

2020

Standing
Committee
on
Practitioners
Affairs



THE
LAW SOCIETY
OF HONG KONG
香港律師會

STANDING COMMITTEE ON PRACTITIONERS AFFAIRS



The Standing Committee considers and keeps under review matters relating to law reforms, legal practice and legal procedures, and makes relevant determinations. It receives and reviews draft statements and submissions proposed in response to consultations from the Judiciary Administration, Government departments, Law Reform Commission, financial institutes, and other public bodies. It also makes recommendations at policy levels to the Council on matters pertinent to legislative amendments, as well as law-related policies of the Hong Kong SAR Government.

The Standing Committee had ten virtual meetings this year, with frequent deliberations between meetings by email circulation. During the year, the Standing Committee oversaw the work on, among others, 21 submissions prepared by relevant committees in response to consultations sent to the Law Society. It helped approve the relevant drafts.

Coronavirus Infection

The Standing Committee noted with concerns the impact of coronavirus pandemic upon the legal profession.

Because of public health consideration, different levels of Courts and registries have been closed temporarily in various periods of time. During these adjournments, the Courts handled only those urgent and essential businesses. To cope with the backlog arising therefrom, the Judiciary Administration expedited the use of video technology for civil cases in the High Court, with hearings conducted via video conferencing. The Standing Committee welcomed such wider use of court technology and at its various meetings noted the progress that had been made on several fronts on the Judiciary's Information Technology Strategy Plan, including: the issuance by the Judiciary Administration of several sets of guidance notes for remote hearings, the proposals on pilot runs for its e-filing system, the putting forth for consultation of a proposal on electronic fees, and the passage of the Court Proceedings (Electronic Technology) Bill.

Separately, in the light of the COVID-19 pandemic, the Standing Committee took the initiative to review and update a Disaster Recovery Plan issued to the general membership in 2004 (in the aftermath of SARS). It sought views from various specialist committees and fellow standing committees and, in February, issued a revised aide memoire to assist members to meet individual needs at the time of pandemic. The Chairman and the Director of Practitioners Affairs (and departmental staff) were alive to the challenges provided by the COVID-19 pandemic and they remain vigilant.

Review of policy initiatives

The Standing Committee considered various policy initiatives on law-related matters. Some examples are set out in the following.

(a) Case Settlement Conferences

The Standing Committee was advised that the Judiciary was extending its pilot scheme for case management process for certain types of actions in the District Court. The pilot scheme as extended related to Case Settlement Conferences. The Standing

Committee (together with the relevant committees) reviewed, inter alia, the involvement and the roles of the Courts in these Conferences, and took the view that there ought to be clarification by the Judiciary on various aspects of their proposals.

In December, the Judiciary issued a set of Guidance Note and a set of Supplementary Note for Case Settlement Conference in Civil Cases in the District Court. The Notes are to take effect on 2 January 2021. In addition, in November, a virtual session on "*Case Settlement Conference Pilot Scheme to be launched in District Court of the Judiciary*" was delivered by the Judiciary during the "Legal Week 2020".

(b) Biennial Review of Legal Aid fees for criminal practitioners

The Standing Committee received views on the biennial review of criminal legal aid, and rendered its full support to provide written representation, jointly with the Bar Association, to the relevant Government bureau to invite discussions.

(c) Mediation funding for personal injuries claims

The Standing Committee continued to oversee the discussion between the Department of Justice ("DOJ") and the Personal Injuries Committee on third party funding for mediation for personal injuries claims, including the draft Code of Conduct for mediation funders. Written representations were prepared and were sent to the DOJ.

(d) Government and other Policy directives

The Standing Committee led with contributions regarding policy directions for the Chief Executive's Policy Address 2020 and the Government Budget 2020-2021, in respect of which detailed submissions were made. Comments and submission were also made on recruitment of overseas judges, as well as various legal policies on different practice areas.

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 the methodology of review of bereavement awards under the *Fatal Accidents Ordinance* (Cap. 22), various amendments to Practice Directions issued or to be issued by the Judiciary, the Guidance Note on solicitors' duties in relation to security transactions, as well as the Guidance Note in family proceedings. The Standing Committee examined the different proposals to amend various ordinances, regulations and statutory codes. Examples included: the *Solicitors (General) Costs Rules*, the *District Court (Fixed Costs in Matrimonial Causes) Rules* (Cap. 336F), the *Code on Disclosure for MPF Investment Funds* as well as the *Evidence (Amendment) Bill 2018*.

The Standing Committee also reviewed / continued to review, for example:

- Competition law practices, including an investigation protocol
- Online payment of legal costs in property transactions
- Draft agreement forms for use of non-consent scheme for conveyancing
- Standard Waiver Letters for the Law Society's DMC Guidelines

- Licensing regime under the *Property Management Services Ordinance* (Cap. 626)
- The policy proposals relating to the implementation of the *Land Titles Ordinance* (Cap. 585), and
- The policy and logistics for will search inquiries.

Support to the specialist committees

The Standing Committee oversaw the work of 29 Committees, 9 Working Parties and ad hoc Task Groups. It provided guidance and advices to these committees on their administration, such as co-option, reviews of terms of references and membership, as well as enrolment exercises. It also assisted a fellow standing committee with their draft Checklists for RME programmes, and made recommendations to the Council of the Law Society on nominations for external committees.

The Standing Committee had another busy year.

Mental Health Law Committee

With the support of the Standing Committee, this year a new *Mental Health Law Committee* was set-up. Its membership comprised a cross-spectrum of membership with experience in different practice areas. This Committee was tasked to raise awareness on mental health law among legal practitioners on legal issues surrounding mental health, and to review the mental health regime for Hong Kong. The Committee also considered and proposed training for the general membership of the Law Society. It met on various occasions and had set up task groups to assist its deliberations.

Joint Tribunal

Apart from the above specialist committees, the Standing Committee continued to help 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.

ARBITRATION COMMITTEE

The Arbitration Committee keeps under review various developments in arbitration practices in Hong Kong and other jurisdictions. It makes recommendations thereon to Council. To help with the workload, the Committee co-opted one member in the year.

The Committee conducted its business principally by emails this year.

Promotion of Solicitor-Arbitrators

In order to help promote arbitration practices for members in Hong Kong and in the Mainland, including the Greater Bay Area ("GBA"), the Committee has considered various initiatives, including the following

(a) Promotion of Solicitor-Arbitrators

The Committee has been discussing with the Shenzhen Court of International Arbitration ("SCIA") on collaboration to help promote arbitration services of Hong Kong. In September, the Committee successfully procured an agreement for solicitor-arbitrators of the Law Society to apply for admission to SCIA's newly established panel of arbitrators based in Hong Kong.

(b) Exploring Business Opportunities in the Greater Bay Area

The Committee has been liaising with reputable legal and dispute resolution institutes in the GBA, to not only discuss issues of mutual relevancy but also explore opportunities. In January, the Chairman led a delegation to the Macau Lawyers Association and to the WTC Macau Arbitration Centre to exchange views and initiatives on the use of and the development of arbitration practices in GBA. The delegation conducted fruitful discussions with the Macau Lawyers Association and the WTC Macau Arbitration Centre. Both organisations agreed to establish a closer working relationship with the Law Society in the promotion and development of arbitration in GBA.

(c) Promotion to the Business Sector

With a view to promoting the use of arbitration in commercial sectors, the Committee has planned and organised meetings and activities with the business community. On the one hand, that initiative continued to promote to the business sector the use of arbitration for commercial disputes; on the other it helped branding of solicitor-arbitrators.

Although this year physical meetings with the business community had been postponed due to the COVID-19 pandemic, invitation had already been extended. The Committee will continue to reach out to the business community to promote arbitration.

(d) Arbitration Leaflet

As one of the promotional initiatives, the Committee this year authored and published an easy-to-read leaflet for the general public. The leaflet provides basic information on arbitration.

The information leaflet is available on the website of the Law Society.

Key Legislative Developments relating to Arbitration

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

(a) **Third Party Funding of Arbitration and Mediation**

The *Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017* (“Amendment Ordinance”) provides for third party funding for arbitration and mediation. Most of the provisions of the Amendment Ordinance (including those relating to third party funding for arbitration) came into operation on 1 February. The implementation of those provisions on mediation funding was deferred. In respect of third party funding for mediation, the Committee rendered assistance and took part in meetings with various specialist committees of the Law Society to offer views.

(b) **Legislative Amendment Proposal Related to the Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Award between the Mainland and the HKSAR**

The *Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR* (the “Arrangement”) was signed in April 2019 and came into effect on 1 October 2019. The Arrangement enables parties to arbitral proceedings in the Hong Kong SAR to apply to the Mainland courts for interim measure, including property preservation, evidence preservation and conduct preservation before the arbitral award is made. The Arrangement will among others help prevent one of the parties to arbitral proceedings from deliberately destroying the evidence or transferring the property and also ensuring that the arbitral proceedings can be carried out effectively.

In November, the Supreme People's Court of China and the Hong Kong SAR Government signed the *Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the HKSAR* (the “Supplemental Arrangement”). The Supplemental Arrangement offers important clarifications and improvements to the current mechanism for mutual enforcement of arbitral awards between Mainland China and Hong Kong.

To implement the Supplemental Arrangement, the Government was arranging a draft bill in the first quarter of 2021. The Committee expressed general support on the Supplemental Arrangement; to further assist the legislative process, the Committee in November wrote to the DOJ and sought details on the proposed legislative amendment.

(c) **Consultation on Outcome Related Fee Structures for Arbitration**

In December, the Outcome Related Fee Structures for Arbitration Sub-committee (“Sub-committee”) of the Law Reform Commission published a consultation paper on Outcome Related Fee Structures (“ORFS”) for Arbitration and launched a public consultation. In a summary, the Sub-committee aimed to seek public's comments on (i) whether ORFS should be permitted for arbitration in (or outside) Hong Kong; (ii)

if so, which types of ORFS should be permitted; and (iii) what changes to Hong Kong law and regulations were required in order to enable any such reform. The Committee set up a working group, led by the Chairman, to review and make recommendations on the consultation paper. The working group held a discussion session and was in the process of finalising views for the Committee.

Training Courses in Arbitration

Continual training on arbitration is essential for solicitor-arbitrators and the general membership of the Law Society. It is important for members to be made aware of and be equipped with updates on knowledge and skills for arbitration. The Committee this year has proposed various training activities in arbitration for the coming year.

