

Standing Committee on Practitioners Affairs

The Standing Committee oversees the work of 25 Committees, one Sub-committee and five Working Parties. It met formally on seven occasions; one member resigned and a new member was co-opted. The Chairmanship of the Standing Committee was reviewed by the Standing Committee on Policy and Resources and the Vice Chairman was appointed as the new Chair in June.

Voluntary Schedule of Recommended Conveyancing Fees

The Committee reviewed a recommendation by the Property Committee to introduce a Voluntary Schedule of Recommended Conveyancing Fees. After debating the proposal it was agreed representatives should meet with the Consumer Council to enquire whether agreement could be reached to review the Schedules in the *Solicitors' (General) Costs Rules* ("Rules") to enable practitioners to use the revised statutory scales as a benchmark for conveyancing transactions.

A meeting took place in March but it was clear the Consumer Council did not support the concept of recommended fees and therefore would be unlikely to support a review of the Schedules to the Rules. The Committee noted that if the Costs Committee were to meet to review the Schedules, it would be necessary for The Law Society to provide an updated report on running a solicitor's practice. A request was made to the Standing Committee on Policy and Resources for funding to engage consultants but the request was declined.

The Hong Kong Conveyancing and Property Law Association was invited to conduct a survey of its members to ascertain the level of support for the proposal and a majority of its members supported the same. However, a minority view expressed concerns given the Government's intention to introduce competition legislation.

The matter was finally reviewed by Council in November but the proposal did not have majority support at the meeting. Nevertheless, Council noted the concerns expressed on the potential shortage of specialist conveyancers and agreed to address this issue.

Property Management Advisory Centres ("PMACs")

The Law Society had provided pro-bono assistance to the Building Management Resource Centres ("BMRCs") operated by the Home Affairs Department for several years. In December 2006, the BMRCs closed and an arrangement was made between the Home Affairs Department and the Hong Kong Housing Society to transfer the service to the PMACs which commenced operation in January. In September, the Hong Kong Housing Society suggested extending the scope of service to include a one-off consultation to Owners' Incorporation meetings. A survey of the volunteers was conducted and there was no clear consensus to extend the scope of the existing pro-bono services. However, members indicated The Law Society should continue its participation in the current Scheme.

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Study on the Demand for and Supply of Legal and Related Services in Hong Kong

The Law Society was invited to review the Combined Analysis Report prepared by Consultants appointed by the DOJ on the *Study on the Demand for and Supply of Legal and Related Services in Hong Kong*. The Committee questioned the methodology adopted by the Consultants, questioned the classification of the “difficult to solve problems” which lacked a clear definition and whether, in reality, such difficult to solve problems required legal advice from professionals. The Committee’s observations were considered by Council and a very detailed response was sent to DOJ in September. It is anticipated the final report will be issued in 2008.

Enduring Powers of Attorney (“EPAs”)

The Committee reviewed the Law Reform Commission’s Report (“LRC”) on EPAs and agreed to convene a joint working party with representatives of the Probate Committee to make recommendations on the response to the questions in the Consultation Paper.

The Sub-committee met in June and the submissions were sent to the LRC on 26 June.

Locums

The Committee discussed a request from a member on whether The Law Society should examine the benefits and disadvantages of organizing a locum service. A locum is a qualified solicitor who steps in to manage the office of a sole practitioner during the temporary absence of the practitioner who may wish to take a short holiday or has an unexpected medical emergency. After reviewing information from comparable jurisdictions, it was decided to conduct a survey to see whether there is any demand for such a service. Currently, the *Solicitors (Professional Indemnity) Rules* cover “an indemnified” which does not cover the appointment of a locum; this means a locum must be an employee of the firm in order to receive cover under the Scheme. The Committee will continue to review and decided whether the suggestion is worth pursuing.

Mediation

The Standing Committee noted the promotion of mediation by the Chief Justice and the Secretary for Justice to complement the reforms taking place under the *Civil Justice Reform* project. (“CJR”). The President of the Lands Tribunal issued a new practice direction outlining a Pilot Scheme involving Building Management cases requiring represented parties to consider mediation. The Law Society was asked to review a draft practice direction prepared by the Chief Justice’s Working Party on Mediation on “*Voluntary Mediation in Petitions presented under Sections 168A and 177(1)(f) of the Companies Ordinance, Cap.32*”. The Standing Committee will be reviewing the reforms and the proposals to encourage the use of mediation given the implementation of this policy via a “top-down” approach.

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Lectures

The Standing Committee organised two lectures in June:

- Dr. Hamilton Hall: *“How does one reconcile vastly different opinions from different medical experts?”* on 12 June
- *Building Management (Amendment) Ordinance* on 21 June

Members of the Committee:

Alex T.H. LAI
(appointed as the *Chairman* in June)
Simon H. BERRY
Geoffrey N. BOOTH
Simon M.Y. CHAN
E. John DAVISON
Junius K.Y. HO
Kevin K.F. YAM

Ambrose S.K. LAM (resigned in July)
J.C. Nicholas MILLAR
Paul C.Y. TAN
Cecilia K.W. WONG
Simon W.L. WONG
(co-opted as new member in August)
Stephen W.S. HUNG
Andrew JEFFRIES

Secretary: Director of Practitioners Affairs

ADR COMMITTEE

The ADR Committee met formally on one occasion and conducted the rest of its business by e-mail; individual members represented The Law Society at external meetings.

Secretary for Justice's Committee on Mediation

The Secretary for Justice convened a committee comprising of a wide cross-section of stakeholders providing mediation services in Hong Kong. The Committee prepared a draft Position Paper on Mediation which Council supported, save for a proposal on accreditation of mediators by a single body as it considers the timing is inappropriate at present. The Committee organized a successful Conference on Mediation, with The Law Society as one of the sponsors, on 30 November and 1 December.

Pilot Scheme on Legal Aid for Mediation in Matrimonial Cases

Two representatives of the Committee attended the Panel on Administration of Justice and Legal Services (“AJLS”) to review a Report on the Legal Aid Scheme for Mediation in Matrimonial Cases on 25 June. The representatives noted the Scheme confirmed the Judiciary’s findings that mediation is of considerable value to divorcing families as it promotes understanding and co-operation.

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LAD should resolve problems in relation to funding where only one party is legally-aided, or where one party with private funds wants to hire a professional mediator who charges more than the \$600 fee paid by LAD, namely, “Would LAD contribute the full \$600 towards the mediator’s fees or only \$300 for its client’s share”? The rate of \$600 adopted by the Judiciary’s Scheme was based on the pay scale of social workers but the actual costs, even for NGOs, of providing the service was just over \$800 per hour, thus there is a 25% funding shortfall. Solicitors who are qualified mediators cannot afford to run a mediation practice on the basis of \$600 per hour per couple and if mediation is to become a full alternative dispute resolution mechanism it must be promoted by the Government and the Judiciary as a professional alternative and adequate funding needs to be provided.

The reliance on qualified mediators providing pro bono services or at a heavily subsidized rate may result in the public regarding mediation merely as an additional hurdle to overcome in order to litigate their cases.

Lectures

- Pilot Scheme for Building Management Cases

The course gave a brief overview of the Directions issued by the President of the Lands Tribunal, a general introduction to mediation, and the role of mediation in the Pilot Scheme.

- Collaborative Law on 30 August

Draft Practice Direction from the Working Party on Mediation

The Committee’s views were sought on a draft Practice Direction prepared by the Working Party on Voluntary Mediation in petitions presented under S.168A and 177(1)(f) of the *Companies Ordinance*. The Committee’s views with those of the Civil Litigation and Insolvency Law Committees will be sent to the Working Party by the end of January 2008.

Joint Consultative Committee (“JCC”)

Representatives attended the JCC meetings at the Hong Kong International Arbitration Centre on 16 March and 28 September.

Members of the Committee:

Geoffrey N. BOOTH (*Chairman*)
Glenn R.A. HALEY
Caroline S.P. LEE
LEE Wai Man
S. Dean LEWIS

Maureen E. MUELLER
Sylvia W.Y. SIU
Kenneth D. SOMMERVILLE
Norris H.C. YANG
Helena S.Y. YUEN

Secretary: Director of Practitioners Affairs

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CIVIL LITIGATION COMMITTEE

The Civil Litigation Committee met on six occasions during the year and one member resigned.

Pilot Scheme on Building Management Cases

Representatives met with the Judiciary on two occasions in January and in May to discuss the implementation of the Pilot Scheme for Building Management cases. Lam J. acknowledged the concerns of practitioners over proposals in relation to mediation and potential costs sanctions. He indicated the purpose of his Directions is to streamline procedures which can be achieved by consideration of mediation. It was acknowledged that mediation is at an early stage of development and there has to be a starting point to increase its use given the success of the Pilot Scheme on Mediation in the Family Court and the introduction of mediation in the Construction List. The Judiciary will be filtering cases to ensure mediation is appropriate as there are disputes which should be adjudicated and are not suitable for mediation.

Mainland Judgment (Reciprocal Enforcement) Bill

After four years of discussion with the Mainland Authorities, an *“Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters”* (“Arrangement”) was signed between the Department of Justice and the Supreme People’s Court on 14 July 2006. *The Mainland Judgment (Reciprocal Enforcement) Bill* implements the terms of the Agreement in the HKSAR. In March members reviewed an article in the *Hong Kong Lawyer* which queried whether the Arrangement could create a practical and workable judgment enforcement regime. It was noted reciprocal enforcement of judgments would be relatively rare but a Hong Kong court could consider arguments against enforcement of a Mainland judgment on Hong Kong legal principles.

Enforcement of Court Judgments in Civil Cases

The AJLS sought The Law Society’s views on Enforcement of Civil and Family Judgments and submissions were sent to the AJLS in February. These included comments on the Bailiff’s Office, recommendations to introduce legislation to introduce attachment of income orders, and improvements of current procedures in relation to information on judgment debtors. The Judiciary Administrator wrote to The Law Society in October objecting to The Law Society’s comments on the ineffectiveness of the Bailiff’s Office. However, feedback from members indicates practitioners avoid issuing writs of *fifa* if there is any prospect of success via other methods of enforcement. This matter has been placed on the AJLS agenda for January 2008.

