

The Standing Committee oversees the work of 21 Committees and 11 Working Parties. It met formally on eight occasions and received reports from various specialist committees on solicitors' practices.

Law Society Circular on Cessation of Practice

The Standing Committee was invited to consider revision of the Guidance Notes on cessation of practice upon death of a sole practitioner. The Standing Committee reviewed the previous circulars on this matter, the relevant sections in the Hong Kong Solicitors' Guide to Professional Conduct (Volume 1, second edition) ("Conduct Guide") as well as Rule 5AA of the *Solicitors' Practice Rules* ("SPR") and noted various views proffered on the matter by different committees and Standing Committees. It anticipated further deliberations and will submit the matter to the Council for consideration.

Consultation on the proposal to enable locally qualified lawyers without valid practising certificates to provide pro bono legal service

The Department of Justice ("DOJ") issued a consultation paper in July on their proposal for locally qualified lawyers not holding valid practising certificates to provide certain pro bono legal services in their private capacities. Relevant legislative amendments to the *Legal Practitioners Ordinance* ("LPO") were suggested. The proposals were reviewed by various committees of The Law Society, including the Standing Committee, which raised queries as to whether these lawyers could possess up-to-date legal knowledge, have any potential conflict and also whether they could procure professional indemnity. The Consultation Paper has not addressed these issues. It has also failed to provide information on the scope of the statutory scheme under the proposal.

These comments, together with comments from other committees, were consolidated and sent to the DOJ in September.

Independent Legal Aid Authority ("ILAA")

The Standing Committee noted that the Legal Aid Services Council ("LASC") has in April received a consultancy report on ILAA. In the said report, the consultant did not recommend the establishment of an ILAA. This recommendation which was accepted by the LASC was contrary to the recommendations made by LASC earlier on the matter.

The Panel on Administration of Justice and Legal Services ("AJLS Panel") discussed this matter on 25 June. At the AJLS Panel meeting, the consultancy report was heavily criticised by the AJLS Panel members and representatives of The Law Society, the Bar Association and other stakeholders. The Government indicated at the AJLS Panel meeting that it would provide more information.

Higher Rights of Audience ("HRA")

The Standing Committee has been monitoring the implementation of the HRA and has discussed issues on possible amendments to the *LPO* on the appointment of Solicitor Advocates as Senior Counsel, the Chinese translation of the title "Solicitor Advocate", the publicity drive for Solicitor Advocates and the training available for applicants.

A Solicitor Advocates Interest Group was set up to foster the interest of those members who intended to apply to become solicitor advocates. The inaugural meeting of this Interest Group took place in April, followed by a networking session in August where Solicitor Advocates shared experience with and provided guidance to candidates seeking accreditation via the exemption route.

Practitioners Affairs — Overlap of Work

The Standing Committee received comments on the review of the overlap of work amongst various committees of The Law Society, and noted the recommendations made to reduce the overlap and to enhance the administrative efficiency and allocation of resources.

Archives Law

The Standing Committee's attention was brought to the press release issued by the Office of the Ombudsman on "Ombudsman Probes Access to Information and Records Management in Hong Kong". It noted that there was no statutory protection of archival records in Hong Kong. The Ombudsman intended to investigate the Government's records management system and its policy on archival of records. The Standing Committee informed general members of the above and invited comments.

The Standing Committee was advised that specific laws have been provided in other jurisdictions but not Hong Kong for the protection of archives. The Standing Committee agreed that provision of open and fair access to public archives was important, and that it was part of the government's public duty to ensure the proper creation, management, protection, preservation and transfer of records. The investigation by the Ombudsman was supported.

Working Party on Party and Party Rates

Members noted that the Working Party on Party and Party Rates has obtained from the consultant the finalised report, which addressed in details the low recoverability of costs by successful litigants and the erosion of the losers pay principle. Copies of the report have been sent to the Judiciary and other related parties; the report has also been circulated to general membership. The Law Society suggested a meeting with the Judiciary for a formal review of the party and party rates.