Participation in Arbitration-Related Events and Activities

In October, the Committee received an invitation from the Queen Mary University London and White & Case 2020. The Committee supported the event, and had relayed its acceptance.

Arbitrators Admission Sub-Committee

The Panel of Arbitrators of The Law Society of Hong Kong ("Panel") comprises solicitors with demonstrably strong experience in resolving disputes of different natures. It was established in October 2016. The Panel is maintained by the Committee with the support of a sub-committee (viz. the Arbitrators Admission Sub-Committee). As of the end 2020, the Panel had 28 solicitor-arbitrators.

CIVIL LITIGATION COMMITTEE

The Committee met on five occasions and conducted the rest of its business by emails.

Court Closure during General Adjourned Period (GAP)

The Committee and the Criminal Law and Procedure Committee have been corresponding with the Judiciary Administration raising issues and concerns arising from the closure of courts, tribunals and registries as a result of COVID-19 pandemic. A list of proposals to address issues and concerns were put forward to the Judiciary Administration for consideration. Representatives of the Committee and other specialist committees had attended two meetings and briefings convened by the Chief Judge of the High Court in mid-February, early March and late March, to discuss the impacts of the courts' closure on civil and criminal practices.

Urgent circular informing general membership about the general arrangements for GAP and stakeholders notifications were issued from time to time during the GAP.

Judiciary's Information Technology Strategy Plan

(a) Court Proceedings (Electronic Technology) Ordinance

The Committee kept a close watch on the legislative progress of the *Court Proceedings (Electronic Technology) Bill*. The Bill sought to provide an overall legislative framework to enable court-related documents to be transacted in electronic form, eventually covering all levels of court. The Bill was passed on 17 July. The Committee will continue the discussions with the Judiciary on the operational and technical issues regarding the integrated court case management system ("iCMS").

(b) Consultation Paper on Legislative Proposals for Electronic Fees

The Committee considered a *Consultation Paper on Legislative Proposals for Electronic Fees* released by the Judiciary in December. The Committee, together with other specialist committees, jointly prepared a submission on the above consultation paper.

(c) Pilot Runs

A circular was issued in February inviting interests for law firms to participate in the Judiciary Administration's pilot runs to test the iCMS. A list which consolidated the expressions of interest was sent to the Judiciary Administration in March for consideration.

(d) Policy Discussion on Registration of Law Firms as Account Holders of iCMS

The Committee and other specialist committees were preparing a reply to the Judiciary Administration on registration of law firms as account holders of iCMS.

Consultation Paper on Remote Hearings: Location of Advocates

The Committee reviewed a *Consultation Paper on Remote Hearings: Location of Advocates* released by the Judiciary Administration in May. Views from the Committee, the Criminal Law and Procedure Committee, the Higher Rights of Audience Committee and the Guidance Committee were consolidated into a written submission, which was sent to the Judiciary Administration in July.

Consultation Paper on the Proposed Application of the United Nations Convention on Contracts for the International Sale of Goods to the Hong Kong Special Administrative Region

The Committee reviewed a *Consultation Paper on the Proposed Application of the United Nations Convention on Contracts for the International Sale of Goods to the Hong Kong Special Administrative Region* released by the DOJ in March. Members of the Committee and the Transportation and Logistics Committee attended a briefing by the DOJ in June. A joint submission was sent to the DOJ in October.

Case Settlement Conference Pilot Scheme in the District Court

The Committee was advised that the District Court had undertaken a pilot scheme in 2018 to introduce assisted settlements into the case management process to further promote the use of alternative dispute resolution in civil litigation; and such pilot scheme would be extended for a further 24 months from January 2021 and be upgraded into a more structured format, called Case Settlement Conference. The Committee, together with the Mediation Committee, relayed views and concerns on the pilot scheme to the Judiciary for consideration. The relevant Guidance Note and Supplemental Note were issued by the Judiciary in December.

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

- Ten Year's Implementation of the Civil Justice Reform
- Review on Solicitor's Hourly Rates
- Existing practice for payment of recovered sums in litigation
- Appointment arrangement for court hearings
- Enforcement in Civil Proceedings – Order 49 Garnishee Proceedings
- Photocopying Charges under First Scheduled of Order 62, *Rules of High Court* (Cap.4A)
- DOJ's arrangement for briefing out of cases and payment of fees during COVID-19
- Signing of translation clause to the Statement of Truth during COVID-19
- Health concerns relating to users of the court registries during COVID-19
- Paper application be made available as an option for admission as solicitors.

The Committee took note of the following:

- Report on Judicial Remuneration Review 2020
- Judgement in *HCMP 1013/2019* [2019] HKCFI 2689
- 2020-2021 Government Budget Public Consultation
- Public Consultation on Chief Executive's Policy Address 2020
- The updated Law Society's information leaflets on Judicial Review, Legal Fees and Evidence in Court
- Third Party Funding for Arbitration
- The Law Society's submission on the proposed legislative changes – execution of deeds by non-Hong Kong companies
- Consultation by the Ombudsman on the Public Interpretation Services in Hong Kong
- Amendments to the *High Court Ordinance* (Cap.4) introduced by the *Statute Law (Miscellaneous Provisions) Ordinance 2020*.

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

- Case Management of Civil Appeals – Interlocutory Applications
- Interest Rate on Judgement Debts in the High Court and the District Court
- Judiciary's Revised Arrangements for Certification of Translations
- Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Cases between the Hong Kong SAR and the Macao SAR
- Enforcement of Judgements in Austria
- PD19.3 – Statement of Truth
- Civil Appeals to the Court of Appeal – Application / Appeal Bundles
- New Security Guard Fees and Deposits for Execution Work by Bailiffs
- Guidance Note for Case Settlement Conference in Civil Case in the District Court.

COMPANY LAW COMMITTEE

The Committee conducted its business by emails.

The Committee considered a number of consultations from the Stock Exchange of Hong Kong Limited ("HKEX"). During the year, submissions were made on the following:

- Review of Chapter 37 – Debt Issues to Professional Investors Only
- Corporate WVR Beneficiaries
- Proposals to Introduce a Paperless Listing & Subscription Regime, Online Display of Documents and Reduction of the Types of Documents on Display
- Review of Listing Rules Relating to Disciplinary Powers and Sanctions Display
- Concept Paper on Modernising Hong Kong's IPO Settlement Process.

COMPETITION LAW COMMITTEE

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

COVID-19 and Competition Ordinance

The Committee, in March, wrote to the Hong Kong Competition Commission ("HKCC") on COVID-19 pandemic related guidance statements proposed to be issued by the HKCC for the business community. A positive feedback from the HKCC was received. The Committee noted the HKCC published COVID-19 related guidance statement and press release in March and May respectively.

Competition Commission Investigation Processes

The Committee continued its discussion on the two practices that the HKCC introduced in the context of investigating suspected contraventions 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 has 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". Upon making recommendations to the Council, a Circular on Competition Commission Investigation Processes was issued in November.

The Leniency Policy for Undertakings Engaged in Cartel Conduct and the Leniency Policy for Individuals Involved in Cartel Conduct

The Committee considered the *Leniency Policy for Undertakings Engaged in Cartel Conduct* and the *Leniency Policy for Individuals Involved in Cartel Conduct*, both published by the HKCC in April. A letter was sent to the HKCC in September on the consultation in the policy formulation process.

Memorandum of Understanding entered between the HKCC and the Securities and Futures Commission

The Committee took note of a Memorandum of Understanding entered between the HKCC and the Securities and Futures Commission in April.

UK Appeal Cases relating to imposter fraud

The Committee considered the two UK Appeal Cases, namely *P&P Property Limited v Owen White & Catlin LLP and Crownvent Limited and Dreamvar (UK) Limited v Mischon de Reya (a firm)*, *Mary Monson Solicitors Limited v The Law Society [1018] EWCA Civ. 1082*. The Committee provided views on implications, if any, from the competition law perspective, for the consideration of the Working Party on Dreamvar's Case.

The Chief Executive's Policy Address 2020 Public Consultation

The Committee provided views on the Chief Executive's Policy Address 2020. Views of the Committee and various specialist committees were consolidated into a submission, which was sent to the Government in September.

CONSTITUTIONAL AFFAIRS AND HUMAN RIGHTS COMMITTEE

The Committee met on twelve occasions this year and discussed a wide range of constitutional and human rights issues. It also assisted in the organising of a symposium on national security legislation.

The National Security Legislation

On 28 May, the Standing Committee of the National People's Congress ("NPCSC") adopted the Decision of the People's National Congress on "*Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security*" by the third session of the thirteenth National People's Congress to authorize the NPCSC to promulgate a national security law in Hong Kong. A draft law on safeguarding national security in the Hong Kong Special Administrative Region was submitted to the NPCSC and was reviewed on its 19th session from 18 June to 20 June. On 30 June, the NPCSC passed "*the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region*" ("NSL") which was promulgated in Hong Kong through Annex III of the Basic Law. The Hong Kong SAR Government gazetted the NSL on 30 June, the same day as the law came into effect.

After the enactment of the NSL, "*The Implementation Rules for Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region*" and the "*Operating Principles and Guidelines for Application for Authorization to Conduct Interception and Covert Surveillance*" were issued by the Hong Kong SAR Government. They were gazetted on 6 July and took effect on 7 July.

The NSL includes offences such as secession, subversion, organisation and perpetration of terrorist activities, and collusion with a foreign country or with external elements to endanger national security. The Committee had extensive deliberations on this piece of legislation. It also met the Criminal Law and Procedure Committee on various occasions and jointly submitted views on their observations and concerns to the Standing Committee on Practitioners Affairs and the Council for further deliberation.

Article 22 of the Basic Law

Apart from NSL, the Committee also discussed various matters of constitutional significance. One of the matters canvassed was the roles of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region and the Hong Kong and Macau Affairs Office of the State Council in the constitutional hierarchy of the Hong Kong SAR and the proper understanding of the function of the two offices under Basic Law Article 22. The discussion of the Committee ensued followed the filibustering in the

Legislative Council and the subsequent comments made by the two offices. The Committee considered the matter and rendered views to assist deliberation by the Council.

