

STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

The Standing Committee oversees the work of 22 Committees, one Sub-Committee and 10 Working Parties. It met formally on 10 occasions and reviewed a diverse number of issues relating to solicitors' practices:

Destruction of Old Files

The Standing Committee was invited to review comments from the Technology Committee in relation to encryption and confidentiality of electronic files; this resulted in a general review of circular 02-384 on the Storage of Old Files. Members noted the impracticality of encryption and agreed the practice could not be imposed on law firms. However, discussion did take place on the need to review guidance on the electronic storage of documents and whether circular 02-384 should be updated. A small working group was convened to provide guidance on whether The Law Society should mandate storage of e-files in Hong Kong or whether accessibility to such material would be adequate. The Council subsequently reviewed the recommendations and decided the views of the Standards and Development Department should be sought; the Practice Management Committee also commented. A revised circular will be considered by the Council and updated guidance will be provided in early 2012.

Enduring Powers of Attorney (Amendment) Ordinance

The Department of Justice proceeded with its decision to amend the Ordinance by removing the concurrent witnessing requirements and replacing this with the requirement that a solicitor can sign the document within a 28-day window after execution by the donor and a medical practitioner. The Law Society criticised this over-cautious approach and submissions were sent on 29 June to the LegCo Panel on Administration of Justice and Legal Services; the Legislative Council passed the Bill in late December.

Practitioners Affairs – Specialist Committees

The Standing Committee on Policy & Resources reviewed the Standing Orders in relation to terms of appointment to both the Standing Committee and its specialist committees. The policy of a maximum of six years (3 years + 3 years re-appointment) was confirmed in relation to membership of the Standing Committee. However, after discussion in relation to the specialist committees, it was noted such committees have a different function than the Standing Committee.

The specialist committees need to have an effective succession plan whilst retaining expertise, therefore the six years policy should not be applied. A consensus was reached that the Chairs of the specialist committees should implement an appropriate succession plan for their committees; the terms of appointment should be flexible and each committee should decide on its own succession.

Investment Products and Financial Services Committee and Company Law Committee

During the review of the specialist committees, the Chairs of the Securities Law Committee and the Company & Financial Law Committee noted their existing terms of references were outdated as they did not correspond with actual practice in law firms; a decision was made to re-vamp the committees. 2 new Committees - The Investment Products and Financial Services Committee and the Company Law Committee were convened in August.

Law Reform Commission ("LRC")'s Consultation Paper on Charities

The Standing Committee agreed to convene a Working Party in August to comment on the Consultation Paper. The Working Party was chaired by a member of the Standing Committee and members were recruited from the Probate Committee, Revenue Law Committee, and the Social Enterprises Sub-Group of the Pro Bono Committee.

The Working Party reviewed the lengthy Consultation Paper and provided a response to the 37 questions; draft submissions were approved by Council and sent to the LRC on 15 November.

Standards of Trial Judges in District Court and Court of Appeal (Criminal Jurisdiction)

The Standing Committee considered a letter from a barrister raising issues of concern arising from the Court of Final Appeal judgment in the Shanghai Land case. Members reviewed the judgments in the Shanghai Land and Semtech cases involving the conviction of solicitors in the District Court and noted these convictions had been overturned by the Court of Final Appeal. The Standing Committee decided to make recommendations to the Council to review issues of concern including, but not limited to compensation for wrongful conviction and recovery of legal costs by the defendants. The Council agreed to convene a Working Party and two members of the Standing Committee were co-opted onto the Working Party.

Working Party on Interpreters

The Standing Committee reviewed a report outlining concerns raised by several committees on the engagement of interpreters for both civil and criminal work. The Part Time Interpreters Unit of the Court Language Section of the Judiciary has a list of interpreters approved for court work but this list is not circulated to practitioners. Hong Kong does not have an open accreditation system or regulatory body for interpreters.

Members agreed a Working Party should be convened to make recommendations to improve the existing system by reviewing such issues as accreditation, availability of interpreters, the role of Legal Aid Department and engagement of interpreters at the official rate of HK\$230 per hour.

Notice of Holiday Arrangements to The Law Society

The Standing Committee was invited by the Member Services Department ("MSD") to review the existing policy of issuing circulars on the holiday arrangements of individual firms before major public holidays. Members considered it inappropriate for The Law Society to continue to issue such circulars and advised the DMS to create a new web page so that practitioners could post their own notices on the Law Society's website.

Pilot Scheme on Litigants in Person

In October, the Committee reviewed a proposal by the Home Affairs Bureau ("HAB") to introduce a Pilot Scheme to provide pro bono advice to litigants in person ("LIPs") with cases before the courts.

A report, with the views of the Civil Litigation Committee and Criminal Law and Procedure Committee, expressed concerns on the Administration's policy to press solicitors to participate in pro bono activities. There was consensus the Government is avoiding its responsibility to provide adequate services to the community to meet the unmet legal needs of the public. Adequate funding should be allocated to the Legal Aid Department in both civil and criminal matters.

The LegCo Panel on Administration of Justice and Legal Services considered the details of the Pilot Scheme on 28 November. The Law Society attended and was represented by the President and the Chairman of the Pro Bono Committee. The HAB envisages a scheme whereby lawyers would volunteer and provide procedural advice to LIPs from 8:30 a.m. to 5:30 p.m. on weekdays and would receive an honorarium of HK\$300 per session.

Concern was expressed that LIPs would expect full legal advice on their cases, not merely advice on procedural matters. It was also noted the provision of purely procedural advice in a matter before the court is unrealistic as procedural advice involves a review of tactics; it would be impossible to separate procedure from actual legal advice. There is a huge potential for misunderstanding.

Members noted the Administration expects solicitors to continue to provide pro bono services when they are faced with heavy outgoings on rental, salaries and overheads and that clients are being squeezed on taxation and the provision of legal aid. HAB proposed to introduce the pilot scheme by the end of the first quarter of 2012 and discussion is still on-going on whether the Law Society will endorse the scheme.

Members of the Standing Committee and their meeting attendances during the year:

Thomas S.T. SO (<i>Chairman joined in July</i>)	4/5	E. John DAVISON (<i>resigned in December</i>)	10/10
IP Shing Hing (<i>Chairman until July</i>)	8/10	Stephen W.S. HUNG	7/10
Cecilia K.W. WONG (<i>Vice Chairman</i>)	7/10	J.C. Nicholas MILLAR (<i>resigned in December</i>)	5/10
Simon H. BERRY (<i>resigned in December</i>)	9/10	Gavin P. NESBITT	8/10
Geoffrey N. BOOTH (<i>resigned in December</i>)	4/10	Simon W.L. Wong	5/10
Simon M.Y. CHAN (<i>resigned in December</i>)	4/10	Kevin K.F. YAM (<i>resigned in December</i>)	1/10

Secretary: Director of Practitioners Affairs

Members of the Working Party on Electronic Files

Simon H. BERRY (*Chairman*)
Gavin P. NESBITT

Gabriela KENNEDY

Secretary: Director of Practitioners Affairs

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

Herbert H.K. TSOI (*Chairman*)
E. John DAVISON

Bill W.Y. MA
Cecilia K.W. WONG

Secretary: Director of Practitioners Affairs

Members of the Working Party on Charities

E. John Davison (*Chairman*)
CHAN Chak Ming
Lester G. HUANG
Jacqueline Y.M. SHEK

William A. THOMSON
Stephen M. VINE
WONG Tak Shing

Secretary: Director of Practitioners Affairs

Members of the Working Party on Consultation on Arrangements for issuing Certificate of Particulars

Simon H. BERRY (*Chairman*)

Vitus W.H. LEUNG

Secretary: Director of Practitioners Affairs

Members of the Working Party on PDPO

Simon H. BERRY (*Chairman*)
Nicholas H.F. CHAN
Rebecca M.C. LO

Thomas S.T. SO
Kevin K.F. YAM

Secretary: Director of Practitioners Affairs

Members of the Working Party on Interpreters

Michael J. VIDLER (*Chairman*)
Patrick M. BURKE

Anthony M.C. LAI
Anthony R. UPHAM

Secretary: Director of Practitioners Affairs

CIVIL LITIGATION COMMITTEE

The Civil Litigation Committee met on six occasions.

Civil Justice Reform (CJR) - Law Society's CJR survey

The Judiciary's Steering Committee on CJR requested The Law Society to conduct a survey to gauge the success or otherwise of the implementation of CJR. The survey was launched on 4 April. The Standing Committee reviewed the results and an analysis was subsequently sent to the Judiciary in November. The survey indicated some of the successes of the CJR namely: sanctioned officers and payments, summary assessments, and the use of single joint experts.

Mediation

Strong views were expressed on mediation and PD31. Data from the survey indicated almost 99% of respondents attempted mediation at least once during the past two years with a settlement rate of approximately 60%. However, the Judiciary's own figures indicated a significantly lower success rate of around only 21%. "Sham mediations" actually increase costs for the parties. Members noted mediations often failed to narrow the issues as an "all or nothing approach" is frequently adopted by the parties.

The survey indicated mediation has been more successful in the following areas: Personal Injury and lower value cases, and also some high value commercial cases where the parties have pre-CJR experience of mediation. The introduction of mediation is still in its infancy and it is unrealistic to expect a rapid change of culture as many practitioners have to gain experience from mediation before they can prepare their clients to change their mind-set.

Frontloading of costs

The frontloading of costs has always been a concern given the data from the UK experience. The survey results indicated 52.6% of respondents noting an increase in unrecoverable costs.

Lands Tribunal

A member complained to the Committee about the lack of facilities at the Lands Tribunal, in particular interview and conference rooms for legal practitioners and their clients. The Committee wrote to the Judiciary highlighting these concerns and invited the Judiciary to provide adequate interview and consultation rooms. The Judiciary should also ensure new court buildings have adequate facilities for both legal practitioners and litigants.

