

Standing Committee on Standards and Development



THE
LAW SOCIETY
OF HONG KONG
香港律師會

2018

The Standing Committee on Standards and Development is responsible for establishing standards and rules and formulating policies on the education, training and regulation of solicitors, and on their conduct and practice management.

The Standing Committee convened nine meetings to oversee the activities of the Department of Standards and Development, and to consider recommendations of the Committees, Sub-Committees, Working Parties and Working Groups under its umbrella.

Legislative Amendments

The Standing Committee considers amendments to the *Legal Practitioners Ordinance Cap. 159* (“*LPO*”) and its subsidiary legislation, *The Law Society’s Practice Directions* (“*PD*”), *Information Packages* and *The Hong Kong Solicitors’ Guide to Professional Conduct, third edition, Volume 1* (“*Conduct Guide*”).

The following amendments were made during the year:

Rule 20 of the Trainee Solicitors Rules (“TS Rules”) ***Admission and Registration Rules (“Admission Rules”)***

A disbarred barrister who wishes to become a solicitor is required to obtain a certificate from the Council of Hong Kong Bar Association before applying for exemption from employment under a trainee solicitor contract. Rule 20 of the *TS Rules* was amended on 8 January to specify the matters to be included in the certificate. Incidental amendments to the *Admission Rules* were made.

Section 9A of the LPO

The *Anti-Money Laundering and Counter-Terrorist Financing Ordinance* (“*AMLO*”) came into operation on 1 March. Schedule 2 to the *AMLO* imposes statutory customer due diligence (“*CDD*”) and record keeping requirements on solicitors and foreign lawyers. The following consequential amendments to the *LPO* were made:

A new section 9A with subsections (1AA), (1AAB) and (1AAC) of the *LPO* was introduced. Under section 9A (1AA), the Council must submit a matter to the Tribunal Convenor for investigation where the Council considers that the conduct of a solicitor, foreign lawyer, trainee solicitor or an employee of a solicitor or foreign lawyer involves an alleged breach. An alleged breach is defined in section 9A (1AAB) to refer to the failure to comply with the AML/CTF requirement in the *AMLO*. The “AML/CTF requirement” is defined in a new section 9A(3) of the *LPO* to mean a requirement on CDD and/or record keeping applicable to legal professionals and trust or company service provider (“*TCSP*”) licensee under Parts 2, 3 and 4 of Schedule 2 to the *AMLO*. If the solicitor or foreign lawyer is a director of a corporation which is a *TCSP* licensee, an alleged breach refers to the breach of the AML/CTF requirement by the corporation or failure by the director to prevent the corporation committing such a breach.

Under section 9A(1AAC), the Council must take into account *PD P* when considering whether the conduct of the solicitor, foreign lawyer, trainee solicitor or an employee of a solicitor or foreign lawyer falls within section 9A(1AA).

In addition to the statutory definition of “AML/CTF requirement”, the new S9A(3) defines “*AMLO*”, “director”, “legal professional”, “*PD P*” and “TCSP licensee”.

Section 4 (1A) (a) of the *LPO*
Forms 1B, 1C, 2, 3 and 4 of the *Admission Rules*

The residency requirements for admission as a solicitor in Hong Kong in section 4 (1A) (a) of the *LPO* was amended on 20 April to the effect that a person is required to have resided in Hong Kong for at least three months immediately before the date on which the person applies for a certificate of eligibility for admission. Incidental amendments to Forms 1B, 1C, 2, 3 and 4 of the *Admission Rules* were made.

Rule 3 of the *Practising Certificate (Solicitors) Rules* (“*Practising Certificate Rules*”)

Rule 3 of the *Practising Certificate Rules* was amended on 11 May to increase the application fee for a practising certificate from \$5,000 to \$6,500 for the practice year commencing on 1 January 2019. A bilingual format for a practising certificate would be introduced on 1 January 2019 so that both the English and Chinese versions would be printed on the same certificate.

PD P

With the implementation of the new provisions of the *AMLO* on 1 March, the Council reviewed and updated *PD P* on AML guidelines:

- (a) Amendments were made to paragraph 1 (iii) in Table A of *PD P* providing for further details on client identification and verification in exceptional or urgent circumstances;
- (b) A new paragraph 3 (iv) was introduced to Table A of *PD P*. It is an applicable situation for enhanced client due diligence if the Government through The Law Society has issued notices informing law firms of situations which may present a high risk of money laundering or terrorist financing;
- (c) The meaning of “a politically exposed person” was amended and was set out in footnote 2;
- (d) The meaning of “an equivalent jurisdiction” was set out in footnote 5;

- (e) The meaning of “a beneficial owner” was set out in Annexure 8;
- (f) The record keeping requirement for criminal cases was extended from three to five years from the expiration of any appeal period (paragraph 6 (iv) in Table A and paragraph 24.4);
- (g) The reference to “Recommendation 16” in paragraph 37 of *PD P* was amended to “Interpretive Note to Recommendation 23”. The words “their suspicions” were replaced by “suspicious transactions”;
- (h) The meanings of “money laundering” and “terrorist financing” were set out in paragraphs 56 and 57;
- (i) Additional guidelines were made for solicitors acting for an attorney or agent of another person (paragraph 91) and non-face to face relationship (paragraph 99);
- (j) The categories of specified intermediaries were set out in Annexure 9.

The revised *PD P* came into effect on 1 September.

Rule 4B (2) of the *Solicitors’ Practice Rules (“SPR”)*

New rule 8 (4) of the *Foreign Lawyers Practice Rules (“FLPR”)*

Schedule to the *Summary Disposal of Complaints (Solicitors) Rules (“Summary Disposal Rules”)*

Rule 4B (2) of the *SPR* was amended to clarify that an unqualified person employed by a Hong Kong firm is not allowed to be employed by another Hong Kong firm or a foreign firm simultaneously except with the written approval of The Law Society. A new corresponding provision of rule 8 (4) was introduced to the *FLPR*. Incidental amendments were made to the Schedule to the *Summary Disposal Rules* so that a breach of these provisions will be dealt with in a summary manner. The amendments will take effect from 4 February 2019.