Legislative Council election and disqualification of legislators

The postponement of the 2020 Legislative Council Election and the extension of the sixth term of the Legislative Council also received the attention of the Committee. The postponement was announced on 30 July by the Hong Kong SAR Government which invoked the *Emergency Regulations Ordinance* (Cap. 241), citing a resurgence of COVID-19 cases at that time. The announcement was followed by “*The Decision of the Standing Committee of the National People’s Congress on the Continuing Discharge of Duties by the Sixth Term Legislative Council of the Hong Kong Special Administrative Region*” made by NPCSC on 11 August. The Legislative Council election originally scheduled on 6 September was thereby postponed to 5 September 2021.

Another matter under discussion by the Committee was the disqualification of four legislators. The disqualification was announced after “*the Decision of the Standing Committee of the National People’s Congress on Issues Relating to the Qualification of the Members of the Legislative Council of the Hong Kong Special Administrative Region*” made on 11 November. After the above announcement, 15 legislators announced their resignation en masse on the same day.

Emergency Regulations Ordinance

The *Emergency Regulations Ordinance* (Cap. 241) (“ERO”) was relied by the Hong Kong SAR Government not only on the postponement of the Legislative Council election, but also on an earlier occasion when the Hong Kong SAR Government in October last year introduced the *Prohibition on Face Covering Regulation* (Cap. 241K) (“PFCR”) under section 2 of the Ordinance. The Court of First Instance in November last year ruled both the use of the ERO and the PFCR to be unconstitutional. This was partially reversed by the Court of Appeal in April which upheld the constitutionality of the ERO as well as section 3(1)(b) of the PFCR relating to unauthorized assembly. The Committee noted the matter was further argued in the Court of Final Appeal which, in its judgment delivered in December, ultimately affirmed the constitutionality of the ERO and dismissed the various challenges thereto.

Roundtable Discussion on National Security Legislation

To assist the general membership to better understand the NSL, the Committee assisted to organize a Roundtable Discussion on 15 July. A panel of distinguished speakers were invited to attend the Discussion and they exchanged views.

Review of constitutional and human rights issues

The Committee has been keeping a close watch on various constitutional and human rights issues including Separation of Power in the Hong Kong SAR, a proposed slavery bill, and the arrest of 15 activists and ex-legislators in April over unauthorized rallies in anti-government protests last year, and various court judgments on doxxing and judicial reviews relating to law enforcement. The Committee also took note of a Consultation by the

Ombudsman on Public Interpretation Services, as well as the following statements issued by the Law Society:

- Graffiti on High Court Building concerning a Judge (jointly with the Hong Kong Bar Association) (2 January)
- Violent Attacks on Members of the Public (25 May)
- National Security Legislation Preliminary Observations (11 June)
- National Security Legislation Further Observations (24 June)
- Judicial Independence (22 September)
- Disqualification of Legislative Councilors (13 November)
- Judicial Intimidation (7 December).

Membership Review

In reviewing its membership, the Committee co-opted two members to help with its workload.

CRIMINAL LAW AND PROCEDURE COMMITTEE

The Committee had nine meetings this year plus various email circulations, to consider a number of issues on criminal law and practices. It co-opted one member and set up two sub-committees on liaison with, respectively, the Police and the Correctional Services Department.

Court Practices during General Adjourned Period

Different levels of courts and tribunals faced temporary closures this year because of public health consideration arising from the COVID-19 pandemic. The general closures resulted in, among others, adjournments and interruptions of court business. The Committee relayed its concerns on the above, jointly with other specialist committees, to the Judiciary Administration.

As the pandemic has put off much criminal work, the caseloads and incomes of practitioners had been affected. The Committee took a serious view on the above and agreed that, among others, payment of costs (interim or otherwise) to solicitors assigned by the Legal Aid Department and the Duty Lawyer Services should be expedited. Those views had been relayed.

Separately, the Committee has written to various law enforcement agencies and suggested to them to put in place protocols to prevent spread of coronavirus infection during legal visits.

Biennial Review of Criminal Legal Aid Fees

The criminal legal aid fees in the reference period from July 2016 to July 2018 was reviewed and, upon completion of the review, was increased by 4%. *The Legal Aid in Criminal Cases (Amendment) Rules 2020*, made under section 9A of the *Criminal Procedure Ordinance*

(Cap. 221) for the above purpose, was introduced into the Legislative Council in June for positive vetting and received approval. The increase was to take effect on 20 July.

On the other hand, while waiting for the above legislative process, the Committee has commenced liaison with the Government on the next biennial review exercise. It wrote to the Government in May, followed by a joint letter with the Hong Kong Bar Association in December. The Committee was keeping in view of progress of the matter.

Demonstrations, protests and arrests

The Committee noted the arrests of various activists and ex-legislators in April, reportedly for offences relating to unauthorized assembly in the anti-government protests last year. With the assistance of a sub-group, the Committee revisited the relevant legislation and offered views to the Council for deliberation.

In respect of those cases arising from social events last year and this year, the Committee was approached for views on proposals to expedite court processing of these cases. After studying these proposals and reviewing similar experiences in other jurisdictions, the Committee provided responses to the Judiciary Administration.

National Security Legislation

The Standing Committee of the National People's Congress ("NPCSC") passed "*The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region*" ("NSL") on 30 June. It was promulgated in Hong Kong and came into effect on the same day. The Committee, with another specialist committee of the Law Society, had a clause-by-clause review of the NSL. It has also studied "*The Implementation Rules for Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region*" and "*Operating Principles and Guidelines for Application for Authorization to Conduct Interception and Covert Surveillance*". The above were gazetted on 6 July and took effect on 7 July. Comments and views on the above were rendered to the Standing Committee on Practitioners Affairs for deliberation.

Evidence (Amendment) Bill 2018 and other legislative amendments

The Evidence (Amendment) Bill 2018 continued to receive the attention of the Committee. The Amendment Bill set out a comprehensive reform of the hearsay regime for criminal practice. The Committee has on previous occasions rendered views on the Amendment Bill to the DOJ, and in December, received from the DOJ further views on Committee Stage Amendments. The Committee was studying these latest views and was preparing a reply.

The Committee took note of other legislative amendments, including the *Statute Law (Miscellaneous Provisions) Bill 2019*, which contains, among others, amendments to section 34B(4) of the *High Court Ordinance* to extend the use of a 2-Judge bench of the Court of Appeal to hear various matters. These amendments aim to increase the flexibility in deployment of judicial manpower in taking up other court cases, and therefore put judicial resources to the best use.

Consultation by Law Reform Commission of Hong Kong on *Sentencing and Related Matters in the Review of Sexual Offences*

The Committee received a consultation paper released by the Law Reform Commission (“LRC”) in November on “*Sentencing and Related Matters in the Review of Sexual Offences*”. The consultation paper is the fourth and final part of the LRC’s overall review of substantive sexual offences. It covered a review of the penalties for offences proposed in the report on Review of Substantive Sexual Offences; examined ways to reform and improve treatment and rehabilitation of sex offenders in Hong Kong; and reviewed the Sexual Conviction Record Check Scheme since it has come into operation in December 2011 as an administrative scheme. A sub-group was set up and was studying the Consultation Paper, with a view to making recommendations to the Committee thereon.

Other engagements relating to criminal practices

The Committee was engaged in discussion with the Osaka Bar Association to share views on Disclosure of Records and Evidence in Criminal Cases. It also assisted another specialist committee in the continual review and update of Rule 5D of the *Solicitors’ Practice Rules* (Cap. 159H).

Highlights of other issues considered

Various matters relating to criminal practices were brought to the attention of the Committee for discussion. These included:

- Policy Address 2020
- Government Budget 2020 – 2021
- the Judiciary IT system (including the passage of the Court Proceedings (Electronic Technology) Bill in July, and proposed remote hearings
- Report on The Judicial Remuneration Review 2020;
- Practice Direction 9.3
- Criminal Jurisdiction (Amendment) Bill 2019
- Yearly Report 2018 of The Prosecution Division of the DOJ
- Annual Report 2018 by The Commissioner on Interception of Communications and Surveillance
- Community Legal Assistance In Hong Kong
- Consultation issued by the Ombudsman on Public Interpretation Services
- Assignment of cases under the Duty Lawyer Services
- Logistics Arrangement on Legal Visits; and
- Checklist for RME Programme.

The Committee kept in view, from time to time, the various agenda items of the Panel on Administration of Justice and Legal Services of the Legislative Council.

EMPLOYMENT LAW COMMITTEE

The Committee conducted its business by emails.

The Committee considered/ reviewed the following employment law related issues:

The Chief Executive's Policy Address 2020 Public Consultation

The Committee provided views on the Chief Executive's Policy Address 2020. A number of proposals, including aligning the number of statutory holidays with that of general holidays was put forward for Government's consideration. Views of the Committee, together with views from other specialist committees, were consolidated into a submission. The Committee in November received a positive feedback from the Secretary for Labour and Welfare that the proposal to increase the number of statutory holidays to bring it on par with that of general holidays had formally entered the discussion stage by the Labour Advisory Board.

Occupational Retirement Schemes (Amendment) Ordinance 2020

The Occupational Retirement Schemes (Amendment) Ordinance was passed by the Legislative Council in June. Comments on the Amendment Ordinance were relayed to the Retirement Schemes Committee, which had sent a letter to the Mandatory Provident Fund Schemes Authority ("MPFA") in August. The MPFA in September replied and provided clarifications on issues, such as employment-based criterion, membership criterion etc.

Employment (Amendment) Ordinance 2020

The Employment (Amendment) Ordinance 2020 was passed by the Legislative Council in July. The Amendment Ordinance included the increase of the statutory maternity leave under the *Employment Ordinance* (Cap. 57) from the 10 weeks to 14 weeks.

Other issues

Other employment law related issues such as the relaxation of the conditions on withdrawal of Mandatory Provident Fund ("MPF"), and the setting off of long service payments and severance payments against MPF contributions, were discussed.

The Committee also took note of the following:

- A consultation paper on legislative proposals for electronic fees released by the Judiciary Administration
- A draft Practice Direction on Case Settlement Conference Pilot Scheme in the District Court
- A suggestion to review Practice Direction 31; and
- The Law Society's information leaflet on Termination of Employment.

