

# Standing Committee on Compliance 2015



The Standing Committee on Compliance oversees The Law Society's administrative and regulatory functions, these responsibilities having been delegated to it by the Council.

The Standing Committee met 10 times during the year and considered 160 agenda items (compared to 191 agenda items in 2014).

The Compliance Department (Conduct and Registration Sections) of the Secretariat supports the work of the Standing Committee.

### **Conduct Section**

The Conduct Section of the Compliance Department is mainly responsible for investigating allegations of professional misconduct against solicitors, foreign lawyers, trainee solicitors and employees of solicitors and foreign lawyers. In 2015, it handled 817 complaints (860 in 2014), of which 419 complaints (398 in 2014) were lodged or referred by members of the public and government organisations and 24 complaints (53 in 2014) were made by solicitors. 802 files were closed during the year; of which 364 were closed without seeking an explanation.

A new In-House Prosecutor joined the Conduct Section in December.

## **INVESTIGATION COMMITTEE**

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Investigation Committees are ad-hoc sub-committees of the Standing Committee. Three members of the Standing Committee are appointed to each Investigation Committee to consider reports prepared by the Conduct Section and to adjudicate on complaints.

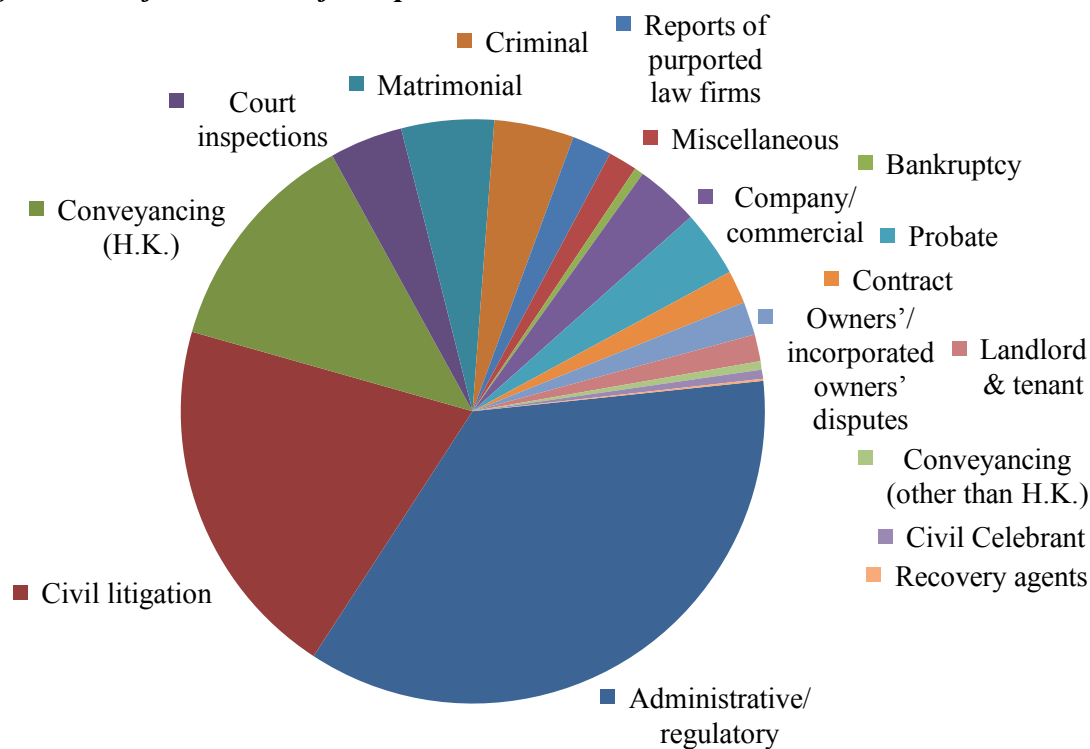
Investigation Committees may recommend to the Standing Committee to issue letters of good practice, regret, or disapproval (or any other sanction authorised by the Council from time to time), and to submit matters to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel.

Investigation Committees considered 349 complaints by circulation of 349 agenda. (In 2014, 313 complaints were considered by circulation of 313 agenda.)

The Standing Committee reviewed eight decisions of the Investigation Committees. Seven decisions were upheld and one decision was upheld except the scope of the sanction was extended (In 2014, five decisions were reviewed, with three decisions upheld and two varied.)

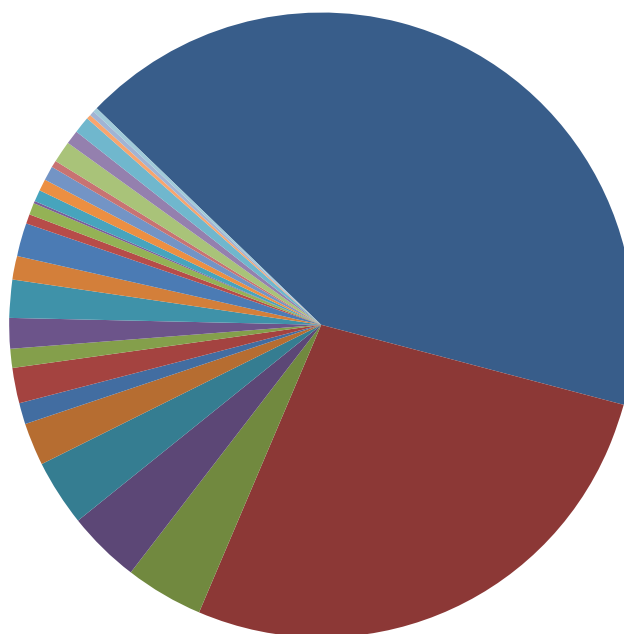
## Determination of Complaints in 2015

Figure 1: Subject matters of complaints



Subject Matters of Complaints	2015	2014	2013
Administrative/regulatory	35.86%	35.93%	32.01%
Civil litigation	20.20%	18.26%	23.38%
Conveyancing (H.K.)	12.61%	13.60%	10.43%
Court inspections	4.04%	7.21%	2.16%
Matrimonial	5.14%	4.07%	6.71%
Criminal	4.41%	3.02%	3.36%
Reports of purported law firms	2.20%	2.91%	2.28%
Miscellaneous	1.59%	2.67%	3.84%
Bankruptcy	0.49%	2.67%	1.56%
Company/commercial	3.55%	2.33%	4.08%
Probate	3.67%	2.09%	3.12%
Contract	1.84%	1.74%	1.08%
Owners'/incorporated owners' disputes	1.84%	1.63%	3.72%
Landlord & tenant	1.47%	0.58%	0.96%
Conveyancing (other than H.K.)	0.49%	0.47%	0.36%
Civil Celebrant	0.49%	0.35%	0.36%
Media/promotion	—	0.23%	0.48%
Recovery agents	0.12%	0.23%	—
Mediation	—	—	0.12%
Inspections	—	—	—