Other matters

Apart from reviewing the aforementioned legislative amendments and making recommendations to the Council, the work of the Standing Committee included the following:

- (a) overseeing the administration of the *Continuing Professional Development (“CPD”) Scheme*, the *Risk Management Education (“RME”) Programme* and the *Overseas Lawyers Qualification Examination (“OLQE”)*;
- (b) approving the documentation and the logistics of the *OLQE*;
- (c) appointment of *OLQE* Examiners and reviewing their fees;
- (d) reviewing the results of the *OLQE*;

- (e) considering the applications for review under rule 9 of the *Overseas Lawyers (Qualification for Admission) Rules* (“*OLQE Rules*”);
- (f) appointing External Examiners of the *Postgraduate Certificate in Laws* (“*PCLL*”) Programmes of City University (“*CityU*”), the Chinese University of Hong Kong (“*CUHK*”), and The University of Hong Kong (“*HKU*”);
- (g) revision of the *Solicitors’ Practice Promotion Code* (“*Promotion Code*”);
- (h) reviewing section 53(1)(a) of the *LPO*;
- (i) considering notifications made by law firms pursuant to the *Code of Good Practice in the Recruitment of Trainee Solicitors* (“*Recruitment Code*”);
- (j) considering proactive management based regulation;
- (k) reviewing the structure of the Head IV *OLQE*;
- (l) reviewing the minimum wage under the *Minimum Wage Ordinance Cap. 608*;
- (m) nomination of a representative to join the *Assessment Panels* of the *University Grants Committee* for the *Research Assessment Exercise 2020*;
- (n) reviewing the guidelines for determining applications for waiver of *PD 5* and rule 7 of the *Foreign Lawyers Registration Rules* (“*FLRR*”);
- (o) reviewing section 11(3) of the *LPO*;
- (p) considering proposed amendments to the *LPO*, the *Practising Certificate (Special Conditions) Rules* and the *SPR*;
- (q) considering suspension of CPD requirements of in-house solicitors;
- (r) considering proposed amendments to *PD P*;
- (s) considering proposed amendments to the *Recruitment Code*;
- (t) considering proposed amendments to the *LPO*, the *FLRR*, the *Foreign Lawyers Registration (Fees) Rules*, the *FLPR* and the *SPR*, the consultation relating to the proposed amendments and the consultation document;
- (u) considering proposed amendments to the *Overseas Lawyers (Qualification For Admission) (Fees) Rules* and the proposed increases in examination fees;
- (v) considering how to enhance the *RME Programme*;
- (w) reviewing membership of all Committees and Working Parties under the Standing Committee;

- (x) nomination of a representative of The Law Society on the Law School Board of CityU;
- (y) nomination of the External Chief Examiner of the *PCLL Programmes*;
- (z) reviewing section 40A(1)(a)(ii) of the *LPO*;
- (aa) reviewing section 53(3) of the *LPO*;
- (ab) reviewing applications for exemption from CPD requirements;
- (ac) reviewing proposed amendments to *PD M*;
- (ad) reviewing section 7(1)(b)(iii) of *FLRR*;
- (ae) nomination of representatives of The Law Society on the *PCLL Academic Boards* of CityU and CUHK.

A consultation was conducted in October with all Hong Kong solicitors, registered foreign lawyers and trainee solicitors on the proposed amendments to the *LPO* and the subsidiary legislation regulating the practice of foreign lawyers and foreign firms in Hong Kong. The Law Society received over 200 responses.

In addition, discussions and meetings were conducted with numerous Hong Kong and foreign law firms. The proposed amendments were also discussed at a Members' Forum on 1 November.

The consultation (including, the Members' Forum) provided a welcome opportunity for The Law Society to explain the underlying objectives of the proposed amendments; and for members and, in particular, foreign lawyers and foreign law firms, to explain how the proposed amendments might impact their businesses. The responses show there was generally no objection to the proposal regarding increases in fees. The Council resolved to proceed with the proposed legislative amendments on the increases. The other amendments are being reviewed in detail.

AML COMMITTEE

The AML Committee convened 11 meetings.

The *AMLO* took effect from 1 March. Schedule 2 to the *AMLO* imposes statutory CDD and record keeping requirements on solicitors and foreign lawyers. The HKSAR Government ("Government") acknowledged the status of The Law Society as a self-regulatory body. They proposed leveraging on the existing regulatory regimes applicable to the Designated Non-Financial Businesses and Professions to enforce the statutory CDD and record keeping requirements. The Law Society can take on statutory oversight for monitoring and ensuring lawyers' compliance. The Government also acknowledged that

The Law Society is the sole authority for enforcing the *AMLO* requirements for legal professionals with the discretion to promulgate guidelines as The Law Society considers appropriate.

Seminars were held to brief legal practitioners on the major provisions of the *AMLO* and to enhance practitioners' understanding of the statutory obligations and practices of suspicious transaction reporting. The Chairman and Members of the Committee were speakers at the seminars.

In light of the new provisions of the *AMLO*, the Committee reviewed and revised *PD P* in consultation with the Standing Committees and the specialist Committees. After lengthy and extensive discussions, the Committee submitted their recommendations to the Council on the proposed amendments to *PD P*. The Council approved the revised *PD P* and it came into operation on 1 September. The major amendments to *PD P* were summarised in the circular 18-647.

A seminar was held on the updated *PD P* to apprise attendees of the key provisions of the revised *PD P* and the *AMLO* as well as their application to lawyers.

