

STANDING COMMITTEE ON COMPLIANCE

The Standing Committee oversees The Law Society's administrative and regulatory functions, these responsibilities having been delegated to it by the Council.

There are 15 members of the Standing Committee, seven of whom are Council members. The Standing Committee met 12 times during the year and considered 202 agenda items (compared to 205 agenda items in 2007).

The Compliance Department (Conduct and Registration Sections) of the Secretariat supports the work of the Standing Committee on Compliance.

Members of the Standing Committee

Thomas S.T. SO (*Chairman*)

Alex T.H. LAI (*Vice-Chairman*)

Anna May M.L. CHAN

Ivy S.C. CHENG

David A. FOK

Dennis H.F. HIE

Stephen W.S. HUNG

LAI Kwok Kwong (appointed in April)

Angela W.Y. LEE (appointed in July)

Teresa S.Y. LIU

Peter C.L. LO

Billy W.Y. MA (appointed in August)

Catherine L.M. MUN (appointed in April)

Amirali B. NASIR (resigned in May)

Kenneth S.Y. NG

Brian K.K. TSE

Secretary: Director of Compliance

Conduct Section

The Conduct Section of the Compliance Department is mainly responsible for carrying out the investigation of allegations of professional misconduct against solicitors, foreign lawyers, trainee solicitors and employees of solicitors and foreign lawyers.

On 15 December 2008, the Complaint Form and the accompanying Guidance Notes were launched. The purposes of the implementation were to uniform and to make efficient the complaint process, to set out clearly the regulatory powers and limitations of The Law Society in complaints handling, and to state the requirements expected of the parties to a complaint. The usage of a complaint form placed the complaint procedure of The Law Society on an equal footing with those of the law societies in other jurisdictions.

Staff members of the Conduct Section visited the Consumer Council (in March), the Equal Opportunities Commission (in April) and the Office of the Ombudsman Hong Kong (in September) to exchange knowledge and experience with their officers on complaints handling and to gain an understanding of their conciliation skills. It is anticipated that in-house training in conciliation, mediation and negotiation skills will be organized for Investigation Counsel.

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529 complaints were lodged or referred by members of the public and government organizations in 2008 (In 2007, 532). 171 complaints were made by solicitors and 479 by The Law Society (84 and 387 respectively in 2007). 1,179 files were closed during the year (978 files were closed in 2007).

Inspections and visits

Under Section 8AA of the *Legal Practitioners Ordinance*, Cap. 159, the Council is empowered to appoint inspectors to verify compliance with the provisions of the Ordinance or any Practice Direction issued by the Law Society, and to determine whether the conduct of those against whom an inspection was made should be inquired into or investigated. Section 8AA stipulates the powers of an inspector in making such enquiries and investigations.

In 2008, the Council resolved to appoint inspectors under Section 8AA to inspect two solicitors' firms. As a result, 19 inspections were conducted against the two firms.

The Investigation Counsel conducted 14 site visits in response to reports of firms purported to be law firms registered with The Law Society. Visits were also made by Investigation Counsel to six law firms in the course of investigations.

Court inspections are conducted each year and at different locations. The Council appointed inspectors to verify compliance with rule 5D of the *Solicitors' Practice Rules*, Cap. 159H and to monitor the proper completion of court attendance forms. During this year, three court inspections were conducted by inspectors at Tsuen Wan, Shatin and Eastern magistrates' courts.

The Monitoring Accountants conduct visits to newly-established firms, mainly, to provide assistance in their accounting procedures/systems, and routinely to all other law firms to ensure compliance with the accounting rules.

179 visits were made by the Monitoring Accountants to 107 solicitors' firms and foreign law firms; some firms required more than one visit. (240 visits to 170 firms in 2007)

INVESTIGATION COMMITTEE

Investigation Committees are ad-hoc sub-committees of the Standing Committee on Compliance. Three members of the Standing Committee on Compliance are appointed to each Investigation Committee to consider reports prepared by the Conduct Section and to adjudicate complaints.

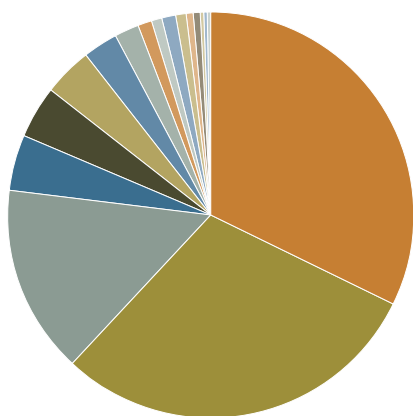
Investigation Committees may recommend to the Standing Committee on Compliance the issue of letters of regret and of disapproval (or any other sanction authorized by the Council from time to time), and submissions of matters to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel. Reviews of the decisions of the Investigation Committees are conducted by the Standing Committee on Compliance.