**Figure 2: Nature of professional misconduct**



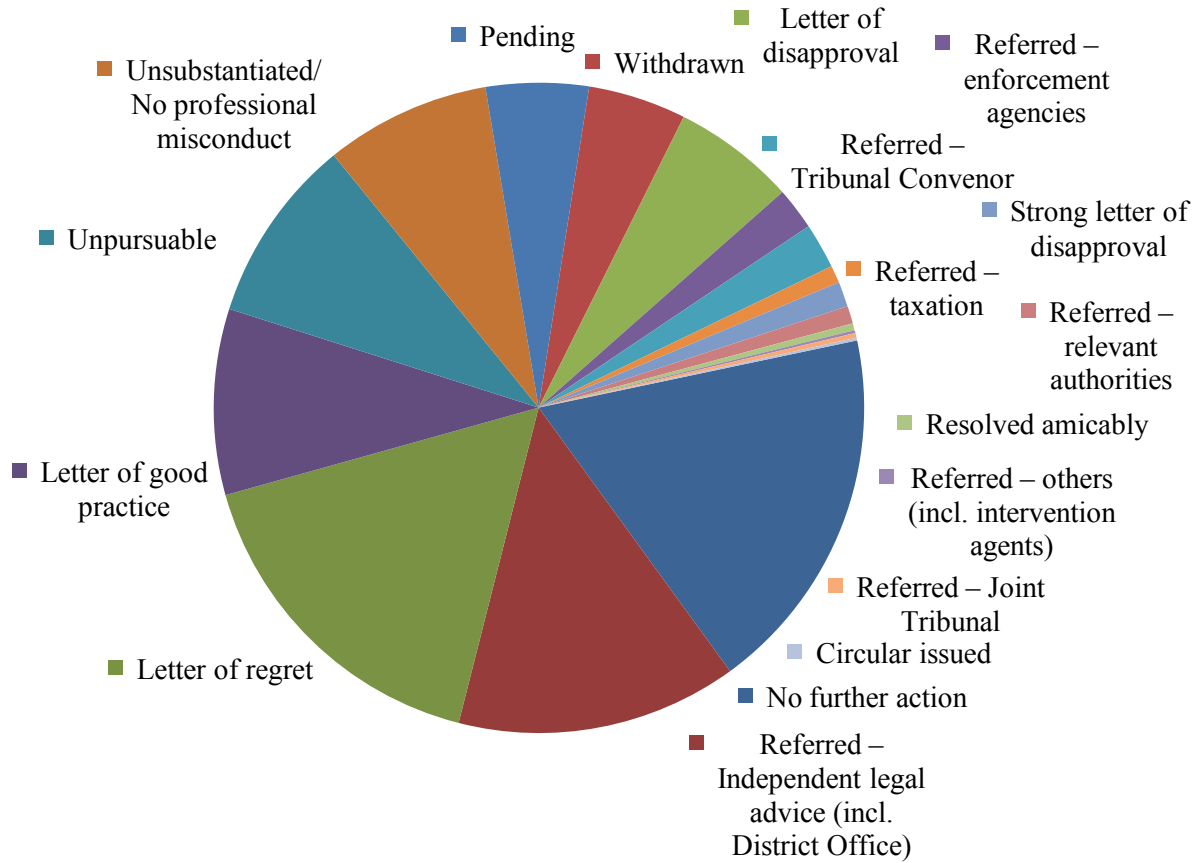
- Breach of Conduct Guide Principles
- Breach of Solicitors' Practice Rules
- Circular no. 04-572(COM) (Court attendance form)
- Breach of Continuing Professional Development Rules
- Breach of Solicitors' Accounts Rules
- Unqualified persons acting or pretending to be a solicitor (ss.45—48 of the LPO)
- Overcharging
- Late submission of Accountant's Reports
- Breach of undertaking
- Negligence
- Breach of Foreign Lawyers Registration Rules
- Miscellaneous
- Dishonesty
- Breach of Foreign Lawyers Practice Rules
- Breach of Solicitors (Professional Indemnity) Rules (r.8)
- Inadequate service
- Breach of Solicitors' Practice Promotion Code
- Breach of Practice Directions
- Conflict of interest
- Delay
- Misbehaviour
- Non-payment of barristers' fees
- Offences in relation to foreign lawyers, etc. (s.50B of the LPO)
- Failure to reply to letters on behalf of a client or to inquiries from The Law Society
- Practising without a practising certificate
- Touting

<b>Nature of professional misconduct</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>
Breach of <i>Conduct Guide</i> Principles	41.86%	35.00%	39.45%
Breach of <i>Solicitors' Practice Rules</i>	27.29%	27.79%	20.62%
Circular no. 04-572(COM) (Court attendance form)	4.04%	7.21%	2.04%
Breach of <i>Continuing Professional Development Rules</i>	3.79%	3.60%	4.32%
Breach of <i>Solicitors' Accounts Rules</i>	3.43%	3.26%	5.16%
Unqualified persons acting or pretending to be a solicitor (ss.45—48 of the <i>LPO</i> )	2.20%	2.91%	2.52%
Overcharging	1.10%	1.98%	3.12%
Late submission of Accountant's Reports	1.84%	1.98%	2.76%
Breach of undertaking	0.98%	1.98%	1.80%
Negligence	1.59%	1.98%	1.80%
Breach of <i>Foreign Lawyers Registration Rules</i>	1.96%	1.74%	1.68%
Miscellaneous	1.22%	1.63%	5.28%
Dishonesty	1.71%	1.16%	1.56%
Breach of <i>Foreign Lawyers Practice Rules</i>	0.49%	1.16%	1.08%
Breach of <i>Solicitors (Professional Indemnity) Rules</i> (r.8)	0.61%	1.05%	0.36%
Inadequate service	0.12%	0.93%	0.96%
Breach of <i>Solicitors' Practice Promotion Code</i>	0.61%	0.81%	0.24%
Breach of <i>Practice Directions</i>	0.61%	0.70%	0.36%
Conflict of interest	0.73%	0.70%	0.24%
Delay	0.37%	0.58%	1.20%
Misbehaviour	1.10%	0.58%	0.84%
Non-payment of barristers' fees	0.73%	0.47%	0.36%
Offences in relation to foreign lawyers, etc. (s.50B of the <i>LPO</i> )	0.86%	0.47%	0.12%
Failure to reply to letters on behalf of a client or to inquiries from The Law Society	0.24%	0.23%	0.48%
Practising without a practising certificate	0.24%	0.12%	0.24%
Commission taking	—	—	0.96%
Breach of <i>Trainee Solicitors Rules</i>	—	—	0.24%
Property fraud	—	—	0.12%
Touting	0.24%	—	0.12%
Breach of <i>Risk Management Education Rules</i>	—	—	—