Pilot Scheme on Exchange of Costs before Mediation

The Law Society had not been officially informed by the Registrar of the High Court of a Pilot Scheme which encouraged legal representatives in High Court cases to exchange information on costs estimates of their respective clients. Members expressed concern as information on legal costs is privileged information between the solicitor and his client.

Rather than proceed with the informal pilot scheme the Committee wrote to the Registrar and suggested an appropriate amendment to the Checklist. The Registrar noted the scheme is voluntary and legal representatives had not objected to requests to exchange information. As any amendment to the Checklist involves other stakeholders he would seek their views. The Committee noted that a voluntary exchange of information is acceptable but any order by the court to do so is not.

Pilot Scheme for Procedural Advice for Litigants in Person

The Committee reviewed the proposal to provide pro bono advice to LIPS and expressed concerns as the Scheme, as envisaged, raised more problems than it would solve. The Administration cannot solve the unmet legal needs of the public by constantly advocating pro bono activities. The Legal Aid Scheme is inadequate and the Pilot Scheme cannot address these needs as there is a limited amount of time solicitors can provide or be expected to provide to the large number of existing pro bono schemes in place.

Representation of a Limited Company before the Court

The Committee was invited to review the provisions in RHC O.5 r6 on the right of a limited company to appear before the court. The Committee could not recall the rationale for the removal of the right of appeal from a decision refusing leave. Members agreed there is an anomaly, as currently there is no right of appeal from an ex parte application to a judicial officer. The right of appeal is an important safety valve and the Committee agreed there should always be a review mechanism of decisions made by a single judicial officer.

Charge-Out Rates

The Committee reviewed the progress of the draft report on Solicitors' Charge Out Rates. In relation to the review of the party and party rates, members agreed the rates should reflect solicitors and own client rate i.e. market rates. The Judiciary should recognise economic realities as there is a significant gap between solicitors' fees and the recovery from party and party taxation. As a matter of policy, the current system is unfair to successful litigants. As the party and party rates have not been reviewed since June 1997, the Judiciary should be invited to establish a review mechanism of the rates every two or three years.

High Court Registry

The Committee noted the Civil Registry Sub-Committee had discussed queries in relation to the following:

- Double-sided copying – the Sub-Committee confirmed papers filed in the High Court should be single-sided only. It was noted some practitioners had used waste paper for court bundles and this practice should be discouraged.
- Default Judgment – a complaint had been made on the delay in processing applications for default judgment. The Sub-Committee indicated the delay had arisen because of “sick leave taken by Registry staff”. The Committee noted this was an unsatisfactory response and agreed to query this with the Sub-Committee.
- Apostilles – the Committee noted proposed changes in procedure to obtain an apostille did not affect civil litigation practice.

Lunch with the Chief Justice

The Committee hosted an informal lunch with the Chief Justice and the Chief Judge on 18 October.

Equal Opportunities Commission (“EOC”)

The Committee met with the EOC in 2010 in relation to its proposal to establish an independent equal opportunities tribunal.

The Judiciary subsequently issued a Consultation Paper *“Review of the Adjudication of Equal Opportunities Claims”* in October. The Judiciary objected to the main proposal to establish a separate Equal Opportunities Tribunal as the number of cases is very small, approximately 10 claims per year over the last five years. An internal review will be conducted in order to improve the existing system whereby the District Court maintains an EO List with its own designated judge. The implementation of the CJR has increased the case management powers of the District Court and this should assist the administration of EOC cases. Submissions were sent to the Judiciary on 25 October.

Members of the Committee:

Nicholas D. HUNSWORTH (*Chairman*)
A. Clinton D. EVANS
Johnny C.M. FEE
D. Nigel FRANCIS
Warren P. GANESH
Joseph S.M. KWAN
Jeffrey H. LANE

Brenda F. LEE
Mark LIN
Amirali B. NASIR
Simon D. POWELL
Kenneth W.Y. WONG
Sherman C.N. YAN

Secretary: Director of Practitioners Affairs

COMPANY AND FINANCIAL LAW COMMITTEE

The Standing Committee on Policy and Resources reviewed the existing terms of reference of the Committee and decided they were outdated. A decision was made to convene a new committee with new terms of reference to reflect the reality members' practices. The Company and Financial Law Committee was disbanded in May

Members reviewed and prepared submissions on the following:-

- *Joint consultation on Property Valuations*
- *Companies Bill 2011*
- *Consultation Paper on Review of the Code on Corporate*

Members of the Committee:

Patrick C.K. WONG (*Chairman*)
Grace K.W. CHAN
CHAO Tien Yo
FONG Shuk Wai
Lewis T. LUK

Gavin P. NESBITT
NG Kay Ian
David P.R. STANNARD
Richard J. THORNHILL
YUEN Ka Fai

Secretary: Director of Practitioners Affairs

COMPANY LAW COMMITTEE

The Committee was convened in July and its members reviewed the following:-

- *Securities & Futures (Amendment) Bill 2011*
- *SFC Proposed Takeovers-related Rule Amendments*
- *Proposed Guidelines regarding Anti-Money Laundering and Counter-Terrorist Financing*

A joint meeting was held with the Investment Products and Financial Services Committee on 26 September to review the draft submissions on the *Securities & Futures (Amendment) Bill 2011*.

Members of the Committee:

Patrick C.K. WONG (*Chairman*)
Grace K.W. CHAN
Elsa S.C. CHAN
CHAO Tien Yo
Julian F. CHARLTON
CHOW Koon Ying

CHOW Stanley
Vincent P.C. KWAN
Lewis T. LUK
Psyche C.S. TAI
YUEN Ka Fai

Secretary: Director of Practitioners Affairs

COMPETITION LAW COMMITTEE

The Committee met on three occasions and conducted the rest of its business via email.

The Law Society's submissions on *Competition Bill*

The Committee reviewed the draft submissions and finalised the same for the Council's approval; the submissions provided commentary on the 176 clauses and nine Schedules in the Bill. A representative from the Committee attended the Bills Committee meeting on 20 July.

The Government acknowledged in October there were major concerns over the Bill and that it proposed to introduce significant Committee Stage Amendments ("CSAs") but only draft CSAs were circulated.

Competition Legislation on Legal Practice

The Committee also reviewed the potential impact of the proposed legislation on legal practice and The Law Society's regulatory activities. The Committee will continue to monitor the progress of the Bill and advise the Council on the impact on solicitors' practices when the CSAs have been finalised.

Members of the Committee:

Simon H. BERRY (*Chairman*)
Nicholas H.F. CHAN
David COX (*retired in October*)
Stephen R. CROSSWELL
Martin DAJANI (*joined in November*)
Angus H. FORSYTH

Larry L.K. KWOK
Simon D. POWELL
Henry J.H. WHEARE
David P.H. WONG
Kevin K.F. YAM

Secretary: Director of Practitioners Affairs

CONSTITUTIONAL AFFAIRS COMMITTEE

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

Legislative Council Ordinance – Election Petition Mechanism

The Constitutional and Mainland Affairs Bureau (CMAB) sought views on whether to amend the Legislative Council Ordinance (LCO), District Councils Ordinance and the Village Representative Election Ordinance to enable speedy determination of election petitions by instituting a leapfrog appeal mechanism to the Court of Final Appeal from a decision by the Court of First Instance. The Committee noted the Chief Executive Election Ordinance contained leapfrogging provisions. Submissions were made expressing concerns on the potential adverse impact on the CFA's workload and that case management of such petitions could be improved by the Judiciary reviewing its Practice Direction SL3.

Legislative Council – Proposals on Filling Vacancies

The CMAB announced in mid May its intention to review the policy for filling vacancies arising from the resignation of Legislative Council members following the resignation of five candidates who protested the Administration's proposals on constitutional reform. Initially, the CMAB had proposed to replace by-elections with a 'precedence list' to cover vacancies arising from resignation, death, disqualification of members, etc. pursuant to Section 15 of the LCO and Article 79 of the Basic Law. The Legislative Council (Amendment) Bill 2011 was gazetted on 3 June and subsequently considered by the Committee on 27 June. The Committee noted the constitutional

issues in the Bill included Articles 26 and 68 of the Basic Law, the International Covenant on Civil and Political Rights, and the right to vote and the right to stand for election. The Bill had significant unresolved issues.

The Committee was of the opinion the Bill was being rushed and Administration had failed to consult the public. A press release was issued by Council on 28 June noting the haste in which the Government wished to pass the Bill. The time-table since the announcement of the proposed change of policy clearly indicated the inadequate time the Administration had provided the public to digest the complicated proposals. The Law Society recommended the Bill should be withdrawn in its current form and urged the Administration to fully consultation with the public and provide adequate time to digest the proposals. Later that day, the CMAB announced it proposed to introduce Committee Stage Amendments (CSAs). The CSAs were reviewed and submissions were sent to the Legislative Council together with a press release on 30 June.

The CMAB published its Consultation Paper and the Law Society's submissions, which advocated retention of the status quo, were sent to the Administration on 21 September. The Administration indicated it would collate and review the submissions and decide the way forward in early 2012.

Congo Judgment

The Committee reviewed the Court of Final Appeal's judgment in the *Democratic Republic of the Congo v. FG Hemisphere Associate LLC* (the Congo Case). The Court, by a three to two majority, gave a provisional ruling that Hong Kong must reverse the pre-1997 law and adopt the same legal principle on state immunity as the Central People's Government, namely the doctrine of "absolute immunity". The CFA referred four questions concerning the Basic Law to the Standing Committee of the National People's Congress (NPCSC) for interpretation.

The Committee reviewed the relevant constitutional provisions and noted the following issues in favour of the adoption of 'restrictive immunity' because of concerns on the impact on commercial transactions in Hong Kong:

- There is a general trend of states moving from absolute to restrictive immunity.
- Restrictive immunity provides legal protection to private businesses in cases of commercial dispute with foreign states.
- Potential vitiation of Hong Kong's potential role in serving as a centre for international commercial dispute resolutions involving foreign states.
- Less protection from potential law suits in foreign countries because of the adoption of restrictive immunities.