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Investigation Committees considered 268 complaints by circulation of 261 agenda. (In 2007, 282 complaints were considered by circulation of 275 agenda.)

Determination of Complaints in 2008

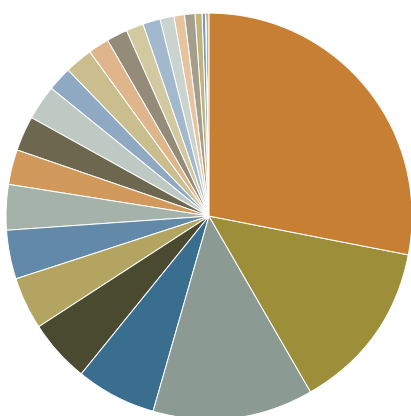
Figure 1: Subject matter of complaints



	2008	2007	2006
Administrative/regulatory	32.23%	35.11%	30.85%
Conveyancing (H.K.)	29.94%	20.51%	14.89%
Civil litigation	14.84%	18.54%	17.34%
Criminal	4.50%	3.35%	5.74%
Matrimonial	4.16%	4.83%	4.68%
Miscellaneous	3.99%	5.82%	5.96%
Probate	2.63%	3.85%	1.17%
Company/commercial	1.95%	1.58%	4.47%
Owners'/incorporated owners' disputes	1.19%	1.78%	–
Landlord & tenant	0.93%	0.49%	1.49%
Report of purported law firms	0.93%	–	–
Civil Celebrant	0.76%	0.69%	–
Contract	0.59%	0.89%	0.53%
Media/promotion	0.59%	–	–
Conveyancing (other than H.K.)	0.34%	0.39%	0.64%
Court inspections	0.25%	0.69%	10.64%
Recovery agent	0.17%	0.79%	1.06%
Solicitors' clerks	–	0.59%	0.43%
Election	–	0.10%	0.11%

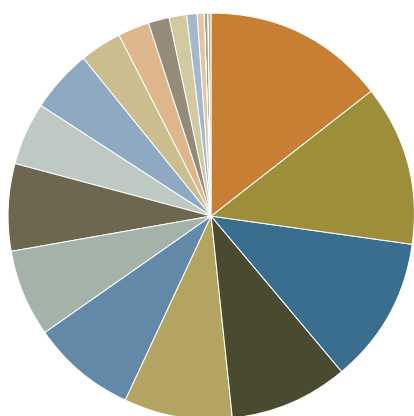
Standing Committee on Compliance

Figure 2: Nature of professional misconduct



	2008	2007	2006
Breach of <i>Conduct Guide Principles</i>	28.07%	29.68%	43.09%
Breach of <i>Solicitors' Practice Rules</i>	13.74%	12.82%	11.06%
Breach of undertaking	12.72%	5.23%	3.09%
Breach of <i>Solicitors' Accounts Rules</i>	6.36%	2.66%	1.60%
Breach of <i>Risk Management Education Rules</i>	5.00%	7.69%	0.96%
Delay	4.24%	2.66%	2.13%
Late submission of accountant's reports	3.82%	0.10%	0.43%
Negligence	3.56%	3.55%	1.60%
Miscellaneous	2.97%	5.23%	0.96%
Breach of <i>Continuing Professional Development Rules</i>	2.80%	6.80%	8.30%
Overcharging	2.63%	3.85%	2.77%
Inadequate service	2.04%	3.25%	1.28%
Dishonesty	2.04%	1.48%	1.49%
Unqualified persons acting or pretending to be a solicitor (ss.45-48 of the <i>LPO</i>)	1.78%	0.59%	0.74%
Circular no. 01-142(COM) (Court attendance form)	1.61%	3.35%	10.64%
Misbehaviour	1.53%	3.55%	1.81%
Breach of <i>Foreign Lawyers Practice Rules</i>	1.36%	0.10%	–
Breach of <i>Solicitors' Practice Promotion Code</i>	1.10%	0.39%	0.64%
Conflict of interest	0.76%	1.28%	1.28%
Breach of <i>Practice Directions</i>	0.76%	0.20%	0.53%
Non-payment of barristers' fees	0.68%	0.99%	1.38%
Failure to reply to letters on behalf of a client or to inquiries from The Law Society	0.17%	0.20%	0.32%
Breach of <i>Solicitors (Professional Indemnity) Rules (general)</i>	0.08%	1.87%	0.53%
Practising without a practising certificate	0.08%	–	0.32%
Touting	0.08%	–	0.21%
Breach of <i>Foreign Lawyers Registration Rules</i>	–	1.87%	1.38%
Offences in relation to foreign lawyers, etc. (s.50B of the <i>LPO</i>)	–	0.30%	0.32%
Being a partner with a conditional practising certificate (s.6(6) of the <i>LPO</i>)	–	0.20%	0.43%
Property fraud	–	0.10%	–
Breach of <i>Solicitors (Professional Indemnity) Rules (r.8)</i>	–	–	0.64%
Breach of <i>Trainee Solicitors Rules</i>	–	–	0.11%

