

## STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

The Standing Committee oversees the work of 19 Committees, one Sub-Committee and six Working Parties. It met formally on seven occasions.

### Law Costs Draftsmen (“LCDs”)

The Working Party continued to review the position of LCDs when representatives met informally with the Chairman of the *Hong Kong Law Costs Draftsmen Association* in March. Members noted other users such as Government Departments and the Legal Aid Department also instruct LCDs and so invited the Registrar of the High Court to seek their views in order to gauge the use of such services. Research on LCDs (or their equivalent) was conducted in comparable jurisdictions such as the various Australian states where there is an on-going attempt to regulate the equivalent of such practitioners, whilst in England and Wales, LCDs are a separate profession subject to regulatory supervision.

In order to protect members of the public a decision was made to remove information on LCDs from the printed version of the *Lawlist* and the public section of the website; the contact details of LCDs are posted on the Members’ Section of The Law Society’s website.

### Mediation

The Committee noted Council’s resolution to convene a new Mediation Committee in light of the importance of mediation in the Civil Justice Reform programme. In order to promote mediation, the Committee decided to circulate hard copies of The Law Society’s material on mediation to all law firms including the Code of Practice, sample mediation documents, as well as information about The Law Society’s Panel of Mediators and Family Mediators; this material was also circulated via the weekly circulars.

- **Legal Aid’s Policy on Funding Mediation**

The Committee wrote to the Director of Legal Aid on 14 May to seek clarification on the policy on mediation as it had received reports that some members who had been assigned cases by the Legal Aid Department had received pressure to secure the services of pro-bono mediators before appointing a mediator on commercial terms. The Director of Legal Aid subsequently confirmed the Legal Aid Department would provide fees to cover mediations; a circular on LAD’s official position was issued on 6 July.

### Cessation of Practice by Foreign Firms

The Standing Committee has oversight of cessation of practice by local firms which is governed by Law Society Practice Direction D7, and by detailed guidelines issued from time to time in the weekly circulars. Members considered a request from The Law Society’s Foreign Lawyers Committee to consider whether comprehensive guidelines should be issued in relation to foreign firms ceasing practice in Hong Kong. It was noted cessation of practice by foreign firms had been covered by separate procedures since 1996 and the Committee decided it would be appropriate to maintain a separate regulatory regime rather than introduced a single practice.

## Standing Committee on Practitioners Affairs

### Property Fraud

The Committee noted three recent conveyancing transactions involving fraud had resulted in claims for indemnity and that the last time such activities had taken place in significant numbers had been in 1997. The Law Society issued a circular which provided information on the *modus operandi* of the fraudsters together with guidance on the security features of the HKID. The Committee decided the circular should be updated and an invitation should be made to the Commercial Crimes Bureau and Immigration Department to lecture members on property fraud and the security features of the new smart Hong Kong ID cards. *The Academy of Law* subsequently organised two lectures which took place in June and August.

### After the Event Insurance (“ATE”)

The Committee received a query from a commercial insurer on whether its proposal to introduce ATE would infringe the Hong Kong law on maintenance and champerty. The Committee considered the views of the Working Party on Conditional Fees as well as those of the Civil Litigation Committee and confirmed The Law Society’s policy that it would not endorse commercial products, and as such, it was a decision for the insurance company to decide whether the ATE should be launched in Hong Kong. The Committee did not give an opinion one way or the other on the legal issues involved.

### Law Reform Commission (“LRC”) Consultation Paper on *Enduring Powers of Attorney: Personal Care*

The Committee discussed the LRC’s proposals and convened a sub-group which prepared submissions on the recommendations; these were sent to the LRC on 29 September 2009.

### Criminal Procedure Ordinance

The Committee considered a request for The Law Society to conduct a review of the “excepted offences” in the *Criminal Procedure Ordinance* which prevents the court from imposing suspended sentences on 17 offences. The Committee agreed the matter should be reviewed and invited the Criminal Law & Procedure Committee to do so.

### Interlocutory Application in the High Court and the District Court

The Committee received complaints from practitioners on lengthy waiting times for interlocutory application in both the High Court and the District Court. It noted this matter had been raised in 2008 when the Judiciary concluded that payment of higher costs is not the best solution to reduce delays and steps have been taken to minimise waiting time. The Committee agreed to raise practitioners’ concerns again in the next meeting of the Civil Court Users’ Committee.

### Party and Party Costs

A decision had been made in the last quarter of 2008 to place the review of party and party rates on hold because of the economic downturn. Council’s view will be canvassed to see whether we need to bring up the subject for discussion with the Judiciary again.

## Standing Committee on Practitioners Affairs

### Members of the Standing Committee and their attendance at meetings during the year (in brackets):

Alex T.H. LAI ( <i>Chairman</i> )	(7/7)	E. John DAVISON	(5/7)
Cecilia K.W. WONG ( <i>Vice-Chairman</i> )	(6/7)	Stephen W.S. HUNG	(4/7)
Simon H. BERRY	(5/7)	J.C. Nicholas MILLAR	(5/7)
Geoffrey N. BOOTH	(2/7)	Simon W.L. WONG	(5/7)
Simon M.Y. CHAN	(4/7)	Kevin K.F. YAM	(3/7)

Secretary: Director of Practitioners Affairs

### Public Consultation on the Review of the Personal Data (Privacy) Ordinance

The Constitutional and Mainland Affairs Bureau published its Consultation Document on *Review of the Personal Data (Privacy) Ordinance* in August. A Working Party comprised of members from the Standing Committee, Intellectual Property Committee and Technical Committee was convened to prepare submissions which were approved by Council on 24 November.

### Members of the Working Party:

Simon H. BERRY ( <i>Chairman</i> )	Rebecca M.C. LO
Nicholas H.F. CHAN	Kevin K.F. YAM

Secretary: Director of Practitioners Affairs

## CIVIL LITIGATION COMMITTEE

The Civil Litigation Committee met on four occasions during the year and conducted the rest of its business by email:

### Civil Justice Reforms (“CJR”)

The CJR was implemented on 2 April and as the Working Party on CJR was *functus*, the Committee agreed to assume responsibility for monitoring the reforms. The Chief Justice convened a CJR Monitoring Committee and the Committee issued a circular inviting practitioners to send in comments on any problems encountered with the Practice Directions and the new rules.

A CJR Review Session was held for members on 11 May when items of concern were raised such as: Statements of Truth, Form 16, Time of Appeals, double-sided printing of documents, etc.

## Standing Committee on Practitioners Affairs

The Committee reviewed comments on the *UK Academy of Expert's Declaration on Experts* noting the Hong Kong declaration was worded differently from that in the UK. The Committee raised this matter with the Chief Judge who indicated experts were unlikely to face any exposure even though the Hong Kong documents states “*I believe that the facts stated in this Expert Report are true and the opinion expressed in it is honestly held*”.

### Legal Aid Certificate

Members expressed concern that practitioners faced wasted costs orders as some practitioners had not been able to deal with queries raised by the Masters in the Case Management Conferences (“CMCs”) because the Legal Aid Certificate had not been extended to cover the applications. The Committee wrote to the Director of Legal Aid to ask that all Legal Aid Counsel reviewed their files in good time to ensure cases proceeding to the CMC would be covered by the Legal Aid Certificate.

### Civil Justice Council

On 24 March representatives from the Committee met with a delegation from the *Civil Justice Council* which was conducting a study tour of Hong Kong and other comparable jurisdictions as part of an investigation into the effectiveness of *Lord Woolf's Civil Justice Reforms* and whether the Reforms had been successful in controlling costs of civil litigation. Lord Jackson indicated the introduction of the Supplemental Legal Aid Scheme in Hong Kong was successful in providing funding to the middle classes.

### Trainee Solicitors' Rights of Audience

The Committee noted trainee solicitors and pupil barristers receive a common training programme up to the PCLL stage of their education and decided, after reviewing Judiciary's PDs 14.1 and 27 and Rule 26 of the Lands Tribunal Rules, to press for an extension of rights of audience for trainees. The Committee wrote to the Registrar of the High Court and suggested trainee solicitors with one year's post-qualification experience should be entitled to appear in taxation hearings and 15-minute applications. The Registrar, after consulting with the Bar Association and the Law Costs Draftsmen Association, proposed to introduce a Pilot Scheme to enable trainee solicitors to appear in taxation hearings lasting less than 3.5 hours and to allow attendance at 15-min applications after one year's traineeship.

### Trainee Solicitors' Checklist

Members noted a request from the Standing Committee on Standards and Development to provide a checklist of areas of work trainee solicitors should deal with. Members noted the checklist should be regarded as an *aide memoire* rather than “*minimum requirements in relation to training*” as many of the smaller firms could not provide the wide scope of training in such checklists.

### After the Event Insurance

Members reviewed a request from a private insurance company seeking views on whether its product contravened the existing law on champerty maintenance. The Committee reviewed an Opinion by a local senior counsel and agreed it is not The Law Society's policy to endorse or approve any commercial products.

## Standing Committee on Practitioners Affairs

### Law Reform Commission (“LRC”) Consultation Paper “Class Actions”

The LRC published its Consultation Paper on the feasibility of introducing Class Actions in November. The Committee agreed to review the proposals in time to meet the Consultation deadline in March 2010.