Legal Aid — Declaration System

The Legal Aid Department ("LAD") wrote to The Law Society to propose a new declaration system with a view to combating the problem of unethical touting by nomination, whereby touts and agents could dupe the successful legal aid applicants into entering retainer agreements and nominate their solicitors. LAD proposed that when an application for legal aid was approved, the successful applicant needed to make a declaration before he could select and nominate his own solicitor.

The Standing Committee noted the views of the Legal Aid Committee, the Personal Injuries Committee and the Civil Litigation Committee on the declaration system and considered that, notwithstanding the nomination sought by an aided person, the discretion of the Director of Legal Aid on assignment of panel lawyers, by virtue of section 13(1) of the *Legal Aid Ordinance*, should be exercised when the nominated solicitor was suspicious of touting. Furthermore, more emphasis should be placed on the contents of the Government's Announcement of Public Interests, in order to reinforce the messages against unethical touting. The above views were conveyed to the LAD. The Standing Committee would continue to keep in view of the issues.

Other Practice Issues

The Standing Committee also received and considered views and comments on various practice issues, including the following:

- the practical problems practitioners faced in relation to *Practice Directions P* on anti-money laundering
- guidance on the practice of storage of old files
- office securities
- use of wifi facilities in court

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

Brian W. GILCHRIST (<i>Chair from July</i>)	3/3	Rebecca V.I. HO	5/8
Thomas S.T. SO (<i>Chair until June</i>)	4/5	IP Shing Hing	4/8
Cecilia K.W. WONG (<i>Vice-Chair since October</i>)	4/8	Kenneth H.S. NG	5/8
Melissa K. PANG (<i>Vice-Chair until June</i>)	4/5	Gavin P. NESBITT	2/8
Simon H. BERRY	6/8	Sylvia W.Y. SIU (<i>joined in August</i>)	0/2
Denis G. BROCK	4/8	Simon W.L. WONG	4/8
E. John DAVISON	5/8	Eric H.Y. WOO	4/8

Secretary: Director of Practitioners Affairs

CIVIL LITIGATION COMMITTEE

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

Consultation Papers

The Committee received and reviewed various Consultation Papers from the Administration and the Judiciary, inclusive of the following:

a. *Amendment to the Companies Ordinance ("CO")*

The Administration proposed to include in the new *CO* restriction of access to personal data of directors and company secretaries, on the grounds of protection of personal data and privacy concerns. This proposal attracted much debate and discussion. It also impinged on civil litigation practice, such as service of proceedings and enforcement of judgments against bankrupt employers. The Committee, jointly with the Company Law Committee of The Law Society and the Hong Kong Bar Association, met the Registrar of Companies, the Financial Services and Treasury Bureau representative and the Honourable Member of Legco representing the Legal Functional Constituency in June to discuss the proposal and to exchange views.

After consideration, the Administration decided not to proceed with this more controversial part of the Bill. It agreed to further review the proposal. The new *CO* came into effect in March 2014 putting the rest of the provisions of the Bill into operation.

b. *Equal Opportunities Claims*

The Committee received from the Judiciary a consultation paper in June on proposed legislative amendments to the Equal Opportunity Rules. This was a follow-up on the previous consultation in 2011. In this latest consultation, the Judiciary proposed to improve relevant procedures and practices for Equal Opportunities Claims.

The Committee had a meeting with the Employment Law Committee of The Law Society. The two committees reviewed the proposed regime on requests for discovery, use of specified forms in lieu of formal court applications, requests for further particulars and the checklisting of remedies. A detailed joint submission on these issues was made to the Judiciary.

c. *Trade Description (Unfair Trade Practice) (Amendment) Ordinance 2012*

The Committee was consulted on the draft enforcement guideline issued under the *Trade Description (Unfair Trade Practice) (Amendment) Ordinance 2012*. It considered the civil compliance-based mechanism and the use of undertakings in enforcement procedures. A joint submission with the Criminal Law and Procedure Committee was made.

d. *Civil Jurisdiction*

The Committee noted the current civil monetary jurisdictional limit of the District Court had not been revisited in the past decade. The Committee believed that, with changes in the socio-economic situation of Hong Kong in this period of time, the civil monetary jurisdictional level of the District Court should be increased. At the same time, it also concluded there should be a review of the rule which provides District Court taxation rates of costs should not be more than 2/3 of the High Court scale. A submission on the above was sent to the Chief Judge.

