

Standing Committee on Practitioners Affairs

The Standing Committee oversees the work of 20 Committees, one Sub-Committee and 10 Working Parties. It met formally on seven occasions and reviewed a diverse number of issues relating to solicitors' practices and also co-ordinating views on several issues straddling the specialist committees.

The Law Society's Standing Orders

The Standing Orders provide for a term limits of 6 years for membership to The Law Society's Standing Committees. It was noted that six members had served for six years or more and a decision was made to conduct a co-option exercise to appoint new members upon the retirement of the longer serving members in January; three new members were co-opted. The Standing Committee also invited two former members to re-join the Standing Committee.

The Law Society Circular on Old Files

The circular on Old Files was finally completed when circular 12-475 dated 25 June was published. The Practice Management Committee, under the Member Services Department, had reviewed the draft circular in January and queried the policy that old physical files must be stored in Hong Kong. The Standing Committee conducted a further review of additional issues including a review of the *Evidence Ordinance*; the draft was settled in February. In March, Council endorsed the draft circular, in particular the policy that old physical files must be stored in Hong Kong. It was noted that *The Law Society Practice Direction D7* would have to be amended to mandate the storage of the files.

Panel on Administration of Justice and Legal Services ("AJLS Panel")

- Home Affairs Bureau ("HAB") Pilot Scheme on Litigants in Person ("LIPs")

The AJLS Panel discussed this matter on 27 February. The Standing Committee expressed its reservations on implementation of the Scheme. The HAB had originally proposed a three-year Pilot Scheme to assist LIPs and sought active participation of both branches of the legal profession. The HAB proposed that lawyers provide pro bono advice on civil procedure to LIPs. Initially, the HAB proposed an honorarium of \$300 for each 3-hour session which was subsequently revised to \$1,000 for a 3-hour session; it was pointed out to the HAB the Pilot Scheme was completely impractical as it expected lawyers to participate in the Scheme during office hours. The HAB's Pilot Scheme was no substitute to bridge the gap for many LIPs who failed to meet the means test to qualify for legal aid.

- Use of Chinese in Court Proceedings

The AJLS Panel discussed this matter on 26 March. The Standing Committee reviewed comments from the Civil Litigation Committee and Criminal Law and Procedure Committee and noted the linkage of use of Chinese with the increase of LIPs could not be substantiated. It was noted in criminal proceedings that 95% of all cases in the Magistracies are conducted in Cantonese. The only court which operates completely in the English language is the Court of Final Appeal ("CFA"). There was consensus that language be it English or Chinese was not a problem in the Administration of Justice. The Standing Committee's views were sent to The Law Society's Legal Education Committee which co-ordinated the submissions to the AJLS Panel.

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- Judicial Manpower Situation

The AJLS Panel discussed the Judiciary's paper entitled *Judicial Manpower Situation* and co-ordinated the Society's views having sought the views of the specialists committees. The Judiciary's paper reported a vacancy rate of 24% with 45 vacancies out of a complement of 189 appointments. The Law Society noted in its submissions the high vacancy rate was unacceptable as it had an adverse impact on the Administration of Justice. The Standing Committee recommended the Judicial Officers Recommendation Commission ("JORC") to extend recruitment to include suitably qualified senior solicitors for appointment. JORC should also consider recruitment from overseas if suitable local candidates could not be recruited to the bench. Finally, JORC was urged to review the pay and conditions of judicial officers in order to improve the attractiveness of appointment to the bench and to enhance the working environment of judicial officers.

Higher Rights of Audience ("HRA")

The Standing Committee had oversight of the implementation of the legislation to accredit solicitors for HRA. The Standing Committee conducted a review of the Frequently Ask Questions which had been prepared to assist members to navigate the new legislation. The HRAB announced in August that it would accept applications from candidates during the month of September; eventually 122 solicitors applied either by way of exemption or by assessment.

Court Dress

The Standing Committee noted the issue of "wigs" remains outstanding and had to be resolved as it could have an impact on criminal law practitioners rather than civil litigators because of the disparity in court dress before juries; solicitor advocates could be regarded as being "less qualified" than their counterpart in the proceedings because they do not wear a wig. The Law Society wrote to the Hon. Chief Justice Geoffrey Ma to express the view there should be commonality of dress for all court advocates as it's an equality of arms issue.

It was noted that the College of Law has been selected to provide training to candidates seeking accreditation via the assessment route.

Working Party on Party and Party Rates

Members noted the dissatisfaction expressed by the Working Party on Solicitors' Charge Out Rates, the Civil Litigation Committee and Personal Injuries Committee on the draft report for review of the party and party rates. A decision was made to invite the four largest accounting firms to express an interest in preparing a report for The Law Society. A small working party subsequently conducted interviews and a decision was made at the end of June to appoint KPMG to prepare a report on a review of the party and party rates. Members of the Working Party attended a briefing in December and it is anticipated the report will be published during the 1st quarter of 2013. The Law Society intends to approach the Judiciary with a request for a formal review of the party and party rates.

Legal Aid — Complaints on Touting Activities

The Legal Aid Department ("LAD") wrote to The Law Society on 20 August to complain about touting activities carried out by some law firms engaged in personal injuries work. The LAD specifically raised the unethical practice by certain law firms who engaged clients on private retainers notwithstanding the fact the victims would be eligible for legal aid from the outset; complaints were also made on the touting activities of law clerks in the Legal Aid offices. The views of the Personal Injuries and Legal Aid Committees were sought and a reply was sent to the LAD which highlighted The Law Society's policy on touting and recovery agents and confirmed disapproval of any touting activities. The LAD was invited to make formal complaints in relation to those firms suspected of touting or unethical activities. The Law Society had launched the PI Helpline in 2009 to combat recovery agents. The Standing Committee is very concerned about the continuing activities of recovery agents and will continue the discussion internally on how to tackle the problems raised by the LAD.

Standing Committee on Practitioners Affairs

Practice Direction ("PD") P

The Standing Committee had raised observations on the practicalities of PD P, in particular that practitioners providing reports on suspicious transactions to the Joint Financial Intelligence Unit ("JFIU") should not proceed, pending JFIU's reply. However, it was noted that the JFIU rarely sends any confirmation that it will investigate reports by the law firms. Hong Kong legislation fails to provide any deeming provision so that when the regulator fails to respond within a reasonable period, practitioners can proceed with the instructions. The Standing Committee considered the best solution would be to amend the existing legislation as it appears a significant percentage of notifications are not substantive; the practical problems of compliance with PD P have been raised with the Anti-Money Laundering Committee.

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

Thomas S.T. SO (<i>Chairman</i>)	7/7	IP Shing Hing	5/7
Melissa K. PANG (<i>Vice Chairman joined in August</i>)	3/3	Kenneth H.S. NG (<i>joined in February</i>)	5/7
Simon H. BERRY (<i>re-joined in April</i>)	4/4	Gavin P. NESBITT	4/7
Denis G. BROCK	6/7	Cecilia K.W. WONG	5/7
E. John DAVISON (<i>re-joined in April</i>)	2/4	Simon W.L. WONG	3/7
Rebecca V.I. HO (<i>joined in February</i>)	4/7	Eric H.Y. WOO (<i>joined in February</i>)	5/7
Stephen W.S. HUNG (<i>resigned in July</i>)	2/4		

Secretary: Director of Practitioners Affairs

Members of the Working Party on PDPO

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

Secretary: Director of Practitioners Affairs

Members of the Working Party on Interpreters

Michael J. VIDLER (<i>Chairman</i>)	Anthony M.C. LAI
Patrick M. BURKE	Anthony R. UPHAM

Secretary: Director of Practitioners Affairs (*until October*)
Assistant Director, Practitioners Affairs (II) (*since November*)

Standing Committee on Practitioners Affairs

CIVIL LITIGATION COMMITTEE

The Committee met on four occasions and conducted the rest of its business via emails.

Consultation Papers

The Committee reviewed various Consultation Papers released by the Administration, including the following:

a. *Rights of Appeal to the Court of Final Appeal*

The Judiciary proposed that all appeals in civil matters to the CFA should be subject to discretionary leave to be sought from the Court of Appeal or the Appeal Committee of the CFA. The Committee supported the legislative amendment to remove the “as of right” provision in principle but concerns were expressed as to whether, on top of the merits of the appeal, there must also be a question of great general or public importance involved.

b. *The Law Reform Commission of Hong Kong (“LRC”) Report on Class Actions*

The Committee noted the recommendations made in the LRC’s Report, in particular, the acknowledgement that funding is a major issue. The LRC recommended the introduction of class actions be undertaken initially by the Consumer Council. The Government has convened a Steering Committee to deal with implementation of the recommendations.

c. *Proposed Legislative Amendments to Authenticity of Notarial Acts and Instruments*

The consultation covered a proposal to introduce provisions to the effect that a notarial act or instrument of a notary public registered in Hong Kong may be received in evidence in civil proceedings without further proof as duly authenticated, unless the contrary is proved. The Committee supported the proposal.

d. *Consultation Paper on the Contracts (Rights of Third Parties) Bill 2013*

The Committee reviewed the Department of Justice’s (“DOJ”) consultation which proposed amendments to the doctrine of privity of contract. Members considered a comparative study on the draft bill, including relevant UK and New Zealand legislation. Submissions on the draft bill were sent to the DOJ in December noting, among other things, that certain clauses in the draft bill should be clarified, in particular the clauses on actual receipts, the assent of a third party, and the express terms authorising unilateral rescission or variation of the contract.

