

STANDING COMMITTEE ON COMPLIANCE

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

There are 15 members of the Standing Committee, seven of whom are Council members. The Standing Committee met 12 times during the year and considered 212 agenda items (compared to 202 agenda items in 2008).

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

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

Thomas S.T. SO (<i>Chairman</i>)	(12/12)	Angela W.Y. LEE	(10/12)
Alex T.H. LAI (<i>Vice-Chairman</i>)	(10/12)	Teresa S.Y. LIU	(7/12)
Anna May M.L. CHAN	(8/12)	Peter C.L. LO	(8/12)
Ivy S.C. CHENG	(10/12)	Billy W.Y. MA	(6/12)
David A. FOK	(5/12)	Catherine L.M. MUN	(9/12)
Dennis H.F. HIE	(8/12)	Kenneth S.Y. NG	(5/12)
Stephen W.S. HUNG	(10/12)	Brian K.K. TSE	(9/12)
LAI Kwok Kwong	(6/12)		

Secretary: Director of Compliance

Conduct Section

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

539 complaints were lodged or referred by members of the public and government organizations in 2009 (In 2008, 529). 111 complaints were made by solicitors and 368 by The Law Society (171 and 479 respectively in 2008).

1,018 files were closed during the year (1,179 files were closed in 2008). About 50% of the files were closed without seeking explanation as the complaints did not identify any issues of professional misconduct.

A document entitled "Notes to Parties to a Complaint" was prepared and would be uploaded onto The Law Society's website in January 2010.

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Inspections and visits

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

In 2009, The Council made three resolutions to appoint inspectors under Section 8AA to inspect solicitors' firms. As a result, 24 inspections were conducted against 12 solicitors' firms.

In addition, Investigation Counsel conducted five site visits in response to reports of firms purported to be law firms registered with The Law Society.

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

The Monitoring Accountants conduct visits to newly-established firms, mainly, to provide assistance in their accounting procedures/systems, and routinely to all other law firms to ensure compliance with the accounting rules. 101 visits were made to 64 solicitors' firms and foreign law firms; some firms required more than one visit. (179 visits to 107 firms in 2008)

The first round of visits to all firms was completed in June 2009. In total, the Monitoring Accountants have conducted 1,301 visits to 811 solicitors' firms and 79 visits to 74 foreign law firms respectively.

INVESTIGATION COMMITTEE

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

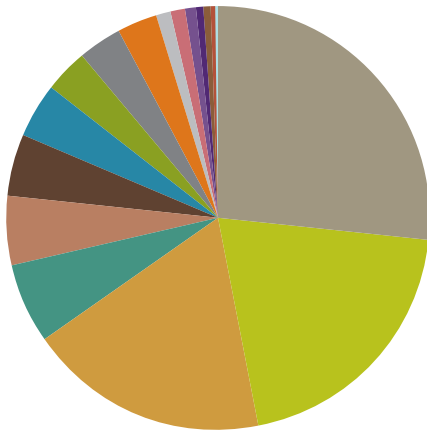
Investigation Committees may resolve to issue letters of regret and of disapproval (or any other sanction authorized by the Council from time to time), and may recommend to the Standing Committee on Compliance submissions of matters to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel.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

Investigation Committees considered 251 complaints by circulation of 255 agenda. (In 2008, 268 complaints were considered by circulation of 261 agenda.) In 2009, the Standing Committee on Compliance reviewed nine decisions of the Investigation Committees and consequently, six decisions were upheld, two decisions were varied and one decision was reversed. (In 2008, 10 decisions were reviewed and all were upheld.)

