

Standing Committee on Compliance

2016



THE
LAW SOCIETY
OF HONG KONG
香港律師會

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

The Standing Committee met nine times during the year and considered 139 agenda items (compared to 160 agenda items in 2015). A further two items were dealt with by circulation of one agenda.

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 2016, it handled 961 complaints (817 in 2015), of which 426 complaints (419 in 2015) were lodged or referred by members of the public and government organisations and 41 complaints (24 in 2015) were made by solicitors. 717 files were closed during the year; of which 271 were closed without seeking an explanation.

INVESTIGATION COMMITTEE

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.

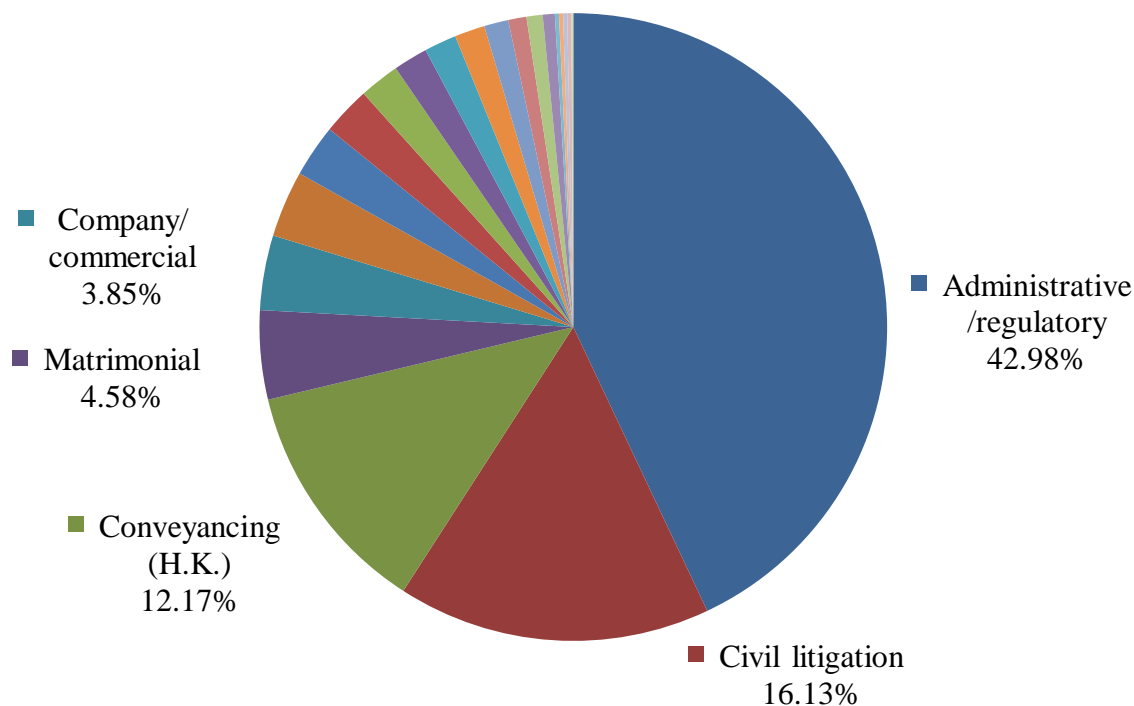
Investigation Committees may recommend to the Standing Committee to issue letters of good practice, regret, or disapproval (or any other sanction authorised by the Council from time to time), and to submit matters to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel.

Investigation Committees considered 285 complaints by circulation of 285 agenda. (In 2015, 349 complaints were considered by circulation of 349 agenda.)

The Standing Committee reviewed 11 decisions of the Investigation Committees. Nine decisions of the Investigation Committees were upheld, and two reviews were allowed which resulted in the withdrawal of one letter of disapproval and one letter of regret respectively. (In 2015, eight decisions were reviewed; seven decisions were upheld and one decision was upheld except the scope of the sanction was extended.)

