



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

The Standing Committee oversees the work of 32 Committees and 13 Working Parties. In 2014, it met formally on six occasions and received reports from various specialist committees on solicitors' practices.

Consultation on resolution regime for financial institution in Hong Kong

In January, the Financial Services and the Treasury Bureau ("FSTB"), in conjunction with the Hong Kong Monetary Authority, the Securities and Future Commission and the Insurance Authority, published a consultation paper on proposals to set up a resolution regime for certain financial institutions operating in the banking, securities and futures and insurance sectors, as well as for certain financial market infrastructures in Hong Kong. As the issues involved in the consultation were complicated and commanded a high level of policy thinking, a working party was set up comprising members from the specialist committees on financial institution regulations, insurance, insolvency and litigation to consider the paper and make recommendations on submissions to the Government.

The Practice on taxation of costs

The Standing Committee noted comments from members and various Law Costs Draftsmen on the court taxation practice. It agreed that this matter should merit thorough consideration and invited the Civil Litigation Committee to look into the matter. The matter will be further deliberated upon following the receipt of further feedback and reports.

Contingency fees and litigation funding

The attention of the Standing Committee was brought to a proposal to introduce litigation funding to Hong Kong. At the same time, it also received an invitation from the Council to re-examine the subjects of conditional fees and contingency fees; conditional fees were considered about a decade ago by a Working Party of The Law Society.

The above issues were inter-related and complicated; they were important not only to general practitioners, but also to Hong Kong as an international dispute resolution centre. The Standing Committee convened a new Working Party comprising members with experience and expertise from different committees to study the issues and report to the Standing Committee.

Promotion of Enduring Powers of Attorney

The Standing Committee received suggestions from the Department of Justice ("DOJ") on the promotion of Enduring Powers of Attorney ("EPAs"). It agreed to the importance of enhancing the awareness of EPAs among practitioners and a new Working Party was established to oversee the relevant work. The Working Party was tasked with promoting awareness of EPAs, considering ways to help practitioners to better understand EPAs. The Working Party had its first meeting in April. It was liaising with the Hong Kong Academy of Law Limited ("Academy") with respect to the planning and the organising of seminars.

Annual review of membership and co-option exercise

The Standing Committee assisted its various specialist committees in their annual reviews of membership. Where necessary, the Standing Committee made suggestions and recommendations to the Council for its deliberation. The Standing Committee also helped with the vetting exercises with respect to the candidacy for co-option to the various specialist committees, in order to oversee and maintain such committees' expertise to cope with the increasing workloads.

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Working Party on Charities

The Standing Committee reviewed and revised the terms of reference of the Working Party on Charities to expand its scope to cover trust practices, so that trust practitioners could have a platform to exchange views and the Council could have the input and expert views relating to trust issues.

Other practice issues

The Standing Committee received and considered views and comments on various practice issues from specialist committees, including the following:

- cessation of practice
- the issue of unused material in criminal trials
- compensation for wrongful conviction
- complaint as to champerty

Members of the Standing Committee and their meeting attendances during the year:

Brian W. GILCHRIST (<i>Chair</i>)	6/6	Gavin P. NESBITT	4/6
Simon H. BERRY	6/6	Kenneth H.S. NG	3/6
Denis G. BROCK	4/6	Sylvia W.Y. SIU	4/6
E. John DAVISON	5/6	Cecilia K.W. WONG	6/6
HO Veng Ian	4/6	Simon W.L. WONG	3/6
IP Shing Hing	6/6	Eric H.Y. WOO	4/6

Secretary: Director of Practitioners Affairs

ARBITRATION COMMITTEE

The Committee met six times and reviewed various matters on arbitration, including the following.

Co-option of New Members

With the increasing importance of arbitration practice, the Committee considered it important to solicit input from members of different practising backgrounds to assist in its deliberation, particularly those working in small and medium sized local law firms. With this aim in mind, the Committee conducted a co-option exercise in April to co-opt additional members to the Committee, as well as other applicants to an advisory group under the Committee to provide input on specific topics.



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Promotion of Solicitor-Arbitrators

The Committee discussed the following initiatives which aimed at promoting members' practices in arbitration:

(a) **Law Society Panel of Arbitrators**

The Committee considered that The Law Society should establish its own panel of arbitrators and resolved to make a recommendation to set up an Arbitrators Admission Committee ("AAC") in order to oversee tasks relating to the establishment and maintenance of the Panel. The above recommendation was endorsed by the Standing Committee. The Committee is now organising the setting up of the AAC.

In relation to the promotion of arbitration practices among general members, the Committee had also been liaising with the Board of Directors of the Hong Kong Solicitors' Indemnity Fund Limited ("HKSIFL") on issues such as policy coverage.

(b) **Law Society Sample Arbitration Clauses**

The Committee took the view that one of the effective ways to promote arbitration as a means to resolve commercial disputes was to encourage and to assist members and the business sector to include an applicable arbitration clause in their commercial documents. In this regard, the Committee is now working on a template clause.

(c) **Networking for Members**

The Committee organised a Members' Gathering at the Clubhouse of The Law Society on 2 December. Around 45 members and guests, including representatives from the DOJ, attended the gathering. The participants shared news on the latest developments and practices of arbitration in Hong Kong, the Mainland and other places around the world.

Consultations on various issues and practices in arbitration

The Committee considered the following consultations:

(a) **HKIAC Domestic Arbitration Rules (2014 Edition)**

The Committee considered this Rules and provided comments to the Hong Kong International Arbitration Centre ("HKIAC") in March.

(b) **Pilot Scheme for Arbitration on Land Premium**

The Committee reviewed the proposal under this Scheme and offered views on the following areas:

- Rules and Regulations
- Appointing Authority
- Panel of Arbitrators
- Arbitral Awards
- Arbitration Hearing
- Promotion of the Scheme

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(c) *Draft Arbitration (Amendment) Bill 2015*

The Committee studied the draft Bill issued by the DOJ in June and rendered its various suggestions to the DOJ in response.

(d) Consultation regarding Amendments to the Terms of Reference of the Financial Dispute Resolution Centre

The Committee considered the proposed amendments to the Terms of Reference of the Financial Dispute Resolution Centre, which allowed for information disclosure for its disciplinary proceedings. Comments of the Committee were sent to the Mediation Committee of The Law Society for consideration and preparation of a consolidated reply.

Participation in Arbitration and Related Events

The Committee coordinated participation in the following events in promoting arbitration.

(a) *International Council for Commercial Arbitration Congress 2018 (“ICCAC”)*

Support to the ICCAC was rendered by the Committee, in order to assist the HKIAC to bid for the hosting of the ICCAC in Hong Kong in 2018.

(b) *Hong Kong Legal Services Forum 2014—Qingdao (16 September)*

This Forum attracted more than 600 legal practitioners, arbitrators and other professionals from the Mainland and Hong Kong. They exchanged views and information on various legal issues on arbitration, including maritime arbitration.

(c) *2014 Annual Conference of In-House Lawyers (24 September)*

More than 400 participants attended the Conference where views were exchanged on various areas relating to in-house lawyers’ practices. A member of the Committee attended the Conference and delivered a presentation on arbitration.

Members of the Committee:

Huen WONG (*Chair*)

Denis G. BROCK

Mason Y.K. CHING (*joined in April*)

Dominic Y.K. LAI (*joined in April*)

Lily Y.Y. LAI (*joined in April*)

John Y.C. LEE

Amy P.S. LO (*joined in April*)

Catherine L.M. MUN (*joined in April*)

Billy Y.K. NG (*joined in April*)

Robert C. RHODA

Philip ROMPOTIS (*joined in April*)

Thomas S.T. SO

Sam K.S. TSUI (*joined in April*)

Kenneth W.Y. WONG (*joined in April*)

Eric H.Y. WOO (*joined in April*)

Steven W.Y. YIP (*joined in April*)

Secretary: Director of Practitioners Affairs



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

CONSTITUTIONAL AFFAIRS AND HUMAN RIGHTS COMMITTEE

The Committee met nine times during the year.

Constitutional Developments

The Committee had a number of meetings to discuss the *Consultation Document on Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016* published by the Government in December 2013. A submission was prepared and released in May. Among other things, the role of the Nominating Committee, public participation in the process of selecting the Chief Executive, the retention of functional constituencies and increase in the number of geographical seats were broached.

The Standing Committee of the National People's Congress endorsed *the Decision on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016* ("NPCSC Decision") in August, prescribing the framework for the selection of the Chief Executive in 2017. The Government was expected to launch another Consultation addressing specific issues in relation to the Chief Executive election in 2017 within the framework of the said NPCSC Decision. The Committee has considered and discussed the relevant issues and will continue to monitor the situation and assist the Council in preparing submissions in response to the Consultation Document.

Refugee asylum seekers

Following the court cases of *Prabakar* [2004] 7 HKCFAR 187, *FB* (2009) 2 HKLRD 346, *Ubamaka Edward Wilson* (FACV15/2011), *C and others* (FACV18-20/2011) and other related cases, the Government implemented a Unified Screening Mechanism to assess non-refoulement claims. The Committee noted that there could be human rights issues potentially arising from the scheme and also implications from the various international convention on torture claims and refugee law. The Committee, jointly with Hong Kong Bar Association ("Bar Association"), has written to the Secretary for Security to seek clarifications and to make suggestion for improvement.

On the other hand, to help members to understand and to grasp the details of this new screening regime, the Committee worked with the Academy to organise a 4-day training course in February on torture claims and the screening mechanism. This was followed by another seminar on the law of refugee in September.

Marriage (Amendment) Bill 2014

After the Court of Final Appeal's judgment in *W v the Registrar of Marriage* (FACV 4/2012), the Government proposed the *Marriage (Amendment) Bill 2014* to amend the *Marriage Ordinance* (Cap. 181) to implement the court order made therein, concerning marriage registration by post-operative transsexual persons in Hong Kong. The Amendment Bill generated much discussion within the Committee as well as the Family Law Committee which was also invited to examine the bill.

The Committee noted with concern the constitutional issues potentially arising from the requirement for the full surgical process as proposed. In the submission jointly produced with the Family Law Committee, the Committee pointed out that the Amendment Bill should be considered only as an interim measure. It invited the Government's attention to the UK *Gender Recognition Act 2004* and suggested the Government to consider a separate set of legislation to deal with all those related issues.



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EOC consultation

The Committee worked with various specialist committees to review a consultation paper issued by the Equal Opportunities Commission (“EOC”) to propose a major revamp on the discrimination law regime in Hong Kong. After a meeting with the EOC in August and various internal meetings, a comprehensive submission jointly produced with other specialist committees was prepared and sent to the EOC.

Stalking

The Committee received a consultation paper on criminalisation of stalking. It set up a task group to review the proposal, together with a task group from the Criminal Law and Procedure Committee.

The Committee expressed concerns on the constitutional implication arising from the proposal, including any curtailment of the freedom of speech, freedom of assembly and also press freedom of reporting. In the course of preparing a submission to respond to the consultation paper, the Committee was advised that the legislative process was aborted by the Government. The Government suggested among other things that there have already been improvement in the policy of combating domestic violence, apparently reducing the need to legislate.

Other reviews

The Committee also attended upon the following and where appropriate, made recommendations to the Council.