Members noted that in order to enhance constitutional development and understanding of the Basic Law, the Council could write to the NPCSC and invite consideration of following in relation to its deliberations on the Congo case:

- Hold public hearings by expanding consultation
- Ensure transparency by insuring members with conflict of interest withdrawal from the interpretative process
- Public issues of the deliberative process
- Highlight the guiding principles and methodology on the interpretation of the Basic Law

Council noted the Committee's views and agreed to write to the NPCSC.

In August, the NPCSC made its determination affirming the doctrine of "absolute sovereignty". The Court of Final Appeal acknowledged the Interpretation in its final judgment dated 8 September.

Interception of Communications and Convert Surveillance Ordinance (ICSO)

The Security Bureau advised the Law Society the Administration would be conducting a comprehensive review on the Ordinance as it had identified a number of issues which would require legislative amendments.

The Committee, together with their members of the Criminal Law and Procedure Committee, conducted a review and submissions were sent to the Security Bureau in late September 2011. The Committee had previously commented on: the power of panel judges, of authorizing officers in relation to partial revocation of a prescribed authorization, the checking of intercept products by the Commissioner, and the time gap between the revocation of the prescribed authorization and the actual discontinuance of the operation. Members also noted there is often a discrepancy of four or five months before the Commissioner's Report is published – the report is sent to the Chief Executive in June and often not released until November or even December. This results in the information in the Annual Report being quite stale. This year, the Commissioner's report to the Chief Executive was dated June 2011 but was not circulated to the public until the end of November.

The Security Bureau indicated at the end of December that it is still collating views and had decided to conduct a 2nd round of consultation in relation to the Ordinance. The Committee will be reviewing the issues and noted the unlikelihood of the ICSO being amended during the remaining term of this Legislative Council.

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

Members reviewed the Bill and discussed Articles 6 and 105 of the Basic Law on the concept of "deprivation" in relation to the imposition of the new stamp duty on conveyancing transactions. On a strict constitutional level, the Bill was not unconstitutional when compared to the *Kowloon Poultry Laan Merchants Association v. Director of Agriculture Fisheries and Conservation* case. There was consensus the Bill was constitutional although there was room for improvement of the policy.

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

IP Shing Hing
Joseph C.W. LI
LING Bing
Thomas S.T. SO
Kevin K.F. YAM
Dieter L.T. YIH

Secretary: Director of Practitioners Affairs

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

The Joint Working Group met on six occasions in 2011.

Panel on Security Meeting 12 April

The Chairman of the Legco Panel on Security invited the Law Society to attend the Panel meeting reviewing the CAT screening system, current practice and legislative proposals. The Joint Profession noted the Administration had signed a two-year agreement with the Duty Lawyers Service (DLS) to extend the Pilot Scheme on CAT (Scheme) for two more years in November 2010.

It noted with regret the Security Bureau's failure to consult the Joint Profession on improving the operation of the Scheme.

The Joint Profession prepared submissions to the Panel and commented inter alia on the following matters:

- Immigration Department's Interview Protocol - this is a non statutory document. Concerns covered attendance at CAT interviews by solicitors and their team members.
- The Security Bureau/Immigration Department's selection of cases for screening, and the basis of the selection.
- Medical Examinations - these were organized by the Immigration Department and not by the claimant's lawyers

In late July, the Security Bureau wrote to the Joint Profession and confirmed advising that certain amendments would be made in relation to interviewing procedures for CAT claimants.

Survey

A survey was circulated to CAT Panel lawyers in mid-May which resulted in a 15% return rate. The Joint Working Group noted certain aspects of the Scheme would benefit from additional training. A new training session for the joint profession had been tentatively scheduled for December. Unfortunately, the Administration was reluctant to provide funding and given this lack of support the seminar was cancelled. The Joint Working Group noted the CAT Scheme is for the benefit of the Government and that it should contribute towards the cost of organizing training.

Immigration (Amendment) Bill 2011

The Bill was gazetted on 7 July.

The Joint Working Group met in August, September and November to settle submission which were sent to the Bills Committee on 18 November; representatives attended the Bills Committee meeting on 21 November.

Members of the Working Group of CAT:

Lester G. HUANG (*Chairman*)

Peter H.C. BARNES

Mark D. DALY

Secretary: Director of Practitioners Affairs

CRIMINAL LAW & PROCEDURE COMMITTEE

The Committee met monthly to review proposed legislations 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.

Comprehensive Review on the *Interception of Communications and Surveillance Ordinance (Cap 589)*

The Committee worked jointly with the Constitutional Affairs Committee to review proposed legislative changes to the *Interception of Communication and Surveillance Ordinance ("ICSO")* put forward by the Security Bureau. Joint recommendations were made to and endorsed by the Council on the responses to be made on the proposed legislative changes and The Law Society issued its submissions in September. The two Committees welcomed the Administration's proposal to strengthen the oversight functions of the Commissioner by conferring express authority on him to access and listen to any intercepted products, given this would serve as a deterrent against any malpractice or concealment of information, particularly relating to information subject to legal professional privilege.

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 LRC recommended that multiple hearsay be admissible under the Core Scheme only if “each level of hearsay” itself satisfies the Scheme’s tests for admissibility. The Committee broadly supported the LRC recommendations but objected to the admission of multiple hearsay evidence. The Committee has grave reservations as to whether multiple hearsay should be admitted in the first place and then whether admitting multiple hearsay would bring justice to a trial process. Under the proposed Core Scheme, the new court’s discretionary power to admit hearsay evidence will be subject to, inter alia, the “*Conditions of Necessity*” being satisfied. The Committee also expressed concern that some of the necessity criteria, for example, where the declarant is outside Hong Kong and refuses to give evidence or cannot be found, could be easily subject to abuse.

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 concern 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. Given the Administration’s request and as the issue of whether there are justifications in 2011 for removing suspected sentence from the armoury of sentencing options available to a sentencing court for “*excepted offence*” is a controversial one, the Committee obtained funding from the Standing Committee on Policy and Resources to secure a legal research report on how the concept of “*excepted offences*” should be reformed in Hong Kong.

Criminal Prosecutions of Victims of Human Trafficking

The Committee noted with concern the Department of Justice reported an almost nil record of human trafficking cases in Hong Kong for the two years of 2008 and 2009. This low rate of prosecution did not reflect the reality of the situation but the lack of a proper system in place in Hong Kong to identify and protect victims of human trafficking and to prosecute human traffickers. The Committee doubted whether Hong Kong’s provisions for the protection of victims of human trafficking and parallel provisions to promote the prosecution of human traffickers were in line with international standards and urged the Department of Justice to review the position.

Free Legal Advice Service

The Committee reviewed the Administration’s proposals to expand publicly funded legal advice service to the public. This included the proposal to set up a free legal advice service, similar to that under the Duty Lawyer Scheme, with volunteer lawyers giving free preliminary legal advice to unrepresented litigants. There was concern that whilst it should be the Government’s obligation to properly fund legal assistance for all areas of law where people could not afford it, the Government has tried to shift its responsibility to the profession when pro bono work by the profession should only operate as a stop gap and temporary measure. Members attended meetings of the LegCo Panel on Administration of Justice and Legal Services to raise concerns on the proposals.

LRC’s Report on the Common Law Presumption that a Boy under 14 is Incapable of Sexual Intercourse

The Committee considered and supported the LRC’s recommendation to abolish the irrebuttable presumption that a boy under 14 is incapable of sexual intercourse

Legal Visits

The Committee carried on with its comprehensive review of the requirements and procedures adopted by various law enforcement agencies (“LEA”) regarding legal visits to and communications with arrested/detained persons. Issues discussed include whether Counsel, a trainee solicitor and an authorised solicitors’ clerk should be allowed to conduct legal visits alone or be required to be accompanied by an appropriate person from the solicitors’ firm; the sort of identification documents to be produced on legal visits, etc. The Committee liaised with the Bar Association of Hong Kong and the various LEA including the Police, the Correctional Services Department, the ICAC, the Immigration Department and the Custom and Excise Department with a view to reach consensus with these organisations on the revised legal visit arrangements.

Prosecutor on Fiat – Proposal on Engagement of Lawyers of the Magistrate’s Court “B” List

The Law Society has, together with the Department of Justice and the Hong Kong Bar Association, organised a Joint Training Programme to provide appropriate training and experience to newly admitted lawyers in order to equip them with the skills in conducting prosecution work and with a view to include them on the Prosecution Division Magistrate’s Court “B” List. A Committee member acted as The Law Society’s speaker for the training course in February.

Public Consultation Paper on Pyramid Schemes Prohibition Bill

The Committee considered the Public Consultation Paper issued by the Commerce and Economic Development Bureau in December 2010 to amend the *Pyramid Selling Prohibition Ordinance, Cap 355* to combat pyramid schemes. The Bureau suggested amending the Ordinance so that persons who “induce other persons to join, with the knowledge that the benefits they may receive are entirely or substantially derived from the introduction of further new participants”, should be subject to criminal sanctions, just as those who “knowingly establish, advertise or manage” pyramid selling schemes. The Committee has reservations on the proposal to make “participants” in the scheme criminally liable. Given that as the rule of the game in pyramid schemes is to attract gullible persons to introduce newcomers this will easily catch “innocent” participants, the Committee sought clarification on what defence would be available to these “innocent” participants.

Review of Criminal Legal Aid Fees – Legal Aid in Criminal Cases (Amendment) Rules 2011

The HAB put forward the draft *Legal Aid in Criminal Cases (Amendment) Rules 2011* to amend, inter alia, Rule 21 of the *Legal Aid in Criminal Cases Rules* with a view to implementing the agreed changes to the criminal legal aid fees system. Members reviewed the Amendment Rules and had concern that references were made to fees “not exceeding” certain rates to describe fees payable to solicitor-advocates when the Committee has been seeking for fixed rather than maximum fee rates. There was also the concern on the proposal for the re-determination of fees to be left entirely in the hands of the Director of Legal Aid when the Committee has previously requested for a system of taxation of fees or at least an independent Tribunal to adjudicate on fee disputes between solicitors and the Legal Aid Department. The Committee reflected its concerns to the Criminal Procedure Rules Committee.