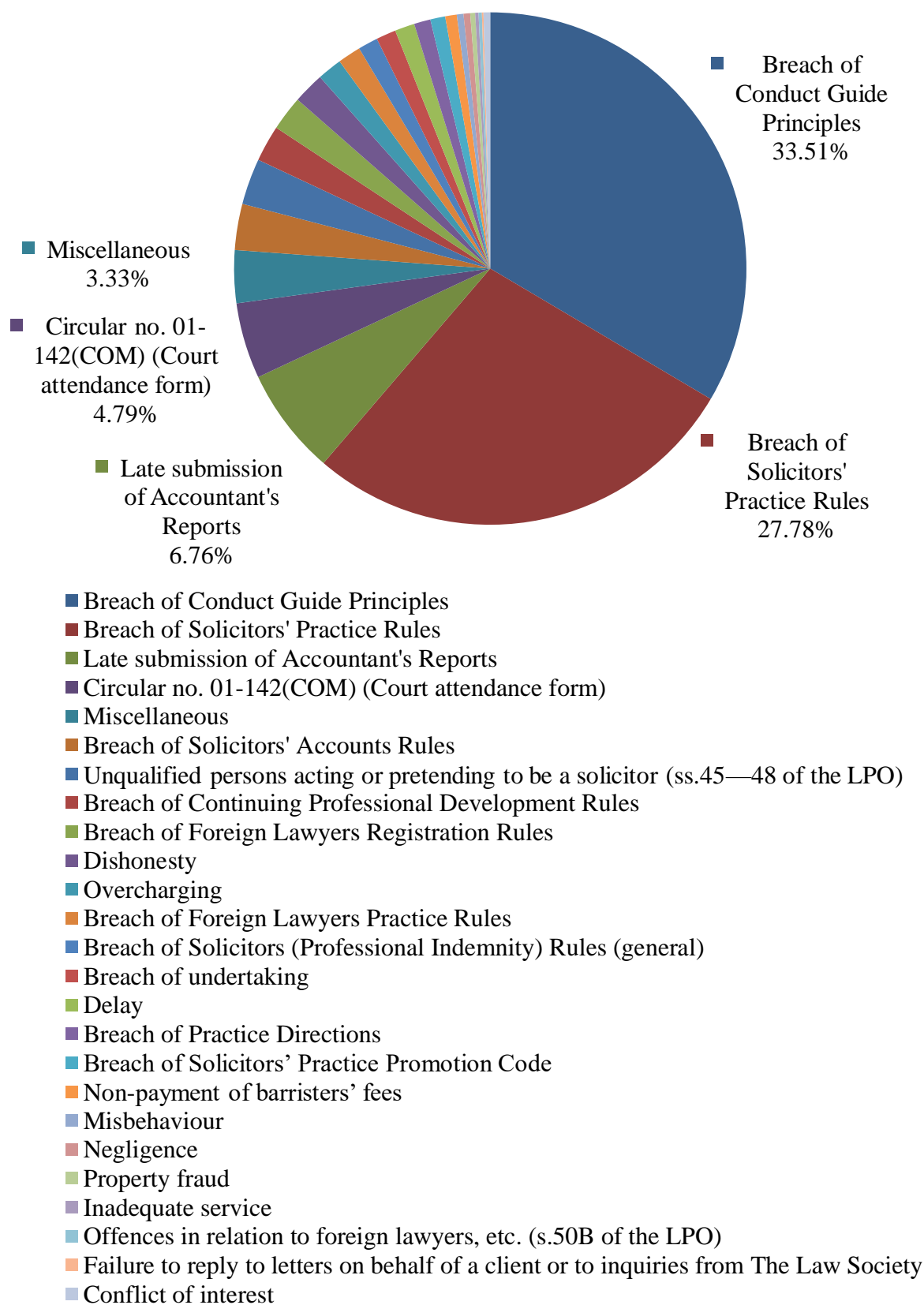
Determination of Complaints in 2016

Figure 1: Subject matters of complaints



Subject Matters of Complaints	2016	2015	2014
Administrative/regulatory	42.98%	35.86%	35.93%
Civil litigation	16.13%	20.20%	18.26%
Conveyancing (H.K.)	12.17%	12.61%	13.60%
Matrimonial	4.58%	5.14%	4.07%
Company/commercial	3.85%	3.55%	2.33%
Court inspections	3.43%	4.04%	7.21%
Reports of purported law firms	2.71%	2.20%	2.91%
Criminal	2.50%	4.41%	3.02%
Miscellaneous	2.08%	1.59%	2.67%
Owners'/incorporated owners' disputes	1.77%	1.84%	1.63%
Contract	1.66%	1.84%	1.74%
Probate	1.56%	3.67%	2.09%
Landlord & tenant	1.25%	1.47%	0.58%
Civil Celebrant	0.94%	0.49%	0.35%
Conveyancing (other than H.K.)	0.83%	0.49%	0.47%
Bankruptcy	0.62%	0.49%	2.67%
Recovery agents	0.21%	0.12%	0.23%
Inspections	0.21%	—	—
Legal Visit	0.21%	—	—
Mediation	0.21%	—	—
Election	0.10%	—	—
Media/promotion	—	—	0.23%

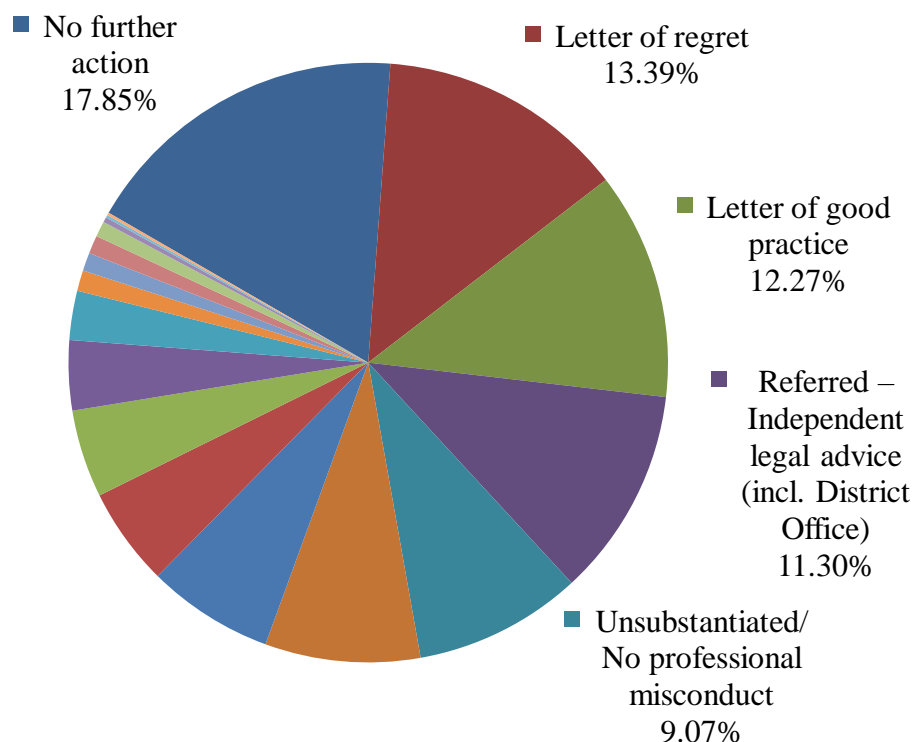
Figure 2: Nature of professional misconduct



Nature of professional misconduct	2016	2015	2014
Breach of <i>Conduct Guide</i> Principles	33.51%	41.86%	35.00%
Breach of <i>Solicitors' Practice Rules</i>	27.78%	27.29%	27.79%
Late submission of Accountant's Reports	6.76%	1.84%	1.98%
Circular no. 01-142(COM) (Court attendance form)	4.79%	4.04%	7.21%
