

STANDING COMMITTEE ON COMPLIANCE

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

There are 15 members of the Standing Committee, seven of whom are Council Members. The Standing Committee met 12 times during the year and considered 206 agenda items (compared to 212 agenda items in 2009).

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

Members of the STANDING COMMITTEE and their attendance:

Thomas S.T. SO (Chairman)	12/12	Teresa S.Y. LIU	8/12
Stephen W.S. HUNG (Vice-Chairman)	9/12	Peter C.L. LO	7/12
Anna May M.L. CHAN	8/12	Billy W.Y. MA	5/12
Ivy S.C. CHENG (retired in December)	9/12	Catherine L.M. MUN	9/12
David A. FOK (retired in December)	5/12	Gavin P. NESBITT (appointed in April)	6/8
Dennis H.F. HIE	9/12	Kenneth S.Y. NG	4/12
LAI Kwok Kwong	10/12	Brian K.K. TSE	10/12
Angela W.Y. LEE	8/12		
Secretary: Director of Compliance			

Conduct Section

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

The Conduct Section handled 992 Complaints in 2010 (1,018 in 2009), of which 543 were made or referred by members of the public and government organizations and 126 were made by solicitors.

In 2010, 551 files (519 files in 2009) were closed without seeking explanation as the complaints did not identify any issues of professional misconduct.

The number of reports received from members of The Law Society or the public about entities purporting to be registered law firms remained constant. In these cases, the Conduct Section referred the reports to the Police for their investigation.

There were movements amongst the staff members of the Conduct Section; an Investigation Counsel and an Assistant In-House Prosecutor were recruited to replace two former staff members of the same posts.

The “Notes to Parties to a Complaint” prepared by the Conduct Section was uploaded onto The Law Society’s Web-site on 18 January 2010.

Inspections and visits

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

In 2010, The Council made two resolutions to appoint inspectors under Section 8AA to inspect a solicitors’ firm.

In addition, Investigation Counsel conducted four site visits to four solicitors’ firms.

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

The Monitoring Accountants paid visits to law firms to provide assistance in their accounting procedures/systems and to inspect their books and accounts to ensure compliance with the accounting rules. 81 visits were made to 57 solicitors’ firms and foreign law firms; some firms required more than one visit (101 visits to 64 firms in 2009).

INVESTIGATION COMMITTEE

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

Investigation Committees may recommend to the Standing Committee on Compliance the submission of any matter to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel.

Investigation Committees considered 265 complaints by circulation of 265 agenda. (In 2009, 251 complaints were considered by circulation of 255 agenda.)

In 2010, the Standing Committee on Compliance reviewed six decisions of the Investigation Committees and consequently, five decisions were upheld and one decision was reversed. (In 2009, nine decisions were reviewed, with six upheld, two varied and one reversed.)

Determination of Complaints in 2010

Figure 1: Subject matter of complaints

	2010	2009	2008
Administrative/regulatory	26.31%	26.82%	32.23%
Conveyancing (H.K.)	23.49%	20.14%	29.94%
Civil litigation	21.57%	18.47%	14.84%
Criminal	4.74%	6.19%	4.50%
Reports of purported law firms	4.03%	4.72%	0.93%
Probate	3.53%	3.14%	2.63%
Matrimonial	3.43%	4.13%	4.16%
Owners'/incorporated owners' disputes	3.23%	3.54%	1.19%
Miscellaneous	3.02%	5.11%	3.99%
Company/commercial	2.02%	3.14%	1.95%
Landlord & tenant	0.81%	0.98%	0.93%
Civil Celebrant	0.81%	0.88%	0.76%
Court inspections	0.71%	—	0.25%
Bankruptcy	0.60%	—	—
Contract	0.50%	1.18%	0.59%
Media/promotion	0.50%	0.39%	0.59%
Conveyancing (other than H.K.)	0.30%	0.49%	0.34%
Recovery agent	0.20%	0.59%	0.17%
Legal visit	0.20%	0.10%	—