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

The Committee reviewed the 4th draft of the 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 other than the defendant to provide professional service to a defendant. The Committee advised the Guidance Committee that the revised draft Rule 5D was acceptable but suggested that all references to “7 days” in the rule should be changed to “14 days” for consistency purposes.

Supply of English Translation of Witness Statements to the Defence

The Committee discussed a member's concern on the policy of only providing "unrepresented defendants" in a criminal case but not those represented by pro bono lawyers with English translated witness statements as this was considered to be contrary to the policy of encouraging pro bono work by lawyers. Clarifications were sought from the Police which confirmed that different policies applied for different level of court cases. For Court of First Instance and District Court cases, the prosecution was required by law to supply the defence with English translated witness statements. However, for Magistrate Court cases, witness statements would not be translated into English; the Police would consider the request from a non-Chinese speaking defendant acting in person for English translated witness statements on a case by case basis.

The Committee also reviewed the following:

- Administrative Scheme for Sexual Conviction Record Check for Child-Related Work
- Annual Report 2010 of the Commissioner on Interception of Communications and Surveillance to the Chief Executive
- Dangerous Drugs Prosecutions – Certificates in Simple Possession
- Defendant's Right to Elect a Jury Trial
- Independence of Director of Public Prosecution
- Judgment of *Vallejos Evangeline Banao also known as Vallejos Evangeline B. v. Commissioner of Registration and Anor* HCAL 124/2010
- HK Police Force Security arrangements during the Visit of Vice-Premier Li Keqiang
- Legal Aid Cases: Retention of Trial/Appeal Bundle
- Legislation for Providing Compensation for Wrongful Convictions
- Live Television Link
- *Personal Data (Privacy) Ordinance* – Safekeeping and Disposal of Records of Interview obtained from Law Enforcement Agencies
- *Public Consultation on Stalking*

Members of the Committee:

Stephen W. S. HUNG (*Chairman*)
 BUT Sun Wai
 Bucky K. H. CHAN
 Duncan K. C. FUNG (*resigned in March*)
 Herman H. M. HUI (*resigned in March*)
 Paul M. W. LI
 Fred S. N. MA (*joined in May*)

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 May and November. Issues discussed this year include: use of electronic bundles, jury summonses, taxation of costs in criminal proceedings, provisions of vulnerable witnesses, improvement works for additional interview rooms in the cell custody area of Tuen Mun Magistracy, review of court waiting times, the need for a Practice Direction for the filing of written submissions in magistracy appeals, the need for the prosecution to have a copy of the relevant pre-sentence papers; hearing of bail applications in the High Court, etc.

Liaison Group With The Correctional Services Department (“CSD”)

The Liaison Group met in November to discuss issues such as legal visits in CSD Institutions, parking facilities for lawyers at Stanley Prison, video conference for women in Tai Lam Centre for Women, visiting facilities for women in Tai Lam; provision of English language program laptop computers for use by English speakers, etc.

Members of the Liaison Group:

Bucky K. H. CHAN
Paul M. W. LI

Kenneth H. S. NG
Anthony UPHAM

Secretary: Assistant Director of Practitioners Affairs

Liaison Group With The Police

The Liaison Group met in December to discuss issues including legal visits in Police operated areas, the policy on the supply of English translation of Witness Statements to the Defence, criteria of Police Station / Police Division of accepting report of crime or complaint, etc.

Members of the Liaison Group:

BUT Sun Wai
Fred S. N. MA

Kevin STEEL
Anthony UPHAM

Secretary: Assistant Director of Practitioners Affairs

Legal Aid Services Council Interest Groups

The Committee has representatives on the following Legal Aid Services Council Interest Groups:

- Interest Group on Scope of Legal Aid
- Interest Group on Processing, Assignment and Monitoring of Assigned-out Cases

FAMILY LAW COMMITTEE

The Family Law Committee met formally on 12 occasions during the year and agreed to recruit additional members. Three new members were co-opted in May.

Cross-Border Family Law Conference (Hong Kong and Mainland China)

The Committee organised a conference with the Shue Yan University which took place during 15 and 16 April. Eminent speakers including Ms. Elsie Leung and Mr. Feng Wei, Minister of Legal Department of Liaison Office of CPG, and HHJ Bebe Chu attended. Discussion took place on matters such as: legal issues arising from the differences between Hong Kong and Mainland Jurisdictions in divorce proceedings; jurisdiction under Part IIA Matrimonial Proceedings and Property Ordinance (Cap.192); Reciprocal Enforcement of Judgment; and Abduction of Children.

Law Reform Commission’s (LRC) Report on Child Custody and Access

The LRC published its final report on Child Custody and Access in 2005. The Committee has been engaged in correspondence with the Labour and Welfare Bureau and the Home Affairs Bureau pushing for implementation of the LRC’s recommendations for almost 7 years.

Members noted the Secretary for Justice had made observations on unacceptable delays by the various bureaux in introducing changes to legislation during his speech at the Opening of the Legal Year ceremony in January and decided to highlight the lack of action taken by the Administration to update legislation. A lunch was organised with representatives from the Social Welfare Department representatives to ascertain frontline officers' concerns over the policy on 19 July. The Committee also convened three sub-groups to review the latest research in UK, Australia and New Zealand. The Labour and Welfare Bureau finally published its Consultation Paper on proposed legislative reform "Joint Parental responsibility Model" on 28 December. The Bureau will collate views on the way forward in April 2012.

Family Court

The Committee noted the forthcoming retirement of several senior judges with extensive family court experience. After discussing the matter with the Law Society's representatives on the Judicial Officers Recommendation Commission members agreed to invite the Chief Justice to an informal lunch to exchange views. The lunch took place with Ma CJ and five Family Court Judges on 14 December. Members emphasised their concerns on the complement of Family Court judges and the desirability of appointing judges who had an empathetic approach towards family law. The Chief Justice noted the concerns and there was consensus the appointment of judges to the Family Court should be made with regard to the paramount importance of the welfare of the children.

Family Court Users' Committee (FCUC)

The Committee reviewed a variety of issues being considered by the FCUC including new forms for financial relief applications, Child Dispute Resolution (CDR), review of draft practice directions and CDR forms. New circulars were issued on family law practice and domicile.

Children's Issues Forum

The Committee noted a proposal to host a Children's Issues Forum in Hong Kong and agreed to seek the Law Society support to sponsor the event. An agreement was reached by the Standing Committee on Policy & Resources to sponsor the Forum jointly with the Hong Kong Family Law Association, Chinese University and Hong Kong University; it is scheduled to take place at the end of August 2012 and will include topics such as parental responsibility, child dispute resolution and other public law topics.

The Committee also reviewed the following:-

- Code of Practice on Reproductive Technology and Embryo Research - Comments were sent to the Council on Human Reproduction and Technology in April
- Domestic Violence – a letter was sent to the LWB volunteering members' services to provide assistance to educate frontline workers. The Committee's representatives also met with the representatives from the HKCSS and the Rape Crises Centre
- Guardianship of Minor (Amendment) Bill 2011 – representatives met with the Department of Justice and submissions were sent on the Bill.
- PD15.10

Members of the Committee:

KONG Yuen Hoong (*Chairman*)
Winnie W.Y. CHOW
Dennis C.K. HO
Anthony J. HUNG
Barbara A. HUNG
Jennifer W.C. IP (*co-opted in May*)
LAM Tze Yan

LEUNG Shek Lim
Jonathan C.Y. MOK
Catherine K.G. POR
Anne SCULLY-HILL (*co-opted in May*)
Annie WILLIAMS (*co-opted in May*)
Susan WONG

Secretary: Director of Practitioners Affairs

Working Group on Children's Welfare

Dennis C.K. HO

Family Court Users' Committee

KONG Yuen Hoong
Dennis C.K. HO

Working Group on Mediation

Catherine K.G. POR

Working Group on CDR

Dennis C.K. HO

HIGHER RIGHTS OF AUDIENCE ("HRA") COMMITTEE

The Committee met on three occasions and conducted the rest of its work via email.

The new Committee was convened in February and its terms of reference are to advise Council on the implementation of HRA for solicitors and the monitoring of HRA thereafter..

Code of Conduct for Solicitor-Advocate

Under Section 39R of the Legal Practitioners Ordinance the Council, in consultation with the Chief Justice and the Bar Council, may issue a Code of Conduct for the purposes of setting out standard of professional conduct to be observed by solicitor-advocates. A draft Code, based on the Code promulgated by the Solicitors' Regulation Authority of England and Wales, has been prepared and circulated to the relevant stakeholders. It is anticipated the Council will promulgate the Code in early 2012.

Higher Rights Assessment Board (HRAB)

The HRAB invited Council to comment on the latest version of the draft rules to implement HRA and the draft Statement of Professional Standards in very late December. The Department of Justice advised the Society that it has tentative plans to introduce the rules in early May 2012.

Members of the Committee:

Peter H. C. BARNES (*Chairman*)
Bonita B.Y. CHAN
Colin B. COHEN
Paul W.C. KWONG
J.C. Nicholas MILLAR

Firoz NASIR (*resigned in September*)
Simon D. POWELL
Mark F. REEVES
TSUI Kwok Sum
Thomas S.T. SO

Secretary: Director of Practitioners Affairs

INSOLVENCY LAW COMMITTEE

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

- *Consultation conclusions on Corporate Rescue Procedure Legislative Proposals*
- *Modernisation of Corporate Insolvency Law*
- *Rule 46(3) of the Bankruptcy Rules, Cap.6*

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

Nicholas D. HUNSWORTH
Camille JOJO
Jimmie K.S. WONG

Secretary: Director of Practitioners Affairs

INTELLECTUAL PROPERTY COMMITTEE

The Committee met on three occasions and attended two external meetings with the Intellectual Property Department ("IPD").