“*Conduct Guide*” = *The Hong Kong Solicitors' Guide to Professional Conduct* (Volume 1, 2nd and 3rd editions)

“*LPO*” = *Legal Practitioners Ordinance*, Cap. 159

**Figure 3: Analysis of closed files decided by Investigation Committees**



	2015	2014	2013
No further action	18.33%	22.07%	17.01%
Referred – Independent legal advice (incl. District Office)	13.97%	13.47%	13.51%
Letter of regret	16.71%	13.12%	12.73%
Letter of good practice	9.23%	7.67%	10.13%
Unpursuable	9.23%	7.20%	8.96%
Unsubstantiated/No professional misconduct	8.23%	6.97%	8.31%
Pending	5.11%	6.85%	8.70%
Withdrawn	4.86%	4.18%	4.81%
Letter of disapproval	6.11%	4.18%	3.51%
Referred – enforcement agencies	2.12%	4.18%	3.51%
Referred – Tribunal Convenor	2.24%	3.14%	1.04%
Referred – taxation	0.87%	2.09%	2.34%
Strong letter of disapproval	1.25%	1.74%	1.30%
Referred – relevant authorities	0.87%	1.63%	2.08%
Resolved amicably	0.37%	1.05%	0.78%
Referred – others (incl. intervention agents)	0.12%	0.23%	0.26%
Referred – other departments of The Law Society	—	0.12%	0.26%
Referred – Joint Tribunal	0.25%	0.12%	0.26%
Circular issued	0.12%	—	0.39%
Summary disposal	—	—	0.13%

## **Applications to the Chief Judge under section 9A(2) of the *Legal Practitioners Ordinance, Cap. 159* (“LPO”)**

There was no inquiry from the Chief Judge in relation to section 9A(2) of the *LPO* in 2015.

### **Inspections and visits**

Under section 8AA of the *LPO*, the Council is empowered to appoint inspectors to verify compliance with the provisions of the *LPO* or any *Practice Direction* (“PD”) issued by The Law Society, and to determine whether the conduct of those against whom an inspection was made should be inquired into or investigated. Section 8AA of the *LPO* stipulates the powers of an inspector in making such inquiries and investigations.

During the year, Investigation Counsel made 22 visits to nine law firms and one purported law firm in the course of their investigations. Three court inspections were conducted by inspectors at magistrates’ courts. For these court inspections, the Council appointed inspectors to verify compliance with rule 5D of the *Solicitors’ Practice Rules* (“SPR”), Cap. 159H and to monitor the proper completion of court attendance forms. The Council did not appoint inspectors under section 8AA of the *LPO* to inspect law firms.

The Monitoring Accountants paid visits to law firms to provide assistance in their accounting procedures/systems and to inspect their books and accounts to ensure compliance with the rules relating to solicitors’ accounting. 79 visits were made to 64 solicitors’ firms and foreign law firms; some firms required more than one visit (64 visits to 44 firms in 2014).

### **Interventions**

The Council’s power of intervention is exercised for the protection of the public and occurs when clients’ interests are at risk. The powers vested in the Council for the exercise of an intervention under Sections 26A, 26B or 26C of the *LPO* are set out in Schedule 2 to the *LPO*. Through the intervention agents, The Law Society first takes control of the office and clients’ monies of the intervened firms and takes possession of the intervened firms’ documents. If necessary, The Law Society may commence court applications to implement the Council’s resolution to intervene. The intervention agents return documents to clients who have specifically requested their return or forward clients’ documents to other firms of solicitors on the instructions of clients. The process of distributing clients’ money of the intervened firms may involve court proceedings and claimants must produce supporting documents to verify their claims. Documents in the possession of the Council are kept in storage in accordance with the guidelines in The Law Society circular 12-475 (PA) or until there is a Court order as to disposal or destruction.

Subject to any Court order for the payment of costs, any costs incurred by the Council in the intervention shall be paid by the solicitor or the foreign lawyer whose practice was being intervened.

The Council did not intervene in the practice of any law firm in 2015.

Nonetheless, The Law Society dealt with taxation and assisted Police investigation related to past interventions throughout the year, including, providing statements to the Police in January; being awarded costs against a solicitor by the Court in November after which, the solicitor filed a summons to review the taxation; filing an application to set down a bill for taxation in December against a solicitor; filing at Court an itemised bill of costs for taxation and serving it on a solicitor in December.

## **INVESTIGATION COMMITTEE ON DISCIPLINARY MATTERS**

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The Investigation Committee (Disciplinary Matters) is the only Investigation Committee with a fixed membership drawn from senior members of the Standing Committee. The Committee's work includes monitoring the progress of disciplinary proceedings, appeals and court proceedings (including bankruptcy petitions), giving instructions to prosecutors and The Law Society's legal representatives, and authorizing the payments of fees incurred in disciplinary proceedings, appeals and court proceedings.

The Committee considered 96 matters by circulation of 50 agenda. (In 2014, 119 matters were considered by circulation of 57 agenda.)

### **Disciplinary proceedings, summary disposals, appeals and judicial reviews**

The Standing Committee on Compliance resolved to submit 13 matters to the Tribunal Convenor concerning the conduct of seven solicitors, three clerks and one foreign lawyer under section 9A(1) of the *LPO* (18 matters concerning nine solicitors and two clerks in 2014). In 2015, six matters had been submitted to the Tribunal Convenor (four in 2014), none of which involved a submission to the Tribunal Convenor for him to dispose of on a summary basis.

A Solicitors Disciplinary Tribunal is a statutory tribunal established by the *LPO*. It is independent of The Law Society which is the prosecuting body. Members of the Solicitors Disciplinary Tribunal Panel are appointed by the Chief Justice. The Chief Justice also appoints the Tribunal Convenor and the Deputy Tribunal Convenors who have the responsibility to appoint a panel of three or four members to sit as a Tribunal to determine applications, and who have the power to dispose of certain classes of complaint on a summary basis.