Members also discussed:

- Enforcement against Unauthorised Building Works in New Territories Exempted Houses.
- Judiciary’s Review of Adjudication of Equal Opportunities Claims by the District Court.
- Higher Rights of Audience (“HRA”) — the draft Code of Conduct for solicitors–advocates, accreditation and contents of training programmes.

IT Facilities in Court

The Judiciary’s Information Technology Strategy Plan was reviewed. The Committee felt implementation of the first phase should take place in the Court of First Instance rather than in the magistracies; priority should also be given to the provision of wi-fi facilities in all Court buildings as should electronic filing, electronic payment and electronic listing as early implementation would reduce costs and unnecessary visits to the court for all court users.

Standing Committee on Practitioners Affairs

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 (*until October*)
Assistant Director, Practitioners Affairs (II) (*since November*)

COMPANY LAW COMMITTEE

The Committee has a busy schedule this year and its members have reviewed and made submissions on the following:

- *HKEx Consultation on Environmental, Social and Governance Reporting Guide*
- *Companies Bill — Clause 664*
- *SFC Consultation Paper on Sponsors*
- *HKEx Consultation Paper on Disclosure of Inside Information*
- *HKEx Consultation Paper on Diversity*
- *FSTB and Companies Registry Subsidiary Legislation for Implementation of the New Companies Ordinance — Phase One Consultation*
- *New Companies Ordinance — Phase Two Consultation*

Members of the Committee:

Patrick C.K. WONG (*Chairman*)
Elsa S.C. CHAN
Grace K.W. CHAN
CHAO Tien Yo
Julia F. CHARLTON
Paul K.Y. CHOW
Stanley CHOW

Vincent P.C. KWAN
Simon S.C. LAI
Lewis T. LUK
Gavin P. NESBITT
Psyche C.S. TAI
Frank K.F. YUEN

Secretary: Director of Practitioners Affairs (*until October*)
Assistant Director, Practitioners Affairs (I) (*since November*)

Standing Committee on Practitioners Affairs

COMPETITION LAW COMMITTEE

The Committee met formally on two occasions and conducted the rest of its business via emails.

Competition Bill

The Committee reviewed the status of the Bill and in particular the Committee Stage Amendments. The Ordinance was gazetted on 22 June.

Legal Practice

The Committee continued to review the potential impact of the *Competition Bill/Ordinance* on (a) solicitors' practices; and (b) The Law Society. Papers prepared by Committee members and extracts from the *LPO* and research on competition policy on the legal profession in England and Wales were considered. It was noted The Law Society meets the definition of an "undertaking" under the *Competition Ordinance*. It is company limited by guarantee unlike many other professional organisations such as the architects, accountants and surveyors which are statutory bodies, whilst the Hong Kong Bar Association ("Bar Association") is registered under the Societies Ordinance.

The Committee noted there are certain "high risks activities" such as: recommended fees, and trainee solicitors' contracts.

Lawyers and law firms will be covered as they are clearly engaged in "economic activities".

The Committee recommended that the Hong Kong Academy of Law Limited ("Academy") should offer risk management education courses on the potential impact of the new legislation on law firms as all firms meet the definition of "undertaking" under the *Competition Ordinance*.

The next phase of implementation of the *Competition Ordinance* will be the appointment of the Competition Commission which will be responsible for the preparation of guidelines on the new Ordinance. The Committee will review and make submissions on those guidelines in due course.

Members of the Committee:

Simon H. BERRY (*Chairman*)

Nicholas H.F. CHAN

Stephen R. CROSSWELL

Martin DAJANI

Angus H. FORSYTH

Brian W. GILCHRIST (*joined in May*)

Larry L.K. KWOK

Gavin P. NESBITT (*joined in May*)

Simon D. POWELL

Henry J.H. WHEARE

David P.H. WONG

Kevin K.F. YAM

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

CONSTITUTIONAL AFFAIRS COMMITTEE

The Committee met six times during the year. Three long serving members resigned and three new members were co-opted in November.

Legislative Council (Amendment) Bill 2011

The Committee reviewed the Constitutional and Mainland Affairs Bureau's ("CMAB") Consultation Report on *Arrangements for Filling Vacancies in the Legislative Council*. It was noted the CMAB favoured a modified option whereby members of the Legislative Council ("LegCo") who resigned would be prohibited from seeking re-election for a period of six months. The Committee discussed the DOJ's Information Note "*Constitutionality of the Proposal*" which contained a large number of extracts obtained from Lord Pannick's Opinion. The Committee reflected its views to the Council which settled the submissions on the Bill; these were sent to the Bills Committee on 24 April and the Bill was subsequently gazetted on 3 June.

Consultation Paper on District Council Appointment System

The CMAB issued its Consultation Paper on its proposal on the abolition of appointed District Council seats. The Committee supported a proposal to abolish all appointed District Council seats in one term and that from 1 January 2016 all members must be returned by direct elections. The Committee also noted the current ratio of approximately one District Council Member for 17,000 residents should be maintained and that district boundaries should be reviewed on a regular basis by the Electoral Affairs Commission.

Interception of Communications and Surveillance Ordinance ("ICSO")

The Security Bureau sought comments from The Law Society on aspects of the ICSO in June 2011; The Law Society provided its submissions on 27 September 2011. A further Consultation was conducted on 30 December 2011 on the two issues namely:

- **Inspection of Covert Surveillance Products by the Commissioner**

The Committee noted the Commissioner on Interception and Surveillance does not have clear statutory authority to listen to intercept products involving legal professional privilege ("LPP") and/or journalistic material ("JM"). As the Commissioner is in reality the sole watchdog of compliance of the Law Enforcement Agencies ("LEAs") with the ICSO it is important to ensure appropriate checks and balances are in place. The Committee supported the Commissioner's request that he should have full oversight and thus should be entitled to review the intercepted products which might contain LPP or JM.

- **Application for a Type 1 or a Type 2 Surveillance Applications**

There are two types of authorisations — Type 1 which is more intrusive and must be approved by a judge; and Type 2 which may be approved by an authorising officer of the relevant LEAs. The existing Sections 2(3) and (4) of the ICSO are unclear on when an application should be made in relation to Type 1/Type 2 authorisation. The Committee agreed that any surveillance involving the possibility of LPP/JM must require an application for Type 1 authorisation; it also noted the Security Bureau should also amend the Code of Practice.

Commissioner's Report 2011

This was published in late November. Members noted with concern the increase in the number of interceptions involving LPP/JM and the Commissioner's complaint that the attitude of some LEAs had been unhelpful.

The Committee will be preparing submissions on Review of the ICSO with the Criminal Law and Procedure Committee.

Standing Committee on Practitioners Affairs

Basic Law — Right of Abode

The Administration had addressed the on-going problem of Mainland mothers coming to Hong Kong to give birth to their babies to ensure the child's right of abode in Hong Kong pursuant to *BL24(1)*. It was noted the Administration had attempted to contain the problem via administrative means and that several options are open to the Government namely: amend the *Immigration Ordinance*, seek a Declaration from the CFA on the status of the Mainland children; invite the NPCSC to interpret *BL24(1)*; or amend the *Basic Law*.

The administrative means introduced by the Government, together with the co-operation of the Mainland Authorities appear to have significantly reduced the number of Mainland mothers entering Hong Kong.

The Committee considered that any decision to press the CFA to overturn its judgment in *Chong Fung Yuen* or to seek a Declaration would damage the rule of law in Hong Kong; it considered the only viable constitutional option would be to amend the Basic Law.

The Law Society issued a press report on 10 October addressing media reports of comments made by the former Secretary for Justice, Ms. Elsie Oi Sie Leung, it was also noted that the DOJ's submissions to the CFA on the Right of Abode cases, launched by foreign domestic helpers, was a live issue before the Court (scheduled for hearing in February 2013) and thus it would be inappropriate to comment on the DOJ's submissions. The Committee did agree that if the CFA's judgment found in favour of the domestic helpers that it would be inappropriate for the Government to make a referral to the NPCSC as this would affect standing of the CFA and the rule of law in Hong Kong. It was also noted that since the transfer of sovereignty to the Mainland, no discussion has taken place on procedures in relation to referrals to the NPCSC and that this lacunae should be addressed.

Consultation Paper on Improvement Measures on the Voter Registration System

The Committee reviewed the Consultation Paper which posed six questions on how to stamp out fraudulent voter registration. The proposals put forward included the following requirements from voters: proof of address, and penalties for registered electors who failed to report a change of address. The Committee felt these were onerous and would deter voter registration and recommended enhanced administrative measures, as well as self-policing. More resources should be given to the Electoral Affairs Commission to check the voter registration rolls, e.g. "strange clustering of names in a particular unit", and enhanced scrutiny of rolls in marginal seats. The submissions were sent to the CMAB on 26 February.

Human Rights Committee

The Council had been invited to review a proposal to convene a separate Human Rights Committee. It was noted The Law Society had a separate Human Rights Committee during the 1990s but its work had been amalgamated with this Committee. Members indicated the Constitutional Affairs Committee was capable of commenting on human rights issues and agreed there was no need to convene a separate committee to deal with human rights. In order to clarify the situation a recommendation was made to rename the committee to the "Constitutional Affairs and Human Rights Committee", and that its terms of reference be clarified to highlight its responsibility to deal with human rights issues.