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Civil Justice Reform (“CJR”)

The Civil Justice (Miscellaneous Amendments) Bill was gazetted on 30 March to implement the recommendations contained in the Steering Committee on CJR’s *Consultation Paper on Proposed Legislative Amendments for the Implementation of the Civil Justice Reform* dated April 2006. The Committee and members of the Working Party on CJR considered various aspects of CJR throughout the year and prepared submissions on the following matters:

- *The Civil Justice (Miscellaneous Amendments) Bill* in May
- Proposed amendments to the draft rules on wasted costs orders, and costs against a non-party in June
- Proposed leave requirements for appeals from the Lands Tribunal in October
- “*Revised Proposal for Amendments to Subsidiary Legislation under the Civil Justice Reform*” in November
- “Discovery” and the “Direct Relevance Test” in November

Rules of the High Court: Order 62

The Judiciary’s revised proposals contained significant amendments to the Schedules in Order 62 and adopted many of The Law Society’s recommendations. The outdated Schedules will be rationalized with the abolition of outdated procedures in relation to such items as the preparation of the writ, copies for service etc. and replaced by a figure of \$10,000. The adoption of these proposals will introduce much needed efficiency.

Taxation of Costs - Meeting with the Registrar and Taxing Masters on 31 July

Representatives met with the outgoing Registrar and the Taxing Masters to discuss Order 62, and the format of taxation bills which had not been considered in the Judiciary’s Report on CJR. The Committee re-iterated its long held position that the format of bills was arcane and unnecessarily cumbersome given the changes in practice and the use of technology over the last three decades. The Committee had produced a sample bill based on a chronological format so the recording of items would track the natural work flow of a standard litigation file thus making the bill easier to prepare and understand; the draft was well received by the Judiciary. The Registrar approved a new proforma set of taxation bills and asked The Law Society to encourage its members to adopt the new format. A revised circular on taxation of costs (Law Society circular 07-653) was circulated on 29 October.

The Registrar also advised the Committee of a trial scheme to encourage paper taxations in order to streamline procedures and the Registrar’s Directions were also circulated to members.

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Draft Hague Convention on Choice of Agreements

The DOJ issued a Consultation Paper on “*The Hague Convention on Choice of Agreement Concluded on 30 June 2005*”. An initial consultation with the DOJ had taken place in 2005 when the Committee provided general approval on the draft proposals. The Convention would allow enforcement in a wide number of jurisdictions where currently there are no agreements in place, or agreements have not been renewed since the transfer of sovereignty in 1997. The Law Society provided its response to the six questions raised in the Consultation Paper supporting the same but noting, in relation to three of the questions, these involved political decisions which could only be made by the Central People’s Government.

In relation to the reciprocity of enforcement of judgments with England & Wales, the Committee was advised that as the United Kingdom is a member of the European Union it is prohibited from entering into bi-lateral negotiations on enforcement of judgments. All such negotiations have to be undertaken by the European Union on behalf of all its members.

Mediation Pledge

The Judiciary sought The Law Society’s views on whether its members and law firms should “sign a mediation pledge” as the Government has signed such a pledge. As the CJR will be embracing mediation as an alternative dispute resolution tool members agreed the profession must first familiarize itself with the process. Consultation is still taking place in relation to the query and it is anticipated additional policy initiatives will be introduced by the Judiciary in 2008 to increase the use of mediation.

Pilot Schemes for Voluntary Mediation under Sections 168(A) And 177(1)(F) Of The Companies Ordinance

Members reviewed a draft practice direction prepared by the Chief Justice’s Working Party on Mediation. Numerous points were raised on the proposal to introduce mediation involving petitions by minority shareholders complaining about oppressive behaviour by majority shareholders. The Committee’s views as well as those of related committees will be collated and sent to the Judiciary for consideration in early 2008.

Members of the Committee:

Nicholas D. HUNSWORTH (*Chairman*)
 Mary S.H. CHAN
 A. Clinton D. EVANS
 Johnny C.M. FEE
 D. Nigel FRANCIS
 Warren P. GANESH
 Junius K.Y. HO
 Joseph S.M. KWAN

Jeffrey H. LANE
 Brenda F. LEE
 Philip W.I. LI (resigned in June)
 Mark LIN
 Amirali B. NASIR
 Simon D. POWELL
 Kenneth W.Y. WONG
 Sherman C.N. YAN

Secretary: Director of Practitioners Affairs

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Working Party on Reform of the Civil Process in Hong Kong

The Working Party met formally on one occasion in a joint meeting with the members of the Civil Litigation Committee on 31 October but did conduct a significant amount of work through e-mail consultation particularly during the latter part of the year.

The *Civil Justice (Miscellaneous Amendment) Bill 2007* was gazetted on 30 March and was considered by the Civil Litigation Committee and the Working Party. Submissions were sent to the Bills Committee after Council's approval on 29 May. The Law Society commented on wasted costs orders, a new section 52A(5) which provides for the introduction of a statutory concept of "fearless advocacy" (which The Law Society did not consider appropriate for civil litigation as the criminal and civil jurisdictions are quite separate and distinct branches of the law). Additional submissions were sent to the Bills Committee on 22 June expanding on the submissions on wasted costs and raising additional observations on "Costs against Non-Parties".

The Working Party reviewed a request from the Judiciary on "Proposed Leave Requirements for Appeals from the Lands Tribunal" and submissions were sent on 18 October. The Chief Justice's Steering Committee on Civil Justice Reform issued a supplementary Consultation Paper on "*Revised Proposals for Amendments to Subsidiary Legislation under the Civil Justice Reform*" and sought views on major changes to the following rules of the High Court: Service of Process, etc out of the jurisdiction, Offers to settle by payment into court, discovery and inspection of documents, case management summonses and conference, evidence, statements of truth, application for judicial review, appeals to the Court of Appeal, costs, and payments into court.

Members of the Working Party met on 31 October with the members of the Civil Litigation Committee and prepared submissions which were sent to the Steering Committee on 23 November.

On 26 October, the Working Party and Civil Litigation Committee also dealt with another request for submissions on "Direct relevance tests for pre-action disclosure in PI cases". This query was also sent to the Personal Injuries Committee and submissions were sent to the Bills Committee on 12 November.

It is anticipated the Bill will pass in early 2008. The subsidiary legislation will be reviewed and it is anticipated it will be presented for a negative vetting procedure for anticipated implementation on 2 April 2009.

Members of the Working Party:

Andrew JEFFRIES (*Chairman*)
D. Nigel FRANCIS/Warren P. GANESH
Barry P. HOY
Nicholas D. HUNSWORTH
James E. JAMISON

Jeffrey H. LANE
Allan C.Y. LEUNG
Mary B.L. THOMSON
Neville J.J. WATKINS
Kenneth W.Y. WONG

Secretary: Director of Practitioners Affairs

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COMPANY AND FINANCIAL LAW COMMITTEE

The Committee has reviewed and made comments on the following:-

- Consultation Paper on Accounting and Auditing Provisions
- ICAC and Directors' Ethics

Members of the Committee:

Patrick C.K. WONG (*Chairman*)
Grace K.W. CHAN
CHAO Tien Yo
Simon S.C. LAI
Angelina P.L. LEE

Lewis T. LUK
NG Kay Ian
David P.R. STANNARD
Richard J. THORNHILL

Secretary: Director of Practitioners Affairs

CONSTITUTIONAL AFFAIRS COMMITTEE

The Committee met on five occasions and discussions were dominated by the *Racial Discrimination Bill* and the Administration's *Green Paper on Constitutional Development*.

Racial Discrimination Bill

The Committee commented on the following proposals:

- Administration of the legislation by the Equal Opportunity Commission ("EOC")
- The potential conflict of interest between the conciliation role and the provision of legal assistance to complainants by the EOC
- Provision of adequate resources to enable language support for ethnic minorities and new arrivals from the Mainland to enable them to acquire linguistic skill in both Cantonese and English to enable them to integrate
- Indigenous inhabitants of the New Territories should not be granted exemptions from racial discrimination as the drafting could be interpreted as widening their existing "rights"

The Law Society's submissions incorporating the views of the Employment Law Committee were sent to LegCo in March.

Statute Law (Miscellaneous Amendments) Bill 2007

The Bills Committee sought The Law Society's views on the concept of "Public Order" and *Public Order (Ordre Public)* and the consequences of deleting the reference to *Ordre Public* in the *Public Order Ordinance*. The Committee considered the query by paper circulation and submissions indicating no objections to the proposals were sent to the Bills Committee on 15 June.

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Prevention of Bribery (Amendment) Bill 2007

Members had made submissions on this matter in October 2005 and noted the Administration's failure to respond to The Law Society's observations particularly in relation to the provisions of *Article 57 of the Basic Law* i.e. whether the Chief Executive ("CE") should be investigated by the ICAC. The Law Society recommended separate legislation should be drafted to deal with the CE rather than amend the *Prevention of Bribery Ordinance* as the common law offence of bribery is insufficient to cover potential acts of corruption, particularly against those persons attempting to corrupt the CE. It was also recommended that an independent Ad Hoc Committee be established to avoid conflicts of interest by the ICAC.

Green Paper on Constitutional Development

The Administration's Green Paper was published on the 12 July and discussion of the proposals was considered in the August meeting. The Committee reviewed The Law Society's earlier submissions on selecting the CE dated September 2004, the 5th Report on Constitutional Development dated November 2005, together with the Interpretations of the Standing Committee of the *National People's Congress* on the selection of the CE dated 6 and 26 April 2004. There was general consensus The Law Society should review the Green Paper from a legal and constitutional perspective and comment on whether the proposals comply with international standards. The Law Society's submissions included observations on the timetable for achieving universal suffrage, election of the CE and election of LegCo by universal suffrage. The evaluations of the Green Paper were presented as a legal analysis of the proposals rather than any view of their political desirability. The submissions were sent to the Administration on 10 October.

Human Rights Forum

Representatives attended meetings held on 18 April and 6 November when the agenda covered the Racial Discrimination Bill and Human Rights in Hong Kong.