The Committee received an interim response from the Chief Judge in November. The Chief Judge agreed the above merited serious consideration. He said he was looking at the views of the Committee.

e. *Wifi Text-based Communication*

The Committee received from the Judiciary a consultation paper on text-based communication in courtrooms. The Judiciary proposed issuing a Practice Direction to deal with the matter bearing in mind the anticipated introduction of wifi facilities into court buildings. The Committee reviewed the regulation of the use of wifi facilities in various overseas jurisdictions and suggested the Judiciary look at the experience in the UK and New Zealand. In these jurisdictions, any unauthorised transmission of court proceedings from a courtroom is prohibited, subject to a few exceptions (e.g. transmissions by lawyers).

Apart from the above issues, the Committee also discussed a wide range of topics relating to civil litigation practice:

- Liens
- Proposed amendment to the *Competition Ordinance* relating to a Competition Tribunal
- Interpleaders
- Removal of the list and index from the *Rules of High Court*
- Removal of designation (HK) in the *Rules of High Court*
- Rights of appeal to the Court of Final Appeal ("CFA") in civil matters
- Beddoe applications
- Recovery of fixed costs under Order 13A *Rules of High Court*

Members of the Committee:

Nicholas D. HUNSWORTH (*Chair*)
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
Denis G. BROCK (*joined in June*)

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

COMPANY LAW COMMITTEE

The Committee reviewed and made submissions on the following:

- Hong Kong Exchanges and Clearing Limited's Consultation on Review of Connected Transaction Rules
- Hong Kong Exchanges and Clearing Limited's Consultation on Proposed Changes to Align the Definitions of Connected Person and Associate in the Listing Rules
- Specified Forms under the new CO
- Provision of Address Proof for Registration of Registered Office Address

Members of the Committee:

Patrick C. K. WONG (*Chair*)

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: Assistant Director, Practitioners Affairs (I)

COMPETITION LAW COMMITTEE

The *Competition Ordinance*, enacted in June 2012, is being implemented in phases to allow for the establishment of, inter alia, the Competition Commission and the Competition Tribunal before it comes into full operation.

Competition Commission

The chair of the Commission was appointed in April. It is in the process of drafting guidelines on competition to familiarise the public with the statutory requirements. The Committee will review the same as soon as the draft guidelines are ready.

Competition Tribunal

The Judiciary Administration proposed to amend the Competition Ordinance. The proposed amendments, essential to the operation of the Tribunal which is a superior court of record having primary jurisdiction to adjudicate competition-related cases, included conferring certain powers on the Tribunal/Registrar such as levying interest on debts/damages, enforcement of pecuniary penalties, prohibition of debtors from leaving Hong Kong, reimbursement of witnesses' expenses and performing judicial duties. The proposed amendments will be modelled on the relevant provisions in the *High Court Ordinance*.

For the sake of consistency, consequential amendments were also proposed by the Judiciary Administration to various ordinances:

- *LPO*: to grant HRA to Solicitor Advocates in respect of the Tribunal
- *Evidence Ordinance*: to enable the Tribunal to bring up persons in lawful custody to give evidence
- *Shenzhen Bay Port Hong Kong Port Area Ordinance*: to provide for the jurisdiction of the Tribunal in the Hong Kong Port Area in Shenzhen Bay
- *Electronic Transactions Ordinance*: to exempt the Tribunal from accepting electronic submissions.

STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

The Committee reviewed the above proposals and, in principle, agreed with the Judiciary Administration. However, the Committee noted that in the proposal, it was not entirely clear whether the Registrar, senior deputy registrar, deputy registrar and any other officer such as a Bailiff of the High Court, by virtue of that appointment, were the only persons entitled to hold the corresponding office or position in the Tribunal. The Committee submitted that clarifications and/or amendments in these respects should be introduced to remove any doubt.

The Judiciary Administration in reply confirmed its policy intent that only those persons identified in section 156 of the *Competition Ordinance* are entitled to take up equivalent roles with the Tribunal and it will take into account the Committee's suggestion when drafting the legislative amendments. The Amendment Bill will be introduced into Legislative Council ("LegCo") in the 2013–14 session.

Members of the Committee:

Simon H. BERRY (*Chair*)

Nicholas H. F. CHAN

Stephen R. CROSSWELL

Martin DAJANI

Angus H. FORSYTH

Brian W. GILCHRIST (*resigned in July*)

Larry L. K. KWOK

Gavin NESBITT

Simon D. POWELL

Henry J. H. WHEARE

David P. H. WONG

Kevin K. F. YAM

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

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

CONSTITUTIONAL AFFAIRS & HUMAN RIGHTS COMMITTEE

The Committee met nine times during the year.

Submissions

Submissions on the following subject matters were made this year:

- | | |
|--|---------------------|
| (1) Right of Abode | 25 March and 14 May |
| (2) CAT (Ubamaka) | 23 July |
| (3) District Councils (Amendment) Bill | 28 March |

Right of Abode

The CFA delivered its judgment in *Vallejos Evangeline Banao (also known as Vallejos Evangeline B.), Domingo Daniel L. v. Commissioner of Registration and Registration of Persons Tribunal* (FACV 20/2012) in March. In this CFA case, the applicants, who were Filipino nationals, sought to argue on the unconstitutionality of the Immigration Ordinance in the light of Article 24 of the Basic Law. The CFA rejected the applicants' submission and dismissed their appeals. Before the CFA delivered its judgment, the Government requested the CFA to refer the matter to the National People's Congress Standing Committee ("NPCSC") for clarification on the rights of abode of those children born in Hong Kong to Mainland parents. This request from the Government was rejected by the CFA on a unanimous basis.

In the press statement issued on 25 March, The Law Society reiterated that, on the question of Mainland mothers giving births in Hong Kong, given the established legal principle, a referral to the NPCSC to interpret Article 24(2)(1) of the Basic Law would undermine the independence of the Judiciary and the Rule of Law; and these are the core values of Hong Kong. The Law Society urged the government not to seek a free standing interpretation of the Basic Law on those questions about which the government has originally asked the CFA to seek an interpretation.

The issue of right of abode of children born in Hong Kong to Mainland parents both of whom were not Hong Kong permanent residents was also raised at the AJLS Panel meeting in May. The Law Society submitted that the right of abode issue should be resolved in accordance with the legal principles established in the case of *Director of Immigration v Chong Fung Yuen (2001) 4 HKCFAR 211*.

Refugee Asylum Seekers

The Administration was criticised by the CFA in the judgment *Ubamaka Edward Wilson v Secretary for Security and Director of Immigration* (FACV 15/2011) on its administrative scheme on Convention against Torture ("CAT") Claims. In this regard, The Law Society advocated that the Administration should take a sensible and pragmatic step and adopt a comprehensive and procedurally fair system of assessment for these claims. It was desirable and in the best interest of Hong Kong to have in place a sound and non-porous screening mechanism to deal with all these claims for non-refoulement.

In mid 2013, the Administration announced that it intended to introduce a unified screening mechanism ("USM") to deal with all non-refoulement claims under the CAT, the Cruel Inhuman and Degrading Treatment or Punishment claims and the refugees' claims. The Law Society generally supported the proposal but considered that the implementation of the USM by an administrative scheme would be inappropriate and undesirable. The details of the USM scheme and the guidelines have not been finalised or issued by the Administration. The Committee was keeping a close watch on the details of the USM scheme when released.