Standing Committee on Practitioners Affairs

Members of the Committee:

Thomas S.T. SO (*Chairman since June*)
Lester G. HUANG (*resigned as Chairman in May*)
BUT Sun Wai
Charles C.C. CHAU
Eric T.M. CHEUNG (*resigned in December*)
John J. CLANCEY
William S. CLARKE (*resigned in January*)
Mark D. DALY

Dr. James D. FRY (*joined in November*)
Eric C. IP (*joined in November*)
IP Shing Hing
Joseph C.W. LI (*resigned in December*)
LING Bing (*resigned in July*)
Raymond C.P. SIU (*joined in November*)
Kevin K.F. YAM
Dieter L.T. YIH

Secretary: Director of Practitioners Affairs

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

The JWG met formally on one occasion and conducted the rest of its business via emails.

Immigration (Amendment) Bill 2011

The JWG reviewed the *Immigration (Amendment) Bill 2011* and provided submissions on 21 and 30 May. The submissions included criticism of the following proposals: the Immigration Department could have discretionary authority on whether claimants should be entitled to an interview, the time for filing of the questionnaire, and the transitional provisions.

In relation to the questionnaire, the Administration was adamant that its proposal to allow claimants 28 days within which to file the questionnaire for adjudication under the CAT Scheme was adequate despite the fact the Administrator of the Scheme, the Duty Lawyer Service had provided evidence to the AJLS Panel that the average time to complete a questionnaire was 48 days, and that complex cases could take as long as 90 days. Committee Stage Amendments were tabled to increase the time to file the questionnaire under *clause 37Y* to 90 days but this was defeated. The Ordinance was gazetted on 20 July.

Training

Initially, the Government was reluctant to provide any funding for training/refresher courses for CAT lawyers but after negotiations, an agreement was reached that support would be provided from the Professional Services Development Assistance Scheme. As funding was only sorted out in June, it was noted the Academy could not organise an appropriate training course until early 2013 because of participation by overseas professionals.

Members of the Joint Working Group of CAT:

Lester G. HUANG (*Chairman*)
Peter H.C. BARNES

Bucky K.H. CHAN
Mark D. DALY

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

CRIMINAL LAW & PROCEDURE COMMITTEE

The Committee met on a regular monthly basis to discuss various criminal law and practice issues, as well as proposed legislation on criminal law. Task groups are set up to review specific topics and also to attend LegCo meetings on those issues.

Admissibility in Hong Kong Proceedings of Foreign Business Documents

The Committee reviewed the DOJ's paper regarding the admissibility of foreign business documents in Hong Kong court proceedings. The proposal essentially involved defining and broadening the meaning of "deposition", and would mean Hong Kong procedures would be in line with other jurisdictions. The Committee supported the proposal and submissions were sent to the Administration in November.

Criminal Legal Aid Fees

It was noted the long-awaited amendments to the *Legal Aid Criminal Cases Rules*, (Cap 221, sub. Leg. D), which introduced a new fees payment regime for practitioners undertaking criminal legal aid work, was finally gazetted in March. Additional heads of pay were introduced to cover such work as reading of materials before, commencement of the preparation work, preparation for trial and conferences, and site visits with legally-aided clients, defence witnesses or experts etc. The Committee is already preparing for the next review of the rates given the 2 years' delay in introducing the increases.

The Committee wrote to the LAD to suggest its Solicitor's Report Form be amended to facilitate consideration by the LAD of any appropriate and relevant uplifting of the fees. The form has been amended and a circular 12-984 (PA) was issued in December.

Criminal Procedure Ordinance — "Excepted Offences" for Suspended Sentence

The Law Society commissioned the Centre for Comparative and Public Law of the University of Hong Kong to conduct a comparative study of the issue in comparable jurisdictions. A recommendation was made that the Administration should abolish the excepted offence and the Third Schedule to the *Criminal Procedure Ordinance* (Cap. 221) should be removed in its entirety. However, the abolition should not disturb the court's discretion to impose a suspended sentence. The report was released to the LRC for reference.

Criminal Practice and Procedures

The Committee also discussed various issues such as:

- double jeopardy;
- matters relating to arrest and detention (such as finger printing, video interviews);
- legal representation for detainees at police stations;
- sentencing;
- use of Chinese in Court proceedings;
- jury trials in the District Court;
- *Control of Obscene and Indecent Articles Ordinance*;
- *Statute Law (Miscellaneous Amendments) Bill 2012*; and
- Hearsay in Criminal Proceedings.

Standing Committee on Practitioners Affairs

Human Trafficking in Hong Kong

The Committee took note of the Executive Summary of the US Department of State's *Trafficking In Persons Report* and the downgrading of Hong Kong's status to "Tier 2" in the said report. A decision was made to raise this matter with the DOJ. The Administration was invited to consider implementation of the relevant international protocols, in order to enhance the HKSAR's reputation in this regard.

Interception of Communication and Surveillance Annual Report 2011

In November, the Committee reviewed the Annual Report on the Interception of Communication and Surveillance 2011. It was noted that there had been an increase in the number of cases involving LPP and JM. It took note of the recommendation of the Commissioner on the need to amend the existing legislation to provide the Commissioner with express authority to review intercepted products suspected of having LPP/JM. The Committee is in the process of consolidating its comments on the Annual Report with the Constitutional Affairs and Human Rights Committee.

LRC Consultation Paper on Rape and Other Non-consensual Sexual Offences

The LRC released a consultation paper on *The reform of the offence of rape and other non-consensual sexual offence*. The LRC recommended in essence the codification of the law on rape and the modernisation of the law by abolishing some offences, such as buggery, and to make such offences gender neutral. The Committee agreed to most of the recommendations but rejected codification of some proposals in relation to the concept of "consent". Detailed submission were approved by the Council and sent to the LRC in November.

Trade Description (Unfair Trade Practices) (Amendment) Bill 2012

The Committee reviewed and discussed the various suggestions set out in the *Trade Description (Amendment) Bill 2012*, which proposed to address various unfair trade practices. The Committee made submissions to the Bills Committee; the Bill was subsequently passed in July. Following passage of the new legislation, the Administration released a set of draft enforcement guidelines. The Committee will prepare submissions in early 2013.

Members of the Committee:

Stephen W. S. HUNG (*Chairman*)
BUT Sun Wai
Bucky K. H. CHAN
Paul M. W. LI
Fred S. N. MA
Jonathan C. Y. MOK

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

Secretary: Director of Practitioners Affairs (*until October*)
Assistant Director, Practitioners Affairs (II) (*since November*)

Standing Committee on Practitioners Affairs

EMPLOYMENT LAW COMMITTEE

The Committee met formally once during the period and conducted the rest of its business by emails.

Review of Admission of Talents and Professionals into Hong Kong

The DOJ invited The Law Society to review the existing schemes on admission of overseas and Mainland talent and professionals into Hong Kong. The Committee provided submissions to the Administration and noted, inter alia, that (1) there is a shortage of lawyers with specialist experience in certain areas, such as competition law; and (2) this problem is expected to be exacerbated upon the passage of legislation in new areas of law.

Policy Study on Standard Working Hours

The Committee reviewed the Labour Department's voluminous *Report of the Policy Study on Standard Working Hours* in November and noted that any proposal to introduce standard working hours and/or otherwise regulate working hours will be complex, given the differing views of employers and employees. It is anticipated that it will take the Administration a substantial period of time to formulate an appropriate policy, and will be even longer before there is any prospect of legislation.

Employment Law Related Issues

- The Committee took note of various issues relating to employment law in Hong Kong, including the endorsement by the Labour Advisory Committee on a proposal to legislate for the provision of paternity leave.
- One presentation on an employment law topic (discussion of the *Cantor Fitzgerald* decision pre-appeal) was given to attendees from The Law Society on 25 October.

Members of the Committee:

Fiona M. LOUGHREY (*Chairman*)
Duncan A.W. ABATE
CHEUNG Yuen Sang
Dennis C.K. HO
IU Ting Kwok

Edward M.T. KO
Jeffrey H. LANE
Walter Y.W. LEE
WONG Kwok Yan
Melissa K. PANG

Secretary: Director of Practitioners Affairs (*until October*)
Assistant Director, Practitioners Affairs (II) (*since November*)

Standing Committee on Practitioners Affairs

FAMILY LAW COMMITTEE

The Family Law Committee had a very busy year meeting on 10 occasions including three Saturday morning meetings. There were significant changes to the membership of the Committee: the Chairman resigned as chair after eight years in post and also as a member of the Committee; three members resigned and/or retired and three new members, two from the Council and one from the LAD were co-opted.

The Committee reviewed a wide range of topics including the following:

- *Labour and Welfare Bureau's ("LWB") Consultation Paper on Child Custody and Access — whether to implement "Joint Parental Responsibility" by Legislative Means?*

The LWB issued its Consultation Paper on 28 December 2011 and set a deadline for submissions by 30 April 2012. The Committee decided to meet on two Saturdays in February to discuss its response; this was followed by two further meetings in March. The Hon Dr. Margaret Ng held a workshop on the Consultation Paper on 2 March; Committee members also represented the Society at the LegCo Panel on Social Welfare's meeting on 25 February.

