

# STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

The Standing Committee oversees the work of 22 Committees, one Sub-Committee and seven Working Parties. It met formally on 11 occasions.

## **HRA Committee**

The *Legal Practitioners (Amendment) Ordinance* was passed on 20 January. The Working Party on HRA recommended a Specialist Committee be convened to monitor implementation of HRA pursuant to the Ordinance. Council agreed and a co-option exercise was undertaken in May when the new Committee was convened.

The HRA Assessment Board was convened by the Chief Justice in July under the Chairmanship of Hon. Mr. Justice Michael Hartmann JA; it has met on a monthly basis since September to draft the subsidiary rules and to set criteria and benchmarks for the qualifying examinations to obtain HRA. The Committee will continue to contact the Assessment Board for progress reports.

## **Law Costs Draftsmen (LCDs)**

The Committee reviewed the Report on LCDs prepared by the Chairman of the Working Party on LCDs and noted the recommendation to maintain the status quo. The Registrar was officially informed the Law Society had removed information on LCDs from the public section of the Law Society's website; the *LawList* no longer contains information on LCDs and the Secretariat would not provide information on LCDs to members of the public. LCDs can only be instructed by solicitors as any complaints on misconduct would be the responsibility of the instructing solicitors.

## **Property Management Advisory Centres (PMACs)**

The Law Society has provided pro-bono advice to the public on the *Building Management Ordinance* (BMO) at the PMACs run by the Hong Kong Housing Society (HKHS) for several years. However, the number of active volunteers has declined and the HKHS invited the Law Society to conduct a recruitment exercise in order to boost numbers. This matter was reviewed by the Standing Committee on Policy and Resources and a decision was made that training should be provided to potential volunteers on the BMO in order to improve the quality of advice to the public before any further recruitment could take place. The *Academy of Law* was invited to organise a course; a specialist was engaged to prepare the material as well as to conduct the training. In late November, a decision was made that responsibility for the PMAC should be transferred to the Pro-Bono Committee.

## **Enduring Powers of Attorney Ordinance (EPAO)**

In March, the Solicitor General advised the Department of Justice (DOJ) would be implementing recommendations made in the Law Reform Commission's Report on EPAs dated 2008. The Law Society was invited to provide preliminary comments on the draft Enduring Powers of Attorney (Amendment) Bill 2011. The Standing Committee endorsed a proposal to delete existing Section 5(2) of the EPAO, which requires the instrument to be signed before a solicitor *and* a registered medical practitioner (who both have to be present at the same time) and replacing it with a requirement for the document to be signed before a solicitor only.

## Standing Committee on Practitioners Affairs

The Panel on Administration of Justice and Legal Services (AJLS) reviewed this matter on 21 December. It was noted, with regret, that DOJ now proposes to amend the EPAO by removing the concurrent witnessing requirements and replacing this with a requirement that a solicitor can sign the document within a 28 window after execution by the donor and a medical practitioner. The Law Society had indicated during the consultation exercise that this option was in fact the worst of all recommendations because the 28-day period could cause great difficulties in the document being effective. The Committee agreed to monitor the progress of the Bill and to repeat its submissions that Section 5(2) of the existing Ordinance should be amended to require witnessing by a solicitor only.

### “Insolvency Practitioners”

The Secretariat received a query from the Official Receiver’s Office (ORO) concerning the Law Society’s response to the *Consultation on Corporate Rescue* published by the Financial and Treasury Bureau (FSTB) in October 2009. The Law Society had indicated support for a proposal that solicitors holding a practising certificate issued under the Legal Practitioners Ordinance “... may take up appointment as provisional supervisor”. The ORO indicated the Administration was considering introducing accreditation standards before to solicitors and accountants would be eligible to engage in corporate rescue work.

The Standing Committee noted the proposal would involve re-opening the Society’s policy on specialist accreditation and decided to invite the ORO to provide further details. However, when the Consultation Conclusions were published on 9 July, ORO indicated the status quo will be maintained as this will allow “*greater market flexibility and provide a wider choice for creditors*”.

### Destruction of Old Files

The Committee dealt with a request from a Cessation Agent on whether the old files of its client could be transferred to the home jurisdiction of the firm which had ceased practice. The Committee noted there were several issues of concern and agreed to consult with other Law Society Committees namely: Guidance, Standing Committee on Standards and Development, and the Professional Indemnity Scheme; divergent views were expressed with some supporting the transfer whilst a majority were opposed. Council subsequently invited the Committee to continue the consultation and advise whether new regulations should be introduced on the removal of old files from the jurisdiction as there are many issues which require consideration such as:

- Client confidentiality/Failure to remove clients’ document from the files before storage
- Maintenance of legal professional privilege in a non-commonwealth jurisdiction
- Retrieval of files

A decision was made that the circular on Old Files be revised and that the *Academy of Law* be invited to provide guidance on the storage and handling of old files in RME courses.

## **Party and Party Rates**

The Committee noted concerns raised by several members on the current level of fees awarded during taxation together with observations the existing party and party rates have not been reviewed since June 1997. This issue was raised with Council in July when it was agreed the Law Society should seek a review of the party and party rates.

In order to assist the Law Society to achieve a fair review it was agreed the Judiciary should be supplied with data on solicitors' charge-out rate. An Expression of Interest (EOI) was posted on the Law Society's website on 30 July; consultants were appointed to assist the Law Society to conduct the survey. A Working Party was convened to supervise the project and it is anticipated the survey will be sent to all legal firms in early 2011.

## **Companies Registry Customer Liaison Group (CRCLG)**

The Committee noted the retirement of the Law Society's long serving representative on the CRCLG and a new representative was nominated in May.

## **Legislation Publication Bill**

The Law Drafting Division advised the Law Society of the introduction of the Legislation Publication Bill which would: provide for a statutory electronic data base, as the existing Bi-lingual Laws Information System (BLIS) does not have statutory recognition, and improve the presentation and user-friendliness of the legislation

The Committee wrote to the Bills Committee on the Legislation Publication Bill in late December to advise that the Law Society supported the Bill.

## **Members of the Committee:**

IP Shing Hing (*Chairman*)

Cecilia K.W. WONG (*Vice Chairman*)

Simon H. BERRY

Geoffrey N. BOOTH

Simon M.Y. CHAN

E. John DAVISON

Secretary: Director of Practitioners Affairs

Stephen W.S. HUNG

J.C. Nicholas MILLAR

Gavin P. NESBITT

Simon W.L. WONG

Kevin K.F. YAM

## **Members of the Working Party on Enduring Powers of Attorney (Amendment) Bill:**

Herbert H.K. TSOI (*Chairman*)

E. John DAVISON

Billy W.Y. MA

Cecilia K.W. WONG

## Standing Committee on Practitioners Affairs

### Members of the Standing Committee and their meeting attendance during the year:

|  |         |                      |         |
|--|---------|----------------------|---------|
| IP Shing Hing ( <i>Chairman</i> )          | (10/10) | E. John DAVISON      | (11/12) |
| Cecilia K.W. WONG ( <i>Vice Chairman</i> ) | (9/12)  | Stephen W.S. HUNG    | (6/12)  |
| Simon H. BERRY                             | (8/12)  | J.C. Nicholas MILLAR | (6/12)  |
| Geoffrey N. BOOTH                          | (9/12)  | Simon W.L. WONG      | (5/12)  |
| Simon M.Y. CHAN                            | (4/12)  | Kevin K.F. YAM       | (3/12)  |

Secretary: Director of Practitioners Affairs

### ADR COMMITTEE

The ADR Committee met formally on one occasion and conducted the rest of its business by e-mail.

#### Panel of Solicitor-Arbitrators

The Committee noted its proposals to establish a Panel of Solicitor-Arbitrators had been reviewed by the Standing Committee on Standards and Development which would result in a significant re-drafting of the proposals. The Committee reviewed these proposals and noted that with the passage of the new *Arbitration Ordinance* in November it would be necessary to harmonize the proposal to take into account the new legislative regime. The Committee is currently redrafting the proposals.

#### Early Neutral Evaluation (ENE)

The Standing Committee on Practitioners Affairs endorsed a proposal to introduce a scheme to promote Early Neutral Evaluation and documents for the scheme would be published via the circulars in early 2011.

#### Members of the Committee:

Geoffrey N. BOOTH (*Chairman*)

Glenn R.A. HALEY

LEE Wai Man

S. Dean LEWIS

Maureen E. MUELLER

Secretary: Director of Practitioners Affairs

Sylvia W.Y. SIU

Kenneth D. SOMMERVILLE

Norris H.C. YANG

Helena S.Y. YUEN



## CIVIL LITIGATION COMMITTEE

The Civil Litigation Committee met on five occasions and held a joint meeting with the Employment Law Committee and one with the Commissioner of the Equal Opportunities Commission (EOC).

### **Law Reform Commission's (LRC) Report on Class Actions**

The Consultation Paper was published in November 2009 and the Committee conducted a full review over three meetings in January, February and March. It was noted the proposals to introduce class actions, although desirable in principle, had serious ramifications especially over funding. In the United States where class actions are common the system of funding is completely different from that in Hong Kong. In the United States contingency fees are permitted and there is no principle of "loser pays". Council endorsed the lengthy submissions which were sent to the LRC on 23 March.

### **EOC's Proposals to establish an Equal Opportunities Tribunal (EOT)**

In September, the EOC wrote to the Law Society with proposals to establish a separate EOT within the District Court and Committee representatives met with the Commissioner in October. After the meeting it was agreed the proposals should be discussed in a joint meeting with representatives of the Employment Law Committee. At a meeting in November both Committees agreed in principle the procedures for discrimination cases should be simplified as existing District Court procedures are inappropriate. However as for the establishment of a new EOT, members were neutral on whether it would be appropriate.

### **Civil Justice Reforms ("CJR")**

The Panel on Administration of Justice and Legal Services (Panel) reviewed the implementation of CJR on 21 December; the Chairman of the Committee attended the meeting. Panel members raised the following matters with the Judiciary Administrator:

- whether CJR would reduce legal costs?
- whether CJR would reduce the length of time of litigation?
- whether the introduction of a requirement for leave to appeal in interlocutory matters had lead to injustices?
- the impact of CJR on unrepresented litigants and the effectiveness of mediation

The Chairman indicated it was too early to come to a final view on the success or otherwise of the CJR at this stage but there was no immediate evidence of a reduction in costs or a shortening of time of litigation.