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Determination of Complaints in 2009

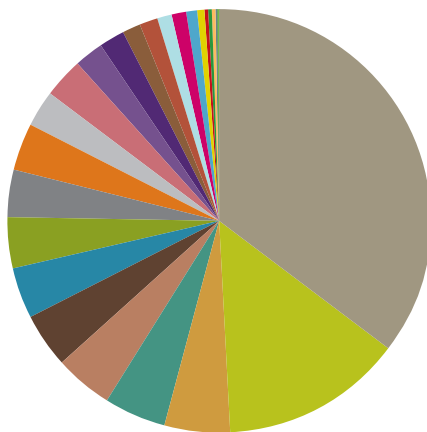
Figure 1: Subject matter of complaints



	2009	2008	2007
Administrative/regulatory	26.82%	32.23%	35.11%
Conveyancing (H.K.)	20.14%	29.94%	20.51%
Civil litigation	18.47%	14.84%	18.54%
Criminal	6.19%	4.50%	3.35%
Miscellaneous	5.11%	3.99%	5.82%
Report of purported law firms	4.72%	0.93%	—
Matrimonial	4.13%	4.16%	4.83%
Owners'/incorporated owners' disputes	3.54%	1.19%	1.78%
Probate	3.14%	2.63%	3.85%
Company/commercial	3.14%	1.95%	1.58%
Contract	1.18%	0.59%	0.89%
Landlord & tenant	0.98%	0.93%	0.49%
Civil Celebrant	0.88%	0.76%	0.69%
Recovery agent	0.59%	0.17%	0.79%
Conveyancing (other than H.K.)	0.49%	0.34%	0.39%
Media/promotion	0.39%	0.59%	—
Legal visit	0.10%	—	—
Court inspections	—	0.25%	0.69%
Solicitors' clerks	—	—	0.59%
Election	—	—	0.10%

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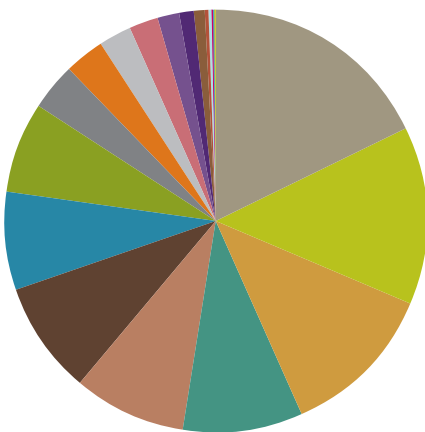
Figure 2: Nature of professional misconduct



	2009	2008	2007
Breach of <i>Conduct Guide Principles</i>	35.56%	28.07%	29.68%
Breach of <i>Solicitors' Practice Rules</i>	13.75%	13.74%	12.82%
Breach of undertaking	5.01%	12.72%	5.23%
Overcharging	4.72%	2.63%	3.85%
Unqualified persons acting or pretending to be a solicitor (ss.45-48 of the <i>LPO</i>)	4.52%	1.78%	0.59%
Breach of <i>Continuing Professional Development Rules</i>	4.13%	2.80%	6.80%
Breach of <i>Risk Management Education Rules</i>	3.93%	5.00%	7.69%
Circular no. 01-142(COM) (Court attendance form)	3.83%	1.61%	3.35%
Late submission of accountant's reports	3.73%	3.82%	0.10%
Miscellaneous	3.34%	2.97%	5.23%
Breach of <i>Solicitors' Accounts Rules</i>	3.05%	6.36%	2.66%
Delay	2.85%	4.24%	2.66%
Misbehaviour	2.36%	1.53%	3.55%
Negligence	1.87%	3.56%	3.55%
Breach of <i>Foreign Lawyers Registration Rules</i>	1.47%	—	1.87%
Inadequate service	1.28%	2.04%	3.25%
Breach of <i>Solicitors' Practice Promotion Code</i>	1.18%	1.10%	0.39%
Non-payment of barristers' fees	1.18%	0.68%	0.99%
Dishonesty	0.69%	2.04%	1.48%
Conflict of interest	0.49%	0.76%	1.28%
Breach of <i>Foreign Lawyers Practice Rules</i>	0.49%	1.36%	0.10%
Breach of <i>Practice Directions</i>	0.29%	0.76%	0.20%
Failure to reply to letters on behalf of a client or to inquiries from The Law Society	0.10%	0.17%	0.20%
Practising without a practising certificate	0.10%	0.08%	—
Breach of <i>Solicitors (Professional Indemnity) Rules (r.8)</i>	0.10%	—	—
Breach of <i>Solicitors (Professional Indemnity) Rules (general)</i>	—	0.08%	1.87%
Touting	—	0.08%	—
Offences in relation to foreign lawyers, etc. (s.50B of the <i>LPO</i>)	—	—	0.30%
Being a partner with a conditional practising certificate [s.6(6) of the <i>LPO</i>]	—	—	0.20%
Property fraud	—	—	0.10%