District Councils (Amendment) Bill 2013

The Administration introduced the *District Councils (Amendment) Bill 2013* in February to abolish the system of appointed seats in District Councils with effect from 1 January 2016. Submissions were prepared and approved in March, expressing The Law Society's support for the proposal.

Meetings with other bodies

The Committee met with other bodies to discuss issues on constitutional and human rights affairs:

- (a) on 28 May, it represented The Law Society to attend the AJLS Panel meeting to review the issues on right of abode of children born to Hong Kong parents both of whom are not Hong Kong permanent residents;
- (b) on 10 July, it met with Hong Kong 2020 to discuss with them the issue of constitutional development;
- (c) on 24 September, together with the Pro Bono Committee of The Law Society, it had a meeting with representatives from the Equal Opportunities Commission ("EOC") to discuss pro bono services which could be available to EOC;
- (d) on 21 November, a task group of the Committee had a meeting with a task group of the Criminal Law and Procedure Committee to review a consultation paper on community drug testing scheme proposed by the Action Committee Against Narcotics; and
- (e) on 12 December, the Chair had a further meeting with the officers from the Security Bureau on the said consultation paper on community drug testing. Another meeting with representatives from the Administration was being arranged to continue the discussion on the community drug testing scheme.

Constitutional Reform

The Committee noted that a Task Force on Constitutional Development was convened by the Government in October. It was headed by the Chief Secretary for Administration with the Secretary for Justice and the Secretary for Constitutional and Mainland Affairs as members to handle the public consultation on constitutional reforms. In December, the Administration issued the consultation paper on the *Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016*. The Committee was reviewing, from legal perspectives, those issues canvassed in the consultation paper.

Training

The Committee has been advising on the training programme for practitioners on CAT claims and refugee law. It worked closely with the Hong Kong Academy of Law Limited ("Academy") which organised a four day seminar in January. Academics and Queen's Counsel from overseas and local practitioners were invited to speak at the seminar. The seminar was well attended by more than 130 participants.

In anticipation of the launch of the USM scheme by the Administration, the Committee was working with the Academy to prepare another seminar on training for USM, which is to take place next year.

Members of the Committee:

Thomas S.T. SO (*Chair*)
BUT Sun Wai
Charles C.C. CHAU
John J. CLANCEY
Mark D. DALY
Dr. James D. FRY

Eric C. IP
IP Shing Hing
Lester G. HUANG
Raymond C.P. SIU
Kevin K.F. YAM
Dieter L.T. YIH

Secretary: Director of Practitioners Affairs

CRIMINAL LAW & PROCEDURE COMMITTEE

The Committee met on a monthly basis to discuss various issues on criminal law and practice, as well as proposed legislation on criminal law. Task groups were set up to review specific topics.

Administration of Justice (Miscellaneous Provision) Bill

In March, the Judiciary proposed to introduce an amendment bill to enhance various court-related matters: calculating the qualifying experience for the appointment of magistracies, handing down of verdicts, live television links and administration of suitors' funds etc. The Committee reviewed these proposals. While it supported most of the proposals on criminal practice, it raised concern on the proposal to equate the experience of qualified solicitors with those of the court-related officers for the appointment of special magistracies. The Committee pointed out that the nature of work done and the amount of time spent by qualified solicitors, for the purpose of appointment of special magistracies, should be given due consideration. Detailed submissions were made and sent to the Judiciary. The Judiciary was re-considering this part of the Bill.

Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012

The Administration issued a set of draft enforcement guidelines under the above Amendment Ordinance to propose, among other things, a set of compliance-based enforcement mechanism. The Committee studied the guidelines and commented that, notwithstanding the introduction of a compliance-based enforcement mechanism, appropriate emphasis should be placed in the guidelines on criminal prosecution and the proposed undertaking. It also suggested to make available a database of those offending traders to the in-bound visitors.