One set of disciplinary proceedings was determined by the Solicitors Disciplinary Tribunal in 2015 (compared to seven in 2014) which resulted in the following orders being made:



Respondent	Position	Charge(s)	Penalty	Fine (HK\$)
1	Clerk	<ul style="list-style-type: none"> <li>• 1 count of disgraceful, dishonourable and discreditable conduct within the meaning of s.2(2) of the <i>LPO</i></li> </ul>	<ul style="list-style-type: none"> <li>• prohibited from employment by any solicitors' firm or foreign law firm in Hong Kong for 2 years from the date of the Order</li> <li>• ordered to pay costs of The Law Society assessed at HK\$55,500.00</li> <li>• ordered to pay costs of the Clerk assessed at HK\$35,608.00</li> </ul>	N/A

“*LPO*” = *Legal Practitioners Ordinance*, Cap. 159

In March, a solicitors' clerk filed a notice of application for leave to apply for judicial review against The Law Society in respect of the Solicitors Disciplinary Tribunal's reasons for decision on preliminary issues.

In April, the Court of Appeal allowed a solicitor's appeal by setting aside the Solicitors Disciplinary Tribunal's order in respect of one complaint and ordered The Law Society to pay 85% of the costs of the solicitor in the appeal. The Court of Appeal also allowed The Law Society's appeal in respect of another complaint against the solicitor by setting aside the penalty imposed by the Solicitors Disciplinary Tribunal and substituting it with an order of two-year suspension from practice with the condition that when the solicitor resumes practice after the suspension, he is prohibited from practising as a sole proprietor or a partner or a manager of a solicitors' firm until The Law Society is satisfied that he is fit to do so. The solicitor was ordered to pay the costs of The Law Society in the appeal, such costs to be taxed if not agreed. In July, the Court of Appeal dismissed the solicitor's notice of motion for leave to appeal to the Court of Final Appeal against the judgment of the Court of Appeal with costs to The Law Society.

Also in April, the Appeal Committee of the Court of Final Appeal dismissed a solicitor's application for leave to appeal against the judgment of the Court of Appeal with no order as to costs.

In June, the Court of Appeal dismissed a solicitor's appeal against the Solicitors Disciplinary Tribunal order with costs to The Law Society.

### **Litigation proceedings**

In October, the Court heard The Law Society's application for security for costs against an applicant in a judicial review.

## CONSENTS COMMITTEE

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The Consents Committee is a sub-committee of the Standing Committee on Compliance. Of the 14 members, three are Council members.

The Consents Committee decides on applications made under the *LPO*, its subsidiary legislation and The Law Society's *PD* for (i) registration by solicitors; (ii) registration as a (a) trainee solicitor, (b) foreign lawyer and (c) foreign law firm; and (iii) consent and waiver.

The Committee met 21 times during the year and considered 486 items (in 2014, 20 meetings and 493 items). A further 10 matters were dealt with by circulation of one agenda (in 2014, 38 matters by circulation of six agenda).

The Standing Committee reviewed and upheld one decision of the Consents Committee.

### Registration Section

The Registration Section of the Compliance Department processes applications and handles applications considered by the Consents Committee.

As with previous years, in conjunction with the Conduct Section, the Registration Section reviewed, processed and filed the “employees’ returns” submitted by all solicitors’ firms and foreign law firms in January of each year, and the Notification of Changes to a Practice on firms’ particulars submitted by solicitors’ firms and foreign law firms throughout the year.

### Nature of applications

Applications considered by the Consents Committee and those processed by the Registration Section during the year included:

	2015	2014	2013
Admissions	575	601	627
Certificates of eligibility for admission	600	636	628
Practising certificates: English	8,647	8,279	7,864
Chinese	3,749	3,603	3,387
Practising certificates – removal of conditions under s.6(6) <i>LPO</i> (solicitors)	186	193	170
Membership	9,869	9,422	8,967
First registration as a foreign law firm	9	10	11
First registration as a foreign lawyer	352	335	336
Renewal of registration as a foreign lawyer	1,270	1,305	1,184

Removal of conditions on certificates of registration (foreign lawyers)	70	51	55
Registration as an Association	8	8	8
Removal of name from the roll of solicitors	6	8	4
Restoration of name to the roll of solicitors	1	2	1
Admission of English barristers	1	1	1
Qualifications for admission s.4(1A) <i>LPO</i>	115	157	175
Employment of staff: s.53(1) <i>LPO</i>	2	2	—
s.53(3) <i>LPO</i>	3	5	2
Practising certificates – removal of conditions under s.6(6A) <i>LPO</i>	47	48	51
Practising certificates – Special Conditions	6	10	25
Registration of first trainee solicitor contracts	371	551	458
Registration of subsequent trainee solicitor contracts	96	83	63
Special leave to employ trainee solicitors	10	16	18
Other trainee solicitor matters	165	182	162
Law costs draftsmen	2	1	1
Accountant’s report – solicitors’ firms	848	830	810
Accountant’s report – foreign law firms	90	77	75
Firm name and letterhead	14	9	14
Waiver applications – general	*7	*5	*5
Waiver applications – <i>PD</i>	1	2	2
Registration of new associate member	—	6	5
Certificates of standing	762	532	507
Letters of no objection <sup>#</sup>	854	812	818
Authorised solicitors’ clerks	10	17	13

