

Standing Committee on Practitioners Affairs



THE
LAW SOCIETY
OF HONG KONG
香港律師會

2018

The Standing Committee considers and keeps under review matters relating to law reforms, legal practice and legal procedures, and makes determinations thereon. It receives and reviews draft statements and submissions proposed in response to consultations from the Judiciary, Government departments, Law Reform Commission, financial institutes, and other public bodies. It also provides recommendations at policy levels to the Council on matters pertinent to legislative amendments, as well as law-related policies of the HKSAR Government. Among the various reviews this year, it has responded to 27 public consultations.

During the year, the Standing Committee met on ten occasions. It also held deliberations between meetings by email circulation.

Review of policy initiatives

The Standing Committee considered various policy initiatives on law-related matters. Some examples include the following.

(a) Third Party funding for arbitration and mediation

The Department of Justice (“DOJ”) consulted the Law Society on the draft Code of Practice for Third Party Funding of Arbitration and Mediation. The draft Code sets out the practices and standards with which third party funders of arbitration under the *Arbitration Ordinance* (Cap.609) are ordinarily expected to comply in carrying on activities in connection with third party funding of arbitration in Hong Kong. The Standing Committee received amendments proposed to the Draft Code in respect of third party funding for arbitration. As for mediation funding, it shared the concerns on possible abuses of mediation funding by unethical touts in personal injuries claims.

(b) Introduction of evaluative mediation to Hong Kong

Under the Steering Committee on Mediation set up by the DOJ, a Special Committee on Evaluative Mediation was formed to explore and research on the proper use of evaluation in mediation for Hong Kong. The Standing Committee discussed this policy initiative. It noted that currently, evaluative mediation has not statutorily been provided for either in the *Mediation Ordinance* or the *Hong Kong Mediation Code*. There should be relevant amendments to codify evaluative mediation. Furthermore, there should be careful planning and co-ordination on training for evaluative mediators. A submission on the above was sent to the Steering Committee on Mediation in October.

(c) Review of the Employees Compensation Assistance Fund Scheme

The unfairness of an injured plaintiff having to himself fund and to win his or her litigation for damages arising out of a personal injury accident, before he or she could apply to the Employees Compensation Fund Board for relief payments, was continually discussed by the Personal Injuries Committee. The above stipulation of a plaintiff having to fund his own litigation is currently provided for under section 20B(3) of the *Employees Compensation Assistance Ordinance* (Cap.365). The matter attracted concerns not only from legal practitioners, but also from the Judiciary. The

Standing Committee took note of a meeting between the Personal Injuries Committee (with the Hong Kong Bar Association) and the Secretary for Labour and Welfare in May. It awaited further development on the matter.

(d) Other Policy directives

Apart from the above, the Standing Committee also contributed views on policy directions regarding e.g. the Government Budget 2018-2019, the *Land Titles Ordinance* (Cap.585), constitutional issues such as co-location arrangement, establishment of the Commission on Children for Hong Kong, as well as the arrangement with the Mainland on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters. On the other hand, review of criminal legal aid rates and financial eligibility limits for legal aid generally continued to be important to the work of the Standing Committee.

Practice and Procedures

The Standing Committee received views and recommendations submitted from time to time by specialist committees on reforms on practices and procedures, such as amendments to Practice Directions issued or to be issued by the Judiciary.

Support to the specialist committees

The Standing Committee oversaw the work of 26 Committees, 11 Working Parties and ad hoc Task Groups. It provided guidance and advices to these committees on their administrative work, such as co-option, review of membership and enrolment exercises. It also made recommendations to the Council on the Law Society on nominations for external committees.

(a) Working Party on the Judiciary's Information Technology Plan

With the support of the Standing Committee, this year a new Working Party on the Judiciary's Information Technology Plan was set up. Its membership comprised a spectrum of membership from various specialist committees. It was tasked to review and to respond to the Judiciary's integrated court case management system and its other Information Technology ("IT") plans. These embraced policy directions on development of IT Plans for the Judiciary. In this regards, the Standing Committee received a report from the Working Party on their discussions with the Judiciary in November on the proposed system for electronic filing of documents with the Court.

Joint Tribunal

Apart from the above specialist committees, the Standing Committee also helped the Joint Tribunal in the discharge of its function. 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.

Visit by the Law Society of Singapore

The Standing Committee helped in receiving a delegation from The Law Society of Singapore in December. It enlisted members from Civil Litigation Committee, Intellectual Property Committee and Pro Bono Committee. Together with the Secretariat, the committee members had a fruitful discussion with the delegates on a variety of matters, including costs in civil litigation, pro bono practices, Intellectual Property specialist list and trademark infringement.

ARBITRATION COMMITTEE

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

The Committee kept under review the various developments of and the practices in arbitration in Hong Kong and other jurisdictions. It made recommendations to the Council on policies on the offer of arbitration services to the members and the general public in Hong Kong. To help with the workload, the Committee co-opted five new members in the year.

Promotion of Solicitor-Arbitrators

The Committee proposed and studied various initiatives to help promote members' practices in arbitration. Among other things, the Committee had several focused discussions on the promotion of solicitor-arbitrators and their arbitration practices in the Mainland.

On 20 June, the Chairperson of the Committee led a delegation of The Law Society to visit the Shenzhen Court of International Arbitration ("SCIA"). The visit was warmly received. The SCIA and The Law Society had a useful discussion to explore ways to mutually promote arbitration services in the Mainland and Hong Kong.

As a part of its promotion efforts, the Committee had considered various initiatives throughout the year:

(a) Law Society Sample Arbitration Clause

To assist members' practice in arbitration and the use of arbitration, the Committee has set up a sub-group to consider and to prepare a *sample arbitration clause* ("*Sample Clause*"). The *Sample Clause* aimed to provide a working template that could readily be made available for use or reference by the members, other relevant practitioners and the general public. The Committee discussed the draft Sample Clause on various occasions. In October, the *Sample Clause* was approved by Council. The *Sample Clause* was made available on the public zone of the website of The Law Society.

(b) Procedure for Appointment of Arbitrators

With a view to enhancing the use of the arbitration services, the Committee had considered a proposal for The Law Society to provide details to potential arbitration service users on procedure for appointment of arbitrators. For that purpose, the Committee had prepared the *Procedure for Appointment of Arbitrators* (“*Procedure*”). The *Procedure* was approved by Council and was put onto the public zone of the website of The Law Society for access by the members, other relevant practitioners and the general public.

The Panel of Arbitrators of The Law Society of Hong Kong

The Panel of Arbitrators of The Law Society of Hong Kong (“Panel”) was another initiative to help promotion on the use of arbitration. It was established in October 2016. The Panel was maintained by the Committee with the support of its Sub-Committee viz, the Arbitrators Admission Sub-Committee. As of the end 2018, the Panel had 26 solicitor-arbitrators.

Consultations relating to Arbitration

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

(a) Consultation on Third Party Funding for Arbitration

The *Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017* (the “*Amendment Ordinance*”) provided for funding for arbitration and mediation by third parties. In August, the DOJ conducted a public consultation on a draft *Code of Practice for Third Party Funding* (the “*Code*”). The Code provided the practices and standards with which third party funders were ordinarily expected to comply, in carrying on activities in connection with third party funding of mediation and arbitration.

The Committee set up a task group to review the draft Code. With the representatives of other specialist committees, members of the task group together with the Chairperson met the DOJ in October. They exchanged views on the draft Code. After much deliberations, the Committee rendered line-by-line comments on the Code. These were consolidated into a joint submission which was approved by Council and which was submitted to the DOJ in November.

In December, the DOJ announced that the relevant provisions of Section 3 of the *Amendment Ordinance* which related to Divisions 3 and 5 of new Part 10A of the *Arbitration Ordinance* shall come into operation from 1 February 2019. The commencement of section 4 of the *Amendment Ordinance* insofar as it related to section 7A(c) and (d) of the *Mediation Ordinance* would be deferred to a future date.

(b) Consultation on Proposed Licensing Regime for *Property Management Companies and Property Management Practitioners*

In November, the Committee reviewed and considered a licensing regime proposed by the Property Management Services Authority (“PMSA”) for *Property Management Companies and Property Management Practitioners*. A joint submission was being prepared.

Training Courses in Arbitration

Continual training on arbitration was essential for solicitor-arbitrators and the general membership of The Law Society. It was on the other hand important for members to be made aware of and be equipped with updates on knowledge and skills for arbitration. In the year, the Committee initiated or participated in the following trainings :

- Seminar on “*International Arbitration under ICC Rules*” (27 April)
- Roundtable Discussion on Arbitration (26 June)
- Seminars on “*Arbitration for Partnership Disputes*” (17 July and 28 August)
- Members Quarterly Lunch Gathering : the Law Society Panel of Arbitrators (6 December); and
- A seminar on the *Code of Practice for Third Party Funding of Arbitration* (to be held in 2019).

Participation in Arbitration-Related Events

The Committee supported or participated the following arbitration-related events in 2018:

(a) Meeting with the China International Contractors Association and others

A member of the Committee represented The Law Society to attend a meeting with the China International Contractors Association and other professional bodies in Hong Kong to discuss various matters relating to cooperation between China and Hong Kong in overseas infrastructure projects on 29 June.

(b) *Hong Kong Forum: 60th Anniversary of the New York Convention* (20 September)

The Committee recommended to The Law Society to support the *Hong Kong Forum: 60th Anniversary of the New York Convention* organised by the DOJ on 21 September.

(c) 2018 Hong Kong Summit on Commercial Dispute Resolution in China (27 October)

A member of the Committee represented the Law Society to speak on “*The Impact of Regulatory Changes on Private Investment & Finance Disputes in the PRC*” in the captioned Summit organised by the Beijing Arbitration Committee. The

Summit was held in Hong Kong on 27 October.

(d) 6th CIETAC Annual Seminar in Hong Kong (28 October)

A member of the Committee represented the Law Society to speak on “*Debate and Discussion on the Med-Arb Process*” in the captioned seminar. The seminar was held on 28 October.

Arbitrators Admission Sub-Committee

The Committee was assisted by a Sub-Committee viz. the Arbitrators Admission Sub-Committee, on admission to the Panel of Arbitrators of The Law Society of Hong Kong. This year, the Sub-Committee had one physical meeting and conducted the rest of its business by emails. Among other things, it discussed:

- the admission requirements of the Panel
- applications for admission to the Panel
- its Terms of Reference, and
- annual review of membership.

CIVIL LITIGATION COMMITTEE

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

Public Consultation on 2018-2019 Government Budget

The Committee provided views on 2018-2019 Government Budget Public Consultation. The Committee considered that more resources should be allocated to the Judiciary. Views of the Committee, together with views of other specialist committees, were consolidated into a submission, which was sent to the Financial Secretary in February.

Consultation on Draft Talent List for Provision of Incentives to Attract Talents to Hong Kong

The Committee was consulted on a Consultation Paper on *Draft Talent List for Provision of Incentives to Attract Talents to Hong Kong* released by the DOJ in April. The views of the Committee were provided to the Council for consideration.

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

The Committee reviewed a Consultation Paper on *Proposed Arrangement with the Mainland on Reciprocal Recognition and Enforcement of Judgment in Civil and Commercial Matters* ("Proposed Arrangement") released in July by the DOJ.