The Mutual Evaluation on Hong Kong made by the Financial Action Task Force (“FATF”) was conducted in November. The FATF’s on-site visit to The Law Society was held on 7 November. A meeting was held between the FATF assessment team and the President, Vice-President, the Chairman and Committee Members on 7 November. During the meeting, constructive views were exchanged on the latest developments on international and domestic AML/CTF. Discussions were also made on AML issues of common concerns encountered by the legal profession. Relevant information and statistics were provided to the FATF assessment team through the Government. Another meeting on 12 November was held between the legal professionals and the FATF assessors. The meeting focused on the extent to which the legal professionals are in compliance with the new provisions of the *AMLO* and *PD P*. It is anticipated that the FATF report on the Mutual Evaluation on Hong Kong will be released in early 2019. The Committee will consider the appropriate follow-up actions upon receipt of the FATF report.

With the implementation of the *AMLO* on 1 March, a new licensing regime was introduced for TCSPs. They are required to apply for a licence from the Registrar of Companies (“the Registrar”) and satisfy a “fit and proper” test before they can provide trust or corporate services as a business in Hong Kong. Legal professionals as defined in the *AMLO* who provide trust or corporate services are not required to apply for a licence if they are sole proprietorships or partnerships in which all partners are legal professionals. Legal professionals are also not subject to the “fit and proper” test. However, it is common for law firms to set up corporations to provide trust or company services to their clients. Under the new provisions of the *AMLO*, these TCSPs are required to apply for a licence from the Registrar and are subject to the regulatory regime of the Registrar notwithstanding that they are wholly and beneficially owned and managed by legal professionals. Directors of these TCSPs are subject to a dual regulatory regime: the TCSP is under the regulatory regime of the Registrar whilst the directors who are legal professionals are subject to The Law Society’s regulatory regime. This arrangement creates confusion and double jeopardy. The Law Society requested the Government to

exercise its statutory power pursuant to section 53B (2) in Part 5A of the *AMLO* to prescribe that Part 5A does not apply to TCSPs which are beneficially owned and managed by the legal professionals. Alternatively, the Government should amend section 9A of the *LPO* to the same effect. The Government rejected The Law Society's proposals. The Committee will continue to liaise with the Government on this matter.

The Joint Financial Intelligence Unit ("JFIU") has launched an electronic means of suspicious transaction reporting solution called "e-STR Submission". The "e-STR Submission" provides supporting functions such as retrieval of previous suspicious transaction reports as well as real-time checking of the feedback from the JFIU. The Law Society issued a circular on 8 October informing law firms of the availability of "e-STR Submission".

The Committee dealt with AML enquiries raised by the Property Committee on first hand and second hand conveyancing transactions. The Committee also provided their comments on the Code of Practice for Third Party Funding of Arbitration from the AML perspective.

THE CPD SCHEME

The *CPD Scheme* aims at providing a convenient framework for the legal profession to meet the changing demands of clients and society by updating the practitioners on legal knowledge and skills.

The Law Society and Hong Kong Academy of Law Ltd. ("Academy") conducted a total of 361 CPD and RME courses during the year. Of the 361 courses, 12 courses were conducted in Cantonese, one course was conducted in Mandarin and the remainder in English. The courses attracted an attendance of 18,226 participants.

The Law Society and the Academy are grateful to the 140 presenters who contributed by sharing their valuable experiences and expertise.

Some of the highlights of these courses are:

AML

AMLO came into effect on 1 March. The Law Society held two seminars on AML jointly with the Narcotics Division, Security Bureau of the HKSAR Government on 10 April and 13 June to brief practitioners on the major provisions of *AMLO*. About 530 participants attended the seminars.

The Academy also held a seminar entitled "Updated *PD P*" on 29 October. The seminar apprised attendees of the key provisions of the *AMLO*, its application to lawyers and *PD P* updated in the light of *AMLO*. The speakers were Mr. Alan Linning, Member of the AML Committee and Mr. Raymond Leung, AML Officer of Deacons. Over 150 participants attended the seminar.

In addition, the accredited RME course providers of The Law Society delivered another six courses on AML for the Academy under The Law Society's *RME Provider Accreditation Scheme*. 649 practitioners attended these courses.

Company Law

The *Companies (Amendment) Ordinance 2018* ("CAO") introduced new requirements on the keeping of significant controllers registers ("SCRs") by companies with effect from 1 March. In addition, the *AMLO*, which came into effect from 1 March, introduced a new licensing regime whereby TCSPs are required to apply for a licence from the Registrar before they can provide trust or company services as a business in Hong Kong.

The Academy conducted two seminars on 28 February and 12 April to brief practitioners on the major statutory requirements for companies to keep SCRs pursuant to the CAO and the major statutory requirements and procedures for TCSPs to apply for a licence pursuant to the *AMLO*. Representatives from the Companies Registry and Ms. Judith Sihombing, Lecturer of the CUHK and HKU were speakers. Over 640 participants attended the seminars.

Taxation of Costs

A seminar entitled "Taxation of Costs" held on 16 January provided practitioners with a general overview of the procedure on costs and the law, and practical tips on taxation of costs. The speakers of the seminar were Mr. Sean Frost, Sole Proprietor of Sean Frost & Co. (Hong Kong) and Mr. Alfonso Fung, Sole Proprietor of Alfonso Fung & Co. 287 participants attended the seminar.

Arbitration

The Law Society and the Academy jointly organised a "Roundtable Discussion on Arbitration" with the Hong Kong International Arbitration Centre ("HKIAC") on 26 June. Topics discussed included proposed changes to the 2013 HKIAC Administered Arbitration Rules, key issues on appointment of arbitrators and risk management in arbitration. Mr. Huen Wong, Past President and Chairman of the Arbitration Committee of The Law Society and Ms. Sarah Grimmer, Secretary-General of the HKIAC delivered the opening remarks. Mr. Nils Eliasson, Chairperson of the Proceedings Committee of the HKIAC, Ms. Kathryn Sanger, Chairperson of the Appointments Committee of the HKIAC, Mr. John Lee, Member of the Arbitration Committee and Ms. Sarah Grimmer were the speakers. About 190 participants attended the roundtable discussion.