#### Members of the Committee:

Nicholas D. HUNSWORTH (*Chairman*)

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A. Clinton D. EVANS

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Johnny C.M. FEE

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D. Nigel FRANCIS

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Warren P. GANESH

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Junius K.Y. HO

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Joseph S.M. KWAN

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Secretary: Director of Practitioners Affairs

Jeffrey H. LANE

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Brenda F. LEE

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Mark LIN

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Amirali B. NASIR

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Simon D. POWELL

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Kenneth W.Y. WONG

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Sherman C.N. YAN

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## COMPANY AND FINANCIAL LAW COMMITTEE

The Committee reviewed and made comments on the following:-

- *IASB Discussion Paper on Preliminary Views on Financial Statement Presentation*
- *Consultation on the Review of the Deposit Protection Scheme*
- *Guoco Group on Legislation for Treasury Shares*
- *2nd Consultation Paper on Deposit Protection Scheme*

#### Members of the Committee:

Patrick C.K. WONG (*Chairman*)

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Grace K.W. CHAN

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CHAO Tien Yo

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Angelina P.L. LEE

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Secretary: Director of Practitioners Affairs

Lewis T. LUK

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NG Kay Ian

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David P.R. STANNARD

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Richard J. THORNHILL

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## Standing Committee on Practitioners Affairs

### CONSTITUTIONAL AFFAIRS COMMITTEE

The Committee met seven times during the year and also dealt with consultations via email.

#### ***Interception of Communications and Surveillance Ordinance (“ICSO”) – Commissioner’s Annual Reports 2007 and 2008***

- **2007 Report**

The Committee, together with input from the Criminal Law & Procedure Committee, reviewed the Commissioner’s Report dated June 2007 (but only published in late 2008) together with the Security Bureau’s paper to the Legislative Council dated February 2009. Concern was expressed by The Law Society on breaches of ‘legal professional privilege’ by Law Enforcement Agencies (“LEAs”), particularly four cases involving the ICAC which indicated the institution needed to improve the cultural mind-set of some officers. The Report was submitted to the Chief Executive (“CE”) on 30 June 2008, namely the last possible day under the ICSO but was not published until 10 February 2009. The Committee recommended the Commissioner’s Report should be released concurrently to Legco as well as to the CE and the reporting time should be reduced to three months as the lengthy delay in releasing the Commissioner’s Report to the general public is inexplicable.

- **2008 Report**

The Committee reviewed the Commissioner’s Report for 2008 and noted again the failure by some LEAs to adopt an appropriate mind-set towards the operation of the ICSO. Comments were made in December re-iterating The Law Society’s concern over the attitude of some LEAs officers such that The Law Society repeated its earlier submissions that criminal sanctions should be imposed for breach of the Ordinance, particularly in cases involving interception of communication covered by legal professional privilege. The Committee noted the Ordinance will not be reviewed until the 2nd quarter of 2010 and the loopholes in the ICSO will continue to be a cause of great concern to the public.

#### ***Control of Obscene and Indecent Articles Ordinance (“COIAO”)***

The Commerce and Economic Development Bureau (“CEDB”) published its Consultation Paper *“Review of the Control of Obscene and Indecent Articles Ordinance”* in October 2008. The Committee considered the proposals in April and agreed, in principle, it would be appropriate to reform the Obscene Articles Tribunal (“OAT”) by removing the Judiciary’s administrative role of classifying material and leaving the Judiciary to deal solely with judicial determination on whether articles were obscene. In respect of the Panel of Adjudicators, the Committee agreed in principle, the Panel should be drawn from a relatively large pool from the community but whether it was appropriate to make use of the jury pool as recommended by the Judiciary was the subject of debate. Agreement was reached that further discussion should take place after the CEDB issues its second Consultation Paper on this complicated matter.

## Standing Committee on Practitioners Affairs

### Drug Abuse in Schools

The Administration announced in August that it intended to introduce a Voluntary Drug Testing Programme for school children in the Tai Po area. The Committee together with representatives from the Criminal Law & Procedure Committee met with the Commissioner for Narcotics, representatives from the Department of Justice and the Home Affairs Bureau on 19 August to discuss, inter alia, the following matters:-

- The legal framework for the Scheme;
- The concept of “voluntary”; and
- Any additional support to students who test positive for drug taking
- whether significant additional resources would be made available for rehabilitation programmes.

### Constitutional Reform

In November, the Constitutional and Mainland Affairs Bureau (“CMAB”) published its latest Consultation Document “*Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012*”. The Law Society issued a Press Release on 18 November in response to the proposals and submissions were sent to the CMAB in early 2010.

The Committee also commented on:

- *Draft Civil Service Code*
- *Consultation Paper on Prisoners’ Voting Right*

### Members of the Committee:

Lester G. HUANG (*Chairman*)

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BUT Sun Wai

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Charles C.C. CHAU

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Eric T.M. CHEUNG

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John J. CLANCEY

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William S. CLARKE

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Secretary: Director of Practitioners Affairs

Mark D. DALY

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IP Shing Hing

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Joseph C.W. LI

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LING Bing

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Kevin K.F. YAM

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### Constitutional Affairs’ Sub-Committee: Working Group on Convention against Torture (“CAT”)

The Council convened an official Working Group to work with the Bar Association to review the Government’s Administrative Scheme to screen CAT claimants.



## Standing Committee on Practitioners Affairs

The Joint Working Group held 8 internal meetings, 4 meetings with the representatives of the Security Bureau, one meeting with the DLS, attended meetings of the Legco Panel on Security on 31 March and 24 September, surveyed the profession in mid-October and issued a Press Release to counter incorrect information circulated by the Security Bureau on the level of interest by lawyers on the *CAT Scheme*.

The Sub-Committee noted the Administration intended to only revise policies in relation to CAT applicants as it refused to introduce a unified system to deal with asylum seekers under the *1951 Convention on Refugees* (“*Convention*”) as Hong Kong is not bound by the *Convention*. The Hong Kong Government does not remove persons who seek protection from the UNHCR until such claims are dismissed. This policy causes significant administrative problems to the Government, but despite being presented with clear and cogent reasons from the Joint Profession, has refused to consider any change to its policy.

At the Opening of the Legal Year 2009, the then President of The Law Society expressed concern over the situation as stated in the Court of First Instance judgment in *FB v. Director of Immigration* when the screening process was found to be well short of the high standards of fairness. The Administration was urged to address the matter by introducing legislation.

The Security Bureau indicated it would be introducing a legislative framework for a regime to assess CAT claimants by the end of the year. The Joint Profession was surprised to note the Security Bureau did not see fit to contact the professional bodies on its proposals but had entered into direct negotiations with the *Duty Lawyer Service (DLS)* to run an administrative scheme for CAT claimants.

The Joint Profession expressed concerns on the lack of consultation in relation to the details of the scheme such as:

- “timing to complete questionnaire was grossly inadequate
  - initially 14 days from date of claim by a CAT applicant which was eventually extended to 28 days with a possibility of a further extension, but only in exceptional circumstances.”
- The provision of Medical Examinations
  - The Security Bureau initially proposed that medical practitioners chosen by the Director would be provided, totally ignoring the matter of fairness and prejudice to the claimant.
- Training
  - The Joint Profession noted the DLS had no infrastructure to provide training to lawyers to conduct such complex cases.
- Fees
  - The Security Bureau refused to increase the hourly rates from standard DLS rates.

The Hong Kong Academy of Law organized a training course which took place between 14-17 December with the assistance of a grant from the Professional Services Development Assistance Scheme. The Scheme was implemented just before year-end.



## Standing Committee on Practitioners Affairs

### Members of the Working Group:

Lester G. HUANG (*Chairman*)

Mark D. DALY

Peter H.C. BARNES

Secretary: Director of 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.

### Annual Reports of the Commissioner on Interception of Communications and Surveillance (“the Commissioner”) to the Chief Executive - 2007 and 2008

The *Interception of Communication and Surveillance Ordinance* (“ICSO”) came into operation in August 2006 and the Commissioner’s main function was to oversee the compliance by the Law Enforcement Agencies (“LEA”) with the statutory requirements in the legislation. The Committee reviewed the Commissioner’s Annual Report 2007 and 2008, which were only released respectively in February and December. Members noted with concern four cited instances of irregularities in the 2007 Report in which the LEA officers had intercepted and obtained information which was subject to legal professional privilege (“LPP”). The Security Bureau explained that the reported incidents of irregularities were isolated incidents but members expressed concern over the process adopted by the LEA regarding the access, preservation and use of LPP information. Representatives of the Committee participated in the discussions with the Constitutional Affairs Committee (“CAC”) on the Reports and submissions were made on the two reports in March and December respectively.

### Authorized Solicitors’ Clerks Scheme (“ASC Scheme”)

The Committee reviewed the Society’s policy on admission of clerks under the ASC Scheme and discussed a proposal by the Consents Committee to create an additional category of “*trainee authorized clerks*” (“TAC”) to train up inexperienced clerks to conduct legal visits, subject to their principals’ undertaking to The Law Society that they would not conduct the visits alone but in the company of their principals. Members did not see any need to create the TAC when clerks could develop experience by working on appropriate files.

### Conviction Rates

The Committee was tasked to review the conviction rates in Hong Kong, following the public debate raised by the comments of Clive Grossman SC in the *Hong Kong Archbold*. Members attended a *Friday Tea Gathering* held by Hon. Margaret Ng in October and undertook a comprehensive study of the conviction data in Hong Kong kept by local authorities such as the Department of Justice, the Judiciary and the Duty Lawyer Service and data from jurisdictions such as the UK, Australia, New Zealand and Malaysia.