Figure 3: Analysis of closed files



	2008	2007	2006
No further action	14.59%	26.46%	25.60%
Referred – Independent legal advice (including District Office)	12.84%	4.44%	1.68%
Letter of disapproval	11.65%	11.11%	13.34%
Unpursuable	9.27%	15.05%	5.17%
Letter of regret	8.81%	6.16%	5.17%
Withdrawn	8.35%	6.77%	8.17%
Unsubstantiated/No professional misconduct	6.88%	11.92%	16.35%
Resolved amicably	6.79%	1.62%	2.40%
Letter of good practice	5.23%	6.57%	5.29%
Pending	4.77%	4.34%	3.37%
Referred – relevant authorities	3.49%	0.91%	0.72%
Referred – enforcement agencies	2.48%	0.10%	0.24%
Referred – taxation	1.74%	1.01%	0.84%
Referred – Tribunal Convenor	1.38%	1.82%	1.08%
Referred – others (including intervention agents)	0.73%	0.20%	–
Summary disposal	0.46%	–	0.12%
Referred – Joint Tribunal	0.18%	0.20%	0.12%
Referred – other departments of The Law Society	0.18%	–	–
Referred – panel of prosecutors (for advice)	0.09%	1.01%	–
Circular issued	0.09%	0.10%	10.34%
Referred – inspection by the Monitoring Accountants	–	0.20%	–

Interventions

The Council's power of intervention is exercised for the protection of the public and occurs when clients' interests are at risk. Through the intervention agents, The Law Society first takes control of the office and clients' moneys of the intervened firms and takes possession of the intervened firms' documents. It then effects transfers of documents in its possession to the intervened firms' former clients or their newly-appointed solicitors. The process of distributing moneys of the intervened firm may involve court proceedings and claimants must produce supporting documents to verify their claims. Subject to any Court order for the payment of costs, any costs incurred by the Council in the intervention shall be paid by the solicitor or the foreign lawyer whose practice is intervened.

The Council appoints a monitoring committee (usually consisting of three Council Members) to oversee the progress of each intervention exercise; the Conduct Section and the intervention agent work closely in every intervention.

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In 2008, the Council resolved to intervene in the practices of three sole practitioners under Section 26A and Schedule 2 to the *Legal Practitioners Ordinance*, Cap.159, and appointed intervention agents.

Date of Council's resolution	Basis of intervention
2 September	Suspected dishonesty on the part of the solicitor
8 October	Solicitor had become bankrupt
17 October	Solicitor had been suspended from practice

Authorized solicitors' clerks

The Standing Committee on Compliance oversees the work of the Conduct Section in administering the Authorized Solicitors' Clerks scheme and has delegated its power to the Consents Committee to approve applications.

There are 953 Authorized Solicitors' Clerks who are unqualified staff members of solicitors' firms permitted to visit clients held in places of detention (918 in 2007).

INVESTIGATION COMMITTEE ON DISCIPLINARY MATTERS

The Investigation Committee on Disciplinary Matters is the only Investigation Committee with a fixed membership drawn from members of the Standing Committee on Compliance. The Committee's work includes monitoring the progress of disciplinary proceedings, appeals and court proceedings, giving instructions to prosecutors and The Law Society's legal representatives, and authorizing the payments of fees incurred in disciplinary proceedings, appeals and court proceedings.

The Committee considered 171 matters by circulation of 78 agenda. (In 2007, 199 matters were considered by circulation of 85 agenda.)

Disciplinary proceedings, appeals and other court proceedings

The Standing Committee on Compliance resolved to submit 17 matters to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel concerning the conduct of 17 solicitors and two clerks in a total of 17 resolutions. Eight out of these 17 matters were resolved to be submitted to the Tribunal Convenor for her to dispose of on a summary basis. Additionally, the Council resolved to refer two matters concerning the conduct of two solicitors to the Tribunal Convenor. By December 2008, 10 matters had been submitted to the Tribunal Convenor (seven in 2007).

A Solicitors Disciplinary Tribunal is a statutory tribunal established by the *Legal Practitioners Ordinance*, Cap. 159. It is independent of The Law Society which is the prosecuting body. Members of the Solicitors Disciplinary Tribunal Panel are appointed by the Chief Justice. The Chief Justice also appoints the Tribunal Convenor and the Deputy Convenors who have the responsibility to appoint a panel of three or four members to sit as a Tribunal to determine applications, and who have the power to dispose of certain classes of complaint on a summary basis.