The Committee noted the Consultation Paper had paraphrased the recommendations in the LRC's Report dated March 2005 and placed an incorrect emphasis on the recommendations in relation to Parental Responsibility ("PR"). The Consultation Paper was criticised as it appeared to favour the Singaporean model and retention of the concept of custody with a lengthy review of the Singaporean Court of Appeal Judgment of *CX v CY*. It was noted the Singaporean model is underpinned by legislation in its *Women's Charter* and that it would not be possible to do this in Hong Kong as there is no similar legislation.

The Committee reviewed changes in comparable jurisdictions such as England and Wales, Australia and New Zealand; there are problems but on balance the Committee favoured the concept of PR. Members felt that Hong Kong should introduce its own legislation and for the successful reforms to be "cherry-picked" from comparable jurisdictions. The most important principle would be adoption of the principle that a child is entitled to maintain contact with both parents after separation. There should be a Hong Kong model for example, "Continuing PR". It was acknowledged that any new legislation will recognise the importance of addressing the concerns of victims of domestic violence and the importance of public housing tenancies. A majority of the Non-Government Organisations support the proposal to introduce PR but subject to the Administration providing adequate resources to implement the policy changes and conducting a comprehensive and well-funded educational programme to assist separating parents comprehend the benefits of the new legislation.

The Committee's submissions were published on 24 April and included updated commentary on the LRC's Report. The Committee wrote to the Bureau querying the lack of progress on the policy initiatives on PR and received a reply dated 21 December that it will be reporting to Legco during the first quarter of 2013.

- *Non-Controversial Recommendations*

The Committee noted the LRC Report made non-controversial recommendations on which there was consensus such as giving a right to a third party to apply for custody to a child. The Committee wrote to the LWB in December in support of the non-controversial recommendations and awaits a comprehensive response.

Standing Committee on Practitioners Affairs

2nd Children's Issues Forum 2012

The Law Society was a sponsor of the Forum and committee members were heavily involved in its organisation. The Forum was held on 27 and 28 August at Hong Kong University. The organisers took advantage of the Hong Kong Judiciary's Conference on Family Law which was attended by a significant number of family court judges from across the globe; invitations were made to the former Children's Commissioner from Norway and the current Commissioner, Australian Capital Territory, and other distinguished academics.

Children's Commission

One of the issues raised at the Forum was the failure of the Government to establish an Independent Children's Commission. The Hong Kong Committee on Children's Right ("HKCCR") wrote to The Law Society on 27 September seeking support for its campaign to establish an independent Children's Commission. The HKCCR will be launching its *1.1 Million Children's Campaign* in early 2013 to advocate on behalf of the Children Commission. The Council resolved to support both the Campaign and the establishment of a Children's Commission in December.

Family Court Users' Committee ("FCUC")

The Committee reviewed several issues affecting Family Court practice including:

- Questionnaire for 1st Appointments

Review of requirement of the Questionnaire for 1st Appointments

- Bundles

The issue of bundles was discussed. The Judiciary indicated bundles should be a "running bundle" which would be retrieved at the end of each hearing and be recycled for use at future hearings. The issue of single/double-sided copying was also discussed. The Committee liaised with the Bar Association and the Hong Kong Family Law Association and joint submissions were sent to the FCUC in November.

- Family Court Practice

The Law Society's circular on Family Court Practice 12-906 was re-drafted and issued in December.

- Proposal to introduce Security Checks at the Family Courts
- Form H on estimation of costs, introduced on 3 October

Judiciary's Practice Direction ("JPD")

- Review of JPD 15.1
- Review of draft JPD on Transfer from the Family Court to the Court of First Instance.
- The Chief Justice issued a Guidance Note on Interviews with Children, published on 1 May.
- PD 15.13 on Children's Dispute Resolution, implemented by the Family Court on 3 October.
- Guidance for Separate Representation for Children in Matrimonial and Family Proceedings implemented on 3 October.

Standing Committee on Practitioners Affairs

Members of the Committee:

Dennis C.K. HO (*as Chairman in July*)

KONG Yuen Hoong (*Chairman*) (*resigned in May*)

Sherman CHEUNG (*joined in September*)

Winnie W.Y. CHOW

Anthony J. HUNG

Barbara A. HUNG

Jennifer W.C. IP

LAM Tze Yan

LEUNG Shek Lim

Jonathan C.Y. MOK

Catherine K.G. POR

Anne SCULLY-HILL

Annie WILLIAMS (*retired in August*)

Susan WONG (*resigned in September*)

Sylvia W.Y. SIU (*joined in March*)

Cecilia K.W. WONG (*joined in July*)

Secretary: Director of Practitioners Affairs

External Committees — Representatives of the Law Society

- Working Group on Children and Ancillary Relief Procedures in Family Proceedings

Dennis C.K. HO

- Family Court Users' Committee

Dennis C.K. HO

Jonathan C.Y. MOK

- Working Group on Mediation

Catherine K.G. POR

HIGHER RIGHTS OF AUDIENCE (“HRA”) COMMITTEE

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

AJLS Panel Meeting — 30 January

The AJLS Panel reviewed the status of implementation of HRA on 30 January. The AJLS Panel Chairman noted the gazetting of the AJLS on 26 January 2010 and queried the two years' delay in implementation. It was noted the draft *Higher Rights of Audience Rules* (“draft HRA Rules”) remained outstanding. Representatives from the HRAB indicated the draft HRA Rules would be presented for negative vetting procedures; the Chairman of the AJLS Panel indicated the AJLS Panel would have no objections to the draft HRA Rules. The draft HRA Rules came into force on 22 June.

The HRAB's representatives advised the AJLS Panel that accreditation would take place twice a year, namely in the Spring and Autumn. Candidates seeking accreditation via the assessment route would be reviewed by Examining Panels whereas those solicitors seeking accreditation via the exemption route would be reviewed by the HRAB.

Standing Committee on Practitioners Affairs

Code of Conduct for Solicitor-Advocates

The Committee continued to prepare the draft Code of Conduct and reviewed comments provided by the Chief Justice (“CJ”) on 17 February; the Committee responded to the matters raised and on 26 April the Chief Justice confirmed he had no further comments. This marked the final phase of the consultation exercise required by Section 39R of the *Legal Practitioners Ordinance*. The Committee then sought the Council’s endorsement of the Code. The Council was invited to promulgate the Code on 3 July.

HRAB — Examining Panels

The Chairman of the HRAB invited The Law Society to nominate at least 6 senior solicitors to sit on each of the HRAB’s Civil and Criminal Examining Panels. A circular was issued on 23 April and the Council was invited to make nominations to the HRAB. A decision was made to convene a sub-committee to interview all applicants and eventually the Council nominated 14 senior solicitors on 1 August, all of whom were subsequently accepted by the HRAB.

Court Dress

The Committee noted the issue of court dress for solicitor-advocates remains outstanding particularly in relation to the wearing of wigs. It was noted the English precedent could provide guidance on the matter. The Council was advised of the Committee’s views and it was agreed the outstanding issue be raised with the HRAB and Chief Justice in April. The HRAB subsequently indicated this matter should be decided by the Chief Justice, whose decision on this matter remains outstanding.

Information on HRA

The Committee recommended a circular be prepared to provide information on the procedures required by the HRAB and a circular was issued in June with the following information:

- (a) FAQs on HRA
- (b) *Legal Practitioners (Amendment) Ordinance 2010*
- (c) *Higher Rights of Audience Rules 2012*
- (d) Application Forms for HRA
- (e) Standards of Professional Competence
- (f) HRAB’s *Guidelines for Assessors in the Conduct of Assessments*
- (g) The Law Society’s *Code of Advocacy for Solicitor Advocates*

Members of the Committee:

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

Simon D. POWELL
Mark F. REEVES
Thomas S.T. SO
TSUI Kwok Sum

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

INSOLVENCY LAW COMMITTEE

The Committee conducted its business by emails and dealt with the following matters:

- Modernisation of Corporate Insolvency Law
- Whether to reduce the Petitioner's deposit payable to the Official Receiver's Office upon filing the Bankruptcy/Winding-up Petitions
- Whether to remove Rule 52A of Chapter 6A *Bankruptcy Rules* in order that the minimum fee prescribed therein can be removed with such fee to be freely negotiated between the Administrators and the debtors
- Revision of the hourly rates chargeable by Panel A Practitioners
- Review of Administrative Panel of Insolvency Practitioners for Court Winding-up Scheme (Panel A Scheme)
- Review of the HK\$200,000 threshold for the administration of liquidation and bankruptcy cases in a summary manner

The Chairman of the Committee, as a representative of The Law Society, also attended regular meetings at 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

Junius K. Y. HO

Nicholas D. Hunsworth (*resigned in May*)

Camille JOJO

Richard M. TOLLAN (*joined in September*)

Jimmie K.S. WONG

Secretary: Director of Practitioners Affairs (*until October*)

Assistant Director, Practitioners Affairs (II) (*since November*)

INSURANCE LAW COMMITTEE

The Committee met twice, principally to review the Administration's proposal on the establishment of an Independent Insurance Authority ("IIA").