## Standing Committee on Practitioners Affairs

### Drug Abuse in Schools

The LegCo Panel on Education sought the Committee's views on the Government's proposal to introduce a school-based drug testing scheme. The Committee supported the proposal in principle subject to further review of a detailed implementation plan and the conditions that drug tests will: (1) be conducted on a voluntary basis; and (2) target "at-risk" students for early treatment and rehabilitation but not for referral of these students to the LEA. Members of the Committee and the Constitutional Affairs Committee attended a meeting with the Commissioner for Narcotics in August to discuss the Government's proposed *Pilot Scheme to Tackle Drug Abuse in Schools*.

### ICAC: Detainees' or Suspects' Signatures

The Committee discussed a member's complaint that the ICAC has unilaterally adduced the signatures of an arrested person on forms provided by that person in the course of his detention as a handwriting specimen in a trial without that person's consent. The ICAC explained that in cases where a suspect refused to provide a handwriting specimen, the ICAC would explore other lawful means to secure handwriting evidence, including making use of documents that had lawfully come into its possession and which contained the suspect's signature. The Committee sought clarification from the ICAC on the meaning of "lawful means" and the types of documents that they regard as having "lawfully come into their possession".

### Legal Aid in Criminal Cases Rules

The Committee shared concerns raised by the Hong Kong Human Rights Monitor ("HKHRM") that only persons who had been "convicted" of an offence were eligible for legal aid for an appeal to the Court of Final Appeal ("CFA") under Rule 4(1)(h) of the *Legal Aid in Criminal Cases Rules (Cap. 221D)*. It submitted its in principle support for HKHRM's request for an amendment to the rules to extend the scope of legal aid to fill the gap.

### Practice Direction for Complex Commercial Crime Trials

The Judiciary consulted the Committee's views on a proposed Practice Direction ("PD") to streamline the management of complex commercial trials. The stated objectives of the PD were to, inter alia, ensure the real issues to be tried would be identified at the earliest stage practicable and the presentation of the defence case would be relevant and efficient. Members expressed grave concerns on the implications of the PD for the defence.

### Pre-trial Witness Interviews by Prosecutors

The Committee reviewed the proposals put forward by the Department of Justice ("DOJ") in the Consultation Paper to empower prosecutors to conduct pre-trial witness interviews ("PTWI"). The alleged benefit of PTWI was they would facilitate the prosecution in deciding, based on their first-hand assessment of the reliability and credibility of prosecution witnesses, whether to initiate or discontinue a prosecution. The Committee took the view that any potential benefits would be outweighed by its associated risks and limitations, such as: the potential risk of witness coaching and contamination of a witness' evidence by the prosecutors. The DOJ had failed to persuade the Committee the scheme had any merit.

### Retention of Trial/Appeal Bundle

The Committee highlighted its concern to the Legal Aid Services Council over Legal Aid Department ("LAD") policy requiring assigned solicitors to retain trial/appeal bundle upon the conclusion of a case. LAD argued that the aided person but not the LAD was the client, and so the assigned solicitor should obtain instructions from the aided person

## Standing Committee on Practitioners Affairs

regarding retention or disposal of the trial bundle. Committee members noted that the relationship between the assigned solicitor and the aided person was different from a private case in that the funding was provided by the LAD in the legal aid cases. Whilst the assigned solicitor is entitled to charge for storage fee, it is unlikely he could get payment from the aided client. To avoid future disputes between assigned solicitors and the aided person regarding the retention or disposal of the files, the Director of Legal Aid agreed to the Committee's proposals to include an advice in their initial letter to the aided clients that the trial/appeal bundle would be returned to them upon the conclusion of the case.

### Review of Criminal Legal Aid Fees

The Committee devoted a significant amount of time and effort this year to its campaign for an overall review of the criminal legal aid fees system. The Law Society consistently stressed the Government should uphold the spirit of the Basic Law which guarantees adequate legal representation funding of a proper criminal legal aid system; and the level of remuneration in these cases should reflect the level paid on party-and-party taxation equivalent to an experienced solicitor with five to six years' post qualification experience in civil proceedings. A total of five reports were submitted to the Council recommending the way forward on the campaign. As negotiations with the Home Affairs Bureau on the fee rates stalled, the Committee held a press conference in September to publicize the Society's stance; and Committee members staged a boycott of criminal legal aid cases for the month of October as a gesture of protest against the Government's indifferent attitude. The Committee will continue to campaign for a just increase in the level of fees.

### Review of the *Control of Obscene and Indecent Articles Ordinance*

The Commerce and Economic Bureau ("CEB") launched a first round public consultation on a comprehensive review of the *Control of Obscene and Indecent Articles Ordinance* to improve the regulation of obscene and indecent articles. The Committee discussed the issues raised in the CEB's Consultation Booklet and reviewed the comments of the Bar and the Judiciary as well as comparable regulatory practices in overseas jurisdictions in three meetings; a Committee member also attended a public discussion forum hosted by the CEB. The Committee generally believed there could not be a fixed definition of "*obscene*" as the meaning of the term should reflect contemporary standards which would change over time. It agreed with the Judiciary the existing statutory set up of the Obscene Articles Tribunal ("OAT") was problematic and it should be re-structured by removing the administrative classification function and transferring this to a newly established independent classification board. However, members had divergent views on whether the existing system should be completely overhauled. The Committee recommended to the Council in March that the Society should confine its comments in the first round of consultation to the system to be put in place on censorship, and reserving its views on the other aspects of the consultation to a later stage.

### Rule 5D of the *Solicitors' Practice Rules* ("Rule 5D")

The Committee considered the DOJ's queries on the 2nd draft of the proposed amendments to Rule 5D. The proposed amendments were made following the Committee's previous recommendations to extend the rule to cover situations where instructions were received from a person to provide professional service to a defendant. The Committee submitted its suggested responses to the DOJ's queries to the Guidance Committee for consideration.

### Second Report on the HKSAR under the United Nations Convention on the Rights of the Child ("the Convention")

The Committee considered and submitted its views to the Constitutional and Mainland Affairs Bureau ("CMAB") on the implementation of the Convention in HK on the criminal law related topics to be included in the Second Report of the HKSAR under the Convention. Submissions were made, inter alia, for the age of a person under

## Standing Committee on Practitioners Affairs

the definition of “*child*” to be raised from “16” to “18” to be in line with the law of other jurisdictions; and for the court to be given a wider discretion to make a no-conviction order in favour of juvenile offenders; etc. The Committee recommended the CMAB to include commentary on various legislative proposals concerning “*children*” being considered by the LRC including legislation on “*causing or allowing the death of a child*” and “*implementation of a new sex offenders register*”.

### Taxation of Costs in Criminal Cases

The Committee reviewed the Registrar of High Court’s paper on “*Taxation of Costs in Criminal Proceedings*”. It did not think a separate scale of costs for criminal taxation was necessary, noting that the civil taxation rates and common fund basis were being used at present for taxation of costs in criminal cases. Members supported the use of the proposed form of the Simple Costs Statement for taxation of agreed lump sum fees.

### Trainee Solicitor Checklist

Committee members noted the proposal of the Trainee Solicitors Committee to issue checklists to provide guidance to trainee solicitors in respect of their training in different areas of practice and provided input on the basic training a trainee solicitor should undertake in criminal litigation practice.

### Visit by the Taiwan Alliance to End the Death Penalty

The Committee received a delegation from the *Taiwan Alliance to End the Death Penalty* in July and provide information on the criminal prosecution and criminal justice system in Hong Kong; the features of the HK system as the death penalty has been abolished; the system in place to safeguard a defendant’s right to have free legal representation; etc.

The Committee also reviewed the following:

- *Legal Practitioners (Amendment) Bill 2009* – Higher Rights of Audience
- Concept of “*Excepted Offence*” under the *Criminal Procedure Ordinance*
- DOJ’s Statement of Prosecution Policy and Practice – Code for Prosecutors
- *Draft Rules under Part II of the Evidence (Miscellaneous Amendments) Ordinance 2003*
- Fees for Transcripts and Record of Proceedings – Judiciary’s Report on the Overall Costing Review
- Extension of Legal Aid to Police Visits
- Independence of Legal Aid
- *LRC Report on Hearsay in Criminal Proceedings*
- *Personal Data (Privacy) Ordinance* – Disposal of Defence Videotapes
- *Research Report on “Legal Aid Systems in Selected Places* prepared by the LegCo Secretariat
- Use of Laptop Computers in Legal Visits

## Standing Committee on Practitioners Affairs

### Members of the Committee:

Stephen W.S. HUNG (*Chairman*)

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BUT Sun Wai

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Bucky K.H. CHAN

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Duncan K.C. FUNG

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Herman H.M. HUI

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Paul M.W. LI

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Jonathan C.Y. MOK

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Secretary: Assistant Director, Practitioners Affairs

Kenneth Hung Sui NG

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Andrew POWNER

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Kevin STEEL

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Anthony UPHAM

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Ben K.K. WONG

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Michael VIDLER

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### External Work:

#### Criminal Court Users' Committee ("CCUC")

The Chairman of the Committee was The Law Society's representative on the CCUC, which met in April and October. Issues discussed this year included: the use of electronic bundles for criminal proceedings in the High Court; jury attendance; provision of Specimen Directions to interested parties; formulating a Practice Direction in relation to stay applications; electronic presentation of evidence; proposed Practice Direction on the raising or submitting of a Human Rights or a constitutional argument; permission for use of laptop computer in court; taxation of costs in criminal proceedings; aspects of the "Pro Forma" contents of witness statements; number of jury summons to be issued; construction of additional courtrooms and associated facilities in the High Court Building.