A seminar entitled "International Arbitration under the International Chamber of Commerce ("ICC") Rules" was held on 27 April. The seminar discussed how the ICC selects arbitrators for ICC cases, the distinctive features of arbitration under the ICC Rules including procedure, evidence and scrutiny of awards, the solicitors' role as counsel in ICC arbitrations and what in-house counsel and the parties they represent may expect of them. Over 120 participants attended the seminar.

The Academy also organised two seminars entitled “Arbitration for Partnership Disputes” on 17 July and on 28 August. Mr. Denis Brock, Council Member and Member of the Arbitration Committee of the Society discussed various types of disputes between partners, the ways in which disputes could be avoided and the modes of dispute resolution. Mr. Huen Wong, Chairman of the Arbitration Committee, Past President and Council Member of Society was the moderator of the seminars. Over 140 participants attended the seminars.

Case Management

The Academy conducted a seminar entitled “Case Management - the Common Problems for Discussion on Case Management Hearing, Case Management Conference, Consolidation and Expert Evidence Directions” on 25 August. The seminar addressed the common problems encountered by legal practitioners in conducting case management hearings and case management conferences, and provided guidance on how to avoid common mistakes made in expert evidence directions. The speakers were Registrar Lung Kim-wan, Master Andy Ho Chi-yin, Senior Deputy Registrar and Master Herbert Au Yeung Ho-wing, of the High Court of Hong Kong. Over 370 participants attended the seminar.

Mediation

The Academy and the Mediation Committee of The Law Society conducted five free sharing sessions on mediation. Dr. James S.P. Chiu, Specialist in General Surgery, Mr. Lung Gwun Ting, Bryan and Ms. Yip Mei Sze, Clara, Consultants of So, Lung & Associates and Professor Norris Yang, Partner of Zhong Lun Law Firm, Sr. Mickey Wong, Professional Quantity Surveyor and Engineer, Professor Leung Hing Fung, Barrister-at-law, Mr. Yeung Man Sing, Partner of Li and Partners were the speakers. They shared their experiences with the participants on topics including construction mediation and mock mediation, the *Apology Ordinance*, Cap. 631, how solicitors can prepare clients on mediation, facilitative and evaluative mediation, mediation on disputes on probate, family business, and separation and divorce, child focused and child inclusive mediation, and parenting coordination. Over 310 participants attended the sharing sessions.

The Academy conducted a workshop on “Evaluative Mediation Training” from 16 to 18 November. The workshop discussed the different types and models of evaluative mediation and its benefits and disadvantages, how to prepare for evaluative mediation, the use of evaluative tools and skills in the mediation process in all types of disputes, the risks associated with practising as an evaluative mediator and how such risks can be minimised. Professor John Wade, Emeritus Professor of Law of Bond University, Australia was the trainer. 20 participants attended the workshop.

Cybersecurity

The Law Society conducted a seminar entitled “Cybersecurity and International Law” jointly with the Office of the Commissioner of the Ministry of Foreign Affairs of the

People's Republic of China ("PRC") in Hong Kong and the Asian Academy of International Law on 11 April. The seminar discussed the role of international law in cybersecurity, the code of conduct of information security and the development of digital space and cybersecurity in China. The speaker was Mr. Hu Bin, Counselor of the Department of Treaty and Law and The Ministry of Foreign Affairs of the PRC. Over 120 participants attended the seminar.

The Academy conducted another 11 RME elective courses on cybersecurity under the *RME Programme*. The courses provided practitioners with an understanding of the risk management of cybersecurity, the reasons for law firms being targeted by threat actors, the motives and modus operandi of threat actors, the responses to be taken for cyber breaches or crises and the best practices against cyber attacks. About 320 practitioners attended the courses.

Joint Courses with other Professions

The Law Society and the Academy jointly organised courses of common interest with other professions and organisations including the Office of the Commissioner of the Ministry of Foreign Affairs, the Narcotics Division of the Security Bureau of the Government, Hong Kong Bar Association, the Hong Kong Institute of Chartered Secretaries and the Hong Kong Institute of Certified Public Accountants. Nine such courses were held over the year. Topics included the most-favoured treatment clause under the international arbitration law, risk management of competition law compliance, UK Corporate Governance Code, major provisions of the *AMLO*, new licensing regime for TCSPs and the keeping of SCRs by companies, human rights and refugee law in the UK, shareholder agreement, Fintech in Hong Kong, international regulation of cryptocurrency and initial coin offerings. Over 1,400 participants attended these courses.

Pursuant to rule 9 of the *CPD Rules* ("*CPD Rules*"), 228 practitioners were granted suspension from the CPD Scheme during the year. Pursuant to rule 8 of the *CPD Rules*, 10 trainee solicitors whose term of trainee solicitor contracts had been reduced from the standard two-year period were granted partial exemption from participation in the *CPD Scheme*.

1,002 Statements of Compliance with CPD/RME requirements were reviewed. CPD audit was conducted on 1,113 trainee solicitors and solicitors during the year. Arising from the CPD audit, general enquiries, and reports made by practitioners on their own initiatives, 13 solicitors and 16 trainee solicitors were found to have failed to comply with the *CPD Rules*. All cases of default were referred to the Compliance Department to be dealt with in accordance with the Council's sanction policy.

CPD Committee

The Committee convened one meeting. Issues considered by the CPD Committee in the meeting and by paper circulation included:

- (a) recommendations of the Consultants appointed by the Standing Committee on Legal Education and Training (“SCLET”) to conduct a comprehensive review of legal education and training in Hong Kong;
- (b) amendments to the 2017/18 CPD Information Package;
- (c) membership of the Committee and the CPD Accreditation Sub-Committee;
- (d) an application made by an attendee for accreditation of a course conducted locally;
- (e) applications for exemption from CPD requirements;
- (f) an application for suspension of the CPD requirement;
- (g) an application made by an attendee for CPD points for attending a course;
- (h) online system for recording CPD activities;
- (i) the CPD schemes of other jurisdictions; and
- (j) general improvements on the implementation of the *CPD Scheme*.