Members of the Committee:

WONG Kwai Huen (*Chairman*)
 BUT Sun Wai
 Charles C.C. CHAU
 Eric T.M. CHEUNG
 John J. CLANCEY
 William S. CLARKE
 Mark D. DALY
 Lester G. HUANG (resigned in May)

IP Shing Hing
 Ambrose S.K. LAM (resigned in May)
 Stephen S.Y. LAW
 Joseph C.W. LI
 LING Bing
 POON Kai Cho
 Kevin K.F. YAM

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

CRIMINAL LAW & PROCEDURE COMMITTEE

The Committee met monthly to review proposed legislation and areas of interest to criminal law practitioners. Members also participated in small group discussions on specific topics and served on various internal Sub-committees and Working Parties. 2 new members were co-opted in January.

Choice of Language in A Trial

The Committee was consulted on a proposal to add a new Part III to *Practice Direction 9.4* on “*Choice of Language in a Trial*”. The Committee welcomed the proposal in principle, as it would clarify the stages an accused should make an election in relation to the trial language. Submissions were made that there should be provisions that the court should consider all the relevant circumstances of the case, including the language of the legal representatives, the witnesses and the court papers.

Consultation Paper on the Choice of Chinese Equivalents for the Words “*Advocacy*” And “*Advocate*” In Legislation

Members reviewed the Department of Justice’s Consultation Paper and agreed in principle its proposal to adopt “*訟辯*” and “*訟辯人*” respectively as the standardized Chinese translations for the terms “*Advocacy*” and “*Advocate*” in legislation.

Duty Lawyer Service (“DLS”)

The Committee complained about DLS’s policy of assigning more than one “*not guilty plea*” case per day to a duty lawyer. DLS did not agree with the complaint and threatened to withhold multiple trial assignments to solicitors. As professional conduct rules dictate that solicitors should not accept instructions where there is a risk of a conflicting professional engagement, members did not think clients’ interests and professional standards should be compromised for the sake of expediency. The Committee has invited the Bar to jointly urge the DLS to revise this policy.

Fees for Transcript and Record of Proceedings

In response to the Committee’s concern on the high level of fees for transcripts and records of proceedings, the Judiciary Administration has finally reviewed its charging basis. A circular was issued in February advising members of the revised fees. The level of fees for CDs and DVDs produced from the Digital Audio and Transcription Services remains high and so there will be ongoing discussion with the Judiciary.

Legal Visits - Use of Notebook Computers

Members discussed a set of Procedural Guidelines proposed by the Correctional Services Department (“CSD”) on the use of notebook computers at seven reception centres/maximum security institutions during legal visits. The Committee supported the issuance of the Guidelines in principle but suggested the arrangements should be put on trial for six months subject to further review. A circular was issued on the new arrangements in February.

Standing Committee on Practitioners Affairs

Legislation

The Committee reviewed and made submission on the following Bills:

- ***Independent Police Complaints Council Bill***
- ***Prevention of Bribery (Amendment) Bill 2007***

The Committee shared the views of the Constitutional Affairs Committee that: (1) given the unique constitutional position of the CE, there should be separate legislation to deal with the CE rather than extending the general standard of bribery prevention applicable to “*prescribed officers*” under the *Prevention of Bribery Ordinance*, Cap. 201 and (2) as ICAC is accountable to the CE under *Article 57 of the Basic Law*, an independent ad hoc Committee should be established to which the ICAC should report on an alleged offence of bribery in order to avoid possible conflict.

- ***Statute Law (Miscellaneous Provisions) Provisions Bill 2007***

Members reviewed Parts 5 and 7 of the Bill, and could not understand the rationale for the proposal in Part 5 to remove the seven years’ maximum sentencing limit for the offence of “*perverting the course of public justice*” and substitute this by giving the court an “*unfettered discretion*” on sentencing, as this could result in a possible sentence of life imprisonment in a High Court case. The Committee reiterated its objections to the proposal in Part 7 to implement an earlier proposal to expand the court’s jurisdiction to award wasted costs against a solicitor in criminal proceedings. The Chairman attended the Bills Committee meeting in June to make representations.

Live Television Link

Despite concerns on the proposed legislation, the Administration issued *draft Live Television Link (Witness Outside Hong Kong) Rules* and *High Court (Amendment) Rules* for consultation. The Committee reiterated its objections noting the Administration has not justified the need for reform and submitted, in particular, that any decision to allow overseas witness to give evidence by a live TV link should be a last resort and should only be allowed with the consensus of both the Prosecution and the Defence and where the testimony of the overseas witness was largely uncontested.

Overseas Lawyers Qualification Examination (OLQE)

At the invitation of the OLQE Committee, the Committee nominated members to join the Examiners’ Panel for Head II (Civil and Criminal Procedure) of the OLQE.

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“Privileged Correspondence” with Clients in the Custody of the CSD

The Committee reviewed a member’s complaint about “*privileged correspondence*” being opened by CSD officers. Rule 47A of the *Prison Rules*, Cap. 234A provides a general power to CSD officers to “*open all correspondence of persons in custody, in order to search for any article which may pose a threat to any individual’s personal safety or to the security, good order and discipline of the prison.*” However, in relation to “*privileged correspondence*” with lawyers, such power is subject to the requirement under Rule 47B that the correspondence should generally only be opened in the presence of the prisoner. A circular was issued in March to highlight the provisions of Rule 47A and 47B to members with a reminder that members should specifically mark their correspondence to clients in the custody of CSD with “*Subject to Legal Professional Privilege*” and “*Private and Confidential*” on both the envelope and the letter to make it obvious to the CSD officers that “*privileged correspondence*” is involved.

Production of Translated Witness Statements to Non-chinese Defendants

The Committee noted with concern a case where the Police rejected a request by a non-Chinese defendant for English translations of witness statements. Members believed defendants have a constitutional right to know the case alleged in criminal prosecutions. For those who do not understand the Chinese language, the Prosecution must supply an English translation of the prosecution papers. The Director of Public Prosecutions was invited to clarify the prosecution policy in this regard.

Review of Criminal Legal Aid Fees

The Committee devoted a significant amount of time and effort to its campaign for an overall review of the criminal legal aid fee system. Representations were made in the Joint Working Group (“JWG”), convened by the Administration, on a revised fee structure. However, negotiations with the Government have reached stalemate after seven meetings of the JWG as the Administration would only discuss the revised fee structure and proposed derisively low fixed hourly rates for solicitors and refused to commit to any meaningful increase in the fee rates. The Committee noted the importance for the Government to uphold the spirit of the Basic Law, which guarantees adequate legal representation for all, and believed the Government should seriously consider funding a proper criminal legal aid system instead of leaving it to be substantially subsidized by the legal profession. Council endorsed the Committee’s recommendation in August to launch a PR Lobbying Campaign on the subject and a Survey of Members was conducted in October. Representatives of the Committee attended two meetings of the AJLS in February and June and also met with legislators and lobbied relevant groups.

Rule 5D of the Solicitors’ Practice Rules (“Rule 5D”)

The Committee reviewed the 1st draft of the proposed amendments to Rule 5D prepared by the DOJ. Members expressed concern on the solicitors’ obligation to “*secure*” the written and signed agreement of the instructing person to the terms in a Rule 5D letter as they had no control over whether clients would sign and return the letter. The Committee recommended that instead of “*secure*”, it should be sufficient for solicitors to “*make reasonable efforts to obtain*” the written and signed agreement of the instructing person.

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Sample Checklists and Clauses

Members discussed and submitted comments to the Working Party on Retainer Letters on the draft checklists and sample clauses on Criminal Law Practice.

Use of Electronic Bundles in Criminal Proceedings

The Committee noted the Judiciary has introduced the use of electronic bundles in complex commercial crime trials and recommended a CPD course be provided to enable members to familiarize themselves with the new practice.

The Committee also reviewed the following:

- Paper on “*Juvenile Justice System – Enhanced Support Measures for Unruly Children and Young Offenders*”
- Practice Notes issued by The Law Society of England and Wales on “*Criminal Procedure Rules: Impact on Solicitors’ Duties to the Client*”.
- Proposed Judiciary Practice Direction on “*Applications to Stay Criminal Proceedings*”

Members of the Committee:

Stephen W. S. HUNG (*Chairman*)
BUT Sun Wai
Bucky K.H. CHAN
Duncan K.C. FUNG
Herman H.M. HUI
Paul M.W. LI
Philip W.I. LI

Jonathan C.Y. MOK (joined in January 2007)
Kenneth Hung Sui NG (joined in January 2007)
Andrew POWNER
Kevin STEEL
Anthony UPHAM
Michael VIDLER

Secretary: Assistant Director, Practitioners Affairs

Working Party on Criminal Legal Aid Fees Reform Campaign

A formal Working Party was established in August to consider and make recommendations to the Committee on the appropriate strategy to take forward the Criminal Legal Aid Fees Reform Campaign. Members met to review the draft Key Messages, Position Paper and the Members’ Surveys.

Members of the Working Party:

Stephen W.S. HUNG (*Chairman*)
BUT Sun Wai
Kevin STEEL

Anthony UPHAM
Michael VIDLER

Secretary: Assistant Director, Practitioners Affairs

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External Work:

Criminal Court Users' Committee ("CCUC")

The Chairman of the Committee was the Society's representative on the CCUC, which met in April and October. Issues discussed included mainly the use of electronic bundles for criminal proceedings in the High Court; court security; translation of court decisions; translation of documentary exhibits for Transfer Proceedings in Magistrates' Courts; jury attendance; provision of specimen Directions to interested parties; Practice Direction on Stay Applications; restriction of video/audio recording in court proceedings.

Liaison Committee with the CSD

Topics discussed with the CSD included mainly provisions of pre-sentencing assessment reports, extension of video legal visit service to Tai Lam Centre for Women; use of notebook computers during legal visits.

Members of the Liaison Committee:

Bucky K.H. CHAN
Duncan K.C. FUNG

Paul M.W. LI
Anthony UPHAM

Secretary: Assistant Director, Practitioners Affairs

EMPLOYMENT LAW COMMITTEE

The Committee reviewed draft bills affecting employment in Hong Kong. Members of the Committee met with the Permanent Secretary for Economic Development and Labour and discussed issues of concern to practitioners.