## EMPLOYMENT LAW COMMITTEE

### Labour Tribunal

In 2008, the Committee had raised two issues concerning the Labour Tribunal, namely the inequity which rose from the unavailability of past decisions and the current time limits for appeal. The Judiciary Administration confirmed in December 2008 that it had noted the representations but saw no reason to change the status quo.

A reply letter was sent on 16 January making further representations for the release of past decisions. The Judiciary Administrator agreed that written reasons for decisions in respect of Labour Tribunal cases would now be provided at least 10 days before the hearing for leave to appeal. In respect of past decisions, the Judiciary re-stated its position there would not be any inequality and confirmed it would not generally publish all written reasons of the Tribunal. However, as a concession, it did agree to post those reasons of a jurisprudential value onto the Judiciary's website.

## Standing Committee on Practitioners Affairs

### Legal Representation before the Labour Tribunal

The Committee discussed current legislation which prohibits legal representation before the Labour Tribunal and considered preparing a policy paper on whether the law is unconstitutional given the provisions of Article 10 of the Basic Law.

### Racial Discrimination Ordinance (“RDO”) - Code of Practice on Employment

The Committee reviewed the draft Code of Practice in March and submissions were prepared and sent to the Equal Opportunities Commission and the Bills Committee in June.

### Minimum Wage Bill

The Committee reviewed the Bill and prepared submissions which were sent to the Bills Committee on 16 September; the Labour Department subsequently invited Committee members to a meeting on 29 September. The Bill was considered at Legco on 7 October and the Committee sent representatives to make oral representations.

The Committee also reviewed of the following:-

- *RD (Formal Investigation) Rules*
- *RD (Investigation and Conciliation) Rules*

### Members of the Committee:

Duncan A.W. ABATE (*Chairman*)

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Y.S. CHEUNG

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Dennis C.K. HO

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IU Ting Kwok

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Edward M.T. KO

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Secretary: Director of Practitioners Affairs

Jeffrey H. LANE

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Walter Y.W. LEE

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Fiona M. LOUGHREY

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WONG Kwok Yan

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## Standing Committee on Practitioners Affairs

### FAMILY LAW COMMITTEE

The Family Law Committee met formally on 5 occasions and held meetings with representatives from the Labour and Welfare Bureau in April and Non-Government Organisations (NGOs) in June and November. A Sub-Committee on Enforcement of Maintenance Orders held its first meeting in November.

#### *Law Reform Commission Report: Child Custody and Access*

Members met with representatives from the Labour and Welfare Bureau (“LWB”) to discuss the Bureau’s plan to introduce legislation to implement the recommendations in the *LRC Report on Child Custody and Access*. The LWB representatives indicated they had contacted various NGOs and sought views on the recommendations, particularly removal of the concept of “custody” and replacing it with “parental responsibility”; the initial stance of the frontline social workers indicated a preference to retain the status quo. The Committee decided to meet with the NGOs to ascertain their concerns and meetings were held on 15 June and 11 November; the Committee found the meetings to be extremely useful as all NGOs agreed the following:-

- Support for the concept of parental responsibility
- The child’s interest should be paramount in making decisions
- Any new legislation should be culturally acceptable and should be suitably adapted to Hong Kong

#### **Family Court Users’ Committee**

The Committee noted the Family Court Users’ Committee had discussed a wide variety of issues including a request for the provision of statistics on applications under the Domestic Violence Ordinance, delays in providing appointments for judgment summonses and lengthy waiting times for court hearings.

#### **Submissions**

The Committee prepared submissions on the following:-

- *UN Convention on Rights of the Child*  
Submissions were prepared for the 2nd Report of HKSAR under the Convention including commentary on:
  - Best interests of a child
  - Recovery of maintenance
    - Criticism of the *Interest and Surcharge of Arrears of Maintenance Ordinance 2003* - this particular Ordinance does not address the needs of spouses seeking enforcement of maintenance orders because of the current low interest rate environment
    - Failure to enforce court orders within a reasonable period because of long waiting lists and lack of resources
- *Domestic Violence (Amendment) Bill 2009*  
The Bill was gazetted on 5 June and the Committee submissions were sent to the Bills Committee supporting the proposal to extend protection under the Bill to same sex couples. The Bill was approved by the legislature and the *Domestic Violence (Amendment) Ordinance 2009* was gazetted on 24 December and came into operation on 1 January 2010.



## Standing Committee on Practitioners Affairs

### Consolidated Family Law Circular

After consultation with the Family Court Users' Committee an updated Consolidated Family Law circular 09-358 was published on 18 May.

#### Members of the Committee:

KONG Yuen Hoong (*Chairman*)

Winnie W.Y. CHOW

Dennis C.K. HO

Anthony J. HUNG

Barbara A. HUNG

LAM Tze Yan

LEUNG Shek Lim

Jonathan C.Y. MOK

Catherine K.G. POR

Susan WONG

Secretary: Director of Practitioners Affairs

### Sub-Committee on Enforcement of Maintenance Orders

The Sub-Committee met in November and agreed to conduct research on the legislation and practice in comparable jurisdictions before making final recommendations in its Report in mid-2010.

#### Members of the Sub-Committee:

Dennis C.K. HO (*Chairman*)

Usha CASEWELL

Winnie W.Y. CHOW

Christina HADIWIBAWA

Barbara A. HUNG

LEUNG Shek Lim

Susan WONG

Secretary: Director of Practitioners Affairs

## INSOLVENCY LAW COMMITTEE

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

- *Voluntary Mediation in Petitions presented under Section 168A and 177(1) of Companies Ordinance*
- *Comment on IASB Exposure Draft ED10*
- *Section 47(1)(a), Legal Practitioners Ordinance, Cap.159*
- *Consultation Paper on Review of Corporate Rescue Procedure Legislative Proposals*
- *Comment on IASB discussion documents and HKICPA Practice Note*

## Standing Committee on Practitioners Affairs

### Members of the Committee:

Keith M.K. HO (*Chairman*)

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Victor K.S. CHIU

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Ian R. DE WITT

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Secretary: Director of Practitioners Affairs

Nicholas D. HUNSWORTH

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Camille JOJO

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Jimmie K.S. WONG

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## INTELLECTUAL PROPERTY COMMITTEE

The Committee met twice during the year, attended two meetings with the Intellectual Property Department on 18 March and 25 September and conducted the rest of its business via email.

### Bi-annual Meeting with Intellectual Property Department (“IPD”)

The Committee met with representatives in March and September when the following matters were discussed:

- *Intellectual Capital Management*
- *Copyright Tribunal – New Copyright Tribunals*
- *Blank Space Condition*
- *“Series of Marks” Trade Mark Registry Manual “Amendment of Applications”*
- *Rejection of Multi-class Applications – over strict and impractical approach to any application in more than 16 classes*
- *English Transliteration of Foreign Names by specified deadline*
- *Disclaimers*
- *Practice on carving-out cited goods-services to EU another foreign cases cited favourable to applicants, overseas trade marks precedents in registrations*
- *Requirement for statutory declarations made before a notary public*
- *Non-compliance with Trade Marks Ordinance/Rules in contentious proceedings*
- *Filing of documents by Mainland party*
- *Country to Hong Kong Trade Mark Rules*
- *Trade Mark Rules 16(2) Notice of Opposition*

### Copyright (Amendment) Bill 2009

The Committee reviewed the Bill and submissions were sent to the Bills Committee on 13 July followed by a meeting with representatives from the Commerce and Economic Development Bureau on 15 July. The Committee accepted an invitation from the Panel on Commerce and Industry to provide submissions on *Copyright Protection in the Digital Environment* in December.

## Standing Committee on Practitioners Affairs

Submissions were also made on the Public Consultation on *Copyright Tribunal Rules*.

The Committee also provided speakers and/or attended the following events:-

- *Seminar on Arts and Intellectual Property for the Arts Development Council on 23 February*
- *Symposium on Brand Protection, Voices of Experience on 30 March*
- *Guangdong/Hong Kong Seminar on IP and Development of SMEs*
- *Exchange Programme for IP Agents in Guangdong and Hong Kong on 22/23 April*
- *IPD Reception for Taiwan IPO Officials on 3 June*
- *Mainland, HKSAR and Macao SAR Intellectual Symposium on 24-25 November*

### Members of the Committee:

A. Clinton D. EVANS (*Chairman*)

Chloe Y.F. LEE

Steven J. BIRT

Anita P.F. LEUNG

Ella S.K. CHEONG

Rebecca M.C. LO

Yvonne CHUA

Henry J.H. WHEARE

Lindsay B. ESLER

Kenny K.S. WONG

KWONG Chi Keung

Secretary: Director of Practitioners Affairs

## LAND USE PLANNING COMMITTEE

The Committee met on two occasions and conducted the rest of its Committee's business by email.

### Urban Renewal Authority ("URA")

The URA contacted The Law Society and sought the Committee's views on the *Urban Renewal Strategy Review*. Members attended a lengthy briefing session with the URA on 3 December when they were briefed on the current policy and prevailing public views. The Committee had previously prepared submissions on this topic as long ago as September 2001; additional submissions were sent to the URA on 29 December.

## Standing Committee on Practitioners Affairs

The Committee also reviewed the *Building (Minor Works) Regulations*.