The Chairperson of the Committee and two members of the Civil Litigation Committee, together with the Chairperson of the Intellectual Property Committee and the Chairperson of the Transportation and Logistics Committee, attended a briefing session by the DOJ in September.

The Committee, together with the Civil Litigation Committee, the Intellectual Property Committee, the Family Law Committee and the Probate Committee, made a joint submission on the Proposed Arrangement in October.

Other Issues

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

- Fixed Costs - review on the current scale of costs for default judgment
- The possible reform on service out of jurisdiction
- Enhancement of court security measures
- Liability for barristers' fees
- Judiciary's information technology plan
- Pro bono work and recovery of costs
- The implementation of the revised jurisdictional limits of the District Court and the Small Claims Tribunal
- Review on the *Statutory Retirement Ages for Judges and Judicial Officers*
- Order 61, Rule 32(1A) of the *Rules of District Court* (Cap.336H).

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

- High Court Taxation
- Lump Sum Assessment Reference Figures
- Appointments to Fix Dates of High Court Civil Trials
- Use of mobile phones and other devices in courtrooms for court proceedings involving jury.

COMPANY LAW COMMITTEE

The Committee conducted its business by emails.

The Committee considered a number of consultations from the Government, the Securities and Futures Commission (“SFC”) and the Stock Exchange of Hong Kong Limited (“HKEX”). During the year, submissions were made on the following:

- SFC’s Consultation on *Proposed Amendments to the Codes on Takeovers and Mergers and Share Buy-backs*

- HKEX's Consultation on *Listing Regime for Companies from Emerging and Innovative Sectors*
- HKEX's Consultation on *Backdoor Listing, Continuing Listing Criteria and other Rule Amendments*
- HKEX's Consultation on *Review Structure in relation to Listing Committee Decisions*
- HKEX's Consultation on *Proposal relating to Listed Issuers with Disclaimer or Adverse Audit Opinion and Financial Statements*.

COMPETITION LAW COMMITTEE

Competition Commission Investigation Processes

The Committee, in October, wrote to the Competition Commission (the "Commission") to raise concerns on the implications of two practices that the Commission appeared to have introduced, in the context of investigating suspected infringements of the *Competition Ordinance*, namely (i) the practice of requiring solicitors firms to produce written confirmation from their lay client to confirm that the solicitors firm had the necessary authority to act; and (ii) the practice of requiring compulsory document and information requests to corporate bodies to be answered by their "Proper Officer". The Committee did not agree that these should be imposed on the legal profession, and expressed the view that there were no justifications for the implementation of these practices. Discussions were continuing.

Hong Kong Competition Exchange 2018

On the recommendation of the Committee, The Law Society supported the *Hong Kong Competition Exchange 2018*, which was held in November.

Consultation Paper on *Review of Telecommunications Regulatory Framework*

The Committee took note of a Consultation Paper on *Review of Telecommunications Regulatory Framework* released by the Government in November. The Committee was prepared to be engaged in the consultation as and when the draft legislation was put forward for consultation.

Co-option of members

To help with the work of the Committee, a new member was co-opted under the Annual Review of Membership in October. Another co-option exercise was in progress in December to fill a subsequent vacancy.

CONSTITUTIONAL AFFAIRS AND HUMAN RIGHTS COMMITTEE

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

Co-location

With a view to implementing the co-location arrangement for the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link at the West Kowloon Station, the HKSAR Government in November 2017 signed a Co-operation Arrangement with the Mainland and in December 2017 obtained approval of this Co-operation Arrangement from the Standing Committee of the National People's Congress. For the purpose of local legislation to implement the Co-operation Arrangement, the Government in January introduced the *Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-Location) Bill* (the "Bill") into the Legislative Council.

The Committee studied the Bill in detail and considered various constitutional issues arising from the Bill. The observations and comments on the Bill were sent to Council for deliberation. Among other things the Council believed that it was in the interests of Hong Kong that the legal basis for the co-location arrangement be clarified. A statement on the matter was issued in late January.

National Anthem Legislation

The Government at a meeting of the Panel on Constitutional Affairs in March consulted Legislative Council Members on the proposed content of the local legislation to implement the National Anthem Law of the People's Republic of China (the "National Anthem Law"). The National Anthem Law was adopted at the 29th session of the Standing Committee of the 12th National People's Congress ("NPCSC") on 1 September 2017, and came into force nationwide on 1 October 2017. On 4 November 2017, the NPCSC adopted the decision to add the National Anthem Law to Annex III of the Basic Law. In consequence, the Government was preparing the draft *National Anthem Bill* (the "draft Bill"). An outline of the draft Bill was reviewed by the Committee. Among the various preliminary observations made, the Committee raised queries with the approach on punishment and sentencing. Together with a few Council Members of the Law Society, the Committee met the Constitutional and Mainland Affairs Bureau in April and relayed to the Bureau their comments on the draft Bill. The Committee also sent their observations to Council which in May issued a submission on the matter.

Appointment of Judges

The Committee's attention was brought to a few commentaries in the media which erroneously suggested political screening of judges at the Court of Final Appeal before appointments. Appointments of judges are made in accordance with Article 92 of the

Basic Law. Any attempt to introduce political or ideological screening in the judicial appointment process was ill-conceived and misplaced. Such attempts could lead the public to query the impartiality and integrity of judges and would undermine public confidence in the Rule of Law. A strong statement on the above was issued in June.

Abusive criticism on the Judiciary

The Committee was seriously concerned on abusive and personal attacks on members of the Judiciary by a small number of the public with strong views on political and other matters. It condemned those derogatory remarks made against a judge arising out of her judgment and sentencing in a criminal case concerning the riot in Mongkok in 2016. The Committee considered that personal attacks on judges had no place in rational discourse and debate. The Committee produced a statement on the above. The statement, subsequently issued in conjunction with the Hong Kong Bar Association in July, urged members of the public to express their views in a manner conducive to rational debate.

Legislative Council By-Election

The Committee had a discussion on the constitutional and legal issues arising from the disqualification of a local activist from running in a Legislative Council by-election in March. The nomination by the activist as a candidate was ruled invalid by a returning officer from the Electoral Affairs Commission on the grounds that her party had called for “self-determination” for the city, making it impossible for her to uphold the *Basic Law* as a Legislative Council Member. The Committee understood that the activist had filed an election petition at the High Court in May, seeking to overturn the result of the above by-election in March and the Returning Officer's decision to bar her from running in the poll.

Electoral Arrangement

The Constitutional and Mainland Affairs Bureau in November 2017 issued a consultation paper on the review of electoral arrangements. It sought views from the public on three issues relating to electoral arrangements, including the regulation of election advertisements published through the Internet (including social media), the regulation of election surveys, as well as the polling hours. After deliberations and recommendations by the Committee, The Law Society in January issued a submission to respond to the above. The Government published the Consultation Report on the subject matter in May.

The Committee had also reviewed another consultation paper on *Proposed Guidelines for Rural Representative Election* released by the Electoral Affairs Commission in June.

Commission on Children

The proposal on the setting up and the scope of work of a Commission on Children for Hong Kong continued to receive attention from the Committee. The Committee in February had a meeting with Ms Anna Wu, a veteran lawyer on human rights who was once a non-official member of the Executive Council, to exchange ideas on the relevancy of a Commission on Children for Hong Kong, and the importance for the independency of

the Commission. The Committee shared views with the Family Law Committee of The Law Society in that proposals for the establishment of a Commission on Children must seek to secure the best possible outcome to protect children and support families in Hong Kong. These views were set out in a submission issued in February.

The Committee noted that the Commission on Children was subsequently established in June, with the Chief Secretary for Administration as the Chairperson and the Secretary for Labour and Welfare as the Vice-chairperson. Two Working Groups were set up under the Commission to undertake specific areas of work. The two Working Groups were respectively on Research and on the Public Engagement, Education and Publicity.

Human Trafficking

Hong Kong is not a signatory to the *Palermo Protocol* and received queries as to how the city could protect victims from human trafficking. A report released in June by the US State Department placed Hong Kong on the Tier 2 Watch List in the Trafficking in Persons Report for the third consecutive year. The Committee noted, with concerns, the above as well as different news articles reporting on the problems on human trafficking. In July it wrote an article for LAWASIA on this matter.

Unified Screening Mechanism for non-refoulement claims

The Unified Screening Mechanism (“USM”) set up by the Government to handle non-refoulement claims received continuous attention from the Committee. In a Legislative Council paper submitted in July, the Government explained their proposed amendments to the *Immigration Ordinance* (Cap.115) as a review of the USM. The proposed amendments aimed to tighten-up the timeframes and procedures for extension of an application under the Ordinance. The Committee continued its close review of the proposed amendments.

Review of constitutional and human rights issues

The Committee was keeping a close watch on various constitutional and human rights issues including the official ban of a pro-independence political party from operating on the basis of the *Societies Ordinance*, the non-renewal of visa of a British journalist who was the Vice-President of the Foreign Correspondence Club, amendments to the PRC constitution, the arrest and the detention of human rights lawyers in the Mainland as well as the review on the system of interpreters in Hong Kong.

CRIMINAL LAW AND PROCEDURE COMMITTEE

The Committee had seven meetings this year to discuss issues on criminal law and practices.

Law Reform Commission of Hong Kong's Consultation Paper on Miscellaneous Sexual Offences

On 16 May, the Law Reform Commission (“LRC”)’s Review of Sexual Offences Sub-Committee published a consultation paper making preliminary proposals for the reform of law concerning miscellaneous sexual offences. These proposals covered miscellaneous sexual offences including incest, exposure, voyeurism, bestiality, necrophilia, acts done with intention to commit a sexual offence, and a review of homosexual or homosexual-related buggery and gross indecency offences in the *Crimes Ordinance*. The paper was the third and final part of the overall review of the substantive sexual offences.

The Committee, with the assistance of a task group, studied the proposals. In the course of review, the Committee noted other jurisdictions had already been proceeding with reforms of other sexual offences not yet canvassed by the LRC. The Committee took the view that those other offences should also be considered by LRC as part of the overall review, or as a separate or extended study. The above views, together with other comments, were summarised in a submission and were sent to the Law Reform Commission in July.

Evidence (Amendment) Bill 2018

The LRC released a consultation paper on Hearsay in Criminal Proceedings in 2005 and a report in November 2009 the latter of which recommended that the existing law of hearsay in Hong Kong criminal proceedings be comprehensively reformed. The DOJ took into account those recommendations made by the LRC and made a proposal last year to reform the law on admissibility of hearsay evidence. The DOJ proposed not to abolish the common law exclusionary rule against hearsay evidence, but sought to provide for a comprehensive and a principled approach to admissibility of hearsay by way of specifying when hearsay would be admissible. Following the above, in June the Government introduced the *Evidence (Amendment) Bill 2018* into the Legislative Council.

The Committee has reviewed the *Evidence Amendment Bill* and in November provided to DOJ its preliminary observations on the matter.

Biennial Review of Criminal Legal Aid Fees

The Government proposed to amend Rule 21 and Part 2 of the Schedule to the *Legal Aid in Criminal Cases Rules* (Cap.221 sub. leg. D) to increase criminal legal aid fees. This proposal followed the discussions held between the Committee, the Government and other stakeholder last year, under the biennial review of criminal legal aid rates. After further meetings and discussions, the *Legal Aid in Criminal Cases (Amendment) Rules 2017* was introduced into and was passed by the Legislative Council. 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) recorded between July 2014 and July 2016.