Members of the Committee:

Duncan ABATE (*Chairman*)
CHEUNG Yuen Sang
Dennis C.K. HO
IU Ting Kwok
Edward M.T. KO

Jeff LANE
Walter Y.W. LEE
Wendy Y.W. LEE
Fiona LOUGHREY
Chris K.Y. WONG

Secretary : Secretary General

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FAMILY LAW COMMITTEE

The Family Law Committee met on eight occasions and a Sub-committee held a meeting in August.

Enforcement of Family Court Orders

The Committee discussed a letter from the AJLS dated 13 November 2006 which sought comments on the current state of Enforcement of Family Court Orders; this was dealt with during a special meeting on 20 January. The Committee made submissions on the following matters:

- Interest and Surcharge on Arrears of Maintenance Orders
- Enforcement of Periodical Payments and Lump Sum Orders
- Secured Periodical payments
- Creation of a database of court orders
- Information on the paying party

Pilot Scheme on Financial Dispute Resolution (“FDR”)

The operation of the FDR was reviewed and members reached consensus that in relation to the role of the FDR judge it was important for the judge to provide greater assistance to the parties rather than to act solely as a mediator. In addition, it was noted solicitors also needed to generate options rather than remain passive when participating in the FDR hearings.

Family Court Users’ Committee

The Chief Justice appointed two members from the Family Law Committee to sit on the Family Court Users’ Committee in their personal capacity. The Committee met on 25 January and 23 October when our representatives were asked to raise the following matters:-

- FDR
 - o The conduct of the 1st Appointment;
 - o Directions on the “Chronology of Events” to assist the judge in the 1st Appointment;
 - o Directions on FDR bundles;
- Approval of draft orders;
- Clarification on the transfer of cases to the High Court, Part Heard cases, and delay in the listing of judgment summonses.

Standing Committee on Practitioners Affairs

Domestic Violence Ordinance (“DVO”)

The Committee met with the Deputy Secretary of the Health Welfare and Food Bureau in February and received a briefing on the Bureau’s proposed amendments to the DVO. The Bill was gazetted in June and the Committee was pleased to note the Bureau’s proposed amendments had taken into account several of The Law Society’s recommendations such as:

- extending the scope of the legislation to cover persons formerly in spousal/cohabitation relationships and their children;
- extending the scope of the legislation to cover wider family relations, including in-laws, grandparents/grandchildren, brothers and sisters, and aunts and uncles;
- enabling a “next friend” of a child under the age of 18 to apply for an injunction on behalf of any child;
- removing the requirement that a child has to be living with the applicant to be entitled to protection under the DVO;
- enabling the court to vary or suspend an existing custody or access order when the court makes an order under the DVO;
- the court can attach a power of arrest if it reasonably believes the respondent will be subjected to violence;
- extending the maximum duration of an injunction order from six months to two years.

However, the Administration refused to propose amendments on the following matters: providing a definition of “domestic violence”, protection to same sex couples, “stalking”, and extending the court’s power to grant ancillary orders for medical bills, destruction of property and other items incurred as a direct result of acts of domestic violence.

Submissions were sent to the Bills Committee in support of the Bill in September and it is expected to pass towards the end of the legislative session in 2008. The Committee also re-stated its support for a truly dedicated Family Court.

Family Law Lectures

The Committee discussed the feasibility of organising a series of lectures for the benefit of family law practitioners and convened a sub-committee which met in August when recommendations were made on: the format, venue, topics and potential speakers. It was hoped a prominent international speaker would provide the Key Note speech in late 2008 but preliminary negotiations have not been successful to date. The Committee hopes a lecture series on cross-border matters can be launched in 2008.

Standing Committee on Practitioners Affairs

Law Reform on Guardianship and Custody

The Committee wrote to the Labour and Welfare Bureau in January seeking information on the Administration's plans to implement recommendations contained in the following Law Reform Reports:

- *Guardianship and Custody* (published in December 1998),
- *Guardianship of Children* (published in January 2002), and
- *Child Custody and Access* (published in March 2005)

The Committee noted the Bureau sent a holding reply and that no proposals have been put forward despite a request for information in January 2006.

Child Protection

The Committee made submissions on the unsatisfactory procedures in place for Child Protection Orders noting such criticism is long standing.

Children's Commission

The Committee discussed a request from the Hong Kong Commission on Children's Rights to establish an independent Children's Commission. It was noted the Administration is considering the establishment of a "Family Commission" and suggested it may be worthwhile to await the outcome of the discussion before establishing yet another commission. Council subsequently decided not to lend its support to the proposal.

International Recovery of Child Support and Other Forms of Family Maintenance

The Committee considered the DOJ's Consultation Paper which outlined the provisions of the draft Convention and sought views on 19 questions; a response was sent on 5 September.

Legislation

The Committee reviewed the following legislation:

- *Domicile Bill*
- *Statute Law (Miscellaneous Provisions) Bill*

Members of the Committee:

KONG Yuen Hoong (*Chairman*)
Mary S.H. CHAN
Dennis C.K. HO
Anthony J. HUNG
Barbara A. HUNG

LAM Tze Yan
LEUNG Shek Lim
Catherine K.G. POR
Sharon A. SER
Susan WONG

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

INSOLVENCY LAW COMMITTEE

The Committee conducted its business by e-mail during the year and dealt with the following matters:-

Official Receiver's Office ("ORO")

The Chairman of the Committee is The Law Society's official representative on the ORO Services Advisory Committee and attended 3 quarterly meetings in the year.

Corporate Accounts System For On-line Bankruptcy Searches

This matter was raised with the Advisory Committee but after discussion it was determined the Scheme was not commercially viable.

Draft Practice Direction

The Committee's views was sought on a draft Practice Direction prepared by the Working Party on Mediation providing for a Pilot Scheme for Petitions presented under S.168A and 177(1)(f) of the *Companies Ordinance*. The Committee's views together with those of the Civil Litigation Committee will be sent to the Working Party at the end of January 2008.

Members of the Committee:

Keith M.K. HO (*Chairman*)
Ian R. DE WITT
Camille JOJO

Victor K.S. CHIU
Nicholas D. HUNSWORTH
Jimmie K.S. WONG

Secretary: Director of Practitioners Affairs

INTELLECTUAL PROPERTY COMMITTEE

The Committee met formally on five occasions and attended four external meetings; three new members were co-opted in the latter half of the year.

Bi-annual Meeting with the Intellectual Property Department ("IPD")

The Committee met with representatives of the IPD on 28 February and 13 September when the following issues were raised:-

- The Trade Mark Registry Search System and Use of the *Ming Font* for online searches
 - o IPD attempted to address the problems but failed to do so to the satisfaction of the Committee which asked for the Working Group on Registry Practice to be re-convened to discuss practical issues

Standing Committee on Practitioners Affairs

- *Brands Inc. v. KK Regal Corp.*
- Re-instatement of Nationality or Country/State of Incorporation in the Registration Document.
 - o The Committee put forward this proposal in light of the latest anti-money laundering requirements and the campaign to “Know your Client”
- *Trade Mark Ordinance Cap. 559*
 - o Transitional Arrangements
 - o Sections 12(4) and 18(4)
- Trade Mark Registry
 - o Order of address at interlocutory applications
 - o Costs
 - o Form 5TA
 - o Extension of time under Rule 13(3)
- “Acquired Distinctiveness”
- Format of IPD letters

Copyright (Amendment) Bill 2006

Representatives met with the Commerce, Industry and Technology Bureau (“CITB”) on 30 January and 20 March and attempted to change the policy decision in relation to “lawfully made” as defined in the Bill. On 2 April, CITB indicated it could not accommodate The Law Society’s views.

With the publication of the Committee Stage Amendments (“CSAs”), the Committee made a final attempt in June to amend the concept of “lawfully made”. The Administration re-iterated its view that copies made with the licence of the copyright owner in the place of making were “lawfully made”, and even if the producer did not hold a license from the Hong Kong copyright owners the products should be regarded as “genuine” rather than “pirated” copies. The Committee stated the Administration’s definition of “lawfully made” in the Bill, in the context of the *Copyright Ordinance*, legalized importation of products to the detriment of the owner of the copyright in Hong Kong. Submissions were sent to the Bills Committee on 5, 12, 15 and 20 June and LegCo members were lobbied for support, but unfortunately, the submissions were not adopted and the Bill passed.

Exemption on Photocopying for Certain Groups

The Committee was invited to review the exemption provisions in the Bill concerning photocopying of legal texts. Commentary was provided that there should be a balance of interest between the copyright owners and users and exemptions should be applied generally and not to any particular group of users. It was noted the Bill contained exemptions for research, private study and anything for the purposes of judicial proceedings, therefore if specific groups wished to escape the provisions of the Ordinance they could enter into commercial licences.

Standing Committee on Practitioners Affairs

Hong Kong Reprographic Rights Licensing Society (“HKRRLS”)

The Committee met with representatives of HKRRLS on 28 May and reviewed its licensing agreement, membership list and mandate. It concluded the proposed licence to be of minimal interest to solicitors or legal practices. A report was made to the Standing Committee on Practitioners Affairs which decided not to enter into negotiations on behalf of The Law Society for a licence to use the copyrighted works covered by the HKRRLS.

Companies Registry

The Committee discussed the problems of shadow companies registering names which could infringe on the intellectual property rights of registered owners. These shadow companies were incorporated in other jurisdictions, particularly the Mainland, to issue fake letters of authorization to legitimize infringing conduct. The Companies Registry has difficulty in preventing abuse of its registration procedures as the existing legislation cannot deal with this practice, and it is clear the Administration will not introduce separate legislation to deal with this problem given the ongoing review of the *Companies Ordinance* which will run until 2010. However, the Companies Registry has established a Liaison Committee with IP Practitioners and The Law Society was invited to nominate a representative to sit on the Committee at the end of the year. The Companies Registry also issued a circular, 6/227 in December reminding the public that registration of a company name with the Companies Registry did not confer any intellectual property rights in respect of that name.