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Figure 3: Analysis of closed files



	2009	2008	2007
Letter of regret	17.83%	8.81%	6.16%
No further action	13.56%	14.59%	26.46%
Referred – Independent legal advice (including District Office)	12.08%	12.84%	4.44%
Letter of good practice	9.20%	5.23%	6.57%
Letter of disapproval	8.63%	11.65%	11.11%
Unpursuable	8.46%	9.27%	15.05%
Resolved amicably	7.48%	6.79%	1.62%
Unsubstantiated/No professional misconduct	7.15%	6.88%	11.92%
Referred – enforcement agencies	3.62%	2.48%	0.10%
Referred – relevant authorities	2.88%	3.49%	0.91%
Pending	2.55%	4.77%	4.34%
Referred – Tribunal Convenor	2.38%	1.38%	1.82%
Withdrawn	1.48%	8.35%	6.77%
Referred – taxation	1.31%	1.74%	1.01%
Referred – others (including intervention agents)	0.74%	0.73%	0.20%
Referred – other departments of the Society	0.25%	0.18%	—
Referred – panel of prosecutors (for advice)	0.16%	0.09%	1.01%
Referred – Joint Tribunal	0.08%	0.18%	0.20%
Circular issued	0.08%	0.09%	0.10%
Referred – inspection by the Monitoring Accountants	0.08%	—	0.20%
Summary disposal	—	0.46%	—

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Interventions

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

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

On 5 October, the Council resolved, under Section 26A and Schedule 2 of the *Legal Practitioners Ordinance Cap. 159*, to intervene in the practice of a solicitor's firm on the basis of its sole practitioner's failure to comply with indemnity rules, and appointed an intervention agent.

Authorised solicitors' clerks

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

The Consents Committee considered that solicitors' firms should only nominate clerks who are experienced, have integrity, and who have working knowledge in criminal litigation as authorised solicitors' clerks given that they are permitted to visit clients held in places of detention without the supervision of solicitors and they perform the important duty of taking instructions from the clients.

By December, there were 970 authorised solicitors' clerks (953 in 2008).

INVESTIGATION COMMITTEE ON DISCIPLINARY MATTERS

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

The Committee considered 195 matters by circulation of 76 agenda. (In 2008, 171 matters were considered by circulation of 78 agenda.)

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Disciplinary proceedings, appeals, summary disposals and judicial review

The Standing Committee on Compliance resolved to submit 19 matters to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel concerning the conduct of 18 solicitors and two clerks. One out of these 19 matters were resolved to be submitted to the Tribunal Convenor for her to dispose of on a summary basis. By December, 13 matters had been submitted to the Tribunal Convenor (10 in 2008).

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

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

Respondent	Position	Penalty	Fines (HK\$)
1	solicitor	<ul style="list-style-type: none">• struck off• ordered to pay fixed costs of HK\$50,000	—
1	solicitor	<ul style="list-style-type: none">• suspended from practice for three years and then conditional practice for three years• ordered to pay costs	—
1	solicitor	<ul style="list-style-type: none">• suspended from practice for three years and then conditional practice for three years• ordered to pay costs	—
1	solicitor	<ul style="list-style-type: none">• censured• ordered to pay 70% of costs	100,000
1	solicitor	<ul style="list-style-type: none">• censured• ordered to pay costs	60,000
1	solicitor	<ul style="list-style-type: none">• censured• ordered to pay costs	10,000
1	clerk	<ul style="list-style-type: none">• prohibited from employment for 20 years• ordered to pay costs	—
1	clerk	<ul style="list-style-type: none">• prohibited from employment for 20 years• ordered to pay fixed costs of HK\$50,000	—
1	clerk	<ul style="list-style-type: none">• censured• ordered to pay costs	10,000

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Out of these six disciplinary proceedings, one solicitor applied for leave to appeal out of time against the findings and orders of a Solicitors Disciplinary Tribunal.

In addition, the Tribunal Convenor summarily disposed of six matters by making orders requiring the solicitors concerned to pay a total of a fixed fine of HK\$10,000 and fixed costs of HK\$15,000 for each matter.