FAMILY LAW COMMITTEE

The Committee met six times during the year. In addition, an informal meeting was held with external bodies, namely the Judiciary, the Hong Kong Bar Association, the Hong Kong Family Law Association to discuss a wide range of family law related issues. The Committee also conducted its business by email. It co-opted one member.

The Committee reviewed an array of family law related issues:

(a) General Adjournment of Court Proceedings ("GAP")

The Committee discussed various issues arising from the GAP, including delay of hearings in the Family Court, delay in granting Decree Nisi or Decree Absolute and communications with the Family Court etc. Suggestions, such as paper disposal to deal with Consent Summons or First Appointment to be more widely used during GAP and Saturday sittings to clear the backlog of Family cases, were relayed to the Judiciary for consideration.

(b) 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 sought to implement the *Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region* signed in 2017. The Committee attached much importance to the Bill and had meetings with the other stakeholders to exchange views. The Bill was introduced into the Legislative Council in December. Written submission was being prepared by the Committee.

(c) Restrictions on Children Travelling out of Hong Kong under Court Orders

The Committee had been corresponding with the Immigration Department on issues arising from the restrictions on children travelling out of Hong Kong under Court Orders. The Committee was scheduling meetings with the Immigration Department to further discuss the issues raised and to put forward suggestions to address those issues.

(d) Third Party Funding for Mediation for Family Cases

The Committee, at a meeting with the Personal Injuries Committee, the Mediation Committee and the Guidance Committee in June, shared experience on third party funding for mediation for family cases.

(e) Proposed Children Proceedings (Parental Responsibility) Bill

The Government proposed at the LegCo Panel meeting on 12 March 2018 not to introduce the proposed *Children Proceedings (Parental Responsibility) Bill* ("Children Bill") into the LegCo. Amongst others, the Government said that as soon as the enhanced measures to support divorcing / divorced / separated families had been implemented, the Government would consult the stakeholders again on the proposed Children Bill. The Committee will continue its effort to press for the introduction of the Children Bill into the LegCo to implement this long overdue law reform.

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

The Committee continued its effort on following up with the Chief Secretary for Administration's Office, the Legal Aid Department and the Judiciary Administration on the proposed legislative amendments to the *District Court (Fixed Costs in Matrimonial Causes) Rules* (Cap.336F) to raise the amount of fixed costs; to extend fixed costs arrangement to the First Appointment, Financial Dispute Resolution hearings, Children's Appointment and Children's Dispute Resolution hearings; and to introduce a regular review mechanism. Deliberations of a paper setting out the proposals for the consideration of the Judiciary's Family Proceeding Court Users' Committee were continuing.

(g) Director of Legal Aid's First Charge on Maintenance Payment under Section 18A of the Legal Aid Ordinance (Cap.91)

The Committee had been in dialogue with the Legal Aid Department since 2016 to push for a review on the Director of Legal Aid ("DLA")'s First Charge on maintenance payment under section 18A of the *Legal Aid Ordinance* ("LAO"), for which the last review was in 1997.

The Committee noted with appreciation that with effect from 26 June, the sum of HK\$4,800 specified in section 18A(5) of the LAO (i.e. amount of maintenance that may be exempted from DLA's First Charge) had been adjusted to HK\$9,100; and the amount of DLA's First Charge that might be waived in cases of serious hardship specified in section 19B(1)(a) of the LAO has been increased from HK\$57,400 to HK\$103,510; and a mechanism had been introduced for adjusting the said two sums on an annual basis to take into account the general price movement as measured by Consumer Price Index (C), in conjunction with the annual review of financial eligibility limits in future.

(h) Draft Guidance Notes on Family Proceedings

The Judiciary's Family Proceeding Court Users' Committee released a set of six draft *Guidance Notes on Family Proceedings* for comments. Various small group discussions with representatives from other stakeholders were held. Comments and amendments to the draft Guidance Notes (drawn up jointly with other stakeholders) were passed on to the Judiciary in September.

(i) Guides to Good Practice for Family Law Practitioners

The Committee, together with other stakeholders, continued to work on a draft Guide to Good Practice for Family Law Practitioners setting out good practice, on a constructive and conciliatory approach to be adopted in Family Law work.

(j) Further Study on the Phenomenon of Divorce in Hong Kong

The Committee kept a close watch on the development of a study, "*Further Study on the Phenomenon of Divorce in Hong Kong*" ("the Study"), which was commissioned by the Home Affairs Bureau. The Study aimed to improve evidence-based policy making on maintenance order. In December, the Committee wrote to the Home Affairs Bureau seeking the latest progress of the Study and enquiring when the final report on the Study would be available.

(k) Chief Executive's Policy Address 2020 Public Consultation

The Committee provided views on the Chief Executive's Policy Address 2020, amongst others, urging the Government to take forward the Children Bill and the suggestion of setting up a maintenance board in Hong Kong. Those views together with views from other specialist committees were collated into a submission, which was sent to the Government in September.

Other family-related matters

The Committee took note of and/or considered the following:

- Procedure and Practice of the Family Court
- Government Budget 2020-2021 Public Consultation
- Definition of spouse under same-sex marriage for the purpose of the Stamp Duty Ordinance
- The Court of Appeal judgment in *BT v CBY* CACV 439/2019, 8 June 2020, [2020] HKCA 426
- Proposed "email security protocol" by other stakeholders
- Information on the Comprehensive Social Security Assistance Scheme – Treatment of Maintenance Payment
- Draft Practice Direction on Case Settlement Conference Pilot Scheme in the District Court
- News articles on legal figures called for legal requirement to report child abuse
- The publication of "Hong Kong Family Court Tables (Duxbury etc.)"
- Proposed amendments to PDSL 9 – Pilot Scheme for Private Adjudication of Financial Disputes in Matrimonial And Family Proceedings
- Consultation Paper on Sentencing and Related Matters in the Review of Sexual Offences.

Circulars

The Committee approved and issued circulars to members relating to the following subject matters:

- Judgment of *WW v LLN* CACV524/2019, 25 March 2020, [2020] HKCA 178
- Specialised Co-parenting Support Centres by the Social Welfare Department and Non-governmental Organisations
- Practice Direction SL9 – Pilot Scheme on Private Adjudication of Financial Disputes in Matrimonial and Family Proceedings.

Events

(a) Training Course for the Social Welfare Department

In September, two Committee members were invited to present training course for the Social Welfare Department on the "Basic Understanding of Related Ordinances and Court Proceedings on Child Custody and Guardianship".

(b) Roundtable Discussion on Maintenance Board

In October, two Committee members attended a Roundtable Discussion on Maintenance Board organised by the Hong Kong Federation of Women's Centre.

HIGHER RIGHTS OF AUDIENCE COMMITTEE

The Committee conducted its business by emails circulation and co-opted a member this year to assist its work.

A *pro hac vice* admission under section 27(4) of the *Legal Practitioners Ordinance* (Cap.159) for an overseas barrister to appear in the trial of civil matter with solicitor advocates only ([2019] 5 HKLRD 441) continued to receive close attention of the Committee. This was the first application where the admission of an overseas barrister was sought on the basis that, if admitted, he would only appear with the solicitor advocates having the conduct of the underlying proceedings without instructing a local barrister. The application was supported by the Law Society and the Secretary for Justice, but was opposed by Hong Kong Bar Council.

In the judgement delivered in the above matter in October 2019, the Court of First Instance allowed the application, but on the condition that the overseas barrister should appear with a local barrister. The Committee noted the headnote of the said judgement which, among other things, stated that '*Solicitor advocates played a less significant role in enhancing access to justice. Public Interest in favour of admitting overseas [barristers] to appear with solicitor advocates only mainly lay in strengthening or facilitating the development and growth of solicitor advocates as a whole. Public interest ... required, as an appropriate safeguard against inhibition on the growth and development of the local Bar, overseas [barrister] to appear together with local counsel, if admitted.*'

The Committee considered the above and noted with support the intervention by the Law Society in the appeal against the above judgement, brought by the applicant in the matter (CACV 543/2019). Various views had been rendered. The appeal hearing took place in November. The Committee keenly awaited the appeal judgement.

Apart from closely following the above, the Committee also took the initiative to review the Law Society's Code of Advocacy for Solicitor Advocates.

The Committee helped review a consultation by the Judiciary Administration on remote hearings.

INSOLVENCY LAW COMMITTEE

The Committee conducted its business by emails.

Consultation on Policy Proposals for Rules on Contractual Stays on Termination Rights in Financial Contracts for Authorised Institutions

The Hong Kong Monetary Authority issued a consultation paper in January to seek views on its policy proposals for rules on contractual stays on termination rights in financial contracts for authorised institutions. The Committee reviewed the consultation paper and made a submission in March. The consultation conclusion was released in December.

Third Party Funding for Arbitration and Mediation

The Committee, the Personal Injuries Committee and the Mediation Committee, had a meeting in June to consider any code of conduct for third party funders for mediation in personal injuries claims. Experience on third party funding for mediation for insolvency cases and views on the subject matter were relayed to the relevant specialist committees for consideration. A letter consolidating views from various specialist committees was sent to the DOJ in July.

Proposed Consultation on an Arrangement with the Mainland in Respect of Judicial Assistance on Cross-boundary Insolvency

The Committee considered a paper, which was issued to the Panel on Administration of Justice and Legal Services of the Legislative Council in June, on the DOJ's proposed consultation on an arrangement with the Mainland in respect of judicial assistance on cross-boundary insolvency. The Committee shall keep this matter under review and would make submission in due course.

Proposed Questionnaire to be filed by Provisional Liquidators/ Liquidators together with the Form D1

The Official Receivers' Office invited comments on its Proposed Questionnaire to be filed by Provisional Liquidators / Liquidators together with the Form D1. The Committee reviewed the proposed questionnaire and made a submission in July.

Draft Companies (Corporate Rescue) Bill

The Committee was, in June, advised by the Financial Services and the Treasury Bureau ("FSTB") of its latest legislative proposals to introduce a statutory corporate rescue procedure and insolvent trading provisions. A 469-page draft *Companies (Corporate Rescue) Bill* was provided. The Committee reviewed the draft Bill and made a detailed written submission to the FSTB in September.

The Chief Executive's Policy Address 2020 Public Consultation

The Committee provided views on the Chief Executive's Policy Address 2020. Its views, together with those from other specialist committees, were consolidated into a submission, which was sent to the Government in September.

