

ADVANCING LEGAL PROTECTION FOR CONSUMERS

促進消費者的法律權益



The Council has consistently advocated for legislative reform and/or the establishment of industry codes of practice and measures to strengthen the legal rights and remedies available to consumers. It does this by conducting studies on topical issues of consumer interest from a legal perspective, and by making carefully drafted recommendations in response to the Government's consultation exercises. Over the decades, these efforts have resulted in numerous amendments to current laws or the introduction of new legislation, and ensured that consumer protection remains firmly in the minds of all parties involved.

本會一直倡議通過法律改革及 / 或制定行業營商守則及措施，加強消費者法律權益及救濟。為此，本會針對與消費者利益相關的熱點議題進行法律研究，並在政府的諮詢工作提出審慎的建議。本會數十年來付出的努力獲得豐碩的成果，促成修改多項現行法例或訂立新法，確保有關方面以保障消費者權益為己任。

Purchase of Properties Outside Hong Kong — A Study on Enhancing Consumer Protection

In October 2021, the Council released the study report titled "*Purchase of Properties Outside Hong Kong – A Study on Enhancing Consumer Protection*", in which recommendations were made to strengthen the regulation of sales of properties situated outside Hong Kong ("POH") for the betterment of consumers purchasing non-local properties. The Council's work coincided with the upsurge of POH-related complaints and Consumer Legal Action Fund (CLAF) applications received by the Council in 2021 arising from the failure of 2 property developments in Thailand and Zhuhai.

The Council researched into the changing dynamics of the POH market in recent years; reviewed related consumer complaints received and handled by the Council; commissioned a survey of POH advertisements; analysed the unscrupulous trade practices and consumer-related issues thus identified; engaged with various stakeholders (including the statutory and regulatory bodies and 2 major estate agencies) to exchange views; and conducted mystery shopping exercises to 20 traders. The following key areas of concern were identified:

《境外置業添保障》研究報告

在 2021 年 10 月，本會發表《境外置業添保障》研究報告，建議全面強化銷售香港境外物業的監管，保障廣大消費者的權益。本會的研究正值 2021 年，兩個位於泰國和珠海的地產項目爛尾，因而導致有關境外物業的投訴及消費者訴訟基金的申請均有所飆升。

本會對近年瞬息萬變的境外物業市場進行研究、檢視本會收到和處理的相關消費者投訴、就銷售境外物業相關的廣告進行調查、分析不良營商手法和消費者相關問題、與不同持份者（包括法定和監管機構，以及兩間主要地產代理公司）接觸並交換意見，並以神秘顧客身份訪問了 20 個商戶。本會總結出以下主要關注事項：

- (1) The lack of licensing requirement for estate agents dealing with POH exclusively and vendors;
- (2) No cooling-off period for purchase deposits, reservation fees or deposit protection mechanisms in place;
- (3) Insufficient regulation of advertisements; and
- (4) Undesirable trade practices.

The Council, after thoroughly considering various stakeholders' views and based on the findings of the report, recommended that:

- (1) All estate agents and salespersons who engage in the sale of first-hand residential POH are required to be licensed under the Estate Agents Ordinance ("EAO");
- (2) The existing statutory duties concerning the provision of information to purchasers and the regulation of advertisements under the EAO be imposed on estate agents and salespersons who engage in the sale of first-hand residential POH;
- (3) Specific information be provided to the potential purchasers, and the content of the advertisements be further regulated;
- (4) A cooling-off period of not less than 7 days for reservation fees be introduced; and
- (5) Upon a reasonable time after implementation of the above 4 recommendations, a review be carried out on the necessity to impose a mandatory requirement that all sales of first-hand residential POH be conducted through licensed estate agents/salespersons.

Following publication of the study report, the Council met with various estate agencies associations to exchange views. Positive feedback was received on the requirement for agents engaged in marketing of POH to be licensed. The Council hopes that the release of the study would stimulate constructive discussions among all relevant stakeholders and the public, and that its recommendations could gain the support of the Government and the relevant public authorities. The Council will continue to advocate the topic.