Throughout the year, a number of determinations relating to the disciplinary process were made by the courts; they were as follows:

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

In February, the Court of Appeal dismissed a solicitor's appeal against the sentence ordered by a Solicitors Disciplinary Tribunal to suspend him from practice for three months but set aside the finding of liability and penalties imposed under one of the complaints. The Court allowed the solicitor's appeal on costs.

Also in February, the Appeal Committee of the Court of Final Appeal dismissed a solicitor's application for leave to appeal against the Court of Appeal's decision.

In March, the Court of Appeal allowed the appeal of a solicitor who had been censured and ordered to pay a fine and costs and be subject to a practice condition. The Court set aside the Tribunal's orders with costs.

In June, the Court of Appeal upheld the order of a Solicitors Disciplinary Tribunal to censure a solicitor but varied the costs order.

In July, the Court of Appeal varied the order of a Solicitors Disciplinary Tribunal by ordering that a solicitor should reimburse each of the complainants in the amount of HK\$12,000, and the fine of HK\$200,000 imposed against the solicitor should be reduced by the amounts he had paid to the complainants. Save as the aforesaid, the Court of Appeal dismissed the solicitor's appeal with an order of costs in favour of The Law Society.

In November, the Court of First Instance granted a solicitor's application for an extension of time to apply for leave and also granted the solicitor leave to apply for judicial review.

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CONSENTS COMMITTEE

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

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

The Consents Committee met 22 times during the year and considered 427 agenda items (There were 22 meetings during 2008 when 487 agenda items were considered.) A further eight matters were dealt with by circulation of one agenda. (In 2008, 19 matters were considered by circulation of four agenda.)

Members of the committee:

IP Shing Hing (*Chairman*)

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

Junius K.Y. HO

Raymond M.S. KWOK

Henry H.W. LAI

Billy Y.C. LAM

Henson LAM

Secretary: Director of Compliance

William C.W. LAM

Billy W.Y. MA

Paul K.Y. NG

Melissa K. PANG

Kelly Y.H. WONG

Dieter YIH

Registration Section

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

For the first time, the Registration Section issued practising certificates in the Chinese language. Members have a choice of receiving the English version of their practising certificates for the year 2010 or both the English and Chinese versions. No additional fee was charged for the Chinese practising certificates. By the end of the year, over 2,000 Chinese practising certificates had been issued.

Also, the Council introduced a new policy to issue membership cards annually. As with the old cards, the new cards bear the photograph of the cardholder. To provide convenience to members, they were allowed to upload their photographs on-line.

Commencing December, the Registration Section participated and provided support to The Law Society's redevelopment and restructuring of its membership database and website.

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Nature of applications

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

	2009	2008	2007
Admissions	420	435	316
Certificates of eligibility for admission	454	430	340
Practising certificates	6,465	6,205	5,925
Practising certificates – removal of conditions under s.6(6) LPO (solicitors)	120	139	168
Membership	7,178	7,031	6,474
First registration as a foreign law firm	11	12	12
First registration as a foreign lawyer	261	464	339
Renewal of registration as a foreign lawyer	1,069	1,001	820
Removal of conditions on certificates of registration (foreign lawyers)	32	39	20
Registration as an Association	10	5	10
Removal of name from the roll of solicitors	2	3	9
Restoration of name to the roll of solicitors	1	3	1
Admission of English barristers	1	2	1
Qualifications for admission s.4(1A) LPO	92	104	5
Employment of staff: s.53(1) LPO	1	2	3
s.53(3) LPO	4	0	1
Practising certificates – removal of conditions under s.6(6A) LPO	22	28	19
Practising certificates – Special Conditions	21	15	10
Registration of first trainee solicitor contracts	288	445	335
Registration of subsequent trainee solicitor contracts	36	82	72
Special leave to employ trainee solicitors	10	13	22
Other trainee solicitor matters	140	158	150
Law costs draftsmen	0	1	1
Accountant's report – solicitors' firms	703	706	694
Accountant's report – foreign law firms	74	55	47
Firm name and letterhead	7	6	4
Waiver of r.13 <i>Foreign Lawyers Registration Rules</i>	4	0	0
Waiver of <i>Practice Direction D. 7</i>	5	3	3
Registration as an associate member	2	0	6
Certificates of standing	611	909	481
Letters of No Objection#	578	935	885
Authorised Solicitors' Clerks	42	13	8

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

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

There were 13,403 unqualified staff members employed by solicitors’ firms at the end of the year (13,398 at the end of 2008). In addition, there were 490 unqualified staff members employed by foreign law firms at the end of 2009 (585 in 2008).