Standing Committee on Compliance

14 disciplinary proceedings were determined by the Solicitors Disciplinary Tribunals in 2008 (compared with 10 in 2007) which resulted in the following Orders being made:

Respondent	Position	Penalty	Fines (HK\$)
2	solicitors	<ul style="list-style-type: none"> struck off ordered to pay costs 	–
1	solicitor	<ul style="list-style-type: none"> censured suspended from practice for 3½ years ordered to pay costs 	398,000
1	solicitor	<ul style="list-style-type: none"> suspended from practice for three years ordered to pay costs 	430,000
1	solicitor	<ul style="list-style-type: none"> censured suspended from practice for six months ordered to pay 35% of Prosecutor's costs ordered to pay 80% of The Law Society's costs ordered to pay 80% of the Tribunal Clerk's costs plus 50% of the costs incurred up to a designated hearing date 	270,000
1	solicitor	<ul style="list-style-type: none"> censured suspended from practice for three months ordered to pay 35% of Prosecutor's costs ordered to pay 80% of The Law Society's costs ordered to pay 80% of the Tribunal Clerk's costs plus 50% of the costs incurred up to a designated hearing date 	143,000
1	solicitor	<ul style="list-style-type: none"> subject to conditional practice for two years ordered to pay 1/3 of 2/3 of costs 	200,000
1	solicitor	<ul style="list-style-type: none"> censured ordered only to be entitled to practise as an assistant solicitor for two years ordered to pay costs incurred after a designated date 	–
1	solicitor	<ul style="list-style-type: none"> ordered to pay fixed costs of HK\$200,000 	250,000
1	solicitor	<ul style="list-style-type: none"> ordered to pay fixed costs of HK\$100,000 	200,000
1	solicitor	<ul style="list-style-type: none"> censured ordered to pay 90% of costs 	150,000
1	solicitor	<ul style="list-style-type: none"> censured ordered to pay fixed costs of HK\$50,000 	–
1	solicitor	<ul style="list-style-type: none"> ordered to pay fixed costs of HK\$51,000 	15,000
1	solicitor	<ul style="list-style-type: none"> ordered to pay agreed costs of HK\$36,000 	15,000
1	solicitor	<ul style="list-style-type: none"> ordered to enroll in courses totalling not less than 20 CPD points over two years ordered to pay 50% costs 	15,000

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Respondent	Position	Penalty	Fines (HK\$)
1	solicitor	<ul style="list-style-type: none"> censured ordered to pay 70% of costs and 100% of costs of specific discovery 	–
1	clerk	<ul style="list-style-type: none"> prohibited from employment for not less than 20 years ordered to pay fixed costs of HK\$100,000, in default of which, co-respondents liable to pay in fixed proportion 	–
1	clerk	<ul style="list-style-type: none"> prohibited from employment for 10 years ordered to pay 10% of costs 	110,000
1	clerk	<ul style="list-style-type: none"> prohibited from employment for five years ordered to pay $\frac{2}{3}$ of $\frac{2}{3}$ of costs 	80,000

Upon The Law Society's application, a Solicitors Disciplinary Tribunal directed that disciplinary proceedings against one solicitor be withdrawn. The Law Society's application was made after the solicitor had settled fees due by her and given an undertaking to pay the costs of the proceedings. The solicitor accepted a letter of disapproval from The Law Society.

Out of the 14 disciplinary proceedings determined in 2008, six solicitors appealed against the findings and orders of the Solicitors Disciplinary Tribunal; The Law Society also lodged an appeal against the orders of a Solicitors Disciplinary Tribunal. Amongst these seven appellants, two solicitors and The Law Society subsequently discontinued their respective appeal applications.

In March, the Court of Final Appeal dismissed a solicitor's appeal from the decision of the Court of Appeal.

In April, a solicitor who had lodged an appeal from the findings and order of a Solicitors Disciplinary Tribunal in 2007 discontinued her appeal.

In June and August, the Chief Judge considered two applications by trainee solicitors under rule 13 of the *Admissions and Registration Rules*, Cap. 159B for an exemption from compliance with the requirement to submit to The Law Society an application form relating to admission. In both cases, the Chief Judge granted the exemption.

In July, the High Court dismissed an application by a member of the public for judicial review with costs to The Law Society. The Law Society and the Solicitors Disciplinary Tribunal were named respectively as the 1st and 2nd Respondents in the proceedings.

In October, the Court of Appeal dismissed a solicitor's appeal from the findings and order of a Solicitors Disciplinary Tribunal.

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CONSENTS COMMITTEE

The Consents Committee is a sub-committee of the Standing Committee on Compliance. There are 13 members, of whom six are Council Members.