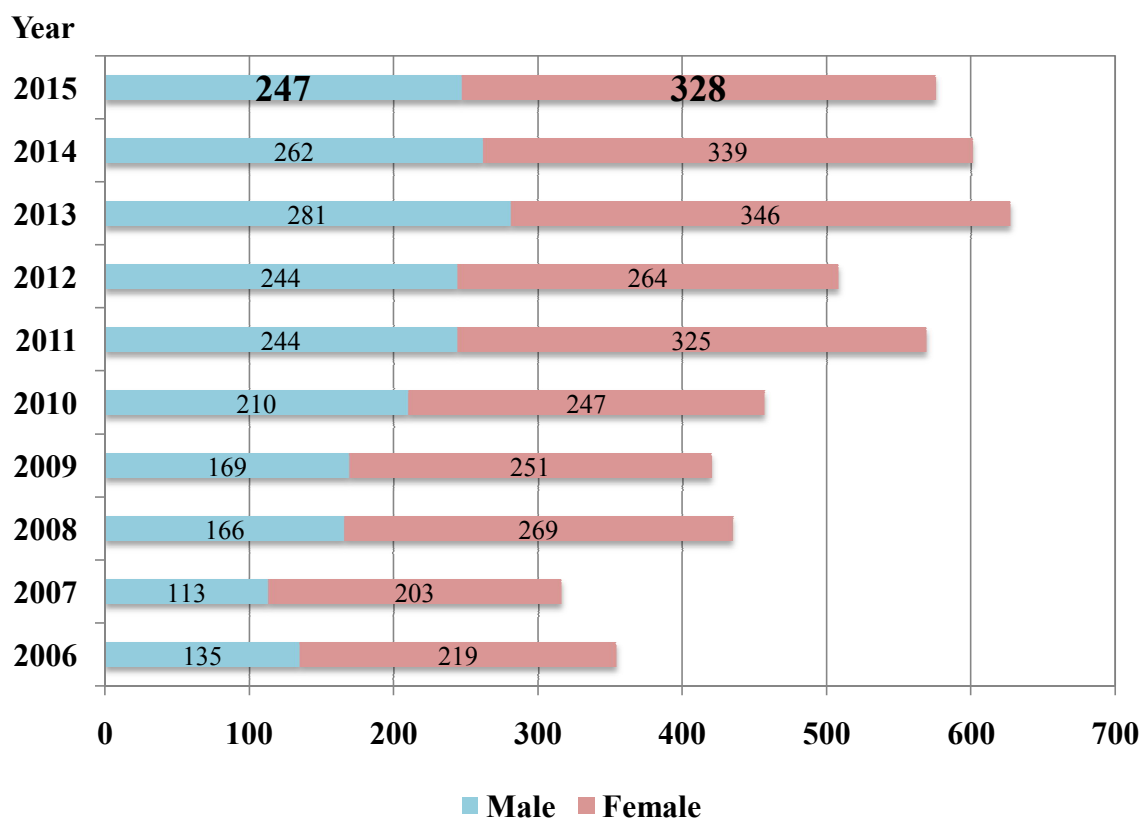
“*LPO*” = *Legal Practitioners Ordinance*, Cap. 159

“*PD*” = The Law Society’s *Practice Directions*

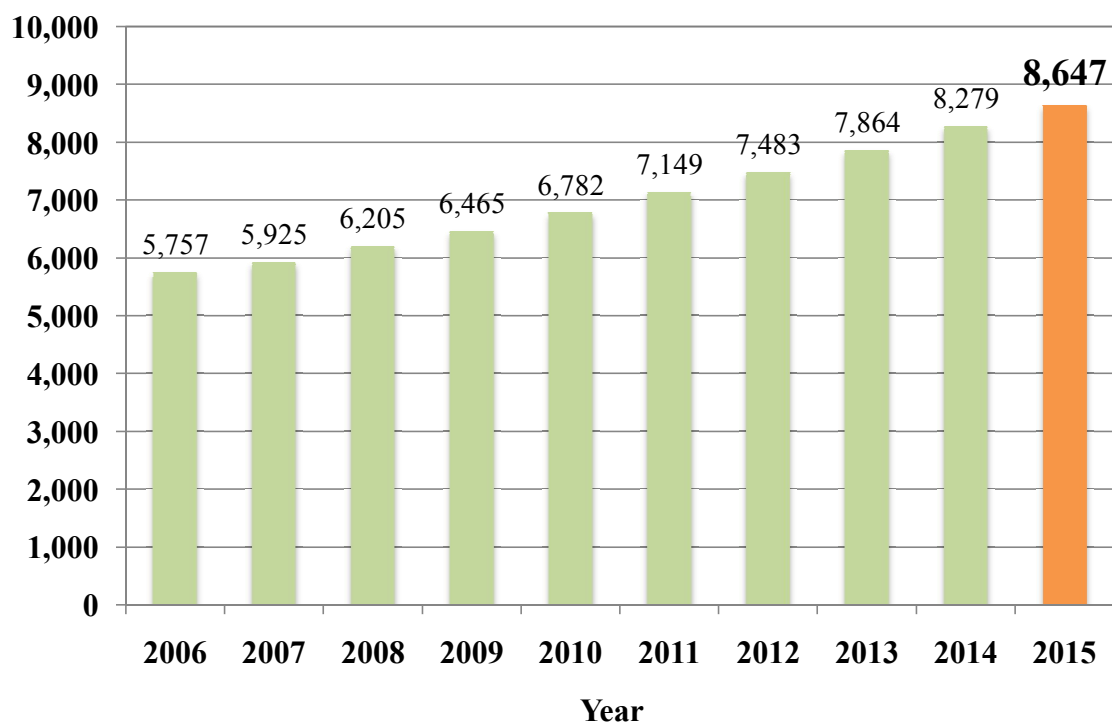
\* Applications were under the *SPR*, Cap. 159H

<sup>#</sup> “No objection” letters are issued to applicants for work visas

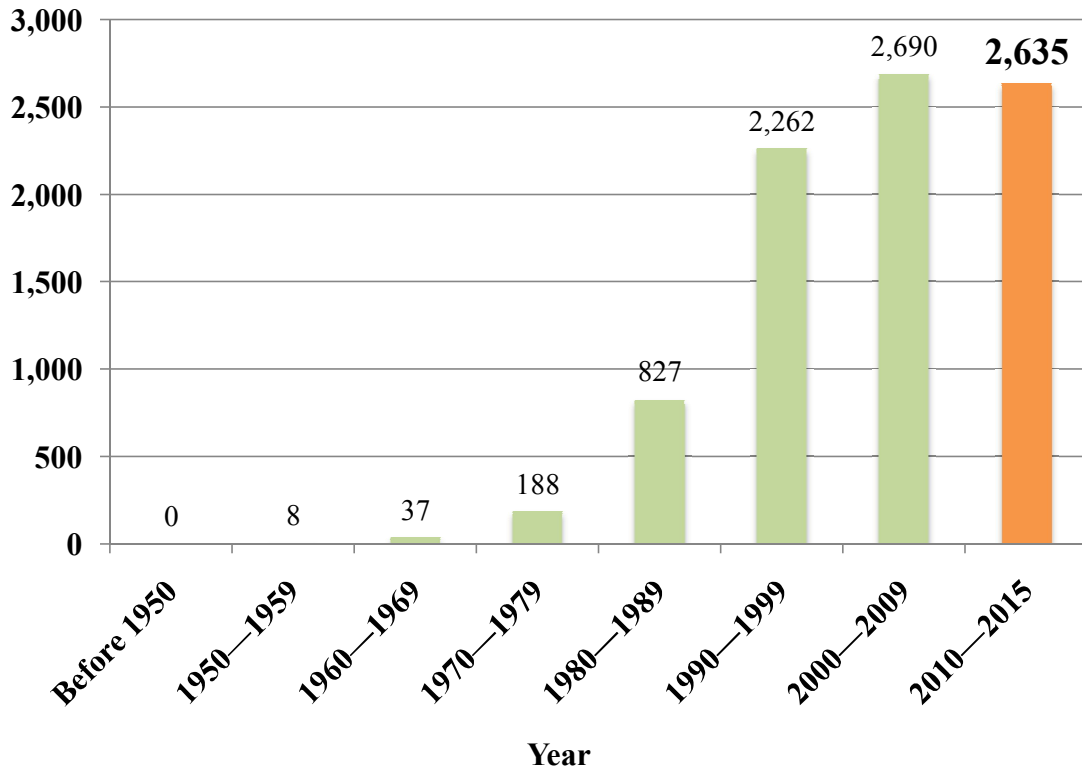
**Figure 4: Admission of solicitors 2006—2015**