- (1) 純粹處理境外物業的地產代理及境外物業的賣方均無須領牌；
- (2) 就訂金和留位費缺乏冷靜期或訂金保障機制；
- (3) 廣告監管不足；以及
- (4) 不良營商手法。

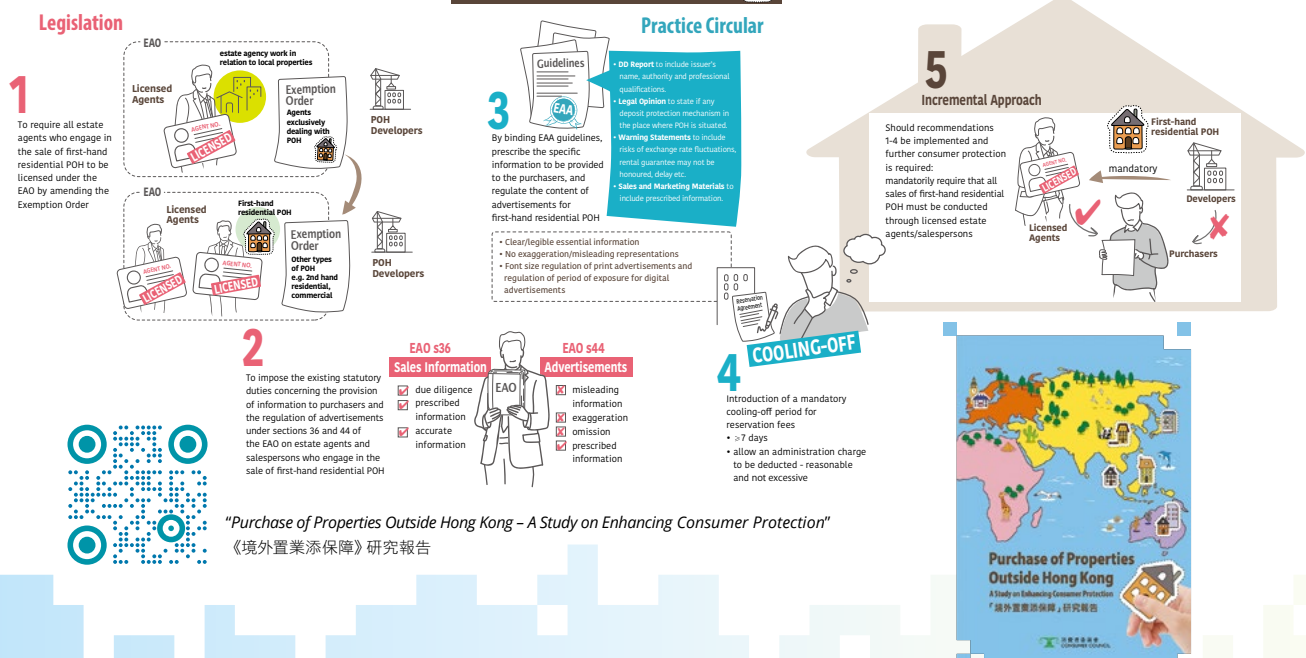
本會在徹底考慮不同持份者的意見後，以及根據報告的結論，作出以下建議：

- (1) 規定所有從事銷售香港境外一手住宅物業的地產代理及營業員須根據《地產代理條例》取得牌照；
- (2) 《地產代理條例》下所訂明有關資料披露予買家及對廣告監管的現行法定責任應進一步適用於從事境外一手住宅物業銷售的地產代理和營業員；
- (3) 規定給予潛在買家的特定資料及加強規管廣告內容；
- (4) 就留位費引入不少於 7 天的冷靜期；以及
- (5) 在上述 4 項建議落實的一段合理時間後，檢視是否有必要強制要求所有境外一手住宅物業的銷售須由持牌地產代理 / 營業員進行。

研究報告出版後，本會會見了不同的地產代理聯會交換意見。其中，就要求從事境外物業銷售的地產代理必須領牌的建議獲得正面反饋。本會期望報告的出版將促進所有相關持份者和公眾進行建設性討論，以及建議能獲得政府和有關當局的支持。本會將繼續就有關議題作出倡議。

Recommendations and the Way Forward - POH

Focus on First-Hand Residential POH



Submission to the Department of Justice — Consultation Paper on the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Bill and the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Rules

In December 2021, the Department of Justice (DOJ) issued a consultation on the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Bill (“Bill”) and the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Rules (“Rules”). The Bill and the Rules seek to implement in Hong Kong the “Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region” signed by the Mainland Supreme’s People Court and Hong Kong Government in January 2019 (“2019 Arrangement”). In 2018, the DOJ issued a consultation on the 2019 Arrangement in which the Council provided submissions.