Review of Duty Lawyer Services Fees

The Committee continued the discussions with the Home Affairs Bureau on the review of the Duty Lawyer Services (“DLS”) Fees. Two members of the Committee joined a Working Group set up for the purpose of the above review. The Working Group met twice to discuss the levels of the DLS Fees. The Committee understood that the Bureau was seeking internal policy clearance and was in the process of securing additional financial resources for the proposed increases. The review would be reported to the Panel on Administration of Justice and Legal Services of the Legislative Council in Jan 2019.

Additionally, as a longer term arrangement for reviewing duty lawyer fees, a mechanism was proposed to be put in place such that future reviews of criminal legal aid fees would cover the review of duty lawyer fees in the same exercise.

Practice Directions

The Committee helped review and/or arrange to issue various circulars and *Practice Directions* including the following

- *Practice Direction 35 - Use of Mobile Phones and Other Devices in Courtrooms for Court Proceedings involving Jury*
- Circular on e-booking for legal visits to facilities of the Correctional Services Department
- Circular on Saturday Arrangements After Gale and Rainstorming Warnings at Magistrates' Courts
- Circular on High Court Taxation.

Criminal Law Conference 2019 (the “Conference”)

The Law Society of Hong Kong, the DOJ and the Hong Kong Bar Association have been co-organizing the criminal law conferences in 2012, 2013, 2015 and 2017 with much success. The Conference provides a platform in a neutral setting for the Judiciary, the criminal law practitioners and academia to freely and actively exchange views on criminal law issues of common interest. To continue to foster the discussion on the issues relating to the development of the Hong Kong criminal legal system, the Committee continued its support to organise a similar conference in the year 2019. Two members of the Committee joined an organizing committee for the conference. The organizing committee had already met twice to discuss topics, venues, and other logistics matters.

Training programme

The Committee repeated to co-organise a one-day training courses with the DOJ and the Hong Kong Bar Association. The training courses this year were held on 28 April and on

6 October. The course comprised of lectures and mock court exercises; it provided criminal advocacy training to participants with less than five years' post qualification.

Other issues relating to criminal practices

Various matters relating to criminal practices had been brought to the attention of the Committee for discussion. These included court security, taking of photos inside the Court during proceedings involving juries, human trafficking, the use of technology by the Judiciary, national anthem, legal and prison visits, as well as a Legal Aid Services Council's proposal on the provision of legal advice service for persons detained in police stations.

EMPLOYMENT LAW COMMITTEE

The Committee conducted its business by emails.

Proposed Legislative Amendments to the *Occupational Retirement Schemes Ordinance*

The Committee, the Retirement Scheme Committee, the Revenue Law Committee and the Insurance Law Committee were consulted on the proposed legislative amendments to the *Occupational Retirement Schemes Ordinance* (Cap.426) by the Mandatory Provident Fund Schemes Authority. The Chairperson attended a meeting with the chairpersons of the above Committees in March and exchanged views. The Chairperson also attended a joint meeting with the Mandatory Provident Fund Schemes Authority (“MPFA”) in May and received a focused explanation by the MPFA representatives on the issues relating to solicitor's statement.

Employment (Amendment) Bill 2018

The Committee reviewed the *Employment (Amendment) Bill 2018* (the “Bill”), which seeks to increase statutory paternity leave from existing three days to five days under the *Employment Ordinance* (Cap.57), while other features of the paternity leave regime would remain unchanged. The Bill was introduced into the Legislative Council in June and was passed in October.

The Discrimination Legislation (Miscellaneous Amendments) Bill 2018

The *Discrimination Legislation (Miscellaneous Amendments) Bill 2018* (the “Bill”) seeks to amend the *Sex Discrimination Ordinance* (Cap.480), the *Disability Discrimination Ordinance* (Cap.487), the *Family Status Discrimination Ordinance* (Cap.527) and the *Race Discrimination Ordinance* (Cap.602) to take forward eight recommendations of priority in the Equal Opportunities Commission's Report on the Discrimination Law Review. The Bill was introduced into the Legislative Council in December. The Committee continued to monitor the progress of the Bill.

Other employment law related issues

The Committee also considered/reviewed the following:

- the review of the Statutory Minimum Wage rate by the Minimum Wage Commission in April
- the Consultation Paper on Draft Talent List for Provision of Incentives to Attract Talents to Hong Kong by the DOJ in April
- the draft revised *Practice Direction P* in the light of the *Anti-Money Laundering and Counter-Terrorist Financing Ordinance* (Cap.615) which came into operation on 1 March
- the Consultation on the proposal to publish records of conviction, revocation/refusal of renewal of licence and written warnings of employment agencies on the department's EA Portal by the Labour Department in August
- the Law Society's public information pamphlet on Termination of Employment Contracts.

Ad Hoc Events for Community

(a) Seminar for Hong Kong Council of Social Service

In August, the Chairperson of the Committee spoke at a Seminar on Employment Related Responsibilities of NGO Boards.

(b) School Talk

The Chairperson was to speak at a School Talk relating to the Use of Privacy and Closed-circuit Television, to be held in March 2019.

FAMILY LAW COMMITTEE

The Committee had a busy year meeting on 13 occasions. In addition, it had seven meetings with the government bureaus and departments, the Judiciary, Legislative Council members and other external bodies to discuss a wide range of family law related issues. Committee members attended three Legislative Council 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 has been advocating the implementation of the law reform on child custody and access for more than 10 years. The Committee noted with disappointment that the Government proposed not to introduce the *proposed Children Proceedings (Parental Responsibility) Bill* into the Legislative Council at this stage.

Notwithstanding the above, the Committee was to continue to engage with different stakeholders, including Legislative Council members, NGOs and women's groups to lobby support for the law reform.

The Committee in December met with the representatives from the Women's Commission and drew their attention to the key features of the *Children Proceedings (Parental Responsibility) Bill* and the importance of the law reform on parental responsibilities.

(b) Child Abuse

The Committee held a special meeting in January to discuss matters to be raised at a meeting of the Legislative Council Panel on Welfare Services, including a review of child protection policies, in light of child abuse cases. The Chairperson attended that Legislative Council meeting and gave views, amongst others, on the need in consolidating all the relevant provisions concerning child protection into one single legislation.

With the recommendations of the Committee, the Council approved to write to the Chief Executive urging for an appointment of a Commission of Inquiry on child protection system in Hong Kong. A letter to the Chief Executive was sent in February.

(c) Establishment of a Commission on Children in Hong Kong

The Labour and Welfare Bureau launched a public engagement exercise on the proposed establishment of a Commission on Children in Hong Kong. The Committee reviewed the proposal. It considered that in the long run, Hong Kong should have an independent Commission on Children, with its own mandate as recommended by United Nations Convention on the Rights of the Child. A submission on the above was made in February.

The Commission on Children, chaired by the Chief Secretary for Administration, was set up on 1 June. Jointly with the Constitutional Affairs and Human Rights Committee, the Committee met the representatives from the Labour and Welfare Bureau and discussed issues relating to the newly formed Commission on Children.

(d) Leave for Children to be taken out of Hong Kong jurisdiction for holidays

A meeting with the Immigration Department was held in September for the Committee to have a better understanding on the protocol handling "Stop Orders" and to exchange views on the problems and difficulties encountered on "Stop Orders". Recommendations in these regards would be made to the Judiciary's Family Proceedings Court Users Committee.

(e) Child Fatality Review - Initial Findings for Responses

The Committee received from the Social Welfare Department an initial finding on child death cases in the years 2014 and 2015. Responses were being prepared to be made to the Social Welfare Department.

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

The Committee noted the Family Council would commission a consultant to conduct a study on, amongst others, a proposal of setting up a Maintenance Board in Hong Kong. The study was expected to be completed by the end of 2019. The Committee would keep the matter under review.

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

The Committee engaged with the Legal Aid Department two year ago seeking a review on the provisions of the Director of Legal Aid's first charge. In April, the Committee received a positive feedback from the Home Affairs Bureau that it proposed to adjust upward (i) the amount of maintenance that may be exempted from the Director of Legal Aid's first charge from \$4,800 to \$8,600 and (ii) the amount of the Director of Legal Aid's first charge, to be waived in cases of serious hardship, from \$57,000 to \$103,510. It also proposed a mechanism for adjusting the above two amounts on an annual basis. The Chairperson of the Committee attended the Legislative Council Panel on Administration of Justice and Legal Services in April to discuss these proposals and indicated support. The Committee urged that the legislative amendments for the proposed increases should be proceeded with as soon as possible.

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

The Committee had been actively following up with the Home Affairs Bureau and the Judiciary on the proposed legislative amendments to the *District Court (Fixed Costs in Matrimonial Causes) Rules* (Cap.336F) to adjust the amount of fixed costs and to extend fixed costs arrangement to the First Appointment, Financial Dispute Resolution hearings, Children's Appointment and Children's Dispute Resolution hearings. With the advent of the new set of Solicitor's Hourly Rates effective from 1 January, the Committee further updated the proposal for the amount of the fixed costs and submitted the revised levels to the Home Affairs Bureau. The Committee would continue to monitor the progress of the proposed legislative amendment exercise.

(i) Practice Direction SL9 - Pilot Scheme on Private Adjudication of Financial Disputes in Matrimonial and Family Proceedings

Practice Direction SL9 sets out the procedures of a pilot scheme for private adjudication of financial disputes in Matrimonial and Family Proceedings. It was extended for three years from 19 January. In parallel to the above, the Committee discussed the development of private adjudication and explored the possibility of

setting up a panel of adjudicators.

(j) Proposed Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill

The *Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill* (the “*Bill*”) seeks to implement the *Arrangement on Reciprocal Recognition and Enforcement of Judgments on Matrimonial and Family Matters*, which was signed by the Supreme People's Court and the Government of the HKSAR on 20 June 2017. The Chairperson of the Committee attended the Legislative Council Panel on Administration of Justice and Legal Services in March. Support was rendered to the *Bill*. The Committee asked for early implementation of the *Bill*.

(k) Consultation Paper on the Proposed Arrangement Between Hong Kong and the Mainland on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters

The Committee commented upon a consultation paper on the *Proposed Arrangement Between Hong Kong and the Mainland on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters* issued by the DOJ. A joint submission consolidating the views from the Committee and other specialist committees was issued in October.

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

The Committee, jointly with other specialist committees, had a meeting with the Director of Public Prosecutions in March to raise concerns over the problem of touting/provision of legal service by non-qualified persons. The Committee relayed to the DOJ the concerns on the matter.

(m) Code of Practice / Guides to Good Practice For Family Law Practitioners

The Committee had been reviewing the possibility of developing and promulgating a code of practice/guides to good practice for family law practitioners with reference to overseas jurisdictions. Deliberations on the code were continuing.

(n) 2018-2019 Government Budget

The Committee, together with other specialist committees, made a joint submission on 2018-2019 Government Budget to the Financial Secretary in February.