Copyright (Amendment) Bill 2011

The Bill was gazetted on 3 June and the Committee was invited to send representatives to attend the Bills Committee meeting on 23 July. Members prepared submissions and noted the Bill introduced a new "communication tort" and removes outdated references to "broadcasting and the internet". Concerns were expressed over the views taken by several parties on the use of material for parodies as people who wish to use the defence of parody in Hong Kong lift the original material in its entirety, rather than a small part of the original work.

Draft Code of Practice

Submissions were sent on the draft Code of Practice on 31 August.

Recommended Fee Schedule

The Committee reviewed and revised the circulars which provide a recommended fee for Trade Marks, Patents and Registered Designs in July.

Consultation Paper on Patent System

The Committee's representatives attended the "Forum on Future Development of Patent System in Hong Kong" on 28 February. In early October, the Commerce and Economic Development Bureau and IPD published its Consultation Paper "Review of the Patent System in Hong Kong". Members reviewed the Consultation Paper in October and agreed to prepare an in-depth submission on issues such as original grant patent, short term patent system and regulation of patent agency services in Hong Kong.

Bi-annual Meeting with Intellectual Property Department (IPD)

The Committee met with the IPD on 18 February and 14 September to discuss a diverse range of topics such as:-

- *New Copyright Tribunal rules*
- *E-commerce*
- *Mainland/Hong Kong co-operation*
- *IP trading in Hong Kong*

The Committee raised the following items: registered designs, amendment of applying for goods or services during deficiency checking stage for some trade mark applications, and the examination of website references by the Trade Marks Registry.

Co-option of New Members

A recruitment exercise took place and a new member was co-opted in August.

Members also attended the following:-

- External events
- Business Intellectual Property Asia Forum on 2 December

Members of the Committee:

A. Clinton D. EVANS (*Chairman*)
Steven J. BIRT
Ella S.K. CHEONG
Yvonne CHUA
KWONG Chi Keung
Chloe Y.F. LEE

Anita P.F. LEUNG
Rebecca M.C. LO
Annie TSOI (*joined in August*)
Henry J.H. WHEARE
Kenny K.S. WONG

Secretary: Director of Practitioners Affairs

INVESTMENT PRODUCTS AND FINANCIAL SERVICES COMMITTEE

The Committee was convened in July 2011 and its members reviewed the following:-

- Securities & Futures (Amendment) Bill 2011
- SFC Proposes Takeovers-related Rule Amendments
- Proposed Guidelines regarding Anti-Money Laundering and Counter-Terrorist Financing
- SFC/HKMA Joint Consultation Paper on OTC Derivates
- SFC Report/Consultation on Securities and Futures (Short Position Reporting) Rules

A joint meeting was held with the Company Law Committee on 26 September 2011 to review the draft submissions on the Securities & Futures (Amendment) Bill 2011.

Members of the Committee:

Simon H. BERRY (*Chairman*)
Alan J. EWINS
FONG Shuk Wai
Stephen M. FLETCHER
Susan J. GORDON
Peter M. LAKE

Jason C.Y. LEE
Alan H LINNING
Gavin P. NESBITT
OR Sin Man
Charlotte J.G. ROBINS
Adamas K.S. WONG

Secretary: Director of Practitioners Affairs

LAND USE PLANNING AND ENVIRONMENTAL LAW COMMITTEE

The Committee met on three occasions.

Panel on Environmental Affairs

The Panel sought views on the judgment in the judicial review application of *Chu Yee Wah v Director of Environmental Protection* concerning approval of the Hong Kong/Zhuhai/Macau bridge project. Submissions were drafted on the Department of Environmental Protection's practices in relation to baseline studies.

Panel on Development – Control of Unauthorised Building Works (UBWs)

The Panel reviewed the control of UBWs under the *Building Ordinance*. Members reviewed the lengthy Legislative Council Brief prepared by the Development Bureau in June as the matter of UBWs had received heavy media attention because of reported breaches by several high profile members of the community. There was agreement the system required an overhaul as the government must provide more information on its policy in order to enhance transparency; there should be a consistent application of enforcement notices by all government bureaux/departments; a clear definition of "building works"; a review and an expansion of the Minor Works Scheme; and any UBWs which posed a danger to the public must be enforced.

Minor Works Scheme under the *Building Ordinance*

The Scheme has been in operation for approximately a year and members noted the relationship between minor works and exempted works remain unclear. The Committee was of the view the Building Department had agreed to conduct a review of the Scheme before any recommendation would be made on any extension. It is clear the problem of UBWs and the scope of the minor works scheme should be comprehensively reviewed by the Administration.

URA's Demand-led Redevelopment Project Pilot Scheme (Pilot Scheme)

The Committee agreed to monitor the discussion of the URAs Pilot Scheme. It was noted the application requirement required too many conditions such as: references to a common staircase where two lots was considered to be unnecessarily complicated; a requirement for the redevelopment area to be generally larger than 400 square meter. It was noted the Compulsory Acquisition Scheme Ownership requirement is 80% but under this Pilot Scheme the requirement is significantly less at only 67% before people can be forced out of their homes. The Scheme should be a genuine policy to help owners to re-develop their properties and should not be open to abuse.

Buildings Legislation (Amendment) Bill 2011

The Bill was gazetted in late November and members will review and prepare comments to the Bills Committee.

Members of the Committee:

John DAVISON (*Chairman*)
Michael T. M. HUI
IP Shing Hing

MA Ho Fai
Andrew W.Y. NG
Christopher TUNG

Secretary: Director of Practitioners Affairs

LEGAL AID COMMITTEE

The Committee reviewed legal aid related issues and members attended a total of four meetings of the LegCo Panel on Administration of Justice and Legal Services to make representations on proposals regarding reform of the legal aid system.

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

The Committee continued to review the Administration's proposed improvement measures to relax the criteria for assessing the financial eligibility of legal-aid applicants in the five-yearly review. Although the Administration's proposals are not the most ideal proposals, they are at least a step in the right direction to widen the net of legal aid to enable more people to be financially eligible. On this basis, the Committee reiterated its support to the proposals including the increase in the financial eligibility limits for Ordinary Legal Aid Scheme from HK\$175,800 to HK\$260,000 and that for the Supplementary Legal Aid Scheme ("SLAS") from HK\$488,400 to HK\$1.3 million. As the discussion process of the five-yearly review had dragged on for a long time, the Committee urged the Administration to commence the legislative process to implement the proposals as soon as possible. A Committee member attended the LegCo Panel on Administration of Justice and Legal Services meeting in February to make representations.

Expansion of the SLAS

The Administration revisited its last year decision not to expand the scope of SLAS following objections raised by The Law Society and other stakeholders. The Committee reviewed the recommendations of the Legal Aid Services Council's Interest Group on Scope of Legal Aid and the revised proposals put forward by the Administration. In gist, the Administration recommended for SLAS to be extended by way of establishing a parallel scheme with a wider scope of coverage (SLAS II) to be administered separately from the existing scheme (SLAS I); for the types of cases to be covered by SLAS II to be introduced on an incremental basis; and for the viability and effectiveness of SLAS II to be reviewed and fine-tuned periodically. The Administration also recommended that the entire sum of HK\$100 million earmarked by the Administration for injection into the SLAS fund be set aside for SLAS II and handed over to the Director of Legal Aid as soon as possible. Members appreciated the need to be prudent with the spending of public fund. The Committee rendered support to the Administration's idea to expand the scope of SLAS on an "incremental" basis and submitted that for public interest, SLAS II should be put in place first and subject to further review at a later stage. The Committee also welcomed the proposed injection of funds to SLAS II. Committee members attended the LegCo Panel on Administration of Justice and Legal Services meetings in January, March and December to make representations.

Members of the Committee also serve on the following Interest Groups of the Legal Aid Services Council :

- Interest Group on Scope of Legal Aid
- Interest Group on Processing, Assignment and Monitoring of Assigned-out Cases

Members of the Committee

Junius K. Y. HO (*Chairman*)
 Peter H. C. BARNES
 Patrick M. BURKE
 Sherlynn G. CHAN
 Dennis C. K. HO

Rebecca V. I. HO
 Alison C. LIU
 Amirali B. NASIR
 Kenneth H. S. NG
 Leslie K. L. YEUNG

Secretary: Assistant Director, Practitioners Affairs

Mediation Committee

The Mediation Committee met ten times during the year and spent considerable time in shaping the development of mediation policies and standards in Hong Kong by reviewing and implementing the following matters:-

Mediation Bill 2011

The Secretary for Justice's Working Group on Mediation, convened a Mediation Task Force to implement the Working Group's recommendation to prepare legislation to introduce a regulatory framework for mediation. The Committee supported the Bill in principle but noted with concern there were too many exceptions which would emasculate the confidentiality of mediation. The Committee reviewed the draft Mediation Bill and made the following comments to the Government: that leave must be sought from the Court in order to adduce mediation communication as evidence in court and disciplinary proceedings; the Government should grant the same partial immunity enjoyed by mediators appointed under the new Arbitration Ordinance, to mediators under the Mediation Ordinance; section 7 of the Legal Practitioners Ordinance should always apply in mediation otherwise it may result in unqualified persons giving legal advice and acting as solicitors when assisting parties. The Government accepted some of the comments the Committee continued to press its views at the Bills Committee for appropriate committee stage amendment to ensure public interest is adequately safeguarded.

Hong Kong Mediation Accreditation Association Limited (HKMAAL)

Following the recommendation of the Working Group's Report, the Mediation Task Force considered the establishment of HKMAAL as the single umbrella body to accredit mediators. The Committee noted the community could benefit from such a body which could raise the profile of mediation services and standard of mediators. However, due consideration must be given to the constitution, operational framework, funding and disciplinary powers of HKMAAL before incorporation. The issue of grandfathering of existing mediators should be dealt with in such a way that quality of mediators is maintained at the outset to protect consumers.

