

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 legislations 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 paid off, resulting in amendments to many current laws or the introduction of new legislations, and ensuring consumer protection is at the forefront of the minds of the relevant parties.

本會多年來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，並向政府作出審慎的建議。數十年來付出的努力得到成果，促成修改不少現行法例或訂立新法，確保各方以考慮保障消費者權益為依歸。



Money Lending – Reforming Law and Trade Practices for Consumer protection (the Report)

A booming consumer lending market in Hong Kong in the past decade resulted in a significant rise in licensed money lenders, accompanied by a substantial increase in credit card overdrafts and personal loans offered by authorised institutions. Despite this, the existing Money Lenders Ordinance (“MLO”) has not had any major amendments since its enactment over 40 years ago, rendering it outdated and ineffective in regulatory oversight.

The Council carried out a review of the consumer lending practices and the current laws and regulations in Hong Kong. It was found that habitual overspending is a primary cause for bankruptcy and multi-time bankruptcies. Unfortunately many consumers suffer from poor debt management and a lack of knowledge of credit products and borrowing costs, due to inadequate advice on indebtedness such as the availability of and access to affordable credit. The abundant aggressive marketing to promote the ease of borrowing without prudent assessment on

保障消費權益 — 改革放債法規和營商手法（「該報告」）

過去十年，香港蓬勃發展的消費貸款市場導致持牌放債人顯著增加，同時認可機構提供的信用卡透支和個人貸款也隨之上揚。儘管如此，香港仍然沿用40年來未有重大修訂的《放債人條例》，顯得不合時宜及未能作出有效的監管。

本會檢視消費者的借貸行為及香港現行的法律法規，發現過度消費的習慣是破產和多次破產的主要成因，而不少消費者亦會因債務管理不善，以及對信貸產品和借貸成本的認知不足而蒙受損失。由於借貸諮詢服務不足，例如尋找貸款選擇和途徑，以及在沒有對還款能力進行審慎評估下，消費者容易被以借貸簡便作為招徠的宣傳手法吸引，而導致以高昂利率借貸。

repayment ability has also resulted in more consumer borrowing at high or even exorbitant interest rates.

From reviewing the industry's advertisements on different platforms, interviews with the trade, a consumer credit reporting agency, borrowers who suffered from revolving loans, social welfare agencies and a review on the Council's complaint cases, the study had identified 9 key issues that need to be resolved through effective regulatory measures, namely:

- (1) Lack of a Sector Specific Regulator
- (2) Inadequate vetting on licence applications
- (3) Ineffective regulation on the conduct of money lenders
- (4) Lack of prudent credit assessment
- (5) Abuse of referee's personal data
- (6) High interest cap
- (7) Excessive and misleading advertising
- (8) Limited enforcement tools and consumer redress
- (9) Low market transparency

To address the problems, the Council made reference to 5 other jurisdictions, benchmarked their regulatory models and proposed the following four

本會檢視借貸行業在不同平台上的廣告，並與行業持分者、消費者信貸報告機構、因循環貸款而蒙受損失的借款人和社福機構會面，亦檢視了本會接獲的相關投訴個案，在該報告中提出9大關注事項，認為有需要透過有效的監管措施去解決：

- (1) 沒有特定的行業監管機構
- (2) 牌照申請的審查不足
- (3) 對放債人的行為監管不足
- (4) 缺乏審慎的信貸評估
- (5) 濫用諮詢人的個人資料
- (6) 貸款利息上限過高
- (7) 廣告過多及帶誤導性
- (8) 執法工具及解決消費糾紛方法有限
- (9) 市場透明度低

針對有關問題，本會參考了5個其他司法管轄區的監管模式為基準，提出四項建議，包括修訂現行法例、成立新的專責行業監管機構、改善市場透明度及加強消費者教育和提供有效的諮詢服務，希望可藉此改善業界的操守，並確保放債人和借款人以公平原則履行合約。



recommendations: amendments to the MLO; establishment of a new sector specific regulator; improvement in market transparency; and strengthening of consumer education and the provision of advisory services. The Council believed that these recommendations would improve the conduct of the industry members and ensure that both money lenders and borrowers would abide by the principle of fairness when performing their contractual obligations.

Submission to the Department of Justice - Consultation Paper No. 2 on 2018 Draft Convention on the Recognition and Enforcement of Foreign Judgments

In its submission, the Council did not support the proposal to exclude “privacy” from the scope of the 2018 Draft Convention due to increasing cross-border consumer activities and the fact that the right to privacy is a key consumer right which warrants protection. The option to make a declaration not to apply the Convention to a specific matter should sufficiently address the problem of sensitivity envisaged by the Special Commission of the Hague Conference on Private International Law.

Similarly, the proposal to exclude “intellectual property and analogous matters” was considered undesirable bearing in mind the trend of increased globalisation of consumer activities. To address the problem of territoriality, the Council suggested that enforcement could be limited to monetary remedies.

As for the proposal to exclude “anti-trust (competition) matters”, the Council continued to urge for its inclusion to better safeguard consumer interests by promoting market competition and suggested that matters falling within Part 7 of the Competition Ordinance (Cap. 619), dealing with private follow-on actions for loss and damages, be covered by the Draft Convention. Finally, as regards the definition of “consumer”, the Council proposed that the scope of “consumer” should be expanded to cover not just natural persons but also legal entities dealing as consumers.

Submissions to the Land Registry - Discussion Paper on Automatic Issuance of Title Certificates under the Land Titles Ordinance (Cap. 585) and Invitation of Members' views on whether the proposed opt-in arrangement for issuance of title certificates or the mandatory issuance should be adopted

In April 2019, the Land Registry (“LR”) proposed that an opt-out mechanism for issuance of title certificates under the Land Titles Ordinance (“LTO”) (i.e. all title certificates shall be issued automatically upon application for registration unless the applicant chooses otherwise) should be introduced (“the Proposal”). The Proposal was the opposite of the existing opt-in mechanism under the LTO.