Other family law-related matters

The Committee took note of the following:

- The opening of the Judiciary's Integrated Mediation Office
- Draft Code of Practice for Third Party Funding of Arbitration and Mediation

- Public Consultation on the Fourth Convention on the Elimination of All Forms of Discrimination against Women Report
- Anti-Money Laundering - Licensing Regime For Trust or Company Service Providers
- The discussion by LegCo Subcommittee on Children's Rights on the reform of child protection legislation, child care services, rights of children affected by domestic violence
- Four sets of Draft Guidance Notes on Family Proceedings, to be issued by the Judiciary in 2019, namely *Guidance on Third Party's Interest in Application for Financial Provision*, *Guidance on Setting Aside a Consent Order on Ancillary Relief*, *Guidance Note on Judgment Summons Procedure* and *Guidance on Child Arrangements: Domestic Violence*

Family Court Users Committee

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

- Summons' Day Arrangement
- Family Proceedings - Correspondence with Court
- Case Management Practice in Processing Leave Applications in Family Court
- Case Management for Application for Leave to Appeal in the Family Court
- Withdrawal of Permission to Use Wifi for Text-based Communications in Family Court

Events

(a) Seminar for Social Workers

In June, the Chairperson of the Committee gave a talk to social workers on custody, care and control and guardianship.

(b) Training for the Social Welfare Department

In September, a Committee member helped present training courses for the Social Welfare Department on the topics of domestic violence.

Feature Articles on Family Law

Committee members contributed to feature articles on Hong Kong Lawyers on matrimonial law and practice. The articles were published in February and November.

INSOLVENCY LAW COMMITTEE

The Committee conducted its business via emails.

Public Consultation on Government Budget 2018-2019

The Committee was consulted on the Government Budget 2018-2019. The views of the Committee, together with those from other specialist committees, were consolidated into a submission, which was sent to the Government in February.

Touting

The Committee noted with concerns the problem of touting by non-professionals in bankruptcy practices. The Chairperson of the Committee, together with chairpersons and members of other specialist committees, had a meeting with the Director of Public Prosecutions in March to discuss and exchange views on the issue of touting.

Consultation on proposals on the introduction of a *Statutory Corporate Rescue Procedure and Insolvent Trading Provisions*

The Committee received from the Government a Consultation Paper setting out its latest proposals on the introduction of a *Statutory Corporate Rescue Procedure and Insolvent Trading Provisions*. The Committee reviewed the Consultation Paper and made a submission in May.

ICAC's recommendation on the Probity Requirements for Private Insolvency Practitioners

The Committee received a letter from the Official Receiver's Office in June seeking a response on whether The Law Society would be prepared to accept the recommendation on the probity requirements for Private Insolvency Practitioners made by the ICAC and if so, when the recommendation could be implemented. After reviewing the matter, the Committee replied to the Official Receiver's Office in October.

Consultation Paper on the *Proposed Arrangement between Hong Kong and the Mainland on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters*

The Committee reviewed a Consultation Paper on the *Proposed Arrangement between Hong Kong and the Mainland on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters* (the "*Proposed Arrangement*") released by the DOJ in July. The *Proposed Arrangement* seeks to broaden the scope of the reciprocal recognition and enforcement in civil and commercial matters.

The Committee, together with the Civil Litigation Committee, the Intellectual Property Committee, the Family Law Committee and the Probate Committee, made a joint submission on the *Proposed Arrangement* in October.

The Committee was advised that the DOJ was preparing a separate consultation paper on an arrangement between the Mainland and Hong Kong for the mutual recognition of and assistance in cross-boundary insolvency matters.

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. Furthermore, the circular on Companies and Insolvency Practice was updated in August to remind practitioners of the Practice Direction on hearing bundles.

Other matters

The Committee also issued members circulars from time to time to assist members with updates on the insolvency law practice. These included a circular issued in February regarding Format for Section 203 (Cap.32) and Section 93 (Cap.6) *Accounts for Liquidation and Bankruptcy Cases*.

Upon the invitation of the Official Receiver's Office, the Committee was to attend a meeting with the Official Receiver's Office in January 2019 regarding its IT Plan.

Official Receiver's Office Services Advisory Committee

Two members of the Committee, as representatives of the Law Society, attended regular meetings of the Official Receiver's Office Services Advisory Committee held throughout the year.

INSURANCE LAW COMMITTEE

The Committee met formally on three occasions this year and conducted the rest of the business via emails.

Proposed Legislative Amendments to the *Occupational Retirement Schemes Ordinance*

The Committee was consulted on proposed legislative amendments to the *Occupational Retirement Schemes Ordinance* (Cap.426) by the Mandatory Provident Fund Schemes Authority. The Chairperson attended a meeting with the chairpersons of various specialist committees of the Law Society in March and a joint meeting with the Mandatory

Provident Fund Schemes Authority in May.

Law Reform Commission Report on Periodical Payments for Future Pecuniary Loss

In June, the Committee considered a Law Reform Commission Report on Periodical Payments for Future Pecuniary Loss and deliberated on the implications of the law reform from the insurance law perspective.

Proposed Law Reform on Insurance Law in Hong Kong

The Committee initiated a review of insurance law in Hong Kong consequent upon the enactment of the UK's Insurance Act 2015. For Hong Kong, the *Marine Insurance Ordinance* (Cap.329), which came into effect in 1961, codified the law relating to marine and, despite its title, non-marine insurance in Hong Kong. The *Marine Insurance Ordinance* has been in force for more than 50 years with little or no amendment of substance. The Committee considered there was a need to have a comprehensive review of the insurance law regime with a view to modernizing the relevant legislation in Hong Kong.

In August, on the recommendations of the Committee, The Law Society wrote to the Law Reform Commission inviting them to set up a Sub-Committee to look at law reform on insurance law in Hong Kong, with particular reference to the statutory reforms in the UK.

Consultation Papers issued by the Insurance Authority

The Committee considered and reviewed the following consultation papers on new regulatory regime for Insurance Intermediaries released by the Insurance Authority:

(a) Consultation Paper on the *Proposed Guidelines for Fit and Proper Criteria and Continuing Professional Development for Licensed Insurance Intermediaries*

The Committee considered a Consultation Paper on the *Proposed Guidelines for Fit and Proper Criteria and Continuing Professional Development for Licensed Insurance Intermediaries* issued by the Insurance Authority and produced a submission in November.

(b) Consultation Paper on the *Draft Guideline on Exercising Power to Impose Pecuniary Penalty in Respect of Regulated Persons under the Insurance Ordinance (Cap. 41)*

A Consultation Paper on the *Draft Guideline on Exercising Power to Impose Pecuniary Penalty in Respect of Regulated Persons under the Insurance Ordinance (Cap.41)* was reviewed by the Committee. After deliberations, the Committee in December produced a submission.

(c) **Consultation Paper on the *Draft Insurance (Maximum Number of Authorised Insurers) Rules***

The Committee's attention was brought to a Consultation Paper on the *Draft Insurance (Maximum Number of Authorised Insurers) Rules*, which was released in October. The Committee was considering various issues canvassed in that Consultation Paper.

(d) **Consultation Paper on the *Draft Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules***

The Committee was also reviewing another Consultation Paper on the *Draft Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules*, which was released in November.

Insurance Law related issues

The Committee discussed a wide range of insurance law related issues including the following and would keep these issues under review:

- the impact of EU General Data Protection Regulation (GDPR) compliance on the insurance industry
- the impact of the *Competition Ordinance* (Cap.619) on insurance industry, in particular the *Competition Commission's Guidelines on Competition Rules*
- the legislative progress of the *Policy Holders' Protection Scheme Bill*
- the Law Society's updated *Practice Direction P on Anti-Money Laundering*
- the review of the law of insurance contracts and the consultation on *the Insurable Interest Bill* by the UK Law Reform Commission and the Scottish Law Commission.

INTELLECTUAL PROPERTY COMMITTEE

Discussions and Reviews

The Committee was busily engaged in the reviews of various matters on intellectual property ("IP") law and practices and had attended upon several visits this year. This year, it had an internal meeting and two meetings with the Government Intellectual Property Department ("IPD"), and conducted the rest of its business via emails and telephone conferences.

IP Specialist List and New Practice Direction

With a view to further enhancing dispute resolution services for IP matters for Hong Kong, the Committee proposed that an 'IP list' (or an 'IP court') be set up. This ideation was embraced in the Law Society's submission rendered in February for the Government Budget 2018-2019.

The above proposal was keenly followed up in September, when the Committee, together with other stakeholders, formally made a joint submission to the Judiciary on the urgent need for Hong Kong to set up an IP Court or a specialist IP List for IP litigation in Hong Kong. The Committee was pleased to note that, in response, the Judiciary in November announced that a specialist list for IP cases in the Court of First Instance was to be set up. The Committee was further consulted on a new Practice Direction drawn up in preparation for the IP specialist list. The new Practice Direction was to replace the existing practice direction of the *Trade Marks Ordinance* (Cap.559), and to kick start the implementation. The Committee had studied the draft and prepared a submission.

IP Evaluative Mediation ("EM")

The Committee continued to consider the use of EM to help resolve disputes in IP. This followed the policy initiative of the Government's Working Group on Intellectual Property Trading – led by the Secretary for Commerce and Economic Development – which studied ways to promote Hong Kong as a premier IP trading hub in the region. The Committee welcomed the efforts to help promote Hong Kong as an IP trading hub, and suggested that, for the introduction of the EM for IP disputes, the DOJ should promulgate relevant codes, guidance or practice notes for EM and to consider whether adequate expertise, training and accreditation and industry indemnity could be provided for the practice. The above were rendered to the DOJ in a submission in October.

Supplemental Submission on Proposed Arrangement between Hong Kong and the Mainland on Reciprocal Recognition & Enforcement of Judgment in Civil & Commercial Matters

The Committee assisted to prepare the submission on IP related aspects in October.

Promotion of IP

Business of Intellectual Property Asia ("BIP") Asia

BIP Asia Forum is an annual IP forum, jointly organised by the HKSAR Government, Hong Kong Trade Development Council and Hong Kong Design Centre. It brings 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 forum this year took place on 6 and 7 December at the Convention and Exhibition Centre. As in previous years, the Law Society was one of the supporting organizations. The Chairperson of the Committee was a member of the Steering Committee for the Forum.

The Committee continued to render support to the forum. Two committee members spoke in a break-out session entitled "*Shape Matters – Latest Development of Protection of 3D Trademarks*". The session was well-attended.

Seminars

For 15 years, the Committee has supported 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 21 June in Foshan. The Chairperson gave a presentation on *IP Audit and Due Diligence*.

Also earlier in June, IPD co-organised the APEC Workshop – Promoting Best Practices in Licensing for SMEs in Creative Industries with Asia-Pacific Economic Cooperation. The Chairperson shared his knowledge and experience as both a speaker and moderator to support the forum.

IP Ambassador Programme

The IP Ambassador Programme was first launched in 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 2018-19.

The Committee supported the Ambassador Programme and assisted the Welcome Reception held on 24 October at the IPD. Members met and shared views with the IP Ambassadors recruited for 2018-2019.

Meetings and Visits

(a) 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 IP practices and updates in the markets. The meetings this year were held on 27 February and 20 September. The matters discussed included

- Proposed Legislative Amendments on *Trade Marks Ordinance*, Cap.559
- Time taken for patent grant after request to register
- Security for costs under the Trade Mark Rules
- Reciprocal Recognition and Enforcement of Judgments
- Patent Practitioner Titles.

(b) Visiting the Trademark Examination Cooperation Guangzhou Centre of the State Administration for Industry and Commerce

The Committee joined a visit to the Trademark Examination Cooperation Guangzhou Centre of the State Administration for Industry & Commerce (“Guangzhou Centre”) (工商總局商標審查協作廣州中心) in Guangzhou in March. This visit was organised by the Guangdong/Hong Kong Cooperation on IP, the IPD, and the Guangdong Administration

for Industry and Commerce (“GDAIC”).