IP Protocols

The Committee wrote to the Judiciary and provided copies of papers prepared by The Law Society of England and Wales on “Threat Actions” and a draft Code of Practice dated June 2004 with a recommendation that adoption of this material could improve standards of intellectual property litigation. The Judiciary Administrator advised the Judiciary will discuss Pre-action Protocols after the passage of the CJR legislation.

The Committee reviewed the following:

- *Patents (Amendment) Bill* in March noting the contents were not controversial.
- Consultation Paper by the Commerce and Economic Development Bureau “*Provision of Additional Exemptions on Circumvention of Technological Measures*”. The Committee will be presenting submissions in early 2008.
- Register of Trade Mark Agents

In November, the Committee discussed the feasibility of establishing a group of IP practitioners similar to the *English Intellectual Lawyers Association*. A sub-committee has been convened and it will discuss the matter further and make recommendations in 2008.

- *Hague Convention on Choice of Agreements*
- Review of Checklists and Sample Clauses on Retainer Letters

Standing Committee on Practitioners Affairs

Members of the Committee:

A. Clinton D. EVANS (*Chairman*)
Ella S.K. CHEONG
Lindsay B. ESLER
Chloe Y.F. LEE (joined in June)
Rebecca M.C. LO
Kenny K.S. WONG

Steven J. BIRT (joined in October)
Yvonne CHUA (joined in June)
KWONG Chi Keung
Anita P.F. LEUNG
Henry J.H. WHEARE

Secretary: Director of Practitioners Affairs

LEGAL AID COMMITTEE

The Legal Aid Committee dealt with a number of issues by way of circulation of papers. Members continued to monitor the assignment of both civil and criminal cases by the Legal Aid Department and the Duty Lawyer Service, raising queries and seeking clarification where appropriate.

The Committee was consulted by the Legal Aid Services Council (“LASC”) on whether Hong Kong should introduce a system of “*preferred suppliers*” for legal aid assignments, similar to the one adopted in England and Wales. Members reviewed a Consultancy Report commissioned by the LASC and were unconvinced a case had been made, noting there were differences in the practices in Hong Kong and England and Wales. However, whilst there is little control over the quality of performance in England and Wales, once the case has been assigned to solicitors and the use of “*preferred suppliers*” might assist to improve quality, the performance of the assigned solicitors and counsel is closely monitored by professional officers in the Legal Aid Department in Hong Kong. There was further concern that the introduction of a system of “*preferred suppliers*” might result in a reduction in the number of firms offering legal aid services and diminution in the availability of access to justice. The Committee submitted its views to the LASC that the existing scheme of legal aid assignments had worked well and it did not see a need for change.

The Committee was well aware that in response to the recommendations of the Ombudsman in its Report on Monitoring of Assigned-out Cases 2006, the Legal Aid Department would take steps to update the “*Manual for Legal Aid Practitioners*”. The Committee will keep a close watch on the development of this and carefully review what implications this might have on the Legal Aid Practitioners.

Members of the Committee:

Junius K.Y. HO (*Chairman*)
Dennis C.K. HO
Ambrose S.K. LAM
Amirali B. NASIR

Kevin STEEL
Christine S.Y. TSANG
Leslie K.L. YEUNG

Secretary: Secretary General

Standing Committee on Practitioners Affairs

PERSONAL INJURIES COMMITTEE

The Committee was convened in June when the Standing Committee on Practitioners Affairs selected 11 members from 21 applicants after taking into account the different approach to personal injuries litigation by solicitors acting for plaintiffs and defendants. The inaugural meeting of the Committee was held on 10 July when members elected the Chair, settled the Committee's terms of reference, and reviewed the contents of the *Judiciary's Personal Injuries Practice Direction 18.1* ("PD18.1"). The Committee held six meetings from July to December.

Lunch with Saunders J.

The Committee invited Saunders J. to an informal lunch on 17 August with five members and discussed the status of PD18.1 and other matters involving personal injuries litigation. The Judge indicated he would wish to discuss PD18.1, mediation of PI cases, and issues concerning the activities of recovery agents. General discussion took place on the potential role of mediation in PI cases with members reviewing the pilot schemes on mediation by the Family Court, the Legal Aid Department, and for Building Management Cases.

Directory of Experts

Members considered it would be useful to compile a *Directory of Experts* which could be used as a resource by the profession and so pooled resources by circulating the names of medical, and non-medical litigations support services. Unfortunately, the project could not proceed as publication of a medical doctor's details in a Directory would breach the Hong Kong *Medical Association's Code of Practice*; the *Personal Data (Privacy) Ordinance* also requires the consent of every person listed.

Practice Direction ("PD") 18.1

Members provided comments on the practice direction which were subsequently collated and discussed during the September to December meetings. In the October meeting, the Committee decided it was important to cross reference the earlier recommendations with the proposed reforms under the CJR in light of the publication of a new Consultation Paper by the Steering Committee on CJR.

The Committee anticipates completion of the review by early 2008 and will represent The Law Society on an Ad Hoc Working Group to be convened by Saunders J.

Mental Health Ordinance

Members agreed to form a Sub-committee to review practice under the *Mental Health Ordinance* in light of the various Directions issued by the Judge in charge of the Guardianship Board. A comprehensive circular on the *Mental Health Ordinance* was circulated on 26 November (circular No.07-710).

Standing Committee on Practitioners Affairs

Members of the Committee:

Mark F. REEVES (*Chairman*)
Patrick M. BURKE
Eliza L.S. CHANG
Christina W.C. HUNG
Nancy B.Y. LEUNG
Vitus W.H. LEUNG

Nicholas J.C. MILLAR
Amirali B. NASIR
Ludwig S.W. NG
Szwina S.K. PANG
Tommy K.M. WONG

Secretary: Director of Practitioners Affairs

Members of the Sub-committee on the Mental Health Ordinance:

Nicholas J.C. MILLAR (*Chairman*)
Eliza L.S. CHANG
Szwina S.K. PANG
Tommy K.M. WONG

RETIREMENT SCHEMES COMMITTEE

The Committee has reviewed and made comments on the following:-

- *Mandatory Provident Fund Schemes (Amendment) Bill 2007*
- *MPF Revised Code and Guidelines*

Members of the Committee:

Duncan A.W. ABATE (*Chairman*)
David G. ADAMS
Cynthia W.S. CHUNG
Angus H. FORSYTH

Christine M. KOO
Fergus F.C. LU (resigned in October)
Ines C.Y. WEI (joined in November)
Judy YANG

Secretary: Director of Practitioners Affairs

REVENUE LAW COMMITTEE

The Committee met formally on two occasions in March and September and reviewed documentation via email. The Committee reviewed and made submissions on the following:

- *Consultation Paper on Tax Reform*
- *Domicile Bill*
- *Draft Departmental Interpretation and Practice Note#10*
- *Proposal to Amend Charge to Salaries Tax*

Standing Committee on Practitioners Affairs

Trust Law Reform

The Committee sought Council's endorsement of the work by the Joint Committee on Trust Law Reform to lobby for reform of the existing trust legislation in order to improve Hong Kong's standing for international trust work.

Joint Liaison Committee on Taxation

Representatives attended meetings on a monthly basis.

Members of the Committee:

William A. THOMSON (*Chairman*)
James J. BERTRAM
Eric C.H. CHIU
Philson W.H. HO

Vincent P.C. KWAN
Simon J.G. RAE
Anthony C.K. SO

Secretary: Director of Practitioners Affairs

SECURITIES LAW COMMITTEE

The Committee reviewed and made comments on the following:-

- *Consultation Paper on Accounting and Auditing Provisions*
- *Discussion Paper on Periodic Financial Reporting*
- *Consultation on New Procedures for Takeovers Hearings*
- *Consultation on Proposed Amendments to the Codes on Takeovers and Mergers and Share Repurchases*
- *Consultation Paper on Electronic Submission of Financial Returns*

Members of the Committee:

Simon H. BERRY (*Chairman*)
James W. BAIRD
Julia F. CHARLTON
Leo P.Y. CHIU
Julianne P. DOE
Teresa Y.Y. KO
Vincent P.C. KWAN

Angelina P.L. LEE
Timothy LOH
Gavin P. NESBITT
Patricia J. SHIH
Dominic W.L. TSUN
David P.R. STANNARD
Dieter L.T. YIH

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

WORKING PARTY ON COMPETITION LAW

This Working Party met formally on four occasions and once with the Government's Consultants in August.

The Economic and Labour Bureau ("Bureau") published its Discussion Paper "*Promoting Competition – Maintaining our Economic Drive*" in November 2006, but the Consultation period was relatively tight as the deadline for submissions was 5 February 2007. The Bureau sought feedback on 20 Questions on, inter alia, the need for a new competition law, the regulatory framework for competition law and enforcement and other regulatory issues. Members split up the work provided provisional answers to the 20 Questions, meeting twice in January to finalise the draft replies which were sent to the Bureau on 13 February.

The Working Party met on 11 June to discuss a request from Council to prepare a report on the potential impact any new legislation could have on solicitors' practices with particular emphasis on the legal monopolies relating to conveyancing, litigation and probate work.

In June, the Government's Consultant invited representatives to discuss The Law Society's submissions on the Consultation Paper, and a meeting took place on 21 August. The Consultants asked 13 additional Questions on such topics as: *Multi-disciplinary Practices*, the "per se rule", exclusions and exemptions, class actions, and *Article 35* of the *Basic Law* guaranteeing access to the Court. Council approved the draft replies on 18 September.

The Government had indicated an intention to introduce a Bill during the last quarter of the year in order to have legislation in place before the end of the LegCo term in July 2008. However, this timetable has been revised and it is anticipated the Bill will not be gazetted until the new legislative term.

Members of the Working Party:

Simon H. BERRY (*Chairman*)
Lester G. HUANG
NG Kin Yuen
Simon D. POWELL

Thomas S.T. SO
Henry J.H. WHEARE
Kevin K.F. YAM

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

Working Party on Higher Rights of Audience (“HRA”)

The Working Party met formally on two occasions on 30 January and 10 October.