Practice Direction 15.10 on Family Mediation

The Committee reviewed the proposed amendments to the Judiciary's Practice Direction 15.10 on Family Mediation with the aim of harmonising the measures adopted in the civil proceedings under Practice Direction 31 on Mediation. Members expressed concerns over possible costs sanction against parties in matrimonial proceedings who unreasonably refuse to mediate, noting that divorcing couples may be affected by complicated psychological issues, and penalizing divorcing couples on costs will deter parties from participating in a process which would be in the best interest of the child.; it was also noted judges are reluctant to order costs against a losing party in custody cases. The proposed amendment also seeks to provide a 'shield' whereby parties may avoid an adverse costs order if the mediator considers the case not suitable for mediation. The Committee took the view mediators are not in a position to judge whether a case is suitable for mediation as they have the least information on the parties when the decision on whether to mediate is taken.

Hong Kong Mediation Code

The Committee reviewed the Code and considered the confidentiality provision is inadequate as mediators should be required to ensure their staff and non-parties who attend the mediation to sign a separate confidentiality agreement. Council endorsed the Committee's proposed amendments and repealed the existing Ethical Code for Mediators to consolidate the regulatory regime for solicitor-mediators in a single document.

Guidelines for Solicitors' Mediation Practice

A circular was issued on 1 August reminding members to ensure all mediation related fees be placed in the firm's account and an Agreement to Mediate must be duly executed prior to mediation. The Committee, in consultation with the Guide Working Party, clarified that in an interest-based facilitative mediation there will not be solicitor-client relationship between the solicitor-mediator and the parties to the dispute so privilege does not apply to their communication.

- Accreditation Standards for Accrediting Stage 1 General Mediation Training Course
- Mediation Practice Support Scheme
- Mediation Services – provision of Chinese translations of all Law Society mediation documents

Membership

Lester G. HUANG (*Chairman*)
John R. BUDGE (*joined in November 2011*)
Patrick M. BURKE
Ambrose S. K. LAM
Maureen E. MUELLER
Amirali B. NASIR
Melissa K. Pang

Catherine K. G. POR
Jody K. Y. SIN
Sylvia W.Y. SIU
Cecilia K. W. WONG
Norris H. C. YANG
Helena S. Y. YUEN

Secretary: Joyce Wong
Mediation Co-Ordinator: Oscar Tan

PERSONAL INJURIES COMMITTEE (“PI”)

The Committee met on five occasions throughout the year.

Interpreters

The Committee discussed concerns raised by a member over the engagement of competent interpreters for reasonable fees. It was noted there is no central system in place to accredit interpreters for court work. The Judiciary and Legal Aid Department have their own internal lists but these are not circulated to practitioners. Many stakeholders need the services of interpreters and in many cases have only a very small pool of candidates to choose from. A member was nominated to sit on the Working Party convened by the Standing Committee on Practitioners Affairs.

Practice Direction 18.1

The Committee continued its review of the practice direction and the impact on practitioners of decisions by the court.

Listing of EC Cases

The Committee noted the EC Registry had changed its practice of issuing appointment lists on an hourly basis compared to half hourly list. This was detrimental to practitioners who often had to spend a significant amount of waiting time in the Registry before their cases were called. It was agreed that enquiries should be made by the Sub-Committee for Civil Registry Court Users.

Sub-Committee on Mental Health Ordinance (“MHO”)

The Sub-Committee reviewed the practice of requisitions on accounts and also discussed the Judiciary’s investment strategy in relation to the *Suitors’ Fund*.

Official Solicitor

A recommendation was made for an invitation to be extended to the Official Solicitor to provide a lecture on the role of the Official Solicitor under the MHO.

Mediation

The Judiciary invited the Committee to comment on a draft practice direction on PI Mediations and observations were made on: timing, attendees, stay of proceedings, appointment of mediators and mediation venue.

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

Nancy B.Y. LEUNG
Vitus W.H. LEUNG
J.C. Nicholas MILLAR
Amirali B. NASIR
Szwina S.K. PANG
Tommy K.M. WONG

Secretary: Director of Practitioners Affairs

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

PROBATE COMMITTEE

The Probate Committee continued to review issues and attend 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*. A total of 300 applications were received and processed this year. A member of the Probate Committee resigned in March and the Committee co-opted 3 additional members in May to assist in its work.

Delay in Processing Applications for Grant

The Committee noted the delay in the probate application process and raised concern with the Probate Registry at the Joint Standing Committee on Probate Registry meeting.

Draft Practice Directions on Probate and Administration of Estate Proceedings (Other than Applications under the Non-Contentious Probate Rules (Cap. 10A))

The Committee reviewed the draft Practice Directions prepared by the Judiciary, which set out, inter alia, the procedures for the revocation of a grant, the rectification of a Will, the removal or substitution of an executor/administrator and matters relating to the taking of accounts. Members welcomed the introduction of the Practice Directions to clarify the relevant procedures in Probate and Administration of Estate Proceedings

Principle 8.01 Commentary 13 of the Hong Kong Solicitors' Guide to Professional Conduct, Vol. 1 ("the Guide") – Will Inquiry Notice

The Committee discussed with concern the discrepancy in wordings between the Law Society's Will Enquiry Notice and Commentary 13 of Principle 8.01 ("Commentary 13") of the Guide. Whilst the Will Enquiry Notice requires a solicitors' firm to contact the enquiring firm within 14 days of the publication of the Notice if a will, codicil or other testamentary dispositions made by the named deceased person in the enquiry notice was "executed on instructions given to" or "is in the safe keeping" of the firm, Commentary 13 only states that disclosure by a solicitor "who holds a will" of the fact and the date of execution of the will in response to the Will Inquiry Notice will not constitute a breach of the duty of confidentiality by the solicitor to the client. The Committee highlighted the discrepancy to the Standing Committee on Standards and Development with the recommendation that the wordings in Commentary 13 should be reviewed.

***Re Chung Ching Wan* HCEA 118/2009**

The Committee reviewed the Judgment in *Re Chung Ching Wan* HCEA 118/2009 regarding the procedural steps an applicant should comply with in an appeal against the decision of Master under Rule 62(1) of the *Non-Contentious Probate Rules (Cap. 10A)*. A circular was issued in April to draw members' attention to the Judgment.

Reform to the Pigeon Box System

The Committee discussed the concern of the Judiciary regarding the loss of probate files under the Pigeon Box System. Members generally believed the Pigeon Box System has worked well and did not think it should be scrapped. They had, however, the concern that the Pigeon Box area was an open area easily accessible to the public. Several proposals were put forward to the Judiciary for consideration, including that: (1) there should be

restricted access to the Pigeon Box area; (2) CCTV camera should be installed; and (3) member firms should be required to supply and be responsible for their own u-type locks and keys.

Reverse Mortgage – Role of Solicitors as Counsellors

The Committee reviewed the Hong Kong Mortgage Corporation Limited's proposed Reverse Mortgage Pilot Scheme and the proposal for solicitors to act as counsellors to potential elderly applicants of Reverse Mortgage Loan and provided input from the probate practice perspective.

The Committee also considered:

- LRC Report on Enduring powers of attorney: personal care

JOINT STANDING COMMITTEE ON PROBATE PRACTICE

A meeting was convened in November to discuss ways to improve probate practice. Matters discussed include difficulties faced by probate practitioners in the probate application process, reform to the Pigeon Box System, use of checklist on the filing of Applications for Grant, quality of applications, special appointment hearings before probate masters, etc. To strengthen communications between the Probate Registry and the legal profession and improve the quality of probate practice, the Joint Standing Committee agreed to meet at a regular 6-month interval rather than on ad hoc basis.

Members of the Committee:

Billy W. Y. MA (*Chairman*)

Helen Y. P. CHAN

Albert C. Y. HO (*resigned in March*)

Viola HUNG (*joined in May*)

Patricia LAM

NG Kin Yuen

TAM Sau Hing

TSANG Kam Chuen (*joined in May*)

Herbert H. K. TSOI

WONG Tak Shing (*joined in May*)

Secretary: Assistant Director, Practitioners Affairs

PROPERTY COMMITTEE

The Committee reviewed issues and legislative proposals relating to conveyancing practice in regular monthly meetings, and also met with representatives of Government departments and other organisations on specific issues. Members of the Committee continued to consider and determine applications for waivers of DMC Guidelines (505 applications); and applications for deviations from forms of Agreement for Sale and Purchase approved under Rule 5C of the *Solicitors Practice Rules, Cap.159H* (35 applications). Members also served on internal Working Parties, and as The Law Society's representatives on external Committees/Working Parties on property related issues. Three members resigned in the year and the Committee co-opted a new member to assist in its work.

Buildings Energy Efficiency Ordinance

The Ordinance was gazetted in December 2010 and seeks to enhance energy efficiency in buildings by requiring building services installations in "prescribed" buildings to comply with specified energy efficiency standard requirements. The Committee noted that the Secretary for the Environment issued a commencement notice in May appointing 21 September 2012 as the operation day for Parts 2, 3, 4, 5 and 6 of the Ordinance and arranged for a circular to be issued to draw this to members' attention. Opportunity was only taken by the Committee to highlight in the circular to members that in response to enquiry made during the legislative process, the Lands

Department has assured in writing that it would not exercise the re-entry right under the Land Grant for any non-compliance of the new legislation.

Concerns over Banking Practice

In response to concerns expressed by the Committee over various banking practices including (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, the Hong Kong Association of Banks (“HKAB”) issued a reminder circular to highlight such concerns to the banking industry. To keep the banking practice under review, a circular was issued in January to bring this to the attention of members and invite feedbacks on the banking practices.

Consent Scheme - Revised Forms

The Committee reviewed the revised Consent Scheme standard forms of Agreement for Sale and Purchase and Statutory Declarations and convened a special Working Party to consider the extent that such changes should be adopted in the corresponding Non-Consent Scheme forms.

Consent Scheme – Proposed Rejection of Applications for Approval of Deed of Mutual Covenants (“DMC”)

The Lands Department consulted the Committee on a proposal to reject applications for DMC approval if no reply or no substantial reply was forthcoming from conveyancing practitioners to requisitions raised within 2 months. Members noted that complex cases or difficulty in obtaining clients’ instructions could be possible reasons why the handling solicitor could not promptly provide a substantive reply to requisitions raised. The Committee objected to the proposal as it would not be appropriate for the Lands Department to dismiss applications without having considered the circumstances of each individual case.