Figure 4: Admission of solicitors 2000—2009

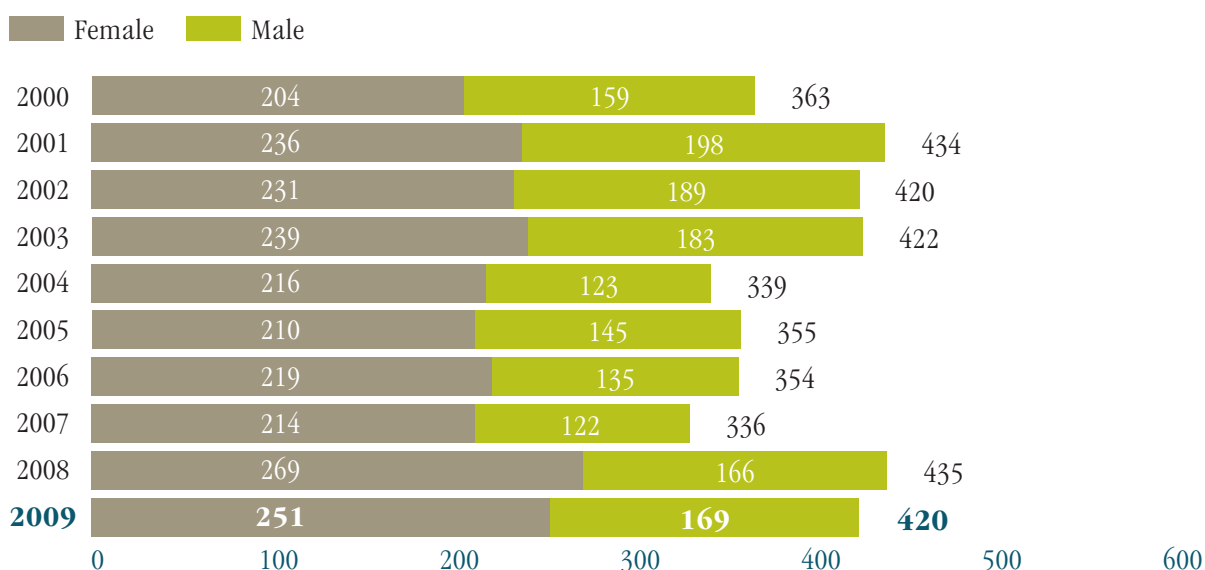
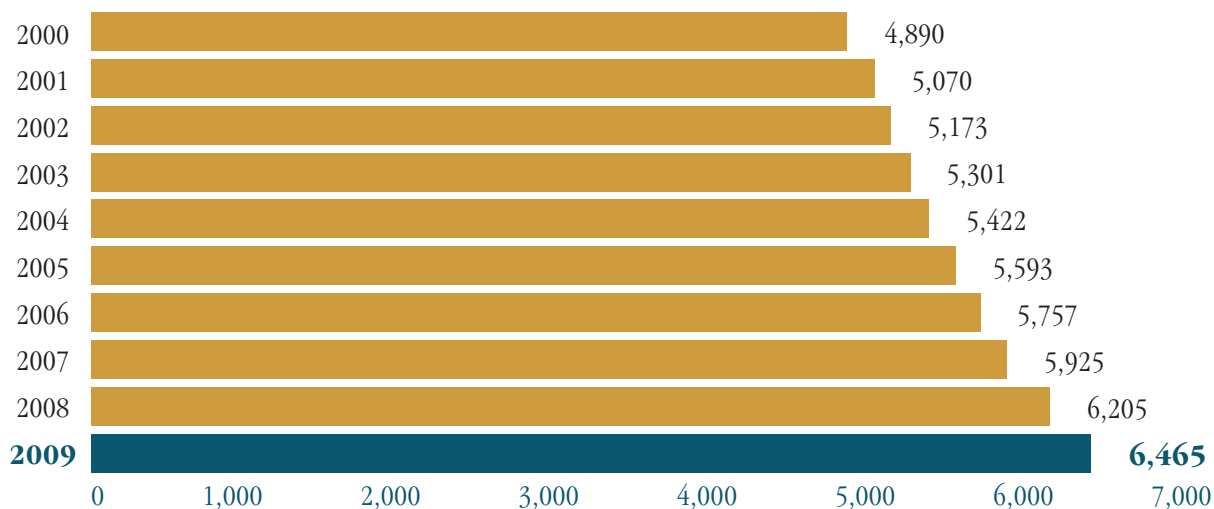
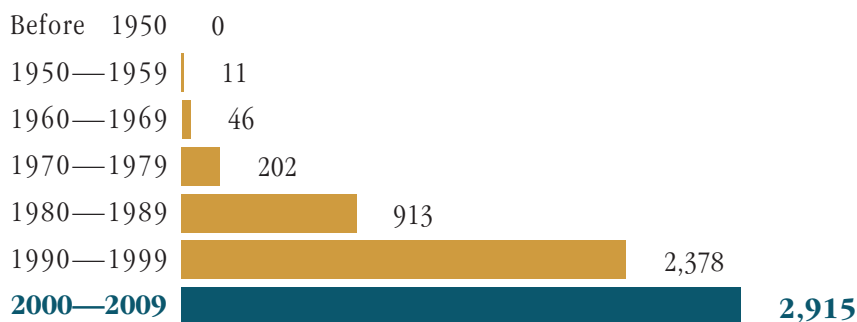