In January the following items were discussed:-

- Establishment of an Independent Advocacy Board;
- “Cab Rank Rule”
- Accreditation

The Chief Justice’s Working Party on Solicitors’ Rights of Audience (“CJ’s Working Party”)

The Working Party published an Interim Report in June 2006 and the Final Report was published on 29 November. The Law Society welcomed the recommendation that solicitors should be granted HRA and that its proposals, on the whole, had been adopted. These include: criteria to be based on five years’ post-qualification practice and appropriate litigation experience; HRA qualifications to be for civil or criminal proceedings or both; establishment of a Higher Rights Assessment Board (Board) to be chaired by a senior judge and The Law Society to make recommendations on appointment of candidates to the Board. The Law Society to be responsible for conduct and discipline of solicitor-advocates and apply a Code of Conduct (to be drawn up by the Council in consultation with the Bar Council and the Judiciary).

The Law Society has been advised that legislation will not be introduced into the Legislative Council until the new legislative session in 2008/9.

Two representatives of the Working Party attended a meeting of the AJLS on 13 December to discuss the recommendations in the Final Report.

Members of the Working Party:

Andrew JEFFRIES (*Chairman*)
 Peter H.C. BARNES
 Melville T.C. BOASE
 Christopher P. ERVING
 Stephen W.S. HUNG
 Nicholas D. HUNSWORTH
 Mark LIN

J.C. Nicholas MILLAR
 Christopher N. MORLEY
 Amirali B. NASIR
 Mark F. REEVES
 Sharon A. SER
 Sylvia W.Y. SIU
 Felix K.Y. YAU

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

MANAGEMENT & TECHNOLOGY COMMITTEE

The Committee met five times during the year and covered the following matters:

Review of The Law Society's Membership Database System and The Law Society Website

The Committee assisted in inviting three IT consultancy companies to submit proposals to study The Law Society's IT infrastructure, in particular the membership database system and the website, and give advice on the requirements for redeveloping the membership database system and revamping the website. The proposals were submitted to the Standing Committee on Policy and Resources for consideration which resolved to appoint a consultancy company to do the study.

Forum on "Everything You Want To Know About IT But Were Afraid To Ask"

The Committee organised two fora on general IT knowledge for law firms. The first forum held on 3 March focused on general IT knowledge and attracted more than 80 members.



Forum on Support Applications for Solicitors' Practices

The Committee organised a second forum on "Support Applications for Solicitors' Practices" on 21 April which focused on products and solutions specifically tailor-made for solicitors' practices; three vendors were invited to make presentations and provide demonstrations.



Forum on Chinese Legal Information

An forum on *Chinese Legal Information* was held on 29 September to introduce on-line legal research on China law. Two vendors were invited to make demonstrations on the research tools available; this was also the first forum organised by the Committee which was conducted in Putonghua.

Standing Committee on Practitioners Affairs

Members of the Committee:

Andrew S.K. LAW (*Chairman*)
Barry C.Y. CHIN
Gabriela KENNEDY
Pamela F. KU

William W.S. LAM
Amirali B. NASIR
Kelvin K.Y. TAM
Peter K. TSE

Secretary: Assistant Director, Administration

PROBATE COMMITTEE

The Probate Committee reviewed issues and attended to members' enquiries relevant to probate practice and procedure. The Committee maintained close contact with the Probate Registry through the Joint Standing Committee on Probate Practice which comprises the Registrar of the High Court, Probate Masters, the Chief Probate Officer and members of this Committee. Members also assisted in processing applications for publication in the weekly *Enquiries from Solicitors on Wills, Codicils and other Testamentary Dispositions*. A longstanding member resigned this year.

Consultation Paper on Enduring Powers of Attorney ("EPAs")

The Committee held two meetings to discuss the recommendations put forward by the LRC in the Consultation Paper on EPAs. There were concerns on the strict requirement under Section 5(2)(a) of the *Enduring Powers of Attorney Ordinance* for concurrent witnessing of the execution of an EPA by a solicitor and a medical practitioner. The majority favoured dispensing with the witnessing requirement by a medical practitioner by introducing safeguards to require mandatory notification of the registration of an EPA to the donor and two persons named in the document, together with an objection procedure to provide a right of recourse in the case of abuse by the attorney. The Chairman reflected the views to the Joint Working Party convened by the Standing Committee on Practitioners Affairs and submissions were made to the LRC in June.

Domicile Bill

Members considered and supported the legislative proposals in the Domicile Bill to simplify the complex common law rules for determining a person's domicile.

Home Affairs Department ("HAD") – Estate Beneficiaries Support Services

The Committee noted the new delegation of powers by the Secretary for Home Affairs to the Director of Home Affairs and her officers to provide support services for estate beneficiaries effective from 1 April. It reviewed a proposed set of application forms, certificates, authorizations and notices to be adopted by the HAD and the relevant pamphlets and booklets and sought clarifications from the HAD on the new procedures. A circular was issued in March to advise members of the change.

Standing Committee on Practitioners Affairs

PCLL Probate

The Committee deliberated on a proposal by the University of Hong Kong to remove the subject “Probate Practice” from the compulsory core areas on the PCLL syllabus and to offer an elective course on “Probate and Trusts Practice”. Members objected to the proposal, as it is important for every solicitor to be acquainted with the basic concepts of succession law (e.g. the concepts of executors and administration and have practical skills in drafting wills.

Trust Laws for the 21st Century

Members discussed the submissions by the Joint Committee on Trust Law Reform to the Government to update the law on trusts. The proposals have not catered for “*Managing Trustee*” and the Committee sought clarification from the Joint Committee in this regard.

Will Search Inquiry

The Committee reviewed the Society’s *Will Search* mechanism and revised the prescribed application form to require clear specification of the applicant’s interests in the deceased’s estate. A circular on the revised application form was issued in December.

JOINT STANDING COMMITTEE ON PROBATE PRACTICE

The Joint Standing Committee met in July, which approved the introduction of the following:

- filing of a completed checklist at the time of the Application for Grant
- payment of both the filing fee and the court fee at the time of the Application for Grant
- removal of files in the Solicitors’ Boxes in the Probate Registry

A circular on the new practice was issued in October.

Members of the Committee:

Herbert H.K. TSOI (*Chairman*)
Helen Y.P. CHAN
Albert C.Y. HO
Anson K.C. KAN (resigned in March 2007)

Patricia LAM
Billy W.Y. MA
NG Kin Yuen
TAM Sau Hing

Secretary: Assistant Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

PROPERTY COMMITTEE

The Committee reviewed issues and legislative proposals relating to conveyancing practice in monthly regular meetings, and also met with representatives of Government departments and other organisations on specific issues. Each member of the Committee continued to consider and determine applications for waivers of DMC Guidelines; and application for deviations from forms of Agreement for Sale and Purchase approved under Rule 5C of the *Solicitors Practice Rules, Cap.159H*. Members also served on internal Working Parties, and as The Law Society's representatives on external Committees/Working Parties on property related issues. One member resigned this year.

Anti-Competition Law

The Committee nominated a representative to serve on The Law Society's Working Party on Hong Kong Competition Policy.

Consent Scheme – Applications for Approval of Deed of Mutual Covenants

Concerns raised by the Committee in earlier years has resulted in the Legal Advisory and Conveyancing Office ("LACO") implementing a number of new measures in 2006 to expedite the DMC approval process. As the new measures have been in place for a year, the Committee urged LACO to conduct a review and reconsider its request for performance pledges on the DMC approval process. However, LACO cited the problem of production of incomplete documents in the DMC checklist by solicitors as a reason for delay in approval, and counter-proposed implementing a policy to reject applications until they are complete and accompanied by a checklist signed personally by a solicitor. The Committee will keep this matter under review.

Electronic Transactions Ordinance, Cap.553 ("ETO")

The ETO gives electronic records and digital signatures the same legal status as that of their paper-based counterparts and the Committee was consulted on whether the legislation should be extended to cover certain categories of documents. Submissions were made in July that the need for paper-based oaths, affidavits, statutory declarations, powers of attorney or trusts should be kept because of the solemnity of the matters involved and the need for secondary authentication. Additionally, oaths, affidavits and statutory declarations should continue to be excluded from the application of ETO until electronic filing of court documents is made possible.

Proposed Amendments to the Forms of Sale and Purchase Agreement Approved under Rule 5C of the Solicitors' Practice Rules ("Rule 5C forms") – 5-day Clearing Week

The Committee discussed the queries raised by the Judiciary on the proposed amendments to the Rule 5C forms, following implementation of the 5-day clearing week by the banking industry. Council endorsed the Committee's recommendation to make further revisions to these forms to deal with the Judiciary's concerns and the Chief Justice's approval was sought in April.

Standing Committee on Practitioners Affairs

Proposed Joint Committee on Property Law and Practice with the All China Lawyers' Association ("ACLA")

As the new PRC Property Law would come into operation in the Mainland in October, this Committee and the Mainland Legal Affairs Committee approached the ACLA to propose the establishment of a Joint Committee on Property Law and Practice as an ongoing forum for mutual exchange of knowledge, information and experience in property law and practice in the two jurisdictions. The ACLA agreed to the idea in principle and there will be further discussions on the detailed arrangements.

Land Titles (Amendment) Bill (2nd Working Draft) ("the Amendment Bill")

The Committee reviewed and endorsed the draft submissions recommended by the Working Party on Land Titles Ordinance to (1) the Land Registry's responses to comments made by the Working Party on the Amendment Bill; and (2) comments made by other stakeholders on the Amendment Bill. It noted with concern the length of time it would take for the enactment of the Amendment Bill and for title registration to come into full operation and suggested the Working Party should consider co-opting additional members to ensure there would be continuity in its work.

Proposed Amendments to the *Conveyancing and Property Ordinance* (Cap. 219) ("CPO") - Production of Original Pre-Intermediate Root Title Documents

The Committee continued to liaise with the DOJ on the introduction of legislation to resolve the difficulties created by two judgments, namely *Yiu Ping Fong v. Lam Lai Hing* HCMP No. 3617 of 1998 and *Guang Zhou Real Estate Development (Hong Kong) Co. Ltd. & Anor v. Summit Elegance Limited* HCA 1531 of 1998. It put forward a revised draft of the new S. 13A of the CPO, as settled by Senior Counsel, to deal with concerns raised by the Bar and other stakeholders. The DOJ conceded there was a problem but proposed its own draft of the new S.13A and proposed legislative amendments be introduced in the Statute Law (Miscellaneous Provisions) Bill 2008. Members expressed reservations on the DOJ's draft and will follow up on the matter.