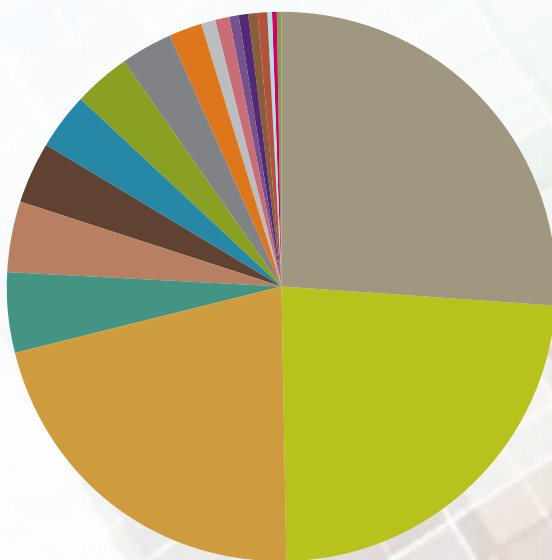


Figure 2: Nature of professional misconduct

	2010	2009	2008
Breach of <i>Conduct Guide Principles</i>	37.40%	35.56%	28.07%
Breach of <i>Solicitors' Practice Rules</i>	15.32%	13.75%	13.74%
Breach of undertaking	6.55%	5.01%	12.72%
Late submission of accountant's reports	5.04%	3.73%	3.82%
Overcharging	4.84%	4.72%	2.63%
Unqualified persons acting or pretending to be a solicitor (ss.45–48 of the <i>LPO</i>)	4.03%	4.52%	1.78%
Inadequate service	3.23%	1.28%	2.04%
Breach of <i>Risk Management Education Rules</i>	3.02%	3.93%	5.00%
Delay	2.22%	2.85%	4.24%
Commission taking	2.22%	—	—
Miscellaneous	2.12%	3.34%	2.97%
Misbehaviour	2.02%	2.36%	1.53%
Circular no. 01-142(COM) (Court attendance form)	1.92%	3.83%	1.61%
Breach of <i>Continuing Professional Development Rules</i>	1.81%	4.13%	2.80%
Negligence	1.61%	1.87%	3.56%
Non-payment of barristers' fees	1.41%	1.18%	0.68%
Breach of <i>Foreign Lawyers Practice Rules</i>	1.01%	0.49%	1.36%
Conflict of interest	0.81%	0.49%	0.76%
Dishonesty	0.60%	0.69%	2.04%
Breach of <i>Solicitors (Professional Indemnity) Rules</i> (r.8)	0.60%	0.10%	—
Breach of <i>Solicitors' Practice Promotion Code</i>	0.50%	1.18%	1.10%
Breach of <i>Solicitors' Accounts Rules</i>	0.30%	3.05%	6.36%
Failure to reply to letters on behalf of a client or to inquiries from The Law Society	0.40%	0.10%	0.17%
Breach of <i>Trainee Solicitors Rules</i>	0.40%	—	—
Breach of <i>Solicitors (Professional Indemnity) Rules</i> (general)	0.20%	—	0.08%
Offences in relation to foreign lawyers, etc. (s.50B of the <i>LPO</i>)	0.20%	—	—
Breach of <i>Practice Directions</i>	0.10%	0.29%	0.76%
Property fraud	0.10%	—	—
Breach of <i>Foreign Lawyers Registration Rules</i>	—	1.47%	—
Practising without a practising certificate	—	0.10%	0.08%
Touting	—	—	0.08%

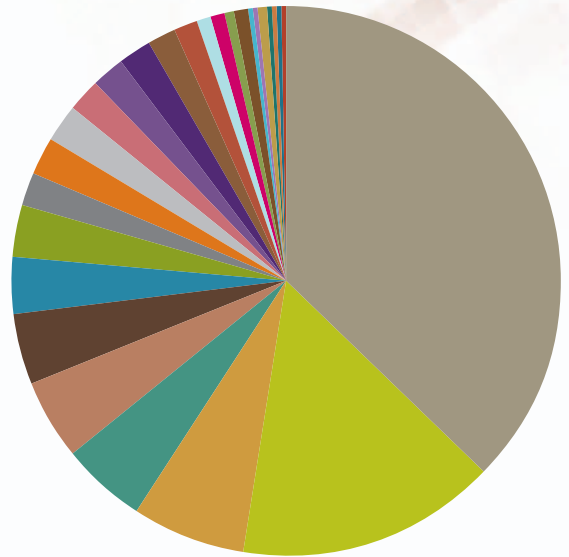
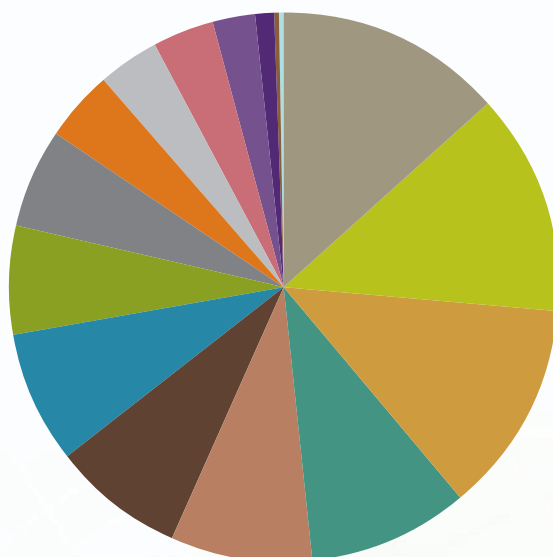


