specified. Besides, the Council suggested that a licensed manufacturer should have more than one Authorised Person so as to ensure no interruption or disruption on compliance with the Code in the manufacturing process.

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，就不同的事宜向政府及相關機構提交5份意見書，涉及範疇包括制定道歉法例、消費者作為無抵押債權人的法律保障，以及第三方資助仲裁。本會亦就藥劑製品製造商及獲授權人的執業守則草案提供意見。

《持牌製造商及註冊獲授權人執業守則》 草擬本的諮詢

本會認同訂立上述執業守則的目的，即確保藥劑製品的製造過程在安全及療效方面，均要達到大眾期望。

為能夠更有效地達到這些目的，本會建議，就持牌製造商如何處理藥劑製品運送過程，加入規管條文，並要求持牌製造商就任何懷疑和已證實產生嚴重藥物不良反應的個案，要及時向當局匯報。此外，本會建議清楚列明對註冊獲授權人的具體要求，例如專業資格及最低年資經驗。同時，本會亦建議持牌製造商應有多於一名獲授權人，以確保整個藥劑製品的製造過程，符合上述的執業守則。



Consultation on Enactment of Apology Legislation

In response to the two rounds of consultation on enactment of the Apology Legislation during the reporting period, the Council made two submissions in support of the proposed legislation, clarifying the legal consequences of apology making and encouraging apology making in circumstances where such apology can facilitate amicable settlement of disputes. The Council agreed with the recommendation that the proposed legislation should take the form of a standalone piece of legislation, specifying also that an apology shall not affect any insurance coverage available to the person making the apology.

Based on its experience in handling consumer complaints, the Council suggested that statements of fact in connection with the matter in respect of which an apology has been made should be treated as part of the apology and protected as such. However, flexibility should be retained in the interest of securing justice by giving the Court the discretion to admit such statements of fact as evidence against the maker of the apology in appropriate circumstances.

Submission on Companies (Winding up and Miscellaneous Provisions) (Amendment) Bill 2015

Whilst appreciating the underlying objective of the legislative proposals to facilitate more efficient administration of the winding up process and enhance protection of creditors through streamlining and rationalising the winding up procedures, the Council invited the Bills Committee of the Legislative Council to give due consideration to the vulnerability of consumers as unsecured creditors in the event of corporate insolvency of a retail merchant. Being part of the class of unsecured creditors, consumers are more likely to recover nothing or only a tiny fraction of proceeds when the realised assets of the insolvent company are distributed. Unlike lenders, suppliers or investors, consumers lack the means to assess the financial viability of the retail merchant and are not in a position to negotiate for terms that mitigate default risk or to acquire insurance against such risk.

The Council suggested that the position of consumers could be moved up on the list of creditors so as to lessen the inequality between consumers and other unsecured creditors in terms of bargaining power and access to information.

Consultation on Third Party Funding for Arbitration

In general, the Council agreed that the Arbitration Ordinance should be amended to permit third party funding for arbitration taking place in Hong Kong, as long as it might serve the purpose of enhancing the rights of consumers to access for justice.

The Council believed that third party funding might encourage consumers who are under financial constraints to use arbitration to resolve disputes with traders, which in turn can reinforce the role of arbitration as a form of access to justice in consumer protection. The Council considered it pivotal to have clear and high ethical and financial standards for third parties providing funding to parties to arbitration.

制訂道歉法例的諮詢

在報告期內，就有關制訂道歉法例的兩輪諮詢，本會共提交兩份意見書。本會認為道歉法例能釐清作出道歉的法律後果，並鼓勵爭議雙方透過道歉促成和解。故此，本會支持制定道歉法例。本會同意道歉法例應以獨立法例的形式制定，亦同意作出道歉的人士在保險合約下的權益將不受影響。

根據本會處理消費者投訴的經驗，本會認為與道歉相關的事實陳述，應被視為道歉的一部分，並加以保護。然而，為確保公義，法院應保留酌情權，在適當情況下，可接納道歉內一些事實陳述作為證據。

公司（清盤及雜項條文）（修訂）條例草案意見書

本會認同上述條例草案的目的，即優化清盤程序，及加強對債權人的保障。本會藉此機會促請立法會的法案委員會，考慮消費者在遇上零售商清盤時，成為無抵押債權人的不利處境。作為無抵押債權人，消費者在清盤人所分派的變現可得款項中，往往只能討回些微款項，甚至一無所獲。而與貸款人、供應商和投資者相比，消費者缺乏評估零售商財務狀況的能力，亦不能與零售商商討交易條款，以減低零售商違約的風險，或取得保險保障。

本會建議，在排列債權人獲償還債務的優先次序上，消費者的位置應獲提升，以減低在議價能力及獲取信息方面，消費者與其他無抵押債權人之間的不平等差距。

第三方資助仲裁的立法諮詢

考慮到有關建議有助提升消費者尋求公義的權利，本會支持修訂仲裁條例，以允許第三方資助在香港進行的仲裁。

本會認為，第三方資助可鼓勵有財務困難的消費者，使用仲裁解決與商戶之間的糾紛，並提升仲裁作為消費者在尋求公義途徑上可擔當的角色。同時，本會認為，在規管資助仲裁的第三方出資者方面，必須訂立清晰及嚴謹的道德及財務要求。