Overseas Lawyers Qualification Examination ("OLQE")

At the invitation of the OLQE Committee, the Committee discussed and nominated appropriate candidates to fill the vacancy following the resignation of one of the Chief Examiners.

Practice Direction A5 – Revised Guidelines for the Drafting of DMCS

The Committee reviewed and endorsed the amendments to the DMC Guidelines, proposed by the Working Party on Revised DMC Guidelines following revisions by LACO of its Consent Scheme DMC Guidelines; these came into operation in July. In view of the enactment of the *Building Management (Amendment) Ordinance 2007* in August, the Committee reconvened the Working Party to further review the new Guidelines.

Standing Committee on Practitioners Affairs

Special Registers for Standard Term Documents (“STD”) and Powers of Attorney (“PAs”)

Members discussed the Land Registry’s Discussion paper on STD and PAs. They endorsed, in principle, the proposal to set up a Register for STD but expressed reservations on the proposal to set up a PA Register, even though the Working Party on Land Titles Ordinance approved the same. The Committee was concerned that the PA Register would make a PA a public document, thus imposing additional burdens on members to search the Register but with no guarantee that it would ease the problem of lost PAs.

The Committee also considered:

- Report of the Housing, Planning and Lands Bureau on the Public Consultation on Mandatory Building Inspection published in May
- Proposed system for determination of land boundaries to be set up under the Land Survey Ordinance.
- *Building (Amendment) Bill 2007*
- Draft checklists and sample clauses on “*Property/Conveyancing/Landlord and Tenant*”.

External Work:

The Committee had representatives on the following external groups and committees:

- Land Registry Customer Liaison Group
- Land Registry Joint Standing Committee
- The Land Titles Ordinance Steering Committee
- The Land Titles Ordinance Review Committee
- Title Registration Education Committee

Members of the Committee:

Emily Y.M. LAM (*Chairman*)
 Lilian CHIANG
 CHAU Wang Wai (resigned in November 2007)
 Wendy CHOW
 Ambrose LAM
 Patrick K.H. LAM
 Angela W.Y. LEE

Mabel M.B. LEE
 Vincent W.S. LIANG
 Amanda L.Y. LIU
 Billy W.Y. MA
 MA Ho Fai
 David P.H. WONG
 Terry P.L. YEUNG

Secretary: Assistant Director, Practitioners Affairs

Standing Committee on Practitioners Affairs

WORKING PARTY ON CONDITIONAL FEES

The Working Party was re-convened by the Council to consider the Law Reform Commission (“LRC”) Report on Conditional Fees published in July.

The terms of reference of the Working Party were to consider the implications of the LRC Report and to advise the Council accordingly. It held two meetings during the year.

The Working Party’s Response was adopted by the Council in September and sent to the LRC in October.

Members of the Working Party:

Michael J. LINTERN-SMITH (*Chairman*)
Patrick M. BURKE
Joseph W.K. CHAN
Barbara A. HUNG

Ludwig S.W. NG
Szwina S.K. PANG
Richard K.C. TSUN
Tommy K.M. WONG

Secretary: Assistant Director, Professional Indemnity Scheme

WORKING PARTY ON LAND TITLES ORDINANCE

The Working Party held six meetings to review the Land Registry’s responses to comments made on the Amendment Bill by all stakeholders. Recommendations were made to the Property Committee on the appropriate response and a total of six submissions on various aspects of the Amendment Bill were made to the Land Registry. The Committee also reviewed proposed amendments to Part 12 of the *Land Titles Ordinance*, dealing with indemnity under the new system. Members expressed grave concern on the proposal as it failed to provide an adequate indemnity system for the state guaranteed title registration system in Hong Kong. As it would take until 2022 before the title registration legislation will be fully implemented, the Working Party agreed with the Property Committee on the need to co-opt “new blood” to ensure continuity in the deliberation process but considered the appropriate time to be after the Amendment Bill has been finalized. The Working Party nominated 3 members to serve on the Government’s Title Registration Education Committee and also convened a Subgroup to review the LTO forms for use under the *Land Titles Ordinance, Cap.585*.

Members of the Working Party:

Andy O.T. NGAN (*Chairman*)
Peter P. AHERNE
E. John DAVISON
Emily LAM
LEE Alice (resigned in August)

LEUNG Siu Hon
Vincent W.S. LIANG
Patrick J. SHEEHAN (resigned in July)
Judith SIHOMBING
Paul K.H. YU

Secretary: Assistant Director, Practitioners Affairs

Standing Committee on Practitioners Affairs

WORKING PARTY ON RECOVERY AGENTS

The members conducted their work via email during the year and liaised with the Department of Justice on its proposals to educate the public about illegality of recovery agents.

Members of the Committee:

Ludwig S.W. NG (Chairman)
Patrick BURKE
Szwina S.K. PANG

Tommy K.M. WONG
Norris H.C. YANG

Secretary: Secretary General

WORKING PARTY ON REVISED DMC GUIDELINES

The Working Party met in January to finalize the review on The Law Society's DMC Guidelines and the policy on waivers. As substantial amendments were made to the DMC Guidelines, *Practice Direction A5* ("PD A5") was also reviewed. The revised DMC Guidelines and PD A5 were circulated in June and July. The Working Party will further review the new DMC Guidelines in view of the changes introduced by the *Building Management (Amendment) Ordinance 2007*.

Members of the Working Party:

LEUNG Siu Hon (*Chairman*)
Patrick K.H. LAM

MA Ho Fai
David P.H. WONG

Secretary: Assistant Director, Practitioners Affairs

HONG KONG LAWYER EDITORIAL BOARD

Members of the Editorial Board met monthly and worked closely with *LeixNexis*, the publisher of *Hong Kong Lawyer*, to monitor the overall quality and standard of the publication and to identify topics of interest to the profession.

Members of the Committee:

Cecilia K.W. WONG (*Chairman*)
Thomas S.T. SO
Bonnie S.Y. CHAN
Charles C.C. CHAU
Raymond HO
Steven LEE
Hans MAHNCKE
George Y.C. MOK

Patrick R. MOSS
Michael PHILLIPS
Anne SCULLY-HILL
Christopher SHERRIN
Michelle TSANG (joined in December)
Michael WILKINSON
Stephen K.Y. WONG (resigned in April)
WONG Tak Shing

Secretary: Assistant Director, Practitioners Affairs (General)

Standing Committee on Practitioners Affairs

YOUNG SOLICITORS' GROUP (YSG)

YSG was established as a Sub-committee of the Standing Committee on Practitioners Affairs to cater for the needs and interests of members of less than five years standing. One of the aims is to encourage communication between young members and to facilitate dialogue between them and senior members of the profession. YSG organised the following events and activities during the year.

CPD Seminars

- *Technical Seminar on Construction Contract Management and Alternative Dispute Resolution* by fellow members and other professionals. It was co-organised with the Hong Kong Institution of Engineers, The Institution of Civil Engineers Hong Kong Association, The Chartered Institution of Building Services Engineers, The Chartered Institute of Arbitrators and The Hong Kong Institute of Surveyors.
- *Disputes over Rights of Way, Aerial Photos of Land and Applications for change of land use.* It was co-organised with the Royal Institute of Chartered Surveyors Asia Pacific.



- *The Art of Cross-Examination* by Martin Lee, SC



- *Probate Practice after 11 February 2006* by Billy Ma, Council Member

Standing Committee on Practitioners Affairs

Friday Lunches

Members had the opportunity to meet socially through informal lunch gatherings in The Law Society's Clubhouse and also met with members of Council, the Standing Committee on Practitioners Affairs and the YSG. 15 lunches were organized during the year.

"Star Pisces" Cruise Trip

To celebrate *The Law Society Centenary*, YSG organised an event "*Sailing on a Seminar for a Weekend's Get-Away Cruise*" on the "*Star Pisces*" on 24 to 25 March when 48 members participated. The event began with an RME/CPD seminar on *Risk Management: Commercial Fraud, IT Crime and Crime Prevention*, held in a theatre on the *Star Pisces* and presented by guest speakers from the Commercial Crime Bureau. The Law Society's Vice-President and YSG Chairperson delivered speeches when the cruise officially began as the *Star Pisces* set off for the high seas. Members also enjoyed a buffet dinner with a simple cake-cutting ceremony, games, a slogan competition and a lucky draw.



Standing Committee on Practitioners Affairs

Community activities

English Tutorial Classes

For the third year, YSG together with the Tung Wah Group of Hospitals (TWGH) ran a session of its “*English Learning Programme*” for underprivileged primary school children which took place from November to December. The programme is an activity-based English learning event where students learned by playing games, quizzes and story-telling. More than 100 members of The Law Society signed up.



Social activities

YSG Dragon Boat Championships 2007

For the second year, YSG organised a Dragon Boat Team to participate in the “*Stanley Dragon Boat Championships 2007*” on 19 June. Over 30 members of The Law Society attended the competition.



Social gatherings with other young professionals

YSG attended two social gatherings at the invitation of their counterparts in other professional bodies.

Members of the Committee:

Cecilia K.W. WONG (*Chairman*)
Vitus W.H. LEUNG (*Vice-Chairman*)
Kajal ASWANI (joined in November)
Bonnie J.Y. CHAN
Serina K.S. CHAN

Charles C.C. CHAU
Tracy N.L. LAM
Stephanie W.Y. LAU (joined in November)
Lynn LEE

Secretary: Assistant Director, Practitioners Affairs (General)

Standing Committee on Practitioners Affairs

HONG KONG SOLICITORS INDEMNITY FUND LTD.

Hong Kong Solicitors Indemnity Fund Limited (“the Company”) was established by The Law Society and empowered by the *Solicitors (Professional Indemnity) Rules* (“the Rules”) to manage and administer the Professional Indemnity Scheme (“the Scheme”) and the Solicitors Indemnity Fund (“the Fund”) subject to direction in certain areas by the Council.

