



Standing Committee on Practitioners Affairs



THE
LAW SOCIETY
OF HONG KONG
香港律師會

2017

The Standing Committee oversaw the work of 30 Committees, 11 Working Parties and ad hoc Task Groups. It received from them draft submissions in different practice areas. These draft submissions were rendered in response to consultations from the Judiciary, Government departments, financial institutes, as well as proposals on law reforms. On the administrative side, the Standing Committee supervised the administration of the above specialist committees. For example, it assisted in the review of their chairmanship and membership.

The Standing Committee met on three occasions and conducted the rest of its business by emails. Two new members were co-opted to help with its workload.

Some of the matters the Standing Committee has considered are set out in the following.

Party and Party Rates

The Working Party on Party and Party Rates raised concerns with the Judiciary on the obsolete Solicitor's Hourly Rates (SHRs). It lobbied the Judiciary to expedite the review on SHRs.

- In February a member of the Working Party attended a panel meeting of the Legislative Council ("LegCo") to explain the importance of an updated set of SHRs.
- In March, members of the Working Party, together with a few Council Members, met to discuss lobbying strategies.
- In the same month, a members' luncheon was held to gauge members' views.

The Standing Committee had been closely reviewing the matter; it took note of a members' survey arranged by the Judiciary consultant, which was to work out a new set of SHRs. Representations were made to the Judiciary on the survey, including the design of its questionnaire.

In December, the Judiciary advised it had concluded its review, and would revise the SHRs with effect from 1 January 2018. The new set of SHRs was close to the level recommended in the Law Society's own consultancy report commissioned in 2013. The SHRs would be updated once every four years.

Review of Fixed Costs for Matrimonial Cases

Fixed costs are available for matrimonial causes under the *District Court (Fixed Costs in Matrimonial Causes) Rules*. Private practitioners can choose to elect fixed costs for matrimonial cases, irrespective of whether or not it is a legal aid assignment. However, if it is a legal aid assignment, practitioners routinely will be asked to elect fixed costs.

The latest review of the above fixed costs was in 2000. The Family Law Committee sought an update and, with the endorsement of the Standing Committee, submitted a proposal in February to amend the Rules and to revise the fixed costs.

Joint Tribunal

The Joint Tribunal is set up to resolve disputes between solicitors and barristers in relation to fees, in accordance with the agreed Terms of Reference and Procedure. The Standing Committee assisted in the administrative work of the Tribunal.

This year a co-option exercise for the Tribunal was arranged. Two new members were co-opted after selection and interviews.

Transportation and Logistics Committee

This new Committee was set up in October and was tasked to monitor and review legal and practice matters pertinent to the transportation and logistics industries. Its terms of reference were:

- to review, examine and comment on any issues relating to the transportation and logistics industries in Hong Kong (including, marine, shipping, aviation, air transport and cargo industries) by making proposals and recommendations to the Council;
- as and when requested by the Council and the Standing Committee, to liaise with and to make representations and submissions to the Administration and relevant external bodies (e.g. LegCo and trade associations); and
- to help promote the profession's contribution to transportation and logistics generally and as part of Hong Kong's role as an international dispute resolution centre and transportation and logistics hub.

A co-option exercise was conducted.

Law Society Panels and Admission Scheme

The Standing Committee assisted in the setting up of two panels this year for The Law Society. One was the "Panel of Arbitrators of The Law Society of Hong Kong". Its establishment was officially announced in an arbitration seminar-cum-reception, held jointly with the Department of Justice ("DOJ") in September.

The other Panel was the "Panel of Parenting Coordinators of The Law Society of Hong Kong". The panel was established in recognition of the growing importance of parenting co-ordination, as a mode of alternative dispute resolution for parenting issues for divorced couples in high conflict situations. The Standing Committee considered and approved the admission requirements for the Panel; empanelment was arranged.

Apart from the above, the Standing Committee also considered and in October approved various enhancements to the Mediator Admission Scheme of The Law Society.

ARBITRATION COMMITTEE

The Arbitration Committee is tasked to discuss, among other things, the development of and the practice in arbitration in Hong Kong and in other jurisdictions. It also recommends policies relating to the offer of arbitration services to members and to the general public in Hong Kong. The Committee is assisted by a sub-committee, viz. the Arbitrators Admission Sub-Committee (“AAC”), on matters relating to admission to the “Panel of Arbitrators of The Law Society of Hong Kong” (“the Panel”).

The Committee met once in the year and conducted the rest of its business by emails.

Panel of Arbitrators of The Law Society of Hong Kong

In consultation with the AAC, the Committee considered and rendered recommendations to the Council on the establishment, empanelment and maintenance of the Panel. These recommendations were considered and approved by the Council in October 2016.

Following the above, the Committee issued several empanelment circulars. By the end of 2017, with the assistance of the AAC, the Committee approved and admitted 24 members as Solicitor-arbitrators.

With the advice of the Committee, the website of The Law Society was at the same time expanded, with a dedicated section for Solicitor-arbitrators. Information such as the contact details of Solicitor-arbitrators was made available on the website.

Promotion of Solicitor-arbitrators

The Committee considered various initiatives to help promote members’ practices in arbitration. One of the main focuses of discussion for the Committee was the promotion of the status of Solicitor-arbitrators and their arbitration practices, in particular in the Mainland. The discussion was continuing.

On top of the above, the Committee organised various activities throughout the year as a part of its promotion efforts:

(a) Arbitration Reception and Seminar

The Committee and the Hong Kong Academy of Law Ltd (“the Academy”) jointly organised the Arbitration Reception and Seminar on 25 September. The event took place at the Function Hall of the Justice Place; that symbolised the joint efforts of The Law Society and the DOJ in the promotion of arbitration.

The event consisted of a reception and a seminar with the title “*Arbitration: New Challenges and Opportunities*”.

The reception was well received by members and guests from government

departments, domestic and international arbitration institutes and other professional bodies in Hong Kong. The then-Secretary for Justice and the President spoke on the latest developments in arbitration in Hong Kong as well as the official launch of the Panel of Arbitrators for The Law Society. As for the seminar, with the Chairman of the Committee as the moderator, distinguished speakers shared views on subjects such as conflict of interest in arbitration and Hong Kong as an arbitration-friendly jurisdiction for dispute resolutions. The above seminar was over-subscribed and the responses were most encouraging.

(b) Certificate of Admission to the Panel

Certificates of admission to the Panel were produced by the Committee and were awarded to each Solicitor-arbitrator in October.

(c) “Arbitration Services” Webpage

The Committee produced a webpage on “Arbitration Services” for the website of The Law Society. The webpage was placed on the public zone of the website and could easily be accessed by members, other professionals and the general public. It provided basic information on arbitration-related matters.

Law Society Sample Arbitration Clause

To promote solicitors’ practice in arbitration and the use of arbitration, the Committee suggested The Law Society to publish its own sample arbitration clause (“Sample Clause”). This aimed to provide a template clause which could readily be available for use by members and the general public.

The Committee received various draft Sample Clauses and, for that purpose, formed a Working Group to work on the final draft for the Committee’s consideration and endorsement. During the course of discussions among members of the Working Group, views were offered on matters such as the formatting and the applicability of the Sample Clause to domestic and international arbitrations for general and specified dispute(s). The Committee was to study the final draft Sample Clause and in due course submit recommendations to the Council for deliberations.

Training Courses in Arbitration

The Committee took the views that continual training on arbitration was essential and should be offered to Solicitor-arbitrators and the general membership of The Law Society. It was important for members to be made aware of and be equipped with updates on knowledge and skills for arbitration.

A Working Group under the Committee was convened to offer suggestions on training for the Law Society and the Academy. The Working Group met once this year and discussed Continuing Professional Development (“CPD”) and Risk Management Education (“RME”) training courses on arbitration-related topics.

Consultations relating to Arbitration

The Committee discussed and/or provided views on the following.

(a) *Arbitration (Amendment) Ordinance 2017*

The Committee studied the proposed legislation on arbitrability of intellectual property disputes last year. It held a number of meetings with the Intellectual Property Committee of The Law Society, the DOJ and the Intellectual Property Department (“IPD”). With these deliberations and the submissions made thereupon, the Committee noted the *Arbitration (Amendment) Ordinance 2017* was enacted in June.

(b) Consultation on Third Party Funding for Arbitration

There had been much discussions within the Committee on the *Arbitration and Mediation (Third Party Funding) (Amendment) Bill 2017* which provided that third party funding of arbitration and mediation was not prohibited by the common law doctrines of maintenance and champerty. The Bill also provided for the establishment of an authorized body to oversee the ethical and financial standards of third party funders, including the publication of a Code of Practice for funders.

The Committee welcomed the clarification set out in the above Bill and noted that the *Arbitration and Mediation (Third Party Funding) (Amendment) Ordinance 2017* was enacted in June.

(c) Consultation on Conditional Fee for Arbitration Work

The Committee noted a request from a LegCo member for a public consultation to allow conditional fee to lawyers of Hong Kong for arbitration work. The Committee was to study the above request in details.

(d) Consultation on Proposal to Enhance the Financial Dispute Resolution Scheme

The Committee had reviewed the final recommendations by the Financial Dispute Resolution Centre on its proposal to enhance its Financial Dispute Resolution Scheme.

Participation in Arbitration-Related Events

(a) Visit by the Chartered Institute of Arbitrators

The Chairman of the Committee together with the President of the Law Society received a delegation from the UK’s Chartered Institute of Arbitrators on 16 October. They exchanged views on, among other things, the developments in arbitration, the establishment of the Panel of Arbitrators for The Law Society and

the provision of arbitration training on general and specified disputes.

(b) Cross Strait Four Regions Young Lawyers Forum 2017

A member of the Committee represented The Law Society to speak on “*Cross border commercial dispute resolution procedure and practice – from jurisdiction, evidence collection, interim relief, to recognition and enforcement of judgments and arbitral awards*” in the captioned seminar. The seminar was held on 20 October.

(c) “Belt and Road” Seminar on Hong Kong Legal and Dispute Resolution Services

Another member of the Committee spoke for The Law Society on “*Strategies and overall planning for enterprises adopting international arbitration to resolve cross-border trade disputes / how to apply for enforcement of the Mainland arbitral awards in Hong Kong*” in the captioned seminar organised by the InvestHK, in Beijing on 21 November.

Arbitrators Admission Sub-Committee

The AAC is set up to help the Committee to oversee all matters in relation to the establishment, empanelment and maintenance of the Panel of Arbitrators of The Law Society of Hong Kong (“Panel”). The AAC this year elected a new chairman and co-opted two new members to assist its work. It met once in the year and discussed, among other things:

- review of its chairmanship and co-option of new members
- establishment, empanelment and maintenance of the Panel
- applications for admission to the Panel
- positioning and promotion of the Panel
- training in arbitration for Solicitor-arbitrators and solicitors
- code of conducts for Solicitor-arbitrators

CIVIL LITIGATION COMMITTEE

The Committee met on two occasions and conducted the rest of its business via emails.