Figure 5: Practising Certificates issued 2000—2009



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Figure 6: Years of admission of 2009 practising members



2,915 practising members were admitted between 1 January 2000 and 31 December 2009 and represent 45% of the total practising members.

Figure 7a: Gender ratio – Solicitors holding a practising certificate

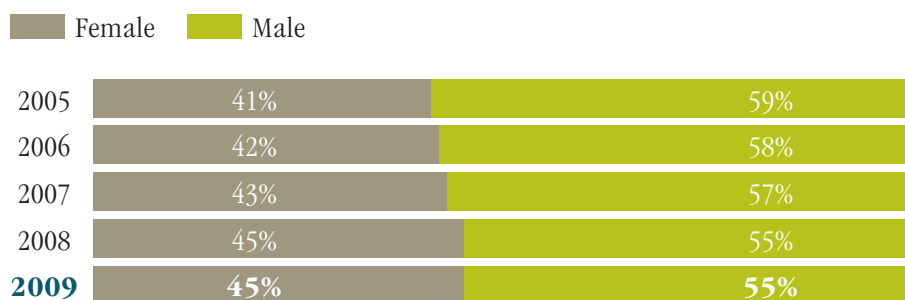


Figure 7b: Gender ratio – Trainee solicitors



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Figure 7c: Gender ratio – Partners