The Committee granted exemption from participation in the *CPD Scheme* to two practitioners on the ground of age and on fair and reasonable ground during the year pursuant to rule 8 of the *CPD Rules*.

CPD ACCREDITATION SUB-COMMITTEE

A total of 4,998 courses, compared with 4,963 courses in 2017, were accredited as CPD courses. In terms of applications, 1,155 of the 4,998 courses were accredited on a course-by-course basis and 3,482 were accredited under the *Provider Accreditation Scheme*. The remaining 361 courses were conducted by The Law Society and the Academy. In terms of course providers, 34 of the 4,998 courses were provided by The Law Society, 352 were provided by the Academy of which 263 were provided under the *RME Programme*, 485 were provided by commercial providers, and the remaining 4,127 were provided by in-house providers such as universities, professional bodies and law firms.

Apart from dealing with the applications for accreditation of courses, the Sub-Committee convened one meeting. Issues considered by the Sub-Committee in the meeting and by paper circulation included applications for renewal of accredited provider status,

accreditation of providers, accreditation of other activities, the irregularities of course providers, the workflow for processing applications for accreditation of courses and membership of the Sub-Committee.

The total number of accredited providers at the end of the year was 60. The Sub-Committee approved three postgraduate or other law courses and seven legal journals and books, 50 legal researches, and accredited two committees and working parties for the purpose of compliance with the CPD requirements during the year.

Members of the Sub-Committee continued to monitor the standard of accredited CPD courses by reviewing course evaluation records and attending selected accredited courses. Three courses were monitored during the year.

FOREIGN LAWYERS COMMITTEE

There were 320 *OLQE* applications. Of these, there were

- (a) 155 applications for exemption from sitting all or part of the 2018 *OLQE* in accordance with the guidelines issued by The Law Society; and
- (b) 165 applications for eligibility to sit or re-sit the *OLQE*.

235 eligible candidates sat the 2018 *OLQE*.

The Committee convened 12 meetings to consider the applications and to review the guidelines for exemption from sitting Heads I to VI of the 2018 *OLQE*.

GUIDANCE COMMITTEE

The Committee convened six meetings and dealt with three enquiries from members and eight referrals from other Committees or Departments within the Secretariat on the following issues of professional conduct:

- (a) breach of undertakings in conveyancing transactions;
- (b) application of the *Promotion Code* to advertisements in a hospital;
- (c) leaflet of “What to ask your solicitor?”
- (d) the status of a consultant in a law firm;
- (e) death of a sole practitioner, the implications to the operation of his firm and his clients and cessation of practice;
- (f) review of Circular 17-629;

- (g) appointment of special executor;
- (h) proposed amendments to rule 5AA of the *SPR*;
- (i) conditional fee for arbitration;
- (j) insertion of a document into a certified copy of a document without the consent of the attesting solicitor;
- (k) proposed amendments to *PD P* in light of the new provisions of the *AMLO*;
- (l) storage and destruction of old files;
- (m) third party funding of arbitration and mediation;
- (n) application and interpretation of Principle 2.07 of the *Conduct Guide* in relation to the provision of services of arbitration and mediation;
- (o) membership of the Committee.

LEGAL EDUCATION COMMITTEE

The Committee considered the following matters by paper circulation:

- (a) appointment of External Examiners of CityU, CUHK and HKU;
- (b) appointment of the Chief External Examiner of the *PCLL Programmes*;
- (c) nomination of a representative for the *Assessment Panels* of the *University Grants Committee* for the *Research Assessment Exercise 2020*;
- (d) recommendations in the interim report of the SCLET Consultants;
- (e) appointment of representatives of The Law Society on the PCLL Academic Board of CityU and CUHK;
- (f) membership of the Committee.

A sharing session with the interns of law firms was organised in July. The President of The Law Society; His Honour Judge George Own, Judge of the Family Court; Mr. Adamas Wong, Director/ Head of Private & Commercial Bank Legal, Asia Pacific Legal, Deutsche Bank AG and Mr. Wesley Wong S.C., Solicitor General, Legal Policy Division, of the Department of Justice (“DOJ”) shared their valuable experiences with summer interns and trainee solicitors. About 49 participants took part in the sharing session.

Council Member Nick Chan and Council Member Simon Lai served as representatives of The Law Society on SCLET, which met on four occasions.

The Law Society ceased to act as Secretary of SCLET and the Sub-Committee of SCLET on English Language Proficiency in February after providing secretarial support for 13 years. The Law Society liaised with the DOJ to ensure a smooth transition of the secretarial role to DOJ.

WORKING GROUP ON THE CEE POSITION PAPER

The Working Group convened six meetings. Matters considered by the Working Group in the meetings and by paper circulation included:

- (a) recommendations in the interim and final reports of the SCLET Consultants;
- (b) Law Society Examination (“LSE”);
- (c) conflict of interest;
- (d) consultants for advising on CEE and LSE;
- (e) the role of The Law Society as Secretary of SCLET;
- (f) responses to the interim and final reports of the SCLET Consultants;
- (g) submission to the Panel on Administration of Justice and Legal Services (“AJLS Panel”) of the Legislative Council and enquiries of the AJLS Panel;
- (h) preparatory courses for LSE.

Members of the Working Group attended a meeting of the AJLS Panel in June to discuss the interim and final reports of the SCLET Consultants, the CEE and LSE.

MEDIATOR AND PARENTING CO-ORDINATOR ADMISSION COMMITTEE

The Committee convened two meetings.

The Committee considered the following in the meetings and by paper circulation:

- (a) membership of the Committee;
- (b) training course on evaluative mediation;

- (c) establishment of the Panels of International General and Family Mediators;
- (d) sub-group on Parenting Co-ordination;
- (e) applications for admission as General and Family Mediators;
- (f) applications for admission as Parenting Co-ordinators;
- (g) applications for renewal of Panel membership on the Panels of General and Family Mediators and Family Mediation Supervisors.