Consultation Papers

The Committee received and reviewed various Consultation Papers from the Administration and the Judiciary, inclusive of the following:

(a) Consultation on Draft Revised *Practice Directions* (“PDs”) 2.1 and 4.1 about Civil Appeals

The Committee considered two draft revised *PDs* 2.1 and 4.1 and in August 2016 rendered detailed comments on two drafts to the Judiciary. The Committee received positive feedbacks from the Judiciary where most of the amendments on the draft revised *PDs* proposed by the Committee were accepted. The revised *PDs* 2.1 and 4.1 took effect in March.

Two briefing sessions on "*Revised Practice Directions 2.1 and 4.1 about Civil Appeals*" were held in January and March by the Judiciary on the revised *PDs* 2.1 and 4.1, the rationale behind the changes and detailed arrangements for civil appeals.

(b) Consultation on the Proposed Legislative Amendments relating to Civil Appeals to the Court of Appeal

The Committee received from the Judiciary a consultation paper on the Proposed Legislative Amendments relating to Civil Appeals to the Court of Appeal. The Judiciary proposed to amend Order 59 of the *Rules of the High Court* (Cap. 4A) to revise the court practice and procedures for civil appeals. The Committee reviewed the consultation paper and sent their comments to the Judiciary in February. The Committee's detailed comments included a recasting of Order 59. The Judiciary replied welcoming the Committee's comments. In relation to the comment concerning recasting the Order, the Judiciary indicated that the comments would be given further detailed consideration.

The proposed legislative amendments on parties' amendments to the appeal-related documents and time extension applications were introduced by way of the *Rules of the High Court (Amendment) Rules 2017*, which was gazetted and brought to the LegCo for negative vetting in June. They came into effect on 1 December.

(c) *Apology Bill*

The Committee reviewed the *Apology Bill*, which was introduced into the LegCo in February. The Bill provided for the effect of apologies in certain proceedings and legal matters. The *Apology Bill* was passed by the LegCo in July and came into effect on 1 December.

(d) *Statute Law (Miscellaneous Provisions) Bill*

The Committee reviewed the *Statute Law (Miscellaneous Provisions) Bill*, which was introduced into the LegCo in June. The Bill proposed a number of miscellaneous amendments to various Ordinances, including the *High Court Ordinance* (Cap. 4) and the *District Court Ordinance* (Cap. 336) for the purpose of updating and further improving the relevant legislation.

(e) Review of the Financial Jurisdictional Limits of District Court and Small Claims Tribunal

The Committee reviewed a briefing paper prepared by the Judiciary Administration on its review of the financial jurisdictional limits of the District Court and Small Claims Tribunal. The Judiciary proposed, amongst others, to raise the general financial limit of the jurisdiction of the District Court from \$1 million to \$3 million and the jurisdictional limit of Small Claims Tribunal from \$50,000 to \$75,000. The Committee noted that, subject to the approval by the LegCo, the Judiciary intended to complete the legislative process within this year, with a view to implementing the revised limits of the District Court and the Small Claims Tribunal in early 2018.

(f) Proposed Arrangement with the Mainland on Reciprocal Recognition and Enforcement of Judgment in Civil and Commercial Matters

The Committee reviewed a paper prepared by the DOJ on the Proposed Arrangement with the Mainland on Reciprocal Recognition and Enforcement of Judgment in Civil and Commercial Matters released in November. The Committee would keep the matter under review.

Other issues

The Committee discussed and raised suggestions on various issues pertinent to civil litigation practices, including the following:

- Photocopying charges of documents in colour-ink
- Publication of the White Book
- Fixing of High Court Civil Trials
- Service by method of public announcement in the PRC
- Proposed introduction of evaluative mediation
- Issues relating to the Civil Justice Reform
- Order 62, Rule 32(1A) of the *Rules of District Court* (Cap. 336H) – “Two-Thirds Rule”

The Committee also issued the following circulars to assist members in updating the civil court practice and procedures:

- Underlying Objectives of Order 1A, *Rules of High Court*
- *PD 27* - Civil Proceedings in District Court - Filing of Writs and Originating Summons
- Arrangement on Mutual Taking of Evidence in Civil and Commercial matters between the Courts of the Mainland and the Hong Kong Special Administrative Region

A Committee member contributed an article for the *Hong Kong Lawyer* on the Underlying Objectives of Order 1A, *Rules of High Court*. The article was published in October.

COMPANY LAW COMMITTEE

The Committee considered a number of consultations from the Administration, the Stock Exchange of Hong Kong Limited (“HKEX”) and the Companies Registry. Submissions were made on the following:

- The Financial Services and the Treasury Bureau’s consultation paper on *Enhancing Transparency of Beneficial Ownership of Hong Kong Companies*
- HKEX’s consultation paper on *Review of the Growth Enterprise Market (“GEM”) and Changes to the GEM and Main Board Listing Rules*
- HKEX’s consultation paper on *Concept Paper on New Board*
- HKEX’s consultation paper on *Capital Raisings by Listed Issuers*
- HKEX’s consultation paper on *Delisting and other Rule Amendments*
- HKEX’s consultation paper on *Review of the Corporate Governance Code and Related Listing Rules*
- HKEX’s consultation paper on *Proposed Changes to Documentary Requirements relating to Listed Issuers and other Minor Rule Amendments*

CONSTITUTIONAL AFFAIRS AND HUMAN RIGHTS COMMITTEE

The Committee had six meetings during the year, and had discussions on a wide range of constitutional and human rights issues. Some of the issues canvassed at the meetings are outlined below.

Co-location

The Administration announced at a press conference on 25 July the implementation of Hong Kong and Mainland customs, immigration and quarantine procedures at the West Kowloon Station (“WKS”) of the Hong Kong Section of the Guangzhou- Shenzhen-Hong Kong Express Rail Link (“XRL”) (i.e. the co-location arrangement). In accordance with the government paper submitted to the LegCo, a “Three-step Process” was to be adopted by the HKSAR Government and the relevant central authorities in implementing the co-location arrangement at the WKS of the XRL. Step One and Step Two were completed, respectively in November (when the HKSAR Government signed the Co-operation Arrangement with the People’s Government of Guangdong Province), and in December (when the Standing Committee of the National People’s Congress (“NPCSC”) issued a Decision, approving and endorsing the above Co-operation Arrangement). Step Three was the commencement of the local legislative process pursuant to the NPCSC’s Decision and the Co-operation Arrangement to implement the co-location arrangement in the HKSAR. The Administration was to introduce the *Guangzhou- Shenzhen-Hong Kong Express Rail Link (Co-Location) Bill* to the LegCo and intended to secure its passage through LegCo’s summer recess in 2018.

The Committee considered various difficult constitutional issues arising from the above, including the legal basis under Hong Kong law, for implementation of the co-location arrangement at the WKS. It would continue to monitor and review the matter, and from time to time make recommendations to the Council.

Unified Screening Mechanism for non-refoulement claims

Unified Screening Mechanism (“USM”) was set up by the Administration in March 2014 to handle non-refoulement claims. Following the Chief Executive’s 2016 Policy Address, in September, the Security Bureau wrote to advise that the Immigration Department planned to increase its determination of the non-refoulement claims to 5,000 or more per year, starting 2017-2018. To implement the above plan, the Security Bureau proposed to launch a Pilot Scheme to provide publicly-funded legal assistance for non-refoulement claimants.

A Task Group was set up under the Committee to consider the above. The Task Group had several internal meetings. It also met the Security Bureau, the Hong Kong Bar Association (“Bar Association”) and the Duty Lawyer Service on several occasions. Concerns including, inter alia, the lack of independence, the proposed capping of fees, and a number of practical considerations were raised. Those were relayed to the Security Bureau by a joint letter with the Bar Association in January. Following further discussions with the Security Bureau, circulars were issued in June and July on the salient issues.

To apprise the general members of the developments in USM, the Committee arranged a training seminar in late April. The Vice President of the Upper Tribunal in the UK, together with officers from the Immigration Department, the United Nations High Commissioner for Refugees and private practitioners, shared views on laws and jurisprudence of non-refoulement protection, as well as a number of practice issues. The training was well-attended.

The Pilot Scheme was launched in September. An “Advisory Committee on Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants” was set up by the Security Bureau to review the operation of the Pilot Scheme. The Committee nominated a member to sit on the Advisory Committee.

Review of constitutional and human rights issues

The Committee was made aware of the misguided public comments, accusations and unfair criticisms against the Hong Kong Judiciary, after the Hong Kong Court of Appeal had issued its decisions on reviews of sentences by the “Occupy Trio” for unlawful assembly. A joint statement by The Law Society and the Bar Association was issued in August 2017, in support of the independence of the Hong Kong Judiciary and the maintenance of the Rule of Law in Hong Kong.

The Committee considered various other constitutional and human rights issues, and shared views relating to, for example, claims for self-determination for Hong Kong, pro-independence views, proposed legislation on national anthem and retroactivity of criminal laws.

Consultations

The Committee reviewed a number of consultation papers and prepared submissions in response, for the Council's consideration. One of the major consultations the Committee had canvassed was the Consultation Paper on Gender Recognition released in June 2017 by the Administration's Inter-departmental Working Group ("IWG") on Gender Recognition. This consultation was said to be Part 1 of the IWG's Study. The consultation was released in response to the judgment of the Court of Final Appeal in *W v Registrar of Marriages* [2013]3 HKLRD 90; FACV 4/2012.

The Administration sought views on whether a gender recognition scheme should be established in Hong Kong, the criteria for determining gender recognition and if so, the procedure for gender recognition. The Committee, together with the Family Law Committee of The Law Society, produced a submission to the Council for consideration, which was approved and was relayed to the Administration in December.

Other consultations considered by the Committee included:

- review of electoral arrangements
- implementation of International Covenant on Civil and Political Rights
- proposal to establish a Commission on Children for Hong Kong.

CRIMINAL LAW AND PROCEDURE COMMITTEE

The Committee met on a monthly basis to discuss issues of criminal law and practices.

Biennial Review of Criminal Legal Aid Fees

The Administration proposed to amend Rule 21 and Part 2 of the Schedule to the *Legal Aid in Criminal Cases Rules* (Cap. 221 sub. leg. D) ("LACCR") to increase criminal legal aid fees. This proposal followed the discussions held among the Committee, the Administration and other stakeholders last year, under the biennial review of criminal legal aid rates. After various meetings and discussions, the *Legal Aid in Criminal Cases (Amendment) Rules 2017* was introduced into and was passed by the LegCo. It was gazetted on 1 December.

Pursuant to the amendment rules, the criminal legal aid rates were increased by 4%. The increases reflected the accumulated change in the Consumer Price Index (C) ("CPI(C)") recorded between July 2014 and July 2016.

Review of Duty Lawyer Service Fees

The Committee last year wrote to the Home Affairs Bureau ("HAB") and sought a review of rates payable to the Duty Lawyers. It took the view that the Duty Lawyer Rates were too low when compared to the criminal legal aid rates. There should be a comprehensive review which should be on top of mechanical adjustments based on Consumer Price

Index/Indices; it should also include a review of the base rates.

In response to the above request, the HAB decided to conduct a review of the Duty Lawyer Rates, and agreed to convene a working group for the above purpose. The Committee had nominated two members to join the working group, and keenly awaited its first meeting.

Consultations on Practice Directions

The Committee was busy this year with various consultations on criminal law and practices.