### Members of the Committee:

John DAVISON (*Chairman*)

MA Ho Fai

Michael T. M. HUI

Andrew W.Y. NG

IP Shing Hing

Christopher TUNG

Secretary: Director of Practitioners Affairs

## MEDIATION COMMITTEE

Council resolved in January to convene the Mediation Committee to review and make recommendations on The Law Society's policies in relation to mediation given the importance of mediation in the Civil Justice Reforms which were implemented on 2 April. A new post of Mediation Co-ordinator was created and the office holder oversees issues which had to be considered internally, liaises with members and also external organizations handling mediation such as the Judiciary and the HKIAC. The Committee met on 8 occasions and has reviewed the following matters:

- standards on training and accreditation of mediators
- liaised with the Hong Kong International Arbitration Centre on reciprocity of accreditation
- increased the scope and frequency of mediation-related training
- considered the adoption of the *Hong Kong Mediation Code*
- promotion of The Law Society's Accredited Mediators, on the General and Family Panels.

The Law Society now provides mediation information on a dedicated section on its website and publishes a *Mediation Update* to the general membership; the Mediation Co-ordinator provided timely assistance to members; and an agreement was reached with the Joint Professional Centre to provide subsidized mediation rooms for Solicitor-Mediators.

The Committee is planning to establish a practice support scheme for junior mediators and produce new promotional material to maintain the quality of Solicitor-Mediators, to help them cope with the implementation of the Judiciary's PD 31 and to remain at the forefront of this new area of practice in the years ahead.

## Standing Committee on Practitioners Affairs

### Members of the Committee:

Lester G. HUANG (*Chairman*)

Patrick M. BURKE

Joshua A. KERN

Ambrose S.K. LAM

Maureen E. MUELLER

Amirali B. NASIR

Melissa K. PANG

Catherine K.G. POR

Jody K.Y. SIN

Sylvia W.Y. SIU

Norris H.C. YANG

Helena S.Y. YUEN

Secretary: Director of Practitioners Affairs

Mediation Co-ordinator: Oscar Tan

## LEGAL AID COMMITTEE

The Committee discussed legal aid related issues and expressed concerns to the LegCo Panel on Administration of Justice and Legal Services (“AJLS”) on the lack of progress on the following matters:

- *Review of the Criteria for Assessing the Financial Eligibility of Legal Aid Applicants*- the financial eligibility limits of legal aid exclude a significant portion of Hong Kong’s citizens and fail to address the needs of the community
- *Expansion of the Supplementary Legal Aid Scheme*
- *Establishment of an Independent Legal Aid Authority in Hong Kong*
- *Proposal on the Permanent Arrangement for Mediation in Legally-Aided Matrimonial Cases* – clarification of the Government’s funding policy on the proposed extension of legal aid to cover mediation in legally aided matrimonial cases on a “*permanent*” basis.

The Committee dealt with the following matters:

### Correspondence with the Director of Legal Aid

A circular was issued in May to remind legal aid practitioners on the correct mode of correspondence with the Director to avoid overburdening legal aid staff with unnecessary filing.

### Independence of Legal Aid

The Committee noted the Legal Aid Services Council (“LASC”)’s findings on the review on the independence of legal aid. The LASC advised it has reviewed the report of its Working Party and came to the conclusion there was no pressing need to replace the Legal Aid Department with an independent legal aid authority, as the current institutional setup was working satisfactorily. The LASC has turned down the Committee’s request for sight of the Working Party report, claiming it was an internal document for reference by members of the LASC only.

## Standing Committee on Practitioners Affairs

### Research Report on “Legal Aid Systems in Selected Places”

The Committee reviewed the Research Report prepared by the Research and Library Services Division of the Legislative Council Secretariat to facilitate discussions by the AJLS on various issues relating to the provision of legal aid services in Hong Kong and submitted its views to the AJLS in September.

### Section 26A Scheme

The LASC operated a scheme to enable legal aid appellants who have passed the means test and wish to seek a review of the refusal of legal aid to obtain a certificate under Section 26A of the *Legal Aid Ordinance*. A circular was issued in May to invite expression of interest from members to join the Panel to undertake the work under the Section 26A Scheme.

The Committee also noted with interest the development on:

- the Society’s campaign on Review of Criminal Legal Aid Fees
- the Framework for Legal Representation of Convention Against Torture Claimants and Asylum Seekers

### Members of the Committee:

Junius K.Y. HO (*Chairman*)

Kevin STEEL

Dennis C.K. HO

Christine S.Y. TSANG

Ambrose S.K. LAM

Leslie K.L. YEUNG

Amirali B. NASIR

Secretary: Assistant Director, Practitioners Affairs

## PERSONAL INJURIES COMMITTEE (“PI”)

The Committee met on nine occasions. One member resigned and two new members were co-opted in May.

### Practice Directions 18.1 and 18.2 (“PDs”)

The Committee discussed the two new PDs and decided to invite the PI Judges in both the High Court and the District Court to conduct seminars on the new procedures. HHJ Marlene Ng agreed to give a lecture to Law Society members on 29 April.

## Standing Committee on Practitioners Affairs

With the Implementation of CJR on 2 April, the Committee conducted a review of the 2 PDs and agreed that areas of concern should be raised with the PI Judge, inter alia:

- Checklist hearing
- Excessive use of paper e.g. Questionnaire in Appendix D
- Filing of documents
- Different directions on the filing of documents in both PDs - the Committee recommended the practice in both courts should be harmonized where possible.
- Appendix H: The wording in paragraph 17
- Appendix F: Clarification that solicitors can submit opinions as Masters were insisting only barristers could provide such advice.

The PI Judges sent a joint reply to the Committee in October and it was agreed that a circular should be prepared to provide additional clarification to assist practitioners; Circular 09-927 was issued in November.

### Statements of Truth

The Committee was concerned with the requirements of new Order 41A noting practitioners had problems with signing statements of truth on behalf of clients. It was noted the Judiciary would accept pleadings in the alternative which would not be penalized but if different facts were used, there would have to be an explanation. It was noted the purpose of statements of truth was to ensure solicitors had made enquiries with due diligence in relation to the pleadings.

### Mediation

The Committee noted Masters in the High Court had circulated their own practice notes encouraging the use of mediation at the beginning of the year even though PD31 would not come into force until 1 January 2010. The Committee agreed that mediations could narrow the issues between the parties which could result in a saving in costs even if the mediation itself were not successful.

### Expert's Report – Single Joint Expert (“SJE”)

The Committee agreed to issue guidance on best practice concerning the appointment of SJE as required by the PDs. A sample draft letter was issued in April and members were invited, as a matter of professional courtesy, to advise the opposing party whether the draft format had been changed. A Chinese translation of the sample letter was subsequently circulated in December.

### Circulars

A new circular providing updated information on the *Hong Kong Occupational Safety and Health Association* was issued in October.



## Standing Committee on Practitioners Affairs

### Interlocutory Applications

The Committee expressed concern on the increase in waiting times for the 3 and 15 minutes lists in both the High Court and District Court. The Committee considered the court should review allocation of resources as the listing of litigants-in-person and represented parties in the same list may not be a fair practice as this failed to take into account the reality that represented parties would be charged by their legal representatives for “waiting time”. This matter would be raised at the December meeting of the Civil Courts Users Committee.

### Members of the Committee:

Mark F. REEVES (*Chairman*)

Jenkin S.F. CHAN (*joined as new member in May*)

Patrick M. BURKE

Eliza L.S. CHANG

Anthony L.C. CHIU (*joined as new member in May*)

Christina W.C. HUNG

Nancy B.Y. LEUNG

Secretary: Director of Practitioners Affairs

Vitus W.H. LEUNG

J.C. Nicholas MILLAR

Amirali B. NASIR

Ludwig S.W. NG (*resigned in March*)

Szwina S.K. PANG

Tommy K.M. WONG

## 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 High Court, Probate Masters, 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*. Its work this year also included:

### *Domicile Ordinance*

The *Domicile Ordinance* came into operation on 1 March 2009 and a circular was issued to highlight to members the implications of the new law on domicile on probate practice.

### Enduring Powers of Attorney (“EPA”): Personal Care

LRC issued a Consultation Paper to seek views on, inter alia, whether the scope of EPA should be extended beyond the current limits involving the donor’s property and financial affairs to include decisions as to the donor’s “*personal care*”. The “*personal care*” was proposed to include “*everyday decision as to the donor’s health care, but not decisions involving the giving or refusing of life-sustaining treatment*” except decisions which would be statutorily excluded. The LRC also sought views on whether EPA made in

## Standing Committee on Practitioners Affairs

a jurisdiction other than Hong Kong should be recognised. A Working Party chaired by a member of the Committee and comprising members from the Standing Committee on Practitioners Affairs was convened to consider the proposals, and submissions on the Consultation Paper were made in September.

### *Re Yip Yuen Kam HCMP 1809/2008*

The Committee considered the Judgment of *Re Yip Yuen Kam* HCMP 1809/2008. In the decision, the Probate Judge emphasized the importance of the supporting Affidavit for the Grant. A circular was issued in January to draw members' attention to the Judgment with a reminder that the applicant should exercise due diligence and care in terms of the information contained in the supporting Affidavit, as any mistake in the document and subsequent amendments to the same would have to be justified.

### Trainee Solicitor Checklist

The Committee considered the Trainee Solicitors Committee's proposal to issue checklists as guidance to trainee solicitors in respect of their training in different areas of practice and provided input on the basic training a trainee solicitor should undergo in will drafting and non-contentious probate practice.

### Joint Standing Committee on Probate Practice

The Committee reviewed concerns raised by a practitioner on Probate practice. A Joint Standing Committee meeting was convened in May to reflect relevant concerns with the Probate Registry and discuss ways to improve probate practice.