- Disqualification of candidates with unserved sentence
- White paper on the practice of one country two system in the HKSAR
- Human Rights Forums on 24 January and 31 July

Members of the Committee:

Thomas S.T. SO (*Chair*)

BUT Sun Wai

Charles C.C. CHAU (*resigned in November*)

John J. CLANCEY

Mark D. DALY

James D. FRY

Lester G. HUANG (*resigned in June*)

Eric C. IP

IP Shing Hing

Raymond C.P. SIU

K.F. YAM

Dieter YIH (*resigned in August*)

Melissa K. PANG (*joined in December*)

Junius K.Y. HO (*joined in December*)

Amirali B. NASIR (*joined in December*)

Nick CHAN (*joined in December*)

Secretary: Director of Practitioners Affairs



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CIVIL LITIGATION COMMITTEE

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

Consultation Papers

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

(a) *Administration of Justice (Miscellaneous Provisions) Ordinance 2014*

The *Administration of Justice (Miscellaneous Provisions) Bill 2014* was gazetted on 25 April.

Part 5 of the Bill sought to repeal section 22(1)(a) of the *Hong Kong Court of Final Appeal Ordinance* (Cap. 484) so that all appeals in civil causes or matters to the Court of Final Appeal (“CFA”) become subject to discretionary leave of the Court of Appeal or the CFA.

The Committee indicated support of the repeal of section 22(1)(a), and advised the Bills Committee accordingly.

The Bill was subsequently passed by the Legislative Council and, save for Part 7, came into effect on 24 December.

(b) **Pilot Scheme For Discovery and Provision of Electronically Stored Documents in cases in the Commercial List – Draft Practice Direction**

The Committee considered the draft Practice Direction, which was premised upon a set of related UK Practice Directions, but took into account procedures in other jurisdictions including Australia and Singapore. Feedback was provided to the Judiciary’s working group.

(c) **Review on Adjudication of Equal Opportunities Claims by the District Court – Draft Practice Direction**

The Committee received from the Judiciary a consultation paper in March on a draft Practice Direction for adjudication of Equal Opportunities Claims in the District Court. The draft Practice Direction was prepared on the basis of the legislative amendments to the *District Court Equal Opportunities Rules* (Cap. 336G). The Committee and the Employment Law Committee made a joint submission to, *inter alia*, raise concerns on discovery.

(d) **Information Technology Strategy Plan (“ITSP”)**

Another consultation from the Judiciary was on its proposed ITSP for the application of information technology and also for the implementation of e-services. The Committee considered issues such as time sensitivity, identity authentication, document authentication, payment options and handling of documents for use in litigation. A joint submission with the Criminal Law and Procedure Committee and the Technology Committee was made.

(e) **Consultation Paper on Stalking**

The Committee reviewed the proposed anti-stalking legislation proposed by the Government in its consultation paper on criminalisation of stalking in civil context. The consultation paper was also reviewed by the Constitutional Affairs and Human Rights Committee and the Criminal Law and Procedure Committee.

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(f) **Discrimination Law Review**

The EOC released a consultation paper on Discrimination Law Review; this constituted a major overview of the anti-discrimination law regime. The Committee reviewed the consultation questions on court proceedings, powers and the constitution of the EOC. The Committee indicated support in principle, and a detailed joint submission was made together with other specialist committees.

(g) *Sex Discrimination (Amendment) Bill 2014*

The Committee and the Employment Law Committee reviewed the *Sex Discrimination (Amendment) Bill 2014* which sought to amend the *Sex Discrimination Ordinance* (Cap. 480) to extend the protection of the Ordinance to cover sexual harassment of service providers by customers. A joint submission was made to the relevant Legislative Council Bills Committee.

(h) *Late Payment of Commercial Debts (Interest) Act 1998 in the UK*

The Committee noted suppliers in Hong Kong could only claim interest on late payments either if interest is awarded by the Court in legal proceedings, or if a right to claim interest is specifically included in a contract. Hong Kong does not have legislation similar to the *Late Payment of Commercial Debts (Interest) Act 1998* in the UK. The Committee took the view that the Law Reform Commission ("LRC") should consider the desirability of introducing similar legislation to Hong Kong. A written invitation together with the relevant background materials were sent to the LRC.

The Committee also discussed:

- conditional fees, contingency fees and litigation funding
- taxation practice in both the District Court and the High Court
- the civil monetary jurisdictional limit of the District Court

Members of the Committee:

Nicholas D. HUNSWORTH (*Chair*)

Denis G. BROCK

A. Clinton D. EVANS (*retired in August*)

Johnny C.M. FEE

D. Nigel FRANCIS

Warren P. GANESH

Patrick M.K. HUI (*joined in October*)

Richard KEADY (*joined in October*)

Joseph S.M. KWAN

Jeffrey H. LANE

Brenda F. LEE

Mark LIN

Amirali B. NASIR (*retired in August*)

Simon D. POWELL

Kenneth W.Y. WONG

Sherman C.N. YAN

Secretary: Director of Practitioners Affairs (*until February*)

Assistant Director, Practitioners Affairs (II) (*since March*)



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COMPANY LAW COMMITTEE

The Committee reviewed and made submissions on the following consultations of the Hong Kong Exchanges and Clearing Limited:

- Consultation on *Risk Management and Internal Control: Review of the Corporate Governance Code and Corporate Governance Report*
- Consultation on *Review of Listing Rules on Disclosure of Financial Information with reference to the New Companies Ordinance and Hong Kong Financial Reporting Standards and proposed minor/housekeeping rules amendments*

Jointly with the Investment Products and Financial Services Committee, the Committee reviewed and made submissions on the following:

- Legislative proposal to provide an Enabling Environment for the introduction of an Uncertificated Securities Regime
- *Securities and Futures and Companies Legislations (Uncertificated Securities Market Amendment) Bill 2014*
- Securities and Futures Commission's Consultation on *Proposed Amendments to the Guidelines for the Exemption of Listed Corporations from Part XV of the Securities and Futures Ordinance (Disclosure of Interest)*
- Hong Kong Exchanges and Clearing Limited's Concept Paper on *Weighted Voting Rights*

The Committee also wrote to the Registrar of Companies to suggest consultation on proposed amendment to the "*Companies (Disclosures of Company Name and Liability Status) Regulation*".

Members of the Committee:

Patrick C.K. WONG (*Chair*)
Elsa S.C. CHAN
Grace K.W. CHAN
CHAO Tien Yo
Julia F. CHARLTON
Paul K.Y. CHOW
Stanley CHOW

Vincent P.C. KWAN
Simon S.C. LAI
Lewis T. LUK
Gavin P. NESBITT
Psyche C.S. TAI
Frank K.F. YUEN

Secretary: Director of Practitioners Affairs (*September and October*)
Assistant Director of Practitioners Affairs (I) (*January to August, November and December*)

COMPETITION LAW COMMITTEE

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

The Committee and reviewed the following relating the implementation of the *Competition Ordinance* (Cap. 619) ("CO").

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a. *Competition (Amendment) Bill 2014*

The *Competition (Amendment) Bill 2014* was introduced into the Legislative Council in May. The Bill aimed to provide for the proper functioning of the Competition Tribunal upon the full commencement of the *Competition Ordinance*. The Committee reviewed the Amendment Bill. The Ordinance was gazetted in November.

b. *Consultation Paper on the Proposed Subsidiary Legislation and President's Directions for the Competition Tribunal*

The Committee received from the Judiciary a consultation paper setting out four sets of draft rules for the Competition Tribunal and two sets of draft President's Directions (Practice Directions). The four sets of draft rules were:

- **Competition Tribunal Rules** — this provided for the practice and procedure to be followed in the Competition Tribunal (“the Tribunal”), including:
 - i. mode of commencement of proceedings and interlocutory application;
 - ii. service of documents;
 - iii. application for intervention and addition of parties;
 - iv. case management;
 - v. procedures in the Tribunal hearings;
 - vi. jurisdiction and duties of the Registrar of the Tribunal; and
 - vii. procedures in relation to appeal, transfer of proceedings, review, enforcement and making a claim on follow-on actions
- **Amendments to the Rules of High Court, Cap. 4A** — this mirrored the provisions in Competition Tribunal Rules in the Rules of High Court.
- **Competition Tribunal (Fees) Rules** — this set out the fees payable to the Tribunal and empowered the Registrar of the Tribunal to reduce, remit or defer payment of fees.
- **Competition Tribunal (Suitors' Funds) Rules** — this specified a Competition Tribunal Suitors Fund.

The two sets of President's/Practice Directions set out the procedures in details and provided guidance to parties and the public on various procedural matters:

- **Competition Tribunal Practice Direction No. 1** — Proceedings before the Tribunal
- **Competition Tribunal Practice Direction No. 2** — Confidential Information

The Committee had a detailed study on the above and made a comprehensive submission to the Judiciary in September. A number of the said suggestions were adopted by the Judiciary.

The Judiciary also invited the Committee to a meeting of the Competition Tribunal Users Committee in December to further discuss the draft Competition Tribunal Rules and the Practice Directions.



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c. Draft Guidelines under the *Competition Ordinance*

The Competition Commission is required under the CO to develop and to issue a set of guidelines to offer guidance on:

- the manner in which the Commission is expected to interpret and give effect to the First Conduct Rule, Second Conduct Rule and Merger Rule
- the manner and form in which complaints are to be made
- the procedures it will follow in deciding whether or not to conduct an investigation and the procedures it will follow in conducting an investigation
- the manner and form in which the Commission will receive applications for a decision or block exemption order.

The Committee reviewed a consultation paper issued by the Commission in October on the above guidelines, and made a detailed submission to the Competition Commission in December on the following:

- the draft Procedural Guidelines (the Guideline on Complaints, Guideline on Investigations and Applications Guideline)
- the draft Competition Rules Guidelines (the Guidelines on the First Conduct Rule, Second Conduct Rule and Merger Rule)

Members of the Committee:

Simon H. BERRY (*Chair*)

Nick CHAN

Stephen R. CROSSWELL

Martin DAJANI

Angus H. FORSYTH

Larry L.K. KWOK

Gavin P. NESBITT

Simon D. POWELL

Henry J.H. WHEARE

David P.H. WONG

Kevin K.F. YAM

Secretary: Assistant Director, Practitioners Affairs (I) (*until February*)

Assistant Director, Practitioners Affairs (II) (*since March*)

CRIMINAL LAW AND PROCEDURE COMMITTEE

The Committee met on a monthly basis to discuss issues on criminal law and practice. Task groups were set up to review specific topics.

Biennial criminal legal aid review

The Committee has been busily engaged in the discussion on the biennial criminal legal aid review. The Committee considered that the criminal legal aid rates were still far below a reasonable level, notwithstanding the uplift by the *Legal Aid in Criminal cases (Amendment) Rules 2013* gazetted on 29 November 2013. The Committee took the view that a reasonable rate was important to attract and to pool talents for criminal legal aid work.



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In the course of deliberation on the matter, the Committee has written to the legal aid authorities in various jurisdictions to share experience and to seek views. A detailed study was prepared and was incorporated in a comprehensive submission sent to the Home Affairs Bureau (“HAB”).

The Committee was subsequently invited to a meeting with the Working Group on the Review of Criminal Legal Aid Fees system set up by the HAB on 26 March to discuss revision to the criminal legal aid rates.