The Judiciary invited the Law Society to conduct a survey of practitioners to obtain data on the implementation of CJR since 2 April 2009. It is anticipated the survey will be conducted in early 2011.

# Standing Committee on Practitioners Affairs

## Lands Tribunal – New Directions

The President of the Lands Tribunal proposed to introduce mediation in relation to compulsory sale cases under the *Land (Compulsory Sale for Redevelopment) Ordinance* and circulated draft directions on mediation. Members noted the draft directions, on the whole, tracked the directions in the Judiciary’s Practice Direction 31 on Mediation, but paragraph six on “legal privilege” had not been followed. A letter was sent to the Judiciary Administrator noting the omission and highlighting the fact the provisions in the draft directions should track the wording in PD31.

## Members of the Committee:

Nicholas D. HUNSWORTH (*Chairman*)

A. Clinton D. EVANS

Johnny C.M. FEE

D. Nigel FRANCIS

Warren P. GANESH

Junius K.Y. HO (*resigned in November*)

Joseph S.M. KWAN

Secretary: Director of Practitioners Affairs

Jeffrey H. LANE

Brenda F. LEE

Mark LIN

Amirali B. NASIR

Simon D. POWELL

Kenneth W.Y. WONG

Sherman C.N. YAN

## COMPANY AND FINANCIAL LAW COMMITTEE

The Committee had an extremely busy year. Members reviewed and made prepared submissions on the following:-

- *Consultation Paper on Scripless Securities*
- *Business Registration (Amendment) Bill 2010*
- *Companies (Amendment) Bill 2010*
- *Business Registration (Amendment) Bill*
- *Proposal on Multiple Statutory Derivative Actions*
- *Revised Sample Memorandum and Articles of Association*
- *Proposed new AML Legislation for Financial Institutions*
- *2<sup>nd</sup> Consultation Paper on Draft Companies (Amendment) Bill*
- *Consultation Paper on Statutory Codification and Draft Guidelines on Disclosure of Inside Information*
- *Legislation (Structured Products Amendment) Bill 2010*
- *Anti-Money Laundering (Financial Institutions) Bill*

## Members of the Committee:

Patrick C.K. WONG (*Chairman*)

Grace K.W. CHAN

CHAO Tien Yo

FONG Shuk Wai (*joined in March*)

Angelina P.L. LEE (*resigned in February*)

Lewis T. LUK

Secretary: Director of Practitioners Affairs

Gavin P. NESBITT (*joined in April*)

NG Kay Ian

David P.R. STANNARD

Richard J. THORNHILL

YUEN Ka Fai (*joined in March*)

## COMPETITION LAW COMMITTEE

In anticipation of the publication of the Competition Bill a Competition Law Committee had been convened in August 2008, but after a delay of almost two years, the Bill was finally gazetted on 2 July. The Competition Law Committee immediately went to work on reviewing the Bill and preparing the Law Society's draft submissions for approval by Council. In 10 meetings from 9 August to 1 December, members conducted a clause by clause review of the Bill's 176 Clauses and 9 Schedules.

The proposed legislation has several policy objectives which includes deterring "undertakings" from adopting or engaging in abusive or anti-competitive conduct which has the object or effect of preventing competition in Hong Kong. One of the most controversial provisions in the Bill is the proposal not to bind Government or statutory bodies or their specified activities on the basis these are "*almost invariably non-economic in nature*". The Chief Executive in Council can grant exemptions if satisfied "*there are exceptional and compelling reasons of public policy*" that the conduct rules should not apply.

The Bill provides general prohibitions in three major areas namely: 1st Conduct Rule which covers "agreements and decisions in concerted practices"; 2<sup>nd</sup> Conduct Rule which covers abuse of "substantial degree of market power in a market"; and finally the "Merger Rule" providing for a prohibition against mergers or acquisitions to 'carrier licences' granted by the Telecommunications Authority or the Broadcasting Authority if it is likely to have the effect of substantially lessening competition in Hong Kong.

The Bill provides for an institutional framework namely the establishment of a Competition Commission, which will be responsible for educating the community on competition policy, advising the government on competition matters and deciding on applications for exemptions. A Competition Tribunal is to be established from within the Judiciary as a superior court of record; the Tribunal will deal with cases referred by the Commission as well as private actions and can review the Commission's determinations.

The Broadcasting Authority and the Telecommunications Authority will have concurrent jurisdiction with the Competition Commission over the broadcasting and telecommunications sector; a Memorandum of Understanding will be prepared to ensure co-operation between the three organizations.

The Bills Committee held a meeting for stakeholders on 29 November and the Law Society's Committee prepared initial submissions on "*Major Issues on the Competition Bill*"; the Chairman of the Competition Law Committee attended this meeting and was able to highlight some of the 20 points raised in the initial submissions focusing on legally-related topics despite the allocation of only 3 minutes to make his presentation.

The Committee completed its initial review of the Bill on 1 December.

## Standing Committee on Practitioners Affairs

### Council's Sub-Committee on Competition Bill

The Council noted the policies underpinning the Bill are controversial and that a significant lobbying exercise by both supporters and opponents is taking place on whether it is necessary for Hong Kong to implement this legislation. A decision was made to convene a Sub-Committee to review the draft submissions prepared by the Competition Law Committee. The Sub-Committee met on three occasions and anticipates its work will be finished in early January 2011 when the Law Society's submissions will be sent to the Bills Committee.

### Members of the Committee:

Simon H. BERRY (*Chairman*)

Nicholas H.F. CHAN

David COX

Stephen R. CROSSWELL

Angus H. FORSYTH

Secretary: Director of Practitioners Affairs

Larry L.K. KWOK

Simon D. POWELL

Henry J.H. WHEARE

David P.H. WONG

Kevin K.F. YAM

### Members of the Sub-Committee:

WONG Kwai Huen (*Chairman*)

Dieter L.T. YIH

IP Shing Hing

Secretary: Director of Practitioners Affairs

Thomas S.T. SO

Gavin P. NESBITT

## CONSTITUTIONAL AFFAIRS COMMITTEE

The Committee met on three occasions during the year and also dealt with consultations via email.

### Constitutional Reform

Members reviewed the Consultation document "*Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012*" published by the Constitutional Mainland Affairs Bureau (CMAB) on 18 November 2009. The Committee's task was to review the proposals from a constitutional view point without commenting from any political perspective. The Law Society's submissions on constitutional reform published in 2004, 2005 and 2007 were considered and Council subsequently endorsed the draft submissions prepared by the Committee on 2 February. The Government announced its political reform package on 14 April and it was noted the proposals would be introduced by Motion which meant no further comments were necessary as the matter would be a political decision going forward.

In late October, CMAB circulated its paper "*Arrangements regarding the Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012*". The Law Society had commented in its earlier submissions that CMAB's proposals failed to meet the Basic Law's requirements of "gradual and orderly progress" as there was insufficient development of democracy. A decision was made to repeat the critique on the proposals as these had been replicated in the Bill. Council endorsed the submissions on 7 December and the document was sent to the Bills Committee.



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

The Committee reviewed the Report prepared by the CMAB with the assistance of representatives from the Law Society's WP on PDPO which had conducted the initial review of the public consultation in late 2009. The Report was divided into proposals which would be taken forward and those which would not based on the response to the Consultation Paper. The Law Society noted some additional proposals had been introduced to address the inappropriate handling of personal data by Octopus to remove loopholes in the existing legislation on the transfer of personal data collected for direct marketing purposes.

Members agreed the revised system should one of 'opt-in' rather than 'opt-out' and that any extended use of the data should be prohibited. If a data user wishes to use the data collected for marketing purposes then it must clarify whether there would be any wider use in the data users' personal collection statement. The Law Society emphasized the overriding principle is for the public to be informed on the use of personal data before the data user has any legal right to pass such data to any third parties. Council endorsed the draft submissions prepared on 7 December.

### Members of the Committee:

Lester G. HUANG (*Chairman*)

BUT Sun Wai

Charles C.C. CHAU

Eric T.M. CHEUNG

John J. CLANCEY

William S. CLARKE

Mark D. DALY

Secretary: Director of Practitioners Affairs

IP Shing Hing

Joseph C.W. LI

LING Bing

Thomas S.T. SO (*joined in April*)

Kevin K.F. YAM

Dieter L.T. YIH (*joined in April*)

### Joint Working Group (Working Group) on Convention against Torture (CAT)

The Working Group noted formal implementation of the Scheme on 24 December 2009. It met on two occasions in July and December to review the operation of the Scheme and in particular to prepare a 2nd training programme which will be held in June 2011 for members of the profession.

### Members of the Working Group of CAT

Lester G. HUANG (*Chairman*)

Peter H.C. BARNES

Secretary: Director of Practitioners Affairs

Mark D. DALY

## 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, served on various internal Sub-committees and Working Parties and attended LegCo meetings to make representations on criminal law related topics.

### Conviction Rates

The Committee undertook a comprehensive study of the conviction data of Hong Kong kept by local authorities and data obtained from overseas jurisdictions. Whilst the study revealed that the conviction rates in Hong Kong are not particularly high compared to the rest of the world, the Committee raised concerns over the failure to implement a consistent system of compiling conviction statistics and recommended that the Government should adopt a uniform set of standards for compiling conviction statistics in Hong Kong to assist in future analysis. Members attended a meeting of the LegCo Panel on Administration of Justice and Legal Services ("*Panel*") in June to make representation.

### Criminal Legal Aid Fees

The discussion on improved funding of legal aid in criminal cases has been a long drawn out process and a recommendation was made to the Council in January to request the Government to proceed with the legislative procedures to put the agreed structural changes and new fees in place. The Committee will follow up with the Home Affairs Bureau on the amendment legislation.

### ***Criminal Procedure Ordinance, Cap. 221 ("CPO") – S. 109B Excepted Offences***

Members reviewed the concept of "*excepted offence*" under Section 109B of the CPO and expressed concerns that the court's sentencing option to impose a "*suspended sentence*" would be taken away even if circumstances should warrant the imposition of this option. The Administration requested the Committee to review the developments in other common law jurisdictions and put forward options for reform. A Special Task Group was convened to review the subject in more detail.