Miscellaneous	3.33%	1.22%	1.63%
Breach of <i>Solicitors' Accounts Rules</i>	2.91%	3.43%	3.26%
Unqualified persons acting or pretending to be a solicitor (ss.45—48 of the <i>LPO</i>)	2.91%	2.20%	2.91%
Breach of <i>Continuing Professional Development Rules</i>	2.29%	3.79%	3.60%
Breach of <i>Foreign Lawyers Registration Rules</i>	2.19%	1.96%	1.74%
Dishonesty	1.98%	1.71%	1.16%
Overcharging	1.56%	1.10%	1.98%
Breach of <i>Foreign Lawyers Practice Rules</i>	1.46%	0.49%	1.16%
Breach of <i>Solicitors (Professional Indemnity) Rules</i> (general)	1.25%	0.61%	1.05%
Breach of undertaking	1.25%	0.98%	1.98%
Delay	1.25%	0.37%	0.58%
Breach of <i>Practice Directions</i>	1.04%	0.61%	0.70%
Breach of <i>Solicitors' Practice Promotion Code</i>	0.94%	0.61%	0.81%
Non-payment of barristers' fees	0.73%	0.73%	0.47%
Misbehaviour	0.42%	1.10%	0.58%
Negligence	0.42%	1.59%	1.98%
Property fraud	0.31%	—	—
Inadequate service	0.21%	0.12%	0.93%
Offences in relation to foreign lawyers, etc. (s.50B of the <i>LPO</i>)	0.21%	0.86%	0.47%
Failure to reply to letters on behalf of a client or to inquiries from The Law Society	0.10%	0.24%	0.23%
Conflict of interest	0.42%	0.73%	0.70%
Practising without a practising certificate	—	0.24%	0.12%
Touting	—	0.24%	—