Draft Practice Direction on Case Settlement Conference Pilot Scheme in the District Court

The Committee considered a draft Practice Direction on Case Settlement Conference Pilot Scheme in the District Court and a suggestion to revise PD31.

Circulars

The Committee issued circulars to members on the following subject matters:

- Temporary Court Closure – Notification for Stakeholders for Bankruptcy-related Court Proceedings
- Provisional Trustees / Trustees under the Bankruptcy Ordinance and Provisional Liquidators / Liquidators under the Companies (Winding Up and Miscellaneous Provisions) Ordinance – COVID-19 Pandemic
- Provisional Trustees / Trustees under the Bankruptcy Ordinance – Cash Payment Scheme
- ORO Circular No.1/2020 – Special and Ordinary Bank Account under section 202(1) of *the Companies (Winding Up and Miscellaneous Provisions) Ordinance* (Cap.32)
- ORO Circular No. 2/2020 – Disqualification of Directors – Revised Arrangement on Submission of Form D1 and Form D2.

Attending Outside Meetings

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

INSURANCE LAW COMMITTEE

The Committee met once formally and conducted the rest of its business by emails. In addition, it met with a few representatives of the Insurance Authority including its General Counsel, to discuss the *Insurance (Amendment) Bill 2020*.

The Committee considered and reviewed the following:

(a) Insurance (Amendment) Bill 2020

The Committee considered the *Insurance (Amendment) Bill 2020*, which sought to provide for a new regulatory regime for insurance linked securities business and to expand the scope of insurable risks of captive insurers set up in Hong Kong. A submission was produced in July and submitted to the Legislative Council Bills Committee, the Insurance Authority and the FSTB. The Bill was passed in July.

(b) Insurance (Amendment) (No.2) Bill 2020

The Committee considered the *Insurance (Amendment) (No.2) Bill 2020*, which sought to amend the Insurance Ordinance to provide for the regulation and supervision of insurance groups by the Insurance Authority. The Bill was passed in July.

(c) Consultation Paper on Draft Insurance (Group Capital) Rules

The Committee considered a *Consultation Paper on Draft Insurance (Group Capital) Rules* issued by the Insurance Authority. Written submission was made and sent to the Insurance Authority in September. The consideration conclusion was released by the Insurance Authority in December.

(d) Consultation Paper on Draft Insurance (Special Purpose Business) Rules

The Committee considered a *Consultation Paper on Draft Insurance (Special Purpose Business) Rules*. The Committee, the Investment Products and Financial Services Committee and the Retirement Schemes Committee, jointly produced a submission, which was sent to the Insurance Authority in October.

(e) Proposed Law Reform on Insurance Law in Hong Kong

The Law Society wrote to the Law Reform Commission, in August 2018, and invited 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. The Committee received an interim reply from the Law Reform Commission in September 2018. A letter to the Law Reform Commission seeking progress was sent in January.

(f) Government Budget 2020-2021 Public Consultation

The Committee provided views on the Government Budget 2020-2021. Views of the Committee, together with those from other specialist committees, were consolidated into a submission, which was sent to the Government in February.

(g) The Chief Executive's Policy Address 2020 Public Consultation

The Committee provided views on the Chief Executive's Policy Address 2020. A joint submission was made with other specialist committees and sent to the Government in September.

The Committee took note of the following:

- *Occupational Retirement Schemes (Amendment) Ordinance 2020* was passed and took effect on 26 June.
- Memorandum of Understanding entered between the Insurance Authority and the Securities and Futures Commission in September, following the introduction of the direct regulatory regime of insurance intermediaries.
- Judgement of *UKAF v Markel* [2020] EWHC 922 (Comm) regarding the general principle on non-disclosure.
- Draft Practice Direction on Case Settlement Conference Pilot Scheme in the District Court.

INTELLECTUAL PROPERTY COMMITTEE

Discussion and Reviews

The Committee was continuously engaged this year in the discussion of various matters on intellectual property ("IP") law and practices. On top of email communication, the Committee had one committee meeting conducted by Zoom. In June members of the Committee met the Intellectual Property Department ("IPD") of the Hong Kong SAR Government to consider various IP matters.

Madrid Protocol

The Committee was invited by the IPD to participate in four focus group meetings held in December 2019, January and May to discuss the application of Madrid Protocol. The meetings had in-depth and constructive exchanges on various procedural issues as well as hearing-related matters, such as the procedures for e-filing and e-servicing of documents, the handling of requests for summary assessment of costs in interlocutory proceedings and the conduct of hearings by alternative mode. It was anticipated that the Madrid-related trademark amendments would be tabled before the Legislative Council within the 2021/22 session.

Trade Marks (Amendment) Bill 2019

The Committee together with other stakeholders studied and provided comments to the IPD on the proposed amendments to the *Trade Marks (Amendment) Bill 2019* ("Bill"). The Bill was passed by the Legislative Council on 10 June. *The Trade Marks (Amendment) Ordinance 2020* was gazetted on 19 June for commencement on the same date (except Section 5 and Part 4 thereof).

New Integrated System ("NIS")

The Committee was in support for the use of the IPD online services. The final phase of the NIS was launched in December 2019. Web-forms relating to inter-partes proceedings, hearings and certified true copies would be available for e-filing. Documents such as pleadings, counter-statement and correspondences could also be filed electronically. There were certain documents that would not be accepted for e-filing such as evidence (e.g. statutory declaration or affidavit and any exhibits attached thereto), court orders, hearing bundles, copies of authorities and skeleton arguments relating to inter-partes proceeding and hearings. The Committee would continue to monitor and render views to the IPD for improvement of the system.

Promotion of IP

(a) Business of Intellectual Property ("BIP") Asia

The Law Society was a supporting organisation to BIP Asia Forum 2020. This Forum was jointly organised by the Hong Kong SAR Government, the Hong Kong Trade Development Council and the Hong Kong Design Centre. It brought together IP professionals from Hong Kong and other jurisdictions to discuss the latest developments in the IP world, and also to explore business opportunities. The Chairman of the Committee was a member of the Steering Committee of the Forum.

The Forum took place on 3 and 4 December at the Hong Kong Convention and Exhibition Centre.

The Committee continued to render support to the Forum. Three committee members, including the Chairman of the Committee, spoke at various break-out sessions. As usual, the sessions were well attended.

(b) IP Manager Scheme PLUS

The Committee continued to assist the IPD in giving lectures for their IP Manager Schemes. The IP Manager Scheme was first launched by the IPD in 2015 to assist, especially, small and medium enterprises ("SMEs") in Hong Kong to build up their IP manpower capacity. The scheme was enhanced to become IP Manager Scheme PLUS in October for providing greater breadth and depth to the contents of the training programme to cater for the specific career needs of IP managers. The Committee had provided their thoughts and suggestions to the enhancement.

(c) IP Consultation Sessions

The Committee was also actively supporting the IPD in giving free preliminary advice at the IPD's IP consultation sessions in order to assist SMEs to raise their awareness of IP.

(d) Meetings

i. Annual Meeting with IPD

The Committee met the IPD on 3 June to discuss various IP laws, practices and related matters. The matters discussed at the meeting included:

- Amendment to the *Copyright Ordinance* (Cap. 528)
- Implementation of an "original grant" patent system in Hong Kong
- Proposed application of Madrid Protocol
- Amendments to the *Rules of the High Court* for proceedings before the Court of First Instance of the High Court of Hong Kong under several IP legislation
- New Integrated System

ii. Annual Meeting with IPD, APAA and ITMP

The Committee was used to holding annual meetings with the IPD, Asia Patent Attorneys Association Hong Kong Group and Hong Kong Institute of Trade Mark Practicing to exchange views on IP practices and updates in the markets. This year, the meeting was unavoidably adjourned due to the COVID-19 pandemic.

iii. Other IP related matters

The Committee has been having discussion on other IP-related matters and where appropriate has, from time to time, issued circulars to the general membership. These included the following:

- the "Trade Marks (Amendment) Ordinance 2020 and Update for Trade Marks Registry Work Manual";
- the further update on "Trade Marks Registry Work Manual";
- the "IP Services Provider Directory Invitation for Registration" and
- the "2020 Guangdong / Hong Kong Seminar on Intellectual Property and Development of Small and Medium Enterprises (Online)"

(e) External Representation

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

INVESTMENT PRODUCTS AND FINANCIAL SERVICES COMMITTEE

The Committee considered a number of consultations from the Government, the Securities and Futures Commission, the Stock Exchange of Hong Kong Limited and the Insurance Authority. During the year, submissions were made on the following:

- Corporate WVR Beneficiaries
- Proposed Amendments to the Code on Real Estate Investment Trusts
- Draft *Insurance (Special Purpose Business) Rules*
- Proposed Amendments to (1) the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations) and (2) the Prevention of Money Commission for Associated Entities
- Laundering and Terrorist Financing Guideline issued by the Securities and Futures
- Management and Disclosure of Climate-related Risks by Fund Managers
- Legislative Proposals to Enhance Anti-Money Laundering and Counter-Terrorist Financing Regulation in Hong Kong.

LEGAL AID COMMITTEE

The Committee conducted its business by emails.

The Committee has been keeping close watch on the development of and matters pertinent to the legal aid practice, including:

(a) Communication with the Legal Aid Department during COVID-19

The Committee wrote to the Director of Legal Aid ("DLA") in February raising concerns over the difficulties member firms had experienced in communication with the Legal Aid Department ("LAD") in the period when the LAD adopted special work arrangements during COVID-19.

(b) Timely Payment of Costs to Assigned Solicitors during COVID-19

A letter from the President was sent to the DLA in March on a request to speed up the processing of payment of costs to assigned solicitors for legal aid matters. A positive feedback from the DLA was received.

The Committee took note of a letter from Secretary for Justice to the DLA joining the legal profession's appeal for the LAD's assistance to, amongst others, streamline and expedite as far as possible the processing of payments to assigned solicitors; and the DLA's positive reply thereto.

(c) Financial Eligibility Limits of Legal Aid Applicants

The Committee noted with effect from 26 June, the financial eligibility limits for the

Ordinary Legal Aid Scheme ("OLAS") and the Supplementary Legal Aid Scheme ("SLAS") had been adjusted upwards. For OLAS, the limit had gone up from \$307,130 to \$420,400. For SLAS, the adjustment was from \$1,535,650 to \$2,102,000.