RESCUE drug testing scheme

The Committee continued its discussion on the RESCUE drug testing scheme, proposed by the Action Committee Against Narcotics (“ACAN”). A submission on the consultation was prepared and was sent to ACAN for their consideration on 15 January after a further meeting with the Security Bureau on 2 January.

In July, the Committee received a consultation conclusion. The ACAN recommended that the Government should continue to engage the relevant parties in discussion, while working out the specific proposal of the proposed scheme. It also recommended that the Government should roll out proposal for operational details for a second-stage public consultation as soon as practicable. The Committee would continue to keep in view of further development in this matter.

Excepted offences under schedule 3 to the *Criminal Procedure Ordinance* (Cap. 221)

The Committee was advised on the progress on the proposed repeal of the list of excepted offences in Schedule 3 to the *Criminal Procedure Ordinance* (Cap. 221). The proposal was initially made by the Committee; it aimed to enable the court to have wider discretion so as to impose more appropriate and adequate sentence, having regard to the gravity of the offence and the circumstances of the convicted person. The Committee understood that the Panel of the Administration of Justice and Legal Services (“AJLS”) of the Legislative Council was reviewing the legislative proposal to amend the relevant provision.

Live Television Link (the witnesses outside Hong Kong) Rules

The Evidence (Miscellaneous) Amendment Ordinance 2003 was passed by the Legislative Council in June 2003. Part II of the Ordinance provided for the giving of the evidence by way of a live television link in criminal proceeding. That part of the Ordinance which set out the use of live television link in criminal proceedings had not yet come into operation, pending finalisation of the relevant rules. The Committee had been consulted previously on the draft rules and had made representation to the DOJ.

Upon invitation, the Committee attended a meeting of the Panel of the AJLS in November. It raised concerns on the apparent lack of measures to address the situations where the witnesses from abroad gave inaccurate or incomplete evidence. The proposal apparently also tipped the balance in favour of the prosecution, in situations where the defence was to apply for exclusion of prejudicial live television evidence.

Legal Visits

The Committee received a suggestion from the Police that, in the case of visits to detainees in police stations, police officers would only need to verify that the visitor was bona fide legal practitioner, irrespective of whether he or she was a barrister or a solicitor. In the case of a visit by a barrister, the suggestion went further to state that there was no need to confirm, either verbally or in writing, that the barrister was instructed by a solicitor.



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The Committee had various internal discussions on this issue, and had invited the Police and other law enforcement agents, as well as the DOJ and the Director of Legal Aid, to a meeting on 23 September to further discuss the above. The attending parties helpfully exchanged views on the subject matter.

Training programme

The Committee continued to assist in the one-day training courses jointly organised with the DOJ and the Bar Association. The training courses were held twice this year, respectively on 15 February and 6 September. They provided criminal advocacy training to participants with less than 5 years' post qualification experience and had acquired some criminal advocacy experience since admission. Subject to the satisfaction of the presiding mock court judge, participants who had successfully completed the training course would be allocated work briefs at the magistrates' courts. The Committee was pleased to note that the two training courses were well received with favourable and encouraging comments.

Unused Materials

The Committee had been invited by the Working Group on Shanghai Land Case of The Law Society to review the issues of unused materials in criminal trials. This issue was relevant to the proper discovery of evidence for the defence. A task group set up to study this issue was in the course of reviewing the reference materials in the UK, including *Criminal Procedure and Investigation Act 1986* in the UK, *the Criminal Justice Act 2003*, the related code of conduct, and also the local judgment in *HKSAR v Lau Ngai Chu* (CACC228/2001).

Stalking

A task group was set up to review, jointly with another task group under the Constitutional Affairs and Human Rights Committee, a consultation paper on criminalisation of stalking. The two sub-groups noted the proposals including the revised definition of "stalking", and the "fear for safety" threshold. Among other things, the criminal task group had reservation on the subjective mental element as proposed.

Before the Committee was to finalise its discussion and the submission, it was advised that the Government aborted the legislative process for the criminalisation of stalking.

Criminal practices and procedure

Apart from the above, the Committee also discussed various issues in criminal law and practices, such as

- single judge applications for leave to appeal in criminal cases
- supply of prosecution witnesses' lists
- notice of abandonment in the schedule to the *Criminal Appeal Rule* (Cap. 221, sub leg A)
- provision of hearing material for criminal appeal cases
- e-submission



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Members of the Committee:

Stephen W.S. HUNG (*Chair until August*)
Kenneth H.S. NG (*Chair from August*)
BUT Sun Wai
Bucky K.H. CHAN
Christopher KNIGHT (*joined in September*)
Paul M.W. LI
Fred S.N. MA

Jonathan C.Y. MOK
Andrew POWNER
Kevin STEEL
Eric TANG (*joined in September*)
Anthony R. UPHAM
Michael J. VIDLER
K.K. WONG

Secretary: Director of Practitioners Affairs

EMPLOYMENT LAW COMMITTEE

The Committee had a busy year in reviewing various amendments and issues in employment legislation. The Committee formally met twice during the year, the task group referred to below met twice and the rest of the Committee's business was conducted via emails.

Employment (Amendment) Bill 2014

The Committee reviewed the *Employment (Amendment) Bill 2014*, which proposed to introduce a statutory paternity leave regime and paternity leave pay mechanism. A submission was produced and submitted to the Legislative Council Bills Committee.

Review on Adjudication of Equal Opportunities Claims by District Court – Draft Practice Direction

The Judiciary issued a draft Practice Direction for adjudication of Equal Opportunities claims. This followed the *District Court Equal Opportunities (Amendment) Rules 2014* and aimed to provide applicable procedures. The Committee and the Civil Litigation Committee jointly reviewed the draft Practice Direction and made a joint submission to the Judiciary on, among other things, the issue of discovery. The Practice Direction was subsequently issued in August as Practice Direction SL8, and took effect in November.

Sex Discrimination (Amendment) Bill 2014

The *Sex Discrimination (Amendment) Bill 2014* amended the Sex Discrimination Ordinance ("SDO") to extend the protection against sex discrimination to cover also sexual harassment of service providers by customers and, harassment on ships and aircraft. The Committee, together with the Civil Litigation Committee reviewed the bill and made submission to the Bills Committee. The Bill was passed in June and took effect in December.



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Discrimination Law Review

In July, the EOC released an extensive consultation paper on Discrimination Law Review and sought views on how to improve and modernize discrimination laws in Hong Kong and to promote equality. The Review covered issues such as: a possible consolidation of the fair existing discrimination ordinances into one; recognition of de facto relationships; prohibition of discrimination on the basis of nationality, citizenship or HK residency; matters relating to accommodation for persons with disabilities; and harassment.

To facilitate deliberation, a briefing session by the EOC was arranged in August. In addition to persons from this Committee, other specialist committees (viz. the Civil Litigation Committee, Family Law Committee, Constitutional and Human Rights Committee, Working Party on Charities) attended the briefing.

The Committee appointed a task group of four persons, including the Chair, to study the consultation paper. That task group rendered a comprehensive submission of proposed comments on the 77 consultation questions from employment law perspective. These views, together with those from other specialist committees of The Law Society, were considered and a consolidated submission was sent to the EOC in October.

Legislative Proposals on Improvement of Corporate Insolvency Law

The Committee was consulted on the Government's legislative proposals on Improvement of Corporate Insolvency Law on the upward adjustment of the caps of the employee-related preferential payments under section 265 of *Companies (Winding Up and Miscellaneous Provisions) Ordinance* (Cap. 32). The Committee reviewed the proposal and jointly with the Insolvency Law Committee produced a reply to the Government.

Other issue

The Committee noted the Administration's policy study on Standard Working Hours.

Members of the Committee:

Fiona M. LOUGHREY (*Chair*)

Duncan A.W. ABATE

David A. ALLISON (*resigned in July*)

Kim BOREHAM

Y.S. CHEUNG (*resigned in July*)

Dennis C.K. HO

IU Ting Kwok (*resigned in July*)

Edward M.T. KO (*resigned in July*)

Jeffrey H. LANE

Walter Y.W. LEE

Melissa K. PANG

Eric A. SZWEDA

Charles H.W. TO

WONG Kwok Yan

Secretary: Director of Practitioners Affairs (*until February*)

Assistant Director, Practitioners Affairs (II) (*since March*)



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

FAMILY LAW COMMITTEE

The Committee had a very busy year meeting on 11 occasions including one on Saturday morning. In addition, it met with the government bureaus and departments to discuss the LRC's Report on Child Custody and Access and also received a Thai delegation to discuss the Hague Convention on Civil Aspects of International Child Abduction.

The Committee reviewed a wide range of topics:

LRC's Report on Child Custody and Access

The Committee has been continuing its effort to advocate the implementation of the LRC's recommendations made in 2005. For that purpose, the Committee arranged to meet representatives from the Labour and Welfare Bureau, Social Welfare Department, Home Affairs Department and the DOJ in September and exchanged views with them on the matter. It urged the Administration to introduce the Children Bill into the Legislative Council as soon as practicable. The Administration indicated that a bill would be introduced in about end of June or early July 2015.

Substituted Service for Matrimonial Proceedings in the Mainland

The Committee has been working with the Judiciary's Family Court Users Committee and the DOJ to try to clarify the practices and the procedures on substituted service for matrimonial and family proceedings in the Mainland. The Committee was lately advised that the High Court of Hong Kong had also been in contact with its Mainland counterparts and suggested that questions relating to mutual legal assistance in substituted service shall be further discussed through consultation between the Supreme People's Court and the High Court, under the *Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and Hong Kong Courts*. The Committee will continue to keep this matter under review.

In the meantime, the Committee has issued a circular to remind general members of the availability of another mode of service provided for under Rule 14(10) of the *Matrimonial Causes Rules*, Cap. 179A.

Judgment Summons

The Committee has been corresponding with the District Court Rules Committee and the HAB on the proposed legislative amendments on judgment summons proceedings. These proposed amendments related to the enforcement of Maintenance Orders in matrimonial proceedings. The Committee considered that these amendments should be put forward as soon as possible.

In response, the HAB explained that they would finalise the legislative amendment upon receipt of the Final Report on the Review of the Family Procedure Rules and then submit the amendments to the District Court Rules Committee for approval. The Committee will closely monitor the development of this matter.

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

The Committee noted the last revamp of the scale of fixed costs about 14 years ago and considered that a timely review of fixed costs was necessary. It has therefore written to the District Court Rules Committee, Director of Legal Aid, the Judiciary Administration and the Home Affairs Department to invite views on the updating of the scale of fixed costs. Interim replies were received.



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Domestic Violence

The Committee has written to the Hong Kong Police Force to suggest a meeting with them to discuss the updated protocol of the Police in handling the domestic violence cases.

Separate Family Court Jurisdiction

The Committee has been considering the setting up of a separate Family Court jurisdiction, and was contemplating of rendering a submission to the Chief Justice for consideration.

Contingency Fees and Litigation Funding

The Committee reviewed the issues of conditional/contingency fees and litigation funding. A member has joined the Working Party on Litigation Funding of The Law Society to provide input from the matrimonial law perspective.