“*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



	2016	2015	2014
No further action	17.85%	18.33%	22.07%
Letter of regret	13.39%	16.71%	13.12%
Letter of good practice	12.27%	9.23%	7.67%
Referred – Independent legal advice (incl. District Office)	11.30%	13.97%	13.47%
Unsubstantiated/No professional misconduct	9.07%	8.23%	6.97%
Pending	8.37%	5.11%	6.85%
Unpursuable	6.83%	9.23%	7.20%
Letter of disapproval	5.30%	6.11%	4.18%
Referred – enforcement agencies	4.74%	2.12%	4.18%
Withdrawn	3.77%	4.86%	4.18%
Strong letter of disapproval	2.65%	1.25%	1.74%
Referred – Tribunal Convenor	1.12%	2.24%	3.14%
Referred – taxation	0.98%	0.87%	2.09%
Resolved amicably	0.98%	0.37%	1.05%
Referred – relevant authorities	0.84%	0.87%	1.63%
Referred – others (incl. intervention agents)	0.28%	0.12%	0.23%
Referred – other departments of The Law Society	0.14%	—	0.12%
Referred – Joint Tribunal	0.14%	0.25%	0.12%
Circular issued	—	0.12%	—

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

Under section 9A(2) of the *LPO*, where a complaint is made to the Council and the Council does not submit a matter to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel ("the Tribunal Convenor") under section 9A(1) of the *LPO* within six months after receiving the complaint, the Chief Judge may, on application by any person or on his own initiative, submit the matter to the Tribunal Convenor if he considers that the Council ought to have done so.

In 2016, the Chief Judge refused two applications under section 9A(2) of the *LPO*.

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 12 visits to seven law firms and one purported law firm. Three of these visits were made under section 8AA of the *LPO*. In addition, nine 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 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. 84 visits were made to 55 solicitors’ firms and foreign law firms; some firms required more than one visit (79 visits to 64 firms in 2015).

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 has intervened in the practice of four solicitors' firms in 2016.

The Law Society also dealt with taxation and assisted Police investigations related to past interventions during the year.

INVESTIGATION COMMITTEE ON DISCIPLINARY MATTERS

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 authorising the payments of fees incurred in disciplinary proceedings, appeals and court proceedings.

The Committee considered 101 matters by circulation of 39 agenda. (In 2015, 96 matters were considered by circulation of 50 agenda.)

Disciplinary proceedings, summary disposals, appeals and judicial reviews

The Standing Committee on Compliance resolved to submit six matters to the Tribunal Convenor concerning the conduct of five solicitors and one foreign lawyer under section 9A(1) of the *LPO* (13 matters concerning seven solicitors, three clerks and one foreign lawyer in 2015). In 2016, six matters had been submitted to the Tribunal Convenor (six in 2015), one of which was for the Tribunal Convenor 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.

Nine sets of disciplinary proceedings were determined by the Solicitors Disciplinary Tribunal in 2016 (compared to one in 2015) which resulted in the following orders being made:

Respondent	Position	Charge(s)	Penalty	Fine (HK\$)
1	solicitor	<ul style="list-style-type: none"> • 1 count of breach of rule 2(a), (c), (d), (e) and (f) of the <i>SPR</i>; • 1 count of breach of rule 2(a), (b), (c) and (d) of the <i>SPR</i>; • 1 count of breach of rule 2(a), (b), (c), (d) and (f) of the <i>SPR</i>; • 1 count of breach of rule 7 of the <i>SAR</i>; • 1 count of breach of rule 9A of the <i>SAR</i>; • 1 count of breach of principles 12.04 and 12.05 of the <i>Conduct Guide</i> and rule 2 of the <i>SPR</i>; • 1 count of breach of principle 6.04 of the <i>Conduct Guide</i>; • 1 count of breach of principle 6.04 of the <i>Conduct Guide</i>; and • 1 count of breach of the common law offence of misconduct on account of all the above complaints. 	<ul style="list-style-type: none"> • struck off the Roll of Solicitors in light of the guilty findings under Complaints 1, 2, 3 and 10; and • to pay costs. 	<ul style="list-style-type: none"> • fined HK\$40,000 in respect of Complaint 4; • fined HK\$40,000 in respect of Complaint 5; • fined HK\$5,000 in respect of Complaint 6; • fined HK\$20,000 in respect of Complaint 8; and • fined HK\$20,000 in respect of Complaint 9.
1	solicitor	<ul style="list-style-type: none"> • 1 count of breach of rule 2(a) and (d) of the <i>SPR</i> and principle 1.02 of the <i>Conduct Guide</i>. 	<ul style="list-style-type: none"> • struck off the Roll of Solicitors; and • to pay costs. 	
1	solicitor	<ul style="list-style-type: none"> • 1 count of breach of rules 10(2) and 10(3) of the <i>SAR</i>; • 2 counts of breach of rule 3(1) of the <i>SAR</i>; 	<ul style="list-style-type: none"> • censured; and • to pay agreed costs. 	<ul style="list-style-type: none"> • fined HK\$25,000 in respect of Complaint 1; • fined HK\$150,000

Respondent	Position	Charge(s)	Penalty	Fine (HK\$)
		<ul style="list-style-type: none"> • 1 count of breach of rule 9A of the <i>SAR</i>; • 1 count of breach of rule 9A(1) of the <i>SAR</i>; and • 1 count of breach of rule 2(e) of the <i>SPR</i>. 		<p>in respect of Complaint 2;</p> <ul style="list-style-type: none"> • fined HK\$40,000 in respect of Complaint 3, • fined HK\$200,000 in respect of Complaint 4; • fined HK\$40,000 in respect of Complaint 5; and • fined HK\$350,000 in respect of Complaint 6.
1	solicitor	<ul style="list-style-type: none"> • 3 counts of breach of rule 4 of the <i>SPR</i> and principle 4.15 of the <i>Conduct Guide</i>; and • 3 counts of breach of rule 4 of the <i>SPR</i> and principles 2.07 and 4.15 of the <i>Conduct Guide</i>. 	<ul style="list-style-type: none"> • to pay costs. 	<ul style="list-style-type: none"> • fined HK\$12,000
1	foreign lawyer	<ul style="list-style-type: none"> • 1 count of breach of rule 2(a) and (d) of the <i>FLPR</i> 	<ul style="list-style-type: none"> • censured; • prohibited from being employed by any solicitor or solicitors' firm or any foreign lawyer or foreign law firm in Hong Kong for a period of 12 months from the date of the Order; and • to pay costs. 	
1	clerk	<ul style="list-style-type: none"> • disgraceful, 	<ul style="list-style-type: none"> • censured; 	