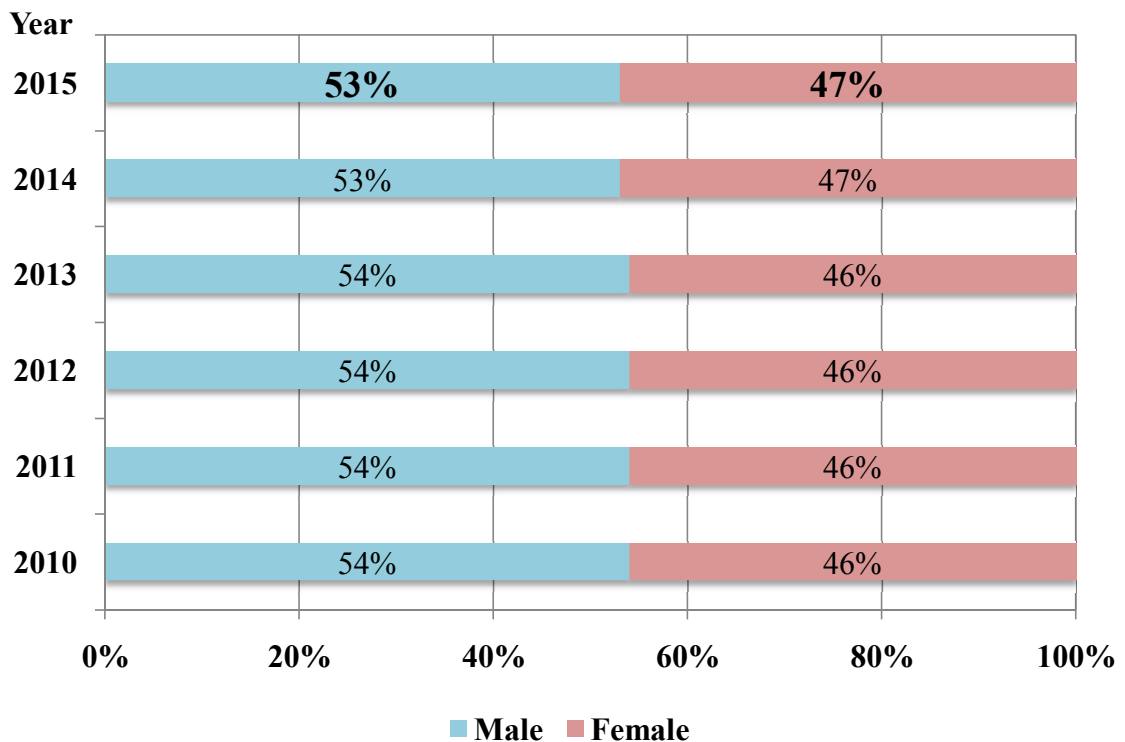
**Figure 5: Practising certificates issued 2006—2015**



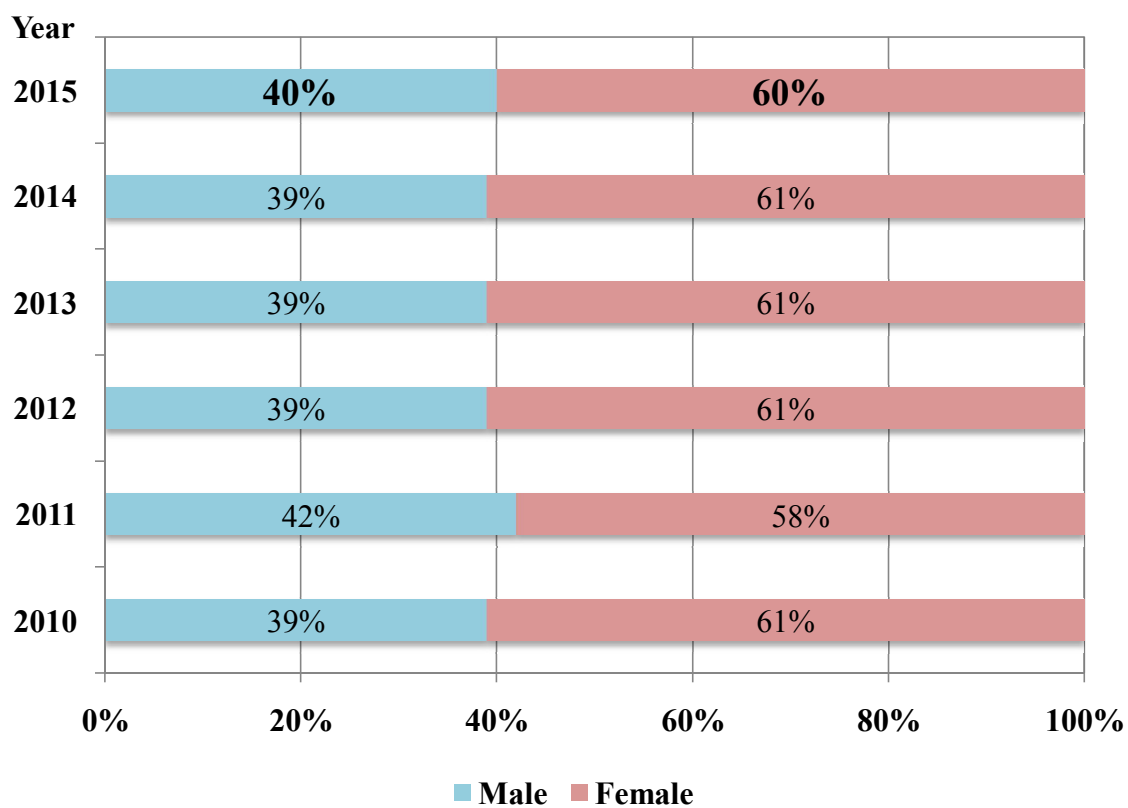
**Figure 6: Years of admission of solicitors holding a 2015 practising certificate**