PD 9.3

One of the main consultations the Committee undertook this year was on the draft *PD 9.3* on criminal listing. The proposed PD aimed to supersede *PD 7.2* (“Court of First Instance – Criminal Running List”) and (old) *PD 9.3* (“Criminal Proceedings in the Court of First Instance”), and provided a new regime for listing and other procedural matters.

The Committee set up a task group to look into the draft. It also joined an external working group set up by the DOJ to discuss the above draft *PD* with representatives from the Bar Association, the Legal Aid Department (“LAD”), and Hong Kong Police.

The views of the professions and the stakeholders were subsequently consolidated and sent to the Judiciary. In response thereto, the Judiciary revised the draft and issued the *PD 9.3* in March. The *PD* was effective on 12 June.

Prior to the implementation of the above *PD*, a briefing was held by the Judiciary on 16 May to help members to better understand the new *PD*.

PD 9.6

Another heavy consultation was on the revision to *PD 9.6* on Magistracy Appeals in the Court of First Instance.

The Committee in July received a draft revised *PD 9.6* from the Judiciary. The draft set out proposals by the Judiciary on procedural steps and timetable to be put in place throughout the chronological process of magistracy appeal cases, from filing of the Notice of Appeal to the hearing. The Judiciary also aimed to provide a set of new listing procedures for magistracy appeal cases.

The Committee convened a task group to review the draft *PD* and wrote to the Judiciary in September to relay its proposals to further revise the draft.

Other *PD*

Apart from the above, the Committee assisted and rendered views to a set of proposed revisions to the *PD* on the provision of special passageway for witnesses of sexual offence

cases during court proceedings.

Other Consultations

The Committee continued its review on the Law Reform Commission Report on sexual offences involving children and persons with mental impairment. It received views from its Task Group, whose comments were consolidated into a submission that was issued in January.

The Committee received and reviewed a number of other consultations and matters pertinent to criminal law and practice. For example, the Committee was consulted on the future development of prosecution work in the Magistracy, and the approach that the Administration was to adopt in taking that matter forward. Submissions in response were rendered to the DOJ in May.

Other consultations the Committee considered this year included the *Evidence (Amendment) Bill*, the reform of the rules against hearsay in criminal proceedings, revised legal aid (criminal) assignment limits, as well as a proposal for a pilot scheme to provide legal advices to persons detained in police stations.

Criminal Law Conference 2017

The Committee assisted in the organising of the Criminal Law Conference 2017 held on 20 May at the Function Hall of the DOJ. The Criminal Law Conference 2017 was the fourth run of this conference series, jointly organised by The Law Society, the DOJ and the Bar Association. The Conference 2017 covered four major topics, namely active case management; protection to the vulnerable in court; joint enterprise law in Hong Kong; and development of sentencing practice. Members of the Law Society spoke at the Conference and shared views on these issues with representatives of the Bar Association, the DOJ, as well as two overseas guest speakers, viz. the Honourable Justice William Young of the Supreme Court of New Zealand and Professor David Ormerod, the Law Commissioner for Criminal Law and Evidence, England and Wales. The conference was over-subscribed.

Training programme

The Committee continued to organise a one-day training course jointly with the DOJ and the Bar Association. The training course was held on 4 March and repeated on 25 November. The course comprised lectures and mock court exercises; it provided criminal advocacy training to participants with less than 5 years' post qualification. The two training courses were well received.

Talks on criminal practices

Members of the Committee helped give speeches and talks on criminal matters. For example, a member on 12 October spoke on criminal law for secondary school students, as part of the Working Group on Business-School Partnership Programme.

EMPLOYMENT LAW COMMITTEE

The Committee conducted its business by emails. Throughout the year, the Committee considered and reviewed various employment practices, and took note of the following:

- the Code of Practice for Employment Agencies promulgated by the Labour Department in January. The Code of Practice sets out, inter alia, the minimum standards which the Commissioner for Labour expects of employment agencies licensees.
- the Administration's initial assessment of the recommendations in the submissions on the Discrimination Law Review by the Equal Opportunities Commission at the meeting of the LegCo Panel of Constitutional Affairs. The Panel identified several recommendations that they considered to be capable of driving consensus among stakeholders and society, for example, introducing express provisions prohibiting direct and indirect discrimination on grounds of breastfeeding.
- *Employment (Amendment) Bill 2017* - This Bill was introduced into the LegCo in May. It aims to, amongst others, empower the Labour Tribunal to make an order for reinstatement or re-engagement as requested by an unreasonably and unlawfully dismissed employee, without having to secure the employer's prior agreement if such an order is considered appropriate and practicable.
- *Employment (Amendment) (No.2) Bill 2017* - The Bill was introduced into the LegCo in June. The Bill seeks to amend Part XII of the *Employment Ordinance* (Cap. 57) to raise the maximum penalty for the offences of overcharging job-seekers and unlicensed operation of employment agencies, to expand the scope of application of the overcharging offence, to provide for new grounds for the Commissioner for Labour to consider refusing to issue or renew or revoking a licence to operate an employment agency, and to provide a legal basis for the issue of codes of practice for employment agencies.

FAMILY LAW COMMITTEE

The Committee had a very busy year meeting on 13 occasions including two on Saturday mornings. In addition, it had five external meetings with the government bureaus and departments, the Judiciary, LegCo members and other external bodies to discuss a wide range of family law related issues. Committee members were invited and attended 4 LegCo Panel meetings.

The Committee reviewed an array of family law related issues:

- (a) **Proposed Legislation to implement the Recommendations of the Law Reform Commission Report on Child Custody and Access - Proposed Children Proceedings (Parental Responsibility) Bill**

The Committee was actively engaged with different stakeholders, including LegCo members, government bureaus, departments and Non-governmental organisations

(“NGOs”), to discuss the proposed *Children Proceedings (Parental Responsibility) Bill*. The proposed Bill represented efforts and attempts to bring forth to the matrimonial regime the important concept of parental responsibility and the focus on children’s best interests. In February, a joint meeting with the LegCo members, the Labour and Welfare Bureau, the Social Welfare Department (“SWD”) and NGOs was held to exchange views. Committee members also delivered talks to NGOs on the main features of the proposed Bill.

One of the core issues which were relevant to the proposed Bill was the housing policy for divorced couples; that could be an important matter in the consideration of parental responsibility. For that purpose, the Committee had a meeting with the Hong Kong Housing Authority in September and discussed the policy on housing arrangements for divorced couples in Public Rental Housing Flats. At the meeting, committee members relayed to the Authority comments and suggestions which the Authority should consider in response to the proposed Bill.

The Committee was lining up meetings with the stakeholders and with the Administration to push for the legislative amendments by way of the *Children Proceedings (Parental Responsibility) Bill* and the related reform.

(b) Proposed establishment of a Maintenance Board in Hong Kong

The Committee had a joint meeting with LegCo members, representatives from the HAB, LAD and other stakeholders in June and shared views on the proposed establishment of a Maintenance Board in Hong Kong. The HAB agreed to look into the matter and was going to commission a consultancy study through the Family Council on maintenance and divorced-related matters.

(c) Domestic Violence

The Committee continued its review on the protocol of handling domestic violence by the Police as well as The Law Society's Panel of Solicitors on Domestic Violence. The Panel List was aimed to provide to the Police and the NGOs references of legal assistance on domestic violence, which usually arose on urgent basis. The Panel List was updated and was sent to the relevant NGOs in January.

(d) Child Abuse

The Committee had been corresponding with the SWD on progress of its review on its protocol on handling child abuse cases and the Multi-disciplinary Case Conference. On the other hand, the Committee received and studied a consultation paper issued by the SWD on the definition of child abuse and handling approaches.

(e) Proposed establishment of a Commission on Children in Hong Kong

Upon invitation by the LegCo's Sub-Committee on Children's Rights, a committee member attended a LegCo meeting in April. Views on the proposed establishment of a Commission on Children in Hong Kong were relayed to the Sub-Committee.

In July, the Hong Kong Committee on Children's Rights ("HKCCR") released a Paper entitled "*Children's Commission for Hong Kong*" and a Wish List for the Commission on Children in Hong Kong. They sought indications of support from stakeholders. The Committee reviewed the Paper and the Wish List and agreed to render support for a Commission on Children with independence and legal mandates set in accordance with the international minimum standards. They also agreed that the proposed legal mandates should be given to the Commission on Children as set out in the Wish List.

(f) Judgment Summons

The Committee examined in detail the Court of Appeal Judgment, *YBL v LWC* (CACV 244/2015) which set out the court's views and interpretation on the procedures to be followed in judgment summons in matrimonial and family proceedings. A circular on the judgment was issued in January. In the meantime, the Committee received and reviewed a draft Guidance Note on Judgment Summons Procedure proposed by the Judiciary in consequence of the above Judgment.

(g) Enforcement of Family Financial Orders

In January, the Committee studied a paper on Enforcement of Family Financial Orders released by the UK Law Commission. The Committee was considering if those recommendations could be brought to Hong Kong.

(h) District Court (Fixed Costs in Matrimonial Causes) Rules, Cap. 336F

The latest review of the fixed costs in matrimonial causes was 17 years ago i.e. in 2000. The Committee considered that an update was overdue. It had a comprehensive review of the fixed costs regime and, jointly with the LAD, submitted to the Judiciary a proposal on the amendments to the *District Court (Fixed Costs in Matrimonial Causes) Rule* to update all the fixed costs. The Committee was awaiting responses from the Judiciary and would keep in view the progress of the review and any related legislative amendments.

(i) Director of Legal Aid's First Charge on maintenance payment under section 18A of the *Legal Aid Ordinance* (Cap.91)

The Committee in December was advised by the HAB that the review of Director of Legal Aid's First Charge on monthly maintenance for spouses was in progress. This followed the close liaison the Committee had with the HAB on previous occasions. The Committee understood that the HAB planned to report the outcome of the review to the LegCo Panel on Administration of Justice and Legal Services in the second quarter of 2018.

(j) Proposed Arrangement with the Mainland on Reciprocal Recognition and Enforcement of Judgment on Matrimonial and Related Matters

The *Arrangement with the Mainland on Reciprocal Recognition and Enforcement of Judgment on Matrimonial and Related Matters* (“the Arrangement”) aimed to facilitate the mutual recognition and enforcement of judgments with the Mainland. It was proposed to cover various types of matrimonial and family civil judgments, including divorce decrees absolute, maintenance orders, custody orders.

In March and May, the Committee met the DOJ and other stakeholders and exchanged views on the Arrangement. Members of the Committee also attended a meeting of the LegCo Panel on Administration of Justice and Legal Services in May and relayed comments. In recognition of the growing number of matrimonial issues arising across the borders, the Committee welcomed and was supportive of the introduction of the Arrangement.

The Arrangement was signed by the Supreme People's Court and the HKSAR Government on 20 June. It would come into effect after both sides have completed their respective internal procedures.

(k) Draft PD on Hearing Bundles for Family Cases

In January, the Committee, jointly with the Bar Association and the Hong Kong Family Law Association, had a meeting the Judiciary and exchanged views on the draft Practice Direction on Hearing Bundles for Family Cases.