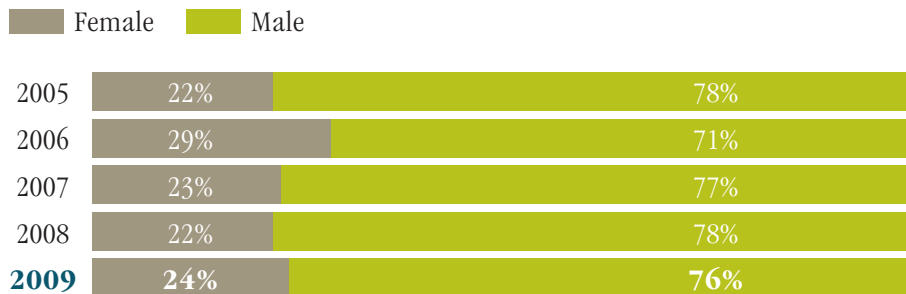


Figure 8: Size of solicitors' firms and number of trainee solicitors in 2009

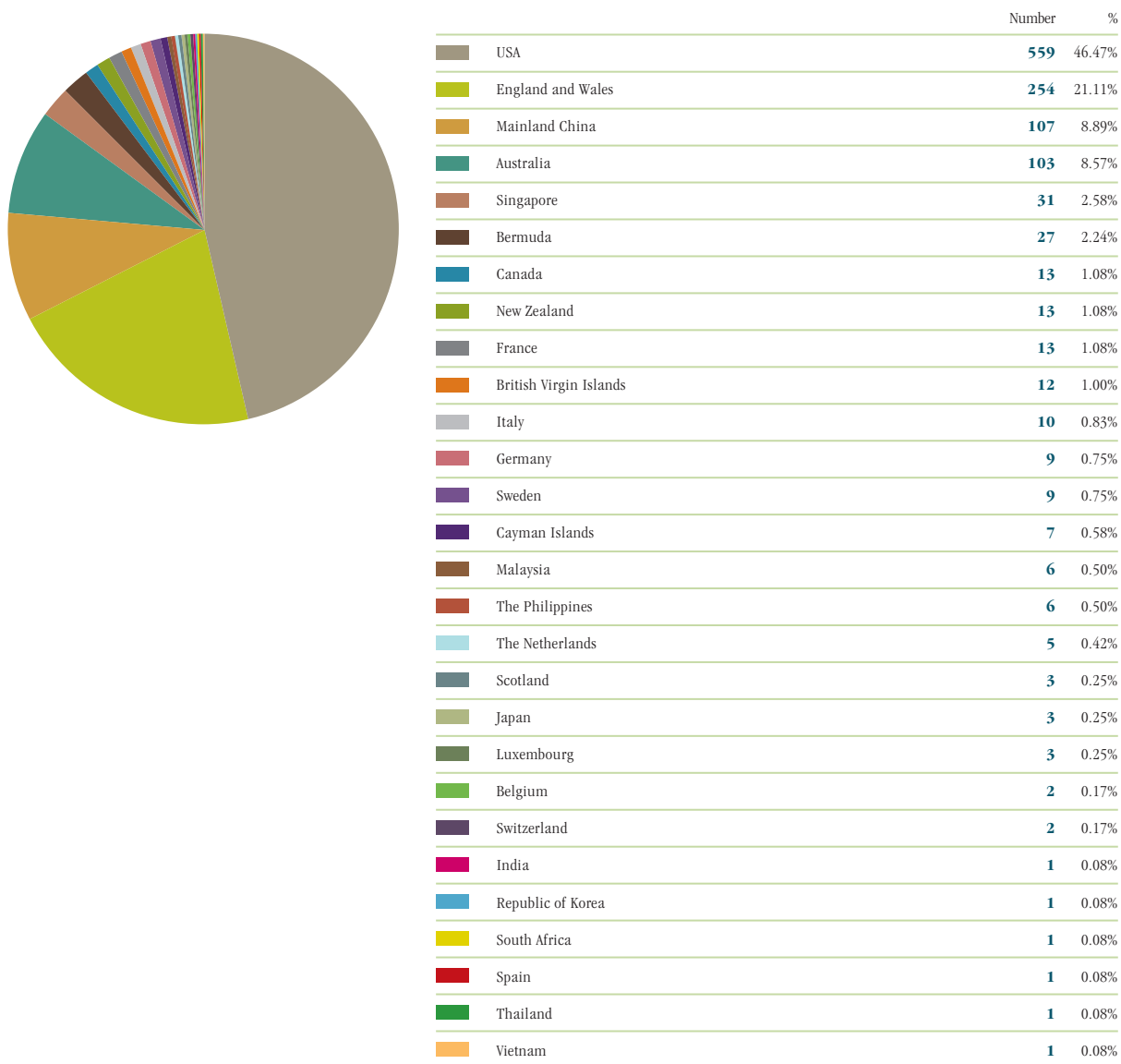
Size of firm	No. of firms		No. of trainee solicitors	
	2009	2008	2009	2008
Sole practitioners	339	320	32	27
2-5 partners	328	321	139	168
6-10 partners	41	39	127	129
11-20 partners	23	24	204	243
Over 20 partners	7	8	119	147
Total	738	712	621*	714 [#]

* excluding 14 in government and 4 working "in-house"