Figure 3: Analysis of closed files

	2010	2009	2008
Referred – Independent legal advice (including District Office)	13.49%	12.08%	12.84%
Letter of regret	13.13%	17.83%	8.81%
No further action	12.51%	13.56%	14.59%
Unpursuable	9.32%	8.46%	9.27%
Resolved amicably	8.25%	7.48%	6.79%
Letter of good practice	7.99%	9.20%	5.23%
Letter of disapproval	7.81%	8.63%	11.65%
Pending	6.30%	2.55%	4.77%
Unsubstantiated/No professional misconduct	5.86%	7.15%	6.88%
Referred – enforcement agencies	4.17%	3.62%	2.48%
Referred – relevant authorities	3.64%	2.88%	3.49%
Withdrawn	3.64%	1.48%	8.35%
Referred – Tribunal Convenor	2.40%	2.38%	1.38%
Referred – taxation	1.15%	1.31%	1.74%
Referred – others (including intervention agents)	0.18%	0.74%	0.73%
Referred – panel of prosecutors (for advice)	0.09%	0.16%	0.09%
Summary disposal	0.09%	—	0.46%
Referred – other departments of the Society	—	0.25%	0.18%
Referred – Joint Tribunal	—	0.08%	0.18%
Circular issued	—	0.08%	0.09%
Referred – inspection by the Monitoring Accountants	—	0.08%	—



Interventions

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

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

In October 2010, the Council resolved to intervene in the practice of a sole practitioner under Section 26A and Schedule 2 to the *Legal Practitioners Ordinance*, Cap.159 on the basis that the solicitor had failed to comply with the indemnity rules. An intervention agent was appointed to wind up the practice.

In 2010, a bankruptcy petition was made to recover from a solicitor the costs incurred by The Law Society in the intervention of her former practice.

Authorised solicitors' clerks

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

By December, there were 968 authorised solicitors' clerks (970 in 2009).

Notes: The Consents Committee considered that solicitors' firms should only nominate staff who are experienced, have integrity, and who have working knowledge in criminal litigation as authorised solicitors' clerks given that they are permitted to visit clients held in places of detention without the supervision of solicitors and they perform the important duty of taking instructions from the clients. In principle, staff with less than one year's working experience in criminal litigation in Hong Kong will not be considered.

INVESTIGATION COMMITTEE ON DISCIPLINARY MATTERS

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

The Committee considered 212 matters by circulation of 68 agenda. (In 2009, 195 matters were considered by circulation of 76 agenda.)

Disciplinary proceedings, appeals, summary disposals and judicial review

In 2010, the Standing Committee on Compliance resolved to submit 19 matters to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel all concerning the conduct of solicitors; one solicitor being the subject of five resolutions. One out of these 19 matters was resolved to be submitted to the Tribunal Convenor for her to dispose of on a summary basis. Additionally, the Council resolved to refer three matters concerning the conduct of three solicitors to the Tribunal Convenor. By December, 15 matters had been submitted to the Tribunal Convenor (seven in 2009).

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

Standing Committee on Compliance

13 disciplinary proceedings were determined by the Solicitors Disciplinary Tribunals in 2010 (compared with six in 2009) which resulted in the following Orders being made:

Respondent	Position	Charge(s)	Penalty	Fines (HK\$)
1	solicitor	<ul style="list-style-type: none"> Principle 1.02 of the <i>Conduct Guide</i> 	<ul style="list-style-type: none"> suspended from practice for five years and then conditional practice for three years ordered to pay costs 	—
1	solicitor	<ul style="list-style-type: none"> 3 counts of Principle 6.04 of the <i>Conduct Guide</i> 2 counts of Rule 2(c), (d), (e) and (f) of the SPR Practice Direction D5 Rule 4A of the SPR 	<ul style="list-style-type: none"> suspended from practice for four years and then conditional practice for two years ordered to pay costs 	—
1	solicitor	<ul style="list-style-type: none"> 2 counts of Principle 14.02 of the <i>Conduct Guide</i> 	<ul style="list-style-type: none"> suspended from practice for three months ordered to pay costs 	10,000
1	solicitor	<ul style="list-style-type: none"> 4 counts of Principle 14.02 of the <i>Conduct Guide</i> Rule 2(d) and (e) of the SPR 	<ul style="list-style-type: none"> conditional practice for two years ordered to pay fixed costs of HK\$127,250 	81,000
1	solicitor	<ul style="list-style-type: none"> Principle 14.02 of the <i>Conduct Guide</i> 	<ul style="list-style-type: none"> conditional practice for one year not less than 15 hours of RME courses ordered to pay costs 	100,000
1	solicitor	<ul style="list-style-type: none"> Rule 2(b) and (d) of the SPR 	<ul style="list-style-type: none"> censured ordered to pay costs 	80,000
1	solicitor	<ul style="list-style-type: none"> Rule 2(d) and (e) of the SPR Rule 2(c), (d), (e) and (f) of the SPR Rule 5(2) of the SPR 3 counts of Principle 6.04 of the <i>Conduct Guide</i> 	<ul style="list-style-type: none"> censured ordered to pay costs 	62,000
1	solicitor	<ul style="list-style-type: none"> Rule 2(d) and (e) of the SPR Rule 2(f) of the SPR 2 counts of Rule 2(d) and (f) of the SPR Rule 2(d) of the SPR and Principle 6.01 of the <i>Conduct Guide</i> Conduct regarded as disgraceful, dishonourable or discreditable by a solicitor of good repute 	<ul style="list-style-type: none"> censured ordered to pay fixed costs of HK\$150,000 	25,000
1	solicitor	<ul style="list-style-type: none"> Principle 14.02 of the <i>Conduct Guide</i> 	<ul style="list-style-type: none"> ordered to pay agreed costs 	30,000
1	clerk	<ul style="list-style-type: none"> Section 2(2) of the LPO and Rule 2(a) and (d) of the SPR 	<ul style="list-style-type: none"> prohibited from employment for 20 years ordered to pay costs 	—
1	clerk	<ul style="list-style-type: none"> Section 2(2) of the LPO for disgraceful, dishonourable or discreditable conduct 	<ul style="list-style-type: none"> prohibited from employment for six years ordered to pay costs 	—

Notes: "LPO" = *Legal Practitioners Ordinance, Cap.159*

"SPR" = *Solicitors' Practice Rules, Cap.159H*

"Conduct Guide" = *The Hong Kong Solicitors' Guide to Professional Conduct (Volume 1, 2nd edition)*

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

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

In February, the Court of Appeal granted leave to a solicitor's appeal out of time against conviction, sentence and costs but in July, the appeal was dismissed by consent with no order being made as to the costs of the proceedings.

In June, judicial review proceedings involving a solicitor were discontinued by consent.

In December, a bankruptcy order was made against a solicitor for his outstanding costs due to the Law Society.

CONSENTS COMMITTEE

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

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

The Consents Committee met 21 times during the year and considered 531 agenda items while there were 22 meetings during 2009 when 427 agenda items were considered. A further 27 matters were dealt with by circulation of six agenda. (In 2009, eight matters were considered by circulation of one agenda.)

Members of the Committee:

IP Shing Hing (*Chairman*)

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

Junius K.Y. HO

Raymond M.S. KWOK

Henry H.W. LAI

Billy Y.C. LAM

Henson LAM

Secretary: Director of Compliance

William C.W. LAM

Billy W.Y. MA

Paul K.Y. NG

Melissa K. PANG

Kelly Y.H. WONG

Dieter L.T. YIH

Standing Committee on Compliance

Registration Section

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

Practising certificates issued for 2010 included, for the first time, a Chinese language version. By the end of the year, 2,770 Chinese practising certificates and 6,782 English practising certificates had been issued to solicitors.