Proposed Panel of Parenting Co-ordinator

The Committee took note of the parenting co-ordination service in other jurisdictions and received a proposal to set up a panel of parenting co-ordinators under The Law Society. It noted that the Mediation Committee of The Law Society was in support of the proposal. The Committee and other relevant specialist committees will further deliberate on the issues arising therefrom, such as training, accreditation and professional indemnity.

Family Court Users Committee

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

- Stop Order
- Listing arrangement
- Substituted Service of Petition in the Mainland

The Committee also issued the following circulars to assist members in updating their family law practice and procedure:

- PDSL5—Guidance on Meeting Children
- PDSL6—Guidance on Separate Representation for Children in Matrimonial and Family Proceedings
- PDSL7—Guidance on Direct Judicial Communications in International Family Disputes Affecting Children
- Evaluation Study on the Pilot Scheme on Children's Dispute Resolution
- Family Symposium 2014: Divorce and Co-parenting

Consultation Papers

The Committee reviewed a number of Bills and Consultation Papers, including the following:

(a) *Marriage (Amendment) Bill 2014*

The *Marriage (Amendment) Bill 2014* was introduced into the Legislative Council in March. The Bill was to amend the *Marriage Ordinance* (Cap. 181) in order to implement the CFA's Order made in the case of *W v Registrar of Marriages* (FACV 4/2012). The Committee together with the Constitutional Affairs and Human Rights Committee reviewed the Bill and made a joint submission to the Bills Committee in May.



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

(b) Review of Family Procedure Rules

The Chief Justice's Working Party on Family Procedure Rules published an Interim Report and Consultative Paper in February on proposals to reform the court procedures for Hong Kong's family justice system. The Consultative Paper contained 136 proposals. One of the key areas of the proposals was to introduce a single unified procedural code to be applicable to both Family Court and High Court. The Committee met three times to review the Consultative Paper. Members of the Committee also attended the Panel on AJLS meeting in April and relayed the comments. The Committee supported the proposed reform. A detailed submission was made in June.

(c) Consultation Paper on the proposed amendment to the *Human Reproductive Technology Ordinance (Cap. 561)*

The Committee received from the Administration a consultation paper on the proposed legislative amendments to the *Human Reproductive Technology Ordinance (Cap. 561)*. These amendments aimed to prohibit advertisements in Hong Kong on sex selection achieved by reproductive technology procedures and they covered services with procedures performed outside Hong Kong. The Committee reviewed the consultation paper and made a submission in August.

(d) Discrimination Law Review

The Committee was consulted on the Consultation Paper on the Discrimination Law Review released by the EOC. The Committee commented on, amongst others, the proposed definitions for de facto relationship and the implication of the proposed introduction. The views of the Committee, together with those from other specialist committees of The Law Society on other parts of the Consultation Paper, were consolidated and sent to the EOC in October.

Events

• Family Summit 2014

The Law Society was the supporting organiser of the *Family Summit 2014*. The Law Society co-hosted the plenary session and a member of the Committee gave a presentation on "*Post separation and Co-parenting: What really matters?*".

• Family Symposium: Divorce and Co-parenting

The symposium was jointly organised by The Law Society and the Hong Kong Council of Social Services. The Chairman and a member of the Committee spoke at the plenary session of the symposium.

Feature articles on Family Law

Committee members contributed to feature articles on the *South China Morning Post* and *Hong Kong Lawyers* on matrimonial law and practice. These articles were published in June and August.



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Members of the Committee:

Dennis C.K. HO (*Chair*)
Anthony J. HUNG (*Vice-Chair*)
Sherman S.Y. CHEUNG
Winnie W.Y. CHOW
Barbara A. HUNG
Jennifer W.C. IP
Lily Y.Y. LAI (joined in November)

LAM Tze Yan
Steven S.L. LEUNG
Jonathan C.Y. MOK
Catherine K.G. POR
Anne SCULLY-HILL
Sylvia W.Y. SIU
Cecilia K.W. WONG

External Committee – representatives of The Law Society

Family Court Users' Committee

Dennis C.K. HO
Jonathan C.Y. MOK

Working Group on Mediation

Catherine K.G. POR

Working Group on CDR

Dennis C.K. HO

Working Party on Family Procedures Rules

Dennis C.K. HO

Working Group on Children & Ancillary Relief Procedures in Family Proceedings

Dennis C.K. HO

INSOLVENCY LAW COMMITTEE

The Insolvency Law Committee conducted its business by email circulation.

Review of Abscondee Regime under the Bankruptcy Ordinance

The FSTB issued a consultation paper in April to seek views on their two reform initiatives, namely a Modified Abscondee Approach and an Interview Approach, in order to address the constitutional challenges on the abscondee regime under the *Bankruptcy Ordinance* (Cap. 32) (“BO”). The Committee reviewed the proposals and made a submission in July. Subsequent to the consultation, the Committee was invited to meet with the FSTB and the Official Receiver’s Office (“ORO”) to exchange views on how the Interview Approach can be further enhanced.

Proposals on Statutory Corporate Rescue Procedures and Insolvent Trading Provisions

The Committee was advised that FSTB was proposing legislation on the corporate rescue procedures and insolvent trading provisions to be introduced into the Legislative Council. The Committee shall keep in view the progress of any relevant amendment bill.

STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Legislative Proposals on Improvement of Corporate Insolvency Law

The Committee considered a consultation paper on the legislative proposals on Improvement of Corporate Insolvency Law. FSTB sought to amend section 265 of BO to adjust the caps of the employee-related preferential payments upward and bring them on a par with the maximum amount of the corresponding payments from the Protection of Wages on Insolvency Fund. A joint submission with the Employment Law Committee was made in September.

Attending outside meetings

The Chairman of the Committee, as a representative of the Law Society, attended regular meetings with the ORO and the Advisory Group on Modernization of Corporate Insolvency Law.

Members of the Committee:

Keith M.K. HO (*Chair*)

Victor K.S. CHIU (*Vice-Chair*)

Ian R. DE WITT (*retired in October*)

Junius K.Y. HO

Camille JOJO (*retired in October*)

Richard M. TOLLAN

Jimmie K.S. WONG

Secretary: Director of Practitioners Affairs (*until February*)

Assistant Director, Practitioners Affairs (II) (*since March*)

External Committees — representatives of the Law Society

ORO Services Advisory Committee

Junius K.Y. HO

Keith M.K. HO

Advisory Group on Modernization of Corporate Insolvency Law

Keith M.K. HO

INSURANCE LAW COMMITTEE

The Committee met formally on three occasions, principally to review the *Insurance Companies (Amendment) Bill 2014*. It conducted the rest of its business by email circulation.

Insurance Companies (Amendment) Bill 2014

The Bill, which was introduced in April, aimed to amend the *Insurance Companies Ordinance* (Cap. 41) to, amongst others, establish an independent Insurance Authority (“IA”) as a body corporate to replace the existing Office of the Commissioner of Insurance. This proposed establishment of the IA was an important regulatory reform in the insurance sector. Under the Bill, a new regulatory regime for the insurance industry was proposed — in particular the IA would take up the regulatory responsibilities under a new statutory licensing regime for insurance intermediaries to replace the existing self-regulatory system. A new Insurance Appeals Tribunal was to be set up with jurisdiction to review decisions made by the IA.



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

The Committee reviewed the 500-page Bill and made a submission to the Legislative Council Bills Committee.

The Chairman of the Committee, as the representative of The Law Society, attended a Bills Committee meeting in June. At the meeting, he reiterated the legal concerns arising under the Bill, one of which related to the multiple roles proposed for the IIA, i.e. as regulator and rule-making body, investigator, prosecutor and judge. Other concerns on the definition of “best interests” requirement were also broached at the meeting.

The Committee continues to monitor the progress of the Bill.

Other matters

The Committee and the Reverse Mortgage Committee were consulted on the Life Insurance Policy-linked Reverse Mortgage programme which the Hong Kong Mortgage Corporation Limited (“HKMC”) intended to launch. The Chairman attended two meetings of the Reverse Mortgage Committee with the HKMC and exchanged views on various matters including complex legal issues, such as the assignment of a policy and the change of beneficiary.

Members of the Committee:

Martin C.V.M. LISTER (*Chair*)

Denis G. BROCK

Christine M. KOO

Nicholas J.E. LONGLEY

Fergus F.C. LU

MAK Hon Ming

Gary MEGGITT

Christopher A. POTTS

Mark F. REEVES

Rupert C. SKRINE

TSUI Kwok Sum

Shane F. WEIR

WONG Kwok Yan

Angela S.Y. YIM

Secretary: Director of Practitioners Affairs (*until February*)

Assistant Director, Practitioners Affairs (II) (*since March*)

INTELLECTUAL PROPERTY COMMITTEE

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

Consultations and Review

The Committee was heavily involved in the review of various consultation papers and a number of intellectual properties issues.

Consultation on *Copyright (Amendment) Bill 2014*

The issues on parody and other related issues continued to receive the attention of the Committee. In May, upon invitation, the Committee attended a meeting with the Intellectual Property Department (“IPD”) and the Commerce and Economic Development Bureau. The Committee impressed upon the Government their concerns on, among other things, the progress on the proposed regime in the treatment of parody.



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

On 13 June, the *Copyright (Amendment) Bill 2014* (2014 Bill) was gazetted. The 2014 Bill combined the proposal previously contained in the *Copyright (Amendment) Bill 2011* with Committee Stage Amendments and brought in legislative proposals to:

- (1) introduce a new exclusive right for copyright owners to communicate their work through any mode of electronic transmission;
- (2) expand the scope of copyright exception to exempt criminal and civil liabilities for certain purposes in appropriate circumstances;
- (3) clarify criminal liabilities on unauthorized distribution and communication of copyright works to the public;
- (4) establish a statutory safe harbour for Online Service Providers; and
- (5) introduce additional factors for the court to consider in assessing damages in civil cases when infringement has been established.

The Committee reviewed the 2014 Bill and produced a comprehensive submission in October. The 2014 Bill was supported in principle and furthermore the Committee strongly urged the 2014 Bill to be adopted and passed without further delay.

On top of the above detailed submission, the Chairman of the Committee also attended and spoke at a meeting of the Bills Committee on the 2014 Bill at the Legislative Council on 25 October. A written submission was prepared and provided for the Legislative Council meeting.

Consultation on Proposed Application of the Madrid Agreement

The Government in November issued a consultation paper on the *Proposed Application of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks to Hong Kong Special Administrative Region*. This consultation was on a proposed protocol to allow trademark owners to apply for registration in one or more countries or territories by filing a single application and paying one set of fees. They may also manage their trademark portfolios through a single procedural step. The Committee has reviewed this Consultation paper and in December, its members attended a briefing session arranged by the IPD. Preliminary comments and observations were made. The Committee was in the course of preparing a submission to respond to the Consultation.

Consultation on Draft Copyright Tribunal Rules

Another heavy consultation paper the Committee studied was the consultation on draft copyright tribunal rules the Government released in December. This consultation sought views on a set of new rules for regulating proceedings before the Copyright Tribunal. The new rules would replace the *Copyright Tribunal Rules (Cap. 528C)* currently in force. The drafting of these rules followed from previous consultations including a consultation exercise in 2009. The Committee was reviewing the draft rules and preparing a submission.

