

# ADVANCING LEGAL PROTECTION FOR CONSUMERS 加強消費者的法律保障

## Alternative Dispute Resolution Regime for Consumer Protection

In the past 3 years, the Council received about 27,000 complaints annually arising from consumer transactions under different categories. Over 70% of the complaints were resolved by conciliation. Consumers of the unresolved cases would be left little choice, either merely gave up their claims or made recourse to legal proceedings.

With a view to seeking a mechanism for resolving consumer disputes in a manner that is more efficient and cost-effective, the Council conducted an in-depth study, entitled "The Role of Consumer Arbitration in the Alternative Dispute Resolution Regime for Consumer Protection". The study shows that there is a potential demand for resolving consumer disputes by alternative dispute resolution.

Drawing reference from overseas experience, the Council suggested introducing a cost-effective alternative dispute resolution mechanism with the establishment of a Consumer Dispute Resolution Centre (CDRC), adopting the approach of "Mediation First, Arbitration Next" for resolving consumer disputes. Such a model may help alleviate the caseload of the courts; and improve social harmony by promoting meaningful direct dialogue between the parties.

## Submissions on Legal Protection

During the year under review, the Council made 2 submissions to the Government and the Financial Dispute Resolution Centre (FDRC), respectively on matters related to recognition and enforcement of foreign judgments and financial dispute resolutions.

## 訴訟以外的方式解決消費爭議

過去3年，本會每年平均接獲約27,000宗涉及不同消費範疇的投訴，當中超過7成個案均可透過調停方式解決。而未能解決的個案，消費者只能選擇作罷，或透過法院訴訟去解決爭議。

為了尋求一個更具效率及成本效益的消費爭議處理機制，本會進行了一項專題研究，審視仲裁在排解消費爭議和保障消費者權益上的角色，結果發現消費者對訴訟以外的解決爭議機制有很大的潛在需求。



參考了海外經驗，本會建議成立一所「消費爭議解決中心」，提供「先調解，後仲裁」的模式去解決消費糾紛。這個模式有助減低法院處理案件的數量，並能促進爭議雙方直接對話，從而提升社會和諧。

## 就法律保障提出意見

過去一年，本會分別向政府及金融糾紛調解中心（調解中心）提交2份意見書，分別涉及外國判決的承認和執行，以及金融爭議的排解。



Laws and codes of practice are bulwarks of consumer protection. To enhance consumer rights and interests at the legislative and regulatory levels, it is the Council's ongoing task to conduct studies on consumer issues from a legal perspective and have the results submitted to stakeholders concerned and the public, with the aim of stimulating policy consideration and public discussion.

法例和守則是消費權益的壁壘。本會將繼續從法律角度研究各項影響消費者權益的議題，並將結果呈交各相關持份者和向公眾發表，目標引發相關政策的考慮和公眾討論。

### Consultation on the 2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments (the Draft Convention)

In its submission to the Department of Justice, the Council pledged its support to the application of the Draft Convention to anti-trust or competition matters, regarding suppression of competition by any corporation, including acts across borders that may be detrimental to consumer interests.

The Council also subscribed to certain provisions of the Draft Convention that were intended to protect litigants who act as consumers in the subject matters. In light of the rapid growth of the sharing economy across the globe, the Council suggested that the meaning of "consumer contract" be clarified on whether such a contract covers consumer-to-consumer transactions.

### Consultation on Proposals to Enhance the Financial Dispute Resolution Scheme

In its submission to the FDRC, the Council pledged support to the proposal of providing more cost-effective and time-efficient options for alternative dispute resolution to enhance consumers' rights to redress. On this premise, the Council agreed to various proposed amendments to the intake criteria, which would enable the FDRC to deal with a wider class of cases and claims being subjects of the court proceedings without withdrawing the case from the court.

To ensure a low-cost and efficient alternative dispute resolution process for the general public, the Council suggested that legal representation should not be allowed in mediation conducted at the FDRC. The Council recommended that the existing approach of "Mediation First, Arbitration Next" should be maintained. As regards the proposal to allow financial institutions to refer financial disputes to the FDRC, the Council called for serious consideration; and opined that if this proposal was implemented, measures should be in place to ensure that informed consent from the claimant would be obtained in a fair and just manner.

### 2016年外國判決承認和執行公約草案初稿諮詢(公約草案)

本會向律政司提交意見書，認同公約草案應涵蓋與反壟斷法或競爭法有關的判決，以處理企業為壓抑市場競爭而作出可能損害消費者利益的跨境行為。

本會亦支持公約草案中加入特別條文，為在相關事情中作為消費者的訴訟方提供保障。鑑於全球共享經濟迅速發展，本會建議釐清公約草案中的「消費合約」是否涵蓋個人對個人的交易。

### 建議優化金融糾紛調解計劃的諮詢

本會向調解中心提交意見書，認同為消費者提供更具有成本效益及更便捷的替代排解爭議程序，以助提升消費者尋求補償的權利。因此，本會支持多項建議修改，以擴大合資格申索範圍，讓調解中心能處理更多類別的個案，以及接受正於法院進行訴訟的申索，讓申索人在毋須撤銷其案件的情況下，使用中心的服務以排解爭議。

為了確保公眾可使用低成本及高效率的替代排解爭議程序，本會建議於調解中心進行的調解程序，不應允許律師代理。本會並建議維持原有的「先調解，後仲裁」模式來處理爭議。另外，對於允許金融機構將金融爭議提交中心處理的提議，本會認為應審慎考慮；並建議如落實此提議，必須實施適當措施，確保申索人是在公平及公正的情況下作出知情的同意決定。