Nature of applications

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

	2010	2009	2008
Admissions	457	420	435
Certificates of eligibility for admission	525	454	430
Practising certificates	6,782	6,465	6,205
Practising certificates – removal of conditions under s.6(6) LPO (solicitors)	146	120	139
Membership	7,986	7,507	7,031
First registration as a foreign law firm	10	11	12
First registration as a foreign lawyer	349	261	464
Renewal of registration as a foreign lawyer	1,007	1,069	1,001
Removal of conditions on certificates of registration (foreign lawyers)	69	32	39
Registration as an Association	10	10	5
Removal of name from the roll of solicitors	5	2	3
Restoration of name to the roll of solicitors	1	1	3
Admission of English barristers	3	1	2
Qualifications for admission s.4(1A) LPO	135	92	104
Employment of staff: s.53(1) LPO	2	1	2
s.53(3) LPO	7	4	0
Practising certificates – removal of conditions under s.6(6A) LPO	37	22	28
Practising certificates – Special Conditions	33	21	15
Registration of first trainee solicitor contracts	429	288	445
Registration of subsequent trainee solicitor contracts	71	36	82
Special leave to employ trainee solicitors	13	10	13
Other trainee solicitor matters	188	140	158
Law costs draftsmen	0	0	1
Accountant's report – solicitors' firms	724	703	706
Accountant's report – foreign law firms	71	74	55
Firm name and letterhead	12	7	6
Waiver of r.13 Foreign Lawyers Registration Rules	1	4	0
Waiver of Practice Direction D.7	1	5	3
Registration as an associate member	3	2	0
Certificates of standing	618	611	909
Letters of No Objection#	915	578	935
Authorised Solicitors' Clerks	85	42	13

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

The Chief Judge determined three applications for exemption from producing an application for a certificate of eligibility for admission as a solicitor under rule 13 of the Admissions and Registration Rules, Cap. 159B.

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

There were 14,137 unqualified staff members employed by solicitors’ firms at the end of the year (13,403 at the end of 2009). In addition, there were 489 unqualified staff members employed by foreign law firms at the end of 2010 (490 in 2009).

The Registration Section continued to participate and provide support to the Law Society’s redevelopment and restructuring of its membership database and Web-site.