### Members of the Committee:

Herbert H.K. TSOI (*Chairman*)

Billy W.Y. MA

Helen Y.P. CHAN

NG Kin Yuen

Albert C.Y. HO

TAM Sau Hing

Patricia LAM

Secretary: Assistant Director of Practitioners Affairs

## PROPERTY COMMITTEE

The Committee reviewed issues and legislative proposals relating to conveyancing practice in regular monthly 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 (428 applications); 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 Society's representatives on external Committees/Working Parties on property related issues.

## Standing Committee on Practitioners Affairs

### **DMC Guideline 6 – Meaning of “Gross Floor Area”**

The Committee discussed a member’s query on DMC Guideline 6(a) and expressed its views that for the purpose of calculation of the undivided shares and management shares allocated to a unit, increased floor area attributed to the unauthorized building works should not be included in the “*gross floor area*” mentioned in Guideline 6(a).

### **Estate Agency Agreements**

The Committee considered concerns expressed by the Estate Agents Authority (“EAA”) that some solicitors have advised their clients not to sign estate agency agreements, although this is a legal requirement. Members did not think the Society should dictate how members should advise their clients, particularly when the advice might be given on the special circumstances of the case. The Committee suggested the EAA should consider conducting a public education campaign on the legal requirement under section 6 of the *Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation*.

### **Government Policy on Breaches of Land Grant Terms**

The Committee followed up on its concerns on the adverse effect that the Government’s policy on breaches of Land Grant terms had on conveyancing transactions. Concerns were raised with the Director of Lands that whilst technical breaches of Land Grant terms was a common occurrence, the relevant Government departments would not respond to enquiries by vendors’ solicitors in a timely manner, thus rendering it impossible for the vendor to fulfill his obligation to give good title to the property. In response to the Committee’s request for (a) a clear Government policy on technical breaches of Land Grant terms; and (b) a performance pledge imposing a time limit for the relevant Government departments to respond to solicitors’ enquiries, the Lands Department first indicated that this was a landlord-and-tenant matter and the Government should, as the landlord, have unfettered discretion to decide whether to take enforcement action. With the Council’s endorsement, the Committee highlighted its concerns to Hon. Margaret Ng; a joint meeting with the Secretary for Development and the Director of Lands was held in July. The Government subsequently agreed to publicize its agreed policy on specified breaches and the Committee will continue to liaise with the Lands Department on the policy issues.

### **Hong Kong Housing Society’s Flat for Sale Scheme (“FFSS”)**

As a result of the introduction of the new Section 13A and amendments to Schedule 2 of the *Conveyancing and Property Ordinance*, the Hong Kong Housing Society revised the Procedural Guidelines and the forms for use in its FFSS Secondary Market Scheme. A circular was issued in March.

### **Land Titles Ordinance (“LTO”)**

The Committee continued to monitor the work progress of the title registration legislation and reviewed the Working Party on Land Titles Ordinance’s recommended submissions on various Government’s proposals regarding the Land Titles (Amendment) Bill.

### **Mandatory Implementation of the Building Energy Code**

To further improve energy efficiency of buildings, the Government proposes to turn the voluntary Building Energy Codes (“BEC”) into statutory requirements. The Environment Bureau (“EB”) sought the views of *The Law Society* on its legislative proposals. The Committee noted the proposed legislation would not provide for

## Standing Committee on Practitioners Affairs

the civil consequences of a breach and was concerned this would give rise to more disputes and litigation in property transactions. Instead of leaving it to the parties to deal with these problems under the pretext of the law of contract, the Committee submitted that the Government should thoroughly consider the policy to adopt and legislate clearly for the incidence of liability. Clarifications were also sought from the EB on how the public could ascertain compliance with the BEC and the consequences of non-compliance.

### Practice Direction L – Attestation of Documents

The Committee reviewed the Judgment of CACV 83/2008 in which a partner was convicted of having wrongfully permitted a solicitor to verify the signature of a clerk in witnessing conveyancing documents without exercising control over and personally supervising the execution of those documents. Paragraph 2 of PD L provides that in respect of the signing or execution of documents, which is not required by law to be witnessed or attested by a solicitor, a solicitor may appoint an experienced clerk to witness or attest the execution of the documents and verify the signature of the clerk “*where it is impracticable for the solicitor to do so personally*”. Members believed what would be considered as “*impracticable circumstances*” for the purpose of PD L depend on the circumstances of each case and it would be dangerous for *The Law Society* to issue guidance on “*impracticable circumstances*” and recommended the Guidance Committee to consider issuing a reminder circular to members on the requirements of paragraph 2 of PD L.

### Property Fraud

In view that a number of property fraud cases surfaced involving the use of forged identity cards / forged title deeds resulting in claims against solicitors, the Committee reviewed and updated the circular on “*Property Fraud*” to remind members to exercise caution in handling conveyancing transactions. The Committee also provided comments on a seminar conducted on “*Property Fraud and Security Feature of HK Smart IC*” and recommended *The Hong Kong Academy of Law* to re-run the seminar, which was held in August.

### Registration of Charges on Landed Property

The Companies Registry conducted a feasibility study on the dual registration of documents for mortgages and charges on landed properties so that the submission of one set of documents (in duplicate) to the Land Registry will satisfy the registration requirements of both the Land Registry and the Companies Registry. The Committee welcomed the proposed simplification of the registration process subject to review of the draft legislation.

### Rule 5C of the Solicitors’ Practice Rules - Revised Approved Forms (“Rule 5C forms”)

The Committee reviewed the four Rule 5C forms as a result of the revisions made to the standard form of Sale and Purchase for the sale of uncompleted residential units under the Consent Scheme by the Legal Advisory and Conveyancing Office to, inter alia, revise the definition of “*Saleable Area*”. The Committee discussed the corresponding amendments to be made to the Rule 5C forms as well as other drafting changes. On Council’s endorsement, application was made to the Chief Justice for his in principle approval of the proposed amendments to the mandatory clauses in the forms.

### Section 13A of the Conveyancing and Property Ordinance (“S. 13A”)

The Committee reviewed the Judgment of Hon. Saunders J. in *Donpower Trading Limited v. Apexcom Limited* HCMP 2095/2008 on S. 13A and highlighted the Judgment to members in a circular in December.

## Standing Committee on Practitioners Affairs

### Trainee Solicitor Checklist

Committee members noted the Trainee Solicitors Committee's proposal to issue checklists to provide guidance to trainee solicitors in respect of their training in different areas of practice and provided input on the basic training a trainee solicitor should undertake in property law practice.

### Visit by *The Tianjin Bar Association*

The Committee received a delegation of 14 lawyers from *The Tianjin Bar Association* in November and provided information on the conveyancing system in Hong Kong and in particular, the law and practice relating to co-ownership of multi-storey buildings. It also invited representatives from *The Hong Kong Conveyancing and Property Law Association Limited* to participate in the discussions to share their working experience on conveyancing practice.

### The Committee also considered:

- *Building (Minor Works) Regulation*
- New Search System for Land Records – implementation work progress
- *Report on World Bank's Doing Business Survey* – ranking for Hong Kong's registration process
- Urban Renewal Strategy Review

### External Work:

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

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

### Members of the Committee:

Emily Y.M. LAM (*Chairman*)

Lilian CHIANG

Wendy CHOW

Ambrose LAM

Angela W.Y. LEE

Vincent W.S. LIANG

Amanda L.Y. LIU

Billy W.Y. MA

MA Ho Fai

Steven M.W. SHUM

Ellen TSAO

David P.H. WONG

Terry P.L. YEUNG

Secretary: Assistant Director, Practitioners Affairs

## Standing Committee on Practitioners Affairs

### WORKING PARTY ON LAND TITLES ORDINANCE (“LTO”)

The LTO was enacted in July 2004 but subject to the Administration’s undertakings to, inter alia, conduct a review of the Ordinance before its commencement and to work with The Law Society to address any subsisting points of concern and issues that might emerge on further consideration before its implementation. The Government launched a three-month consultation in January to gauge the views of the public and stakeholders on two important aspects of the Land Titles (Amendment) Bill: (1) Conversion Mechanism; and (2) Rectification and Indemnity Arrangements.

#### Conversion Mechanism

The Administration raised concerns on the effect of automatic conversion on registers of land with indeterminate ownership and proposed to replace the “*Daylight Conversion Mechanism*” under the LTO by a mid-way house conversion mechanism, in effect reverting the system to a gradual conversion process. Members met with the Administration to understand their concerns but were of the view they had failed to make any case for change. On the other hand, the Working Party could not see how the newly proposed conversion mechanism would help to resolve the highlighted problems but could see significant defects with the mechanism. On the Working Party’s recommendations, The Law Society expressed grave concerns that after 20 years of deliberations and with submissions made on no less than 40 occasions, the Administration proposed to introduce fundamental changes to the conversion mechanism at such a late stage. The Working Party conducted an extensive publicity campaign including holding public forums and meeting with various stakeholders and legislators to explain the Society’s stance. The Government agreed to drop the proposal and to introduce instead legislative amendments to enable the Land Registrar to deal with the problem registers.

#### Rectification and Indemnity Arrangements

The Government has concern that the “*Mandatory Rectification Rule*” (“*MR Rule*”) under the LTO, which essentially is the carrying over of the *nemo dat* principle to the new system, would undermine confidence in the Title Register and proposed to introduce “*deferred indefeasibility*” as an exception to the MR Rule. The Working Party shared the Government’s concerns and submitted that a title registration system with the MR Rule was unworkable and it should be removed from the LTO.