Respondent	Position	Charge(s)	Penalty	Fine (HK\$)
		dishonourable and discreditable conduct within the meaning of section 2(2) of the <i>LPO</i> .	<ul style="list-style-type: none"> prohibited from employment by any solicitor or foreign lawyer for a period of 30 years from the date of the Order; and to pay costs. 	
1	clerk	<ul style="list-style-type: none"> disgraceful, dishonourable and discreditable conduct within the meaning of section 2(2) of the <i>LPO</i>. 	<ul style="list-style-type: none"> prohibited from employment by solicitors' firms in Hong Kong for 20 years; and to pay costs. 	
1	clerk	<ul style="list-style-type: none"> disgraceful, dishonourable and discreditable conduct within the meaning of section 2(2) of the <i>LPO</i>. 	<ul style="list-style-type: none"> prohibited from employment with any solicitor or foreign lawyer for a period of 2 years from the date of the Order; and to pay the Law Society's costs and disbursements in the sum of HK\$42,293.50 and the Clerk's costs and disbursements in the sum of HK\$33,914. 	

Furthermore, a case of one solicitor charged with one count of breach of principle 14.02 of the *Conduct Guide* was summarily disposed of under section 9AB of the *LPO*. The solicitor was fined a fixed penalty of HK\$10,000 and ordered to pay fixed costs of HK\$15,000.

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

“*SPR*” = *Solicitors' Practice Rules*

“*SAR*” = *Solicitors' Accounts Rules*

“*FLPR*” = *Foreign Lawyers Practice Rules*

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

Litigation proceedings

In February, an applicant named The Law Society as a Putative Respondent in his application for judicial review.

In March, the High Court refused to grant leave to a clerk to apply for judicial review against the Solicitors Disciplinary Tribunal's decision on preliminary issues. The clerk appealed against the dismissal of his application for leave but the appeal was dismissed by consent with costs to the Law Society in November. In May, the clerk applied for leave to apply for another judicial review against the decision of the Solicitors Disciplinary Tribunal to proceed with the disciplinary proceedings against him. The clerk withdrew his second application for judicial review in August.

In April, the Court of Appeal dismissed a solicitor's appeal against an order of the High Court that his action by a Writ of Summons be struck out with costs to The Law Society.

In April, the High Court discharged an interim order against the decision of the Council to intervene in the practice of a solicitors' firm.

In May, two solicitors served Originating Summonses on The Law Society against The Law Society's decisions to impose conditions on their practising certificates. Judgment was handed down in November; the two solicitors' appeals were allowed with 50% costs to them.

In August, a solicitor's application for leave to apply for judicial review against The Law Society's decision to intervene in the practice of his firm was dismissed with no order as to costs.

In December, a judicial review hearing took place regarding The Law Society's decision on a complaint. Judgment was reserved.

In December, a solicitor filed a Notice of Appeal against the Findings handed down by the Solicitors Disciplinary Tribunal.

CONSENTS COMMITTEE

The Consents Committee is a sub-committee of the Standing Committee on Compliance.

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 477 items (in 2015, 21 meetings and 486 items). A further 40 matters were dealt with by circulation of three agenda (in 2015, 10 matters by circulation of one agenda).

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:

Nature of applications	2016	2015	2014
Admissions	637	575	601
Certificates of eligibility for admission	615	600	636
Practising certificates: English	9,076	8,647	8,279
Chinese	4,137	3,749	3,603
Practising certificates – removal of conditions under s.6(6) <i>LPO</i> (solicitors)	216	186	193
Membership	10,345	9,869	9,422
First registration as a foreign law firm	8	9	10
First registration as a foreign lawyer	335	352	335
Renewal of registration as a foreign lawyer	1,310	1,270	1,305
Removal of conditions on certificates of registration (foreign lawyers)	79	70	51
Registration as an Association	9	8	8
Removal of name from the roll of solicitors	5	6	8
Restoration of name to the roll of solicitors	2	1	2
Admission of English barristers	—	1	1
Qualifications for admission s.4(1A) <i>LPO</i>	108	115	157
Employment of staff: s.53(1) <i>LPO</i>	1	2	2
s.53(3) <i>LPO</i>	2	3	5
Practising certificates – removal of conditions under s.6(6A) <i>LPO</i>	27	47	48
Practising certificates – Special Conditions	10	6	10
Registration of first trainee solicitor contracts	537	371	551
Registration of subsequent trainee solicitor contracts	109	96	83
Special leave to employ trainee solicitors	20	10	16
Other trainee solicitor matters	191	165	182
Law costs draftsmen	—	2	1
Accountant’s report – solicitors’ firms	868	848	830
Accountant’s report – foreign law firms	86	90	77
Firm name and letterhead	13	14	9
Waiver applications – general	*16	*7	*5
Waiver applications – <i>PD</i>	3	1	2
Registration of new associate member	4	—	6
Certificates of standing	1,258	762	532
Letters of no objection [#]	798	854	812
Authorised solicitors’ clerks	19	10	17

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

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

* Applications were under the *LPO, Cap 159*; the *SPR, Cap. 159H*; the *SAR, Cap.159F*; the *FLRR, Cap.159S*, and the *FLPR, Cap.159R*

[#] “No objection” letters were issued to applicants for work visas.