### Establishment of a HK Register of Public Service Interpreters

The Committee noted Hong Kong lacks (1) a proper system for users of the criminal justice system to gain access to "*qualified*" interpreters; and (2) any quality control procedure. As accurate interpretation plays a vital role in a criminal justice system, the Committee invited the Judiciary to consider making available the list of court interpreters for use by the legal profession and the law enforcement bodies and adopting some of the practices of the *National Register of Public Service Interpreters* in the UK regarding the recruitment and quality control of interpreters.

### ICAC: Detainees' or Suspects' Signatures

The Committee reviewed ICAC's policy in obtaining handwriting specimen from suspects. The ICAC indicated that in cases where a suspect "*refused*" to provide a handwriting specimen, it would be incumbent upon the investigation officer to explore other lawful means to secure evidence of handwriting, including making use of documents which had lawfully come into its possession and which contained the suspect's signature. The Committee issued a circular in August to highlight the ICAC's policy, with the recommendation that members should advise their clients on the implications of signing on ICAC's standard forms and documents.

## Legal Visits

The Committee issued an updated circular on “*Legal Visits at the CSD Institutions*” in March and convened a Task Group to conduct an overall review of the rules regarding the conduct of legal visits.

## Law Reform Commission (“LRC”) Consultation Report on Hearsay in Criminal Proceedings

The LRC issued a Consultation Report proposing a comprehensive reform of the hearsay rule in criminal proceedings. As a wholesale reform of the hearsay rule will have far-reaching ramifications for criminal law practice, the Committee convened a Task Group of four members to study the 42 recommendations in the LRC Report. The Committee broadly supported the LRC recommendations but objected to the admission of multiple hearsay evidence. Members also had reservations on the proposed “*necessity*” test for the court to admit hearsay evidence in the case of an overseas witness, a missing witness or a witness who refuses to testify on the ground of self-incrimination.

## LRC Report on Sexual Offences Records Checks for Child-related Work: Interim Proposals

The LRC proposed to introduce an administrative scheme as an interim measure to enable employers of persons undertaking child-related work and work relating to mentally incapacitated persons to check the criminal conviction records for sexual offences of potential employees. The Committee noted with concern that the LRC proposals have gone beyond the initial concern with “*paedophiles*” to cover “*all*” sexual offenders. Members submitted that a register of only “*paedophiles*” should be introduced and there should be proper safeguards within the proposed administrative scheme to keep inappropriate cases from being registered; the legislation should also be narrowly drafted.

## Prosecutors on Fiat

The Committee reviewed and supported DOJ’s proposal to organize a Joint Training Programme to provide training to newly admitted lawyers with a view to equip them with the skills in conducting prosecution work and include them on the DOJ’s Magistrate’s Court “*B*” list. It also recommended additional courses on “*Prosecutor on Fiat*” to be conducted by The Law Society to meet the demand of the profession.

## Public Consultation Paper on Legislation to Enhance Protection for Consumers Against Unfair Trade Practices

The Commerce and Economic Development Bureau proposed in the Public Consultation Paper to amend the *Trade Descriptions Ordinance, Cap 362* with a view to enhance protection for consumers against unfair trade practices. New Consumer Protection Offences were proposed to be created as strict liability offences in respect of misleading omissions, aggressive practices, bait and switch tactics, bait advertising and accepting payments without the intention or ability to supply the contracted goods or services. The Committee worked jointly with the Review of Proposed Legislation Committee to study the proposals and joint submissions on the Consultation Paper were issued in October.

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

The Committee reviewed various drafts of proposed amendments to Rule 5D of the *Solicitors’ Practice Rules* prepared by the DOJ to implement the Committee’s recommendation to expand the rule to cover situations where instructions were received from a person to provide professional service to a defendant. The Committee suggested the responses to the DOJ’s queries on the draft rule for the Guidance Committee’s consideration.

### **Taxation of Costs in Criminal Cases**

The Committee supported the Judiciary's proposal to introduce a Simple Costs Statement as a new form of taxation bill to be used in place of the formal columnar bill for cases "where a lump sum fee" is charged and issued a circular in May to inform members of the new arrangement.

### **Taking of Evidence by Way of a Live Television Link – Draft Rules under Part II of the Evidence (Miscellaneous Amendments) Ordinance**

The Administration consulted The Law Society on two sets of draft Rules prepared pursuant to the new Section 79L of the CPO, namely, (1) the draft *Live television Link (Witness Outside Hong Kong) Rules*; and (2) the draft *High Court (Amendment) Rules*. The Committee submitted its views on the draft Rules in February, reiterating its fundamental concern that the common law right to cross-examine would be adversely affected by the proposed Rules and that the video link provisions could be seen as a convenient way of avoiding bringing witnesses to testify in Hong Kong. It proposed as minimum requirements that the giving of evidence via live television link should be permitted only when (1) the court is satisfied that the applicant party has used their best endeavours to bring the witness to Hong Kong court, and it is in the interests of justice for the evidence to be received via a live television link; and (2) where it is conducted at a court room in the jurisdiction where the evidence is given. A joint meeting with the Administration will be convened to discuss the Committee's concerns on the draft Rules.

### **The Committee also reviewed the following:**

- Annual Report 2009 of the Commissioner on Interception of Communications and Surveillance to the Chief Executive
- Amendments to the *Legal Aid in Criminal Cases Rules, Cap.221D*
- Consultation Paper on Double Jeopardy
- Criminal Prosecutions of Victims of Human Trafficking
- Expansion of Free Legal Advice Service
- Fees for Transcripts and Record of Proceedings
- Government's proposals regarding improvement on Legal Aid Services
- Independence of Legal Aid
- Introduction of Jury Trial in the District Court
- LRC Report on Criteria for Service as Jurors
- LRC Report on The Common Law Presumption that a Boy under 14 is Incapable of Sexual Intercourse
- Practice Direction 9.7 – Application to Stay Criminal Proceedings
- Practice Direction for Complex Commercial Crime Trials
- Proposal of the HKU Law Faculty's Centre for comparative and Public Law to conduct a Research Project on the Criminal Justice System in Hong Kong
- Proposed Construction of West Kowloon Law Courts Building
- Public consultation Paper on Proposed Legislative Amendments to Eradicate Pyramid Schemes
- Report from the Independent Police Complaints Council
- Review of the *Interception of Communications and Surveillance Ordinance*
- Supply of English Translation of Witness Statements to the Defence



## Members of the Committee:

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

Kenneth H. S. NG  
Andrew POWNER  
Kevin STEEL  
Anthony UPHAM  
Michael J. VIDLER  
Ben K. K. WONG

Secretary: Assistant Director, Practitioners Affairs

## External Work:

### CRIMINAL COURT USERS' COMMITTEE ("CCUC")

The Chairman of the Committee sits as The Law Society's representative on the CCUC, which met in March and October. Issues discussed this year include: demonstration on the use of electronic bundles for criminal proceedings in the District Court; formulating a Practice Direction in relation to Stay Applications; Jury Summonses; Practice Direction on Complex Commercial Crime Cases; proposed construction of West Kowloon Law Courts Building; proposed construction of additional courtrooms and associated facilities in the High Court Building, provision of additional interview rooms at Kwun Tong Magistracy; access to cell area in Kowloon City Magistracy; taxation of costs in criminal proceedings; etc.

## EMPLOYMENT LAW COMMITTEE

The Committee meet formally on three occasions and conducted the rest of its business by email. The long standing Chairman retired in May.

### Disability Discrimination Ordinance – Revised Code of Practice

In April, the EOC circulated a revised Code of Practice to the *Disability Discrimination Ordinance*. The Committee met in June and submission was sent to the EOC on 6 July.

### Equal Opportunities Tribunal

The Committee was invited by the Civil Litigation Committee to review a Consultation Paper published by the EOC on its proposal to establish an EOT. Members held a joint meeting with the Civil Litigation Committee in November when the proposal was discussed and it was agreed the Commissioner should be invited to attend a joint meeting with representatives; this took place on 8 December.

## Members of the Committee:

Fiona M. LOUGHREY (*Chairman*)  
Duncan A.W. ABATE (*Chairman*)  
(*resigned as Chairman in June*)  
Y.S. CHEUNG  
Dennis C.K. HO

IU Ting Kwok  
Edward M.T. KO  
Jeffrey H. LANE  
Walter Y.W. LEE  
WONG Kwok Yan

Secretary: Director of Practitioners Affairs

## FAMILY LAW COMMITTEE

The Family Law Committee met formally on eight occasions and held two meetings with representatives from various children groups and the Labour and Welfare Bureau and one meeting with representatives from the Hong Kong Housing Association.

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

The Committee continued to press the Labour and Welfare Bureau (LWB) for progress on implementation of the LRC Report on *Child Custody and Access* published in 2005. The LWB indicated the views of children should be sought and so a meeting with the following children's groups took place on 4 February: *Children's Rights Association, Kidz Dream and the Society for Community Organisation (SOCO)*. A 2<sup>nd</sup> meeting took place on 8 July with the *Boys and Girls Club Association of Hong Kong, Hong Kong Committee on Children's Rights and SOCO*. The prevailing view of the children was supportive of the reforms as they see the proposals as means of reducing tension between their parents as they want an on-going relationship with both parents. The Bureau was criticised by the Court of Appeal in two judgments *PD and KWW CACV188/2009* and *SMM and TWN CAVC209/2009* for its failure to implement the LRC's recommendations.

### Matrimonial Proceedings and Property (Amendment) Bill 2010

The DOJ sought the Committee's views on proposals to amend the *Matrimonial Property Proceedings Ordinance* (MPPO) to address problems arising from the Court of First Instance judgment in *ML v YJ (HCMC13/2006)*. It was noted the MPPO followed the English Matrimonial Proceedings and Property Act save that Section 15 of the Act had not been included in our legislation. In Hong Kong, ancillary matters must be resolved before a decree absolute can be granted whereas on the Mainland the practice is for a decree to be granted and then resolution of ancillary matters. The Committee reviewed the proposed amendments and indicated the court's jurisdiction should include "domicile and substantial connection with Hong Kong". The Bill was gazetted on 18 June and the Ordinance was passed by the Legislative Council on 24 December; the provisions will come into effect on 1 March 2011.