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

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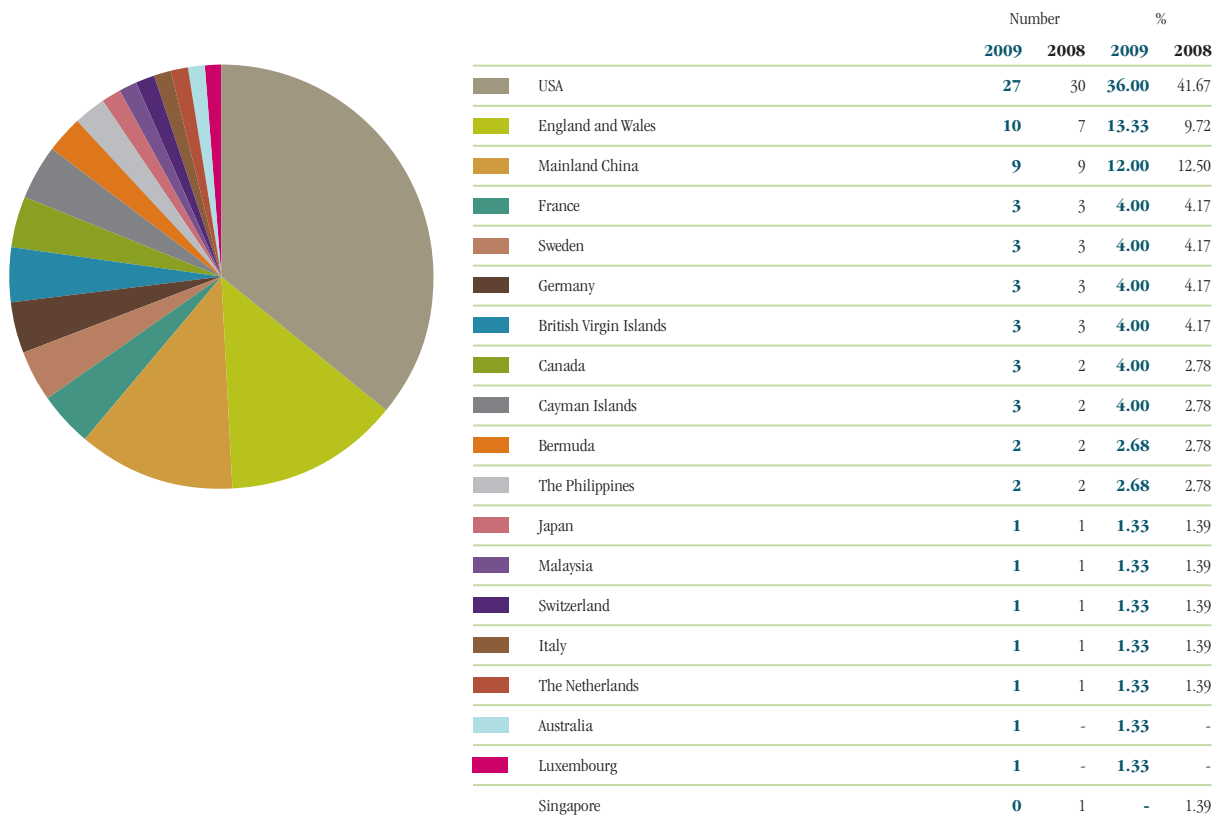
Figure 9: Home jurisdictions of registered foreign lawyers in both foreign law firms and solicitors' firms



Notes: Of the 1,203 registered foreign lawyers, 419 worked with foreign law firms and 665 with solicitors' firms.

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Figure 10: Home jurisdictions of foreign law firms



Notes: There were 70 foreign law firms in Hong Kong, of which one was registered to practise the laws of both Cayman Islands laws and British Virgin Islands laws, one was registered to practise the laws of the USA and Malaysia; three were registered to practise the laws of England and Wales and the USA. (In 2008, there were 67 foreign law firms, of which five were registered to practise the law of two jurisdictions.)

There were 27 Associations registered between foreign law firms and solicitors' firms. 12 new foreign law firms were registered. Nine foreign law firms were closed, six of which became solicitors' firms.

By the end of the year, there were 154 student members registered with The Law Society.



Compliance Department