The Working Party also engaged in discussions and exchange of correspondence with the Administration on other issues involved in the post-enactment review, including: date of registration and priority of charging orders; severance of joint tenancy; re-registration of charging orders, other court orders and *lis pendens*; rights by prescription as an overriding interest; covenants implied under Section 35 of the CPO; cautions, etc. Given its very heavy workload, the Working Party co-opted 2 new members in July to assist in its work.

#### *External Work:*

The Working Party has representatives on the following external committees:

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



## Standing Committee on Practitioners Affairs

### Members of the Working Party:

Andy O.T. NGAN (*Chairman*)

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Peter P. AHERNE

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E. John DAVISON

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Emily Y.M. LAM

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Alexander H.S. LEUNG (*joined in July*)

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Secretary: Assistant Director, Practitioners Affairs

Vincent W.S. LIANG

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Anthony H.Y. SHIN (*joined in July*)

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Judith SIHOMBING

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Paul K.H. YU

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## RETIREMENT SCHEMES COMMITTEE

The Committee reviewed and made comments on the following:-

- *Mandatory Provident Fund Scheme (Amendment) Bill 2009*
- *Revised MPF Guidelines*

### Members of the Committee:

Duncan A.W. ABATE (*Chairman*)

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David G. ADAMS

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Cynthia W.S. CHUNG

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Angus H. FORSYTH

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Secretary: Director of Practitioners Affairs

Christine M. KOO

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Ines C.Y. Wei

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Judy YANG

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## REVENUE LAW COMMITTEE

The Committee met formally on two occasions and conducted the rest of the business by email. One member resigned and a recruitment exercise was conducted at the end of the year with a decision on co-option expected in early 2010.

The Committee considered the following matters:-

- *Inland Revenue (Amendment)(No2) Bill* – this Bill was uncontroversial and no submissions were made to the Bills Committee.
- *Consultation Paper “Review of Trustee Ordinance in Related Matters”* - the Council convened a Working Party from various committees and invited the Revenue Law Committee to nominate two members to sit on its internal working party.



## Standing Committee on Practitioners Affairs

- *Inland Revenue (Amendment)(No.3) Bill* – although the Bill was relatively brief, being only seven pages long, it authorized the Administration to enter into a Comprehensive Agreement for the Avoidance of Double Taxation (“CAADT”) with another territory that may require the Administration to collect information relevant to the taxes imposed by that territory. The Committee had considered a Consultation Paper published by the Financial Services and Treasury Bureau (“FSTB”) in 2008 on the *Potential Liberalization of Exchange of Information in Hong Kong for Double-Taxation Agreements*. The Committee wrote to the FSTB on 16 September and submissions were sent to the Bills Committee on 1 and 21 October and 16 November.

The Committee also considered the following matters:-

- *“Black-Hole” Expenditure and Prospect for Reform,*
- *Draft Departmental Interpretation and Practice Note No.21 issued by the Inland Revenue Department*
- *Attending Joint Liaison Committee on Taxation meetings throughout the year*

### Members of the Committee:

William A. THOMSON (*Chairman*)

William C.W. LAM

James J. BERTRAM

Simon J.G. RAE

Vincent P.C. KWAN

Anthony C.K. SO (*resigned in November*)

Secretary: Director of Practitioners Affairs

## SECURITIES LAW COMMITTEE

The Committee reviewed and made comments on the following:-

- *Legislation for Treasury Shares*
- *Consultation Paper on Proposals to Accelerate Rights Issues and Open Offers*
- *Consultation Paper on Increasing Short Position Transparency*
- *Consultation Paper on Proposed Listing Rules for Mineral and Exploration Companies*
- *Consultation Paper on Proposals to Enhance Protection for the Investing Public*
- *HKEx Consultation Paper on Proposed Changes to the Connected Transaction Rules*

## Standing Committee on Practitioners Affairs

### Members of the Committee:

Simon H. BERRY (*Chairman*)

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James W. BAIRD

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Julia F. CHARLTON

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Leo P.Y. CHIU

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Julianne P. DOE

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Teresa Y.Y. KO

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Vincent P.C. KWAN

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Secretary: Director of Practitioners Affairs

Angelina P.L. LEE

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Timothy LOH

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Gavin P. NESBITT

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David P.R. STANNARD

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Dominic W.L. TSUN

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Dieter YIH

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## WORKING PARTY ON ARBITRATION LAW

### *Arbitration Bill 2009* (“the Bill”)

The Bill was gazetted on 26 June and members met on 28 August and 10 September to consider the provisions after contrasting them with earlier submissions on a Draft Bill circulated by the DOJ in 2007; submissions were sent to the Bills Committee on 16 September.

In October, the DOJ sought clarification on the provisions in Clauses 102 to 103 in its *Consultation Paper on Arbitration Law and Draft Arbitration Bill* because of concerns expressed by some in the construction industry on the lack of an automatic opt-in system for domestic arbitration provisions. The Law Society supported the removal of the domestic regime, namely removal of the opt-in provision and a reply was sent to DOJ on 27 October.

### Members of the Committee:

Brian W. GILCHRIST (*Chairman*)

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Jeffrey H. LANE

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Mark LIN

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Secretary: Director of Practitioners Affairs

Amirali B. NASIR

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Mary B.L. THOMSON

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Kenneth W.Y. WONG

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## Standing Committee on Practitioners Affairs

### WORKING PARTY ON HIGHER RIGHTS OF AUDIENCE (“HRA”)

Members of the Working Party met three times during the year and conducted the rest of its business via email. Representatives of the Working Party also attended Legco Panel meetings on 7 September, 6 and 22 October.

#### Survey of the Profession

In February the DOJ wrote to The Law Society asking for an informed estimate of the likely number of candidates who would apply for HRA accreditation as this information would assist the Judiciary to provide adequate resources to deal with such applications. A survey was conducted in the latter part of February and the results were sent to the DOJ on 4 March.

#### *Draft Legal Practitioners (Amendment) Bill 2009*

In late February, the DOJ wrote to The Law Society proposing a major change of policy to the draft Bill. The *Final Report of the Chief Justice’s Working Party on Solicitors’ Rights of Audience* recommended The Law Society Council should have responsibility for administering the accreditation policy for HRA as well as organising advocacy courses, etc. However, the CJ indicated the Higher Rights Assessment Board should take over these responsibilities and the Council’s role would be limited to vetting applications. The Council agreed to the policy change but expressed concerns on how an accreditation scheme would be operated given its considerable experience in running educational courses; concern was also expressed on the minimum number of times the Board would meet to consider applications. Further matters which arose during discussion of the draft Bill included:-

- Confirmation that the Council would issue certificates to solicitors-advocates and maintain a list which could be inspected by members of the public
- Loss of HRA when a solicitor has been adjudicated bankrupt
- Sanctions on a solicitor appearing in the higher courts when not an accredited solicitor-advocate: on this issue, representations were made that such solicitors should face sanctions similar to those imposed on barristers, namely upon conviction the solicitor could face a fine of up to \$500,000.

*The Legal Practitioners (Amendment) Bill 2009* gazetted on 12 June.

The AJLS invited The Law Society and other stakeholders to attend a Panel meeting on 7 September and a delegation led by the President attended. The Panel met again to conduct a clause by clause review of the Bill on 6 and 20 October, and indicated the Bill would pass its 3rd reading in early 2010 subject to clarification of technical details and Committee Stage Amendments by the Department of Justice.

## Standing Committee on Practitioners Affairs

### Members of the Working Party:

Peter H.C. BARNES (*Chairman*)

Melville T.C. BOASE

Christopher P. ERVING

Stephen W.S. HUNG

Nicholas D. HUNSWORTH

Mark LIN

J.C. Nicholas MILLAR

Secretary: Director of Practitioners Affairs

Christopher N. MORLEY

Amirali B. NASIR

Mark F. REEVES

Sharon A. SER

Sylvia W.Y. SIU

Felix K.Y. YAU

## WORKING PARTY ON RECOVERY AGENTS

The Working Party met six times during the year and conducted the rest of its business via email.

### Panel on Administration of Justice and Legal Services Meeting on 23 February

The AJLS met on 23 February to consider DOJ's report on action taken to protect members of the public from the illegal activities of recovery agents; representatives from the Working Party attended the meeting. The DOJ reported it had arranged for Announcements of Public Interest to be broadcasted in the media, the prosecution of an alleged agent and a solicitor was pending (a solicitor was subsequently convicted of the offence of maintenance), and consideration of legislation was on-going.

### Publicity Campaign to assist PI Victims

The Council agreed to conduct a publicity campaign to assist PI victims to obtain free legal advice from a Panel of Volunteers. The campaign would include:

- *PI Hotline: 2840 1211*
- *Public Seminars: a public seminar was held on 16 June*
- *Press conference on 26 May to launch the PI Helpline*
- *Production of promotional pamphlets and posters*
- *Articles in the local press*
- *Interviews on RTHK and CRHK on the Helpline*

The Working Party helped to establish guidelines to convene a Panel of Volunteers; solicitors wishing to offer pro-bono assistance of up to one hour had to match the eligibility criteria laid down by the Legal Aid Department for its Personal Injuries Panel. A recruitment circular was issued and resulted in 148 solicitors volunteering their services and agreeing to a Performance Pledge to return calls within 24 hours of an assignment. The Scheme was launched on 15 June and as of 31 December had received 313 calls.