Figure 4: Admission of solicitors 2007—2016

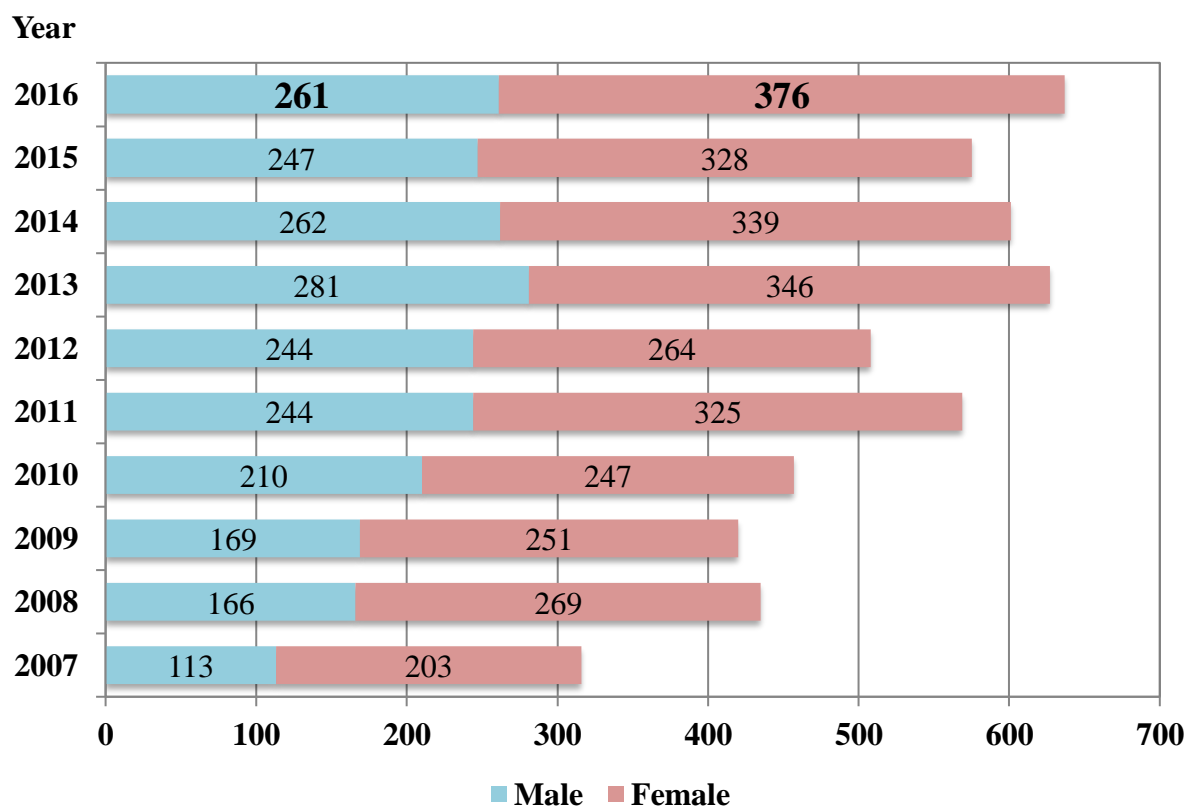


Figure 5: Practising certificates issued 2007—2016

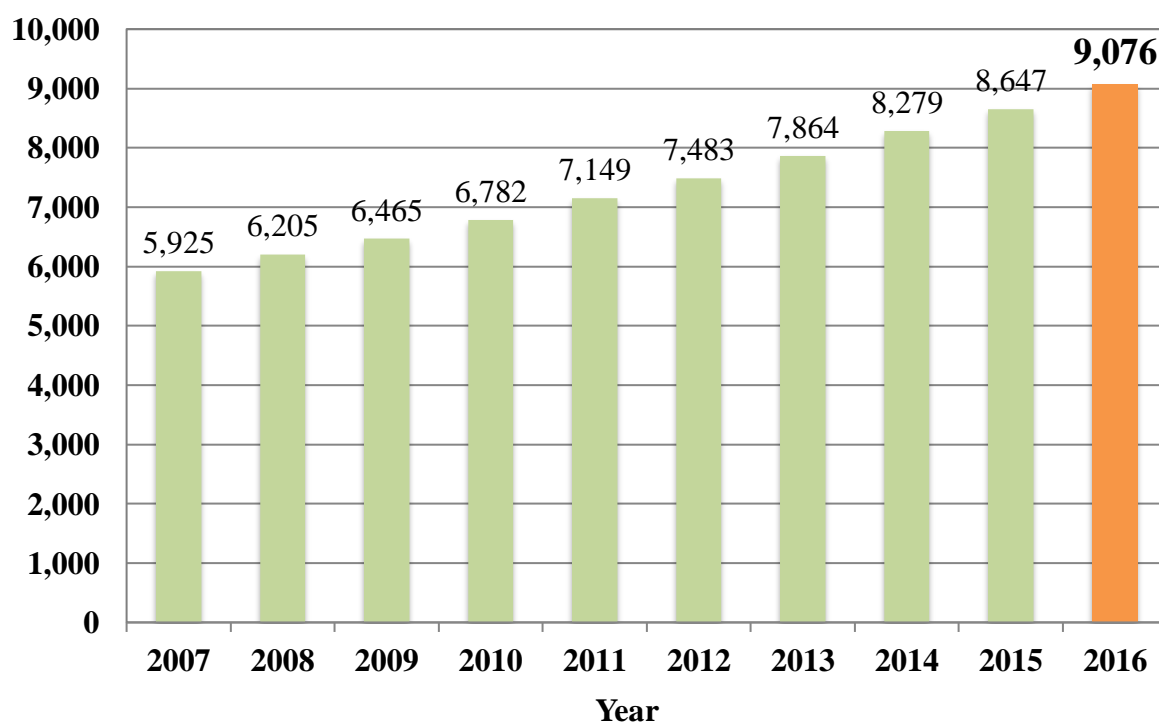


Figure 6: Years of admission of solicitors holding a 2016 practising certificate

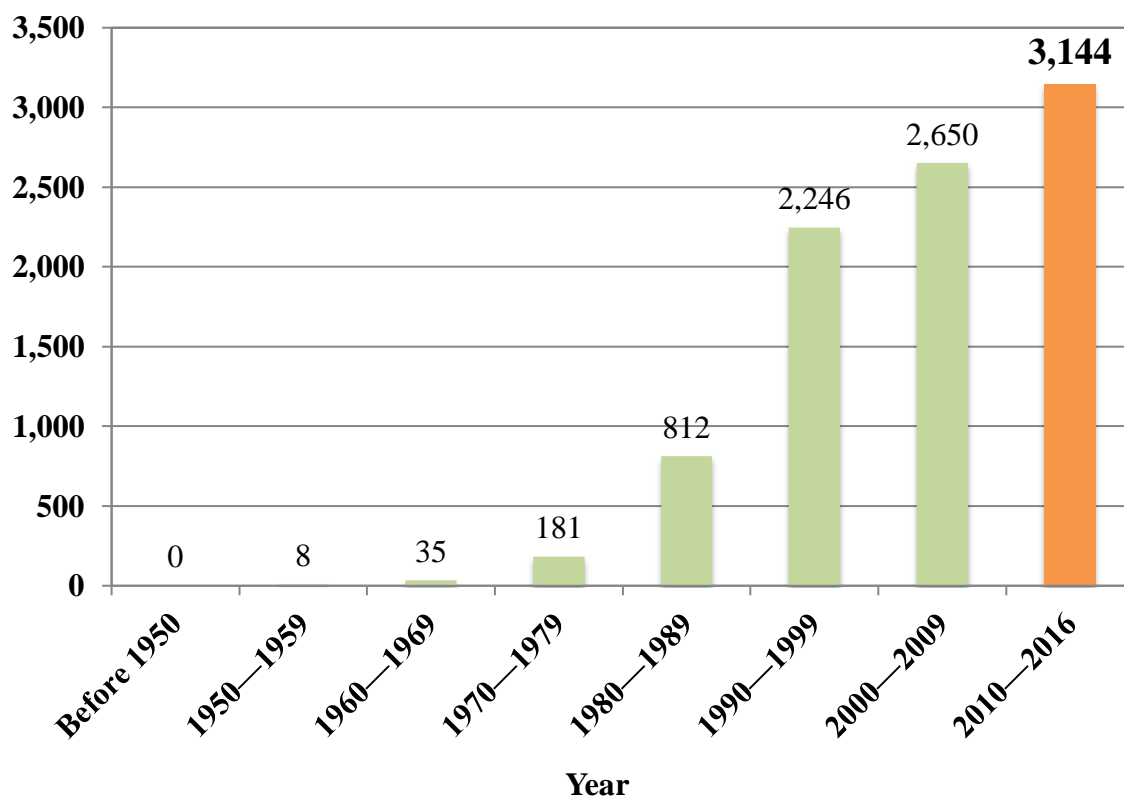


Figure 7a: Gender ratio – Solicitors holding a practising certificate 2011 – 2016