(d) Director of Legal Aid's First Charge

The Committee noted with effect from 26 June, the sum of HK\$4,800 specified in section 18A(5) of the Legal Aid Ordinance ("LAO") (i.e. amount of maintenance that may be exempted from DLA's First Charge) had been adjusted to HK\$9,100; and the amount of DLA's First Charge that might be waived in case of serious hardship specified in section 19B(1)(a) of the LAO has been increased from HK\$57,400 to HK\$103,510; and a mechanism had been introduced for adjusting the two said sums on an annual basis to take into account the general price movement as measured by Consumer Price Index (C), in conjunction with the annual review of financial eligibility limits in future.

(e) 2020-2021 Government Budget Public Consultation

The Committee provided views on 2020-2021 Government Budget Public Consultation. Views of the Committee, together with views of other specialist committees, were consolidated into a submission. The submission was sent to the Financial Secretary in February.

(f) The Chief Executive's Policy Address 2020 Public Consultation

The Committee provided views on Chief Executive's Policy Address 2020 regarding legal aid policy. Views of the Committee, together with views of other specialist committees, were consolidated into a submission, which was sent to the Government in September.

(g) Consultation by Ombudsman on the Public Interpretation Services in Hong Kong

The Committee considered a consultation on the Public Interpretation Services in Hong Kong. Comments from the Committee were consolidated into a submission, and that was sent to the Ombudsman in November.

MEDIATION COMMITTEE

The 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 the general members, solicitor-mediators and solicitor-mediation advocates. This year, the Committee co-opted two members to fill the vacancies left by two retiring members.

The Committee met twice in the year and conducted the rest of its business by emails. To help with the workload, it established three working groups and each met once this year.

Development of Mediation in the Greater Bay Area

The Committee has been continuing its effort to promote the practices of solicitor-mediators and solicitor-mediation advocates in Hong Kong and in the Mainland, including the Greater Bay Area ("GBA"). Among the various initiatives put forward by the Committee, one area of focus is to advocate for a wider application of Hong Kong law and the facilitative mediation model in mediation for international or cross-border commercial disputes in the GBA. That helps not only the promotion of mediation practice, but also the expansion of work opportunities for solicitor-mediators and solicitor-mediation advocates.

This year, the Committee supported the Joint Mediation Helpline Office ("JMHO") with two Memorandums of Understanding respectively with the China Guangzhou Arbitration Commission and the China Council for the Promotion of International Trade – Dongguan Mediation Centre, in the promotion and development of mediation and online mediation in the GBA.

The Committee would keep on liaising with local and Mainland authorities and professional bodies and explore opportunities for solicitor-mediators and solicitor-mediation advocates.

Pilot Scheme of Cases Settlement Conference in District Court

In 2018, the Judiciary introduced the External Mediation Master Scheme ("Scheme") to the District Court to assist the resolution of general civil claims (with exception for certain specified cases such as personal injury claims). Under the Scheme, an "external mediation master" would be appointed to assist the parties to try to settle their dispute through use of mediation.

The above pilot scheme was to be extended for case management process in the District Court. The pilot scheme as extended (for a period of 24 months from January 2021) would relate to Case Settlement Conference ("CSC"). For this purpose, the Judiciary issued a Guidance Note (and a Supplementary Note) to set out the practice for CSC in all civil cases before the District Court, except personal injuries, employees' compensation, false detention claims against the Government and equal opportunities cases. The Notes were to take effect on 2 January 2021. A circular was issued to inform the general members on the above.

Assistance to Solicitor-Mediators

The Committee understood the difficulties some solicitor-mediators have encountered when they tried to obtain professional guidance and/or practice opportunities in mediation practice. To assist solicitor-mediators and also members generally, the Committee recommended to Council to provide a sponsorship for solicitor-mediators who participated in a mediator mentorship scheme for those mediation cases conducted in the West Kowloon Mediation Centre. The mentorship scheme provides opportunities to the less experienced solicitor-mediators to work with more experienced mediators and to co-mediate real-life cases. The mentorship scheme was approved by Council. Members who meet the eligibility requirements could apply for sponsorship for the above mentorship scheme.

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, arouses public awareness of and

understanding on mediation. It also helps 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 Secretariat, provided information on mediation and mediation services to the public. The Helpline received encouraging feedbacks. The trial period of the Helpline was repeatedly extended.

Updates of the Mediation Leaflet and Mediation Webpage

To promote mediation practices, the Committee offers and provides information on mediation and on the Law Society's mediation services to the general members and general public. This year the Committee updated an information leaflet for the public and the leaflet has been put out to the general public. The Committee also created a new webpage on all Law Society's Panels of Mediators. The webpage has been put onto the Law Society webpage.

Other Promotion for Solicitor-mediators

The Committee has:

- reviewed the policies on solicitors' practice in Mediation and Parenting Co-ordination ("PC")
- organised Continuing Professional Development ("CPD") activities on Mediation, PC and related subjects
- liaised with stakeholders on matters relating to Mediation; and
- monitored and updated general members on the latest development of Mediation, PC and Early Neutral Evaluation in Hong Kong.

Mediation Services

The Committee continues to provide support services for mediation to the Law Society's members. This year, 7 requests for nomination of mediators were processed.

Consultation relating to Mediation

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

(a) Draft Code of Practice for Third Party Funders of Mediation

The *Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017* was enacted in June 2017. Among other things, the Amendment Ordinance provides 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 Funding of Arbitration and a Code of Practice for Third Party Funding of Mediation.

In 2018, the Committee and other specialist committees of the Law Society submitted a joint submission on the draft Code of Practice for Third Party Funding of Arbitration and Mediation to the DOJ. Divisions 3 and 5 of new Part 10A of the Arbitration Ordinance and the Code of Practice for Third Party Funding of Arbitration came into

operation on 1 February 2019; the commencement of section 4 of the Amendment Ordinance insofar as it relates to section 7A(c) and (d) of the *Mediation Ordinance* and the issuance of the Code of Practice for Third Party Funding of Mediation were deferred to a future date.

In January, the Committee and other specialist committees met with the DOJ to discuss the Code of Practice for Third Party Funding of Mediation. This was followed up by further discussion in July with the DOJ on the Code of Practice for Third Party Funding of Mediation and Arbitration for personal injuries claims.

(b) Consultation Paper on Outcome Related Fee Structures for Arbitration

In December, the Outcome Related Fee Structures for Arbitration Sub-committee ("Sub-committee") of the Law Reform Commission published a consultation paper on Outcome Related Fee Structures for Arbitration to launch a public consultation. The Committee was reviewing the consultation paper with a view to formulating a consolidated submission for the Sub-committee.

(c) Government Budget 2021

The Committee considered and made a request to the Government for support in the development and promotion of mediation in Hong Kong. The views of the Committee were to be included in the Law Society's submission to the Government.

Organisation of and Participation in Mediation Events

The Committee has planned various mediation-related CPD activities for the general membership. Some of the activities were cancelled or postponed due to COVID-19. Nevertheless, with the efforts of the Committee, the following CPD activities were put out this year as part of its continual efforts to promote mediation services to members:

- JMHO's CPD webinar "Dos and Don'ts for Mediation Practice" (4 September)
- JMHO CPD webinar "Mediation on Labour Disputes & Discrimination Cases" (23 October)
- IAM-HKMC Mediation Symposium (27-30 October)
- Mediation Conference 2020 (6 November)
- ICC Mediation Competition Hong Kong (11-14 November)

MENTAL HEALTH LAW COMMITTEE

The Mental Health Law Committee was set up in March to, inter alia, raise awareness on mental health law amongst legal practitioners so as to help them with, inter alia, handling their clients' cases involving mental health law issues, such as applications under the *Mental Health Ordinance* (Cap. 136) ("MHO"). The Committee aims to keep general members up to date on the most recent developments in mental health law in Hong Kong and abroad. On the other hand, it considers policy proposals for reform of the mental health regime in Hong Kong.

To assist the deliberation, the Committee set up task groups to focus the discussion on specific areas of mental health issues and training.

The Committee met four times this year, in addition to task group meetings and email communication.

Review of the Mental Health Ordinance

The MHO was first enacted in 1960 to amend and consolidate the law relating to mental incapacity and the care and the supervision of mentally incapacitated persons. It has not been substantially reviewed in the past five decades. The Practice Direction issued by the Judiciary on mental health matters, viz. Practice Direction 30.1, was released in October 2005, which was also a long time ago. In the past 10 years or so, Hong Kong is having an aging population with a longer life expectancy. The need for a more modern mental health law regime is imminent, and is underscored by the emphasis that the Hong Kong SAR Government has placed in the policy addresses in recent years.

One of the major tasks for the Committee was to review and update the MHO. Two task groups were set up to review specific parts of the MHO. Each task groups had met on various occasions, and discussed the MHO. They were to report to the Committee in due course.

Apart from the review of the MHO, with the assistance of the Official Solicitor's Office, the Committee discussed the current Practice Direction 30.1 and proposed amendments thereto, with a view to improving and updating the practices thereof for the benefit of the Court (in e.g. hearing the MHO applications), the legal profession and the general public. In the course of deliberation, the Committee worked with and received helpful comments from other specialist committees of the Law Society. The Committee was consolidating the views received thereon.

Course and Seminars

Another task group set up under the Committee was tasked with the review of and the making of recommendations on training for general members on mental health law subjects. This year the sub-group already met on a few occasions, and had provided views to the Committee.

The Committee, upon hearing the above, was discussing the training with other specialist committees of the Law Society, as well as the Academy of Law. It was also liaising with other stakeholders with a view to collaborating with them to hold seminars and other courses on mental health law issues and practices.

Circulars on Mental Health Law Matters

The Committee had been reviewing various members' circulars on mental health law and practices, and was updating those circulars to be released.

i. A Webinar on Advance Directive

The Chairman and members of the Committee spoke on various occasions on mental health law matters. For example, the Chairman delivered a presentation on a webinar on "*Living Will, Living Well? Advance Directives Across Asia*" on 30 September and 2

October. The webinar was to encourage a better understanding of advance directives. The Law Society was one of the supporting organisations of the seminar. The webinar was well-received.

ii. Other collaborations and Reviews

On top of the above, the Committee also worked with other specialist committees to review different matters related to mental health and court proceedings thereof. Among other things, the Committee considered the enduring power of attorneys; the documentation in use by the UK Court of Protection etc. The Committee on the other hand took note of the Judiciary's proposal on the use of information technology for court's hearings.