Figure 4: Admission of solicitors 2001 – 2010

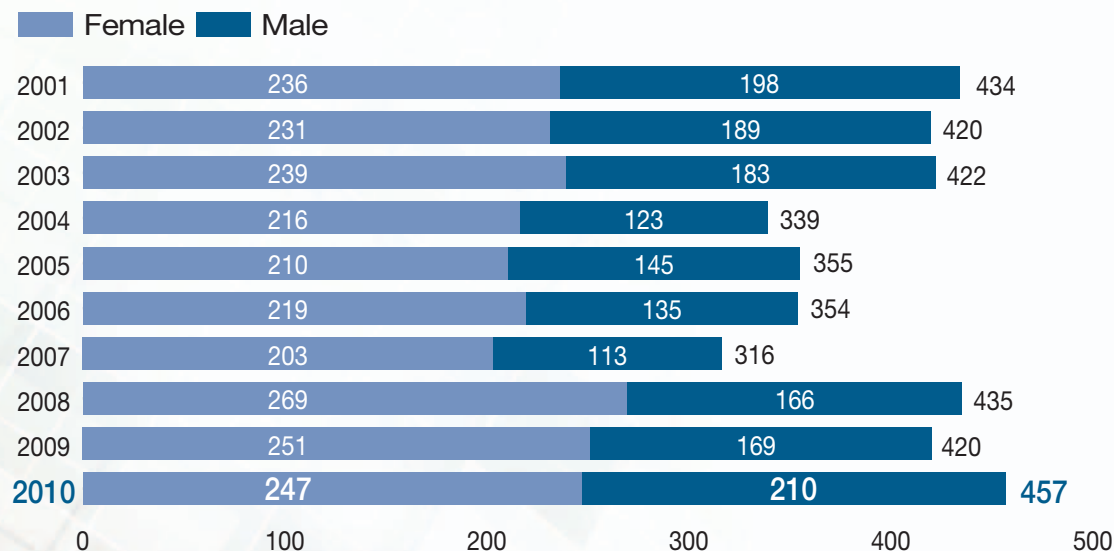


Figure 5: Practising Certificates issued 2001 – 2010

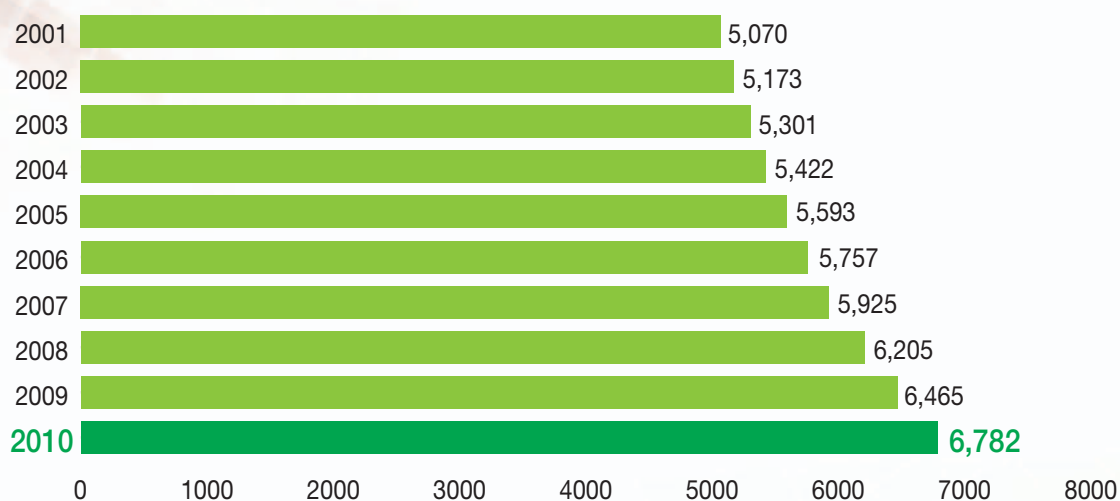


Figure 6: Years of admission of 2010 practising members

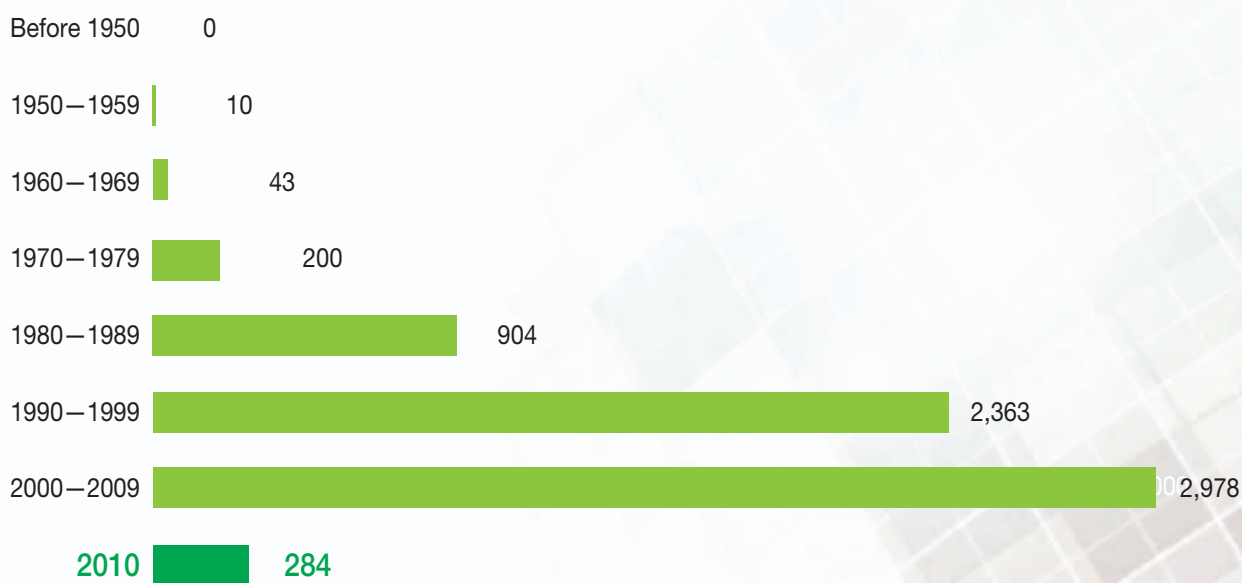


Figure 7a: Gender ratio – Solicitors holding a practising certificate

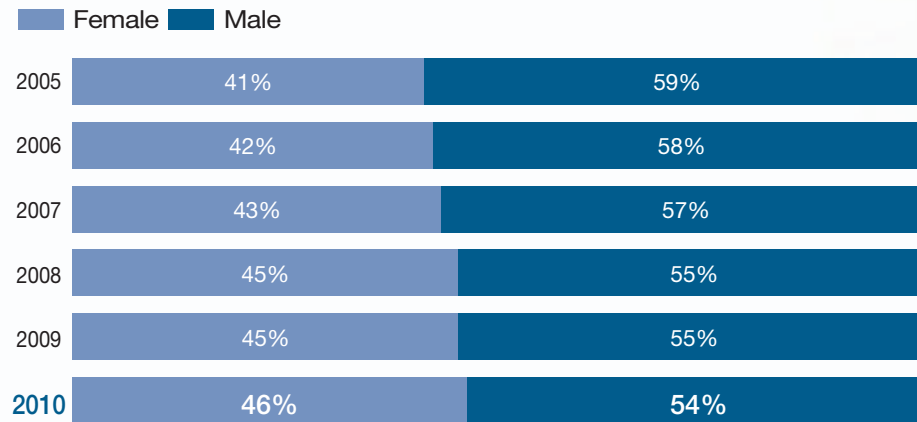


Figure 7b: Gender ratio – Trainee solicitors

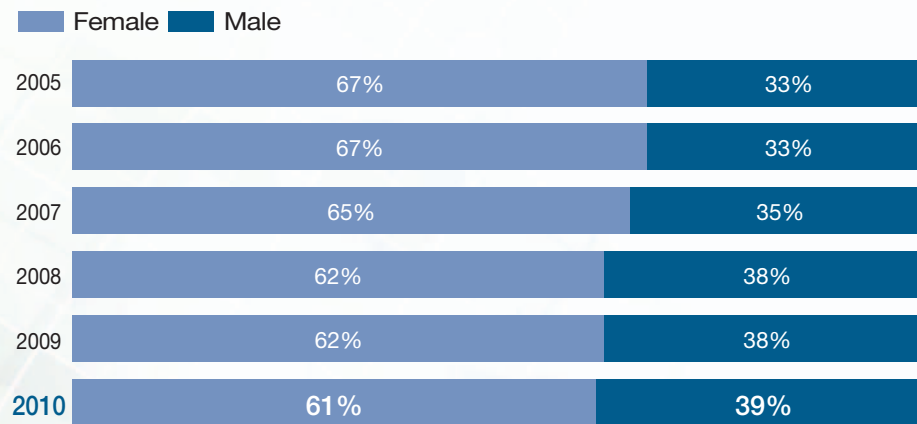