### Working Group on Child Dispute Resolution

The Working Group had completed its terms of reference but as children's issues remain of paramount importance a new Working Group on Family Proceedings was convened under the chairmanship of Mr. Justice Michael Hartmann JA. The Standing Committee on Practitioners Affairs nominated a member of the Committee to be the Law Society's representative.

### Cross-Border Family Law Conference

The Committee received a proposal to co-host a conference with Shue Yan University on Cross-Border Family issues and agreement was reached that the Law Society will co-host the event which is scheduled to take place in late March 2011 when eminent speakers from Beijing, Shanghai, Shenzhen and Hong Kong will participate.

### Lecture by Professor Xia

Professor Xia, who gave a lecture to members in 2008, agreed to provide an update on family law in the Mainland; this took place on 22 November and was well received.

## Family Court Users' Committee (FCUC)

The Committee's 2 representatives attended meetings of the FCUC which discussed a wide variety of topics throughout the year.

### Members of the Committee:

KONG Yuen Hoong (*Chairman*)

Winnie W.Y. CHOW

Dennis C.K. HO

Anthony J. HUNG

Barbara A. HUNG

Secretary: Director of Practitioners Affairs

LAM Tze Yan

LEUNG Shek Lim

Jonathan C.Y. MOK

Catherine K.G. POR

Susan WONG

## Sub-Committee on Enforcement of Maintenance Orders

The Sub-Committee met on four occasions and reviewed research on legislation and practice in comparable jurisdictions on Methods of Enforcement of Maintenance Orders. A report will be prepared in 2011.

### Members of the Sub-Committee on Enforcement of Maintenance Orders:

Dennis C.K. HO (*Chairman*)

Winnie W.Y. CHOW

Barbara A. HUNG

LEUNG Shek Lim

Secretary: Director of Practitioners Affairs

Susan WONG

Usha CASEWELL

Christina HADIWIBAWA

## HIGHER RIGHTS OF AUDIENCE ("HRA") COMMITTEE

The Committee was convened in May and held its first meeting on 19 May.

The Committee settled its Terms of Reference and reviewed the amendment Ordinance noting the priority for the Chief Justice was the appointment of a Chairman of the Higher Rights Assessment Board (Board) as this will be responsible for drafting subsidiary legislation on HRA and will set the criteria on assessment.

The Board was appointed on 2 July; the Chief Justice appointed three senior solicitors, in their personal capacity as solicitors, to sit on the Board. The first meeting was held in September and the Committee was advised there would be monthly meetings to work on the rules and assessment criteria. The Academy of Law cannot announce training courses for candidates until the Board announces the criteria and the rules have been passed by the legislature. The Committee will continue to monitor the situation.

## Standing Committee on Practitioners Affairs

### Members of the Committee:

Peter H. C. BARNES (*Chairman*)

Bonita B.Y. CHAN

Colin B. COHEN

Paul W.C. KWONG

J.C. Nicholas MILLAR

Secretary: Director of Practitioners Affairs

Firoz NASIR

Simon D. POWELL

Mark F. REEVES

TSUI Kwok Sum

Thomas S.T. SO

### INSOLVENCY LAW COMMITTEE

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

*Consultation Paper on Review of Corporate Rescue Procedure Legislative Proposals*  
*Proposed Accreditation of Insolvency Practitioners*

The Chairman of the Committee, as a representative of the Law Society, also attends regular meetings with the Official Receiver's Office throughout the year.

### Members of the Committee:

Keith M.K. HO (*Chairman*)

Victor K.S. CHIU (*Vice Chairman*)

Ian R. DE WITT

Secretary: Director of Practitioners Affairs

Nicholas D. HUNSWORTH

Camille JOJO

Jimmie K.S. WONG

### INSURANCE LAW COMMITTEE

The Insurance Law Committee met formally on one occasion and conducted the rest of its business by email correspondence.

### Consultation Paper on Proposed Establishment of an Independent Insurance Authority

The FSTB published its Consultation Paper on 12 July and proposed the establishment of an Insurance Authority (IA) which would be financially and operationally independent of the government, and take over the work of the Office of the Commissioner of Insurance.



The Insurance Committee met on 25 August to review the 11 questions raised by FSTB and members queried whether the proposals addressed the existing mischief in the system. It was noted the mis-selling of products in Hong Kong, such as the Lehman Brothers' mini-bonds, was not connected in any way with insurance-related products. These products were not sold by insurance intermediaries but were sold by the banks. If the proposals were implemented there would be regulatory overlap between the newly created IA and also the HKMA; members queried how this could be justified as it is very difficult to ensure consistent application of regulations by separate regulatory bodies. As the document covered investment products with a thin layer of insurance cover, the Committee decided to seek the views of the Securities Law Committee.

Council endorsed the response prepared by both the Insurance Law Committee and Securities Law Committee on 26 October and indicated the proposals, in essence, failed to address the mischief in the system against the cost of establishing the independent IA.

In December, Council approved a Rider to the submissions noting the Consultation Paper had been thin on detail, the analysis was shallow and recommended that a more detailed consultation paper be issued. The Rider was sent to the FSTB on 28 December.

### Membership of the Committee:

Mark F. REEVES

Christine M. KOO

Martin C.V.M. LISTER

Nicholas J.E. LONGLEY

MAK Hon Ming

Lewis S.C. MAN

Secretary: Director of Practitioners Affairs

Christopher A. POTTS

Rupert C. SKRINE

TSUI Kwok Sum

Shane F. WEIR (joined in August)

WONG Kwok Yan

Angela S.Y. YIM

## INTELLECTUAL PROPERTY COMMITTEE

The Committee met on two occasions during the year and attended two meetings with Intellectual Property Department.

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

The Committee attended the meetings on 24 February and 14 September when the following matters were discussed:-

- *Amendments to Certificates of Grant of Short-term Patents and Registered Design*
- *Proposal for change of Trade Marks Registry's procedure for handling deferred payment of application fees*
- *Upgrading of IPD's computer system*
- *Form T1 on Registrability*
- *Statistics on Case Management Conferences and Pre-hearing Reviews*
- *Comments on the Trade Marks Registry's Work Manual*
- *Security for Costs*
- *Filing of Form 12*
- *Notarisation of Statutory Declaration*
- *Performance Pledge for Trade Marks Applications*
- *Trade Description Ordinance*
- *Hong Kong Institute of Patent Attorneys Trade Marks Application*

### **Proposals for Strengthening Copyright Protection in the Digital Environment**

The Committee prepared submissions for the Legco Panel on Commerce and Industry and attended a Panel meeting on 19 January. The Committee emphasised that consultation on this matter had been taken place for almost a decade and the Law Society had provided submissions in April 2007 and September 2008. The Law Society's representatives at the meeting emphasized the need for legal certainty in relation to liability for copyright infringement and the digital environment; limitation of liability in the form of "safe harbours" and clarity in the law.

### **Meeting with the U.S. Patent & Trademark Office**

Members of the Committee met representatives of the USPTO in April to discuss matters of mutual concern but particularly the enforcement of copyright in the context of the Internet and e-commerce.

### **Patent Agents and Patent Attorneys**

The Committee met with representatives of the newly-formed Hong Kong Institute of Patent Agents Limited in July to discuss its proposals for establishing patent agent qualifications in Hong Kong. Separately, the committee considered proposals for regulating use of the term "patent attorneys" in Hong Kong. The matter was subsequently considered by Council who declined to take up the recommendations.

### **Companies (Amendment) Bill 2010**

The Bill was gazetted on 20 January and a sub-committee was formed to prepare submissions in relation to the problem of "shadow companies" and their impact on businesses both in and outside Hong Kong in recent years. It was noted the Bill would empower the Registrar to direct such companies to change their names within a specified period, and where the company fails to comply with the direction the Registrar will be empowered to substitute the name of the company. Members of the committee met with the Companies Registry in November and the Ordinance was passed by Legco on 7 July, the provisions relating to "shadow companies" came into force on 10 December.

The Committee also provided assistance with the following:-

- *Fifth Pan-PRD Forum on IP Co-operation in Fujian City*
- *Symposium of Patent Law Amendment – implementation in the Mainland*
- *Guangdong/Hong Kong Seminar on IP and Development of SMEs*
- *Exchange programme for IP agents in Guangdong and Hong Kong*
- *IPR Symposium – Managing IPR as a Business Asset in Greater China*
- *Patent Study Visit to Beijing*
- *Mainland, HKSAR and Macau SAR IP Symposium 2010*

### **Members of the Committee:**

A. Clinton D. EVANS (*Chairman*)

Steven J. BIRT

Ella S.K. CHEONG

Yvonne CHUA

Lindsay B. ESLER

KWONG Chi Keung

Secretary: Director of Practitioners Affairs

Chloe Y.F. LEE

Anita P.F. LEUNG

Rebecca M.C. LO

Henry J.H. WHEARE

Kenny K.S. WONG

## LAND USE PLANNING AND ENVIRONMENTAL LAW COMMITTEE

The Committee dealt with the Urban Renewal Strategy and met once on 10 June to discuss the consultation paper. Members also attended an Urban Renewal Strategy Forum with professional groups and advised participants of the Law Society's views based on submissions dated 23 December 2009:

- ensure the strategy is overarching and comprehensive, top down and bottom up guided by sustainable development principles at its core;
- Victoria Harbour and its foreshore need to be carefully integrated into the strategy to ensure that all new development, redevelopment, regeneration and revitalisation is harmonised and consistent, to bring out the full potential and value of the harbour for economic, social and environmental benefits;
- reinforce the ability of social workers/mediators to advocate the message and facilitate change, through proper planning and training;
- consider whether the principle of self-financing is appropriate in all cases, as Government must spend first for many initiatives to be successful but have the ability to recoup its investment over a reasonable period.