The Consents Committee considers applications for registration, consent and waivers filed by solicitors and trainee solicitors under the *Legal Practitioners Ordinance*, Cap. 159 and *Practice Directions*. It also determines applications for registration of foreign law firms and foreign lawyers, and applications for certification of law costs draftsmen. Reviews of the decisions of the Consents Committees are conducted by the Standing Committee on Compliance.

The Consents Committee met 22 times during the year and considered 487 agenda items (There were 21 meetings during 2007 when 413 agenda items were considered.) A further 19 matters were dealt with by circulation of four agenda. (In 2007, 13 matters were considered by circulation of three agenda.)

Members of the Committee

IP Shing Hing (*Chairman*)

Kenneth S.Y. NG (*Vice-Chairman*)

Junius K.Y. Ho

James E. JAMISON (resigned in December)

Raymond M.S. KWOK

Henry H.W. LAI

Henson LAM

William W.C. LAM

Billy Y.C. LAM

Billy W.Y. MA

Paul K.Y. NG

Melissa K. PANG

Kelly Y.H. WONG

Dieter L.T. YIH

Secretary: Director of Compliance

Registration Section

The Registration Section of the Compliance Department processes routine applications and handles applications considered by the Consents Committee.

Since November, the student membership application procedure has been simplified by abolishing the requirement on applicants to produce individual confirmation letters from the universities on their student status. Verification is based on the lists of law students provided by the law school/department of universities.

In December, a copy of the Notification of Changes to a Practice form in word-format (in addition to the PDF-format) was made available on The Law Society's web-site. It is anticipated that more Law Society forms will be made available for completion on-line.

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In the 2008 *Law List* published by The Law Society, the Registration Section has included with the consent of solicitors and foreign lawyers, their office e-mail addresses.

Work on the augmentation of the 2009 *Law List* has already begun. This includes the gathering and arranging of information on solicitors practising outside Hong Kong, Hong Kong solicitors' firms with offices outside Hong Kong and civil celebrants of marriage.

Nature of applications

Applications considered by the Consents Committee and those processed by the Registration Section included:

	2008	2007	2006
Admissions	435	316	354
Certificates of eligibility for admission	430	340	365
Practising certificates	6,205	5,925	5,757
Practising certificates – removal of conditions under s.6(6) LPO (solicitors)	139	168	185
Registration as a foreign law firm	12	12	14
Registration as a foreign lawyer	464	339	317
Removal of conditions on certificates of registration (foreign lawyers)	39	20	13
Registration as an Association	5	10	6
Removal of name from the roll of solicitors	3	9	4
Restoration of name to the roll of solicitors	3	1	2
Admission of English barristers	2	1	0
Qualifications for admission s.4(1A) LPO	104	5	57
Employment of staff: s.53(1) LPO	2	3	3
s.53(3) LPO	0	1	1
PIS Rules exemption: employed solicitors	0	0	4
Practising certificates – removal of conditions under s.6(6A) LPO	28	19	18
Practising certificates – Special Conditions	15	10	16
Registration of first trainee solicitor contracts	445	335	305
Registration of subsequent trainee solicitor contracts	82	72	60
Special leave to employ trainee solicitors	13	22	10
Other trainee solicitor matters	158	150	141
Membership cards*	1,923	1,423	1,121
Law costs draftsmen	1	1	4

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	2008	2007	2006
Accountant's report – solicitors' firms	706	694	673
Accountant's report – foreign law firms	55	47	36
Firm name and letterhead	6	4	4
Group practice	0	0	1
Name cards	0	0	0
Waiver of <i>Practice Direction D.7</i>	3	3	0
Registration as an associate member	0	6	5
Certificates of standing	909	481	1507
Letters of No Objection [#]	935	885	749