The Guangzhou Centre is the first Trademark Examination Cooperation Centre set up outside Beijing in December 2016. It assists in the handling of the increasing trademark applications in the Mainland.

The visit to the Guangzhou Centre provided a valuable platform for the Committee members, trademark examiners and IP ambassadors from the IPD to exchange views with the representatives of the Guangzhou Centre and GDAIC on trademark-related work. GDAIC representatives also shared the experience of trademark administrative enforcement in Guangdong.

(c) Visiting the Guangdong Intellectual Property Trade Expo 2018 and the Intellectual Property Pearl River Forum 2019

In November, the Chairperson and a few members of the Committee visited the *Guangdong Intellectual Property Trade Expo 2018* (the "Expo") and the Intellectual Property Pearl River Forum 2019 (the "Forum"). The Expo and the Forum were organised by the Guangdong Intellectual Property Office, Guangzhou Municipal People's Government and China Patent Information Centre. The events served to provide an international platform for exchange of the latest developments of intellectual properties among various sectors in the IP industry.

(d) Visit by the Delegation of State Administration for Industry and Commerce

The Committee in January received the director from the World Intellectual Property Organization ("WIPO") office in China. The director deliberated on the work of WIPO, and the different IP legal practices in Hong Kong and in Mainland.

(e) Visit by the Shenzhen Officials

The Committee attended a meeting with a group of Shenzhen officials in November upon an invitation from the Tai Kung International Media College. Members shared views on the enforcement of IP rights, especially the differences in the jurisdiction and practices of customs in Hong Kong and China.

(f) Visit by the Singapore Law Society

The Committee helped receive a delegation from the Law Society of Singapore in December. Members of the Committee discussed with representatives from the Law Society of Singapore's IP Practice Committee the latest developments in IP Law and Practice in the two jurisdictions, including the registration procedures for trademarks and patents, copyright issues, and enforcement.

(g) Other IP related matters

The Committee has been keeping in view various IP-related matters and has, from time to time, issued circulars to the general membership. These included the following:

- consultation on *the Inland Revenue (Amendment) (No.2) Bill 2018*
- the *"Trade Mark Registry Work Manual"*; and
- the *"2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters"*.

External Representation

The Committee continued to be represented on the Business of IP 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 considered various consultations from the Securities and Futures Commission. During the year, submissions were prepared on the following:

- Proposed Amendments to the *Code on Unit Trusts and Mutual Funds*
- *OTC derivatives regime for Hong Kong – Proposed refinements to the scope of regulated activities, requirements in relation to OTC derivative risk mitigation, client clearing, record-keeping and licensing matters*
- *Proposed conduct requirements to address risks posed by group affiliates*
- Proposed Guidelines on *Online Distribution and Advisory Platforms* and Further Consultation on *Offline Requirements Applicable to Complex Products*
- Proposed Enhancements to the *Investor Compensation Regime and Related Legislative Amendments*
- *OTC derivatives regime for Hong Kong – Proposed margin requirements for non-centrally cleared OTC derivative transactions*
- Proposed Guidelines for *Securities Margin Financing Activities*.

LEGAL AID COMMITTEE

The Committee met once this year and conducted the rest of its business via emails. A committee member also attended the AJLS meeting in April.

(a) Financial Eligibility Limits of Legal Aid Applicants

In April, the Committee received a proposal by the Home Affairs Bureau that the financial eligibility limits of Ordinary Legal Aid Scheme and Supplemental Legal Aid Scheme would be adjusted upward from HK\$302,000 and HK\$1,509,980 to HK\$307,130 and \$1,535,650 respectively. The Committee noted that the upward adjustments took effect in November.

(b) Expansion of the Supplementary Legal Aid Scheme

In April, the Committee noted the Government's proposed legislative amendments to expand the scope of Supplementary Legal Aid Scheme to cover civil proceedings in respect of monetary claims (i) for professional negligence against financial intermediaries licensed or registered for Type 1 (dealing in securities), Type 2 (dealing in futures contracts) or Type 8 (securities margin financing) regulated activities within the meaning of the *Securities and Futures Ordinance* (Cap.571); and (ii) in respect of derivatives of securities, currency futures or other futures contracts on the basis that the person seeking legal aid was induced to deal in those derivatives, futures or contracts by fraud, deception or misrepresentation. The Government planned to implement the above proposals in the first half of 2019.

A Committee member attended the AJLS meeting in April to reiterate the Law Society's views on the expansion of Supplementary Legal Aid Scheme as set out in the written submission issued in 2015.

The Committee would keep the matter under review and continue to discuss the further expansion of the Supplementary Legal Aid Scheme.

(c) Director of Legal Aid's First Charge

The Law Society has since 2016 been engaged with the Home Affairs Bureau and the Legal Aid Department urging for a review of the Director of Legal Aid's First Charge. The Committee noted the Government reported to the AJLS Panel in April that the Government would (i) adjust the current amount of HK\$4,800 specified in section 18A(5) of the *Legal Aid Ordinance* (Cap.91) ("LAO") to HK\$8,660 (i.e. amount of maintenance that may be exempted from Director of Legal Aid's First Charge); (ii) increase the current amount specified in section 19B(1)(a) of the LAO from HK\$57,400 to HK\$103,510 (i.e. amount of Director of Legal Aid's First Charge that may be waived in cases of serious hardship); and (iii) introduce a mechanism for adjusting the above two amounts on an annual basis to take into account the general price movement as measured by CPI(C), in conjunction with the annual review of financial eligibility limits in future. The Committee would continue to work with the Family Law Committee and monitor the implementation of the proposed adjustments.

(d) Payment of Costs to Assigned Solicitors

The Committee's attention was drawn to the problems encountered by assigned solicitors on payment by the Legal Aid Department of costs, assessment of costs, interest on costs and performance pledges. The Committee would continue to review the issues with a view to making proposals to the Director of Legal Aid for improvement.

(e) Listing and Hearing of Legal Aid Appeals

A circular on Listing and Hearing of Legal Aid Appeals was issued in September for general members' attention.

MEDIATION COMMITTEE

The Mediation Committee is tasked to review and make recommendations on mediation-related matters and to assist the Council in formulating policies and services on these matters for general members. This year, it reviewed its terms of reference and extended its work scope to cover Parenting Co-ordination (“PC”) and Early Neutral Evaluation (“ENE”). It co-opted one new member to help the work of the Committee.

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

Parenting Co-ordination Services

In Parenting Coordination (“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 help resolve disputes on parenting issues, and make decisions for the parties. This area of practice continued to be one of the important practice areas. To help members develop the practice, two members of the Committee joined a task group, convened by the Mediator and Parenting Co-ordinator Admission Committee (“MPCAC”), to study PC-related practice in Hong Kong.

Additionally, to provide information on the Panel of PCO and other relevant information relating to Law Society’s services on PC to the members and the general public, the Committee created a new webpage, titled *Parenting Co-ordination Services*, on the public zone of the website of the Law Society. The *Parenting Co-ordination Services* webpage was formally launched in November.

Pilot Scheme on Mediation Helpline

The Law Society’s Mediation Helpline (“Helpline”) was launched in November 2014. The Helpline, under the supervision of the Committee, aroused the public awareness of and understanding on mediation. It also helped 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 Dispute Resolution Coordinator of the Secretariat, provided information on mediation and mediation services to the public. The Helpline received positive feedbacks and the trial period of the Helpline was repeatedly extended.

Evaluative Strategies and skills in Mediation

Evaluative mediation has been put forward by the Hong Kong Government as one of the pioneering initiatives for the Hong Kong’s dispute resolution services. A Special Committee on Evaluative Mediation was set up under the Secretary for Justice’s Steering Committee on Mediation. The Special Committee reviewed and made recommendations on, among others, introducing evaluative mediation to Hong Kong.

The Committee noted the evaluative strategies and skills embraced in this approach and studied its scope and application. It discussed various matters on the use of evaluative mediation approach, including any potential risks and liabilities to mediators, with other specialist committees of the Law Society.

With the recommendation of the MPCAC, the Committee invited the Hong Kong Academy of Law to organise an *Evaluative Mediation Training* in 2018. A 3-days training was held on 16-18 November. It was well received by the participants.

Panels of International Mediators

The Committee received a recommendation of the MPCAC on the setting up of a Panel of International General Mediators and a Panel of International Family Mediators for solicitors with experience in international and cross-border disputes resolutions. These two panels aimed to assist solicitor-mediators to extend and to apply their practices in international and cross-border disputes, and also provided practitioners and the general public with a database on suitably qualified solicitor-mediators. The above recommendation was to be submitted to the Council for approval.

Mediation Leaflet

The Committee was in the process of revising its leaflet to provide updated information on mediation and Law Society's mediation services to the members and the general public. The Committee received the proposed contents.

Promotion of Solicitor-mediators

To promote solicitors' mediation practices, the Committee has:

- reviewed the policies on solicitors' practice in Mediation and PC
- organised Continuing Professional Development ("CPD") activities on Mediation, PC and related subjects
- liaised with stakeholders on matters relating to Mediation
- monitored and updated solicitors on the latest development of Mediation, PC and ENE in Hong Kong.

Mediation Services

The Committee continued to provide support services for mediation to The Law Society's members. This year, 14 requests for nomination of mediators were handled. On the other hand, the Committee was looking into the coverage of the Professional Indemnity Scheme to solicitor-mediators in the absence of liability exclusion clause in the agreement to mediate between parties to mediation and a mediator.

Sample Med-Arb Clause and Sample Mediation Clause

The Committee considered other initiatives to help the provision of mediation services for members and the general public. These included a proposal to revise the *Sample Med-Arb Clause* on the appointing body of arbitrators, and a proposal to formulate and publish a *Sample Mediation Clause* to assist disputing parties to refer their disputes to mediation for settlement under the Law Society's Mediation Rules.

The above initiatives were to be submitted to the Council for approval. Further details on the above would be announced when available.

Consultations relating to mediation

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

(a) Consultation on the Draft Code of Practice for Third Party Funders

The *Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017* ("Amendment Ordinance") was enacted in June 2017. Among other things, it provided for the establishment of an authorised body to formulate the ethical and financial standards of third party funders for arbitration and mediation, and the publication of a Code of Practice for Third Party Funders ("Code").

In August, the DOJ conducted a public consultation on the draft Code. The draft set out the practices and standards with which third party funders were ordinarily expected to comply in carrying on activities in connection with third party funding of mediation and arbitration. The Committee reviewed and discussed the draft Code, in particular, mediation funding for personal injury cases. The Committee's observations were consolidated with the views from other specialist committees of the Law Society. A joint submission, which was approved by the Council, was sent to the DOJ in November.

The Committee noted that in December, the DOJ announced that Divisions 3 and 5 of new Part 10A of the Amendment Ordinance would come into operation from 1 February 2019; and the commencement of section 4 of the Amendment Ordinance insofar as it related to section 7A(c) and (d) of the *Mediation Ordinance* would be deferred to a future date.

(b) Consultation on Proposed Licensing Regime for Property Management Companies and Property Management Practitioners

In November, the Property Management Services Authority ("PMSA") conducted a consultation on the "*Proposed Licensing Regime for Property Management Companies and Property Management Practitioners*". The PMSA proposed a licensing regime for property management companies ("PMCs") and property management practitioners ("PMPs"), with a view to regulating the provision of property management services.