### Members of the Committee:

John DAVISON (*Chairman*)

Michael T. M. HUI

IP Shing Hing

Secretary: Director of Practitioners Affairs

MA Ho Fai

Andrew W.Y. NG

Christopher TUNG

## LEGAL AID COMMITTEE

The Committee met six times this year to discuss legal aid related issues and members attended a total of seven meetings of the LegCo Panel on Administration of Justice and Legal Services (Panel) to make representations on proposals regarding reform of the legal aid system. Three members resigned this year and the Committee co-opted six members to cope with its increasing workload.

### Community Legal Services

The Committee studied the Research Report on "*Legal Aid Systems in Selected Places*" prepared by the Legislative Council Secretariat and submitted views to the Panel that the Administration should consider expanding legal aid to provide community legal services such as those offered in the overseas jurisdictions as covered in the Research Report.

### Five-yearly Review of the Criteria for Assessing the Financial Eligibility of Legal Aid Applicants ("*five-yearly review*")

The Committee reviewed the Administration's proposals in the five-yearly review. It welcomed the proposed increase in the financial eligibility limits ("*FEL*") for the two legal aid schemes as a step in the right direction to widen the net of legal aid but urged the Administration to elaborate on the basis for the proposed level of increase; the lack of statistical information has made it difficult for stakeholders and the public to assess the adequacy of the proposed increases. Given the review has been a prolonged process, the Committee called on the Administration to implement its proposals on the revised FEL as soon as practicable.

## Independence of Legal Aid

The Law Society has long been advocating for the establishment of an independent Statutory Legal Aid Authority. The Committee expressed concern on the findings of the Legal Aid Services Council (“LASC”) earlier this year that there was no pressing need to replace the Legal Aid Department (“LAD”) with an independent legal aid authority given the service of the LAD has been satisfactory. Concern was expressed on the lack of transparency of the review exercise as the LASC has turned down the Committee’s request for sight of the review report on the basis that the report was meant for internal consideration only. The Committee submitted that the LASC had taken a wrong approach in the review exercise in consulting only the views of LAD staff but not public views. The Committee urged the LASC to embark on a fresh review of the independence issue.

## International Bar Association (“IBA”) – Legal Aid Jurisdictional Survey

The Committee submitted views on the legal aid position in Hong Kong in response to the Legal Aid Jurisdiction Survey conducted by the IBA.

## Review of Supplementary Legal Aid Scheme (“SLAS”)

The Committee raised concern to the Panel on the lack of progress on the subject of expansion of the SLAS. The Administration concluded in March not to expand the scope of SLAS to cover other categories of cases, stressing SLAS was a self-financing scheme funded by contributions from damages recovered in successful cases; in reviewing SLAS, regard must be given to the fundamental principle of maintaining its financial viability. The Committee did not accept the explanations given by the Administration not to expand as the coverage of SLAS should not be based solely on economic consideration. At the request of the Panel, LASC reviewed the issue of expansion of SLAS and submitted its recommendations in December. The Committee will study these recommendations and continue to press for expansion of the scope of SLAS.

The Committee also reviewed the following:

- Research Report on “*Legal Aid Systems in Selected Places*” prepared by the Research and Library Services Division of the Legislative Council Secretariat
- Proposed legislative amendments to the *Legal Aid in Criminal cases Rules*

## Members of the Committee:

Junius K. Y. HO (*Chairman*)

Peter H. C. BARNES (*joined in July*)

Patrick M. BURKE (*joined in July*)

Sherlynn G. CHAN (*joined in July*)

Dennis C. K. HO

Rebecca V. I. HO (*joined in July*)

Ambrose S. K. LAM (*resigned in June*)

Secretary: Assistant Director, Practitioners Affairs

Alison C. LIU (*joined in July*)

Amirali B. NASIR

Kenneth H. S. NG (*joined in July*)

Kevin STEEL (*resigned in June*)

Christine S. Y. TSANG (*resigned in January*)

Leslie K. L. YEUNG

## MEDIATION COMMITTEE

The Mediation Committee met nine times during the year and devoted substantial time in reviewing and implementing the following matters:-



## **Report of the Secretary for Justice's Working Group on Mediation**

The Working Group published a Report in February with 48 recommendations to promote a wider and more sustainable use of mediation in Hong Kong. The Committee was supportive to most of the recommendations but considered the timeframe to introduce the recommendations was too slow as there is an urgent need to enact legislation in the form of a Mediation Ordinance to ensure a proper regulatory framework is in place to protect the public.

## **Consultation paper on Proposed Establishment of an Investor Education Council and a Financial Dispute Resolution Centre**

Following the collapse of the Lehman Brothers minibond scheme, the Government launched a 3-month public consultation on its proposal to establish a Financial Dispute Resolution Centre (FDRC) to provide mediation and arbitration services to parties involved in financial disputes.

The Committee considered the establishment of the FDRC had more advantages than establishing a Financial Ombudsman. In its submission to the Financial Services and Treasury Bureau, however, the Committee expressed concerns over the quality of mediation and arbitration services to be provided by the FDRC as well as the issue of confidentiality. The Consultation Paper also failed to address the problem of 'power imbalance' between an individual and a financial institution as the parties have huge differences in technical knowledge, financial resources and relevant information on the dispute; doubt was expressed if any negotiated settlement between an individual and a financial institution would be 'voluntary'. As for arbitration, members noted some financial disputes involve credibility and it would be necessary to conduct hearings and call for witnesses. 'Paper Arbitrations' would be inappropriate in such cases.

## **Accreditation Standards for Accrediting Stage 1 General Mediation Training Course**

The Committee, together with input from the Mediator Accreditation Committee, reviewed the accreditation standards for training courses as discussion among stakeholders had mainly focused on accreditation of mediators, but members considered it equally important to regulate the quality of trainers. The Committee published a draft '*Accreditation Standards for Accrediting Stage 1 General Mediation Training Course*' and launched a 3-month consultation. Comments were received from major mediation services providers, trainers, and academia which have been reviewed and incorporated into the draft *Standards* to be recommended to Council.

## **Mediation Intermediaries and Sharing of Fees of Solicitor-Mediator with non-qualified persons**

The Committee noted the practice of establishing mediation case-referring bodies in the market and took the view that such intermediaries could facilitate the use of mediation by the community provided the quality of their services are up to standard. However, Solicitor-Mediators in Hong Kong should be mindful that paying referral fees to such intermediaries on the basis of revenue-sharing may be in breach of Rule 4 of the *Solicitors' Practice Rules* when the 'referring body' is not a solicitor. A circular was issued reminding members to deal with such intermediaries with caution.

## **Mediation Practice Support Scheme**

The Committee, with assistance from the Member Services Department, established a *Practice Support Scheme* for junior mediators to assist Solicitor-Mediators deal with the implementation of the Judiciary's Practice Direction 31 (PD31) and so remain at the forefront of this new area of practice. An Assistant Mediator Scheme was launched with Catholic Marriage Advisory Council to provide junior mediators with the opportunity to conduct a case with a lead mediator. Five sharing sessions with experienced mediators were conducted and four mediation clinics were organised.

## Standing Committee on Practitioners Affairs

### Mediation Updates

The Committee circulated four issues of *Mediation Updates* during the year. It has reported several court decisions made after the implementation of PD31 in relation to mediation covering topics such as: confidentiality, appointment of mediator, costs, and procedural requirements. Book reviews were also provided in the *Mediation Update* on four new local reference books on mediation published during the year.

### Mediation Services

The Mediation Co-ordinator continued to provide assistance to members. During the year over 40 cases were referred to the Law Society for nomination of a mediator. A Pilot Project to provide community venues for mediation initiated by the Secretary for Justice's Working Group and administered by the Law Society offered venues free of charge for mediations conducted on a pro bono basis, and at a subsidized rate for other cases.

### 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

Secretary: Joyce Wong

Mediation Co-Ordinator: Oscar Tan

Catherine K.G. POR

Jody K.Y. SIN

Sylvia W.Y. SIU

Cecilia K.W. WONG

Norris H.C. YANG

Helena S.Y. YUEN

## PERSONAL INJURIES COMMITTEE (PI)

The Committee met on seven occasions during the year.

### Practice Direction 18.1 (PD18.1)

Members noted the Judiciary would appoint a new judge to be in charge of the PI List and in anticipation of the appointment in April agreed to prepare a list of issues on PD18.1 and arrange a meeting to discuss concerns on procedural matters. The Committee hosted an informal lunch with Bharwaney J. on 15 June and discussed areas of concern; the Chairman followed up the discussion with a letter raising the following issues:-

- mediation at PTR
- a statement of issues to be lodged with the Checklist statement
- recent experiences on taxation in PI cases
- minor amendments to PD18.1

The Chairman formally raised the following matters with the judge:-

- death cases and documentation to be provided
- streamlining the checklist procedure
- taxations – the right to lodge documents

In September, the judge confirmed in writing that he agreed in principle on introducing new procedures but indicated further consultation with other stakeholders should take place and then a pilot scheme could be introduced. It is anticipated the pilot scheme will be introduced in 2011.

### Employment Compensation (EC) Cases/PD18.1

The Chairman wrote to the judge in charge of EC cases on 18 August and sought clarification of the material required to update the status of a case required by Appendix D of PD18.2. The Acting Chief District Judge indicated that in cases where little or no action had taken place since the last order, new information could be supplied by way of a memo or covering letter.

### Occupational Therapists (OTs)

The Committee noted criticism of reports prepared by OTs in a recent judgment *HCPI506/2009* when the Master commented on the following:-

- unacceptable delay of the written report i.e. 6-month period from interview to production of a report
- over-lengthy report which recited matters not within the experience of OTs: reports should be concise and focus only on relevant issues in order to save costs

## Standing Committee on Practitioners Affairs

The Committee agreed to send a letter to the Hong Kong Society of Occupational Therapy Association to suggest an informal meeting to discuss the judgment and to discuss mutual areas of concern. This took place in early June when there was a useful exchange not only on the judgment but also of OTs views on problems within the existing system. An agreement was reached that the Academy of Law be invited to organize a seminar on the role of OTs in PI cases; this was co-presented with a solicitor on 17 December.

### **Taxation of Costs**

Members discussed complaints over the level of fees awarded during taxations and agreed the amounts were unrealistic, notifying party and party rates had not been reviewed since 1997. It was noted that Council has agreed to seek a formal review of the rates and will proceed with this in 2011.