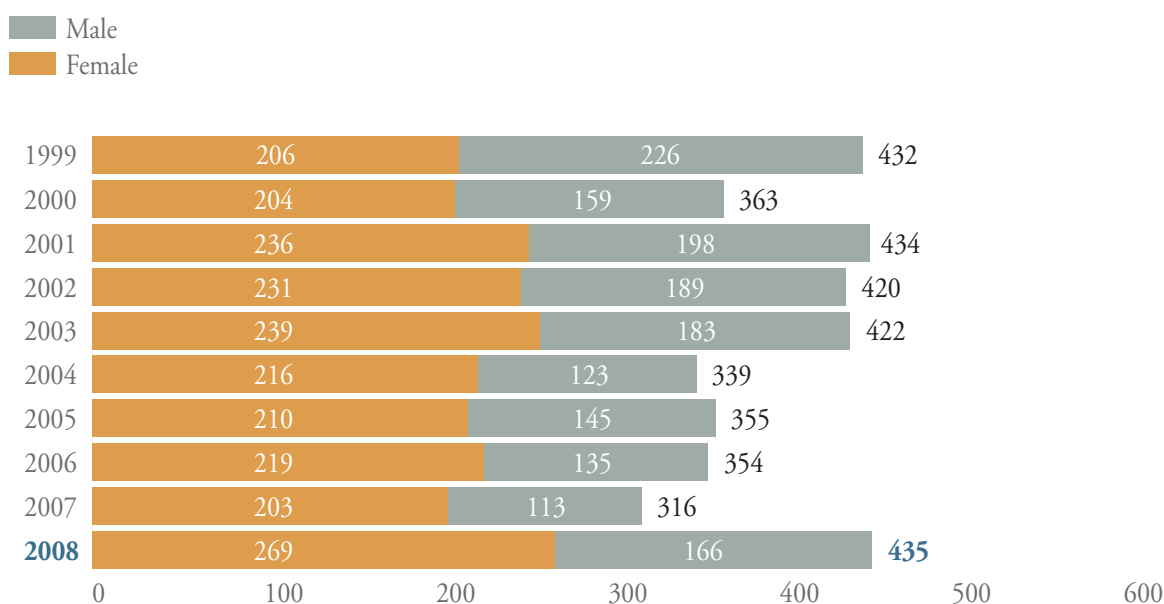
* – Solicitors (1,145), trainee solicitors (393), student members (183) and associate members (202)

[#] – “No Objection” letters are issued to applicants for work visas.

The Registration Section (in conjunction with the Conduct Section) reviewed, processed and filed the “employees’ returns” submitted by all solicitors’ firms and foreign law firms in January of each year, and the Notification of Changes to a Practice on firms’ particulars submitted by solicitors’ firms and foreign law firms throughout the year.

There were 13,398 unqualified staff members employed by solicitors' firms at the end of the year (13,022 at the end of 2007). In addition, there were 585 unqualified staff members employed by foreign law firms at the end of 2008 (506 in 2007).

Figure 4 : Admission of solicitors 1999-2008



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Figure 5 : Practising Certificates issued 1999-2008

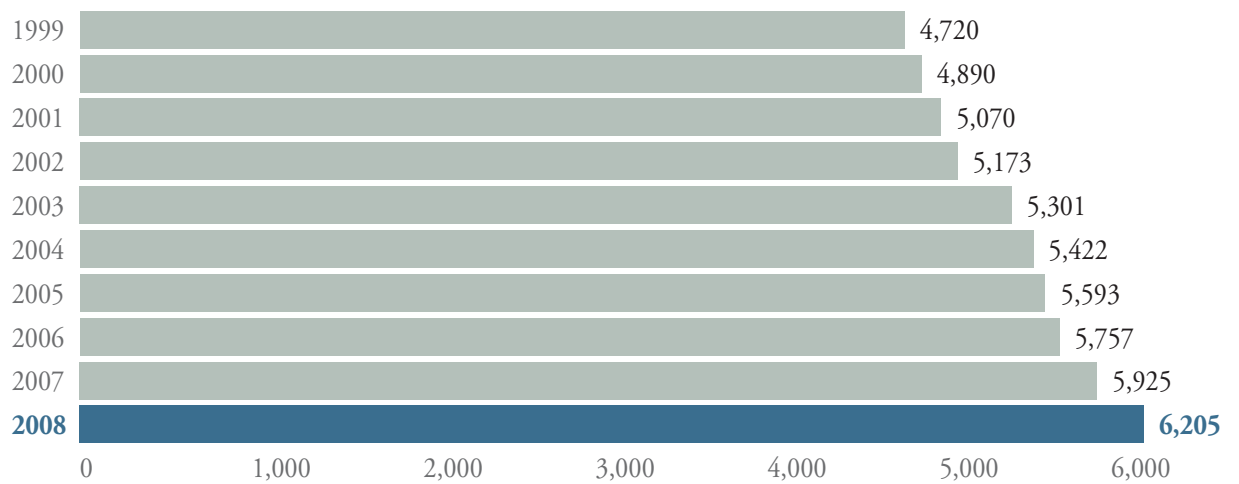
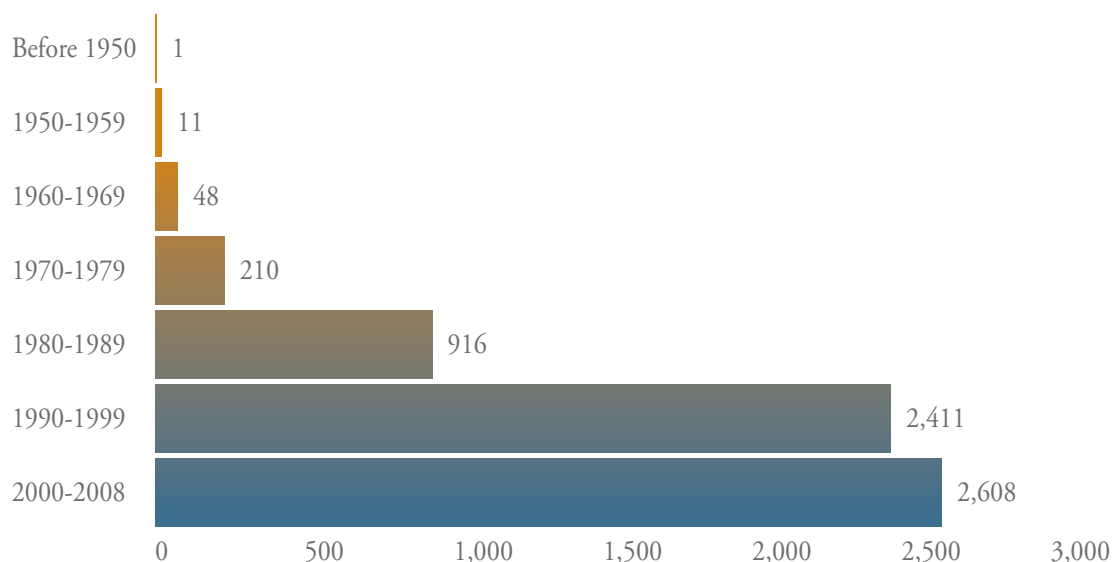