The Committee considered the above consultation and provided its views to the Property Committee for a consolidated submission to the PMSA.

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:

- *Construction Mediation and Mock Mediation* (3 March)
- *Does the Apology Ordinance (Cap.631) Change Anything in Mediation?* (19 April)
- *Mediation Week 2018* (11 – 19 May)
- *How Solicitors Can Prepare Clients on Mediation?* (15 May)
- *JMHO 4th Shanghai – Hong Kong Commercial Mediation Forum* (19 May)
- *Facilitative Mediation or Evaluative Mediation?* (24 May)
- *JMHO Workshop – Mediating Cross-Border Disputes* (3 October)
- *Evaluative Mediation Training* (16-18 November)
- *JMHO Workshop - Effective Mediation in Resolving Cross-Cultural Disputes* (22 November)
- *Mediation Cases Sharing and Parenting Co-ordination* (27 November).

PERSONAL INJURIES COMMITTEE

The Committee met four times this year. It also had various meetings with the Judiciary, the Hong Kong Bar Association, the DOJ, the Labour and Welfare Bureau and the Legislative Councillor to discuss different personal injuries matters.

Employees Compensation Assistance Fund Board

The deliberation on Section 20B of the *Employees Compensation Assistance Ordinance* Cap.365 (“ECAO”) continued. This section is unfair to those plaintiffs in personal injury claims who are to pray for relief payment under the ECAO. Those plaintiffs need 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 plaintiffs. In a meeting in May jointly with the Hong Kong Bar Association, the Committee met the Secretary for Labour and Welfare. The Committee relayed the above concerns to the Government. It revisited the financial situation of the Fund at various times, and discussed the necessary legislative amendments to the ECAO in order to address the above problem.

Consultation Paper on *Periodical Payments for Future Pecuniary Loss in Personal Injury Cases*

A Sub-Committee of the Law Reform Commission of Hong Kong (“LRC”) in April released a consultation paper on *Periodical Payments for Future Pecuniary Loss in Personal Injury Cases*. The Sub-Committee sought views on whether the court should be given, by way of legislation, the power to make periodical payment orders (“PPOs”) in respect of damages for future pecuniary loss in personal injury cases. The consultation

arose from the LRC's consideration of the current system of assessment of damages for future pecuniary losses in personal injury cases, whereby a lump sum award is made at the time of trial to compensate for a continuing stream of income. This conventional approach brings the inevitable problem that the lump sum award for future pecuniary loss is either too little or too much, and has generally been criticised as being imprecise and unscientific.

The Committee agreed that from a policy consideration of the principle of *restitutio in integrum*, the Court should have the power to make PPOs in awarding damages in personal injuries claims. At the same time, it acknowledged the concerns and the potential difficulties caused to the insurance industry in the making of PPOs. To address the above, the Committee proposed that before Hong Kong was to have the PPOs regime, there should be a system whereby the damages for future needs could be capitalised into a fund (the "Fund"). Under this Proposal, damages for future needs shall be assessed by the Court as one lump sum, using the appropriate discount rate and the expected term for the claimant's need. The insurance company would only have to pay this lump sum without being concerned with periodical payments. After full payment, the insurance company would be discharged from any or further liabilities of the matter. The Fund would then pay out periodical payments to the claimant as provided for in the PPO. A submission on the above proposal was sent to the LRC in August.

Investment in Mental Health Cases

Following a discussion with the Judiciary, the Committee considered any improvements to the investment of the sums of damages awarded in mental health cases. The Committee was in the course of reviewing the practice in the UK with the Court of Protection.

Review of bereavement award under the *Fatal Accidents Ordinance*, Cap.22

The Committee was consulted over a proposal by the Government to revise the amount of award for damages for bereavements under the *Fatal Accidents Ordinance*, Cap.22, from HK\$150,000 to HK\$220,000. The proposal was said to have been made to reflect the effect of cumulative inflation recorded since the last revision in 1997. The Committee agreed that this statutory award should be increased, and that an amendment bill should be introduced, as soon as possible. As for the quantum of the increase, the Committee was of the view that the proposed figure was arguably not the most desirable, as it had not (for example) taken into account the changing and the social and economic conditions in Hong Kong. However, in order to assist the legislative process within the legislative year, the Committee had no objection to, and supported, the proposed increases.

At the same time, the Committee also asked for a periodic uplift of the bereavement award under the *Fatal Accidents Ordinance*, Cap.22, once every two years. Furthermore, there should be a comprehensive review of the quantum for this head of claim once every six years.

A submission on the above was sent to the DOJ in May.

Mediation Funding for Personal Injuries Claims

The Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (“Amendment Ordinance”) was gazetted in June 2017. By virtue of the Amendment Ordinance, the authorised body (as defined in the Amendment Ordinance) may issue a code of practice setting out the practices and standards with which third party funders are ordinarily expected to comply in carrying on activities in connection with third party funding of arbitration and mediation. Furthermore, before issuing the above code of practice, the Amendment Ordinance required that the authorised body must consult the public about the proposed code and publish a notice to inform the public of the proposed code.

On 30 August, the DOJ released the draft Code of Practice for third party funders (“Code”) for consultation. The draft Code was passed to various specialist committees of the Law Society, including the Personal Injuries Committee, for views.

The Committee expressed strong reservation on mediation funding under the Amendment Ordinance insofar as personal injuries litigation was concerned. The Committee considered that, inter alia, the Amendment Ordinance was not clear whether post-action mediation for personal injuries cases should be considered as part of litigation (contentious) proceedings where the doctrine of champerty applied. The Committee took the view that the launch of the mediation funding regime in Hong Kong could invite unethical touting by recovery agents. Other practical problems could emerge when the Amendment Ordinance was to come into full effect. These problems could arise in Order 80 settlements and cases under the Employees Compensation Assistance Fund Scheme, and legal aid cases. The Committee asked to exclude personal injuries litigation from mediation funding regime.

Touting

The Committee, together with other specialist committees of the Law Society and a few Council Members, had a meeting with the Director of Public Prosecutions in March to discuss among other things the problem of touting. Concerns were raised by the Committee on the offering of legal services by non-qualified persons and the touting of personal injuries claims. These persons could quite commonly be seen outside the Legal Aid Department offices, hospitals and the Labour Department.

PROBATE COMMITTEE

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

The Committee considered various matters relating to probate law and practices. This year, the Committee made submissions in response to the following consultations: -

- *Continuing Powers of Attorney Bill*
- Proposed Arrangement between Hong Kong and The Mainland on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters.

Apart from the above, the Committee reviewed the following:

- Section 10 of the *Probate and Administration Ordinance*
- The *Non-contentious Probate Rules*
- Supplement No. 2 to the Guide to No-contentious Probate Rules
- Invalid Appointment of Joint and Several Executors under Wills

Members' circulars where relevant were issued on the above.

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*. This year a total of about 646 will search enquiries were received and processed. To facilitate the will enquiries on either a deceased person or a mentally incapacitated person, the will search application forms had been revised and was issued in March.

One member delivered for the Academy of Law CPD trainings on Intestate and Testate Succession, respectively in August and September.

The Committee maintained close working 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 all members of the Committee. The Committee met the Probate Registry in March and exchanged views on various practice issues.

External Work

The Committee participated in the Joint Standing Committee on Probate Practice with the Judiciary.

PROPERTY COMMITTEE

The Committee was busy this year meeting every month to consider a wide range of conveyancing issues and the related legislative proposals. It also engaged with different Government departments and other organizations to discuss property-related matters.

Some of the issues the Committee has considered are listed below.

(a) Land Titles Ordinance

The Committee has busily been in communication with the Land Registry on practical issues relating to the implementation of *Land Titles Ordinance*, Cap. 585 ("LTO"). In order to better understand the practical aspects of the LTO, the Committee attended a dummy run organised by the Land Registrar in September.

The dummy run was for the Land Registry to show to the Committee the intended procedures for registration under LTO. Apart from commenting on practical implementation, members of the Committee at the dummy run also relayed its various suggestions to the Land Registry to help improve the implementation of the LTO.

The above dummy run was followed up by further correspondences and meetings with the Land Registry on the matter. In the meantime, members of the Committee as well as other veteran members, joined the LTO Steering Committee and the LTO Review Committee.

(b) Property Frauds

Property frauds continued to receive close attention from the Committee in the year especially after the Committee's attention was brought to a Court of Appeal judgment in the UK viz. *P&P Property Limited v Owen White & Catlin LLP, Crownvent Limited and Dreamvar (UK) Limited v Mishcon De Reya (a firm), Mary Monson Solicitors Limited* ([2018] EWCA Civ. 1082) (the "UK Judgment"). The UK Judgment potentially raised grave concerns to the local legal profession in cases of imposter frauds.

The Committee had carefully studied the UK Judgment, and raised the matter with relevant organizations, such as the Hong Kong Association of Banks and the Hong Kong S.A.R. Licensed Money Lenders Association Limited to invite them to cope with the fraudulent property transactions. The matter was under continual deliberation by the Committee.

(c) Property Management Services Ordinance

The Property Management Services Ordinance, Cap.626 ("PMSO") and the *Property Management Services (Levy) Regulation* (the "Regulation") came into operation on 1 July. At the request of the Committee, the Property Management Services Authority ("PMSA") together with the Inland Revenue Department and the Home Affairs Department met with the Committee in May to discuss the logistics and the arrangement for the collection of levies under the Regulation. The Committee at the meeting expressed concern on the scope of leviable instruments under PMSO.

On the other hand, further to the implementation of PMSO and the Regulation, PMSA issued a consultation on a proposed licensing regime for property management companies and property management practitioners which would have serious implications on the profession. The Committee was considering the consultation paper, and would prepare a submission.

(d) Non-Consent Scheme - Finance Undertaking

The Committee continued to consider the various improvements to the Non-Consent Scheme. The provision of a finance undertaking in the Non-Consent Scheme remained to be one of the initiatives under consideration. For that purpose, the

Committee was reviewing 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).

(e) Other Practice Issues

The Committee issued various practice-related circulars to general members on 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 various issues on practice and procedures on conveyancing. It also deliberated various property-related matters, such as the following and, where appropriate, had issued members' circulars:

- *Stamp Duty (Amendment) Ordinance 2018* – Stamping of Instruments of Immovable Properties
- IRD – e-Stamping Service Security Upgrade
- *Property Management Services Ordinance (Commencement) Notice 2018* and *Property Management Services (Levy) Regulation*
- *Residential Properties (First-hand Sales) Ordinance* – Showing “a Public Utility Installation” on the Location Plan
- Land Registry – Launch of e-Notification Service for Return of Instruments
- *Stamp Duty (Amendment) (No.2) Ordinance 2018* – Stamping of Instruments of Immovable Properties
- Levy Collection under the *Property Management Services Ordinance*
- LACO CM No.80 – Lands Department Consent Scheme – New consent conditions for sale of residential units in uncompleted private developments
- *Residential Properties (First-hand Sales) Ordinance* – Information on Fire Service Installations and Equipment for Open Kitchen in a Sales Brochure
- Hong Kong Housing Society's Flat-For-Sale-Scheme (“FFSS”) – FFSS Secondary Market Scheme Revised Documentation
- The Land Registry “Meet the Clients” Session on “Common Reasons for Withholding Instruments from Registration”
- LACO CM No.34A – Revised Government Property Administrator's Guidelines and Checklist for Deeds of Mutual Covenant for developments involving Government Accommodation.