The *Mediator Accreditation Scheme* was formally launched in August 2005. The Law Society joined the Hong Kong Mediation Accreditation Association Ltd. (“HKMAAL”) as a Founder Member and HKMAAL commenced operation on 2 April 2013. HKMAAL resolved that all Founder Members including The Law Society should stop conducting its stage two mediator assessments by 15 July 2013 and accrediting applicants as mediators by 15 September 2013. Thereafter, all accreditation of mediators must be conducted by HKMAAL.

In August 2015, The Law Society implemented the *Mediator Admission Scheme (General Mediators)*.

In November 2017, The Law Society further extended the *Mediator Admission Scheme (General Mediators)* to cover the admission of family mediators and family mediation supervisors and the *Mediator Admission Scheme (General Mediators)* was renamed as the *Mediator Admission Scheme*.

Solicitors who were not accredited by The Law Society as General Mediators, Family Mediators and Family Mediation Supervisors prior to September 2013 under the *Mediator Accreditation Scheme* may seek admission, subject to the requirements in the *Mediator Admission Scheme*, onto the Panel of Admitted General Mediators, Panel of Admitted Family Mediators and Panel of Family Mediation Supervisors through the *Mediator Admission Scheme*. Applications are considered and approved by the Committee on a case-by-case basis.

As of the end of the year, there were 197 solicitors on the Panel of General Mediators, 45 solicitors on the Panel of Family Mediators and 10 solicitors on the Panel of Family Mediation Supervisors.

44 applications for renewal of membership on the Panel of General Mediators, 10 applications for renewal of membership on the Panel of Family Mediators and one application for renewal of membership on the Panel of Family Mediation Supervisors were processed. Audit on 10 cases was conducted. 40 applications for renewal were approved.

In November 2017, The Law Society also established the Panel of Parenting Co-ordinators. Parenting Co-ordination is an alternative dispute resolution process whereby a Parenting Co-ordinator is appointed either by the courts or the parties in high conflicts matrimonial disputes to resolve child-related issues. As of the end of the year, there were 16 Parenting

Co-ordinators on the Panel.

OLQE COMMITTEE

The Committee convened four meetings including a joint meeting with the Chief Examiner, Examination Panel Convenors, and Examiners.

The issues considered by the Committee in the meetings and by paper circulation included:

- (a) results of the 2017 *OLQE*;
- (b) feedback of the candidates on the 2017 *OLQE*;
- (c) the format and the logistical arrangements for the 2018 *OLQE*;
- (d) the 2018 *OLQE* Information Package and related documentation;
- (e) appointment of Examiners and Panel Convenors and their fees;
- (f) the syllabus and reading list of each Head of the *OLQE*;
- (g) applications for special arrangements to sit the *OLQE*;
- (h) restructure of the Head IV *OLQE* on Professional Conduct and Solicitors' Accounts;
- (i) the date of the conduct of the Head V *OLQE* on Principles of Common Law and the date of release of examination results;
- (j) feasibility of implementing multiple-choice questions in the *OLQE*;
- (k) recommendations of the SCLET Consultants;
- (l) amendments to the result slip and the *OLQE* Information Package on the date of passing the *OLQE*;
- (m) membership of the Committee;
- (n) review of the Marking Procedures;
- (o) job description of the Chief Examiner.

OLQE

The 24th *OLQE* was held from 25 October 2018 to 15 January 2019. A total of 235 candidates sat one or more written Heads of the Examination. 231 out of 235 candidates came from 23 overseas jurisdictions, 11 of which were non-common law jurisdictions. The remaining four candidates were Hong Kong barristers.

Of the 235 candidates, 115 candidates (49%) passed the Examination, having passed each of the Heads that they were required to sit. 119 candidates (51%) failed the Examination, having failed one or more of the Heads that they were required to sit. One candidate was disqualified after sitting the Examination.