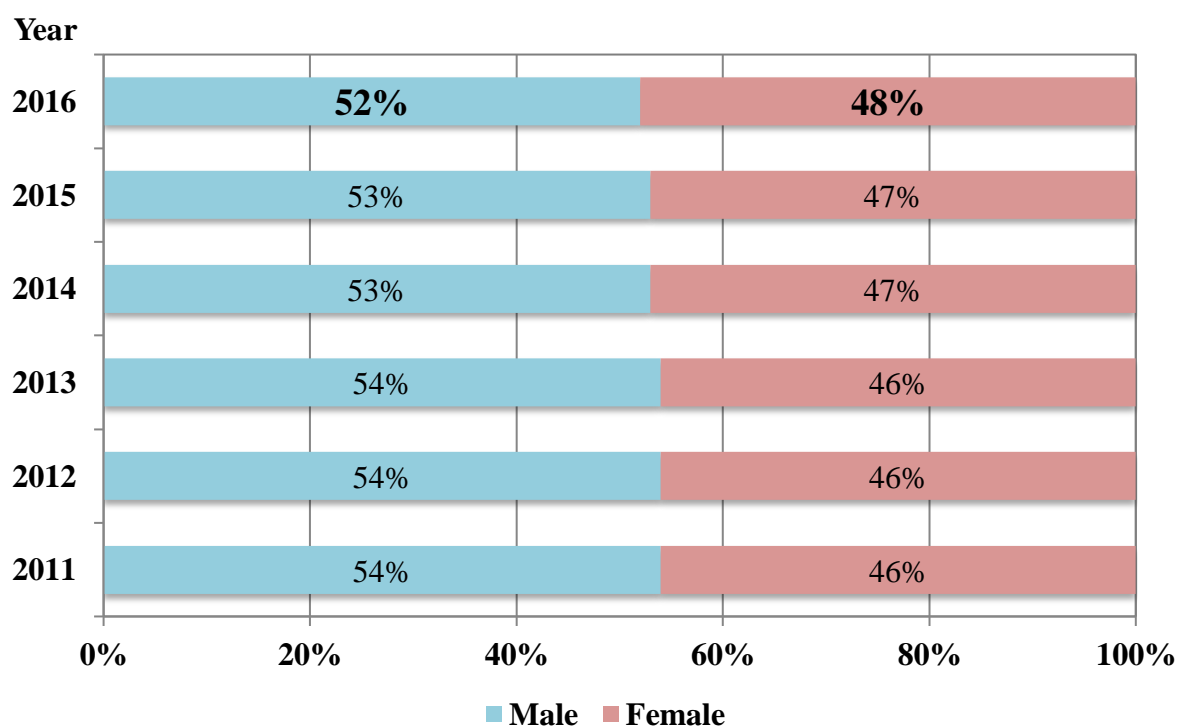


Figure 7b: Gender ratio – Trainee solicitors 2011 – 2016

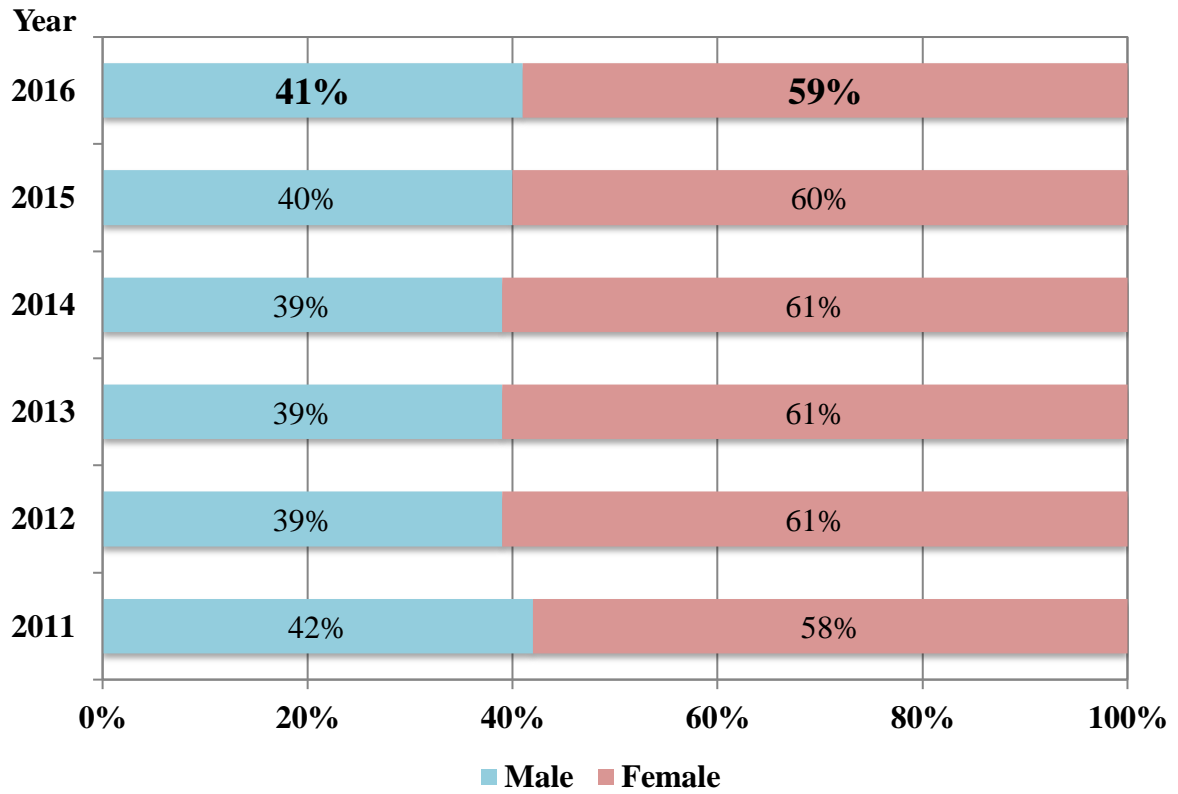


Figure 7c: Gender ratio – Partners 2011 – 2016

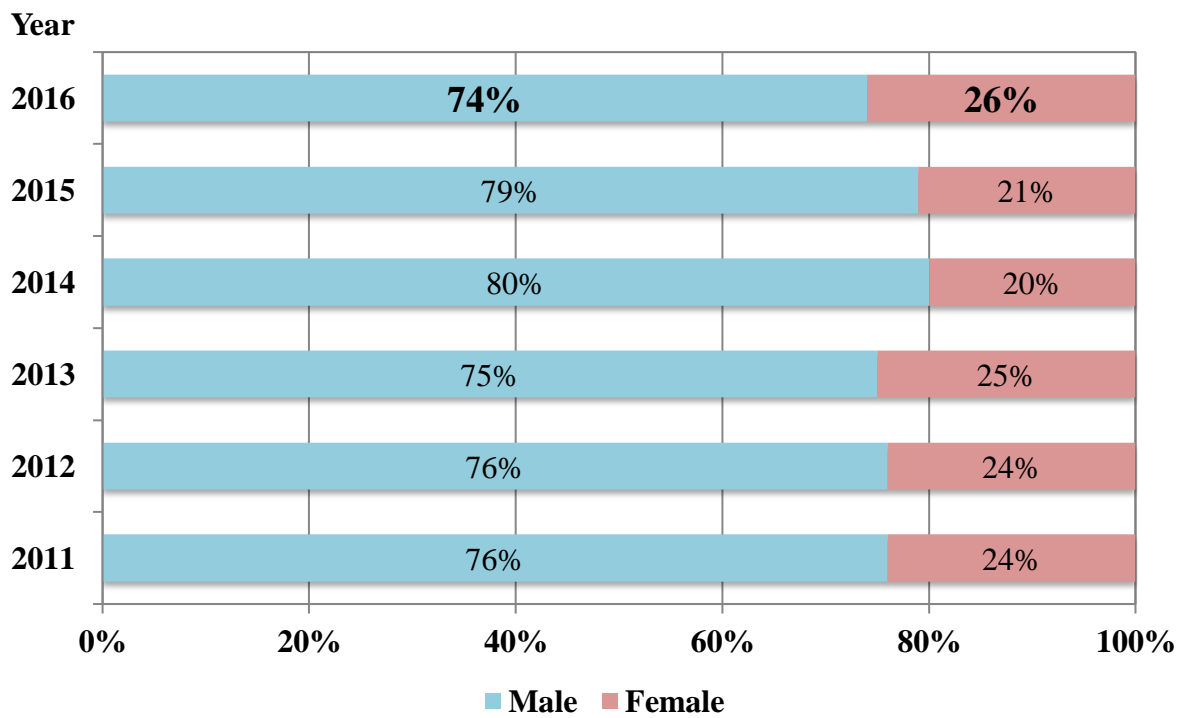


Figure 8: Size of solicitors' firms and number of trainee solicitors in 2016

Size of firm	No. of firms		No. of trainee solicitors	
	2016	2015	2016	2015
Sole practitioners	421	406	66	57
2—5 partners	352	357	302	328
6—10 partners	49	45	198	183
11—20 partners	35	36	244	252
Over 20 partners	13	10	208	164
Total	870	854	1,018[#]	984[*]

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

excluding 12 in government and 6 working “in-house”