Criminal Legal Aid

The Committee noted that the *Legal Aid in Criminal Cases Rules (Amendment Rules) 2013*, which was made by the Criminal Procedure Rules Committee on 4 October, was approved on 29 November. These amendment rules gave effect to the last biennial criminal legal aid review. Under the amendment rules, solicitors assigned to represent legally aided persons were to be remunerated according to the revised table of fees set out in the schedule to the rules. Furthermore, the Director of Legal Aid may re-determine the fees in circumstances in accordance with the rates in these rules.

In preparation for the review in 2014, the Committee issued a circular to members to invite views on criminal practice. It also held meetings to discuss various concerns on criminal legal aid, such as criteria for assignment of criminal legal aid, the rates etc. The Committee has on the other hand written to the Home Affairs Bureau to suggest discussion and meeting.

Rescue Drug Testing Scheme

The Action Committee Against Narcotics ("ACAN") issued a consultation paper in September on a community drug testing scheme and invited public discussion on whether and, if so, how legislation should be introduced to authorise community drug testing. ACAN sought views from The Law Society.

Two task groups respectively of the Committee and of the Constitutional Affairs and Human Rights Committee were set up to examine the various proposals of the scheme. Meetings with the representatives from ACAN and also the Narcotics Division of the Administration were also held. A draft submission on the consultation paper was being prepared, to be finalised after the task groups had another meeting with ACAN and the Narcotics Division.

Excepted Offences

The Law Society received a proposal from the Law Reform Commission ("LRC") to abolish "excepted offences". These excepted offences were currently provided for under section 109A and 109B and Schedule 3 of the *Criminal Procedures Ordinance*. Under these provisions, suspended sentences were not available as an option in sentencing.

The Committee has already sent in submissions advising that the concepts of these excepted offences were outdated and should be repealed. The LRC has taken on board these views. The Committee supported the proposal.

E-Inquiry

The Judiciary provided e-inquiry service for criminal trials on their website. The Committee considered that more information should be made available and wrote to the Judiciary to suggest improvements. After discussion, the Judiciary agreed to enhance their website. Effective from 1 December, the names of the parties and the nature of hearings would be displayed, after they have been captured on the Judiciary's case management system. The names of the judges hearing the case would also be released three working days before the hearing. Members were advised of these enhancements by circular.

Wifi text-based communication

The Judiciary sought views from practitioners on a draft Practice Direction to regulate text-based communication in court rooms. Since wifi facilities were to be introduced into the court buildings to enable court-users, including the public, to join and to send text-based communications, the Judiciary proposed that reasonable use of text-based communication should be allowed in the court rooms. The Committee deliberated on possible abuses of these communications and expressed concerns over the "tipping off" of witnesses in criminal trials. It suggested the Judiciary to seek reference from comparable legislation in the UK and in the New South Wales. These views, together with other observations from the Civil Litigation Committee and the Technology Committee, were consolidated and sent to the Judiciary in reply.

Criminal Practices and Procedures

The Committee also discussed various issues in criminal law and practice such as:

- The practice of obtaining transcripts for bail application pending appeal
- Interception of Communication and Surveillance Annual Report 2011
- Improvement of prison visit arrangement
- Arrangement of court hearings during gale and black rainstorm warning
- Implementation by the Judiciary on the five-day working week
- Extension of video legal visit to the Tai Lam Centre for Women

Members of the Committee:

Stephen W. S. HUNG (*Chair*)

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 UPHAM

Michael J. VIDLER

Ben K. K. WONG

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

Director of Practitioners Affairs (*since November*)

EMPLOYMENT LAW COMMITTEE

The Committee formally met twice during the year and conducted the rest of its business by emails.

Administration of Justice (Miscellaneous Provision) Bill

The Committee was consulted on the Bill, which included various proposals to improve the operation of the Labour Tribunal, such as clarification of the jurisdiction of the Labour Tribunal, enhancement of the case management powers of the Labour Tribunal, and also the suggestion of a general statutory duty on restriction on use of documents received in the course of the tribunal proceedings. The Committee supported the majority of the suggestions made.