### **Interpreters**

The Committee considered correspondence from a member outlining problems in relation to the engagement of interpreters. One of the many problems involves the disparity between the actual market rate practitioners pay for interpreters compared with the rates paid by the court and allowed during taxation; the court rate is \$230 whilst the market rate ranges from \$400 to \$1,000 for initial instructions of a minimum 2-hour period. The Committee decided to write to the Registrar to obtain more information on the court's engagement of interpreters and the problems in relation to the Taxation Master's failure to recognize the existing market rate of interpreters. This matter will be followed up in 2011.

### **Mental Health Ordinance (MHO)**

The Committee will conduct a review of the court's investment policy.

### **Members of the Committee:**

Mark F. REEVES (*Chairman*)

Patrick M. BURKE

Jenkin S.F. CHAN

Eliza L.S. CHANG

Anthony L.C. CHIU

Christina W.C. HUNG

Secretary: Director of Practitioners Affairs

Nancy B.Y. LEUNG

Vitus W.H. LEUNG

J.C. Nicholas MILLAR

Amirali B. NASIR

Szwina S.K. PANG

Tommy K.M. WONG

### **Members of the Sub-Committee on the Mental Health Ordinance:**

J.C. Nicholas MILLAR (*Chairman*)

Eliza L.S. CHANG

Szwina S.K. PANG

Tommy K.M. WONG



## **Working Party on Recovery Agents (Working Party)**

### ***P.I. Helpline***

Members of the Working Party continued to supervise the operation of the *P.I. Helpline*. The launch of the Pilot Scheme on 15 June 2009 was reviewed by Council and a decision was made to introduce the scheme on a permanent basis. The Secretariat dealt with 388 calls for assistance during the first year. The Legal Aid Department wrote to the Law Society and confirmed that, as a result of the campaign, it was clear victims were now applying for legal aid rather than seeking assistance from recovery agents.

The Council also decided to re-launch the Helpline and consultants were engaged to publicise the Scheme; a publicity campaign was launched on the MTR from 26 May to 8 June. The Panel of volunteers has been expanded after a successful recruitment exercise; it now has 200+ volunteers; callers are assigned to the Panel on rotational basis. In December, the final phase of the current publicity campaign took place when posters were distributed to the following organisations:-

- Hospital Authority
- Society Welfare Department Offices
- Labour Department and
- Legal Aid Department

Finally, a dedicated icon was created for the *P.I. Helpline* on the Law Society's website.

### **Members of the Working Party:**

Ludwig S.W. NG (*Chairman*)  
Patrick M. BURKE

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*.

### **Application for Grant ad Colligenda Bona**

A circular was issued in September to draw members' attention to the Judgment in *Re Wan Sing Hon* HCMP 1554/2010 regarding the proper practice for an application for *Grant ad Colligenda Bona*.

### **Consultation Paper on the Introduction of the Concept of Advance Directives in Hong Kong**

The Committee reviewed the Consultation Paper issued by the Food and Health Bureau in December 2009. Submissions were issued on the proposals in March.

### **Paragraph 6(1) of Schedule 2 of the *Intestates' Estates Ordinance, Cap 73 ("IEO")* – Meaning of "Guardian"**

The Committee reviewed the case of *LWY v. Guardianship Board and The Director of Social Welfare* HCMP No. 953/2008, which decided that the term "guardian" in paragraph 6(1) of Schedule 2 of the IEO only refers to a guardian of a surviving "infant" spouse. Under the decision, the Guardianship Board has no jurisdiction to appoint a guardian for a surviving spouse who is "mentally incapacitated" for the purpose of making an election on her behalf under paragraph 1 of Schedule 2 for appropriation of her residence to her entitlement under the deceased estate. As this could pose problems to the distribution of estate in cases where the residence of a mentally incapacitated surviving spouse is involved, members discussed the need to propose legislative changes to paragraph 6 of Schedule 2 of the IEO to clarify the meaning of "guardian".

### **Use of Checklist in Filing**

The Committee reviewed the use of the checklist in Grant Applications. The initial idea of introducing the checklist is to streamline the application process but it was observed that frontline Probate Registry staff have not been checking the application papers against the agreed checklist but examined in detail the contents of the application papers. As this will prolong the application process, the issue was raised for discussion with the Judiciary through the Joint Standing Committee on Probate Practice.

### **JOINT STANDING COMMITTEE ON PROBATE PRACTICE**

A meeting was convened in July to discuss ways to improve probate practice. Matters discussed include the use of checklist on filing of Applications for Grant, the Judiciary's proposals to actively case manage non-contentious probate applications, updating of the common requisition list by the Judiciary, reform to the Pigeon Box system, etc.

### **Members of the Committee:**

Herbert H. K. TSOI (*Chairman*)

Helen Y. P. CHAN

Albert C. Y. HO

Patricia LAM

Secretary: Assistant Director, Practitioners Affairs

Billy W. Y. MA

NG Kin Yuen

TAM Sau Hing

## 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. Members of the Committee continued to consider and determine applications for waivers of DMC Guidelines (429 applications); and applications for deviations from forms of Agreement for Sale and Purchase approved under Rule 5C of the *Solicitors Practice Rules, Cap.159H* (44 applications). Members also served on internal Working Parties, and as The Law Society's representatives on external Committees/Working Parties on property related issues. A member resigned in January and the Committee co-opted a new member to fill the vacancy.

### ***Buildings (Amendment) Bill 2010***

The Bill was introduced in January to amend the *Building Ordinance, Cap 123* to provide for regular inspection of old buildings including windows and the associated repairs so as to prevent such from becoming unsafe. Two mandatory inspection schemes were proposed to be established, namely, (a) a mandatory building inspection scheme; and (b) a mandatory window inspection scheme. The Committee reviewed the Bill and submitted views in July. Concerns were raised on, inter alia, (a) the lack of means for owners, prospective buyers and other interested parties to ascertain whether a prescribed notice of inspection or repair has been issued in respect of a property and the status of compliance; (b) possible abuse and corruption in building inspection and repair projects under the two mandatory inspection schemes; (c) the status of “*unauthorized*” minor works remaining as a blot on title despite their validation under the Household Minor Works Validation Scheme; and (d) the proposal to establish a Building Affairs Tribunal to dispense with legal representation.

### ***Buildings Energy Efficiency Bill***

The Bill sought to enhance energy efficiency in buildings by requiring building services installations in “*prescribed*” buildings to comply with specified energy efficiency standard requirements. The Committee supported in principle the objectives behind the Bill but submitted concerns on the compliance implications of the new law for conveyancing transactions. Major concerns expressed on the Bill included: (1) the lack of means provided by the legislation for owners and responsible persons to ascertain the status of compliance with the new law; and (2) that non-compliance of the new legislation would trigger the Government's right to re-enter the property under the relevant Land Grant. Members met with the Administration on four occasions to discuss the issues of concern. Representatives of the Committee also attended a Bills Committee meeting in September. In response to the Committee's concerns, the Administration introduced Committee Stage Amendments and the Lands Department confirmed in writing that it would not exercise the re-entry right under the Land Grant for any non-compliance of the new legislation. A circular was issued in December to highlight the new legislation and the Lands Department's policy on the re-entry issue.

### **Concerns over Banking Practice**

The Committee expressed concerns with the Hong Kong Association of Banks (“*HKAB*”) over various banking practices given their adverse implications on conveyancing practice. These included (a) late return of executed discharge/release by mortgagee banks; (b) late confirmation of drawdown of loans from banks; and (c) lack of proof of due execution of documents by foreign banks. HKAB issued a reminder circular in December to bring these issues of concern to the attention of the banking industry.

## **Conveyancing Fees**

The Committee discussed a suggestion that The Law Society should issue a checklist to educate the public and the profession on the minimum steps that should be properly undertaken by solicitors in a conveyancing transaction, which would include information on the time involved and the reasonable level of fees that should be charged. The Committee expressed reservations on whether the introduction of a checklist, without any sanction for non-compliance, would help to resolve the existing cut-throat price competition problem. It recommended seeking an understanding with the Hong Kong Solicitors Indemnity Fund Limited on the possibility of linking up non-compliance with the level of insurance premium payable by members under the Professional Indemnity Scheme.

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

The Committee has raised concern with the Administration in previous years on the lack of a clear Government's enforcement policy for breaches of Land Grant terms, as this has posed difficulty for proof of title in conveyancing transactions. A meeting was arranged with the Secretary for Development to discuss the Committee's concerns and following its repeated requests, the Government eventually agreed to publicize its policy on specified breaches of the Land Grant Terms. Whilst some outstanding concerns remain to be resolved, the Committee has accepted the Government's offer as any further campaign would take time; it would continue to campaign for better measures.

## ***Land Titles (Amendment) Bill***

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 for the Land Titles (Amendment) Bill.

## **New Territories Conveyancing Practice**

The Committee followed up with the Secretary for Development on the problem on missing/damaged Government Grant and other practical problems in New Territories Conveyancing Practice.

## **Practice Direction L ("PD L") – Attestation of Documents**

The Committee reviewed PD L Paragraph 2 provides that a solicitor may appoint an experienced clerk to witness or attest the signing or execution of documents which is not required to be witnessed or attested by a solicitor in law and verify the signature of the clerk "*where it is impracticable for the solicitor to do so personally*". Members raised concern on the reference to "*impracticable*" circumstances in PD L, which would effectively require solicitors to witness signatures of clients "*personally*" in almost every case. The Committee invited the Guidance Committee to review PD L and consider deleting the reference to "*impracticable*" circumstances, as the Practice Direction has already required an "*experienced*" clerk to witness and attest the signing and execution of the document and as there are professional rules in place to govern solicitors' duty to supervise staff.

## **Section 13A of the Conveyancing and Property Ordinance, Cap 219**

The Committee issued a circular in April to draw to members' attention the Court of Appeal Judgment in *Donpower Trading Limited v. Apexcom Limited* CACV 172/2009 and update members on the development of the case.