Figure 9: Home jurisdictions of registered foreign lawyers

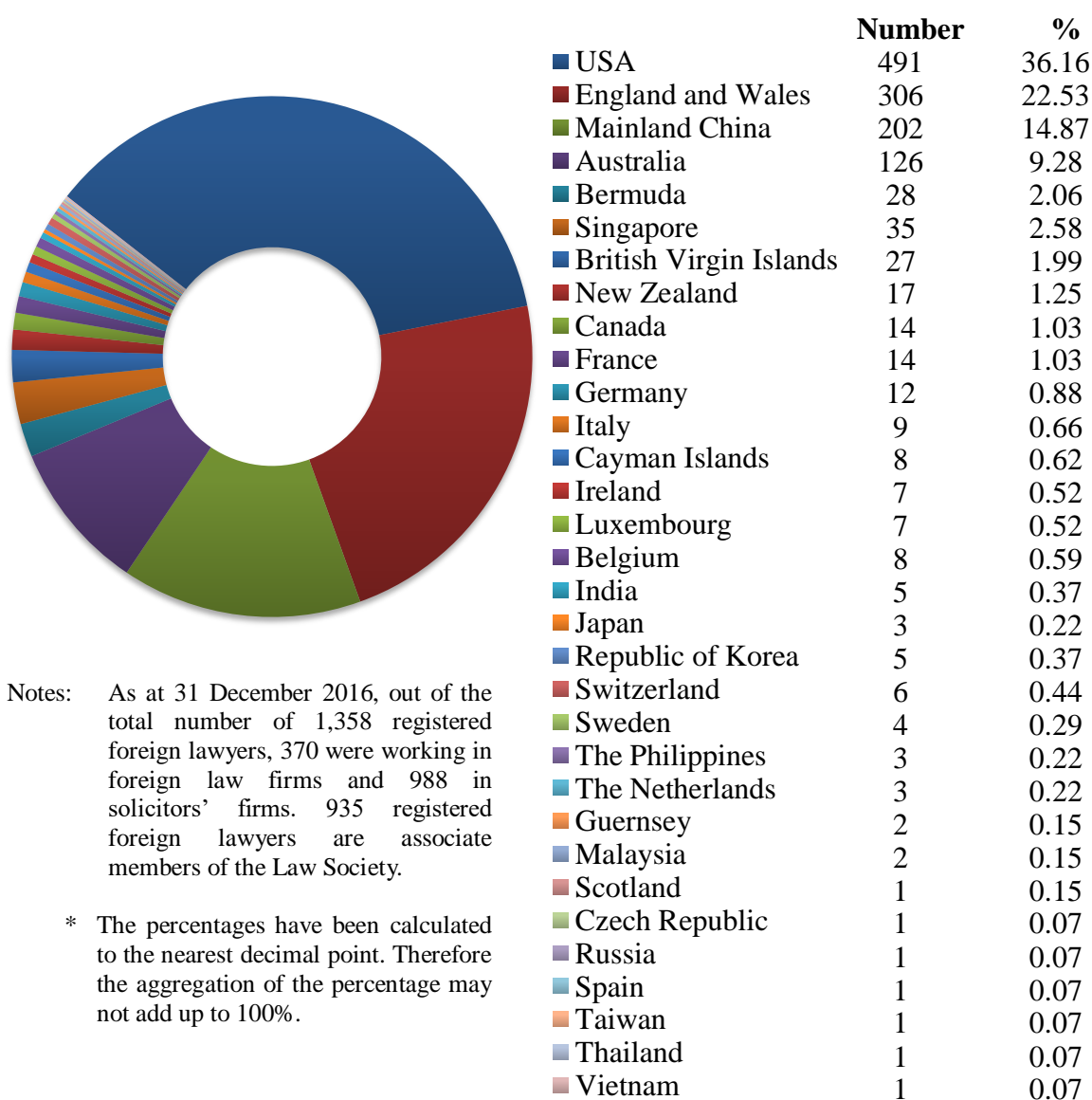
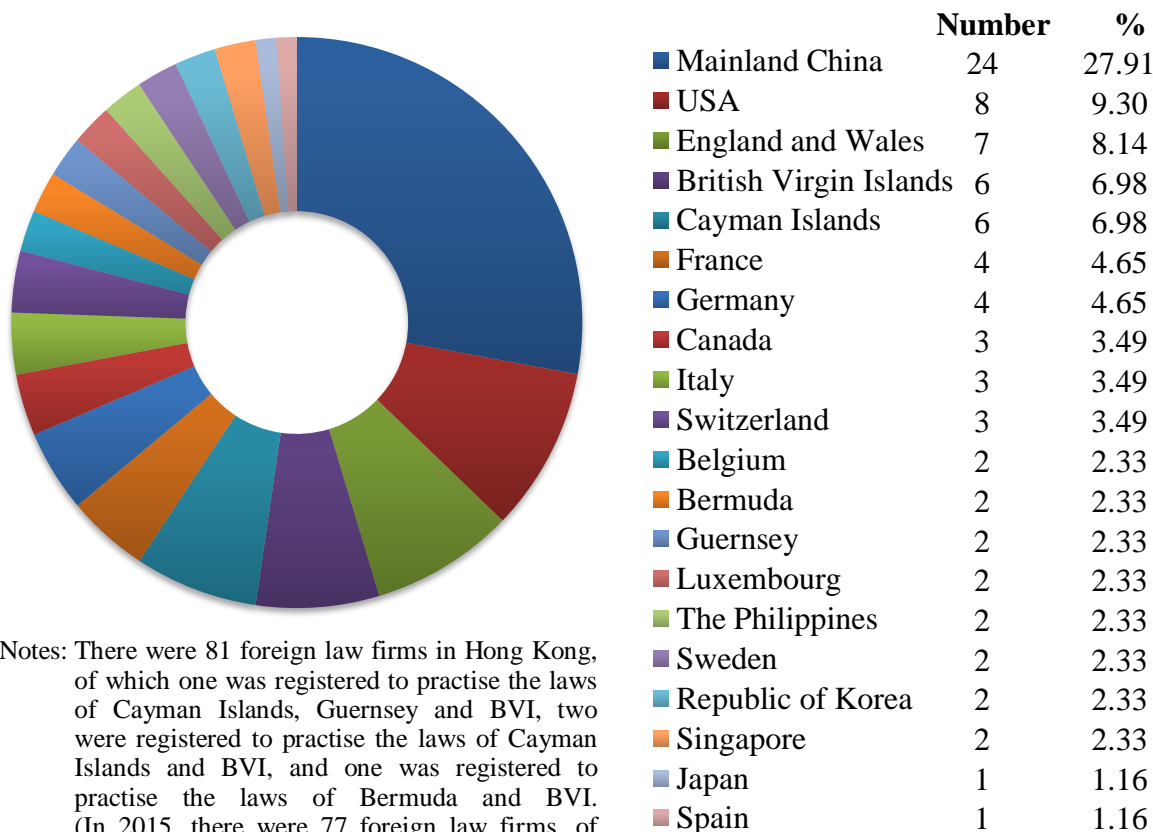


Figure 10: Home jurisdictions of foreign law firms



Notes: There were 81 foreign law firms in Hong Kong, of which one was registered to practise the laws of Cayman Islands, Guernsey and BVI, two were registered to practise the laws of Cayman Islands and BVI, and one was registered to practise the laws of Bermuda and BVI. (In 2015, there were 77 foreign law firms, 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.)

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

There were 36 Associations registered between foreign law firms and solicitors' firms (32 in 2015). Ten new foreign law firms commenced practice (9 in 2015). Six foreign law firms were closed, three of which established local practices. (In 2015, 11 were closed, eight of which established local practices.)

There were 15,312 unqualified staff members employed by solicitors' firms at the end of the year (15,111 at the end of 2015). In addition, there were 469 unqualified staff members employed by foreign law firms at the end of 2016 (466 in 2015).

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 867 authorised solicitors' clerks (908 in 2015).

The Law Society continued to waive subscription fees for student members in 2016. By the end of the year, there were 320 student members registered with The Law Society (473 in 2015).

At the end of December, the number of Law Society Approved Law Costs Draftsmen was 36 (37 in 2015).