(l) PD SL9 - Pilot Scheme on Private Adjudication of Financial Disputes in Matrimonial and Family Proceedings

The PD SL9 set out the procedures of a pilot scheme for private adjudication of financial disputes in matrimonial and family proceedings, which would expire in early 2018. The Committee reviewed the PD SL9 and sought to extend the above pilot scheme for another three years.

(m) Separate Family Court Jurisdiction

The Committee reviewed the current Family Court system in Hong Kong with reference to a number of comparable jurisdictions, including England & Wales, Australia, New Zealand, Singapore, Canada and Israel. The Committee took the view that it was appropriate and desirable for Hong Kong to have a separate Family Court with its own jurisdiction. The Committee was working on this proposal, to be submitted to the Council for deliberations.

(n) Parenting Coordination

Parenting Coordination is considered to be effective in resolving disputes in high conflict cases. A Parenting Coordinator can be appointed either by a court or by the parties in matrimonial disputes to resolve child-related issues. With the advice from

the Committee, The Law Society established its Panel of Parenting Coordinators.

(o) Consultation Paper on Gender Recognition

The Inter-departmental Working Group on Gender Recognition released a Consultation Paper on Gender Recognition in June. The Committee reviewed the Consultation Paper which raised for consultations the questions on whether a gender recognition scheme should be established in Hong Kong; the criteria for determining whether a person would be eligible for gender recognition; and the procedure for gender recognition. The views of the Committee, together with those from other specialist committees, were consolidated. A detailed submission was made in December.

(p) Touting/Provision of Legal Service by Non-Qualified Persons

The Committee continued to discuss the problem of touting/provision of legal service by non-qualified persons. It was seeking meetings to consider the issues.

Others

The Committee took note of the following:

- Third Report of the Child Review Fatality Panel
- Enhanced security measures at Family Court
- Department of Justice's proposal to introduce evaluative mediation to Hong Kong
- Paper on Enforcement of Family Financial Orders released by the UK Law Commission

Family Court Users Committee

On the recommendations of the Family Court Users Committee, the Committee had approved and issued circulars to members on the following subject matters: -

- Suggested Wording of Penal Notice For Breach Of Access Orders or Undertakings Regarding Children
- Panel notice for Breach of Access Orders or Undertakings Regarding Children

Events

(a) CPD seminars on Family Law

Upon the recommendation of the Committee, the Academy organised a number of CPD seminars on Family Law, including Trust & Divorce and e-bundles.

(b) Child-focused Co-parenting Project - free legal consultation

In March, two members of the Committee attended the free legal consultation

session of a child-focused co-parenting project organised by the Hong Kong Council of Social Services.

(c) Roundtable - Children Commission in Hong Kong

The Law Society was one of the co-organisers of the Roundtable-Children Commission in Hong Kong held in September. A Committee member spoke as the Responding Guest to the Roundtable.

(d) Training for the SWD

In November, two members of the Committee presented training courses for the SWD on domestic violence and child custody.

INSOLVENCY LAW COMMITTEE

The Committee conducted its business via emails.

Conference on Insolvency Law and Practice

Upon the support and the recommendation of the Committee, the Academy organised a one-day conference on Insolvency Law and Practice in March in the Hong Kong Convention and Exhibition Centre. The Seminar aimed to update practitioners on the latest developments in insolvency law and practice. Committee members and distinguished speakers from the Judiciary, the DOJ, the Official Receiver's Office, law firms/chamber and accountant firms spoke on Cross-border Insolvency Issues and Choice of Forum, Legislative Reform on Corporate Rescue, Litigation Funding and Acquisition of Non-performing Loans as a Business in the Conference. The Conference was fully-subscribed and was well-received.

Consultation on the draft standard directions on shareholder disputes

In March, upon the invitation of the Judiciary's Sub-Committee on Companies and Insolvency Matters, the Committee reviewed a set of draft standard directions for shareholder disputes, in the context of an application under section 177(1)(f) of the *Companies (Winding Up and Miscellaneous Provisions) Ordinance*, Cap. 32 and under section 724 of the *Companies Ordinance*, Cap. 622 (which restates section 168A petitions of the old *Companies Ordinance*). The standard directions aimed to enhance the effectiveness and efficiency of case management for companies court cases. The Committee provided comments on the draft and in April sent its submissions to the Judiciary.

Reform to Hong Kong's Insolvency Law

The Committee received a draft paper prepared by the Company and Insolvency Law Society ("COINS") on its proposals to reform the Hong Kong's Insolvency Law. Among

other things, the proposals were to permit the provisional liquidation regime to function as a restructuring tool; provide for automatic stay provisions within the scheme of arrangement regime; and enact a conventional cross-border insolvency provision (similar in nature to section 426 of the UK's *Insolvency Act*). The Committee took a strong view that the reform to the insolvency law regime in Hong Kong had been long overdue. The proposals should be given serious considerations. With endorsement from the Council, the Committee in October responded to the COINS and rendered support to the draft paper.

Civil Court Users' Committee - Sub-committee on Company and Insolvency Matters

On the recommendations of the Sub-committee on Company and Insolvency Matters under the Judiciary Civil Court Users' Committee, the Committee approved and issued circulars to members on various matters relating to insolvency and bankruptcy, including the following:

- Filing of Affidavits in opposition and reply under rule 32 of the *Companies (Winding-Up) Rules* (Cap. 32H)
- Time Estimate on Hearings.

Other matters

The Committee discussed and issued circulars from time to time to assist members with updates on the following insolvency law practice:

- Official Receiver's Office circulars
- Report of the Consumer Council on Chargeback "Consumer Protection on Prepayment and Retailer Insolvency – Review of Chargeback and Beyond"

Attending outside meetings

The Committee had sent its member, as a representative of The Law Society, to attend and to report on regular meetings of the Official Receiver's Office Services Advisory Committee throughout the year.

INSURANCE LAW COMMITTEE

The Committee met once this year and conducted the rest of the business via email.

The Committee reviewed the new insurance regulatory regime and discussed the implications by the *Insurance Companies (Amendment) Ordinance 2015* and the introduction of the independent Insurance Authority. This Authority replaced the office of the Commissioner of Insurance and regulated insurance companies with effect from June.

Apart from closely monitoring the above, the Committee also discussed a wide range of

insurance law related topics including the following:

- the introduction of levy on insurance premiums and the removal of the requirement for address proof for policy applicants
- the proposed legal and regulatory initiatives including the policy holders' protection scheme, the risk-based capital regime, the Insuretech Sandbox and Fast Track authorisation procedure for digital insurers and the new licensing regime for intermediaries
- the impact, implementation and effect of GL16 Guideline on Underwriting Long Term Insurance Business (Other than Class C Business) and GL17 Guideline on Reinsurance, both took effect in June.

The Committee was keeping a close watch of the *Insurance Act 2015* (UK) and the latest development on the requirement for insurable interest in the UK. It was considering making a set of recommendations to the Council to modernise the insurance law in Hong Kong.

Noting the above matters, and with increases in the workload, the Committee this year conducted a co-option exercise to seek members. It aimed to finalise the co-option shortly.

INTELLECTUAL PROPERTY COMMITTEE

The Committee was busily engaged in the reviews of various matters on intellectual property (“IP”) law and practices this year. It met twice internally and conducted the rest of its business via emails and telephone conferences.

Application of the Madrid System

On the trade mark front, the Committee’s discussion on the proposed application of Madrid System of International Registration to Hong Kong continued. The HKSAR Government intended that the Madrid Protocol be implemented in Hong Kong by extension of China’s membership. The Committee had particular concerns about the arrangement between Hong Kong and China under the Madrid Protocol, as a trade-mark owner could not enjoy protection from an International Registration filed in China as the Office of Origin to Hong Kong and vice versa and whether this could render Hong Kong to become less competitive than its neighbouring countries which can designate both China and Hong Kong under the Madrid system. Reservations were also expressed as to whether the Madrid System could be beneficial to small and medium enterprises (“SMEs”) in Hong Kong if they do not have a certain volume of overseas trade mark applications. The views of the Committee were relayed to the HKSAR Government in February. The IPD gave a briefing on the latest developments in December.

IP Evaluative Mediation ("EM")

The Committee continued to discuss the HKSAR Government's policy initiative to make use of EM to help resolve disputes in IP. The Committee understood EM to be a process which may include an evaluation by a mediator of the strengths and weaknesses of the parties' cases and the mediator's assessment of the likely outcome of the case. This was unlike the conventional facilitative mode of mediation. The Committee was keen to explore the use of EM in IP disputes and how it differs from Early Neutral Evaluation. It discussed, among other things, potential liability of mediators engaged in EM, the need for training, the background expertise required, and the requisite insurance coverage for this mode of mediation.

The Committee also worked with other specialist committees of The Law Society to discuss the above.

Amendments to *Patent (General) Rules*, Cap. 514C

The Committee attended a consultation session organised by the IPD on the Administration's proposed amendment to *Patents (General) Rules*, Cap. 514C. In the consultation session, the IPD introduced the new procedures for applications for grant of original grant patents and also for post-grant substantive examination of short-term patents. The Committee exchanged views with the IPD on the proposed new procedural framework for the relevant proceedings.

IP Chapter in a Free Trade Agreement (FTA) with Australia

The Committee participated in a consultation by the IPD on an IP chapter in a Free Trade Agreement (FTA) with Australia. The IP Chapter in the FTA related to different areas of IP and cooperation between Hong Kong and Australia.

Other Consultations

The Committee had been keeping in view various other IP-related matters and, where appropriate, issued circulars to the general membership. Such included the consultation on copyright exceptions following the Marrakesh Treaty and the new *Copyright Tribunal Rules* (Cap. 528D).

Promotion of IP

Business of Intellectual Property Asia ("BIP") Asia

BIP Asia Forum was an annual IP forum, jointly organised by the HKSAR Government, Hong Kong Trade Development Council and Hong Kong Design Centre. It brought together IP professionals from Hong Kong and other jurisdictions to discuss the latest developments in the IP world, and also to collaborate business opportunities. The Law Society was one of the supporting organisations. The Chairman of the Committee was a member of the Steering Committee for the Forum.

This year the Forum took place on 7 and 8 December at the Hong Kong Convention and Exhibition Centre. Similar to last year, the Committee continued to render support. Among other things, the Chairman and two committee members spoke in one of the break-out sessions entitled “*Managing an IP Asset*”. They shared views on not only how to design a smart and effective management system, but also how to incorporate them into everyday practice and integrate them into the business culture. The session was well-attended.

Creativity Talks

For a number of years, IPD has organised creativity talks for university students and invited speakers from the creative industry to share their experiences. This year, the event was held at the Chinese University of Hong Kong. The Chairman of the Committee served as the moderator for the 1-hour session.

Seminars

For over a decade, the Committee has been supporting IPD and its Guangdong counterparts to participate in an annual symposium for local SMEs in different Guangdong cities to advocate the importance of IP. This year, the symposium was held on 23 June in Dongguan and the Chairman gave a presentation on *IP Audit and Due Diligence*.