Figure 7c: Gender ratio – Partners

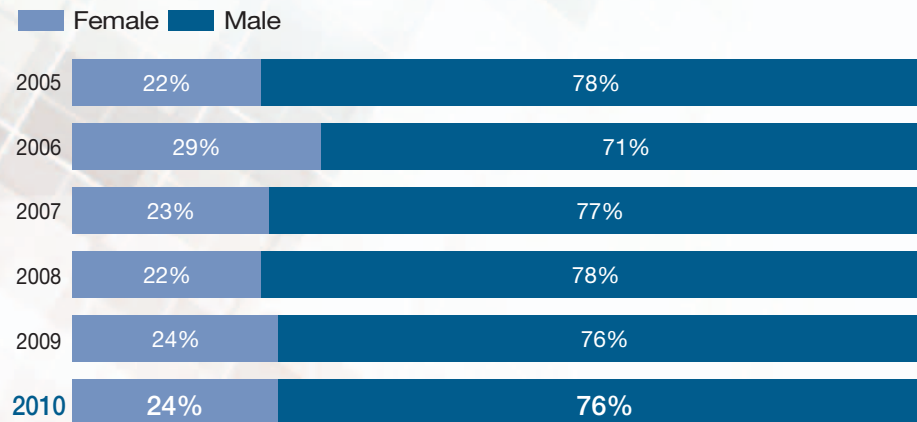


Figure 8: Size of solicitors' firms and number of trainee solicitors in 2010

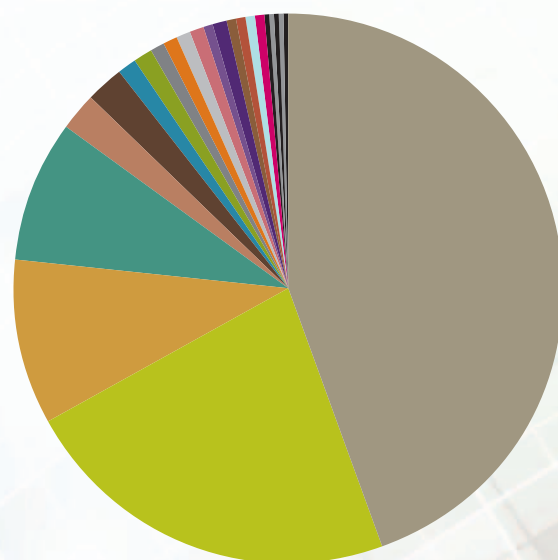
Size of firm	No. of firms		No. of trainee solicitors	
	2010	2009	2010	2009
Sole practitioners	347	339	40	32
2-5 partners	344	328	157	139
6-10 partners	44	41	158	127
11-20 partners	22	23	181	204
Over 20 partners	7	7	131	119
Total	764	738	667[#]	621[*]