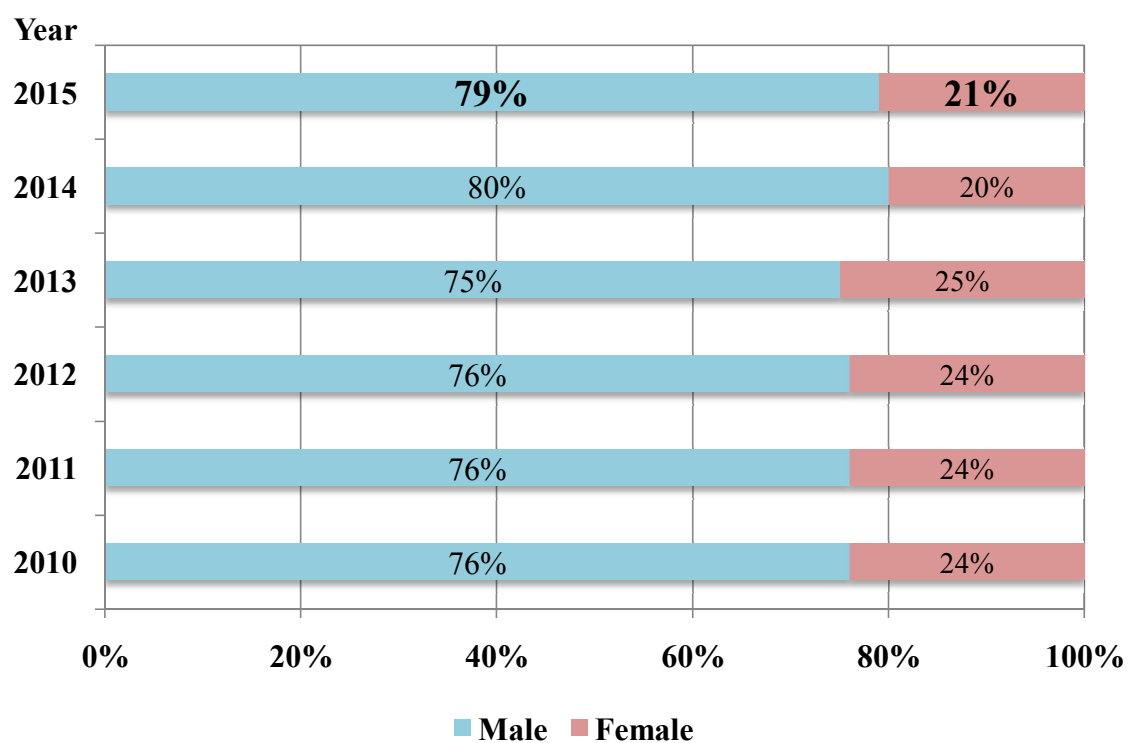
**Figure 7a: Gender ratio – Solicitors holding a practising certificate 2010 – 2015**



**Figure 7b: Gender ratio – Trainee solicitors 2010 – 2015**



**Figure 7c: Gender ratio – Partners 2010 – 2015**



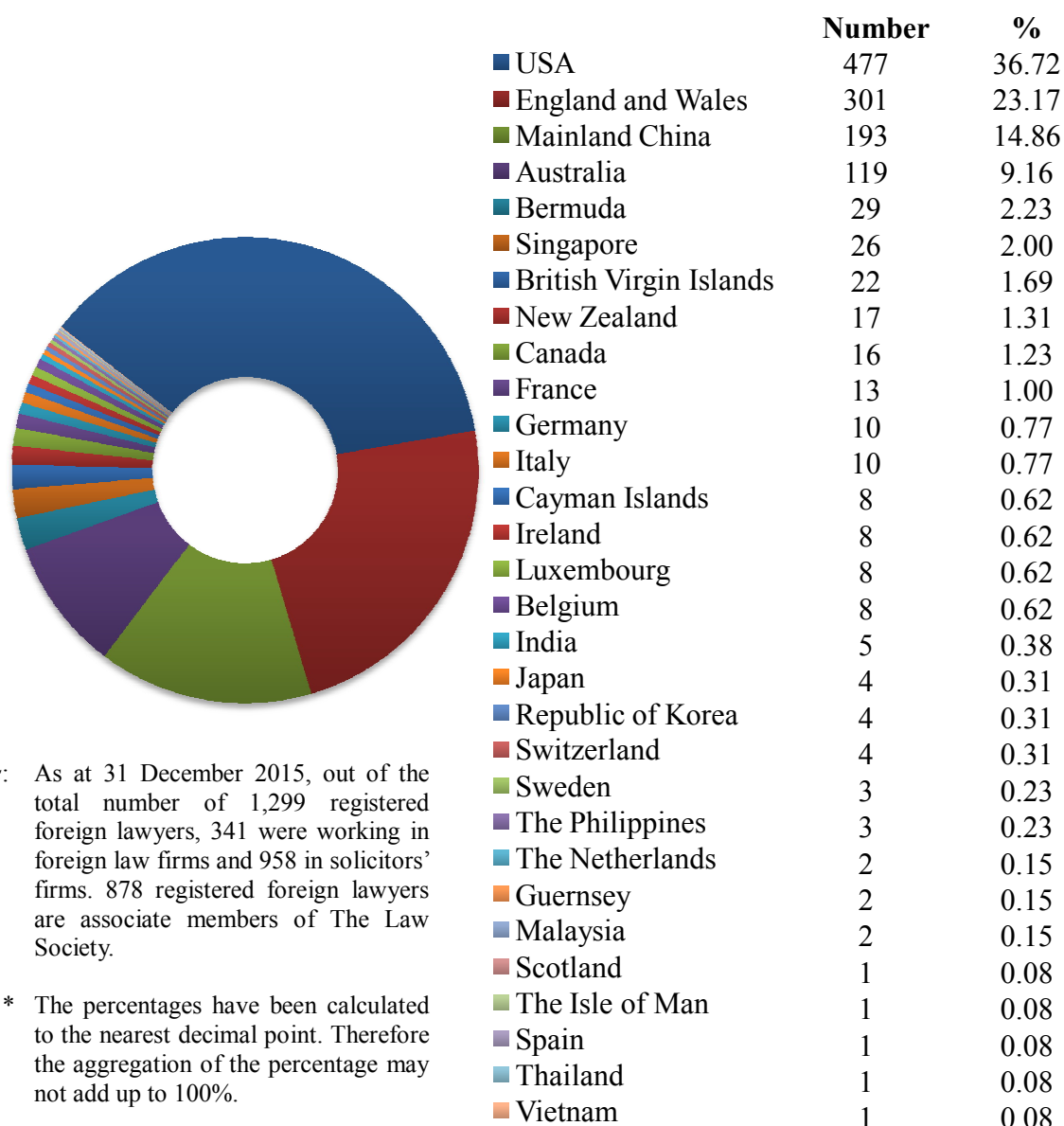
**Figure 8: Size of solicitors' firms and number of trainee solicitors in 2015**