The Law Society also supported IPD to organise a 1.5 hour seminar on *IP Audit and Due Diligence* on 22 September. The seminar was organised for IP Managers, who had joined IPD's IP Manager Scheme. The seminar helped them to better understand the process and benefits that IP audit and due diligence would bring about prior to seeking IP finances and engaging in IP trading activities. The seminar received a full house subscription and positive feedback.

IP Consultation Service

The Committee has been working with IPD to help, inter alia, the general public in the understanding of IP matters. The Pro Bono IP Consultation Service was one of the initiatives which the Committee has been advising on. The Consultation Service aimed to assist the SMEs in Hong Kong to raise their awareness of intellectual property, as well as to develop effective IP management and commercialisation strategies and to deal with possible challenges in the competitive environment. It was launched in September. A 30-minute face-to-face consultation service was to be delivered by practising solicitors of The Law Society registered with the IPD. Advisory areas covered IP registration, IP management, IP licensing and IP due diligence. To recruit Advisors for the Scheme, various enrolment circulars were issued to the general membership of The Law Society in April.

Survey on Manpower in Intellectual Property Trading and Management

In 2014, IPD commissioned a survey on IP Trading at which many respondents expressed

that “staff experience/knowledge” was a major challenge to them in developing IP trading. In view of this finding, IPD commissioned a contractor in January to conduct a Manpower Survey to collect further information on the manpower currently involved in IP trading and management in Hong Kong and to identify the development and training needs in order to build up the manpower required for promoting and developing IP trading in Hong Kong. It was hoped that the findings of the Manpower Survey would provide information to assist the Administration in formulating policies and measures on manpower development so as to facilitate the development of Hong Kong into an IP trading hub in the region. Members representing the Committee attended a consultation with the contractor to discuss how the survey could be effectively carried out.

Publications

The Committee jointly published two booklets with the IPD this year. The first booklet published in June was on *"Intellectual Property Audit and Due Diligence"*. The second one was named *"IP Licensing"* and was published in December. Both booklets aimed to help the general public in particular the SMEs in Hong Kong to grasp a basic understanding of the subject matters. They were put also up on the websites of The Law Society and IPD, as well as a website on “Hong Kong – The IP Trading Hub”.

IP Ambassador Programme

The IP Ambassador Programme was first launched last school year (2016 - 2017), and was repeated this school year (2017 - 2018). It was jointly organised by IPD, Faculty of Law of the University of Hong Kong, Faculty of Law of the Chinese University of Hong Kong and School of Law of City University of Hong Kong. Under the Ambassador Programme, IPD recruited law students as “IP Ambassador” to conduct school talks for primary, secondary and tertiary school students in Hong Kong in 2017-18.

The Committee supported the Ambassador Programme and assisted the Welcome Reception held on 10 November at the IPD. Members met and shared views with the IP Ambassadors recruited for 2017-2018.

Meetings and Visits

Bi-annual Meetings with IPD

The Committee meets the IPD twice a year to discuss various IP laws, practices and related matters. These meetings are useful for the parties to exchange views on the IP practices and the updates in the markets. The meetings this year were held on 22 February and 18 September. The matters discussed included :

- Amendments to *the Copyright Ordinance*, Cap. 528
- New *Copyright Tribunal Rules*, Cap. 528 D
- Implementation of an “original grant” patent system
- Proposed application of Madrid Protocol
- IP Arbitration

- E-filing and online searches
- Amendment to the *Rules of High Court* together with the proposed incidental amendments to the *Patents (General) Rules* (Cap. 514C), the *Registered Designs Rules* (Cap. 522A) and the *Trade Mark Rules* (Cap. 559A)

Visiting the Guangzhou IP Arbitration Centre and Guangzhou IP Courts

On 29 November, the Chairman and a few members of the Committee joined the IPD to visit the Guangzhou IP arbitration centre and IP courts. The arbitration centre was established in 2011 and was collaboration between Guangzhou government, IP organisations, tertiary institutions, relevant enterprises and lawyers' associations. The Guangzhou IP court was amongst the first IP courts in China established since December 2014.

Visit by the Delegation of State Administration for Industry and Commerce

The Committee hosted a lunch reception in March for the Beijing delegation of the Trademark Review and Adjudication Board in China and exchanged views on the logistics and preferred ways for making submissions to the Board for trademark review and adjudication.

External Representation

The Committee continued to be represented on the BIP Asia Steering Committee. The Committee had also representatives on the Focus Group on Review of the Patent System in Hong Kong of the IPD.

INVESTMENT PRODUCTS AND FINANCIAL SERVICES COMMITTEE

The Committee conducted its business by emails. This year, it co-opted three new members, including a Council Member, to help with the Committee's work.

The Committee considered various consultations from the Securities and Futures Commission. Submissions were made on the following:

- Proposed Amendments to the *Securities and Futures (Professional Investor) Rules*
- Proposals to reduce and mitigate Hacking Risks associated with Internet Trading
- Proposed Guidelines on Online Distribution and Advisory Platforms
- *Securities and Futures (Open-ended Fund Companies) Rules* and *Code on Open-ended Fund Companies*
- Further Consultation on Proposed Disclosure Requirements Applicable to Discretionary Accounts

LAND USE PLANNING & ENVIRONMENTAL LAW COMMITTEE

The Committee conducted its business by emails. It considered matters with impacts on land use, planning and environmental aspects.

In about June, the Committee received a proposal by the Urban Renewal Authority ("URA") to set up a Building Rehabilitation Platform (the "Platform"). The Platform aimed to assist building owners with sourcing and appointments of consultants, contractors and service providers for building rehabilitation services. The Committee attended a briefing session on the Platform in March and noted the various policy objectives.

Apart from reviewing the above proposal, the Committee also considered invitations from the URA for the Law Society to join their committees under the above Platform. Preliminary views were sent to the Standing Committee on Practitioners Affairs for further deliberations.

LEGAL AID COMMITTEE

The Committee had four meetings this year including a meeting with the Director of Legal Aid ("DLA") and his deputies in November. Two new members were co-opted to the Committee to help with the work of the Committee.

The Committee continued to consider a number of legal aid related issues. These included various proposals to enhance the legal aid system in Hong Kong. For example, the Committee noted and raised with the LAD the Committee's concerns on delays in the setting down of the legal aid appeal and the provision of the reasons for refusal of legal aid thereafter to the LAD. There were discussions on the "section 9 Opinion". Under section 9 of the *Legal Aid Ordinance*, Cap. 91 ("LAO"), a solicitor or a barrister could be engaged by the DLA to give an opinion concerning the merits of an application for legal aid and to advise on any question of law arising out of an application. The costs liability of obtaining such an opinion was causing uneasiness to the aided persons and practitioners. Such concerns had been relayed to DLA when the Committee had lengthy discussions with the LAD. Comments, including the recoverability of costs of procuring section 9 Opinions, and the practice of not assigning legal aid case to the same counsel who had provided the section 9 Opinion, were conveyed to DLA.

The Committee also discussed matters that could facilitate members in handling legal aid matters. These included the request to review the interim payment of costs by the LAD in civil legal aid assignments and re-assignments.

Discussions of the above were on-going.

Apart from the above, the Committee had been keeping in view the review of the Civil Jurisdictional Limits of the District Court and the Small Claims Tribunal and the

expansion of Supplementary Legal Aid Scheme. It also considered other matters essential to the legal aid system in Hong Kong, including the following:

(a) Legal Aid Financial Eligibility Limits

To successfully apply for legal aid, a legal aid applicant must pass the means test and the merits test. An applicant would not be eligible for legal aid if his financial resources exceed the Financial Eligibility Limit. This Financial Eligibility Limit was constantly under review. In April, the Committee received a proposal by the HAB which proposed to review the Legal Aid Financial Eligibility Limits. The Committee considered that references should be made to a review on SHRs by a consultant which the Law Society commissioned in 2013. Such views were conveyed to the HAB for consideration.

(b) Limits on Legal Aid Assignments

Section 13 of *LAO* provides that where a legal aid certificate is granted, the DLA may act for the aided person through legal aid counsel or assign any lawyers in private practice who are on the Legal Aid Panel selected by either the aided person if he so desires, or the DLA. To avoid abuses of legal aid, the DLA had reviewed the maximum number of assignments to counsel and solicitors handling civil and criminal cases.

The results of the above review were set out in a paper, together with measures the Administration considered to prevent the misuse of the legal aid system in Hong Kong. A copy of this paper was noted by the Committee in July. The Committee was to discuss the assignment limits and where appropriate, would render submissions to the Panel on the Administration of Justice and Legal Services of the LegCo.

(c) District Court (Fixed Costs in Matrimonial Causes) Rules (Cap.336F)

The costs prescribed under the *District Court (Fixed Costs in Matrimonial Causes) Rules* were reviewed in 2000, which was 17 years ago. An update was long overdue. In March, The Law Society had a number of internal and external meetings with stakeholders. A joint representation with the LAD was submitted to the Judiciary for an amendment to the *District Court (Fixed Costs in Matrimonial Causes) Rules* and to update all the fixed costs. The Committee would follow up closely with the Judiciary on the progress of the proposed legislative amendments.

(d) Director of Legal Aid's First Charge

Another review sought by the Committee was on the maintenance payment vis-à-vis the DLA's First Charge. Currently, under section 18A *LAO*, when an aided person is successful in recovering or preserving any money or property in the legally aided proceedings, he would be required to repay the Director all sums paid or payable on his behalf out of the money or property recovered or preserved (maintenance for children and maintenance for spouse up to the first HK\$4,800 per month excepted). Jointly with the Family Law Committee, the Committee sought a review under the

above provision, and received a favourable response from the HAB. The HAB indicated they would be reporting the outcome of the review to the LegCo Panel on Administration of Justice and Legal Services next year.

MEDIATION COMMITTEE

The Mediation Committee met three times in the year and conducted the rest of its business by emails.

Mediator Admission Scheme

The Law Society ceased to accredit mediators since September 2013, under an agreement with the Hong Kong Mediation Accreditation Association Limited (“HKMAAL”). Under that agreement, The Law Society supported the HKMAAL to be the single accreditation body for mediators in Hong Kong.

Following from the above, in December 2014, The Law Society launched the Mediator Admission Scheme (General Mediation). Members who have complied with the admission requirements by The Law Society could be admitted as Admitted General Mediators.

As part of the efforts to assist members, the Committee reviewed the admission requirements for Admitted Family Mediators and Admitted Family Mediation Supervisors, and considered the extension of and the re-naming of the then existing Mediator Admission Scheme (General Mediation) as Mediator Admission Scheme to cover admission as Admitted Family Mediators and Admitted Family Mediation Supervisors. Various recommendations were made to the Council. These recommendations were approved in October. Under the Mediator Admission Scheme, members who have complied with the requirements of The Law Society could be admitted as Admitted General Mediators, Admitted Family Mediators and Admitted Family Mediation Supervisors.

Panel of Parenting Co-ordinators

Parenting Co-ordination (“PC”) is a distinct model of dispute resolution for divorced couples in high conflict situations. In the course of PC, a Parenting Co-ordinator (“PCO”) is appointed to assist the parties to resolve disputes with parenting issues. Subject to the contractual agreements between the parties and the PCO, and/or the applicable statutory provisions in the relevant jurisdiction, the PCO could be engaged to help resolve disputes on parenting issues, and to make decisions for the parties.