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

#excluding 12 in government and 4 working "in-house"

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

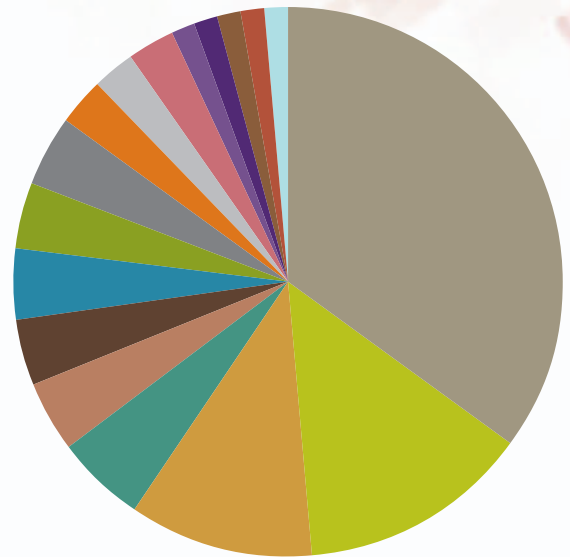
	Number	%
USA	565	44.63%
England and Wales	285	22.51%
Mainland China	121	9.56%
Australia	106	8.37%
Bermuda	28	2.21%
Singapore	28	2.21%
Canada	16	1.26%
Germany	12	0.95%
New Zealand	12	0.95%
Italy	11	0.87%
France	11	0.87%
British Virgin Islands	9	0.71%
Sweden	9	0.71%
Cayman Islands	9	0.71%
Japan	7	0.55%
Malaysia	7	0.55%
The Philippines	7	0.55%
India	6	0.47%
The Netherlands	3	0.24%
Scotland	3	0.24%
Luxembourg	3	0.24%
Republic of Korea	2	0.16%
Belgium	1	0.08%
Guernsey	1	0.08%
South Africa	1	0.08%
Switzerland	1	0.08%
Thailand	1	0.08%
Vietnam	1	0.08%



Notes: Of the 1,266 registered foreign lawyers, 399 worked with foreign law firms and 739 with solicitors' firms.

Figure 10: Home jurisdictions of foreign law firms

	Number		%	
	2010	2009	2010	2009
USA	27	27	35.14	36.00
Mainland China	10	9	13.51	12.00
England and Wales	8	10	10.81	13.33
Sweden	4	3	5.41	4.00
British Virgin Islands	3	3	4.05	4.00
Canada	3	3	4.05	4.00
Cayman Islands	3	3	4.05	4.00
France	3	3	4.05	4.00
Germany	3	3	4.05	4.00
Australia	2	1	2.70	1.33
Bermuda	2	2	2.70	2.68
The Philippines	2	2	2.70	2.68
Italy	1	1	1.35	1.33
Japan	1	1	1.35	1.33
Luxembourg	1	1	1.35	1.33
Malaysia	1	1	1.35	1.33
The Netherlands	1	1	1.35	1.33



Notes: There were 72 foreign law firms in Hong Kong, of which one was registered to practise the laws of both Cayman Islands laws and British Virgin Islands laws, one was registered to practise the laws of the USA and Malaysia; and one was registered to practise the laws of England and Wales and the USA. (In 2009, there were 70 foreign law firms, of which five were registered to practise the law of two jurisdictions.)

There were 30 Associations registered between foreign law firms and solicitors' firms (27 in 2009). Eight new foreign law firms commenced practice (12 in 2009). Six foreign law firms were closed, five of which established local practices (In 2009, nine were closed, six of which established local practices).

The Law Society waived subscription for student members in 2010. By the end of the year, there were 476 student members registered with The Law Society (154 in 2009).

The number of Law Society Approved Law Costs Draftsmen remained at 38.



Compliance Department