The Company held 10 Board meetings during the year and an Annual General Meeting.

The Company considered a number of matters including:

- Issues in relation to the conduct of claims and the terms of reference of the Claims Committee
- The performance of the Scheme’s Broker and Manager
- The performance of the Scheme’s investment managers
- The collection of deductibles
- The standard form of accountant’s certificate for reporting the gross fee income of law firms and a proposed new form of gross fee income report
- Proposed amendments to the Rules
- The monthly management accounts and the audited accounts of the Fund and the Company
- *The Land Titles Ordinance (Amendment) Bill*
- *The Solicitor Corporations Rules*
- Renewal of Directors’ and Officers’ liability and Professional Indemnity insurance for the Company and the Directors
- Matters arising from the liquidation of HIH Casualty and General Insurance Ltd. (“HIH”) and FAI General Insurance Company Ltd. (“FAI Australia”) and the provisional liquidation of FAI First Pacific Insurance Co. Ltd. including the dispute with the Liquidators on the outstanding liabilities owed by HIH and FAI Australia, the dividends payable to the Company, and other matters arising from the creditors’ committees and committees of inspection
- Enquiries by member firms relating to the Scheme

A total of 138 notifications of claims were received by the Claims Manager, ESSAR Insurance Services Ltd. (“ESSAR”) during the 2006/2007 indemnity year, i.e. from 1 October 2006 to 30 September 2007 and the grace period from 1 October 2007 to 29 November 2007. 23 of the notifications resulted in proceedings, four claims were closed without any payment, and 111 remained as notifications.

Standing Committee on Practitioners Affairs

The number of claims for the last 21 indemnity years and the number of members as at 30 September of each of those years are as follows:-

Year	Number of Claims ¹	Increase/Decrease from Previous Year ²	Number of Members
1986/87	64	—	1,384
1987/88	58	-9%	1,625
1988/89	126	117%	1,754
1989/90	178	41%	2,060
1990/91	72	-60%	2,350
1991/92	93	29%	2,572
1992/93	118	27%	2,847
1993/94	143	21%	3,161
1994/95	151	6%	3,451
1995/96	150	-1%	3,784
1996/97	176	17%	4,197
1997/98	336	91%	4,494
1998/99	483	44%	4,612
1999/00	263	-46%	4,771
2000/01	230	-13%	4,946
2001/02	214	-7%	5,086
2002/03	206	-4%	5,191
2003/04	158	-23%	5,317
2004/05	145	-8%	5,498
2005/06	164	13%	5,666
2006/07	138	-16%	5,831

¹ Number of Claims includes claims notified within the grace period.

² Percentage of increase or decrease has been calculated to the nearest decimal point.

Standing Committee on Practitioners Affairs

Claims notified in the 2006/2007 indemnity year are categorized as follows:-	
Company/Commercial	26
Conveyancing	44
Litigation	50
Miscellaneous	5
Patents and Trademarks	9
Probate	4
Total	138

Notifications are also categorized into negligence or fraud claims. After investigation, two of the 138 notifications for the 2006/07 indemnity year were classified as fraud claims.

As at 30 September, the total liability of the Scheme for the 2006/2007 indemnity year calculated on the basis of claims paid and claims reserved was HK\$23,989,975 of which HK\$857,508 consisted of claims paid (including costs) and HK\$23,132,467 of claims reserved.

The total amount of claims paid (including costs) since the inception of the self-insured Scheme in 1986 amounted to HK\$1,258,915,750 and the total amount reserved was HK\$546,592,046.

A detailed account of the operation of the Scheme and claims data as well as the audited accounts of the Fund as at 30 September will be published in the Scheme's Annual Report for the 2006/2007 indemnity year.

Directors of the Company:

Peter R. GRIFFITHS (*Chairman*)
 Francis W.C. CHONG (resigned in December)
 Albert B.K. DAN
 Christopher G. HOWSE
 James E. JAMISON
 Peter C.L. LO

Amirali B. NASIR
 Ludwig S.W. NG
 NG Wai Yan
 Richard N. TANNER
 Norris H.C. YANG

Company Secretary: ESSAR

Standing Committee on Practitioners Affairs

PIS CLAIMS COMMITTEE

Claims are handled by the Claims Committee in conjunction with the Claims Manager, ESSAR. The Claims Committee held six meetings to discuss both new and on-going claims.

Members of the Committee:

Christopher G. HOWSE (*Chairman*)
(resigned in December)

David G. SMYTH (*Vice-Chairman*)
(resigned in November)

Charles W. ALLEN

Keith M. BRANDT (appointed in October)

Tony K.W. CHOW (appointed in October)

David C. CHU

Colin B. COHEN

Stewart J. CROWTHER (resigned in November)

J. Martin HEATH (resigned in November)

James E. JAMISON (appointed in October)

Peter K.H. NGAI (resigned in November)

Ronald W.T. TONG

Secretary: ESSAR

PIS INVESTMENT SUB-COMMITTEE

The PIS Investment Sub-committee met quarterly.

At each meeting the Sub-committee would invite the Fund's investment managers to give a presentation on the performance of the Fund's investments and to provide their outlook on market trends for each quarter.

The two investment managers of the Scheme are AllianceBernstein Hong Kong Ltd. ("AllianceBernstein") and Credit Agricole Asset Management Hong Kong Ltd. ("Credit Agricole").

About 60% to 70% of the Fund's portfolio is invested in bonds and cash and about 30% in equities. The investment objectives of the Fund are to:-

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

Standing Committee on Practitioners Affairs

2007 was a mixed year for equities. There was moderate growth in the global markets in the first half of the year but high volatility weakened returns in the third and fourth quarters. The *MSCI world index* was up 11.6%.

The US economy was affected by excessive cash flow in the housing market. A slowdown in the market triggered a fall in prices. Instruments for collateralized debts and mortgaged backed securities suffered from a drop in liquidity and banks and mortgage-related companies faced massive losses.

The European markets proved slightly more resilient, with particularly Germany posting a strong return over the period on the back of improved domestic economic prospects. The UK faced similar problems as the US. The French and Southern European economies posted sluggish economic returns.

Asia, with the exception of Japan, was driven by strong economic prospects and abundant local and international capital inflows. It provided the best performance over the other regions in the year.

The global bond market grappled with the credit crunch as the subprime crisis in the housing market in the US unfolded. The US Federal Reserve cut interest rates by 100bps and the Bank of England cut 25bps in early December. The European Central Bank and the Bank of Japan also put further interest rate hikes on hold. Credit markets weakened significantly in the second quarter, as a result of the shortage of liquidity in the global financial system. This is despite several attempts by the major central banks to inject liquidity to unlock the credit crunch. With the US being the epicentre of the subprime crisis, the US dollar weakened significantly with the dollar index falling by about 9%.

The portfolio managed by Credit Agricole provided a return of 14.72% and the portfolio managed by AllianceBernstein provided a return of 10.2% over the year.

Members of the Sub-committee:

Peter C.L. LO (*Chairman*)
John S. GALE
IP Shing Hing
Ludwig S.W. NG

Kevin C.K. SHUM
Christopher H.W. SO (resigned in July)
Norris H.C. YANG

Secretary: Assistant Director, Professional Indemnity Scheme

Standing Committee on Practitioners Affairs

PROFESSIONAL INDEMNITY ADVISORY COMMITTEE

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

The Committee and its Sub-committee held three meetings during the year and considered proposed amendments to the Rules, the *Solicitor Corporations Rules* and professional indemnity insurance for solicitors practising in their own name.

Members of the Committee:

Robin S. PEARD (*Chairman*)
Kevin R. BOWERS
Steven J. DEWHURST
Lawrence Y.H. LEE
(Aon Hong Kong Limited)
Susan P.S.K. LIANG

NG Wai Yan
Peter K.H. NGAI
David G. SMYTH
Fiona J. STEWART
Gareth H. THOMAS
Norris H.C. YANG

Secretary: Assistant Director, Professional Indemnity Scheme

PIS PANEL SOLICITORS SELECTION BOARD

The PIS Panel Solicitors 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.

A tender was conducted in December for the retainer commencing February 2008.

The firms which served as Panel Solicitors in 2007 were:

Allen & Overy
Baker & McKenzie
Barlow Lyde & Gilbert
Clifford Chance
Deacons
Fred Kan & Co.

Herbert Smith
P.C. Woo & Co.
Richards Butler
Stephenson Harwood & Lo
Wilkinson & Grist
Woo, Kwan, Lee & Lo

Members of the Board:

WONG Kwai Huen (*Chairman*)
Stephen W.S. HUNG

Kenneth S.Y. NG
Thomas S.T. SO

Secretary: Assistant Director, Professional Indemnity Scheme

Standing Committee on Practitioners Affairs

PIS REVIEW WORKING PARTY

The terms of reference of the Working Party are to review the structure and operation of the Professional Indemnity Scheme (“the Scheme”); to invite and consider the views of members; and to make recommendations to the Council in connection therewith.

The Working Party held five meetings during the year to discuss the composition of the Claims Committee; and the levels of deductibles and loadings on specific types of risks. The Working Party reported its progress to the Legislative Council in February. It will continue to meet and review the Scheme.

Members of the Working Party:

Peter C.L. LO (*Chairman*)
 Peter R. GRIFFITHS
 Christopher G. HOEWSE
 Nicholas D. HUNSWORTH

Sundaramoorthy KRISHNAN
 Patrick R. MOSS (resigned in December)
 Kenneth S.Y. NG
 Benny Y.B. YEUNG

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 Rules, to submit the application for insurance and/or the gross fee income report on or before 15 August, or pay their annual contributions on or before 30 September each year. The Working Party is also responsible for approving the applications for an extension of time to submit the application for insurance and/or the gross fee income report.

Members of the Working Party:

IP Shing Hing (*Chairman*) | NG Wai Yan
 Albert B.K. DAN | WONG Kwai Huen

Secretary: Assistant Director, Professional Indemnity Scheme



Department of Practitioners Affairs