The above practice area attracted close attention among parties and practitioners. In the light of its growing importance, the Committee in December 2016 recommended that a Panel of Parenting Co-ordinators be established for solicitors. The Committee deliberated and made suggestions on the establishment, empanelment and maintenance of the Panel of PCO. The Council considered and accepted these recommendations in October. A members’ circular on empanelment was issued in November.

Pilot Scheme on Mediation Helpline

The Committee assisted in the launch of the Mediation Helpline (“Helpline”) in November 2014. The Helpline, under the umbrella of the Free Legal Helpline, aimed to arouse the public awareness of and understanding on mediation. It also helped to promote mediation in general, as well as solicitors’ mediation practices in Hong Kong. The Helpline was initially launched for a trial period of six months. During the trial period, a panel of Solicitor-Mediators, with the assistance of the Mediation Coordinator of the Secretariat, offered to provide information on mediation and mediation services to the public. The Helpline received positive feedbacks. In the light thereof, the trial period of the Helpline was repeatedly extended. Lately, the Committee recommended to extend the Helpline until 31 December 2019.

Evaluative Mediation

Evaluative mediation (“EM”) was one of the initiatives put forward by the HKSAR Government to promote Hong Kong’s dispute resolution services. The Committee discussed this mode of mediation, its scope and application. It considered that EM could bring both opportunities and challenges to mediation practitioners, and that good preparation was required for the benefit of the whole mediation profession and mediation service users.

The Committee noted that, for the discussion on EM, a Special Committee on EM under the Secretary for Justice’s Steering Committee on Mediation was set up by the Administration. The Special Committee among other things would review and make recommendations on introducing EM to Hong Kong. On the other hand, the Committee discussed EM with other specialist committees of The Law Society such as the Intellectual Property Committee. It exchanged views on various matters on the use of EM, including any potential risks and liabilities to mediators.

Mediation Services in Qianhai and in Mainland

In December 2015, The Law Society was invited by the Qianhai-Hong Kong Chamber of Commerce (“Chamber”) to set up a Panel of Mediators (“Qianhai Panel”) to provide mediation services to their members in Qianhai.

After much discussion, the Committee came up with various proposals on admission requirements of the Qianhai Panel and the logistic supports on mediation services in Qianhai. These recommendations were endorsed by the Council in April 2016. Co-option circulars were then issued and a list of nominated mediators together with the proposed admission requirements were provided to and accepted by the Chamber in June 2016.

The Committee kept a close watch on ways to assist members to expand their mediation practices in Qianhai. In March, the Committee made further proposals to the Chamber on fee schedule for mediation services in Qianhai.

Apart from mediation services in Qianhai, the Committee had also been looking for opportunities for members to offer and expand their mediation service in the Mainland. For instance, the Committee had been closely monitoring the establishment of a panel of lawyer-mediators under the Shenzhen Qianhai Cooperation Zone People's Court.

Consultations relating to mediation

The Committee considered and/or provided views on the following matters:

(a) Consultation on the proposed Apology Legislation in Hong Kong

The Committee's attention was brought to the *Apology Bill* – it noted that the Bill aimed to promote and encourage the making of apologies to facilitate amicable settlement of disputes by clarifying the legal consequences of making an apology. The *Apology Bill* was enacted as the *Apology Ordinance* (Cap. 631) in July.

(b) Consultation on the *Arbitration and Mediation (Third Party Funding) (Amendment) Bill 2017*

The Committee discussed the *Arbitration and Mediation (Third Party Funding) (Amendment) Bill 2017* which among other things provided that third party funding of arbitration and mediation was not prohibited by the common law doctrines of maintenance and champerty. On the other hand, an authorised body would be set up to oversee the ethical and financial standards of third party funders and the publication of a Code of Practice for funders.

The above Bill was enacted as the *Arbitration and Mediation (Third Party Funding) (Amendment) Ordinance 2017* in June. The Committee keenly awaited the consultation on the Third Party Funding of Arbitration Code of Practice.

(c) Consultation on Proposal to Enhance the Financial Dispute Resolution Scheme

The Committee reviewed the final recommendations of the Financial Dispute Resolution Centre on its proposal to enhance its Financial Dispute Resolution Scheme.

Promotion of Solicitor-mediators

To promote solicitors' mediation practices, the Committee had:

- reviewed the policies on solicitors' practice in mediation and parenting co-ordination
- organised CPD and RME activities on mediation and related subjects
- liaised with stakeholders on matters relating to mediation
- monitored and updated solicitors on the latest development of mediation in Hong Kong.

Organisation of and Participation in Mediation Events

The Committee helped organise and/or promote the following CPD activities as part of its continual efforts to promote mediation services to members:

- JMHO Workshop – Mediating Intellectual Property Disputes (19 January)
- The Future of ADR for Medical & PI Cases - Facilitative, Evaluative or Collaborative? (21 March)
- JMHO Workshop – Dealing with Internal Conflict in Negotiation and Mediation – A Mediator’s Perspective (25 March and 25 April)
- JMHO Workshop – Mediating Property Disputes – Essential Law and Skills for Mediators (26 May)
- Practical Tips for Mediators in conducting Mediation (18 July)
- Representing a Client in Mediation (19 September)
- Risk Management in Family Mediation Practice (27 September)
- Child Focused and Child Inclusive Mediation and Parenting Co-ordination in Hong Kong (30 November)
- Members’ Quarterly Gathering – Third Party Funding of Mediation (19 December)

Mediation Services

The Committee continued to provide support services for mediation to The Law Society members. This year, four requests for nomination of mediators were handled.

PERSONAL INJURIES COMMITTEE

The Committee had four meetings this year and met the Judiciary twice to discuss various issues on personal injuries practice and procedures.

Employees Compensation Assistance Fund Board

The Committee continued its deliberation on Section 20B of the *Employees Compensation Assistance Ordinance*, Cap. 365 (“*ECAO*”). This section provides that the amount of the relief payment to an eligible person under the *ECAO* shall be the amount of damages for which the employer is liable to pay the eligible person after that amount is reduced by any employees’ compensation received, or any amount of damages already paid by the employer. Section 20B(3) of *ECAO* further provides that, notwithstanding the definition of “damages”, for the purposes of determining the amount of a relief payment, any interest payable on any amount, and any costs arising from proceedings in respect of any damages, shall not be included. This provision limits the amount of the relief payment to damages and excludes from the amount of the relief payment, any amount due by way of interest on damages, and any amount incurred by way of costs.

The above section 20B(3) is unfair to a plaintiff in a personal injury claim, who is to pray for relief payment under the *ECAO*. That plaintiff needs to incur costs to obtain a judgment for damages from the District Court or from the High Court, which amount of costs cannot

be recovered from the Employees Compensation Assistance Fund Board and which, in the absence of any other sources of income or capital, must come out of the relief payment made to the plaintiff.

The Committee had carefully analysed the finance position of the Employees Compensation Assistance Fund Board in recent years. It had discussions with the Bar Association and the Labour Department, and was arranging a meeting with the Labour and Welfare Panel to consider the issues.

Circulars on Practice issues

With a view to assisting members to source experts for their cases, the Committee wrote to various universities and companies to ask for lists of experts who would be willing to offer expert advice in litigation and court cases. Upon receipt of their responses, and on the basis that the lists did not carry any implications or inferences on any endorsement, recommendation or accreditation by The Law Society of any expertise set out in the lists, a circular was issued in December to advise members of the databases or directories maintained by the Hong Kong Academy of Medicine and the Medical Council of Hong Kong.

Other circulars were issued from time to time on personal injuries related matters. For example, an updated circular on the role of the Official Solicitor and his responsibilities was issued in October.

Apology Legislation

The *Apology Bill* sought to clarify the legal consequences of making an apology (as defined), with a view to promoting and encouraging the making of apologies in order to prevent the escalation of disputes and thus enhanced settlement. It was passed by the LegCo in July. As provided for under the *Apology Ordinance* (Cap. 631) an apology would not constitute an admission of fault or liability and must not be taken into account in the determination of fault, liability or other issues to the prejudice of the apology maker. Evidence of the apology will not be admissible as evidence for such determination. To better understand the legislation, members attended a briefing session organised by the DOJ in November.

Other reviews

Apart from the above, the Committee was keeping a close watch on various matters relevant to the personal injury practice in general, for example :

- the proposed increases in the civil jurisdictional limit of the District Court
- the review of Order 62, rule 32(1A) of the *Rules of District Court* (Cap. 336H) (which puts a cap on the costs which may be allowed by the District Court on taxation at not exceeding two-thirds of the amount which would have been allowed has the taxation been carried out in the High Court)
- Mediation funding
- Personal Injuries Helpline

PROBATE COMMITTEE

The Committee met once this year and conducted the rest of its business via emails.

The Committee considered matters relating to probate law and practices, including the operation of the Checklist for Application of Grant.

Apart from the above, the Committee considered the following:

- stamping of Deeds of Family Arrangement
- the estate beneficiaries support services provided by the Home Affairs Department, in particular the inspection of bank deposit box
- syllabus on Conveyancing and Probate for the proposed Common Entrance Examination
- amendment to will search application forms for applications from mentally incapacitated persons

Where relevant, members' circulars were issued.

The Committee also attended to members' enquiries on probate practices and procedures. It assisted in processing applications for publication in the weekly *Enquiries from Solicitors on Wills, Codicils and other Testamentary Dispositions*. A total of 561 applications were received and processed this year.

The Committee maintained close work relationship with the Probate Registry through the Joint Standing Committee on Probate Practice which comprises of the Registrar of High Court, Probate Masters, Chief Probate Officer and members of the Committee.

External Representation

The Committee has representative(s) in the Joint Standing Committee on Probate Practice.

PROPERTY COMMITTEE

The Committee met every month to consider issues and legislative proposals relating to conveyancing practices. It also engaged with different Government departments and other organisations and discussed a number of property-related matters.

Additionally, Committee members considered and determined applications for waivers of Deed of Mutual Covenant Guidelines, and applications for deviations from forms of Agreement for Sale and Purchase approved under Rule 5C of the *Solicitors Practice Rules* (Cap. 159H) submitted by members.

Consultation on the *Building Management Ordinance*

In April, the LegCo Panel on Home Affairs invited the Committee to attend a meeting and to make submission on the *Building Management Ordinance*, Cap. 344. The Committee provided comments on various proposals on the quorum of the meetings of owners' incorporation, definition of "Large Scale Maintenance Projects", benchmarking for the procurement of supplies, goods and services as well as the remuneration and termination of DMC Managers. A written submission on these concerns was made and rendered to the LegCo Panel on Home Affairs in May.

Consultation on the *Stamp Duty (Amendment) Bill*

The LegCo set up a Bills Committee to review the *Stamp Duty (Amendment) Bill 2017*. The Bill was to introduce a new flat rate of 15% for the ad valorem stamp duty chargeable on instruments of residential property executed on or after 5 November 2016 for the sale and purchase or transfer of residential property unless specifically exempted or provided otherwise. After reviewing the amendment bill in details, the Committee in March made a submission to the LegCo.