Establishment of an IIA

The Administration sought views on various matters set out in a detailed and lengthy Consultation Paper, including the proposed governance structure, and licensing framework for insurance intermediaries and the regulatory and disciplinary powers of the IIA.

While it supported the key legislative proposals in principle, the Committee prepared extensive submissions requesting clarification of a number of the policy initiatives, including certain key definitions and various features of the proposed licensing and regulatory arrangements for insurance intermediaries.

Standing Committee on Practitioners Affairs

Members of the Committee:

Martin C.V.M. LISTER (*Chairman*)
Denis G BROCK
Christine M.K. KOO
Nicholas J.E. LONGLEY
MAK Hon Ming
Christopher A. POTTS

Mark F. REEVES
Rupert C. SKRINE
TSUI Kwok Sum
Shane F. WEIR
WONG Kwok Yan
Angela S.Y. YIM

Secretary: Director of Practitioners Affairs (*until October*)
Assistant Director, Practitioners Affairs (II) (*since November*)

INTELLECTUAL PROPERTY COMMITTEE

The Committee met on three occasions and conducted the rest of its business via informal discussions and emails.

The Commerce and Economic Development Bureau and Intellectual Property Department — Consultation Paper on Review of the Patent System in Hong Kong (“Consultation Paper”)

The Consultation Paper was published on 4 October 2011. The Committee reviewed and prepared submissions on the policy questions and the Council endorsed these on 17 January.

The Committee expressed doubts on whether an “Original Grant” Patent (“OGP”) system would promote local innovation in Hong Kong and whether it could be cost-effective — (under the current “re-registration” system, applicants pay approximately US\$1,200 whereas fees in jurisdictions with an OGP system are significantly higher).

In relation to the proposal to establish an OGP system in Hong Kong, with substantive examination outsourced to other patent offices, the Committee felt that any proposal to contract out the examination system (e.g. to State Intellectual Property Office (“SIPO”)) may give PRC patent practitioners added competitive advantage and thus would be counter-productive to the objective of nurturing local talent as outlined in the Consultation Paper.

The Committee noted that the existing short-term patent system is efficient. The commercial life of a product may be too short to justify an application for a standard patent, which has 20 years of protection. The Committee did not support any proposal to discontinue the short-term patent system in Hong Kong.

The Committee supported a proposal to regulate patent agency services in Hong Kong which ideally should be administered by the Intellectual Property Department (“IPD”). It was noted that the terms “patent attorney” and “patent agent” are largely understood by the international community as protected titles with special meanings; these titles should continue to be recognised whether or not an OGP system is to be implemented in Hong Kong.

Standing Committee on Practitioners Affairs

Proposal for Feasibility Study on IPD as a Satellite Office for SIPO

The Chairman discussed a tentative proposal from the Hon Ms. Regina Ip on the Feasibility of Establishing IPD as a Satellite Office for SIPO. The Committee considered that the proposal may have merit but requires further consideration to assess the potential benefits for Hong Kong generally and Hong Kong intellectual property practitioners in particulars.

Business of Intellectual Property (“BIP”) Asia

The Hong Kong Trade Development Council (“HKTDC”) invited The Law Society to sponsor the BIP Forum, which took place on 7 December at the Hong Kong Convention and Exhibition Centre. The Council agreed to sponsor the Forum and three members of the Committee were represented on the Steering Committee.

Copyright (Amendment) Bill 2011

The Committee monitored the progress of the Bill through the LegCo, and gave a presentation to the Bills Committee, with a view to counterbalancing the intense pressure raised by netizens who raised concerns over potential breaches of copyright, criminal remedies, the concept of parody and a perceived restriction on freedom of speech. The Bill was eventually withdrawn by the Government because, owing to a filibuster, there would have been insufficient time to debate all the issues involved.

Bi-annual Meeting with IPD on 20 February and 26 September

The Committee discussed the following items:

- Proposed IP Trading Hub
- Patent System Review
- Progress and proposed time table
- Claims of “Computer Software” in Class 9

IPD Outsourcing Exercise

Representatives from the Committee had a meeting with the Director of the IPD on 13 July to raise concerns in relation to the Department’s proposal for outsourcing some of its trade mark examination functions. It was noted that the proposed exercise covered areas of quasi-judicial functions which should be carried out by the Registrar acting through Registry officials; members were not persuaded that external delegation would result in the Registrar retaining sufficient administrative or even quasi-judicial control over the work carried out. Concerns were also expressed on the possibility of conflicts of interest, which members are stringently required to avoid. There were also serious concerns about confidentiality issues. It was noted that the existing procedure is well established, transparent and trustworthy. The Committee expressed concerns that outsourcing to a private contractor, whether or not it is a law firm, could seriously impair the existing confidence that practitioners have in the system as a whole. The IPD indicated that it had not received any expressions of interest by the end of the specified period for lodging them.

Standing Committee on Practitioners Affairs

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
Henry J.H. WHEARE
Kenny K.S. WONG

Secretary: Director of Practitioners Affairs

INVESTMENT PRODUCTS AND FINANCIAL SERVICES COMMITTEE

The Committee has reviewed and made submissions on the following:

- SFC proposed amendments to Code of Conduct to facilitate establishing the Financial Dispute Resolution Center Limited
- SFC Consultation Paper on Sponsors
- HKEx Consultation Paper on Trading Halts
- HKEx Consultation Paper on Disclosure of Inside Information
- SFC Consultation Paper on Non Corporate Listed Entities

Members of the Committee

Simon H. BERRY (*Chairman*)
Alan J. EWINS
Stephen M. FLETCHER
Eliof S.W. FONG
Susan J. GORDON
Peter M. LAKE

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

Secretary: Director of Practitioners Affairs (*until October*)
Assistant Director, Practitioners Affairs (I) (*since November*)

LEGAL AID COMMITTEE

The Committee met four times this year to discuss the following issues.

Establishment of an Independent Legal Aid Authority ("ILAA")

The Committee continued to press the Administration to remove the administration of the LAD from the HAB and to establish an ILAA to administer all matters relating to legal aid. The Committee noted an ILAA would, inter alia, reduce bureaucracy, enhance the promotion of access to justice and the provision of legal services to the public. Discussions were held with the Bar Association to promote the establishment of the ILAA. In September, the Committee attended a meeting with the Consultant commissioned by the Legal Aid Services Council ("LASC") to conduct a consultancy study on the feasibility and desirability of establishing the ILAA in Hong Kong. A press statement was subsequently issued by The Law Society calling for the timely establishment of the ILAA. It is anticipated the consultancy report will be released in 2013.

Standing Committee on Practitioners Affairs

Expansion of the Legal Aid Schemes — The Ordinary Legal Aid Scheme (“OLAS”) and the Supplementary Legal Aid Scheme (“SLAS”)

Committee members represented The Law Society at a Panel meeting in July to discuss the expansion of the legal aid schemes. After discussion, the LegCo passed a resolution in late July to expand the scope of OLAS, and the SLAS to cover various types of negligence and monetary claims, and also the Labour Tribunal appeals. The Resolution was welcomed as a step in the right direction. The debate is still on-going in relation to whether and if so what other types of claims should be covered by the SLAS scheme.

The Administration subsequently amended the relevant subsidiary legislation to change the existing application fees and the rates of financial contribution. The Committee considered the increased contribution rates to be too high. In a LegCo Sub-Committee’s meeting in November, the Committee urged the Administration to regularly review the final contribution rates; an agreement was subsequently reached that a review would take place after the implementation of the changes.

Financial Eligibility Limits (“FELs”)

A related matter involved revision of FELs. The Committee supported an increase in the FELs, but noted that the revised levels still exclude a significant portion of the sandwich class.

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

Kenneth H. S. NG

Leslie K. L. YEUNG

Secretary: Deputy Secretary General (*until May*)

Assistant Director of Practitioners Affairs (I) (*May — October*)

Assistant Director, Practitioners Affairs (II) (*since November*)

PERSONAL INJURIES COMMITTEE

The Committee met on three occasions. Apart from formal meetings, members also held discussions on various issues by emails.

Personal Injuries Litigation Practice

The Committee discussed a variety of issues involving both practice and procedures in relation to employees’ compensation applications, personal injuries claims and medical negligence claims such as:

- the pre-action protocol in Employees’ Compensation applications
- practice and procedures in fatal accident claims
- mediation in personal injuries litigation
- taxation of costs

Standing Committee on Practitioners Affairs

Civil Justice Reform Seminar

The Chairman of the Committee was invited to speak at a CJR Seminar in December. His speech covered mediation, use of single-joint experts, practice in employees' compensation claims and sanctioned offers/sanctioned payments in personal injuries litigation. He invited both claimants and respondents to adopt a more realistic and less antagonistic approach to the pursuit and settlement of claims.

Employees Compensation Assistance Fund Board

The Committee noted with concern the unsatisfactory position in relation to claims made under the *Employees Compensation Assistance Fund Ordinance (Cap. 365)*. Claimants are required to prove their claims before the court, before any application can be made under the Ordinance for relief. The Employees Compensation Assistance Fund Board does not have any authority to pay the claimants' costs or interest. In *Lau Yuk Hung v Tsang Kwong Ming* (HCPI 284/2010), the Personal Injuries Judge made it clear that this state of affairs was unsatisfactory. The Committee agreed with the observations and wrote to the Chairman of the Board and invited her to attend a meeting in early 2013.