PERSONAL INJURIES COMMITTEE

The Committee had extensive discussions this year on a number of issues related to personal injuries matters. In addition to its internal meetings, the Committee met the Judiciary and discussed with other stakeholders issues of mutual interest.

Some of the issues discussed are summarised in the following.

(a) Employees Compensation Assistance Fund Board

The Committee has been taking stock of the deliberations on the *Employees Compensation Assistance Ordinance* Cap. 365 ("ECAO"). The ECAO provides for the administration of the Employees Compensation Assistance Fund, which is a last resort fund for injured employees who establish liability for a work-related injuries but who are unable to recover from their employers or any insurer. The ECAO was amended in 2002 due to the Fund's limited financial means. The Committee considered that the ECAO should be reviewed and amended, in order for the Fund to pay out fuller common law damages, interest and costs to uninsured plaintiffs to ensure that the injustice they now suffer from is remedied. The Committee accordingly made representations to Government. As an interim, the Committee urged the Secretary for Labour and Welfare to increase the limits for relief payments to reflect the larger awards now being made in personal injury cases.

(b) Mediation Funding for Personal Injuries Claims

The Committee continued its discussion with the DOJ on third party funding for mediation for personal injuries claims. It has on various occasions expressed concerns on the above proposed funding regime. Among others, the Committee considered that mediation funding could be abused by claim agents to "legalise" their touting businesses, and in July has sent to the DOJ further views. On the other hand, together with the Mediation Committee of the Law Society, the Committee has sourced views from other jurisdictions on mediation funding, and was reviewing the matter further.

(c) Consultation on Interpreters

A consultation paper issued in October by the Ombudsman on interpreter's services in Hong Kong was brought to the attention of the Committee. The Ombudsman, in her investigation into the interpreters' service, took the view that the Hong Kong SAR Government has not compiled information about outside interpreters for foreign languages and Chinese dialects (other than Putonghua and Cantonese) for hiring by the Government bureau or department and related public organisations. Moreover, the qualification requirements for such interpreters were said not to be uniform across the Government. The Committee in general agreed that the outside interpreters' services should be improved. A joint submission with views from other specialist committees was produced to respond to the Consultation Paper.

(d) Consultation on Outcome Related Fees Structures

The Committee in December received another consultation paper produced by the Law Reform Commission ("LRC") on Outcome Related Fee Structures ("ORFS") for Arbitration. Noting that the recommendations in the paper were produced to preserve and promote Hong Kong's competitiveness as a leading centre for arbitration service to enable Hong Kong to compete on an even playing field with other popular arbitral seats which allow some form of ORFS, the Committee focused its study on the proposal that personal injury claims should be treated differently from other claims in arbitration, and whether lawyers (as defined in the paper) should be prohibited from entering into ORFS in respect of personal injury claims that are submitted to arbitration. The views of the Committee were being finalised, to be consolidated with the comments from other specialist committees.

(e) Bereavement Awards under the Fatal Accidents Ordinance Cap. 22

The Committee had various exchanges with the DOJ on the mechanism to try to quantify societal changes, for the purpose of uplift and review of the bereavement awards under the *Fatal Accidents Ordinance* (Cap. 22). Together with the Hong Kong Bar Association a telephone meeting with the DOJ was arranged in May whereby different approaches to the quantification of the awards were broached.

(f) Amendments to the Employees Compensation Rules

With a view to improving the employees' compensation regime to, for example, better utilise the resources of the Judiciary and also to save time and cost of the parties, the Committee was reviewing the *Employees Compensation Ordinance* (Cap. 282) and its subsidiary legislation. The discussion was ongoing.

(g) Court Practices

The Committee has been kept abreast of the different court practices being put in place throughout the year, such as the proposed implementation of a case settlement conferences for District Court actions, and the various court closures during General Adjourned Period at the time of COVID-19 pandemic. In addition, the Committee took part in the discussion with the Judiciary Administration on the use of court technology for electronic filing. The Committee, on the other hand, was considering possible amendments to Practice Directions 18.1 and 18.2, as well as suggestions to try to streamline the resolution of personal injuries claims.

(h) Membership

To help the Committee's work, the Committee co-opted three members this year. On the other hand, a committee member joined the Mental Health Law Committee of the Law Society to assist their discussion on mental health matters.

The Chairman of the Committee sits on the LRC Sub-Committee on Periodical Payments for Future Pecuniary Loss in Personal Injury Cases.

PROBATE COMMITTEE

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

The Committee considered various matters on probate law and practices. This year, the Committee reviewed a consultation launched by the Food and Health Bureau on end-of-life care legislative proposal regarding "advanced directives" and "dying in place" and provided a detailed submission thereon.

Apart from the above, the Committee considered the following and offered views:

- Third Party Funding for Mediation
- Ticketing System for users of the Probate Registry
- Legalisation of Overseas Documents for Use in Hong Kong
- Remote witnessing for wills
- Issues relating to enduring powers of attorney
- Practice Direction 30.1.

Member's circulars where relevant were issued on the above.

The Committee attended to member's 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*. About 508 will search enquiries were received and processed this year.

To assist the general membership, the Committee reviewed the will search application form and provided updates thereto. The updated application form was issued and has been in use since May.

One Committee member helped the Academy of Law with CPD training and delivered presentations on Intestate and Testate Succession, in August and in September.

For the benefit of the general public, the Committee finalised and published an information pamphlet on basic information on probate practice. The pamphlet was released in April.

PROPERTY COMMITTEE

The Committee met on a monthly basis to consider issues and legislative proposals on conveyancing practices. It also engaged with different Government departments and other organisations to discuss property-related issues, and where appropriate, issued member's circulars on various subject matters. This was in addition to the routine consideration and determination of applicants submitted from time to time by the general members for waivers of Deed of Mutual Covenant Guidelines and applications for exemptions/deviations from forms of Agreement for Sale and Purchase as approved under Rule 5C of the *Solicitors Practice Rules* (Cap. 159H).

The Committee co-opted a member to help with its workload.

Some of the matters considered by the Committee this year are summarised below.

(a) Land Title Ordinance

One of the matters being extensively considered by the Committee was the *Land Titles Ordinance*, Cap. 585 ("LTO"). With a view to an early implementation of the LTO, the Committee has been having in-depth discussion and meetings both internally and with the Land Registry and have made various submissions on the legal, technical and procedural issues to the Land Registry ("Registry").

(b) Property Frauds

Another important matter the Committee had been discussing at length was imposter frauds in conveyancing transactions.

The Committee had numerous meetings to consider those issues arising from the UK Court of Appeal judgments in *P&P Property Limited v Owen White & Catlin LLP*, *Crownvent Limited* and *Dreamvar (UK) Limited v Mishcon De Reya (a firm)*, *May Monson Solicitors Limited* ([2018] EWCA Civ. 1082). On the other hand, it noted the subject matter was being reviewed by a dedicated Law Society working party as there are implications on transactions other than conveyancing transactions of which money passes through solicitors. The Committee rendered views to assist the deliberations of the Working Party.

(c) Problems Faced by Conveyancing Practitioners during COVID-19 Pandemic

The Committee was conscious of the impact of the COVID-19 pandemic on completion of conveyancing transactions, and the temporary closure of the Land Registry and the Inland Revenue Department during the pandemic. It has liaised with the Land Registry and other authorities, for example, the First Hand Residential Properties Authority, the Legal Advisory and Conveyancing Office and the Estate Agent Authority, for interim and long-term measures to be put in place at the time of pandemic.

(d) Land Registry's Re-scanning of Block Government Leases

The Committee had a meeting with the Registry in September to specifically discuss the re-scanning of the Block Government Leases by the Registry. To assist members in their conveyancing practice, the Committee procured from the Registry a list of re-scanned Block Government Leases and had relayed the list (to be updated periodically) to the general membership.

(e) Undue Influence – Guidelines on Solicitors' Duties

The Committee revised the Guidelines on Solicitor's Duties in relation to Security Transactions with Potentially Unduly Influenced Party to assist members to fulfill their professional obligations in the conduct of "3-party" security transactions, which are susceptible to claims of undue influence. It had further considered the issue on whether face-to-face meetings referred to in the Guidelines could be substituted by video conference through the use of (for example) Zoom or Skype. Two circulars on the matter, respectively in April and in September, were published.

(f) Mental Health – Practice Direction 30.1

The Committee rendered assistance to the Mental Health Law Committee on the review of the draft orders under Annex F of the Practice Direction 30.1, which relates to a mentally incapacitated person's interests in his or her landed property and lease.

(g) Attestation of Conveyancing Document

The Committee reviewed the conveyancing practice for documents executed abroad to be attested/legalised and issued a circular in October on the matter.

(h) Rating (Amendment) Bill 2019

The Government introduced the above Bill into the Legislative Council for scrutiny in October 2019. The Bill proposes that developers of first-hand private residential units with occupation permits issued for 12 months or more should furnish annual returns to the Rating and Valuation Department on the status of the units. If the units are unsold and have not been rented out 183 days or more in aggregate during the past 12 months, the developers will need to pay Special Rates in respects of the units. The proposed Special Rates are chargeable at a flat rate of 200 percent of the rateable value of the relevant unit.

The Committee kept a close watch of the subject matter and noted, among other things, that the Bills Committee of the Legislative Council in June discontinued its scrutiny work on the Bill.

(i) Property Management Services Ordinance

Concerns on the scope of the licensing regime for and possible impact upon of the *Property Management Services Ordinance* (Cap. 626) the legal profession were raised by the Committee and queries were relayed to the Property Management Services Authority ("PMSA") for clarifications. Upon receiving responses from PMSA, the Committee issued a circular in February to the general membership. Two circulars on the subject matter were further issued in March and July to respond to members' queries and to provide updates on the licensing regime.