Land Titles Ordinance

The Land Registry engaged the Committee and exchanged views on a number of practice issues relating to the implementation of the *Land Titles Ordinance*, Cap. 585 ("*LTO*"). The Committee, with the Working Party on *LTO*, met the Land Registrar in September, and relayed to them various concerns on the latest proposals made by the LTO. The discussion was on-going.

Property Frauds

The Committee had been paying close attention to property fraud cases, and been considering measures to assist general members to avoid these frauds. Among other things, the Committee engaged the Immigration Department to discuss the provision of an offence hotline. The hotline provided a channel for verification checks of Hong Kong identity cards in suspected immigration offences. The arrangement for the hotline was finalized after further deliberation, a circular on the above was issued in May.

Non-Consent Scheme - Finance Undertaking

The Committee had a number of discussions to consider improvements to the Non-Consent Scheme. One of the initiatives under consideration was the provision of a finance undertaking in the Non-Consent Scheme. The Committee was considering inter alia the interplay of the above finance undertaking with the *Buildings Ordinance* (Cap. 123) and the *Companies (Winding Up and Miscellaneous Provisions) Ordinance* (Cap. 32).

Other Practice Issues

The Committee issued various practice-related circulars to general members, to advise them of the latest practice notes issued by the Buildings Department, the Lands Department, the Planning Department, and the Land Registry.

The Committee worked with other specialist committees of The Law Society to consider several issues on practice and procedures on conveyancing. It also deliberated various property related matters, such as the following

- Proposals relating to transactions of Subdivided Flats
- Standard clauses of the Deed of Mutual Covenants under Land Grant
- Green Form Subsidized Home Ownership Pilot Scheme
- Demolition of unauthorized structures on private agricultural lands
- E-Alert Service for Authorized Institutions
- Syllabus Common Entrance Examination on legal practice in Conveyancing and Probate
- *Anti-Money Laundering and Counter- Terrorist Financing (Financial Institutions) Ordinance* (Cap. 615) and *the United Nations (Anti-Terrorism Measures) Ordinance* (Cap. 575)

External Work

Urban Renewal Authority

A proposal by the URA to set up a Building Rehabilitation Platform (the "Platform") was brought to the attention of the Committee. It was said that the Platform proposed by the URA would assist building owners in the appointment of consultants, contractors and service providers for building rehabilitation services. The URA invited representatives from the Law Society to join committees to be set up under the Platform. After being considered by the relevant committee and the Standing Committee, and upon further deliberation, the Committee responded and nominated a member to join the above committees of the URA.

Other professional engagements

The Committee had representatives on the following liaison group and committee:

- Land Registry Customer Liaison Group
- Land Registry Joint Standing Committee

WORKING PARTY ON LAND TITLES ORDINANCE

The Working Party met once this year and conducted the rest of its business via emails.

The Working Party continued to discuss the implementation of the *LTO* with the Land Registry and, together with the Property Committee, met the Land Registry in September.

The Working Party had representatives on the following external committees:

- The Land Titles Ordinance Steering Committee
- The Land Titles Ordinance Review Committee
- Title Registration Education Committee

The Land Titles Ordinance Review Committee had a meeting on 17 October to discuss various technicalities involved in the proposals put forward to implement the title registration.

The Land Titles Ordinance Steering Committee on the other hand met on 20 November. At policy level, it reviewed the relevant amendments to the Land Titles Ordinance.

WORKING PARTY ON REVIEW OF NON-CONSENT SCHEME FORMS

The Working Party had one meeting this year and conducted the rest of its business by emails.

The Working Party continued to review and to propose amendments to the following forms:-

- the agreements for sale and purchase for uncompleted and completed developments;
- the sub-sale and purchase agreements for uncompleted and completed developments; and
- the Statutory Declaration.

In the course of the above review, the Working Party considered, among others, the amendments brought by the Legal Advisory and Conveyancing Office of the Lands Department ("LACO") on the agreements for sale and purchase under the Consent Scheme. Amendments were made to some of the above forms. The revised forms were approved by the Council and the Chief Justice, and were put into effect on 31 July.

WORKING PARTY ON REVISED DMC GUIDELINES

The Working Party was set up to review the proposed revision by the Legal Advisory and Conveyancing Office to the guidelines for the drafting of the Deed of Mutual Covenants ("DMC") under the Consent Scheme. It had a meeting on 4 August to consider amendments proposed to The Law Society's Guidelines for DMCs and made recommendations on the revision to Guideline 29 for the Property Committee's deliberation.

RETIREMENT SCHEME COMMITTEE

The Committee conducted its business by emails. It considered the following updates and amendments to the Mandatory Provident Fund Scheme, and issued circulars to general members, where appropriate.

- Application for Approval as Trustees and Application for Approval as Controllers of Approved Trustees (Guidelines I.1)
- Application for Registration of Provident Fund Schemes (Guidelines I.2)

- Eligible Insurers (Guidelines I.4)
- Application for Approval of Pooled Investment Funds (Guidelines I.6)
- Annual Statements of Approved Pooled Investment Funds (Guidelines II.5)
- Reserving Standards for Investment Guarantees (Guidelines III.9)
- MPF Intermediary Registration and Notification of Changes (Guidelines VI.1)
- Annual Returns to be Delivered by Registered Intermediaries (Guidelines VI.3)
- MPF Intermediary Registration and Notification of Changes (Guidelines VI.1)
- Annual Fees for Registered Intermediaries (Guidelines VI.5)

REVENUE LAW COMMITTEE

The Committee reviewed and took note of the following:

- *Stamp Duty (Amendment) Bill 2017*, which sought to introduce a new flat rate of 15% for the ad valorem stamp duty chargeable on certain instruments dealing with residential properties executed on or after 5 November 2016, in lieu of the existing AVD rates at Scale 1 set out in the *Stamp Duty Ordinance (Cap.117)*.
- *Inland Revenue (Amendment) (No.2) Bill 2017* which aimed to confer profits tax concessions to qualifying aircraft lessors and qualifying aircraft leasing managers.
- *Inland Revenue (Amendment) (No.3) Bill 2017* which sought to amend the *Inland Revenue Ordinance* to expand the list of reportable jurisdictions for the more effective implementation of the arrangement relating to automatic exchange of financial account information in tax matters. The Bill was passed in June and came into operation on 1 July.
- *Inland Revenue (Amendment) (No.4) Bill 2017*, which sought to amend the *Inland Revenue Ordinance (Cap. 112)* to provide profits tax exemption to certain open-ended fund companies with their central management and control exercised in Hong Kong; and to provide for related matters.
- *Inland Revenue (Amendment) (No.5) Bill 2017* and *Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (New Zealand) (Amendment) Order 2017*.
- *Inland Revenue (Amendment) (No.6) Bill 2017*, which aimed to codify the transfer pricing principles into the *Inland Revenue Ordinance (Cap. 112)* and implement the minimum standards of the Base Erosion and Profit Shifting package promulgated by the Organization for Economic Co-operation and Development.

Attending outside meetings

Two committee members, as representatives of the Law Society, attended regular meetings of the Joint Liaison Committee on Taxation throughout the year.

REVERSE MORTGAGE COMMITTEE

The Committee conducted its business via emails.

The Committee was in February advised by the Hong Kong Mortgage Corporation Limited ("HKMA") of an enhancement to its Reverse Mortgage Programme. The enhancement arose from the intention of the HKMA to address the needs of existing borrowers under its reverse mortgage programme, who may in future become mentally incapable, and also the needs of potential borrowers who intend to mortgage their properties under the reverse mortgage programme, but who are already mentally incapacitated. The enhancement also provides that HKMC's subsidiary is to become a lender under the reverse mortgage programme.

The Committee considered the above enhancements and the related Information Package. In March the Committee issued a members' circular, which included a form for legal practitioners to sign up to provide legal services to the public in relation to Enduring Power of Attorney and Part II Order for Mentally Incapacitated Persons.

WORKING PARTY ON RESOLUTION REGIME

The Working Party reviewed a lengthy consultation paper on the regulations on protected arrangements released by the Financial Services and the Treasury Bureau, in conjunction with the Hong Kong Monetary Authority, the Securities and Futures Commission and the Insurance Authority. The consultation invited views on the scope and the degree of protection for the different classes of protected arrangements, including necessary carve-outs from the protections in order not to overly restrict a resolution authority from achieving orderly resolution. After a thorough discussion, the Working Party produced a submission in February to the Administration.

The Working Party also took note that *the Financial Institutions (Resolution) Ordinance* and *the Financial Institutions (Resolution) (Protected Arrangements) Regulation* which came into operation on 7 July.

HONG KONG SOLICITORS INDEMNITY FUND LIMITED

Hong Kong Solicitors Indemnity Fund Limited ("HKSIFL") was established by The Law Society and empowered by the *Solicitors (Professional Indemnity) Rules* ("*the SPI Rules*") to manage and administer the Professional Indemnity Scheme ("PIS") and the Solicitors Indemnity Fund ("HKSIF") subject to direction from the Council.

The HKSIFL held a total of six Board meetings during the year and an Annual General Meeting.

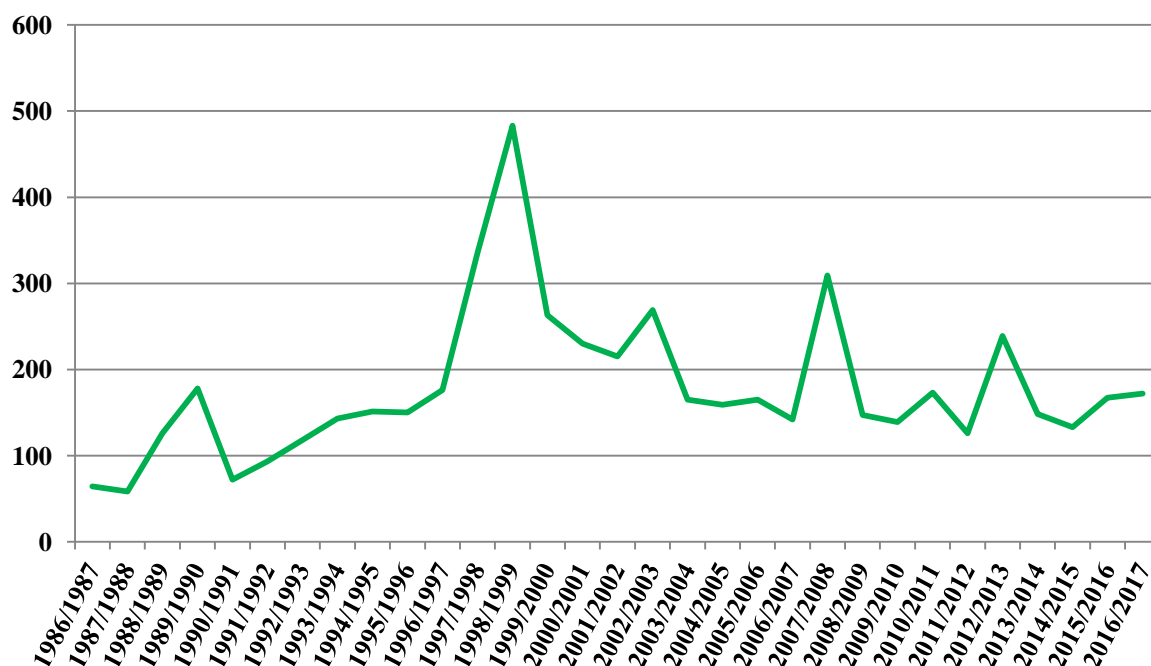
The HKSIFL considered a number of matters including:

- Issues in relation to the conduct of claims
- Increasing the indemnity limit of the PIS
- Contribution reduction
- The performance of the PIS Broker and Manager and extension of the Broker and Manager contract
- The performance of PIS investments and the appointment of a Multi-Asset Fund Manager
- Proposed reforms to the PIS and amendments to the *SPI Rules*
- Ceased firms which failed to submit the final Gross Fee Income Report and/or Quarterly Return and/or pay their final PIS contributions
- The monthly management accounts and the audited accounts of HKSIF and HKSIFL
- Renewal of Directors' and Officers' liability and Professional Indemnity insurance for HKSIFL and the Directors
- Matters arising from the liquidation of HIH Casualty and General Insurance Ltd. and FAI General Insurance Company Ltd. and the provisional liquidation of FAI First Pacific Insurance Co. Ltd.
- Enquiries relating to the PIS

A total of 172 notifications of claims were received by the Claims Manager, ESSAR Insurance Services Ltd. ("ESSAR") during the 2016/2017 indemnity year, i.e. from 1 October 2016 to 30 September 2017 and the grace period from 1 October 2017 to 29 November 2017. As at 30 September 2017, 32 of the notifications resulted in proceedings, 6 were closed without payment, 2 were settled with payment and 138 (including those closed without payment) remained as notifications.