Size of firm	No. of firms		No. of trainee solicitors	
	2015	2014	2015	2014
Sole practitioners	406	382	57	58
2—5 partners	357	365	328	316
6—10 partners	45	46	183	175
11—20 partners	36	34	252	282
Over 20 partners	10	9	164	132
<b>Total</b>	<b>854</b>	<b>836</b>	<b>984*</b>	<b>963#</b>

\* excluding 13 in government and 6 working “in-house”

# excluding 15 in government and 6 working “in-house”

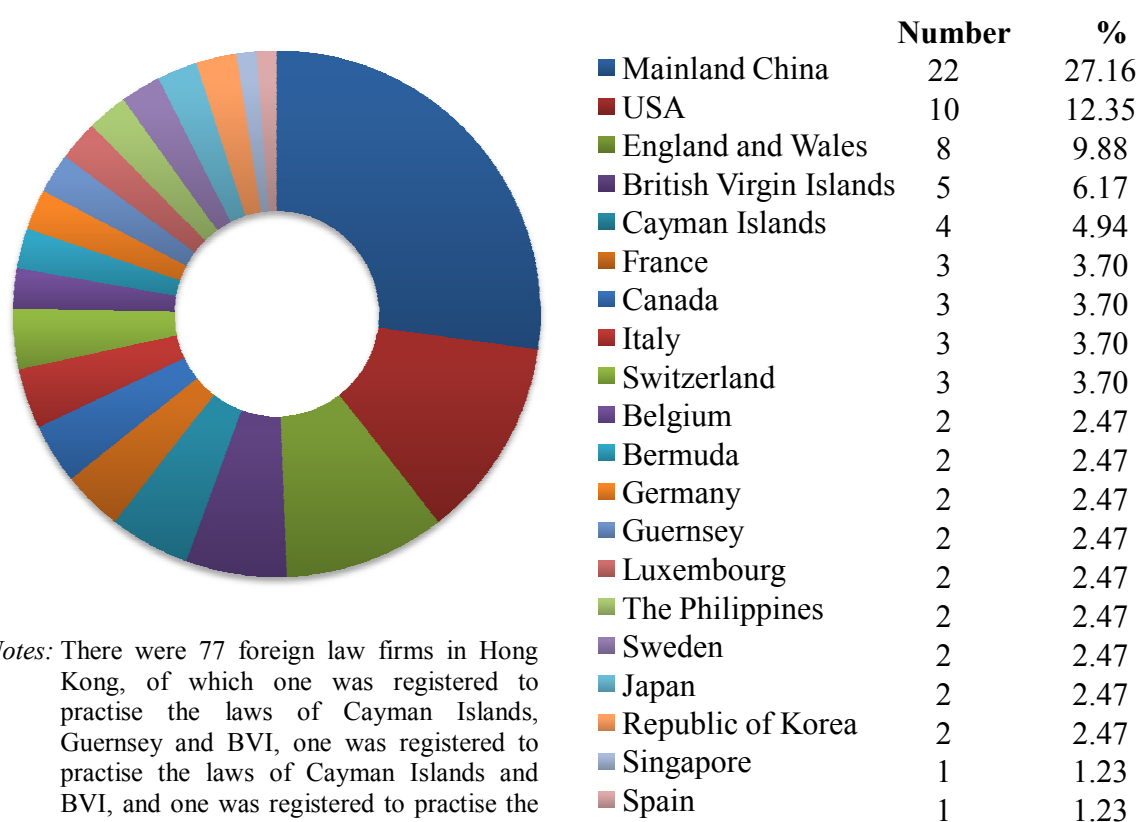
**Figure 9: Home jurisdictions of registered foreign lawyers**



Notes: As at 31 December 2015, out of the total number of 1,299 registered foreign lawyers, 341 were working in foreign law firms and 958 in solicitors' firms. 878 registered foreign lawyers are associate members of The Law Society.

\* The percentages have been calculated to the nearest decimal point. Therefore the aggregation of the percentage may not add up to 100%.

**Figure 10: Home jurisdictions of foreign law firms**



*Notes:* There were 77 foreign law firms in Hong Kong, of which one was registered to practise the laws of Cayman Islands, Guernsey and BVI, one was registered to practise the laws of Cayman Islands and BVI, and one was registered to practise the laws of Bermuda and BVI. (In 2014, there were 79 foreign law firms, of which three were registered to practise the law of more than one jurisdiction.)

\* The percentages have been calculated to the nearest decimal point. Therefore the aggregation of the percentage may not add up to 100%.

There were 32 Associations registered between foreign law firms and solicitors' firms (36 in 2014). Nine new foreign law firms commenced practice (11 in 2014). 11 foreign law firms were closed, eight of which established local practices. (In 2014, five were closed, two of which established local practices.)

There were 15,111 unqualified staff members employed by solicitors' firms at the end of the year (14,851 at the end of 2014). In addition, there were 466 unqualified staff members employed by foreign law firms at the end of 2015 (451 in 2014).

The Standing Committee on Compliance oversees the work of the Conduct Section in administrating the authorised solicitors' clerks scheme and has delegated its power to the Consents Committee to consider applications. By December, there were 908 authorised solicitors' clerks (931 in 2014).

The Law Society continued to waive subscription fees for student members in 2015. By the end of the year, there were 473 student members registered with The Law Society (240 in 2014).

At the end of December, the number of Law Society Approved Law Costs Draftsmen was 37 (38 in 2014).