DMC Guidelines – Revised Waiver Application Form

The Committee reviewed and revised the DMC Guidelines waiver application form; the revised form was published in a circular in January.

Government Policy on Breaches of Land Grant Terms

The Committee engaged in correspondence with the Administration over the recent years on the lack of a clear Government’s enforcement policy for breaches of Land Grant terms. This has resulted in the Lands Department’s clarification of its enforcement policy regarding certain technical breaches of Land Grant terms. A circular was issued in February to make the Lands Department’s enforcement policy known to members and the Committee continued to liaise with the Administration on the outstanding concerns.

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*.

Proposed Legislation to Regulate the Sale of First-Hand Residential Properties

In response to calls to step up the regulation of the existing arrangements by way of legislation to ensure better consumer protection, the Government convened a Steering Committee to study the proposal to regulate the sale of first hand residential properties by legislation. Having considered the recommendations of the Steering Committee upon completion of the study, the Transport and Housing Bureau issued a Consultation Paper in

November to put forward draft provisions in the form of proposed legislation for consultation. The Committee attended to reports by the Society's representative on the Steering Committee's discussions and reviewed the Consultation Paper. Committee members had a joint meeting with the Administrations representatives in December to discuss the proposals and will submit views in early 2012.

Reverse Mortgage – Role of Solicitors as Counsellors

The Committee reviewed the Hong Kong Mortgage Corporation Limited's proposed Reverse Mortgage Pilot Scheme and the proposal for solicitors to act as counsellors to potential elderly applicants of Reverse Mortgage Loan and provided input from the conveyancing practice perspective. Members took the view that the role of the Reverse Mortgage Counsellors should be clearly defined and limited to ensuring that the elderly borrowers would understand the features and implications of taking out a reverse mortgage loan.

Rule 5C of the Solicitors' Practice Rules - Approved Forms ("Rule 5C forms")

Following the Lands Department's revision of the Consent Scheme form of Sale and Purchase Agreement to revise the definition of "Saleable Area" and introduce new definitions of "Measurements" and "Other Areas", the Committee has earlier submitted proposed amendments to the mandatory clauses in the Rule 5C forms to the Chief Justice for his in principle approval. Members reviewed and responded to the comments and queries made by the Chief Justice on the proposed amendments to the Rule 5C forms and a circular was issued in August to publish the revised Rule 5C forms for adoption by the profession.

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

The Financial Secretary announced a proposal to introduce, on top of the ad valorem stamp duty, a Special Stamp Duty ("SSD") on certain transactions in residential properties on 19 November 2010 and the intention to give "retrospective effect" to the new legislation. As the SSD was intended to generally affect resale transactions of residential "acquired" on or after 20 November 2010 (i.e. the day immediately following the date the Government's announcement of policy), the Committee sought clarifications from the Inland Revenue Department before the gazettal of the Bill on various aspects of the SSD policy, including the meanings of the important concepts of "acquired", "disposed of" and "date of acquisition" in the proposed legislation. The Bill to implement the SSD proposal was gazetted in December 2010. Given the important implications of the Bill on conveyancing practice, a circular was issued in January to invite comments from the general membership. The Committee met eight times over the year to discuss the proposed legislation including four meetings with the Administration's representatives and Committee members attended three Bills Committee meetings to make representations. A total of five submissions were made on the Bill. The Bill was passed into law in June and to familiarise members with the new stamping procedures, the Committee invited representatives from the Stamp Duty Office to conduct two seminars in July to explain the new SSD requirements and procedures to members.

The Committee also considered:

- subsidiary legislations for implementation of the Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme under the *Building Energy Efficiency Ordinance - Building Energy Efficiency (Fees) Regulation & Building Energy Efficiency (Registered Energy Assessors) Regulation*
- *Building Legislation (Amendment) Bill 2011*
- Lands Department's August 2010 Progress Report on Determination of Land Boundaries

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

Doreen Y. F. KONG

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

Angela W. Y. LEE (*resigned in December*)

Vincent W. S. LIANG

Amanda L. Y. LIU

Billy W. Y. MA

MA Ho Fai

Steven M. W. SHUM

Ellen TSAO (*resigned in October*)

Raymond M. W. Wong (*joined in November*)

David P. H. WONG

Terry P. L. YEUNG

Secretary: Assistant Director, Practitioners Affairs

WORKING PARTY ON LAND TITLES ORDINANCE (“LTO”)

The LTO was enacted in July 2004 but subject to the Administration’s undertakings to, inter alia, conduct a review of the Ordinance before its commencement and to work with The Law Society to address any subsisting points of concern and issues that might emerge on further consideration before its implementation. The 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 overwhelming concerns expressed by The Law Society, the Government agreed not to proceed with its previously proposed “*Midway-house Conversion*” mechanism. Instead, to deal with the problem of indeterminate ownership in the existing system, an initial framework of a proposed “*Two-Stage Conversion Mechanism*” was put forward by the Land Registry for consultation in May. Under the revised proposal, the Land Registrar will have the power to withhold conversion of problematic land registers to the new system by registering a Land Registrar’s Caution Against Full Conversion. Additionally, any registered owner who does not want the title of his property being fully converted to registered land may also register an opt-out caution against his own property. The Working Party reviewed and sought clarifications on certain aspects of the latest Government’s preliminary proposals and lent its in principle support to the proposals subject to clarifications of the issues it has raised and further deliberations within The Law Society of the detailed proposed system.

- **Rectification and Indemnity Arrangements**

The Government carried out a consultation exercise in 2009 proposing to introduce “*deferred indefeasibility*” as an exception to the “*Mandatory Rectification Rule*” (“*MR Rule*”) under the LTO. The MR Rule is the carrying over of the *nemo dat* principle to the new system. The Working Party’s position has always been that “*indefeasibility of title*” is the cornerstone of any registered title system and 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. In view of the Working Party’s objection, the Administration proposed to amend the LTO so that after full conversion

of title, the MR rule would no longer apply. Subject to Section 82 of the LTO, purchasers in possession for valuable consideration will be entitled to immediate indefeasibility and indemnity with cap will be payable to former owner who cannot restore title in respect of fraud which occurred after primary conversion. The Working Party supported the latest preliminary proposals in principle subject to consideration of the detailed arrangements.

- **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: Section 37(3) of the LTO and the definition of “charge” in Section 2 in relation to Section 37 of LTO; whether Section 12A of the *Conveyancing and Property Ordinance*, Cap. 219 should be expanded to allow the court to order removal of a charge registered under the LTO in the circumstances mentioned in Section 41 of the LTO; determination of land boundary, etc.

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**

Members of the Working Party

Andy O. T. NGAN (*Chairman*)
 Peter P. AHERNE
 E. John DAVISON
 Emily Y. M. LAM
 Ambrose S.K. LAM (*joined in June*)

Alexander H. S. LEUNG
 Vincent W. S. LIANG
 Anthony H. Y. SHIN
 Judith SIHOMBING
 Paul K. H. YU (*resigned in May*)

Secretary: Assistant Director, Practitioners Affairs

WORKING PARTY ON REVISED DMC GUIDELINES

The Lands Department revised the Consent Scheme DMC Guidelines for DMC in June to bring the Guidelines in line with the changes introduced by the *Building Management (Amendment) Ordinance 2007*. The Working Party was reconvened to consider the revisions made in the Consent Scheme DMC Guidelines and the extent that the revisions should be adopted in The Law Society’s DMC Guidelines.

Members of the Working Party

LEUNG Siu Hon (*Chairman*)
 Patrick K. H. LAM
 MA Ho Fai

David P. H. WONG
 Terry P. L. YEUNG

Secretary: Assistant Director, Practitioners Affairs

RETIREMENT SCHEMES COMMITTEE

The Committee reviewed and made comments on the following:-

- Revised MPF Guidelines on:-
 - *Guidelines on enrolment and contribution Arrangements for Relevant Employees Other than Casual Employees (Guidelines IV.8)*
 - *Guidelines on Contribution Arrangement of a Self-employed Person (Guidelines IV.17)*
 - *Guidelines on Contribution Arrangement of a Self-employed Person who sustains a Loss (Guidelines IV.18)*
 - *Guidelines on Minimum and Maximum Levels of Relevant Income of a Self-employed Person (Guidelines IV.19)*
 - *Guidelines on Central Securities Depositories (Guidelines I.7)*
 - *Guidelines on approved Exchanges (Guidelines III.4)*
 - *Guidelines on Equities and Other Securities (Guidelines III.2)*
- *Mandatory Provident Fund Schemes (Amendment) Bill 2011*

Members of the Committee:

David G. ADAMS (*Chairman*)
Cynthia W.S. CHUNG
Christine M. KOO
Martin C.V.M. LISTER

Sophia W.Y. MAN
TAM Chi Wai
Ines C.Y. Wei
Judy YANG

Secretary: Director of Practitioners Affairs

REVENUE LAW COMMITTEE

The Committee conducted its business by email circulations during the year. Representatives also attended meetings of the Joint Liaison Committee on Taxation throughout the year. Four new members were co-opted to the Committee in July.