## **Stamp Duty (Amendment) (No. 2) Bill 2010**

The Financial Secretary proposed to introduce, on top of the current ad valorem stamp duty, a Special Stamp Duty (“SSD”) on certain transactions in residential properties on 19 November. The Committee reviewed the Bill and sought clarification from the Inland Revenue Department on the meanings of “*acquired*” and “*disposed of*” in the proposed legislation and the application of SSD in certain grey areas: enforcement action by mortgagees, conditional agreements, acquisitions of property under a will, the law of intestacy or right of survivorship, etc. Concerns were also raised on the potential liability of purchasers to pay additional SSD that the Inland Revenue Department may assess to be payable after completion. Members met with the Administration’s representatives to elaborate its concerns. In view of the important implications of the retrospective legislative proposals on conveyancing practice, the Committee issued two circulars in November to solicit members’ views. The Committee would review the comments received from the general membership and submit further views on the Bill to the Administration.

## **The Committee also considered:**

- Consultation Paper on Proposed Changes to Requirements for Qualified Property Acquisitions and Formation of Joint Ventures
- Concern of the Financial Secretary’s Office on the ranking for Hong Kong’s registration process in the *Report on World Bank’s Doing Business Survey*

## **External Work:**

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

- **Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation**
- **Land Registry Customer Liaison Group**
- **Land Registry Joint Standing Committee**

## **Members of the Committee:**

Emily Y. M. LAM (*Chairman*)

Lilian S. F. CHIANG

Wendy CHOW (*resigned in January*)

Doreen Y. F. KONG (*joined in May*)

Ambrose S. K. LAM

Angela W. Y. LEE

Vincent W. S. LIANG

Secretary: Assistant Director, Practitioners Affairs

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

### WORKING PARTY ON BUILDING MANAGEMENT

The Law Society is a supporting organization of the ICAC's territory-wide Integrity and Quality Building Management Programme 2010/11 ("*ICAC Programme*"). The Committee convened this Working Party in May to provide support to the ICAC programme. Members worked within a tight schedule to review and provide comments on a 150+ pages in a draft Management Toolkit, training videos, webpages and related publicity pamphlets and material on building management prepared by the ICAC for distribution to Owners' Corporations and other building management bodies. The Working Party also solicited speakers for 20 workshops for Owners' Corporation in 18 districts of Hong Kong and for practitioners in legal, surveying and property management sectors involving in building management. A CPD seminar on the subject was conducted for members of The Law Society in November.

#### Members of the Working Party:

Billy W. Y. MA (*Chairman*)

Ram D. BIALA

FONG Chun Kwong

Secretary: Assistant Director, Practitioners Affairs

LAM Kin Man

Alexander H. S. LEUNG

TANG Wai Chung

### 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 Working Party reviewed and provided its recommendations to the Property Committee and the Council on the submissions to various issues raised in the Post-Enactment Review:

- **Conversion Mechanism**

As a result of the overwhelming concerns expressed by The Law Society, the Government agreed not to proceed with its proposed "*Midway-house Conversion*" mechanism but to deal with the problem registers instead by introducing legislative amendments to enable the Land Registrar to withhold conversion of relevant land to the new registration system by registering a Land Registrar's Caution Against Conversion ("*LRCAC*"); views were sent on the LRCAC proposal. Whilst lending its in-principle support to the Government's revised proposals, the Working Party submitted, inter alia, that the problematic status of all the identified double/multiple registers as well as any Notice of Intention to register an LRCAC to be issued should be noted on the register. The Working Party also objected to the proposal for an administrative review mechanism to review the decision of the Land Registrar when the aggrieved person should be given the right to appeal to the court.

- **Rectification and Indemnity Arrangements**

The Government has expressed 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 in the new title registration system and issued a Consultation Paper in January 2009 proposing to introduce “*deferred indefeasibility*” as an exception to the MR Rule. The Working Party’s position has always been that “*indefeasibility of title*” is the cornerstone of any registered title system. It objected to the MR rule as it defeated the whole purpose of a title registration system, i.e. to bring certainty to title and simplify the conveyancing process, and would result in a reversion to the old system of the investigation of title. The Administration however advised that a majority of responses to its consultation were in favour of retaining the MR Rule. The Committee reaffirmed its position that a title registration system with the MR Rule was unworkable and it should be removed from the LTO. Suggestions were made that there should be either immediate or deferred indefeasibility and that measures should be introduced to minimize fraud for the protection of innocent owners. In view of Heung Yee Kuk’s insistence to retain the MR rule, the Working Party recommended giving an option to indigenous villagers for their lands to be excluded from automatic conversion so they could study the experience of the registration system before deciding whether to opt into the new system. Given the concern that the importance of the principle of “*indefeasibility of title*” to a title registration system and the adverse implications of the MR Rule on the new system had not been sufficiently made clear in the Government consultation exercise, the Working Party conducted an extensive lobbying campaign including meeting with the following stakeholders: the Consumer Council, Hong Kong Mortgage Corporation and the Hong Kong Bar Association, to explain its position. In the end, the lobbying campaign succeeded in bringing major stakeholders like the HKAB, the Real Estate Developers Association of Hong Kong and HKMC to share the Law Society’s position. Representatives from the Committee also attended meetings of the LegCo Panel on Administration of Justice and Legal Services to elaborate on its concerns and recommendations.

- **Other Issues**

The Working Party engaged in discussions and exchange of correspondence with the Administration on other issues involved in the post-enactment review, including: covenants implied under Section 35 of the *Conveyancing and Property Ordinance, Cap.219*, determination of land boundary, operation of caution system, registration of managers of T’sos and T’ongs, relationship between the LTO and other Ordinances, re-registration of charging orders, other court orders and *lis pendens*, rights by prescription as an overriding interest, severance of joint tenancy, etc.

### **International Land Titling Conference in Delhi**

A member of the Working Party attended an International Land Titling Conference held in India in mid-July to exchange views with representatives of overseas jurisdictions on the key legal and operational aspects of a land titling system.

### ***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*)

Peter P. AHERNE

E. John DAVISON

Emily Y. M. LAM

Alexander H. S. LEUNG

Secretary: Assistant Director, Practitioners Affairs

Vincent W. S. LIANG

Anthony H. Y. SHIN

Judith SIHOMBING

Paul K. H. YU

## RETIREMENT SCHEMES COMMITTEE

Two long standing members, including the Chairman, resigned from the Committee in June and three new members were co-opted. During the year, the Committee reviewed and made comments on the following:-

- Revised *MPF Guidelines* on:-
  - Investment Managers
  - Transfer Process under s.148A and 148B of the General Regulation
  - Election Forms for Transfer of Accrued Benefits
  - Guidelines on Application for Cancellation of Approval of Constituent Funds and Guidelines on Application for Cancellation of Approval of Pooled Investment Funds
  - Enrolment and Contribution Arrangements for Self-employed Persons
- *Draft Guide for MPF Intermediaries Conducting Sales and Marketing Activities Relating to the Employee Choice Arrangement*

## Members of the Committee:

Duncan A.W. ABATE (*Chairman*) (resigned in June)

David G. ADAMS (*Chairman*)

Cynthia W.S. CHUNG

Angus H. FORSYTH (resigned in June)

Christine M. KOO

Secretary: Director of Practitioners Affairs

Martin C.V.M. LISTER (joined in September)

Sophia W.Y. MAN (joined in September)

TAM Chi Wai (joined in September)

Ines C.Y. Wei

Judy YANG



## REVENUE LAW COMMITTEE

The Committee met formally on one occasion and conducted the rest of its business by email circulation. Representatives also attended meetings of the Joint Liaison Committee on Taxation throughout the year.

The Committee discussed the following matters:-

- *Inland Revenue Ordinance (IRO)*
- *Proposed Amendments on Appeals from the Inland Revenue Board of Appeal*

In September the Financial Services and Treasury Bureau (FSTB) circulated a paper "*Legislative Proposals to enhance the Efficiency of the existing Tax Appeal Mechanism*" which contained detailed proposals to amend the existing appeals procedure from the Inland Revenue Board of Revenue (BOR) under the IRO. FSTB indicated discussion has taken place with the Joint Liaison Taxation Committee since December 2009 but the Committee noted that full details of the proposal were only reviewed in this paper. FSTB proposes to amend Section 69 of the IRO, which currently sets out the procedure for appeals by way of case stated to the Court of First Instance, and replacing this with the requirements that the appellant obtain leave to appeal from the CFI, and imposed a test for such interlocutory appeals namely "*the appeal has a reasonable prospect of success*". The Committee objected to the proposed amendments and wrote to the Secretary for FSTB on 17 November.

### Joint Liaison Taxation Committee (JLTC)

JLTC is comprised of a cross-section of organisations of Hong Kong businesses and professionals. The Committee has two representatives and the Committee attended meeting in March, April and October.

The Committee also considered the following:-

- *Trustee Ordinance Review*
- *Comprehensive Avoidance of Double Taxation Agreement*
- *Inland Revenue (Amendment) Bill 2010*

A member of the Committee resigned in December and the Committee will conduct a co-option exercise in early 2011.

### Members of the Committee:

William A. THOMSON (*Chairman*)

James J. BERTRAM

Sally S.W. IP (alternate member) (*joined in 10 March*)

Secretary: Director of Practitioners Affairs

Vincent P.C. KWAN

William C.W. LAM (*resigned in December*)

Simon J.G. RAE

## REVIEW OF PROPOSED LEGISLATION COMMITTEE

The Committee met on two occasions.

### Consultation Paper on Legislation to Enhance Protection for Consumers against Unfair Trade Practices (Consultation Paper)

The Committee met to review the Consultation Paper which reviewed existing consumer protection legislation, in particular the *Trade Descriptions Ordinance* (TDO) and put forward proposals to enhance consumer protection against unfair trade practices. The main proposal was to extend the TDO to cover Trade Descriptions of Services and create new criminal sanctions in respect of common practices such as: “bait and switch, bait advertising and the practice of accepting payments without the intention or ability to supply the contracted goods or services”. The new criminal sanctions would be introduced by creating strict liability offences.

The Committee decided to seek the views of the Criminal Law and Procedure Committee and a joint meeting was held on 19 October when consensus was achieved that the introduction of strict liability offences would not be too draconian.

Submissions were sent to the Commerce and Economic Development Bureau on 29 October.