Meetings and Conferences

Apart from the above review, the Committee was busily involved in various meetings and conferences.



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Bi-annual Meeting with IPD

The Committee attended biannual meetings with IPD on 28 February and 12 September and discussed a number of issues relating to IP laws, practices and related matters. Matters canvassed at the biannual meetings included:

- Review of Patent System
- Review of Form T2
- Amendment to the *Patent Ordinance* and *Rules of High Court Order 103*
- Position on colours of trade mark after the case *Specsavers International Healthcare and Others [2013] EMTR 46* and OHIM's *Common Communication on the Common Practice of the Scope of Protection of Black and White Marks*
- Views on trade mark protection for trade dress

Competition Ordinance

Together with other specialist committees, the Committee in July attended a meeting with representatives from the Competition Commission to discuss issues including the draft guidelines to be issued under the *Competition Ordinance*. The Committee relayed to the Competition Commission views and comments on the draft guidelines to be issued.

Working Group on Review of the Patent System in Hong Kong

This Working Group on Review of the Patent System in Hong Kong was set up by the Advisory Committee on Review of the Patent System in Hong Kong of the Commerce and Economic Development Bureau, to consider the establishment of an interim regulatory regime for the patent system. Members of the Committee attended meetings of the Working Group and exchanged views.

Apart from having meetings of the Working Group, members of the Committee also attended joint meetings with other patent associations to consider and to deliberate patent practices and regulation.

Business of Intellectual Property (“BIP”) Asia

BIP Asia Forum was an important annual intellectual property forum, jointly organised by the Government, the Hong Kong Trade and Development Council (“HKTDC”) and Hong Kong Design Centre. The forum took place on 4 and 5 December in the Hong Kong Convention & Exhibition Centre. The Law Society was one of the sponsors of the forum.

Similar to the past two years, the Committee helped with the organising work for the forum. Apart from the provision of and the arrangement for the logistics support, members of the Committee also spoke with other prominent speakers at the forum and shared their views. At the breakout session of 4 December, the Chairman and two members spoke on “*IP Audit and Due Diligence – A Legal Perspective*”. Insightful comments were exchanged in this 1.5 hours session which was well attended.

The 136th edition of Annual Meeting of the International Trademark Association (“INTA”)

The 136th Annual Meeting of the INTA was held in Hong Kong Convention and Exhibition Centre. The Committee in May jointly hosted a welcome reception with IPD, HKTDC and other supporting organizations for the Annual Meeting.



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Pilot Scheme of Intellectual Property Consultation Service by IPD

The Committee worked with the IPD to set up a pilot scheme of Intellectual Property Consultation Service. This Consultation Service aimed to give outreach IP advisory programmes to Small to Medium Sized Enterprises. The Committee had discussed with the IPD various logistics arrangement. The pilot scheme was expected to be launched in 2015.

Presentations and participations at IP symposiums and other events

The Committee continued its efforts to promote IP awareness and also Hong Kong's competitiveness as an international IP hub. It took part in a number of local and overseas symposiums and events organised by IPD and/or local PRC governments for SMEs in various PRC cities, as well as tertiary institutes. These included:

- Seminar on "Hong Kong — An International Hub For Legal & Arbitration Services" & Networking Luncheon of the Roadshow in Vietnam and Cambodia organised by the Department of Justice in February
- Invitation by the Institute of Trade Mark Attorney to a Reception at the British Consulate-General in May
- Guangdong/Hong Kong Seminar on Intellectual Property and Development of Small and Medium Enterprises (Shanwei) in June
- Asia Patent Attorneys Association — 40th Year Celebration and Launch of The Hong Kong Intellectual Property Academy in October
- Acting as moderator of IP Seminars at the Shu Yan University in March and at the CUHK in October

External Representation

The Committee continued to be represented on the BIP Asia Steering Committee.

The Committee also has representatives on the Focus Group on Review of the Patent System in Hong Kong of the IPD.

Members of the Committee:

Kenny K.S. WONG (*Chair*)
Steven J. BIRT
Ella S.K. CHEONG
Yvonne CHUA
A. Clinton D. EVANS
KWONG Chi Keung

Chloe Y.F. LEE
Anita P.F. LEUNG
Rebecca M.C. LO
Annie S.T. TSOI
Henry J.H. WHEARE

Secretary: Assistant Director of Practitioners Affairs (I) (*January to August, November and December*)
Assistant Director of Practitioners Affairs (II) (*September to October*)



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

INVESTMENT PRODUCTS AND FINANCIAL SERVICES COMMITTEE

The Committee reviewed and/or made submissions on the following:

- Securities and Futures Commission's Consultation on *Amendments to the Code on Real Estate Investment Trusts*
- Securities and Futures Commission's Consultation Concerning the *Regulation of Alternative Liquidity Pools*
- Financial Services and the Treasury Bureau's Consultation on *Open-Ended Fund Companies*
- Securities and Futures Commission's Consultation on *Proposals to amend publication requirements relating to offer and redemption prices or net asset value and notices of dealing suspension under the Code on Unit Trusts and Mutual Funds*
- Hong Kong Monetary Authority and Securities and Futures Commission's joint Consultation on *Securities and Futures (OTC Derivative Transactions-Reporting and Record Keeping) Rules*
- Securities and Futures Commission's Consultation Conclusion on the *Proposed Amendments to the Professional Investor Regime and Further Consultation on the Client Agreement Requirements*

The Committee and the Company Law Committee reviewed and jointly made submissions on the following:

- Legislative proposal to provide an Enabling Environment for the introduction of an Uncertificated Securities Regime
- *Securities and Futures and Companies Legislations (Uncertificated Securities Market Amendment) Bill 2014*
- Securities and Futures Commission's Consultation on *Proposed Amendments to the Guidelines for the Exemption of Listed Corporations from Part XV of the Securities and Futures Ordinance (Disclosure of Interest)*
- Hong Kong Exchanges and Clearing Limited's *Concept Paper on Weighted Voting Right*

Members of the Committee:

Simon H. BERRY (*Chair*)
Alan J. EWINS
Stephen M. FLETCHER
Eliof S.W. FONG
Susan J. GORDON
Peter M. LAKE

Jason C.Y. LEE
Alan H. LINNING
Gavin P. NESBITT
Sara S.M. OR
Charlotte J.G. ROBINS
Adamas K.S. WONG

Secretary: Director of Practitioners Affairs (*September to October*)

Assistant Director of Practitioners Affairs (I) (*January to August, November and December*)

LAND USE PLANNING AND ENVIRONMENTAL LAW COMMITTEE

The Committee had one meeting this year and conducted the rest of its business via emails.

Private Columbaria Bill

The Government proposed to enact a new piece of legislation under which all private columbaria, unless exempted, shall be subject to regulation under a licensing scheme. This proposal was set out in the Private Columbaria Bill. Under this Bill, a statutory Private Columbaria Licensing Board would be set up as the licensing authority.



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

The Bill was gazetted on 20 June and was tabled at the Legislative Council on 25 July. The Committee reviewed and supported the Bill in principle, subject to a few queries and comments. A submission was rendered in September.

Phase II Public Engagement Exercise for the Proposed Establishment of a Harbourfront Authority

The Harbourfront Commission (“HFC”) in 2013 proposed to establish a Harbourfront Authority (“HFA”) and, together with the Development Bureau, launched a two phase Public Engagement Exercise. A consultation paper was released in September in its Phase II. The Committee reviewed this consultation paper and made a submission in December. The Committee in principle supported HFA to replace HFC’s existing role and to expand its function and become a statutory authority. The Committee also expressed views on, among others, HFA’s remit and composition.

Members of the Committee:

John DAVISON (*Chair*)

Michael T.M. HUI (*resigned in October*)

IP Shing Hing

MA Ho Fai (*resigned in December*)

NG Wai Yan

Christopher TUNG

Secretary: Director of Practitioners Affairs (*September to October*)

Assistant Director of Practitioners Affairs (I) (*January to August, November and December*)

LEGAL AID COMMITTEE

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

Meetings with the Legal Aid Department

The Committee has been keeping close watches on the development of and matters pertinent to the legal aid practice, including the application procedures for legal aid applicants, publication of easy-to-understand guidelines, the processing time for legal aid applications, assigning and monitoring of legal aid cases to panel members, the costs liability of unfavourable section 9 advices and also the overall reform of the Legal Aid Scheme. These matters were raised for discussion with the Director of Legal Aid and his deputy directors at two meetings in May and November. At these meetings, members of the Committee and the Personal Injuries Committee attended to make their views and concerns known to the Director directly. The meetings were very useful and constructive.

Among other things, the Committee received positive feedbacks from the Legal Aid Department that the Department would :

- enhance their website in order to facilitate access by the public to checklists for legal aid applications
- review extending the scope of the Supplementary Legal Aid Scheme; absorbing the costs liability of unfavourable section 9 advices and expediting release of damages, settlement sum etc due to the aided persons after deducting their reasonable amount under the First Charge
- continue to enhance greater transparency of the Legal Aid Scheme and introduce measures, such as requiring applicants to make appropriate declaration in order to curb unethical touting



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Meeting with the Legal Aid Services Council

With the aim to acquiring a better understanding of the monitoring of legal aid assignments, the Committee met the Chairperson of the Legal Aid Services Council (“LASC”) in October. The Committee took the opportunity to discuss with the LASC issues relating to touting, assignment and monitoring of legal aid cases to Panel lawyers.

Touting, Recovery Agents, Champerty

The Chairman of the Committee, as a representative of The Law Society, spoke at the AJLS Panel meeting of the Legislative Council in March on Abolition of the Common Law Offence of Champerty. It was reiterated that The Law Society is determined to combat the problem of champerty; the legal position regarding champerty is basically unchanged and is still unlawful in Hong Kong.

On the other hand, the Committee welcomed the Legal Aid Department to send in their representative to sit in the Working Party on Recovery Agents of The Law Society to work together to tackle the problem of unethical touting.

The Committee shall continue to keep the above issues, as well as legal aid practices, under review from time to time and would seek every opportunity to work closely with all stakeholders, such as the Legal Aid Department, the Home Affairs Department and other government departments, with a view to improving the legal aid services.

Members of the Committee:

Junius K.Y. HO (Chair)

Patrick M. BURKE

Sherlynn G. CHAN

Dennis C.K. HO

Rebecca V.I. HO

Arthur K.H. HONG (*resigned in October*)

Alison C. LIU

Kenneth H.S. NG

Virginia W.L. SZETO

WAN Charn Wing

Leslie K.L. YEUNG

Secretary: Director of Practitioners Affairs (*until February*)

Assistant Director, Practitioners Affairs (II) (*since March*)

PERSONAL INJURIES COMMITTEE

The Committee discussed various issues in personal injuries practice by email circulation.

Champerty and maintenance offences

The Committee reviewed the judgments in *Secretary for Justice v Ip Hon Ming et al* (CAAR3/2014) and *HKSAR v Mui Kwok Keung* (CACC133/2013). In both cases, courts unambiguously held that the offences of champerty and maintenance are part of the law in Hong Kong and they attract criminal sanctions.

The Committee also attended a meeting of Panel of the AJLS of the Legislative Council. The stance of The Law Society was reiterated i.e. among other things lawyers risked committing professional misconduct, if they work on cases financed by recovery agents.