The Committee discussed the following matters:-

- *Inland Revenue (Amendment)(No.2) Bill*
- *Consultation Paper on Charities*

Members of the Committee:

William A. THOMSON (*Chairman*)
James J. BERTRAM
Sally S.W. IP (*alternate member*)
CHAN Chak Ming (*joined in July*)
Vincent P.C. KWAN

Archie W. PARNELL (*joined in July*)
Simon J.G. RAE
Steven R. SIEKER (*joined in July*)
Jacqueline Y.M. SHEK (*alternate member*)(*joined in July*)

Secretary: Director of Practitioners Affairs

REVERSE MORTGAGE COMMITTEE

The Hong Kong Mortgage Corporation Limited (“HKMC”) approached The Law Society in January on their proposed Reverse Mortgage (“RM”) Pilot Scheme and on the proposal for solicitors to act as Counsellors for potential elderly borrowers in the “mandatory” pre-loan counselling process under the Scheme. The Council convened the Committee in March to oversee the RM Counselling project, review in detail the draft documentations and make recommendations to the Council on responses to the proposals made by the HKMC. Given the intention of the HKMC to launch the RM programme in July, the Committee worked under a tight time schedule meeting frequently and working closely with representatives of the HKMC to review detailed arrangements of the counselling scheme and proposed documentations. Issues discussed include whether The Law Society should endorse members’ participation in the RM Scheme as Counsellors; objectives of counselling in the scheme and the exact role and liability of Counsellors; the role of The Law Society in the Counselling Scheme; proposed eligibility requirements of solicitor-counsellors; who should attend the counselling session; etc. The RM Programme was officially launched on 15 July and to prepare for that, joint training courses were conducted with HKMC in June and August to qualify Counsellors for the RM Programme. The Committee will continue to monitor the RM Counselling project.

Members of the Committee:

Billy W. Y. MA (*Chairman*)
Heidi K.P. CHU
Junius K. Y. HO

Joseph C. W. LI
Emily Y. M. LAM
Steven M. W. SHUM

Secretary: Deputy Secretary General

SECURITIES LAW COMMITTEE

The Standing Committee on Policy and Resources reviewed the existing terms of reference of the Committee and decided they were outdated. A decision was made to convene a new committee with new terms of reference to reflect the reality members’ practices. The Securities Law Committee was disbanded in May. Members reviewed and prepared submissions on the following:-

- *Joint Consultation on Property Valuations*
- *SFC Consultation Paper Securities and Futures (Financial Resources) Rules*

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

Angelina P.L. LEE
Timothy LOH
Gavin P. NESBITT
David P.R. STANNARD
Dominic W.L. TSUN
Dieter L.T. YIH

Secretary: Director of Practitioners Affairs

HONG KONG SOLICITORS INDEMNITY FUND LIMITED

Hong Kong Solicitors Indemnity Fund Limited ("Company") was established by the Law Society and empowered by the *Solicitors (Professional Indemnity) Rules ("the Rules") Cap.159M* to manage and administer the Professional Indemnity Scheme ("the Scheme") and the Solicitors Indemnity Fund ("the Fund") subject to direction in certain areas by the Council.

The Company held a total of seven Board meetings during the year and an Annual General Meeting.

The Company considered a number of matters including:

- Issues in relation to the conduct of claims
- Contribution reduction
- The performance of the Scheme's Broker and Manager
- The structure and performance of the Scheme's investments and selection of global equity managers
- Proposed amendments to the Rules
- The monthly management accounts and the audited accounts of the Fund and the Company
- Tender of auditors
- 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
- 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.
- PIS website
- Enquiries relating to the Scheme

A total of 172 notifications of claims were received by the Claims Manager, ESSAR Insurance Services Ltd. ("ESSAR") during the 2010/2011 indemnity year, i.e. from 1 October 2010 to 30 September 2011 and the grace period from 1 October 2011 to 29 November 2011. As at 30 September 2011, 11 of the notifications resulted in proceedings, 2 were closed without payment, 1 was settled with payment and 159 remained as notifications.

The number of claims for the last 25 indemnity years and the number of members holding practising certificates as at 30 September of each of those years are as follows:-

Indemnity Year	Percentage Number of Claims*	Increase/Decrease from previous year⁺	No of members
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
2010/2011	172	24%	7,041

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

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

Claims notified in the 2010/2011 indemnity year were categorized as follows:-

Company/Commercial	18
Conveyancing	37
Landlord & tenant	1
Litigation	67
Miscellaneous	27
Patents and Trademarks	19
Probate	3
Total	172

As at 30 September 2011, the total liability of the Scheme for the 2010/2011 indemnity year, calculated on the basis of claims paid and claims reserved, was HK\$13,465,001 of which HK\$12,599,761 consisted of claims paid (including costs) and HK\$865,240 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\$1,625,836,994 and the amount reserved was HK\$154,129,021. The total claims paid and reserved was HK\$1,779,966,015.

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 2011 will be published in the Scheme's Annual Report for the 2010/2011 indemnity year.

Directors of the Company:

Peter R. GRIFFITHS (<i>Chairman</i>)	Amirali B. NASIR
Denis G. BROCK (<i>appointed in November</i>)	Ludwig S.W. NG
Albert B.K. DAN	NG Wai Yan
Brian W. GILCHRIST	Kevin C.K. SHUM
Christopher G. HOWSE	Richard N. TANNER
Peter C.L. LO	WONG Kwai Huen (<i>resigned in November</i>)
Patrick R. MOSS	Norris H.C. YANG

Company Secretary: ESSAR

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 five meetings to discuss both new and ongoing claims.

Members of the Committee:

Brian W. GILCHRIST (<i>Chairman</i>)	Tony K.W. CHOW
Colin B. COHEN (<i>Vice-Chairman</i>)	Simon P. CLARKE
Charles W. ALLEN	George D. LAMPLOUGH
Keith M. BRANDT	Jeffrey H. LANE
Richard H.C. CHALK	Ronald W.T. TONG

Secretary: ESSAR

PIS INVESTMENT SUBCOMMITTEE

The PIS Investment Subcommittee held seven meetings.

In addition to the four quarterly meetings where the Fund's investment managers would report to the Subcommittee on their performance and provide their outlook on market trends, three additional meetings were held to conduct a review of the portfolio structure and appoint two new global equity managers.

Mercer Investment Consulting Limited was engaged to assist in the selection of global equity managers and to provide on-going monitoring services. The current investment managers of the Fund are as follows:

- Amundi Hong Kong Limited ("Amundi")
- AllianceBernstein Hong Kong Ltd. ("AllianceBernstein")
- MFS Investment Management ("MFS")
- Grantham Mayo van Otterloo ("GMO")

The Fund adopts a conservative investment strategy where the investments are predominantly placed in fixed income securities. The investment objectives are:

- (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 net returns on the portfolios managed by AllianceBernstein and Amundi for the 12 month period ended 31 December 2010 were 8.56% and 7.08% respectively. The net returns for the 12 month period ended 31 December 2011 were -3.44% and -2.11% respectively.

The equity portion (approximately 30%) of AllianceBernstein's portfolio was re-allocated to MFS and GMO in December 2011. In view of the short investment period, the net returns of MFS and GMO will be provided in the Annual Report next year.

Members of the Subcommittee:

Peter C.L. LO (*Chairman*)
John S. GALE
IP Shing Hing
Ludwig S.W. NG

Kevin C.K. SHUM
WONG Kwai Huen
Norris H.C. YANG

Secretary: Assistant Director, Professional Indemnity Scheme

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 one meeting during the year and considered the operation of the Rules with regard to deductibles.

Members of the Committee:

Robin S. PEARD (<i>Chairman</i>)	Peter K.H. NGAI
Kevin R. BOWERS	David G. SMYTH
Lawrence Y.H. LEE (<i>Aon Holdings Hong Kong Limited</i>)	Fiona J. STEWART
Susan P.S.K. LIANG	Gareth H. THOMAS
NG Wai Yan	Norris H.C. YANG

Secretary: Assistant Director, Professional Indemnity Scheme

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
Clyde & Co.
Deacons
Fred Kan & Co.
Herbert Smith
P.C. Woo & Co.
Reed Smith Richards Butler
Wilkinson & Grist

Members of the Selection Board:

WONG Kwai Huen (<i>Chairman</i>)	Kenneth S.Y. NG
Stephen W.S. HUNG	Thomas S.T. SO

Secretary: Assistant Director, Professional Indemnity Scheme

WORKING PARTY ON PIS GROSS FEE INCOME REPORTS AND CONTRIBUTIONS

The Working Party is responsible for considering and making recommendations to the Council on the appropriate action to be taken against those firms which failed, in breach of the Rules, to submit the application for indemnity and/or the gross fee income report on or before 15 August, or pay their annual contributions on or before 30 September in each year. The Working Party is also responsible for approving the applications for an extension of time to submit the application for indemnity and/or the gross fee income report.

Members of the Working Party:

IP Shing Hing (*Chairman*)
Albert B.K. DAN

NG Wai Yan
WONG Kwai Huen

Secretary: Assistant Director, Professional Indemnity Scheme

PIS REVIEW WORKING PARTY

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

Two issues being considered by the Working Party were:

- The feasibility of a Master Policy Scheme (“MPS”) in Hong Kong. For MPS to be considered as an alternative to the current Scheme, it must at least provide comparable coverage. After consultation with the Company’s insurance consultants, Lockton Companies (Hong Kong) Limited (“Lockton”), it was noted certain features of the Scheme, such as unlimited aggregate cover, are not currently supported by commercial insurers. When coverage comparable to the current Scheme becomes available, Lockton will perform a cost comparison exercise for the Working Party’s review.
- An actuarial analysis of the present contribution formula. The findings of the analysis are as follows:
 - The current contribution formula is sufficient to cover the total claims and expenses of administering the Scheme;
 - The three rating factors currently used in the formula, namely the average number of principals, average number of assistants and gross fee income are all positively correlated with the net incurred costs and the number of reported claims;
 - Any additional rating factors to be introduced to the formula will need to be obtained from members without causing an excessive burden and be verifiable. The Rules will also need to be amended to authorise the collection of such data;
 - As with any formula structure, cross subsidization exists and large firms were found to contribute more than the cost attributable to them. Small firms contributed less than or equal to their share of the cost while medium size firms showed mixed results.

The Working Party will continue to monitor the progress of the costs comparison exercise.

Members of the Working Party:

Peter C.L. LO (*Chairman*)

Peter R. GRIFFITHS

Heidi K.P. CHU

Christopher G. HOWSE

Nicholas D. HUNSWORTH

Sundaramoorthy KRISHNAN

Kenneth S.Y. NG

Benny Y.B. YEUNG

Secretary: Assistant Director, Professional Indemnity Scheme



Practitioners Affairs Department