Figure 6 : Years of admission of 2008 practising members



2,876 practising members were admitted between 1 January 1999 and 31 December 2008 and represent 46% of the total practising members.

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Figure 7a :
Gender ratio
- Solicitors

Male
Female

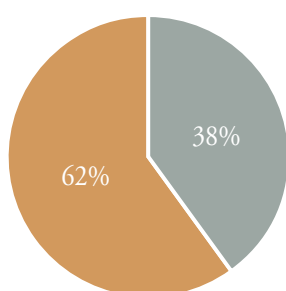


Figure 7b :
Gender ratio
- Trainee Solicitors

Male
Female

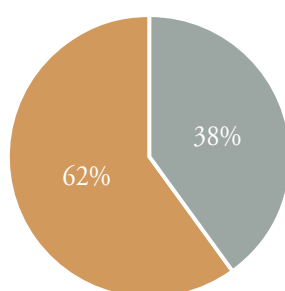


Figure 7c :
Gender ratio
- Partners

Male
Female

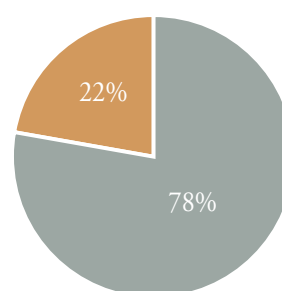


Figure 8: Size of solicitors' firms and number of trainee solicitors in 2008

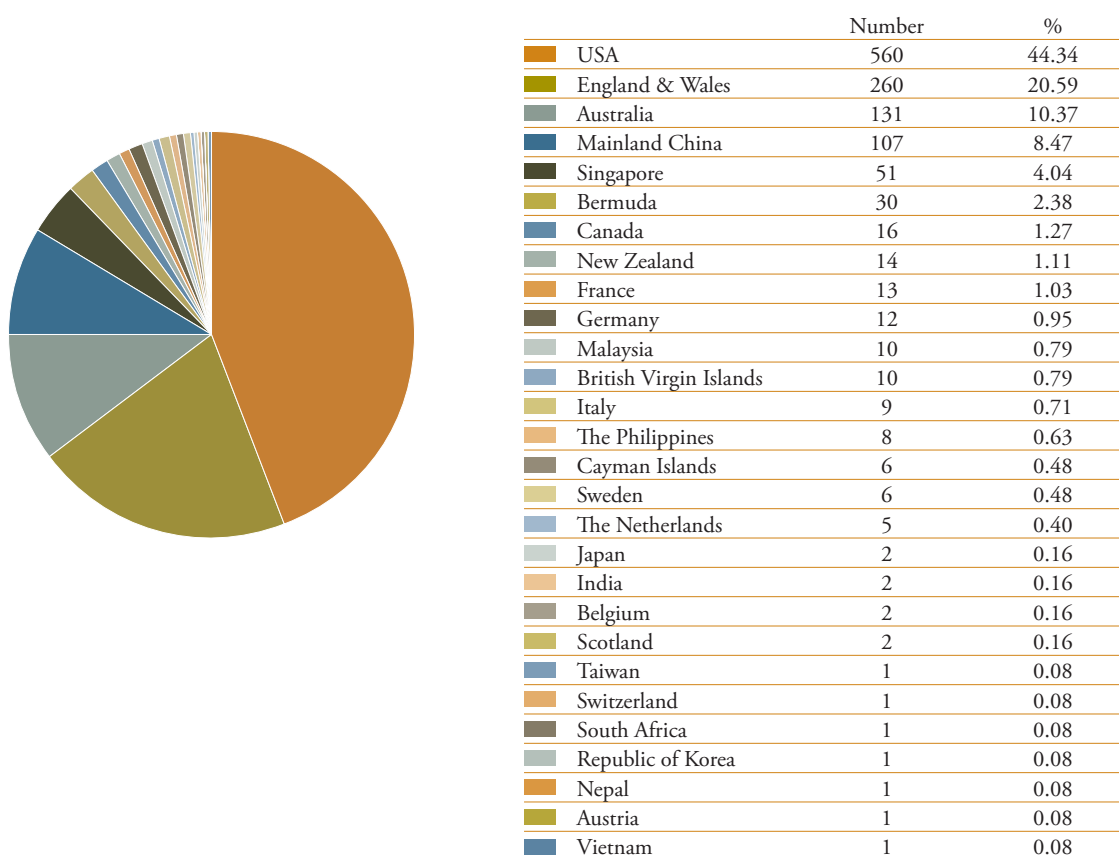
Size of firm	No. of firms		No. of trainee solicitors	
	2008	2007	2008	2007
Sole practitioners	320	320	27	39
2-5 partners	321	320	168	169
6-10 partners	39	44	129	176
11-20 partners	24	19	243	173
Over 20 partners	8	6	147	96
Total	712	709	714 [#]	653 [*]

* excluding 14 in government and 3 working "in-house"

excluding 13 in government and 3 working "in-house"