Touting and Champerty

The Committee noted The Law Society is still receiving complaints on touting and champertous activities by some law firms. This unprofessional conduct is seriously prejudicial to claimants' interest because of unlawful payments to recovery agents from the damages and/or the sub-standard work being carried out in these cases. The Committee is liaising with the LAD to discuss ways to address those concerns.

Cross-Boundary Private Car Scheme

The Committee considered the Administration's proposed scheme to permit Mainland drivers to drive in Hong Kong, and the consequential potential impact on motor insurance and legal proceedings involving such matters as service of proceedings. The Committee wrote to the Transport and Housing Bureau to raise its concerns.

Employees' Compensation Ordinance

The Committee noted that the *Employees' Compensation Ordinance (Cap. 282)* was amended this year to increase the amount of compensation items payable and that increases were made to the ceiling of monthly earnings, the minimum amount for compensation for death and permanent total incapacity; compensation for employees requiring pensions, funeral expenses, and the costs relating to prosthesis and surgical appliances. A circular 12-563 (PA) was issued in July.

Members of the Committee:

Mark F. REEVES (*Chairman*)

Patrick M. BURKE

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 (*until October*)

Assistant Director, Practitioners Affairs (II) (*since November*)

Standing Committee on Practitioners Affairs

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 over 300 applications were received and processed this year.

Reform to the Pigeon Box System

New arrangements for the Pigeon Box System were introduced by the Judiciary on 3 October in order to improve the management of the pigeon boxes and to locate files in a more efficient and effective manner; a circular was issued with details of the new arrangements. These new arrangements will be kept under review from time to time by the Committee with the Probate Registry.

In the estate of Tse Chu

The Committee has reviewed the Judgment *In the estate of Tse Chu* [HCAG 11051/2011] which involves complicated points of *Tsing* law. A circular was issued in September to draw members' attention to the said Judgment.

Wong Wah Sai & Anor v Wong Wah Tung [HCAP 16/2011] & In the estate of Ang Chiok [HCAG 5464/2010]

The Committee reviewed the Judgments in the two cases and noted the Judiciary's concerns regarding false oath or affidavit/affirmation sworn/made by applicants in support of application for grant of representation. A circular was issued in October reminding members to exercise due care and caution when preparing such affidavits/affirmations and that the possibility of criminal liability should be stressed to clients. In addition, members' attention was also drawn to the Probate Registry's requirement for supporting documents to be specific when describing the relationship(s) between the deceased and the applicant(s).

Will-writing Services

The UK Legal Services Board recently proposed, following a consultation, that will-writing, estate administration and probate should only be carried out by regulated legal professionals in order to give greater protection to consumers. Will-writing is not a reserved legal activity in Hong Kong under the *LPO*, although it involves complicated issues on tax, trust and property rights and should be regulated in the interest of public. The Committee is conducting a review of the law in this respect in light of the proposal and UK experience.

Guide to Non-Contentious Probate Practice

The Committee discussed with the Judiciary for the need of a practice guide on probate application practice, which will be available in 2013.

Common Requisition Lists

The Committee reviewed the Common Requisitions List posted on the Judiciary's website. The aim of the Common Requisitions List is to familiarise members and their staff with procedure and requirements.

Special Appointment Hearings

The Committee reviewed the use of Special Appointment Hearings and noted that such hearings had rarely been used by probate practitioners. The Committee will consider organising training courses on Special Appointment Hearings and common requisitions for probate practitioners.

Standing Committee on Practitioners Affairs

JOINT STANDING COMMITTEE ON PROBATE PRACTICE

The Committee and the Probate Registry meet at a regular 6-month interval to maintain communications with a view to improve the quality of probate services. Matters discussed in the meetings include reform to the pigeon-hole system, quality of application for grant, use of checklists, update of the common requisitions list, any difficulties faced by probate practitioners during the application process, special appointment hearings; need for a guide to non-contentious probate practice, etc.

Members of the Committee

Billy W. Y. MA (*Chairman*)

Helen Y. P. CHAN

Viola HUNG

Patricia LAM

NG Kin Yuen

TAM Sau Hing

TSANG Kam Chuen

Herbert H. K. TSOI

WONG Tak Shing

Secretary: Deputy Secretary General (*until May*)

Assistant Director, Practitioners Affairs (I) (*from June*)

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 Deed of Mutual Covenant ("DMC") Guidelines (420 applications); and applications for deviations from forms of Agreement for Sale and Purchase approved under Rule 5C of the *Solicitors Practice Rules* ("SPR"), (Cap. 159H) (9 applications). Members also served on internal Working Parties, and The Law Society's representatives on external Committees/Working Parties on property-related issues. The Committee co-opted a new member this year to assist in its work.

Residential Properties (First-hand Sales) Bill

This Bill was gazetted on 16 March and passed into law on 29 June to provide a framework for regulating first-hand sales of residential properties by developers and to ensure better protection for consumers. Throughout the short 3-month legislative period, the Committee met regularly to intensively review the Bill. It also met with the Government's representatives to discuss the legislative provisions. Two written submissions were made in April and June and representatives of the Committee attended LegCo meeting to express the Committee's concerns over the Bill. The legislation will come into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette. Pending that, the Committee will continue to review draft guidelines, practice notes and FAQs put forward by the Administration to familiarise conveyancing practitioners with the new requirements to ensure smooth implementation of the Ordinance.

Consent Scheme

As a result of the changes brought by the *Residential Properties (First-hand Sales) Ordinance* Cap.621, amendments to the agreement for sale and purchase of residential properties under the Consent Scheme has become necessary. The Committee maintained close contact with the Lands Department regarding such amendments of the documents. Circulars were issued over several weeks in December inviting practitioners' views on the Lands Department's revised draft agreement.

Standing Committee on Practitioners Affairs

The Law Society's DMC Guidelines

The Committee reviewed and approved amendments to The Law Society's Guidelines on DMC recommended by the Working Party on DMC Guidelines. The new Guidelines took effect on 26 November and a circular was issued to keep members updated of the revised Guidelines.

Title Inquiries with the Lands Department

In view of the speed of the conveyancing transactions in Hong Kong and the prolonged time taken by the Administration to respond to practitioners' inquiries (e.g. breach of Government Lease), the Committee engaged in correspondence with the Lands Department who agreed to introduce measures to expedite the process. The Committee will monitor the progress of introducing such measures.

Government Policy on Breaches of Land Grant Terms

The Committee followed up on its outstanding concerns previously raised with the Lands Department regarding the latter's policy in respect of certain technical breaches of Land Grant Terms. These include:

- (a) *Alienation Restriction*: Members expressed concern over the decision in *Wong Kwok Yan and another v Pon Chi Lok* [CACV 38/2008] and proposed to the Lands Department that enforcement action in respect of breaches of alienation restrictions be waived once after premium for such breaches have been paid and accepted.
- (b) *DD&H*: If an occupation permit has already been issued by the Buildings Department ("BD") prior to April 1984 or during the period from April 1986 to August 1993 when BD and Lands Department were under one department, the Lands Department should not take enforcement action for failure to obtain consent for DD&H.

Settlement of Rates/Government Rent at the time of Completion

The Committee noted members' concern over the accuracy and reliability of information provided by the Rating and Valuation Department ("R & D") on arrears of Rates and Government Rent to facilitate settlement of apportionment account on completion of a sale and purchase. The Committee engaged in correspondence with R & D stressing the importance of such information for conveyancing purpose and the need for a guarantee on the accuracy of such information. The matter is under review by R & D.

Client's Accounts held by Law Firms as Stakeholders

The Committee noted the proposal that withdrawal of stakeholder's monies in a client's account shall be operated by the law firm and the client jointly. However, taking into account the specific duties which may be imposed on law firms under the relevant agreements and the potential administrative and operational delay/inconveniences resulting therefrom, the Committee did not consider such proposal feasible or practical.

Competition Bill

The Committee had reviewed the general exclusions from conduct rules in relation to the scale fees for conveyancing transactions. The said Bill was passed into law on 14 June. The Ordinance will be implemented in phases and the provisions relating to setting up of the Competition Commission and the Competition Tribunal will come into operation first. The competition rules and penalties will not come into full operation until all preparatory work is completed, tentatively in or about late 2013.

Standing Committee on Practitioners Affairs

Stamp Duty (Amendment) Bill 2012

On 26 October, the Financial Secretary announced a proposal to launch another round of demand side management measures to stabilise the property market, which measures, subject to passage of the legislation, will come into operation on 27 October. The new measures include (i) increasing the rates of Special Stamp Duty ("SSD") and extending its restriction period from 2 years to 3 years; and (ii) introducing a new Buyers' Stamp duty ("BSD") payable by non-Hong Kong permanent resident buyers of residential properties at the rate of 15% on the full stated consideration or the market value of the property on top of any existing stamp duty. BSD will not apply to Hong Kong Permanent Residents. However, local and non-local companies will be required to pay BSD. A circular was issued in October to inform members of such measures. The Committee and The Law Society's Revenue Law Committee met with the Government's representatives in November and made joint written submissions in December raising concerns, inter alia, that the scope of exemption was too restrictive and some exemptions were unclear and further clarification was required. The Bill was gazetted on 28 December and is under review by the said two Committees.