Figures 1 – 6 : Examination results with respect to each head of the OLQE

Figure 1 :
Head I – Convenancing

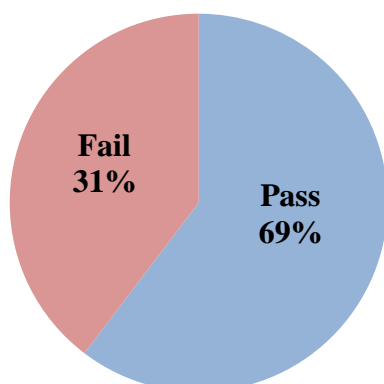


Figure 2 :
Head II - Civil and Criminal Procedure

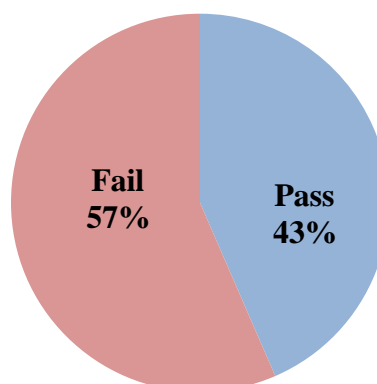


Figure 3 :
Head III - Commercial and Company Law

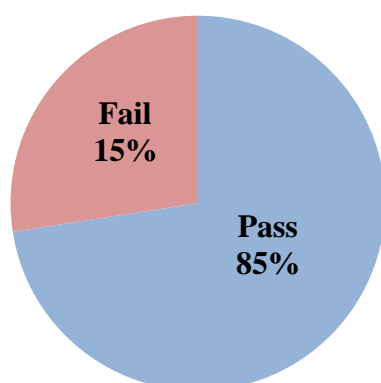


Figure 4 :
Head IV – Accounts and Professional Conduct

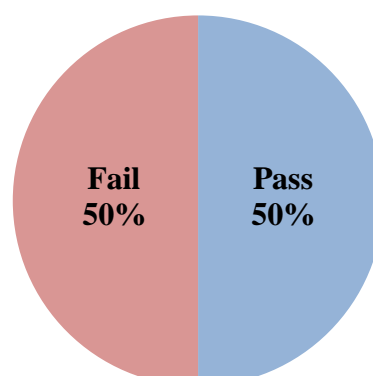


Figure 5 :
Head V – Principles of Common Law

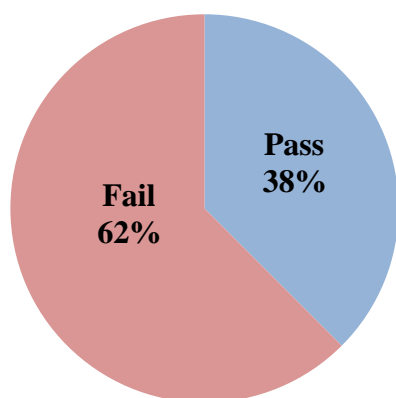


Figure 6 :
Head VI - Hong Kong Constitutional Law

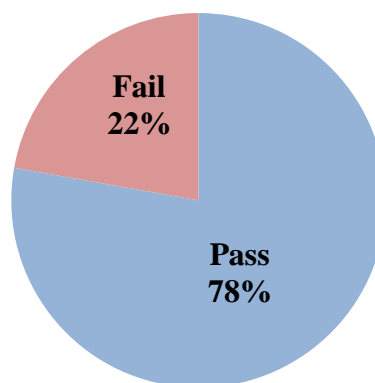
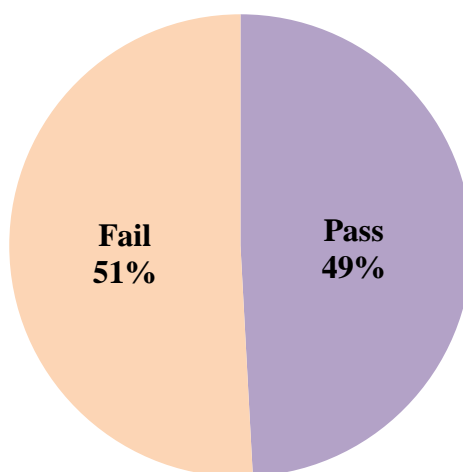


Figure 7 : Overall Examination Result



	No. of Candidates						Overall Result
	Head I	Head II	Head III	Head IV	Head V	Head VI	
Pass	137	20	45	54	3	112	115
Fail	62	26	8	54	5	32	119
Total	199	46	53	108	8	144	234

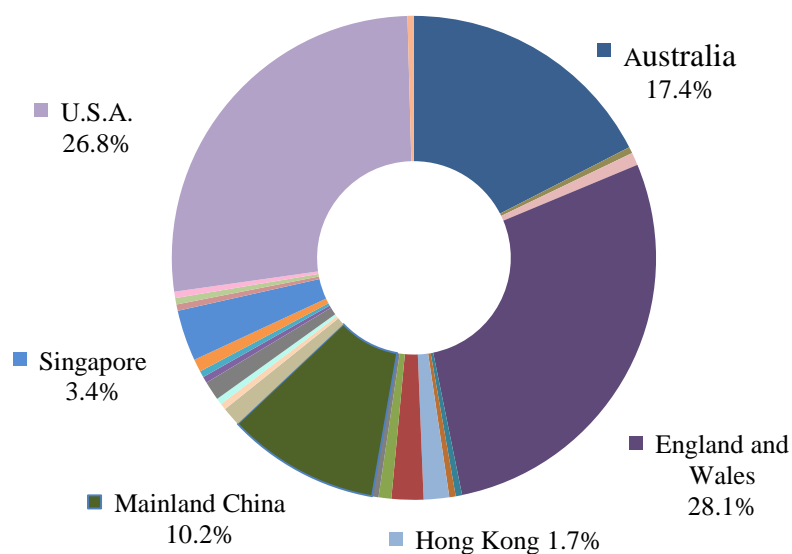
Written Heads

Head I – Head IV & Head VI

Oral Head

Head V

Figure 8: Jurisdictions of the candidates



- Australia
- England and Wales
- Hong Kong
- Kenya
- Nepal
- Philippines
- Singapore
- Taiwan
- British Virgin Islands
- France
- India
- Mainland China
- Netherlands
- Republic of Ireland
- South Africa
- U.S.A.
- Canada
- Germany
- Japan
- Malaysia
- New Zealand
- Russia
- Sweden
- Ukraine

Jurisdictions	No. of Candidates	%*	Jurisdictions	No. of Candidates	%*
Australia	41	17.4	Nepal ¹	1	0.4
British Virgin Islands	1	0.4	Netherlands ¹	1	0.4
Canada	2	0.9	New Zealand	3	1.3
England and Wales	66	28.1	Philippines ¹	1	0.4
France ¹	1	0.4	Republic of Ireland	1	0.4
Germany ¹	1	0.4	Russia ¹	2	0.9
Hong Kong ²	4	1.7	Singapore	8	3.4
India	5	2.1	South Africa	1	0.4
Japan ¹	2	0.9	Sweden ¹	1	0.4
Kenya	1	0.4	Taiwan ¹	1	0.4
Mainland China ¹	24	10.2	U.S.A.	63	26.8
Malaysia	3	1.3	Ukraine ¹	1	0.4
			Total	235	

¹ *Non-common law jurisdiction*

² *Barrister*

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

RME COMMITTEE

The Committee oversees the administration of the *RME Programme* which aims at raising the awareness of risk issues and promoting good risk management of legal practice.

Since its implementation in November 2004, the *RME Programme* has been in operation for over 10 years extending its application gradually to all Hong Kong solicitors practising as sole practitioners, partners, associates, consultants, trainee solicitors, and registered foreign lawyers working in Hong Kong law firms.

With the establishment of the Academy, the RME courses are all offered through the Academy.