Waiver Applications

The Committee helped consider and determine 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 general members. This year there was a total of 487 applications for DMC Waivers.

Urban Renewal Authority

The Urban Renewal Authority ("URA") set up a Building Rehabilitation Platform (the "Platform") in 2017. The Platform proposed by the URA assists building owners in the appointment of consultants, contractors and service providers for building rehabilitation services. A member of the Committee joined the committees under the Platform, and assisted in the discussion of provisions for building rehabilitation services in Hong Kong.

Other professional engagements

The Committee had representatives on the following group and committees:

- Land Registry Customer Liaison Group
- Land Registry Joint Standing Committee
- Land Titles Ordinance Steering Committee
- Land Titles Ordinance Review Committee

WORKING PARTY ON REVIEW OF NON-CONSENT SCHEME FORMS

The Working Party had two meetings this year, and conducted the rest of its business by emails.

During the year, the Working Party has busily been discussing the following forms and has completed the respective reviews-

- (a) the agreements for sale and purchase of "residential property" for uncompleted and completed developments; and
- (b) the sub-sale and purchase agreements of "residential property" for uncompleted and completed developments.

Amendments to the above forms were proposed to and agreed upon by the Property Committee. The proposed amendments would be considered by the Council in due course. Upon endorsement, the amended forms would be submitted to the Chief Justice for approval.

The Working Party has kick-started the next review, and has commenced to study the Forms of Agreement for sale and purchase of "non-residential property" under Rule 5C of the *Solicitor's Practice Rules*.

The Working Party on the other hand continued to monitor, among others, the amendments brought by the Land Advisory and Conveyancing Office of the Lands Department on the agreements for sale and purchase of residential and non-residential properties under the Consent Scheme.

WORKING PARTY ON REVISED DMC GUIDELINES

The Working Party was set up to review the proposed revision by the Legal Advisory and Conveyancing Office of the Lands Department ("LACO") to the guidelines for the drafting of the DMC under the Consent Scheme.

The Working Party co-opted two new members this year. It had two meetings and conducted the rest of its business by emails this year.

The Working Party considered, among others, the amendments brought by LACO on the DMC Guidelines. With reference to the amendments brought by LACO on its DMC Guidelines, the Working Party made recommendations on the revision to the Law Society's DMC Guidelines for the Property Committee's deliberation.

RETIREMENT SCHEME COMMITTEE

The Committee met once in March, jointly with other specialist committees, to discuss the proposed amendments to the *Occupational Retirement Schemes Ordinance* (Cap.426) ("ORSO"), and conducted the rest of its business by emails. The above amendments were said to enhance the power of the Registrar of Occupational Retirement Schemes to ensure that schemes regulated under the ORSO are bona fide employment-based retirement schemes and improve the governance of occupational retirement schemes. These arose as the Registrar considered that some entities might have misused registered or exempted schemes for non-retirement purposes such as marketing (to investors who were not employees of the relevant employer). These schemes did not fall within the ambit of the ORSO under the original policy intent. The misuse of registered and exempted schemes would compromise the integrity of the regulation of investment products in Hong Kong. Legislative proposals were therefore put forward to ensure that registered and exempted schemes were employment-based, and that only bona fide transfer-in payments were allowed.

The Committee also considered the following updates and amendments to the Mandatory Provident Fund Scheme, and issued circulars to general members, where appropriate.

- Central Securities Depositories (Guidelines I.7)
- Equities and Other Securities (Guidelines III.2)
- Default Investment Strategy (Guidelines III.14)
- Approved Exchanges and Index-Tracking Collective Investment Schemes (Guidelines III.4 & III.10)
- Election for Transfer of Accrued Benefits (Guidelines IV.3)

REVENUE LAW COMMITTEE

The Committee conducted its business via emails.

Proposed legislative amendments to the Occupational Retirement Schemes Ordinance

The Committee was consulted on the proposed legislative amendments to the *Occupational Retirement Schemes Ordinance* (Cap.426). The Chairperson of the Committee in March met with the chairpersons of the Retirement Schemes Committee, the Insurance Law Committee and the Employment Law Committee and exchanged views.

Consultation on Proposed Legislative Amendments on Adoption of Fair Value Accounting for Financial Instruments for Tax Reporting

The Committee received from the Government a proposal to amend the *Inland Revenue Ordinance* (Cap.112) to allow the recognition of financial instruments on a fair value basis for tax reporting. The Committee wrote to the Government in July asking for clarification of the meaning and intention of the proposal.

OCED's Paper on "Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures"

In March, the Organization for Economic Co-operation and Development ("OECD") issued model disclosure rules that require lawyers, accountants, financial advisors, banks and other service providers to inform tax authorities of any schemes they put in place for their clients to avoid reporting under the OECD/G20 Common Reporting Standard or prevent the identification of the beneficial owners of entities or trusts. The Committee had considered the various issues arising from these model disclosure rules. It was going to make recommendations to the Council on the matter.

Revenue-related reviews

During the year, the Committee took note of and/or reviewed the following:

- the proposed amendments to the Law Society's Practice Direction P in the light of the *Anti-Money Laundering and Counter-Terrorist Financing Ordinance* (Cap.615) which came into operation on 1 March.
- *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. The Government further proposed amendments to the Bill to address possible ring-fencing and tax leakage concerns.
- *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 (BEPS) package promulgated by the Organization for Economic Co-operation and Development.

- *Inland Revenue (Amendment) (No. 2) Bill 2018*, which sought to expand the scope of profits tax deductions for capital expenditure incurred for the purchase of intellectual property rights from the existing five types to eight. The additional three IPRs are rights in layout-design (topography) of integrated circuits, plants varieties and performances.
- *Inland Revenue (Amendment)(No.3) Bill 2018*, which aimed to provide for enhanced tax deduction for expenditure incurred by enterprises on qualifying research and development (R&D) activities, in order to encourage more enterprises to conduct R&D activities in Hong Kong.
- *Inland Revenue (Amendment) (No.6) Ordinance 2018*, which primarily implemented the minimum standards of the Base Erosion and Profits Shifting package promulgated by the Organization for Economic Co-operation and Development and codifies the transfer pricing principles into the *Inland Revenue Ordinance* (Cap.112).
- *Inland Revenue (Amendment) (No. 7) Bill 2018*, which sought to amend the *Inland Revenue Ordinance* (Cap.112) (a) to align tax treatment of financial instruments with their accounting treatment in certain circumstances; (b) to provide for deduction of interest expenses payable to overseas export credit agencies; (c) to refine the provisions that implement the arrangement relating to automatic exchange of financial account information in tax matters; (d) to avoid potential double non-taxation of income of visiting teachers and researchers; and (e) to revise the meaning of the sibling relationship.
- *Inland Revenue (Convention on Mutual Administrative Assistance in Tax Matters) Order*. The Convention on Mutual Administrative Assistance in Tax Matters entered into force in Hong Kong on 1 September to allow Hong Kong to effectively implement the automatic exchange of financial account information in tax matter (AEOI) and the Base Erosion and Profit Shifting (BEPS) package promulgated by the Organization for Economic Co-operation and Development.
- *Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Bill 2018*, which sought to address the concerns of the Council of the European Union over the ring-fencing features of the tax regimes for privately offered offshore funds in Hong Kong and enhance the competitiveness of the tax regimes by creating a level playing field for all funds operating in Hong Kong. The Bill was introduced into the Legislative Council in December.

Public Consultation on Government Budget 2018-2019

Apart from the above, the Committee also relayed comments on the Government Budget 2018-2019 and with other specialist committees jointly made a submission to the Government on the Budget 2018-2019 in February.

Joint Liaison Committee on Taxation

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 advised by the Hong Kong Mortgage Corporation Limited ("HKMC") in September of an enhancement to its Reverse Mortgage Programme. The enhancement was for HKMC Insurance Limited, a wholly-owned subsidiary of HKMC and the current operator of the Reverse Mortgage programme, to launch a fixed rate mortgage plan under the programme. The above aimed to provide potential borrowers with an option of a fixed-rate mortgage plan which was in addition to the floating-rate mortgage plan currently available under the programme. A members' circular, which included the updated Counselling Protocol, Counselling Questionnaire and Counselling Certificate was issued in September.

WORKING PARTY ON ENDURING POWERS OF ATTORNEY

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

The Working Party reviewed a consultation paper on the proposed legislation on continuing powers of attorney. This consultation followed a previous Law Reform Commission of Hong Kong's report on *Enduring Powers of Attorney: Personal Care* issued in 2011. The report recommended the extension of the scope of an enduring power of attorney ("EPA") to cover not only decisions on a donor's property and financial affairs, but also decisions on a donor's personal care. After consideration, the DOJ proposed that a new Continuing Powers of Attorney Ordinance be enacted to replace the existing EPA scheme with a new regime known as the continuing powers of attorney to distinguish it from an EPA created under the existing Enduring Powers of Attorney Ordinance. The Working Party prepared a submission in April to respond to the consultation. It suggested, among other things, to raise concerns on potential conflict for the same attorney to look after a donor's property and financial affairs as well as to take care of his/her personal care.

The Working Party was aware of the increasing concern by the public of the use of advance care planning and advance directives in Hong Kong. It carried out a study on similar schemes on EPA in other jurisdictions and had prepared a submission in April.

TRANSPORTATION AND LOGISTICS COMMITTEE

The Transportation and Logistics Committee is tasked to monitor and review legal and practice matters pertinent to the transportation and logistics industries. Its terms of reference were expanded in May. The updated terms of reference of the Committee are as follows:

- To review, examine and comment on any issues relating to the transportation and logistics industries in Hong Kong (including, marine, shipping, aviation, road, rail and air transport and cargo industries) by making proposals and recommendations to the Council;
- As and when requested by the Council and the Standing Committee on Practitioners Affairs, to liaise with and to make representations and submissions to the Government and relevant external bodies (e.g. Legislative Council 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.

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

Consultation Papers

The Committee considered the following consultation papers:

(a) Consultation Paper on the Regulation of Unmanned Aircraft Systems in Hong Kong

The Committee reviewed a *Consultation Paper on the Regulation of Unmanned Aircraft Systems* (commonly known as drones) released by the Civil Aviation Department in April. The Committee provided views on the consultation questions raised, and in June prepared a submission for the Civil Aviation Department.

(b) Consultation Paper on the Proposed Arrangement between Hong Kong and the Mainland on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters

The DOJ released a *Consultation Paper on the Proposed Arrangement between Hong Kong and the Mainland on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters* (the "Proposed Arrangement") in July. The Proposed Arrangement seeks to broaden the scope of the reciprocal recognition and enforcement in civil and commercial matters.

The Chairperson of the Committee, together with representatives from other specialist committees, attended a briefing session by the DOJ in September. A submission, jointly with the Civil Litigation Committee, the Intellectual Property Committee, the

Family Law Committee and the Probate Committee, was made in respect of the Proposed Arrangement in October.

The above submission was followed by a supplemental submission rendered in response to requests by the DOJ for further views on the Proposed Arrangement in respect of maritime matters. The supplemental submission on these further consultation issues on maritime matters was prepared in November.