Consultation Paper on Adverse Possession

The LRC issued a Consultation Paper on Adverse Possession. There are seven recommendations including, inter alia, that the existing provisions on adverse possession should be retained but will be recast under the prospective registered land system. The matter is under review by the Committee with reference to the experiences in other common law jurisdictions.

The Committee also considered/reviewed:

- The Government's proposed system of determination of land boundaries under the *Land Survey Ordinance (Cap.473)*.
- Registration scheme of illegal structures in respect of village houses in New Territories.
- The Minor Work Control System under the *Building (Minor Works) Regulation (Cap.123N)*.

External Work:

The Committee has representatives on the following groups and committees:

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

Members of the Committee

Emily Y. M. LAM (*Chairman*)
Debbie F. CHEUNG (*joined in February*)
Lilian S. F. CHIANG
Doreen Y. F. KONG
Vincent W. S. LIANG
Amanda L. Y. LIU

Billy W. Y. MA
MA Ho Fai
Steven M. W. SHUM
David P. H. WONG
Raymond M. W. WONG
Terry P. L. YEUNG

Secretary: Deputy Secretary General (*until May*)
Assistant Director, Practitioners Affairs (1) (*from June*)

Standing Committee on Practitioners Affairs

WORKING PARTY ON REVISED DMC GUIDELINES

The Working Party has reviewed and updated The Law Society's DMC Guidelines to bring them in line with the revisions made in the Lands Department's DMC Guidelines as a result of the enactment of the *Building Management (Amendment) Ordinance 2007*. The revised Guidelines took effect on 26 November and members were informed of the updated Guidelines in November by a circular.

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 (1)

WORKING PARTY ON REVIEW OF NON-CONSENT SCHEME FORMS

In light of the changes brought by the *Residential Properties (First-hand Sales) Ordinance*, the Working Party reviewed the Non-Consent Scheme and the necessary amendments to the approved forms relating to the sale and purchase of residential properties under Rule 5C of the SPR.

Members of the Committee:

Amanda L. Y. LIU (*Chairman*)
Doreen Y. F. KONG

LEUNG Siu Hon
Raymond M. W. WONG

Secretary: Deputy Secretary General (*until May*)
Assistant Director, Practitioners Affairs (1) (*from June*)

WORKING PARTY ON LAND TITLES ORDINANCE ("LTO")

The LTO was enacted in July 2004, but has not come into operation pending a comprehensive review of the outstanding issues to be introduced by the Administration in the form of an Amendment Bill. Amongst the many outstanding issues to be resolved, conversion, rectification and indemnity are the three core elements of the title registration system that the Working Party has spent much time in discussing with the Administration. After much controversial discussion on the correct form of the conversion mechanism and the rectification and indemnity arrangements should take, the Government put forward preliminary proposals in respect of a 2-stage conversion mechanism and the Working Party has submitted its views on the preliminary proposals in 2011. As there has been no progress on the Amendment legislation, the Working Party followed up with the former Land Registrar on the updated position of the legislative proposals in June and August.

The Working Party will continue to follow up with the Administration and monitor progress.

External Work:

The Working Party has representatives on the following external committees:

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

Standing Committee on Practitioners Affairs

Members of the Working Party

Andy O. T. NGAN (*Chairman until August*)
Peter P. AHERNE
AU Fun Kuen (*joined in January*)
Dora S. Y. CHAN (*joined in January*)
E. John DAVISON
Emily Y. M. LAM

Ambrose S. K. LAM
Alexander H. S. LEUNG
Vincent W. S. LIANG
Anthony H. Y. SHIN
Judith SIHOMBING
Huen WONG (*joined in March*)

Secretary: Deputy Secretary General (*until May*)
Assistant Director, Practitioners Affairs (I) (*from June*)

REVENUE LAW COMMITTEE

The Committee met formally on five occasions and also attended seven meetings of the Joint Liaison Committee on Taxation. The Committee had a very busy year dealing with the following:

- *Tax Information Exchange Agreements ("TIEAs")*

The Committee met in March to discuss the proposed legislative changes to permit Hong Kong to enter into standalone TIEAs. The Committee reviewed the policy for Double Taxation Agreement ("DTA"), the activities of the Organisation for Economic Co-operation and Development ("OECD") and the Global Forum on Transparency and Exchange of Information for Tax Purposes ("Global Forum"). The Global Forum was established in 2000 and now has in excess of 100 members, including Hong Kong and has focused on increasing tax collections and minimising tax evasion since the 2008 global financial crisis.

The Committee noted the public policy reasons for DTAs are clear given that each side has offered concessions in relation to its taxes but the public policy reasons for exchanging tax information under a TIEA are less compelling. The data privacy concerns in Hong Kong should weigh heavily in the balance when considering whether the Commissioner of Inland Revenue should be given the legislative authority to conclude TIEAs.

Representatives from the Committee attended a consultative meeting with the Financial Services and The Treasury Bureau ("FSTB") on 1 June. The Committee prepared submissions on the FSTB's Consultation Paper "*Provision of Legal Framework for entering into Tax Information Exchange Agreements*" which expressed considerable reservation over the establishment of a comprehensive legal framework for TIEAs by highlighting the following:

- Concern was expressed over the constitutional rights of privacy owed to Hong Kong citizens under the Basic Law
- The lack of judicial oversight and protection of the rights of Hong Kong tax payers and the Government's approach that these safeguards should be placed in the Inland Revenue Rules and Departmental and Interpretation Practice Notes ("DIPNs") was wholly unsatisfactory as such protection should be statutory in nature

It is anticipated the Government will introduce amendments to the *Inland Revenue Ordinance ("IRO")* in early 2013.

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- *Islamic Finance*

The Committee reviewed the FSTB's Consultation Paper "*Proposed Amendments to the IRO and Stamp Duty Ordinance ("SDO") to facilitate Development of an Islamic Bond (i.e. Sukuk) market in Hong Kong*".

Members had the benefit of a briefing on the principles of Islamic financing from members of The Law Society's Islamic Finance Interest Group which included discussion of: an overview of the concept of interest, comparable UK legislation, views on bank accounts and mortgages. Discussion took place on the proposal of introducing an Alternative Bond Scheme as a vehicle for Islamic Finance, corporate sukuks, joint venture and profit sharing, and stock and shares. The Law Society was generally supportive of the Administration's policy to enhance Hong Kong's status as an international finance centre. It was noted the Government needed to do a significant amount of preparatory work in order to educate not only the public but also the financial industry and professionals on the basic concepts of Islamic finance.

A meeting was held with the FSTB on 7 September when details of the legislative initiative were discussed. Members sought clarification on issues such as: reasonable commercial return, adequate resources for the Inland Revenue Department, and the handling of "source concept" in the context of Islamic Finance structures. It was noted the FSTB had cherry-picked elements from various markets for Hong Kong's legislation. A second Consultation on Islamic Finance took place in early November. It is anticipated the Government will gazette a Bill in early 2013.

- *Buyers' Stamp Duty*

An announcement was made on 26 October by the Financial Secretary that the Government would amend the SDO to continue the SSD provisions. It also announced the introduction of a new BSD in relation to residential properties acquired by all persons, including limited companies, other than by Hong Kong Permanent Residents which would come into effect on 27 October.

Members attended a briefing on 7 November with representatives from the Transport and Housing Bureau and the IRD. It was noted the Administration had failed to provide clear guidance on the scope of exemptions under the BSD which caused confusion and uncertainty in the market. It also caused difficulties for solicitors who could not fully advise clients on the impact of BSD and whether exemptions were available in relation to transactions, particularly those which straddled the implementation date.

The Committee prepared joint submissions with The Law Society's Property Committee. In relation to the policy to introduce BSD, a query was raised whether the Government had conducted any analytical review of SSD and BSD in order to ascertain the success, or otherwise of its stamp duty policy; specific comments were raised on the lack of information in relation to exemptions under BSD. The submissions were published on 21 December and the *Stamp Duty (Amendment) Bill 2012* was gazetted on 28 December.

Members of the Committee:

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

Archie W. PARNELL
Simon J.G. RAE
Steven R. SIEKER
Jacqueline Y.M. SHEK

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

REVERSE MORTGAGE COMMITTEE

The Reverse Mortgage ("RM") Programme was launched officially by The Hong Kong Mortgage Corporation Limited ("HKMC") in July 2011 and The Law Society is responsible for overseeing the RM Counselling project. Since the launching of the RM Programme, it has been well received by the market; there were 290 applications as at 31 October. To better meet the social needs, HKMC proposed to introduce three enhancements to the RM Programme by increasing the maximum specified property value from HK\$8 m to HK\$15 m, reducing the minimum age of the borrower to 55 and increasing the maximum lump sum payout amount from 50% of the value of the actuarial value of the RM to 90%. The Committee worked closely with HKMC under a tight schedule to review and amend the counselling documentation. The enhancements took effect on 16 November. Circulars were issued to bring the members' attention to the enhancements and update them of the revised counselling documents. The Committee also assisted in organising a CPD course in November for existing RM counsellors and those who are interested to be a RM counsellor. 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 (*until May*)
Assistant Director, Practitioners Affairs (I) (*from June*)

WORKING PARTY ON PARTY AND PARTY RATES

In June, a decision was made by the Standing Committee on Policy and Resources to engage KPMG to prepare a report to review the current party and party rates and whether a case could be made to the Judiciary for a review of the rates which have been in place since 1997.