Six Module 1A, six Module 1B, five Module 2A and five Module 2B of principals' core courses, two Module 1 and two Module 2 of non-principals' core courses, 11 Module 1 and 11 Module 2 of registered foreign lawyers' core courses, 23 Module 1 and 23 Module 2 of trainee solicitors' core courses, 20 compulsory first elective courses for trainee solicitors, and 116 elective courses were held during the year. The Committee monitored closely the evaluation of these courses by the course participants.

RME electives have since 1 November 2008 been offered free of charge to those participants who have to fulfill their RME obligations in the relevant RME practice year and who have not attended any other RME electives during that year. Free core courses have also been offered by the Academy to all trainee solicitors since 1 November 2009. Since 1 November 2014, subject to certain exceptions, all courses within the *RME Programme* have been offered free to participants.

The Committee convened one meeting during the year. Matters considered by the Committee in the meeting and by paper circulation included:

- (a) membership of the Committee;
- (b) applications for exemption from complying with the RME requirements;
- (c) train-the-trainer courses;
- (d) recruitment of part-time tutors;
- (e) practice management course;
- (f) international recognition of the *RME Programme*;

- (g) tender for the appointment of a course provider to review and enhance the core courses of the *RME Programme*;
- (h) reminders to legal practitioners on their RME obligations;
- (i) proactive management based regulation;
- (j) checklists on the ethical requirements set out in the core courses and electives.

The Committee considered 69 applications for exemption from complying with the RME requirements pursuant to rule 8A of the *Legal Practitioners (RME) Rules* (“*RME Rules*”) by email circulation and in the Committee meeting.

RME ACCREDITATION SUB-COMMITTEE

The Sub-Committee is tasked with the responsibility of reviewing applications for accreditation of RME course providers, courses and activities in accordance with the accreditation criteria.

98 applications for accreditation were processed, out of which 49 elective courses offered by law firms and other institutions and 44 elective courses offered by commercial providers were accredited.

Course provider accreditation for RME elective courses was introduced in 2007. 13 law firms accredited as RME elective course providers offered 146 in-house elective courses and another 13 elective courses to the general membership of The Law Society during the year.

The Sub-Committee also considered one application for conducting legal research and one application for participation in committee for accreditation as RME elective activities.

WORKING PARTY ON PRACTICE IN SERVICE CENTRES, AT HOME, IN DOMESTIC PREMISES OR BY VIRTUAL OFFICES

PD D5 requires a solicitor’s practice to be conducted in self-contained premises. Staff and facilities should be under the exclusive control of the solicitor. Rule 7 of the *FLRR* is the corresponding provision of *PD D5* for foreign lawyers.

The Working Party formulated a list of internal guidelines to facilitate the Consents Committee to consider the applications for waivers of *PD D5* and rule 7 of the *FLRR*. The guidelines were reviewed by the Standing Committee and the revised guidelines were endorsed by the Council.

TRAINEE SOLICITORS COMMITTEE

The Committee convened one meeting. Matters considered by the Committee in the meeting and by paper circulation included:

- (a) membership of the Committee;
- (b) amendments to the *Recruitment Code*;
- (c) notifications made by law firms pursuant to the *Recruitment Code*;
- (d) minimum wage prescribed by the *Minimum Wage Ordinance Cap. 608*;
- (e) recommendations of the SCLET Consultants on trainee solicitor training.

GUIDE WORKING PARTY

The Working Party convened one meeting and discussed the following issues:

- (a) Chapter 4 of the *Conduct Guide* on charging fees;
- (b) Principle 11.03 Commentary 4 of the *Conduct Guide* relating to breach of conveyancing undertakings; and
- (c) incidental amendments to the *Conduct Guide* to facilitate the implementation of solicitor corporations in the future.

The Working Party will continue to review and update the *Conduct Guide*.

WORKING PARTY ON SOLICITORS' PRACTICE RULES

The Working Party convened one meeting. Matters considered by the Working Party in the meeting and by paper circulation included:

- (a) the definition of “business communication” in the proposed amendments to the *SPR*;
- (b) mental incapacity of sole proprietors;
- (c) enduring power of attorney;
- (d) the statutory meaning of “association” in the *SPR*.

WORKING PARTY ON SOLICITOR CORPORATION RULES

The Working Party convened one meeting with the Hong Kong Society of Notaries to discuss amendments proposed by DOJ to the *Notaries Public (Practice) Rules*, amendments counter-proposed by the Society of Notaries and to resolve any issues arising from the amendments.

The Law Society continued to liaise with DOJ on the drafting of the *Solicitor Corporation Rules*, the *Foreign Lawyer Corporation Rules* (“*FLC Rules*”), the consequential amendments to the *LPO* and its subsidiary legislation.

DOJ raised various enquiries on the treatment of “non-Hong Kong companies” under the *FLC Rules* and The Law Society is seeking advice on the issue.

Progress was made in finalizing the consequential amendments to the following pieces of subsidiary legislation:

- (a) the Chinese and English texts of the *Solicitors Disciplinary Tribunal Proceedings Rules*;
- (b) the English text of the *Accountant’s Report Rules*;
- (c) the English text of the *Solicitors (Group Practice) Rules*;
- (d) the English and Chinese texts of the *FLPR*;
- (e) the English text of the *TS Rules*;
- (f) the English and Chinese texts of the *Barristers (Qualification) (Amendment) Rules*;
- (g) the English and Chinese texts of the *FLRR*;
- (h) the English and Chinese texts of the *RME Rules*;
- (i) the English and Chinese texts of the *Summary Disposal Rules*;
- (j) the English and Chinese texts of the *Practising Certificate Rules*;
- (k) the English and Chinese texts of the *Admission Rules*.

WORKING PARTY ON THE PRACTISING CERTIFICATE (SPECIAL CONDITIONS) RULES

The Working Party considered the following by paper circulation:

- (a) suspension of practising certificates in the case of intervention of firms;
- (b) costs on account payable by intervened firms.