Issues relating to Transportation and Logistics Industries

The Committee also took note of the following relating to transportation and logistics industries:

- review on marine insurance law in Hong Kong
- the latest development of the shipping industry in Hong Kong
- the latest development of the Chinese Maritime Law
- the latest drone regulation in the United Kingdom and the European Union
- the introduction of the concessionary tax regime on Aircraft Leasing in Hong Kong
- the set up of an Independent Review Committee on Hong Kong's Franchised Bus Service.

Article on Hong Kong Lawyer

The Chairperson contributed an article on *Hong Kong Lawyer* on the work of the Committee. The article was published in September.

WORKING PARTY ON CHARITIES AND TRUST

The Working Party on Charities and Trust was set up to consider, review and report on the current and proposed legislation on and relating to law and practice on charities and trust and to make recommendations, where appropriate in these areas; and to provide submissions on the above for the Council's consideration. During the year, it took note of the proposal by the Mandatory Provident Fund Schemes Authority to amend the Occupational *Retirement Schemes Ordinance* (Cap.426), which could have an impact on the trustees practice area as the trustees' duties or obligations relating to the proposed amendments could be codified.

WORKING PARTY ON ENGAGEMENT AND FEE ARRANGEMENTS WITH BARRISTERS

The Working Party on Engagement and Fee Arrangements with Barristers was set up under the Civil Litigation Committee and was specifically tasked to review the current arrangement in instructing barristers in civil matters, including the financial liabilities of instructing solicitors.

The Working Party met in April. It reviewed the matter further and put forward a set of

recommendations for consideration of the Civil Litigation Committee. The Working Party was dissolved in October.

WORKING PARTY ON INTERPRETERS

The Working Party on Interpreters was set up to review and make recommendations to the Council on improvements to the current system of public service interpretation for: (i) civil and criminal proceedings before courts and tribunals, including disciplinary or regulatory proceedings; (ii) proceedings before any person who is acting in a judicial or quasi-judicial capacity; (iii) investigation by law enforcement agencies; and (iv) taking instructions from clients of law firms relating to and incidental to (i), (ii) and (iii) above with a view to the Law Society proposing and promoting the implementation of an improved system.

In October, the Working Party and the Constitutional Affairs and Human Rights Committee had a meeting and discussed the constitutional and human rights issues arising from the engagement of interpreters in Hong Kong. The two committees agreed that the current interpreters system required a careful study in the aspects of accreditation, qualification, remuneration and ethical/disciplinary matters.

WORKING PARTY ON RESOLUTION REGIME

The Working Party on Resolution Regime was set up in 2014 and was tasked to review the consultation paper(s) then issued by the Financial Services and the Treasury Bureau, the Hong Kong Monetary Authority, the SFC and the Insurance Authority on and relating to a proposed resolution regime for Financial Institutions in Hong Kong. With the assistance of the Working Party, the Law Society produced 3 submissions since its formation, namely in April 2014, April 2015 and February 2017. The *Financial Institutions (Resolution) Ordinance* (Cap.628) came into effect on 7 July 2017. In February, the Working Party considered a Consultation Paper on *Rules Prescribing Loss-absorbing Capacity Requirements for Authorised Institutions*.

The Working Party was dissolved in October.

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 seven Board meetings during the year and an Annual General Meeting.

The HKSIFL considered a number of matters including:

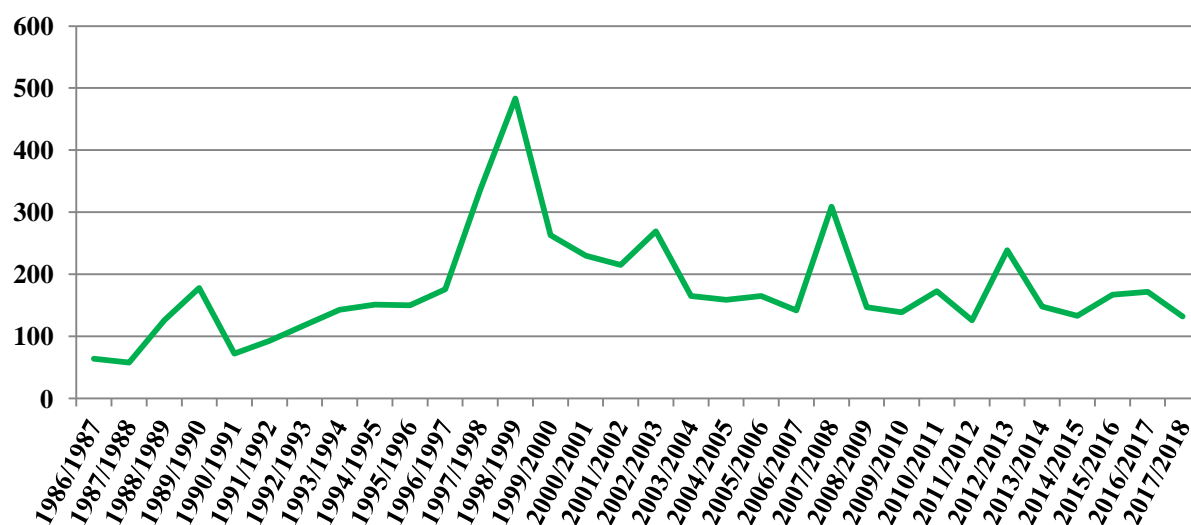
- Increasing the indemnity limit of the PIS

- Contribution reduction
- Keeping a Significant Controllers Register
- The performance of the PIS Broker and Manager
- The performance of PIS investments
- 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
- Renewal of Reinsurance Programme and Insolvency Insurance Programme of the PIS
- 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
- Appointment of actuary.

A total of 132 notifications of claims were received by the Claims Manager, ESSAR Insurance Services Ltd. ("ESSAR") during the 2017/2018 indemnity year, i.e. from 1 October 2017 to 30 September 2018 and the grace period from 1 October 2018 to 29 November 2018. As at 30 September, 13 of the notifications resulted in proceedings, seven were closed without payment, three were settled with payment and 116 (including those closed without payment) remained as notifications.

The number of claims for the last 32 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 – 2017/2018)



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
2002/2003	269	25%	5,301
2003/2004	165	-39%	5,422
2004/2005	159	-4%	5,593
2005/2006	165	4%	5,757

Indemnity Year	Number of Claims	Percentage Increase/Decrease from previous year	No of members with Practising Certificates (as of 31 December)
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
2017/2018	132	-23%	9,903

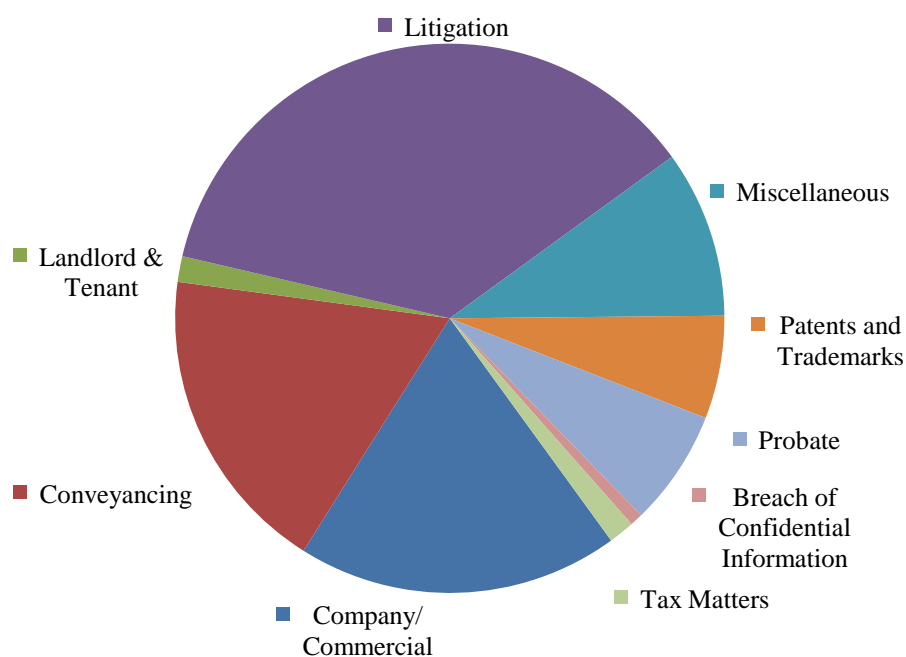
* Number of Claims includes claims notified within the grace period.

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

Claims notified in the 2017/2018 indemnity year were categorised as follows:-

Company/Commercial	25
Conveyancing	24
Landlord & Tenant	2
Litigation	48
Miscellaneous	13
Patents and Trademarks	8
Probate	9
Breach of Confidential Information	1
Tax Matters	2
	132

Figure 2 : Types of Claims notified in 2017/2018



Six fraud claims were received in the 2017/2018 indemnity year.

As at 30 September, the total liability of the PIS for the 2017/2018 indemnity year, calculated on the basis of claims paid and claims reserved, was HK\$18,391,620 of which HK\$13,160,413 consisted of claims paid (including costs) and HK\$5,231,207 consisted of claims reserved.

The total amount of claims paid (including costs) since the inception of the self-insured PIS in 1986 amounts to HK\$2,022,509,092 and the amount reserved is HK\$127,620,399. The total claims paid and reserved is HK\$2,150,129,491.

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 will be published in the PIS Annual Report for the 2017/2018 indemnity year.

PIS CLAIMS COMMITTEE

Claims are handled by the Claims Committee pursuant to the *SPI Rules* 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 meetings during the year. At each meeting, the Subcommittee and HKSIFL's investment consultant, Mercer Investment Consulting Limited ("Mercer") would meet two of the five investment managers in person to discuss their performance and to provide their outlook on market trends.

In between meetings matters arising are considered by emails. These include the consideration of monthly performance and custodian reports, exchanging and discussing information and views and making decisions on relatively minor investment issues.

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 2017 and 2018 were as follows:

Investment Manager	Type of portfolio	Net Return		Portfolio Size (In USD)	
		2017	2018	As of 31 Dec 2017	As of 31 Dec 2018
Amundi	Equities and bonds	8.85%	-4.57%	151,005,062	144,098,710
AllianceBernstein	Bonds	3.63%	1.70%	132,165,032	134,324,039
MFS	Equities	27.41%	-9.69%	52,718,282	47,611,801
GMO	Equities	25.29%	-13.91%	36,443,460	31,373,347
Ruffer	Multi-Asset (mainly equities and bonds)	2.05%	-4.95%	54,693,781	51,881,224
Overall portfolio return		10.33%	-3.90%	427,025,617	409,289,121

* MFS and GMO were appointed in December 2011, Ruffer was appointed in December 2017. New funds were injected into the portfolios of some of the 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 set out that indemnifieds of the PIS are to be defended by Panel Solicitors appointed by the Council
- to increase the indemnity limit of the PIS.

The Working Party held three 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 April 2018 to 31 March 2023.

The firms which had served as Panel Solicitors prior to 1 April were:

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

The firms which have been serving as Panel Solicitors after 1 April are:

- Bird & Bird
- Deacons
- Fred Kan & Co.
- Howse Williams Bowers

- Mayer Brown
- Norton Rose Fulbright
- P.C. Woo & Co.
- Reed Smith Richards Butler
- Reynolds Porter Chamberlain

The Selection Board held one meeting during the year 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.