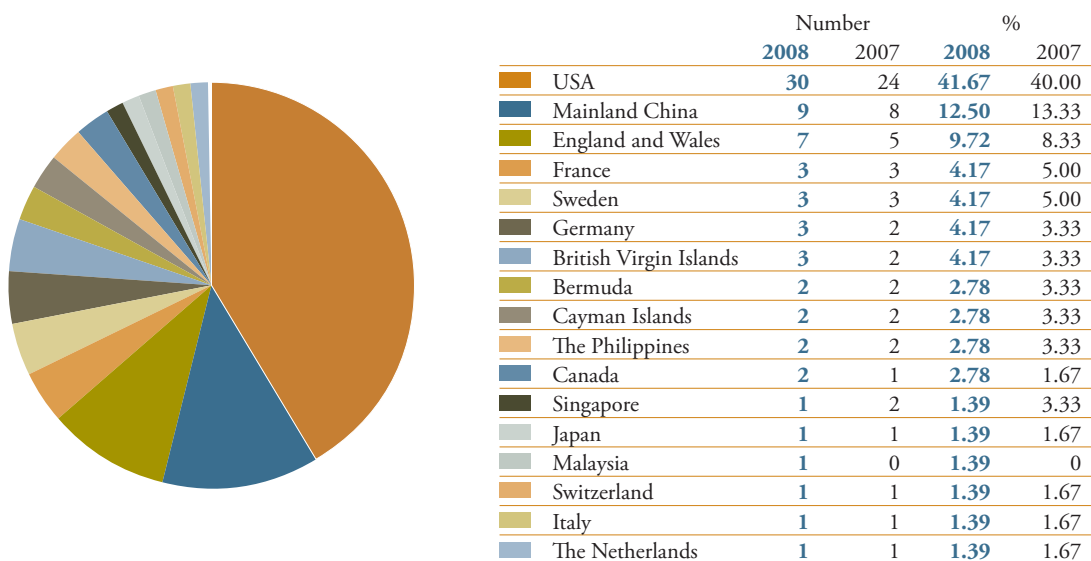
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Figure 9: Home jurisdictions of registered foreign lawyers in both foreign law firms and solicitors' firms



Note: Of the 1,263 registered foreign lawyers, 477 worked with foreign law firms and 665 with solicitors' firms.

Figure 10: Home jurisdictions of foreign law firms



Note: There were 67 foreign law firms in Hong Kong, of which one was registered to practise the laws of both Cayman Islands and British Virgin Islands; one was registered to practise the laws of the USA and Malaysia; three were registered to practise the laws of England and Wales and the USA. (In 2007, there were 56 foreign firms, of which four were registered to practise the laws of two jurisdictions.)

There were 21 Associations registered between foreign law firms and solicitors' firms. 13 new foreign law firms were registered. Two foreign law firms were closed.

By the end of the year, there were 200 student members registered with The Law Society.



Compliance Department