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Fatal Accident Claims

The Committee had been in correspondence with the Judiciary on the practice on the commencement of fatal accident claims, where there was no grant of letters of administration. The Committee was pleased to note the decision of Hon Bharwaney J in the case of *Burshra Bibi et al v Method Building and Engineering Works Limited (in liquidation)* (HCPI301/2012). The judgment clarified for practitioners the appropriate procedures to be adopted in commencing fatal accident claims in the above circumstances.

On the other hand, the Committee also reviewed the bereavement award under the *Fatal Accidents Ordinance* Cap. 22 which has been undisturbed in past decade.

Employee Compensation Assistance Scheme (“ECAS”) Claims

There have been continual discussions within the Committee on the liability of the ECAS Fund Board to pay interest on those damages that have been awarded to successful claimants in personal injury claims against the ECAS Fund board, and the costs incurred by the plaintiffs in proving the cases in court. The Committee subsequently noted the judgment in *Kwan Kam Pui v Fung Man (Transliteration) and others* (HCPI 18/2012), which clarified the above issues. The Court in that case further held that the usual order should be made against the ECAS Fund Board, as is made against an employer defending the proceeding against whom a judgment for damages has been obtained; and such order usually is to pay the entire costs of the action.

Meetings with the Director of Legal Aid

The Committee, together with the Legal Aid Committee of the Law Society, met the Director of Legal Aid on 12 May and 18 November to discuss practices relating to the legal aid assignments. The issues broached at the meetings included the application and processing, choice of solicitors and counsel on panel, section 9 advices, as well as payment of costs to assigned solicitors and experts.

Meeting with the LASC

Together with the members of the Legal Aid Committee, the Committee met the Chairperson of the LASC on 30 October. Both Committees expressed their views and concerns on the monitoring of the legal aid assignments. There were also exchanges of views and suggestions made to try to improve the transparency of the monitoring system on assignments.

Members of the Committee:

Mark F. REEVES (*Chair*)
Patrick M. BURKE
Eliza L.S. CHANG
Anthony L.C. CHIU
Christina W.C. HUNG
Nancy B.Y. LEUNG

Vitus W.H. LEUNG
J.C. Nicholas MILLAR
Amirali B. NASIR
Szwina S.K. PANG
Tommy K.M. WONG

Secretary: Director of Practitioners Affairs



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

PROBATE COMMITTEE

The Probate Committee met twice this year.

The Committee continued to review issues and to attend to members' enquiries on probate practice and procedure. The Committee maintained close contact with the Probate Registry through the Joint Standing Committee on Probate Practice, which comprises of the Registrar of High Court, Probate Masters, Chief Probate Officer and members of the Committee. The Committee also assisted in processing applications for publication in the weekly Enquiries from Solicitors on Wills, Codicils and other Testamentary Dispositions. A total of about 480 applications were received and processed this year.

Seminar on Probate Practice

The Committee followed up with a proposal canvassed at a meeting of the Joint Standing Committee on Probate Practice in September 2013 to hold a seminar on probate practice. The Committee held discussion with the Academy and organised a Seminar on Probate Practice on 3 April. The Committee was honoured to have Mr. Registrar Lung, Master K. Levy and Master J. Wong to speak at the seminar on the Guide to Non-Contentious Probate Practice ("the Guide"), the Appointment Hearing, and New Procedure for Fast Tracking for Complicated Applications and Administrative Matters. The seminar was well attended by about 400 practitioners.

Competition Ordinance, Cap. 619

The Committee participated at a meeting with Competition Commission, together with representatives from other specialist committees. Useful discussions took place on, among other things, scale fees and recommended fees in the context of the CO.

Review of New Checklist and Supplemental No. 1 to the Guide

In October, the Committee received from the Judiciary a draft New Checklist and also the Supplement No. 1 to the Guide. The Committee studied the draft which represented a significant revamp of the current probate practice, in particular the duty of the solicitors submitting the probate applications. Having carefully considered the draft, the Committee has submitted its views to the Probate Master and will have a meeting with the Probate Master in finalizing the New Checklist and the Supplemental No. 1 to the Guide.

JOINT STANDING COMMITTEE ON PROBATE PRACTICE

The Committee and the Probate Masters met in August to exchange views on ways to improve probate services. Matters relayed to the Probate Masters included topics such as legalization of documents executed abroad for use in Hong Kong, the rules of alias, pigeon hole system, fast track for complicated cases, caveat and certified copy grant.

STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Members of the Committee:

Billy W.Y. MA (*Chair*)

Helen Y.P. CHAN (*retired in September*)

Viola HUNG

NG Kin Yuen

TAM Sau Hing

TSANG Kam Chuen

Herbert H.K. TSOI

WONG Tak Shing

Secretary: Assistant Director of Practitioners Affairs (I) (*January to August, November and December*)
Assistant Director of Practitioners Affairs (II) (*September to October*)

PROPERTY COMMITTEE

The Committee met 11 times this year and reviewed a number of issues and legislative proposals relating to conveyancing practices. Meetings were held with representatives of various Government departments and organizations on a number of property-related issues. In addition, the Committee continued to consider and determine applications for waivers of Deed of Mutual Covenant Guidelines (459 applications) and applications for deviations from forms of Agreement for Sale and Purchase approved under Rule 5C of the *Solicitors Practice Rules* (Cap. 159H) (2 applications). Members also served on internal Working Parties, and represented The Law Society on external Committees/Working Parties on property-related issues.

Practice Direction A2

The Committee considered and amended PD A2 to cover both completed and uncompleted developments which are for less than the whole of the residue of the term of years under which the development is held under the relevant Government Grant. The revised PD A2 took effect in late March and members were informed thereof by circular.

New Practice Direction A13

In consequence of the revision to Principle 14.06 of the Guide to Professional Conduct Volume 1 in 2013, the Committee prepared a new PD A13 to incorporate therein those principles which had been taken out from the former Principle 14.06 of the Guide but which should be observed by practitioners. The new PD A13 took effect on 10 February. A circular was issued to advise members.

Non-Consent Scheme

The Committee considered and reviewed the following in light of the revision of agreement for sale and purchase under the Consent Scheme by the Land Advisory and Conveyancing Office of the Lands Department ("LACO") in or about July 2013:

- (a) amendments to two new agreements for sale and purchase of first-hand residential properties in uncompleted and completed development;
- (b) amendments to the two sub-sale and purchase agreements under the Non-Consent Scheme; and
- (c) consequential amendments to the related Statutory Declaration.



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Competition Ordinance, Cap. 619

Members of the Committee, together with members of other specialist committees, attended a meeting with representatives from the Competition Commission in July to discuss a number of issues whilst the Competition Commission was drafting guidelines to implement the *Competition Ordinance*. Relevant views on property-related issues were exchanged.

Stamp Duty (Amendment) Ordinance 2014

The *Stamp Duty (Amendment) Bill 2012* to tighten up Special Stamp Duty (“SSD”) and to introduce Buyer’s Stamp Duty (“BSD”) was passed and gazetted on 28 February to become the *Stamp Duty (Amendment) Ordinance 2014*. It had a retrospective effect from 27 October 2012. A circular was issued to advise members of the passing of this Bill and matters relating to BSD exemption.

After the Bill has been passed, the Stamp Office issued two Stamping Circulars in February on the new arrangement for stamping regarding payment and application for exemptions from SSD and BSD. The Committee reviewed these Stamping Circulars and sought clarification from the Government on various issues on the arrangement for stamping regarding payments and applications for claiming exemptions for SSD and BSD. The Stamp Office subsequently issued two sets of Interpretation and Practice Notes to clarify their requirement and policy on the arrangement relating to exemptions for SSD and BSD.

Stamp Duty (Amendment) (No. 2) Ordinance 2014

The *Stamp Duty (Amendment) Bill 2013* to introduce double rates for ad valorem stamp duty (“New AVD”) for both residential and non-residential properties was passed to become the *Stamp Duty (Amendment) (No. 2) Ordinance 2014*. The Ordinance was gazetted on 25 July. It had retrospective effect from 23 February 2013. Members were advised of the passing of this Bill and matters relating to BSD and New AVD by circular.

Prior to the passing of the Bill, the Committee has been seeking clarifications from the Government on various issues including the distinction between residential and non-residential properties.

Land (Miscellaneous Provisions) (Amendment) Bill 2014

The Government introduced this Bill to increase the penalty for unlawful occupation of unleased land and for unlawful structure being erected on unleased land. Following a review of this Bill, the Committee provided a written submission in December.

Fully Profit (Asia) Ltd v The Secretary for Justice FACV 17/2012

In *Fully Profit (Asia) Ltd v Secretary for Justice* [2013] HKEC 717, the CFA set out its views on the construction of the word “house”. In the opinions of the Committee, this judgment created uncertainty for conveyancing practitioners in situations when there is a “house” restriction in government leases. The Committee has written to the Government to seek views on policy arising from this Judgment.

Whilst the Committee was waiting for a substantive reply from the Government, the Lands Department issued a Practice Note No. 3/2000/A (“PN 3/2000A”) in June. The Committee considered that the PN 3/2000A did not help to remove the uncertainties and met the Lands Department in December to relay its concerns.

The Committee is now following up with the Lands Department on the issues canvassed at the above meeting.



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Property Management Services Bill 2014

This Bill was gazetted on 25 April and was introduced into the Legislative Council on 7 May. In a summary, this Bill proposed a mandatory licensing regime to regulate the provision of property management services, under the supervision of a Property Management Services Authority. The Bill also sought to introduce criminal sanctions.

Subject to the queries on the imposition of the levy and the comments on the uncertainty of some terms used in the Bill, the Committee welcomed the Bill as it should enhance the quality and standard of building management. A submission was rendered.

Contract (Third Party Rights) Bill 2014

The Committee's attention was drawn to this Bill which to a certain extent revamped the general principle of privity of contract. Concerns were expressed over, among others, the uncertainty of the definition of the term "covenants relating to the land" in the Bill, and the implications of the Bill on conveyancing transactions.

The Committee had a meeting with the DOJ in September on the Bill. Apart from the above concerns, the Committee also relayed their uneasiness with the proposed exclusion of Deed of Mutual Covenant and covenants relating to land from the application of the Bill. There were discussions also on the possible impact of the proposed statutory regime on the land contracts and the possible effects of the Bill on rights and liabilities of property owners.

The above views of the Committee were received by the DOJ, which agreed to give a grace period of one year after the Bill's passage before the Government was to bring the Bill into operation.

The Bill was passed and gazetted in December. The Committee would keep in view of the development in this matter.

Application for Waiver of Deed of Mutual Covenant Guidelines

The Committee reviewed and approved the amendments recommended by the Working Party on Revised DMC Guidelines to the application form for waiver of Deed of Mutual Covenant Guidelines and the standard waiver letter A and D. Members were informed thereof by circular. The Committee would continue to review the amendment to the Deed of Mutual Covenant Guidelines.