Prior to the 2019 Arrangement, only monetary judgments on disputes arising from commercial contracts that provide for exclusive jurisdiction of the Hong Kong or designated Mainland courts may be registered for the purpose of enforcement in the other jurisdiction. The 2019 Arrangement expands the scope of judgments that may be registered to include all judgments of civil and commercial nature, whether in contract or tort and whether for monetary and/or non-monetary relief, save for a few exceptions relating to IP and unfair competition claims.

The Council’s submissions were made to reflect principles and considerations which were of concern to consumers. The Council took into account the consideration that, in the majority of consumer claims, monetary relief is probably the most common form of relief sought. Whilst some transactions may involve substantial amounts, many claims are relatively modest. As such, consumers should be able to pursue registration of judgments by means and under circumstances that are most cost-effective and expeditious, including doing so in person rather than through lawyers.

向律政司就《內地民商事判決（相互強制執行）條例草案》及《內地民商事判決（相互強制執行）規則》諮詢文件提交意見

2021年12月，律政司就《內地民商事判決（相互強制執行）條例草案》（《條例草案》）及《內地民商事判決（相互強制執行）規則》（《規則》）的立法建議徵詢意見。《條例草案》及《規則》旨在落實最高人民法院與香港特區政府在2019年1月簽訂的《關於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的安排》（《2019執行判決安排》）。本會於2018年曾在律政司就《2019執行判決安排》的徵詢提供意見。

在《2019執行判決安排》之前，在內地或香港登記以強制執行的另一司法管轄區的判決，須為香港法院或指定內地法院在商事合同爭議作出的金錢判決，並且有關合同須提出該法院擁有專屬管轄權。《2019執行判決安排》擴大可登記以強制執行的判決之範圍，包括所有民事及商事性質的判決，不論是基於合同還是侵權法，亦涵蓋金錢及/或非金錢的濟助（涉及知識產權和不正当競爭有關的少數例外情況除外）。

本會提供的意見反映消費者所關注的原則和考慮。本會考慮到在大部分消費者申索中，金錢救濟可能是最為常見的濟助。儘管個別交易可能涉及較大的金額，大多數申索所涉及的金額相對有限；因此，消費者應能通過最具成本效益和最快捷的方式及條件登記判決，包括能夠親自（而不須聘用律師）進行登記。

The Council considered that the Bill and the Rules reflect the reciprocal enforcement mechanism under the 2019 Arrangement. Nonetheless, the Council gave various suggestions on improving the ease of understanding and application of the mechanism to reduce the risk of delay and consequential cost in the registration process. In particular, whilst the Rules require proof of the nature and effectiveness of a Mainland judgment by means of a Mainland court certificate, the Council submitted that other documentary evidence should be considered in light of recent case authority. The Council also suggested that the DOJ works with the Mainland judiciary to provide guidance for local Mainland courts which may not be familiar with the 2019 Arrangement, as well as more efficient means of service of documents in the Mainland. It is considered that these measures would enable consumers to pursue a registration application more quickly and cost-effectively within the agreed framework.

In addition, the Council proposed that the Bill should clarify that a judgment creditor should be able to pursue a winding up or bankruptcy petition against the trader without the need for prior registration. In the Council's experience, consumer claims may be modest on one hand and the trader may not have identifiable assets on the other such that the only practical course of redress would be to pursue a winding up or bankruptcy petition.

本會認為《條例草案》及《規則》反映《2019 執行判決安排》下的相互強制執行機制。儘管如此，本會提出了各種建議，以便有關機制能夠更為容易理解及實施，從而減免登記過程中出現延誤的風險和相應成本。尤其是針對《規則》要求須由內地判案法院發出證明書以證明內地判決的性質和效力，本會在參考近期案例後，認為應考慮其他可作為佐證的書面證據。本會亦建議律政司與內地司法機構合作，為可能不熟悉《2019 執行判決安排》的內地法院提供指導，以及擬定能夠在內地更有效送達文件的方式。該等措施應能讓消費者在既定框架內更快及更有成本效益地推進判決登記的申請。

此外，本會建議《條例草案》應澄清判定債權人應能夠對商戶提出清盤或破產呈請而無需事先登記判決。根據本會的經驗，一方面消費者的申索金額可能有限，而另一方面商戶亦可能沒有可辨認資產供強制執行，因此消費者唯一可行的補救途徑是對商戶提出清盤或破產呈請。