KPMG was engaged in August and members were invited to assist the project by participating in a survey and/or submitting their comments to the consultant.

KPMG provided a briefing on the progress of the project in mid December and publication of the report is expected to be in early 2013.

Members of the Working Party:

Cecilia K.W. WONG (*Chairman*)
Denis G. BROCK
Nicholas D. HUNSWORTH

Amirali B. NASIR
Kenneth W.Y. WONG

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

WORKING PARTY ON REVIEW OF THE *TRUSTEE ORDINANCE*

In response to the Consultation Paper on “*Detailed Legislative Proposals on Trust Law Reform*” issued by the FSTB, the Working Party reviewed the Government’s proposals, made submissions in May and met with the Government’s representatives in October. The proposed reform introduces statutory provisions on duty of care, power to delegate, power to employ agents, nominees and custodians, power to insure, professional trustees’ entitlement to receive remuneration, trustee’s exemption clause, beneficiary’s rights to remove trustee, abolishment of the out-dated rules against perpetuities for non-charitable trusts, etc. The aims of the reform are to bring the regulatory regime in line with other comparable common law jurisdictions in order to strengthen the competitiveness of Hong Kong’s trust services industry and consolidate the status of Hong Kong as an international asset management centre. Taking into account the views and comments of various stakeholders, the Government clarified and refined some of the proposals and released its Consultation Conclusions in November. The Government intends to finalise and introduce the amendment bill into the LegCo in the 2012–13 legislative session. The Working Party will review the coming amendment bill and follow up on the legislative process.

Members of the Working Party:

Billy W. Y. MA (*Chairman*)

James J. BERTRAM

CHAN Chak Ming

Lester G. HUANG

Simon J. G. RAE

Herbert H. K. TSOI

David A. WHITE

WONG Tak Shing

Secretary: Deputy Secretary General (*until May*)

Assistant Director, Practitioners Affairs (I) (*from June*)

WORKING PARTY ON SHANGHAI LAND CASE

The Working Party met formally on three occasions and conducted the rest of its business via email.

A draft report was considered by the Council in the autumn and a decision was made to prepare two separate Reports: one dealing with matters arising from recent CFA involving the prosecution of professional advisers giving rise to matters of concern in relation to “*Access to Justice*”; a second shorter report dealing with issues raised by members after the Academy’s CPD course on the *Shanghai Land Case* in September 2011.

A decision was made to publish the two Reports in January 2013.

Members of the Working Party:

WONG Kwai Huen (*Chairman*)

Brian W. GILCHRIST

Stephen W.S. HUNG

LAM San Keung

Gavin P. NESBITT

Dieter L.T. YIH

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

HONG KONG SOLICITORS INDEMNITY FUND LIMITED

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

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

The HKSIF 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 PI Scheme's investments and change of custodian
- Proposed amendments to the SPI Rules
- The appropriateness of the indemnity limit
- Impact of various factors on the PIS such as legislative changes and the Closer Economic Partnership Arrangement Between Hong Kong and the Mainland ("CEPA")
- The monthly management accounts and the audited accounts of the PI Fund and the HKSIF
- Renewal of Directors' and Officers' liability and Professional Indemnity insurance for the HKSIF and the Directors
- Matters arising from the liquidation of HHH Casualty and General Insurance Ltd. and FAI General Insurance Company Ltd. and the provisional liquidation of FAI First Pacific Insurance Co. Ltd.
- PI Scheme website
- Enquiries relating to the Scheme

A total of 125 notifications of claims were received by the Claims Manager, ESSAR Insurance Services Ltd. ("ESSAR") during the 2011/2012 indemnity year, i.e. from 1 October 2011 to 30 September 2012 and the grace period from 1 October 2012 to 29 November 2012. As at 30 September 2012, 13 of the notifications resulted in proceedings, 2 were closed without payment, 2 were settled with payment and 111 remained as notifications.

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The number of claims for the last 26 indemnity years and the number of members holding practising certificates as at 30 September of each of those years are as follows:

Indemnity Year	Number of Claims*	Percentage Increase/ Decrease from previous year ⁺	Number 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	143	–13%	5,831
2007/2008	309	116%	6,092
2008/2009	147	–52%	6,341
2009/2010	139	–5%	6,670
2010/2011	174	25%	7,041
2011/2012	125	–28%	7,381

* 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 2011/2012 indemnity year were categorised as follows:

Company/Commercial	21
Conveyancing	36
Litigation	47
Miscellaneous	14
Patents and Trademarks	4
Probate	3
Total	125

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As at 30 September 2012, the total liability of the PI Scheme for the 2011/2012 indemnity year, calculated on the basis of claims paid and claims reserved, was HK\$33,582,455 of which HK\$3,030,378 consisted of claims paid (including costs) and HK\$30,552,077 consisted of claims reserved.

The total amount of claims paid (including costs) since the inception of the self-insured PI Scheme in 1986 amounted to HK\$1,668,093,057 and the amount reserved was HK\$154,208,671. The total claims paid and reserved was HK\$1,822,301,728.

A detailed account of the operation of the PI Scheme and claims data as well as the audited accounts of the SI Fund as at 30 September 2012 will be published in the PI Scheme's Annual Report for the 2011/2012 indemnity year.

Directors of the Company:

Peter R. GRIFFITHS (*Chairman*)
Denis G. BROCK
Albert B.K. DAN
Brian W. GILCHRIST
Christopher G. HOWSE
Peter C.L. LO
Patrick R. MOSS

Amirali B. NASIR
Ludwig S.W. NG (*resigned in April*)
NG Wai Yan
Kevin C.K. SHUM
David G. SMYTH (*joined in August*)
Richard N. TANNER (*resigned in February*)
Norris H.C. YANG

Company Secretary: ESSAR

PI SCHEME 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 six meetings to discuss both new and ongoing claims.

Members of the Committee:

Brian W. GILCHRIST (*Chairman*)
Colin B. COHEN (*Vice-Chairman*)
Charles W. ALLEN
Keith M. BRANDT
Richard H.C. CHALK (*resigned in May*)

Tony K.W. CHOW
Simon P. CLARKE
George D. LAMPLOUGH
Jeffrey H. LANE
Ronald W.T. TONG

Secretary: ESSAR

Standing Committee on Practitioners Affairs

PI SCHEME INVESTMENT SUB-COMMITTEE

The PI Scheme Investment Sub-Committee met quarterly.

At each meeting the Sub-Committee invites the HKSIF'S investment consultant, Mercer Investment Consulting Limited and two of the four investment managers to report on the SI Fund performance and to provide their outlook on market trends.

The current investment managers of the SI Fund are as follows:

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

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

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

The net returns on the portfolios managed by the investment managers for the 12 month period ended 31 December 2011 and 2012 were as follows:

		Net Return	
	Type of portfolio	2011	2012
Amundi	Equity and bonds	-2.11%	9.68%
AllianceBernstein	Bonds	-3.44%	3.86%
MFS*	Equity	—	24.13%
GMO*	Equity	—	13.56%

* MFS and GMO were appointed in December 2011.

Members of the Sub-Committee:

Peter C.L. LO (*Chairman*)

John S. GALE

IP Shing Hing

Elen LAU (*joined in May*)

Kher Sheng LEE (*joined in May*)

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

Kevin C.K. SHUM

WONG Kwai Huen (*resigned in June*)

Norris H.C. YANG

Secretary: Assistant Director, Professional Indemnity Scheme

Standing Committee on Practitioners Affairs

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 HKSIF or the Claims Committee.

The Committee held one meeting during the year and considered the operation of the SPI Rules with regard to claims loading and 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 (Aon Holdings Hong Kong Limited)	Fiona J. STEWART
Susan P.S.K. LIANG	Gareth H. THOMAS
NG Wai Yan	Norris H.C. YANG

Secretary: Assistant Director, Professional Indemnity Scheme

PI SCHEME PANEL SOLICITORS SELECTION BOARD (“THE SELECTION BOARD”)

The 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 2012 were:

Baker & McKenzie	Howse Williams Bowers (<i>joined in May</i>)
Clyde & Co.	P.C. Woo & Co.
Deacons	Reed Smith Richards Butler
Fred Kan & Co.	Smyth & Co. (<i>appointed in September</i>)
Herbert Smith Freehills	Wilkinson & Grist

The retainer of the above Panel expired on 31 January 2013. The Selection Board held one meeting in 2012 to resolve the tender requirements of the retainer from 2013 to 2018.

Members of the Selection Board:

WONG Kwai Huen (<i>Chairman</i>)	Amirali B. NASIR (<i>joined in December</i>)
Stephen W.S. HUNG	Thomas S.T. SO (<i>resigned in December</i>)
Kenneth S.Y. NG	

Secretary: Assistant Director, Professional Indemnity Scheme

WORKING PARTY ON PI SCHEME 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 SPI 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 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.

Standing Committee on Practitioners Affairs

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

PI SCHEME REVIEW WORKING PARTY

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

The Working Party completed its review of the feasibility of a Master Policy Scheme and the appropriateness of the current PI Scheme contribution formula last year. It was resolved that cover will continue to be provided to members under the PI Scheme. Findings of the review were detailed in the 2011 Annual Report and reported to the AJLS Panel.

Having completed its work, the Working Party has now been wound up by the Council.

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