## Standing Committee on Practitioners Affairs

Council has agreed the *PI Helpline* should be introduced on a permanent basis and the Working Party is working with the Consultants on the launch of the 2nd phase of the campaign in early 2010.

### Members of the Committee:

Ludwig S.W. NG (*Chairman*)

Szwina S.K. PANG

Patrick M. BURKE

Tommy K.M. WONG

Secretary: Director of Practitioners Affairs

## WORKING PARTY ON REVIEW OF TRUSTEE ORDINANCE

The Financial Services and the Treasury Bureau (“FSTB”) issued a Consultation Paper in June to gauge public views on legislative proposals to improve the *Trustee Ordinance* (Cap. 29) (“TO”) and the law relating to trusts. The stated aim of the exercise is to provide an up-to-date framework for the operation of trusts in Hong Kong with a view to strengthening the competitiveness and attractiveness of our trust services industry. The Working Party met twice in July and September and drafted submissions in response to the 18 questions put forward in the Consultation Paper. Members also attended a consultation forum held in July. The Working Party noted the review exercise aim to sharpen the edge of the Hong Kong trust industry in the international arena but believed a balance had to be struck between competing interests: the interests of the settlor, the private/professional trustee and the beneficiaries. The Working Party was of the view that The Law Society should be even-handed and any changes should protect the public. Submissions were made by The Law Society on the Consultation Paper in September.

### Members of the Working Party:

Billy W.Y. MA (*Chairman*)

Simon J.G. RAE

James J. BERTRAM

Herbert H.K. TSOI

CHAN Chak Ming

David A. WHITE

Lester G. HUANG

WONG Tak Shing

Secretary: Assistant Director, Practitioners Affairs

## Standing Committee on Practitioners Affairs

### HONG KONG SOLICITORS INDEMNITY FUND LIMITED

Hong Kong Solicitors Indemnity Fund Limited ("Company") was established by The Law Society and empowered by the Solicitors (*Professional Indemnity*) Rules (*"the Rules"*) Cap.159M 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 a total of seven 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
- The performance of the Scheme's Broker and Manager
- The performance of the Scheme's investment managers and the Scheme's investments
- Professional indemnity cover for solicitor mediators and China-appointed Attesting Officers
- Proposed amendments to the Rules
- The monthly management accounts and the audited accounts of the Fund and the Company
- Renewal of Directors' and Officers' liability and Professional Indemnity insurance for the Company and the Directors
- Commutation with reinsurers of the Scheme
- Insolvency Cover
- Security of the Fund's assets in the light of the global economic crisis
- Amendments to the Land Titles Ordinance Cap. 585
- Tender for appointment as the Scheme's Broker and Manager
- Matters arising from the liquidation of HIH Casualty and General Insurance Ltd. and FAI General Insurance Company Ltd. and the provisional liquidation of FAI First Pacific Insurance Co. Ltd.
- Enquiries by member firms relating to the Scheme

A total of 148 notifications of claims were received by the Claims Manager, ESSAR Insurance Services Ltd. ("ESSAR") during the 2008/2009 indemnity year, i.e. from 1 October 2008 to 30 September 2009 and the grace period from 1 October 2009 to 29 November 2009. As at 30 September 2009, 16 of the notifications resulted in proceedings, one was settled with payment, six were closed without payment and 125 remained as notifications.

## Standing Committee on Practitioners Affairs

The number of claims for the last 23 indemnity years and the number of members holding practising certificates as at 30 September 2009 of each of those years are as follows:-

Year	Number of Claims*	Increase / Decrease from Previous Year+	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	215	-7%	5,086
2002/03	269	25%	5,191
2003/04	165	-39%	5,317
2004/05	159	-4%	5,498
2005/06	165	4%	5,666
2006/07	140	-15%	5,831
2007/08	308	120%	6,092
2008/09	148	-52%	6,341

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

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



## Standing Committee on Practitioners Affairs

Claims notified in the 2008/2009 indemnity year were categorized as follows:-

Company/Commercial	19
Conveyancing	43
Landlord and Tenant	3
Litigation	53
Miscellaneous	9
Patents and Trademarks	19
Probate	2
<b>Total</b>	<b>148</b>

As at 30 September 2009, the total liability of the Scheme for the 2008/2009 indemnity year, calculated on the basis of claims paid and claims reserved, was HK\$33,485,062 of which HK\$3,130,385 consisted of claims paid (including costs) and HK\$30,354,677 consisted of claims reserved.

The total amount of claims paid (including costs) since the inception of the self-insured Scheme in 1986 amounted to HK\$1,452,432,738 and the total amount reserved was HK\$347,175,813.

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 2009 will be published in the Scheme's Annual Report for the 2008/2009 indemnity year.

### Directors of the Company:

Peter R. GRIFFITHS (*Chairman*)

Ludwig S.W. NG

Albert B.K. DAN

NG Wai Yan

Brian W. GILCHRIST (*appointed in June*)

Kevin C.K. SHUM (*appointed in April*)

Christopher G. HOWSE

Richard N. TANNER

Peter C.L. LO

Huen WONG (*appointed in June*)

Patrick R. MOSS

Norris H.C. YANG

Amirali B. NASIR

Company Secretary: ESSAR

### 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 ongoing claims.

## Standing Committee on Practitioners Affairs

### Members of the Committee:

Brian W. GILCHRIST (*Chairman*)  
(*appointed in February*)

Colin B. COHEN (*Vice-Chairman*)

Charles W. ALLEN

Keith M. BRANDT

Richard H.C. CHALK (*appointed in January*)

Secretary: ESSAR

Tony K.W. CHOW

Simon P. CLARKE (*appointed in January*)

George D. LAMPLOUGH (*appointed in January*)

Jeffrey H. LANE (*appointed in January*)

Ronald W.T. TONG

## PIS INVESTMENT SUBCOMMITTEE

The PIS Investment Subcommittee met quarterly.

At each meeting the Subcommittee invites 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 Amundi, formerly Credit Agricole Asset Management Hong Kong Ltd. ("Amundi").

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 index;
- (b) preserve capital; and
- (c) achieve, in the long term, a rate of return over the performance benchmark.

Losses were incurred by the Fund in the year ended 31 December 2008. However, in 2009 governments worldwide opted for large fiscal spending and monetary authorities fought against contraction in credits by sustained liquidity injections. As a result global equities rebounded.

The net returns on the portfolios managed by AllianceBernstein and Amundi for the 12 month period ended 31 December 2008 were -19.22% and -9.65% respectively. The net returns for the 12 month period ended 31 December 2009 were 21.59% and 15.23% respectively.

## Standing Committee on Practitioners Affairs

### Members of the Subcommittee:

Peter C.L. LO (*Chairman*)

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John S. GALE

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IP Shing Hing

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Ludwig S.W. NG

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Secretary: Assistant Director, Professional Indemnity Scheme

Kevin C.K. SHUM

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Huen WONG (*appointed in June*)

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Norris H.C. YANG

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## PROFESSIONAL INDEMNITY ADVISORY COMMITTEE

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

The Committee held one meeting during the year and considered the implications of limited liability partnerships for the Fund.

### Members of the Committee:

Robin S. PEARD (*Chairman*)

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Kevin R. BOWERS

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Lawrence Y.H. LEE (*Aon Holdings Hong Kong Limited*)

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Susan P.S.K. LIANG

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NG Wai Yan

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Secretary: Assistant Director, Professional Indemnity Scheme

Peter K.H. NGAI

---

David G. SMYTH

---

Fiona J. STEWART

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Gareth H. THOMAS

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Norris H.C. YANG

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## 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.

## Standing Committee on Practitioners Affairs

The firms which served as Panel Solicitors in 2009 were:

Baker & McKenzie  
 Barlow Lyde & Gilbert  
 Deacons  
 Fred Kan & Co.  
 Herbert Smith  
 P.C. Woo & Co.  
 Richards Butler  
 Wilkinson & Grist

### Members of the Selection Board:

Huen WONG (*Chairman*)

Kenneth S.Y. NG

Stephen W.S. HUNG

Thomas S.T. SO

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

### Members of the Working Party:

IP Shing Hing (*Chairman*)

NG Wai Yan

Albert B.K. DAN

Huen WONG

Secretary: Assistant Director, Professional Indemnity Scheme

## PIS REVIEW WORKING PARTY

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

## Standing Committee on Practitioners Affairs

Continuing on with the work in the previous year the Working Party reviewed:

- The updated expert advice on the advantages and disadvantages of a master policy scheme (“MPS”), its feasibility in Hong Kong, and MPS in other jurisdictions
- Preliminary findings on the actuarial analysis of the present contribution formula, whether it is appropriate in the light of the current demographics of law firms and their claims experience

On the recommendation of the Working Party the Council resolved to conduct a tender and appointed a firm of brokers to conduct a costs comparison between the MPS and the Scheme.

The Working Party submitted an interim progress report to the Panel on Administration of Justice and Legal Services of the Legislative Council in October.

The Working Party continues to monitor the progress of the review of the contribution formula and the costs comparison exercise. Final recommendations will be made after considering the expert advice being sought.

### Members of the Working Party:

Peter C.L. LO (*Chairman*)

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Peter R. GRIFFITHS

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Raymond C.K. HO

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Christopher G. HOWSE

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Secretary: Assistant Director, Professional Indemnity Scheme

Nicholas D. HUNSWORTH

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Sundaramoorthy KRISHNAN

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Kenneth S.Y. NG

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Benny Y.B. YEUNG

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*Practitioners Affairs Department*