### Members of the Committee:

Neville J.J. WATKINS (*Chairman*)

David T.W. LAM (*resigned in August*)

Isabella W.H. CHAN

Raymond C.Y. LEE

Secretary: Director of Practitioners Affairs

## SECURITIES LAW COMMITTEE

The Committee had an extremely busy year. Members reviewed and prepared submissions on the following:-

- *Consultation Paper on Scripless Securities*
- *Consultation Paper on Proposed Establishment of an Investor Education Council and a Financial Dispute Resolution Centre*
- *Companies Ordinance Rewrite*
- *Consultation Paper on Proposed Statutory Codification of Certain Requirements to Disclose Price Sensitive Information by Listed Corporations-FAQs*
- *Consultation Paper on the Draft Guidelines on Disclosure of Inside Information*
- *Consultation Paper on Multiple Statutory Derivative Actions*
- *Consultation Paper on Proposed New AML Legislation for Financial Institutions*
- *Legislation (Structured Products Amendment) Bill 2010*
- *Consultation Paper on Proposed Regulatory Regime for Credit Rating Agencies*
- *Consultation Paper on Proposed Establishment of an Independent Insurance Authority*
- *Consultation Paper on Proposed Changes to Requirements for Qualified Property Acquisitions and Formation of Joint Ventures*
- *Consultation Paper on Proposed Change to the Minimum Number of Shareholders for the Market Capitalisation/ Revenue Test*
- *Consultation Paper on the Evidential Requirements under the Securities and Futures (Professional Investor) Rules*
- *Anti-Money Laundering (Financial Institutions) Bill*

## Members of the Committee:

Simon H. BERRY (*Chairman*)

James W. BAIRD

Julia F. CHARLTON

Leo P.Y. CHIU

Julianne P. DOE

Teresa Y.Y. KO

Vincent P.C. KWAN

Secretary: Director of Practitioners Affairs

Angelina P.L. LEE

Timothy LOH

Gavin P. NESBITT

David P.R. STANNARD

Dominic W.L. TSUN

Dieter L.T. YIH

## WORKING PARTY ON HIGHER RIGHTS OF AUDIENCE (WORKING PARTY)

The Working Party noted the *Legal Practitioners (Amendment) Ordinance* was enacted on 20 January. At its meeting, on 3 February, members noted they had completed the Working Party's Terms of Reference and made a recommendation to the Standing Committee that a new HRA Committee be convened to monitor the implementation of HRA.

## 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 REVIEW OF TRUSTEE ORDINANCE

At the recommendation of the Working Party, The Law Society submitted views in September 2009 on the Consultation Paper issued by the FSTB on "*Review of the Trustees Ordinance and Related Matters*". The Working Party reviewed and responded to a query raised by the FSTB on The Law Society's recommendation to introduce legislation to provide that a trustee should have an insurable interest in the trust property under certain circumstances, as a trustee should not make a profit out of his trust, or place himself in a position of conflict of interest with the trust. FSTB published the Consultation Conclusions in February. The Government indicated a Bill incorporating its proposed amendments to the *Trustee Ordinance, Cap. 29 and the Perpetuity and Accumulations Ordinance, Cap. 257* will be drafted; the Working Party will review the terms of the proposed legislation in due course.

## Members of the Working Party:

Billy W. Y. MA (*Chairman*)

James J. BERTRAM

CHAN Chak Ming

Lester G. HUANG

Secretary: Assistant Director, Practitioners Affairs

Simon J. G. RAE

Herbert H. K. TSOI

David A. WHITE

WONG Tak Shing

### 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 eight 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
- Contribution reduction
- The performance of the Scheme’s Broker and Manager
- The performance of the Scheme’s investment managers and the Scheme’s investments
- 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
- Insolvency insurance cover
- Security of the Fund’s assets in the light of the global economic crisis
- Amendments to the Solicitors Corporation Rules
- Tender for appointment of 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 relating to the Scheme

A total of 140 notifications of claims were received by the Claims Manager, ESSAR Insurance Services Ltd. (“ESSAR”) during the 2009/2010 indemnity year, i.e. from 1 October 2009 to 30 September 2010 and the grace period from 1 October 2010 to 29 November 2010. As at 30 September 2010, 11 of the notifications resulted in proceedings, 2 were settled with payment, 9 were closed without payment and 127 remained as notifications (127 already includes the 9 cases closed without payment).



## Standing Committee on Practitioners Affairs

The number of claims for the last 24 indemnity years and the number of members holding practising certificates as at 30 September 2010 of each of those years are as follows:-

| <b>Indemnity Year</b> | <b>Number of Claims*</b> | <b>Percentage Increase/Decrease from previous year*</b> | <b>No of members</b> |
|-----------------------|--------------------------|---|----------------------|
| 1986/1987             | 64                       | –   | 1,384                |
| 1987/1988             | 58                       | -9%   | 1,625                |
| 1988/1989             | 126                      | 117%  | 1,754                |
| 1989/1990             | 178                      | 41%   | 2,060                |
| 1990/1991             | 72                       | -60%  | 2,350                |
| 1991/1992             | 93                       | 29%   | 2,572                |
| 1992/1993             | 118                      | 27%   | 2,847                |
| 1993/1994             | 143                      | 21%   | 3,161                |
| 1994/1995             | 151                      | 6%  | 3,451                |
| 1995/1996             | 150                      | -1%   | 3,784                |
| 1996/1997             | 176                      | 17%   | 4,197                |
| 1997/1998             | 336                      | 91%   | 4,494                |
| 1998/1999             | 483                      | 44%   | 4,612                |
| 1999/2000             | 263                      | -46%  | 4,771                |
| 2000/2001             | 230                      | -13%  | 4,946                |
| 2001/2002             | 215                      | -7%   | 5,086                |
| 2002/2003             | 269                      | 25%   | 5,191                |
| 2003/2004             | 165                      | -39%  | 5,317                |
| 2004/2005             | 159                      | -4%   | 5,498                |
| 2005/2006             | 165                      | 4%  | 5,666                |
| 2006/2007             | 140                      | -15%  | 5,831                |
| 2007/2008             | 308                      | 120%  | 6,092                |
| 2008/2009             | 148                      | -52%  | 6,341                |
| 2009/2010             | 140                      | -5%   | 6,670                |

\* 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 2009/2010 indemnity year were categorized as follows:-

|                        |            |
|------------------------|------------|
| Company/Commercial     | 18         |
| Conveyancing           | 48         |
| Litigation             | 49         |
| Miscellaneous          | 8          |
| Patents and Trademarks | 16         |
| Probate                | 1          |
| <b>Total</b>           | <b>140</b> |

As at 30 September 2010, the total liability of the Scheme for the 2009/2010 indemnity year, calculated on the basis of claims paid and claims reserved, was HK\$36,715,671 of which HK\$8,985,471 consisted of claims paid (including costs) and HK\$27,730,200 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\$1,517,389,113 and the total amount reserved was HK\$273,478,352.

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 2010 will be published in the Scheme's Annual Report for the 2009/2010 indemnity year.

### Directors of the Company:

Peter R. GRIFFITHS (*Chairman*)

Albert B.K. DAN

Brian W. GILCHRIST

Christopher G. HOWSE

Peter C.L. LO

Patrick R. MOSS

Amirali B. NASIR

Company Secretary: ESSAR

Ludwig S.W. NG

NG Wai Yan

Kevin C.K. SHUM

Richard N. TANNER

WONG Kwai Huen

Norris H.C. YANG

### PIS CLAIMS COMMITTEE

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

### Members of the Committee:

Brian W. GILCHRIST (*Chairman*)

Colin B. COHEN (*Vice-Chairman*)

Charles W. ALLEN

Keith M. BRANDT

Richard H.C. CHALK

Secretary: ESSAR

Tony K.W. CHOW

Simon P. CLARKE

George D. LAMPLOUGH

Jeffrey H. LANE

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 Hong Kong Limited ("Amundi") (formerly known as Credit Agricole Asset Management Hong Kong Ltd).

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

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

The Fund enjoyed double-digit growth in the year ended 31 December 2009. However, 2010 was a mixed year with several European countries announcing budget deficits while the US continues its efforts in enforcing the second wave of Quantitative Easing. The overall returns generated were moderate.

The net returns on the portfolios managed by AllianceBernstein and Amundi for the 12 month period ended 31 December 2009 were 21.59% and 15.23% respectively. The net returns for the 12 month period ended 31 December 2010 were 8.56% and 7.08% respectively.

### Members of the Subcommittee:

Peter C.L. LO (*Chairman*)

IP Shing Hing

Kevin C.K. SHUM

Norris H.C. YANG

Secretary: Assistant Director, Professional Indemnity Scheme

John S. GALE

Ludwig S.W. NG

WONG Kwai Huen

## 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 Working Party of the Committee held three meetings during the year and considered the implications of limited liability partnerships and solicitors corporations for the Fund.

## Standing Committee on Practitioners Affairs

### Members of the Committee:

Robin S. PEARD (*Chairman*)

Kevin R. BOWERS

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

Susan P.S.K. LIANG

NG Wai Yan

Secretary: Assistant Director, Professional Indemnity Scheme

Peter K.H. NGAI

David G. SMYTH

Fiona J. STEWART

Gareth H. THOMAS

Norris H.C. YANG

### 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.

The firms which served as Panel Solicitors in 2010 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:

WONG Kwai Huen (*Chairman*)

Stephen W.S. HUNG

Secretary: Assistant Director, Professional Indemnity Scheme

Kenneth S.Y. NG

Thomas S.T. SO

### 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*)

Albert B.K. DAN

Secretary: Assistant Director, Professional Indemnity Scheme

NG Wai Yan

WONG Kwai Huen



## 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.

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. A cost comparison exercise between MPS and the current Scheme is also in progress.
- Findings on an 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

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*)

Peter R. GRIFFITHS

Raymond C.K. HO

Christopher G. HOWSE

Secretary: Assistant Director, Professional Indemnity Scheme

Nicholas D. HUNSWORTH

Sundaramoorthy KRISHNAN

Kenneth S.Y. NG

Benny Y.B. YEUNG



*Practitioners Affairs Department*