律政司 — 關於 2018 年外國判決承認和執行公約草案第 2 號諮詢文件提交意見

本會考慮到跨境的消費活動不斷增加，就意見書中提出將「私隱」作為一項重要消費者權利豁除在 2018 年公約草案範圍之外，本會並不支持。事實上，公約草案已容許締約國，可就特定事宜，聲明公約不適用於該些事宜，此選擇已充分處理海牙國際私法會議特別委員會所提出的敏感事項問題。

同樣地，本會考慮到消費活動趨向全球化，認為豁除「知識產權和類似事項」的提議並不可取。為了解決地域性的問題，本會建議執行僅限於金錢上的補償。

就豁除「反壟斷（競爭）事項」的提議，本會仍會繼續要求將其納入在公約內，促進以市場競爭的方式來有效地維護消費者利益，並建議公約草案應涵蓋《競爭條例》（第 619 章）第 7 部分有關追討損失和賠償的私人後續訴訟的事宜。最後，就「消費者」的定義，本會建議應將「消費者」的範圍擴大至不僅適用於一般人，還要包括以消費者身份作交易的法人。

土地註冊處 — 關於《土地業權條例》（第 585 章）下自動簽發業權證明書的討論文件，以及關於採用自動或強制性發出土地業權證書的選擇安排提交意見

2019 年 4 月，土地註冊處建議引入根據《土地業權條例》發出業權證明書的選擇退出機制（即除非申請人表示不同意，否則所有業權證明書均會在申請註冊後自動發出）（下稱「該建議」），該建議跟現行《土地業權條例》的選擇發出業權證明書機制剛好相反。

在土地註冊處未有提供充足資料和研究結果下，以及該建議是基於土地註冊處假定大多數業主均希望擁有及保存業權證明書，由於業權證明書僅是一個業權的標記而非業權證明，本會建議土地註冊處應先尋求銀行界和按揭公司的意見，確定在申請按揭時是否如土地註冊處的假設般需要業主出示業權證明書，以了解業主對業權證明書的需求，及應就其假設諮詢各主要利益持份者的意

In the absence of the provision of adequate information and in-depth research by the LR, the fact that the Proposal was predicated on LR's assumption that most property owners would like to have and keep a title certificate. Noting that a title certificate was only an indicia of ownership and would not prove title to a property, the Council urged the LR to solicit views from the banking industry and mortgage companies to ascertain if they would require production of title certificates as assumed by the LR; to ascertain the demand of property owners for title certificates; and to obtain and consider views from all major stakeholders. Despite the absence of the aforesaid information, the Council submitted that the opt-in procedure might offer better protection to property owners as it would encourage property owners to obtain detailed legal advice which would enable them to make an informed choice.

The LR subsequently further invited submissions from members of the Land Titles Ordinance Steering Committee on whether the opt-in mechanism under the enacted LTO with the proposed administrative means should be changed to a mandatory issuance, with no option for the owner not to obtain and keep a title certificate.

In the absence of information showing how the proposed mandatory issuance of title certificates would prevent property fraud, the Council maintained the same view as previously submitted in April 2019, that property owners should be allowed to make an informed decision based on proper legal advice as to whether or not to obtain a title certificate. The Council reiterated that the importance of an informed choice was paramount as obtaining a title certificate had both positive and negative repercussions to property owners in different situations depending on the circumstances and wishes of the individual purchaser and his/her future plans for the property. In addition, consumers might not view the value of having a title certificate to be as high since it would only be an "indicia of ownership" and would not prove title to a property, especially as it was envisaged that parties should still check against the Title Register to verify ownership of a property and not solely rely on the production of a title certificate.

The Council further submitted that irrespective of whether a title certificate was available in support of a transfer, it was anticipated that solicitors would continue to take reasonable "know your client" steps which should be the most pragmatic and effective way of minimising property fraud. The Council pointed out the possible danger of over-reliance on the production of a title certificate as proof of the holder's identity, as this might encourage a less thorough due diligence to be carried out when checking identity compared to what was currently in place, thereby increasing the risk of fraud.

見。在沒有上述資料可作參考的情況下，本會認為保留選擇發出業權證明書機制或會為業主提供較佳的保障，因這可鼓勵業主就是否需要業權證明書尋求詳盡的法律意見，並作出知情的選擇。

土地註冊處之後進一步要求土地業權條例督導委員會就應否把現行《土地業權條例》下的選擇發出業權證明書機制更改為強制性發出業權證明書，不給予業主選擇是否需要及保存業權證明書的建議提交意見書。

在未有資料顯示強制性發出業權證明書將如何防止欺詐物業的情況下，本會維持於2019年4月所提交的意見書的觀點，即應該容許業主就是否領取業權證明書事宜，索取適當的法律意見，並作出知情的決定。本會重申，知情的選擇至為重要，業主應該根據自己的情況和意願，以及物業的用途，衡量擁有業權證明書的利與弊。此外，業權證明書只是一個「業權的標記」，而不是物業的業權證明，因此，當消費者在轉讓物業時，不能完全單靠業權證明書，而仍需依賴業權註冊紀錄來核實業權，這可能影響消費者領取業權證明書的意慾。

本會進一步提出，無論在物業轉讓時是否擁有業權證明書，相信律師仍會執行合理的「認識你的客戶」程序，這應是最務實和有效避免物業欺詐的方法。本會亦指出過分依賴業權證明書有可能導致律師在檢查物業業權時，未能徹底執行盡職調查，從而增加欺詐的風險。