The number of claims for the last 31 indemnity years and the number of members holding Practising Certificates as at 30 September of each of those years are as follows:-

Figure 1: Number of Claims (1986/1987 – 2016/2017)



Indemnity Year	Number of Claims	Percentage Increase/Decrease from previous year	No of members with Practising Certificates (as of 31 December)
1986/1987	64	-	1,807
1987/1988	58	-9%	1,998
1988/1989	126	117%	2,152
1989/1990	178	41%	2,326
1990/1991	72	-60%	2,479
1991/1992	93	29%	2,721
1992/1993	118	27%	2,981
1993/1994	143	21%	3,307
1994/1995	151	6%	3,596
1995/1996	150	-1%	3,896
1996/1997	176	17%	4,309
1997/1998	336	91%	4,619
1998/1999	483	44%	4,720
1999/2000	263	-46%	4,890
2000/2001	230	-13%	5,070
2001/2002	215	-7%	5,173

Indemnity Year	Number of Claims	Percentage Increase/Decrease from previous year	No of members with Practising Certificates (as of 31 December)
2002/2003	269	25%	5,301
2003/2004	165	-39%	5,422
2004/2005	159	-4%	5,593
2005/2006	165	4%	5,757
2006/2007	142	-14%	5,925
2007/2008	309	118%	6,205
2008/2009	147	-52%	6,465
2009/2010	139	-5%	6,782
2010/2011	173	24%	7,149
2011/2012	126	-27%	7,483
2012/2013	239	90%	7,864
2013/2014	148	-38%	8,279
2014/2015	133	-10%	8,647
2015/2016	167	26%	9,076
2016/2017	172	3%	9,463

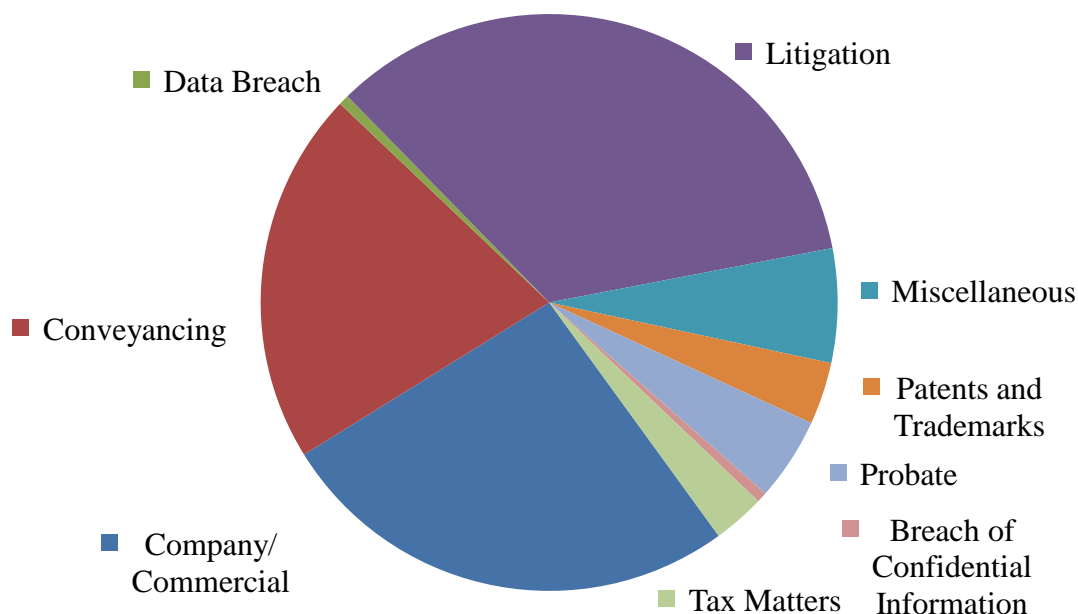
* Number of Claims includes claims notified within the grace period.

+ Percentage of increase or decrease has been calculated to the nearest decimal point.

Claims notified in the 2016/2017 indemnity year were categorised as follows:-

Company/Commercial	45
Conveyancing	36
Data Breach	1
Litigation	59
Miscellaneous	11
Patents and Trademarks	6
Probate	8
Breach of Confidential Information	1
Tax Matters	5
	<u>172</u>

Figure 2 : Types of Claims notified in 2016/2017



25 fraud claims were received in the 2016/17 indemnity year.

As at 30 September 2017, the total liability of the PIS for the 2016/2017 indemnity year, calculated on the basis of claims paid and claims reserved, was HK\$19,502,992 of which HK\$6,041,913 consisted of claims paid (including costs) and HK\$13,461,079 consisted of claims reserved.

The total amount of claims paid (including costs) since the inception of the self-insured PIS in 1986 amounted to HK\$1,970,501,469 and the amount reserved was HK\$123,770,904. The total claims paid and reserved was HK\$2,094,272,373.

A detailed account of the operation of the PIS and claims data as well as the audited accounts of the HKSIF as at 30 September 2017 will be published in the PIS Annual Report for the 2016/2017 indemnity year.

PIS CLAIMS COMMITTEE

Claims are handled by the Claims Committee pursuant to the *SPI Rules* and with the assistance of the Claims Manager, ESSAR. The Claims Committee held five meetings during the year to discuss both new and ongoing claims. It also considered a wide range of urgent claims issues by email circulation.

PIS INVESTMENT SUB-COMMITTEE

The PIS Investment Sub-Committee held four regular meetings during the year. At each meeting, the Subcommittee would invite HKSIFL's investment consultant, Mercer Investment Consulting Limited ("Mercer") and two of the five investment managers to report on the HKSIF performance and to provide their outlook on market trends.

In addition to the four regular meetings, the Subcommittee also met on 25 August to conduct a Multi-Asset Fund Manager selection exercise. After consideration of Mercer's recommendations and the proposals of each manager, it was resolved to diversify the portfolio by investing in a Multi-Asset Fund managed by Ruffer LLP ("Ruffer").

The Subcommittee conducted the rest of its business, including consideration of monthly performance and custodian reports, exchanging and discussing information and views and making decisions on a wide range of investment issues by emails.

The current investment managers of the HKSIF are as follows:

- Amundi Hong Kong Limited ("Amundi")
- AllianceBernstein Hong Kong Ltd. ("AllianceBernstein")
- MFS Investment Management ("MFS")
- Grantham Mayo van Otterloo ("GMO")
- Ruffer

HKSIF adopts a conservative investment strategy where the investments are predominantly placed in fixed income securities. The investment objectives are:

- (a) achieve, in the long term, a rate of return over and above the Hong Kong consumer price inflation;
- (b) preserve capital; and
- (c) achieve, in the long term, a rate of return over the performance benchmark.

The net returns on the portfolios managed by the investment managers for the 12 month period ended 31 December 2016 and 2017 were as follows:

Investment Manager	Type of portfolio	Net Return		Portfolio Size (In USD)	
		2016	2017	As of 31 Dec 2016	As of 31 Dec 2017
Amundi	Equities and bonds	3.03%	8.85%	171,375,995	151,005,062
AllianceBernstein	Bonds	4.10%	3.63%	119,820,357	132,165,032
MFS	Equities	6.61%	27.41%	39,068,843	52,718,282
GMO	Equities	6.96%	25.29%	26,773,124	36,443,460
Ruffer	Multi-Asset (mainly equities and bonds)	-	2.05%	-	54,693,781
Overall portfolio return		4.10%	10.33%	357,038,319	427,025,617

* MFS and GMO were appointed in December 2011, Ruffer was appointed in December 2017. There were injection of funds, partial redemption of the Amundi portfolio and also re-allocation of funds between managers during the year.

PROFESSIONAL INDEMNITY ADVISORY COMMITTEE

The Committee is responsible for reviewing and advising on any issue referred to it by the Council, HKSIFL or the Claims Committee relating to professional indemnity cover under the PIS.

A Working Party of this Committee considered various amendments to the *SPI Rules*, including amendments:

- to improve the cover provided under the PIS;
- consequential to the introduction of *Solicitors Corporation Rules*;
- to incorporate Registered Foreign Lawyers into the calculation of PIS contributions and deductibles;
- to clarify that a solicitor working in two firms in association must ensure that both firms maintain Indemnity under the SPI Rules

The Working Party held two meetings during the year and conducted the rest of its business by email circulation.

PIS PANEL SOLICITORS SELECTION BOARD

The Selection Board was established by the Council to resolve all matters relating to the tender for appointment as Panel Solicitors, to consider the tender applications and to make recommendations to the Council on the appropriate firms to be appointed to the Panel.

The retainer of the current Panel runs from 1 February 2013 to 31 March 2018.

The firms which served as Panel Solicitors in 2017 were:

- Bird & Bird
- Deacons
- Fred Kan & Co.
- Howse Williams Bowers
- P.C. Woo & Co.
- Reed Smith Richards Butler
- Smyth & Co.

The Selection Board held one meeting during the year to prepare for the 2018 – 2022 tender and conducted the rest of its business by email circulation.

WORKING PARTY ON PIS GROSS FEE INCOME REPORTS AND CONTRIBUTIONS

The Working Party is responsible for considering and making recommendations to the Council on the appropriate action to be taken against those firms which failed, in breach of the *SPI Rules*, to submit the application for indemnity and/or the gross fee income report on or before 15 August, or pay their annual contributions on or before 30 September in each year. The Working Party is also responsible for approving the applications for an extension of time to submit the application for indemnity and/or the gross fee income report.

During the year, the Working Party considered a number of defaults and applications for time extensions by email circulation.