The Committee also considered and reviewed other property related matters, such as:

- the feasibility of revival of conveyancing scale fee
- the impact of the court case *De Monsa Investments Limited v. Whole Win Management Fund Ltd* [FACV No. 6 of 2012] on Section 13A of *Conveyancing and Property Ordinance* (Cap. 219)
- Stamp Duty Interpretation and Practice Notes issued by Stamp Office

External Work:

The Committee has representatives on the following group and committee:

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



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Members of the Committee:

Emily Y.M. LAM (*Chair*)

Debbie F. CHEUNG

Keith P.K. CHEUNG

Lilian S.F. CHIANG

Doreen Y.F. KONG

Vincent W.S. LIANG (*retired in December*)

Amanda L.Y. LIU

Billy M.Y. MA

MA Ho Fai (*retired in December*)

Steven M.W. SHUM

David P.H. WONG (*retired in December*)

Raymond M.W. WONG

Terry P.L. YEUNG

Secretary: Assistant Director of Practitioners Affairs (I) (*January to August, November and December*)

Assistant Director of Practitioners Affairs (II) (*September to October*)

WORKING PARTY ON LAND TITLES ORDINANCE

The Land Titles Ordinance Steering Committee issued a paper LTOSC No. 14 in June. The paper proposed to further revise the “Two Stage Conversion Mechanism” and the rectification and indemnity arrangements. The Working Party has reviewed the above paper and would submit their views to the Land Registrar.

The Working Party has representatives on the following external committees:

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

Members of the Working Party:

E. John DAVISON (*Chair*)

Judith SIHOMBING (*Vice-chair*)

Peter AHERNE

AU Fun Kuen

Dora S.Y. CHAN

Emily Y.M. LAM

Alexander H.S. LEUNG

Vincent W.S. LIANG

Andy O.T. NGAN

Anthony H.Y. SHIN

Huen WONG (*resigned in November*)

Secretary: Assistant Director of Practitioners Affairs (I) (*January to August, November and December*)

Assistant Director of Practitioners Affairs (II) (*September to October*)



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

WORKING PARTY ON REVIEW OF NON-CONSENT SCHEME FORMS

The Working Party took note of and considered the amendments to the agreements for sale and purchase under the Consent Scheme by the LACO in or around July 2013. As a result of the aforesaid amendments by LACO, the Working Party reviewed the relevant Non-Consent Scheme documents and proposed amendments to the following documents:

- (a) two new agreements for sale and purchase of first-hand residential properties in uncompleted and completed development respectively;
- (b) two sub-sale and purchase agreements under the Non-Consent Scheme; and
- (c) Statutory Declaration.

The Working Party received comments from the DOJ on the above proposed amendments, and was liaising with the Chief Justice.

Members of the Working Party:

Amanda L.Y. LIU (*Chair*)
Doreen Y.F. KONG

LEUNG Siu Hon
Raymond M.W. WONG

Secretary: Assistant Director of Practitioners Affairs (I) (*January to August, November and December*)
Assistant Director of Practitioners Affairs (II) (*September to October*)

WORKING PARTY ON REVISED DMC GUIDELINES

The Working Party on Revised DMC Guidelines met three times this year and has reviewed and revised the following:

- the standard waiver letter A and D of The Law Society
- application form for waiver of DMC Guidelines

The Working Party would keep in view of the revision to The Law Society's Guidelines for Deed of Mutual Covenant No. 29, in light of the revised LACO Guideline No. 29.

Members of the Working Party:

LEUNG Siu Hon (*Chair*)
Patrick K.H. LAM
MA Ho Fai

David P.H. WONG
Terry P.L. YEUNG

Secretary: Assistant Director of Practitioners Affairs (I) (*January to August, November and December*)
Assistant Director of Practitioners Affairs (II) (*September to October*)



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

RETIREMENT SCHEMES COMMITTEE

The Committee conducted its business by emails.

Revision to MPFA Guidelines

The Committee has been receiving and commenting on proposed revisions to the Mandatory Provident Fund Guideline from time to time, inclusive of the following, and has advised members of those revisions by circulars.

- Annual Returns to be Delivered by Registered Intermediaries (Guidelines VI.3)
- Application for Approval as Trustees and Application for Approval as Controllers of Approved Trustees (Guidelines I.1)
- Application for Registration of Provident Fund Schemes (Guidelines I.2)
- Eligible Insurers (Guidelines I.4)
- Application for Approval of Constituent Funds (Guidelines I.5)
- Application for Approval of Pooled Investment Funds (Guidelines I.6)
- MPF Coverage on Employees Working Outside Hong Kong (Guidelines IV.16)
- MPF Exempted ORSO Schemes — Application for Exemption of ORSO Registered Schemes (Guidelines V.2)
- MPF Exempted ORSO Schemes — Application for Approval of Appointment of Trustees (Guidelines V.6)
- MPF Intermediary Registration and Notification of Changes (Guidelines VI.1)
- Annual Returns to be Delivered by Registered Intermediaries (Guidelines VI.3)
- Election for Transfer of Accrued Benefits (Guidelines IV.3)
- Debt Securities (Guidelines III.1)
- Payment of Accrued Benefits — Documents to be Submitted to Approved Trustees (Guidelines IV.4)
- MPF Exempted ORSO Schemes — Withdrawal of Minimum MPF Benefits (Guidelines V.11)

Mandatory Provident Fund Scheme (Amendment) Bill 2014

The Committee's attention was brought to a *Mandatory Provident Fund Scheme (Amendment) Bill 2014*, gazetted on 27 June and introduced into the Legislative Council on 2 July. The Bill proposed to allow a scheme member to withdraw his accrued benefit by phases upon a member's retirement or early retirement. It also sought to require a trustee to process a scheme member's request to make such withdrawal.

The Committee has studied the Bill. While the Bill involved different policy considerations, the Committee provided comments on the technicality and the drafting and produced a submission. The submission was sent to the MPF Authority in September.

Apart from the above, the Committee also noted the following:

- Consultation on providing better investment solutions for MPF members
- Consultation on the enhancement to the deposit protection scheme



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Members of the Committee:

David G. Adams (*Chair*)
Cynthia W.S. Chung
Christine M. Koo
Martin C.V.M. Lister
Billy W.Y. Ma

Sophia W.Y. Man
Tam Chi Wai
C.Y. Wei
Judy Yang

Secretary: Director of Practitioners Affairs (*September to October*)
Assistant Director of Practitioners Affairs (I) (*January to August, November and December*)

REVENUE LAW COMMITTEE

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

Automatic Exchange of Information for Tax Purposes (“AEOI”)

In October, members of the Committee attended a briefing session on the Government’s plan to implement AEOI in Hong Kong. The Committee was advised that the Government intended to formulate a detailed legislative proposal on AEOI in 2015 and was proposing further consultation with the stakeholders before it submitted the relevant Bill to the Legislative Council in 2016.

Legislative Proposal to Extend the Profit Tax Exemption for Offshore Funds

The Committee received from the Government a consultation paper on a legislative proposal to extend the profit tax exemption for offshore funds. The proposal aimed to attract more private equity funds to operate business in Hong Kong. With the benefit of reading the submissions made by the Joint Liaison Committee on Taxation (“JLCT”) on the matter, the Committee resolved to adopt the same position as the JLCT.

The Committee also discussed the following matters:

- the proposed legislative amendments to Tax Appeal Mechanism
- the Inland Revenue (Amendment) (No. 3) Bill 2013 — Captive Insurance
- the Stamp Duty (Amendment) Bill 2012 — BSD
- Practice Direction P
- Expansion of Tax Exemption
- Real Estate Investment Trusts
- Double Tax Agreement
- Loan (Amendment) Bill 2014
- Consultation Paper on “Open-ended Fund Investment Company”



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Members of the Committee:

Steven R. SIEKER (*Chair*)
Lee. T. BENJAMIN
Sally S.W. IP
CHAN Chak Ming
Vincent P.C. KWAN
Angela Y.L. LAU

Cynthia S.W. LEE
Gavin P. NESBITT
Simon J.G. RAE
Jacqueline Y.M. SHEK
William A. THOMSON

Secretary: Assistant Director, Practitioners Affairs (I) (*until February*)
Assistant Director, Practitioners Affairs (II) (*since March*)

External Committees – Representatives of The Law Society

Joint Liaison Committee on Taxation

Simon J.G. RAE
William A. THOMSON

REVERSE MORTGAGE COMMITTEE

The Committee received proposals to enhance the reverse mortgage programme by the HKMC. The Committee, together with Insurance Law Committee of The Law Society, met the HKMC in May and in July to discuss these proposals. Views were usefully exchanged on matters such as assignment of policy, consumers' interest, counsellor's duties and other practical issues.

The Committee helped to organise a seminar on 21 August on the role of counsellors under the reverse mortgage programme. The seminar was well received and was attended by over 150 participants. The participants were given an overview of the reverse mortgage programme and an update on the proposed life insurance policy-link enhancements.

Members of the Committee:

Billy W.Y. MA (*Chair*)
Heidi K.P. CHU
Junius K.Y. HO

Joseph C.W. LI
Emily Y.M. LAM
Steven M.W. SHUM

Secretary: Assistant Director of Practitioners Affairs (I) (*January to August, November and December*)
Assistant Director of Practitioners Affairs (II) (*September to October*)

WORKING PARTY ON INTERPRETERS

The Working Party on Interpreters had two internal meetings and is now considering views canvassed from various stakeholders in order to compile a report to make recommendations to the Council on action to be taken by The Law Society to implement a system of public service interpreters for civil and criminal proceedings before courts.

The Committee has co-opted a new member this year to assist in its work.



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Members of the Working Party:

Michael J. VIDLER (*Chair*)
Patrick M. BURKE
Anthony M.C. LAI

Karen MCCLELLAN (*joined in May*)
Anthony R. UPHAM

Secretary: Director of Practitioners Affairs (*until February*)
Assistant Director, Practitioners Affairs (*since March*)

WORKING PARTY ON RESOLUTION REGIME

The FSTB, the Hong Kong Monetary Authority, the Securities and Futures Commission and the Insurance Authority in January jointly issued a Consultation Paper on “*An Effective Resolution Regime for Financial Institutions in Hong Kong*” to seek views on the needs to establish a “resolution regime” to provide national authorities with administrative powers to bring about orderly resolution at times of critical or systemic failures of large financial institutes. The regime would have stabilised and secured continuity for the key parts of the business of that failing financial institute. At the same time, these regimes would ensure that the costs of failure are to be borne by the shareholders and creditors of the failing financial institutes, rather than through reliance on use of public funds.

A list of questions was posed at the Consultation Document. In response, a Working Party on Resolution Regime was set up to review these proposals. The Working Party consisted of members from a spectrum of expertise and experience. After studying the consultation document, the Working Party produced a detailed submission in April.

Members of the Working Party

Simon H. BERRY (*Chair*)
Alan J. EWINS
Stephen M. FLETCHER
Eliof S.W. FONG
Keith M.K. HO

Nicholas D. HUNSWORTH
Jason C.Y. LEE
Martin C.V.M. LISTER
Sara S.M. OR

Secretary: Director of Practitioners Affairs (*until February*)
Assistant Director, Practitioners Affairs (II) (*since March*)

WORKING PARTY ON ENDURING POWERS OF ATTORNEY

A Working Party on Enduring Power of Attorney was set up upon, among other things, an initiative from the DOJ to promote the awareness and understanding of EPAs. The DOJ related their proposal to an earlier LRC report in 2008, which recommended that the Government, in partnership with relevant professional bodies and non-governmental organizations, to take steps to promote the awareness and the understanding of EPAs.