(j) Other property-related issues

On top of the abovementioned circulars, the Committee considered various practice-related matters and where appropriate issued circulars to general members on, inter alia, the latest practice notes issued by the Buildings Department, the Lands Department, the Planning Department, and the Land Registry. These included:

- the Lands Department Practice Notes
- LACO Circular Memorandum
- Land Registry Circular Memorandum
- Property Management Services Authority Licensing Regime
- Public Services of Land Registry
- Stamp Duty – Residential Property Transaction Involving Persons who are spouses of any same-sex marriage legally recognised elsewhere
- Attestation of Conveyancing Documents COVID-19 Pandemic
- Guidelines on Solicitors' Duties in relation to Security Transactions with Potentially Unduly Influenced Party
- Home Ownership Scheme Secondary Market Scheme
- Hong Kong Housing Authority – COVID 19 Pandemic
- Sale and Purchase of Property – Payment of Rates and Government Rent
- Guideline on Solicitors' Duties in relation to Security Transactions with Potentially Unduly Influenced Party – Face-to-Face Meetings
- Land Registry – Expiry of the 2009 Version of E-Memorial Form
- Attestation of Conveyancing Documents
- Stamp Duty Ordinance – New Stamp Duty Measure
- the Consultation Paper on Legislative Proposals for Electronic Fees

(k) Non-Consent Scheme

The Committee worked closely with the Working Party on Review of Non-Consent Scheme Forms to continue attending queries from the Land Advisory and Conveyancing Office of the Lands Department on the following:-

- Amendments to two agreements for sale and purchase of first-hand residential properties in uncompleted and completed developments; and
- Amendments to the two sub-sale and purchase agreements.

(l) Pamphlets

The Committee updated two information pamphlets for the Law Society, namely "Purchase of Residential Premises" and "Protection for Domestic Tenants". The updated pamphlets were released in May.

External Work

i. Land Registry

The Chairperson of the Committee sat on the Land Titles Ordinance Steering Committee. The Steering Committee oversees a LTO Review Committee and a Title Registration Education Committee. The Law Society was also represented on the above two committees.

Apart from the above, the Committee also had representatives on other external group and committee as follows:-

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

ii. 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 sat on the Service Providers Committee and the Promotion Committee set up under the Platform.

RETIREMENT SCHEMES COMMITTEE

The Committee conducted its business by emails.

During this year, the Committee considered / noted the following:

Occupational Retirement Schemes (Amendment) Ordinance ("Ordinance")

The Ordinance was passed by the Legislative Council on 17 June. The Committee reviewed the operation of the Ordinance and in August provided comments to the Mandatory Provident Fund Schemes Authority.

MPFA's Code on Disclosure for MPF Investment Funds ("Code")

The Committee on its own initiative considered the Code. After a careful review, it in August proposed updates and comments to the Mandatory Provident Fund Schemes Authority on the Code.

Consultation on legislative amendments for implementation of eMPF Platform

In July, the Committee attended a meeting arranged by the Mandatory Provident Fund Schemes Authority to consider the proposed legislative amendments on "*eMPF Platform*". This was followed by a meeting of the Panel on Financial Affairs of the Legislative Council to be held in January 2021 to further discuss the eMPF Platform projects and related matters. The Committee was keeping a close watch on the development.

In addition, the Committee considered the following updates and amendments with regard to the Mandatory Provident Fund ("MPF") schemes, and issued circulars to general member, which included, inter alia:

- Guidelines on Equities and other Securities (Guidelines III.2)
- Guidelines on Default Investment Strategy (Guidelines III.14)
- MPF Intermediary Registration and Notification of Changes (Guidelines VI.1)
- Revisions to Mandatory Provident Fund Guidelines on Giving of Notices or Documents by Electronic Means (Guidelines IV.26)

External Representation

The Committee continued to be represented in MPFA Guidelines Committee.

REVENUE LAW COMMITTEE

The Committee conducted its business by emails.

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

- The legislative exercise to revise Hong Kong's *Automatic Exchange of Financial Account Information in tax matters* ("AEOI") implementation arrangement was noted having regard to the recommendations of the Organisation for Economic Co-operation and Development ("OECD"). The *Inland Revenue Ordinance (Amendment of Section 50A) Notice 2020* and the *Inland Revenue Ordinance (Amendment of Schedule 17D) Notice 2020* were gazetted in April and were tabled at the Legislative Council for negative vetting.
- The *Exemption from Salaries Tax and Profits Tax (Anti-epidemic Fund) Order* was gazetted and took effect in May. The Order sought to implement tax exemption from the year of assessment 2019-20 to most of the financial assistance or relief under the Anti-epidemic Fund provided to businesses or individuals. A circular to general membership was issued in June.
- The *OECD's Base Erosion and Profit Shifting (BEPS)' 2.0 Proposal*, which was a new initiative, comprised two pillars, namely digital tax and global minimum tax. The Chairman of the Committee attended a focus group meeting arranged by the Financial Services and The Treasury Bureau in November.
- The *Stamp Duty (Amendment) Bill 2020* was introduced into the Legislative Council in December. The Bill sought to abolish the Doubled Ad Valorem Stamp Duty on non-residential property transactions, with effect from 26 November.
- Health and other concerns for users at the Inland Revenue Department Headquarters – concerns were raised with the long queues for tickets outside the Revenue Tower during COVID-19.

2020-2021 Government Budget Public Consultation

The Committee provided views on 2020-2021 Government Budget Public Consultation, with respect to the stamp duty on residential property transaction in Hong Kong. Views of the Committee, together with views of other specialist committees, were consolidated into a submission. That was sent to the Financial Secretary in February.

The Chief Executive's Policy Address 2020 Public Consultation

The Committee provided views on the Chief Executive's Policy Address 2020. The Committee was of the view that amid the COVID-19, it would be an appropriate time for the Government to consider a review of the tax system. Views of the Committee, together with views of other specialist committees, were consolidated into a submission. The submission was sent to the Financial Secretary in September.

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") that the wholly owned subsidiary of HKMC viz. the HKMC Insurance Limited would extend its Reverse Mortgage Programme to accept property(ies) of a local private limited company wholly and directly owned by a borrower as security for a reverse mortgage loan. A member's circular on the above, which also includes an updated Counselling Protocol, Counselling Questionnaire and Counselling Certificate, was issued in June.

TRANSPORTATION AND LOGISTICS COMMITTEE

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

Consultation Paper on the Proposed Application of the United Nations Convention on Contracts for International Sale of Goods to Hong Kong

The DOJ in March issued a consultation paper on the *Proposed Application of the United Nations Convention on Contracts for International Sale of Goods (CISG) to Hong Kong Special Administrative Region*. The CISG is a treaty which provides a set of uniform rules governing the formation, performance and remedies for breach of contracts for the international sale of goods within its scope. The DOJ sought the public's views on whether the CISG should be applied to Hong Kong, and if so, its implementation in Hong Kong. The Committee and the Civil Litigation Committee jointly reviewed the consultation paper.

Members of the two Committees attended a briefing session arranged by the DOJ in June. A joint written submission was prepared and submitted to the DOJ in October.

Proposed Legislative Amendment Exercise to the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap.434)

The Committee, in August, sent a follow-up letter to the Marine Department regarding the progress of the proposed legislative amendments to the *Merchant Shipping (Limitation of Shipowners Liability) Ordinance* (Cap.434). A reply from the Marine Department was received in September. The Committee would continue to keep this matter under review.

Issues relating to Transportation and Logistics Industries

The Committee also considered the following issues relating to the transportation and logistics industries:

- a consultation paper on *Outcome Related Fee Structures for Arbitration* issued by the Law Reform Commission's Outcome Related Fee Structures for Arbitration Subcommittee, providing input for the draft written submission to be made by the Law Society to the LRC
- the granting and execution of warrant of arrests against vessels arriving in the Hong Kong SAR during COVID-19. A meeting with the Judge in charge of the Admiralty List, the Registrar of the High Court, the Chief Bailiff, and other stakeholders to discuss the above was being scheduled.

WORKING PARTY ON CHARITIES AND TRUST

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

The Working Party was reviewing the charities and trust law regimes in Hong Kong. It was working on a paper setting out the pressing issues on charities and trust law and was to provide recommendations on how to address those issues for consideration of the Council.

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 continued to monitor the operation and discuss legal issues in relation to the application of the *Enduring Powers of Attorney Ordinance* (Cap. 501) and considered and offered comments to the Government on the above issues.

The Working Party also closely worked with other committees such as the Probate Committee and the Mental Health Law Committee on matters of mutual relevance.

WORKING PARTY ON INTERPRETERS

In October, the Ombudsman initiated a direct investigation into the Government's arrangements for engaging outside interpretation services and invited public views. The Working Party sought views from the Civil Litigation Committee, the Criminal Law and Procedure Committee, the Legal Aid Committee, the Personal Injuries Committee and the Constitutional Affairs and Human Rights Committee and produced a submission in response. The submission was sent to the Ombudsman in November.

The above submission had also been sent to the Judiciary, the Equal Opportunities Commission and the various bureaux and departments of the Government (viz. the Department of Justice, the Legal Aid Department, the Duty Lawyer Scheme, the Civil Service Bureau and Home Affairs Department), as it was relevant that they were to be advised of the Law Society's stance on the matter.

WORKING PARTY ON JUDICIARY'S IT PLAN

The Working Party on Judiciary's IT Plan was tasked with reviewing and responding to the Judiciary's consultation on its iCMS and its IT plan. The Working Party composed of members from the Civil Litigation Committee, the Criminal Law and Procedure Committee and other specialist committee. Its members attended a demonstration by the Judiciary on the key interfaces and features of iCMS in September.

The Working Party, together with various specialist committees, produced two submissions, respectively in April 2019 and July 2019. The Working Party also noted that the *Court Proceedings (Electronic Technology) Bill* was passed in July.

The Working Party was dissolved in October.

WORKING ON REVIEW OF NON-CONSENT SCHEME FORMS

The Working Party conducted meetings twice and conducted the rest of its business by emails.

The Working Party continued with further review of the draft agreement forms for use of the non-consent scheme forms:-

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

Amendments to the above agreement forms had been proposed to the Property Committee and been considered by Council. Upon deliberations and endorsement, those were submitted to the Chief Justice for approval.

The Working Party keeps in view, among others, developments and updates on law and practices in conveyancing as well as agreement forms and amendments issued by the Legal Advisory and Conveyancing Office of the Lands Department on agreements for sale and purchase of residential and non-residential properties under the Consent Scheme.