The Working Party had a meeting in July, and is now considering the organisation of a seminar on EPAs.



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Members of the Working Party:

Billy W.Y. MA (*Chair*)
E. John DAVISON

Herbert H.K. TSOI
Cecilia K.W. WONG

Secretary: Director of Practitioners Affairs (*September to October*)
Assistant Director of Practitioners Affairs (I) (*January to August, November and December*)

WORKING PARTY ON LITIGATION FUNDING

A Working Party on Litigation Funding was set up to consider the proposed introduction of litigation funding to Hong Kong and to also revisit the conditional fees and contingency fees. The Working Party consisted of members with experience and specialties in arbitration, liquidation, civil litigation, insurance, insolvency, matrimonial practices, criminal practices, legal aid and personal Injuries practices. It met twice this year.

In the course of deliberation, the Working Party took note of the celebrated judgment of Kaplan J in *Cannonway Consultants Limited v Kenworth Engineering Limited* [1995] 2 HKLR 475, as well as the more recent judgments including *Re Cyberworks Audio Video Technology Limited* [2010] 2 HKLRD 1137 and in *Re Po Yuen (To's) Machine Factory* [2012] HKLRD 815. It also noted the suggestion that Hong Kong might be losing its competitiveness as an international dispute resolution centre to other jurisdictions where litigation funding for arbitration and liquidation cases were allowed. The Working Party is consolidating the various views received and preparing a recommendation to Council for deliberation.

Members of the Working Party:

Denis G. BROCK (*Chair*)
Patrick M. BURKE
Christopher J. DOBBY
Warren P. GANESH
Cameron D. HASSALL
Barbara A. HUNG

Jason D. KARAS
Paul M.W. LI
Gary MEGGITT
Amirali B. NASIR
Mark F. REEVES
Sylvia W.Y. SIU

Secretary: Director of Practitioners Affairs



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

WORKING PARTY ON RECOVERY AGENTS

The Working Party met once and conducted the rest of its business by email.

The Working Party noted the following judgments on the offences of champerty and maintenance:

- (a) *Secretary for Justice v Ip Hong Ming* (HCA3/2014)
- (b) *HKSAR v Mui Kwok Keung* (CACCC133/2013)

It also took note of the discussion by the Panel of the AJLS of the Legislative Council in March on the proposed abolition on champerty offence. Various issues arising from unethical touting were discussed, including the Solicitors Promotion Code and the declaration system launched by the Legal Aid Department. The Working Party proposed to meet various government departments.

Members of the Working Party:

Ludwig S.W. NG (*Chair*)
Patrick M. BURKE
Szwina S.K. PANG

Thomas S.T. SO
WONG Tommy K.M.

Secretary: Director of Practitioners Affairs

WORKING PARTY ON SHANGHAI LAND CASE

The Working Party had a meeting with the Secretary for Justice in December 2013 and exchanged views with him on various issues important to the legal profession. The issues raised for discussion included the maintaining of a level-paying field between prosecution and defence, avoidance of delay in the prosecution, discovery of and the proper disposal of unused materials by the prosecution, recovery of costs by successful defendants and the setting up of an independent body to look into compensation for acquitted parties.

The Working Party met this year to follow up with the above discussion and recommended to the Council to continue to keep in view of the developments. It also invited the Criminal Law and Procedure Committee of The Law Society to look into the issues. The Working Party was dissolved after the meeting.

Members of the Working Party:

Huen WONG (*Chair*)
Simon H. BERRY
Brian GILCHRIST
Stephen W.S. HUNG

Ambrose S.K. LAM
Gavin P. NESBITT
Dieter YIH

Secretary: Director of Practitioners Affairs



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

HONG KONG SOLICITORS INDEMNITY FUND LIMITED

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

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

The HKSIFL considered a number of matters including:

- Issues in relation to the conduct of claims
- Contribution reduction
- The performance of the PIS Broker and Manager
- The performance and potential diversification of PIS investments
- Review and update of PIS investment guidelines
- Proposed reforms to the PIS and amendments to the *SPI Rules*
- Ceased firms which failed to submit the final Gross Fee Income Report and/or Quarterly Return and/or pay their final PIS contributions
- Investigation of understatement of Gross Fee Income
- The monthly management accounts and the audited accounts of HKSIF and HKSIFL
- Renewal of Directors’ and Officers’ liability and Professional Indemnity insurance for HKSIFL and the Directors
- Renewal of Reinsurance Programme and Insolvency Insurance Programme of the PIS
- Matters arising from the liquidation of HIH Casualty and General Insurance Ltd. and FAI General Insurance Company Ltd. and the provisional liquidation of FAI First Pacific Insurance Co. Ltd.
- Enquiries relating to the PIS

A total of 147 notifications of claims were received by the Claims Manager, ESSAR Insurance Services Ltd. (“ESSAR”) during the 2013/2014 indemnity year, i.e. from 1 October 2013 to 30 September 2014 and the grace period from 1 October 2014 to 29 November 2014. As at 30 September 2014, 17 of the notifications resulted in proceedings, 6 were closed without payment, 1 was settled with payment and 130 remained as notifications.

STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

The number of claims for the last 28 indemnity years and the number of members holding practising certificates as at 30 September of each of those years are as follows:

Indemnity Year	Number of Claims	Percentage Increase/ Decrease from previous year	No of members
1986/1987	64	—	1,384
1987/1988	58	-9%	1,625
1988/1989	126	117%	1,754
1989/1990	178	41%	2,060
1990/1991	72	-60%	2,350
1991/1992	93	29%	2,572
1992/1993	118	27%	2,847
1993/1994	143	21%	3,161
1994/1995	151	6%	3,451
1995/1996	150	-1%	3,784
1996/1997	176	17%	4,197
1997/1998	336	91%	4,494
1998/1999	483	44%	4,612
1999/2000	263	-46%	4,771
2000/2001	230	-13%	4,946
2001/2002	215	-7%	5,086
2002/2003	269	25%	5,191
2003/2004	165	-39%	5,317
2004/2005	159	-4%	5,498
2005/2006	165	4%	5,666
2006/2007	142	-14%	5,831
2007/2008	309	118%	6,092
2008/2009	147	-52%	6,341
2009/2010	139	-5%	6,670
2010/2011	174	25%	7,041
2011/2012	126	-28%	7,381
2012/2013	240	90%	7,717
2013/2014	147	-39%	8,111

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

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

STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Claims notified in the 2013/2014 indemnity year were categorised as follows:

Company/Commercial	20
Conveyancing	40
Landlord & Tenant	4
Litigation	51
Miscellaneous	8
Patents and Trademarks	11
Probate	12
Breach of Confidential Information	1
	147

Four fraud claims were received in the 2013/14 indemnity year.

As at 30 September 2014, the total liability of the PIS for the 2013/2014 indemnity year, calculated on the basis of claims paid and claims reserved, was HK\$39,308,417 of which HK\$5,364,438 consisted of claims paid (including costs) and HK\$33,943,979 consisted of claims reserved.

The total amount of claims paid (including costs) since the inception of the self-insured PIS in 1986 amounted to HK\$1,775,742,484 and the amount reserved was HK\$191,364,617. The total claims paid and reserved was HK\$1,967,107,101.

A detailed account of the operation of the PIS and claims data as well as the audited accounts of the HKSIF as at 30 September 2014 will be published in the PIS Annual Report for the 2013/2014 indemnity year.

Directors of HKSIFL:

Peter R. GRIFFITHS (*Chair*)
Denis G. BROCK
Albert B.K. DAN
Brian W. GILCHRIST
Christopher G. HOWSE
Peter C.L. LO

Patrick R. MOSS
Amirali B. NASIR
NG Wai Yan
Kevin C.K. SHUM
David G. SMYTH
Norris H.C. YANG

Company Secretary: ESSAR

PIS CLAIMS COMMITTEE

Claims are handled by the Claims Committee pursuant to the *SPI Rules* and with the assistance of the Claims Manager, ESSAR. The Claims Committee held five meetings during the year to discuss both new and ongoing claims.

STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Members of the Committee:

Brian W. GILCHRIST (*Chair*)
 Colin B. COHEN (*Vice-Chair*)
 Charles W. ALLEN
 Keith M. BRANDT
 Tony K.W. CHOW

Simon P. CLARKE
 George D. LAMPLOUGH
 Jeffrey H. LANE
 Ronald W.T. TONG

Secretary: ESSAR

PIS INVESTMENT SUBCOMMITTEE

The PIS Investment Subcommittee met quarterly.

At each meeting, the Subcommittee invites HKSIFL's investment consultant, Mercer Investment Consulting Limited and two of the four investment managers to report on the HKSIF performance and to provide their outlook on market trends.

The current investment managers of the HKSIF are as follows:

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

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

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

The net returns on the portfolios managed by the investment managers for the 12-month period ended 31 December 2013 and 2014 were as follows:

	Type of portfolio	Net Return	
		2013	2014
Amundi	Equity and bonds	6.44%	3.40%
AllianceBernstein	Bonds	0.27%	7.22%
MFS*	Equity	29.55%	7.46%
GMO*	Equity	19.95%	-1.84%

* MFS and GMO were appointed in December 2011.

A review of the PIS investment guidelines is currently underway.



STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Members of the Subcommittee:

Peter C.L. LO (*Chair*)
John S. GALE
IP Shing Hing
Elen LAU

Kher Sheng LEE
Kevin C.K. SHUM
Norris H.C. YANG

Secretary: Assistant Director, Professional Indemnity Scheme

PROFESSIONAL INDEMNITY ADVISORY COMMITTEE

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

The Working Party of the Committee held one meeting during the year and considered various amendments to the *SPI Rules* by email circulations.

Members of the Committee:

Robin S. PEARD* (*Chair until November*)
David G. SMYTH* (*Chair from November*)
Kevin R. BOWERS
Richard KEADY (*joined in January*)
Lawrence Y.H. LEE (Aon Holdings Hong Kong Limited)
(*retired in November*)

Susan P.S.K. LIANG
NG Wai Yan
Peter K.H. NGAI
Fiona J. STEWART*
Gareth H. THOMAS
Norris H.C. YANG (*retired in November*)

Secretary: Assistant Director, Professional Indemnity Scheme

* Members of the Working Party of the Committee

PIS PANEL SOLICITORS SELECTION BOARD

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

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

The firms which served as Panel Solicitors in 2014 were:

Bird & Bird
Deacons
Fred Kan & Co.
Gall

Howse Williams Bowers
P.C. Woo & Co.
Reed Smith Richards Butler
Smyth & Co.

STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Members of the Selection Board:

Huen WONG (*Chair*)
Stephen W.S. HUNG

Kenneth S.Y. NG
Amirali B. NASIR

Secretary: Assistant Director, Professional Indemnity Scheme

WORKING PARTY ON PIS GROSS FEE INCOME REPORTS AND CONTRIBUTIONS

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

During the year, the Working Party considered a number of defaults and applications for time extensions and resolved recommendations to the Council by email circulations.

Members of the Working Party:

IP Shing Hing (*Chair*)
Albert B.K. DAN

NG Wai Yan
Huen WONG

Secretary: Assistant Director, Professional Indemnity Scheme



Practitioners Affairs Department