The above views, together with those from different specialist committees of The Law Society on other parts of the Bill, were consolidated and sent to the Judiciary.

Review of Equal Opportunities Claim Rules in the District Court

The Committee joined the Civil Litigation Committee to review the Judiciary's proposals for legislative amendments to the *District Court Equal Opportunities Rules*, which aimed to streamline adjudication of relevant proceedings in the District Court. This exercise included consideration of:

1. issues relating requests for further particulars of a claimant's case in an equal opportunity claim;
2. new claim forms;
3. a Practice Direction; and
4. timing issues.

Views were proffered on the above, and also on the use of standardised forms in lieu of formal court applications and in relation to choice of remedies available to a claimant. The Committee hoped that the new Practice Directions would help achieve resolution of equal opportunities claims in a speedy and time-and-cost-efficient manner.

Other issues

The Committee also noted discussion by the AJLS Panel on the following:

- “continuous contract” requirement under the *Employment Ordinance*
- protection for participation in trade union activities

Members of the Committee:

Fiona M. LOUGHREY (*Chair*)

Duncan A.W. ABATE

Y.S. CHEUNG

Dennis C.K. HO

IU Ting Kwok

David A. ALLISON (*joined in May*)

Charles H. W. TO (*joined in May*)

Edward M.T. KO

Jeffrey H. LANE

Walter Y.W. LEE

WONG Kwok Yan

Melissa K. PANG

Eric A. SZWEDA (*joined in May*)

Kim BOREHAM (*joined in May*)

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

FAMILY LAW COMMITTEE

The Family Law Committee met nine times this year. In addition, it also met with government bureaux and departments to discuss issues pertinent to matrimonial practices.

LRC's Report on Child Custody and Access

The Committee has been continuing the effort to push for the implementation of the LRC's recommendations to abolish the concept of custody by introducing the new concept of parental responsibility. The Committee met with representatives of Labour and Welfare Bureau (“LWB”) in July to exchange views on the matter and understood that LWB will convene a Working Group with the DOJ to finalise policy. The Committee awaited further consultation on this matter.

CFF v ZWJ CACV 171/2012

The Committee noted this Court of Appeal (“CA”) case which arose from an appeal by the Respondent to set aside a decree absolute where the petition had been served by substituted service. In the judgment, the CA made observations on, inter alia, ex parte applications for substituted service. It stressed the importance for the applicant to give full and frank disclosure of all material facts in support of an ex parte application for substituted service. Where the applicant has improperly obtained an order for substituted service on the basis of wrong or misleading affirmation evidence, the court will set it aside.

A circular was issued to remind members of the salient issues canvassed in this judgment.

Substituted Service on the Mainland China

The Committee's attention was drawn to the difficulties matrimonial practitioners faced in serving divorce petitions in the Mainland China, by way of substituted service by publishing a notice on a Chinese language newspaper. The Committee noted that in order to comply with rule 109 of the *Matrimonial Causes Rules* and Order 11 rule 5(2) of the *Rules of District Court*, the court required evidence to support that the mode of substituted service, as abovementioned, was a valid and acceptable mode of service in the Mainland China. Apparently, there was a lack of such evidence. The Committee was considering the above and has raised this matter with the DOJ.

Article on Family Law

Members of the Committee contributed to feature articles on the South China Morning Post on matrimonial law and practice and has sent in articles on Judicious Encouragement and Hague Convention. These articles were published in June and August.

Judgment Summonses

In January, The Law Society received a letter from the District Court on its proposals to amend Order 90A of the *Rules of District Court* to remove the outdated practice and procedures of the existing judgment summonses system, particularly the Enforcement of the Maintenance Orders in Matrimonial Proceedings.

These proposed amendments to the *Rules of District Court* were supported. The Committee will monitor the further progress of the matter.

Child Abduction Legislation (Miscellaneous Amendments) Bill 2013

The Bill, which was introduced in July, aimed to amend the *Child Abduction and Custody Ordinance* and other enactments to provide for combating child abduction and for better implementation the Convention on the Civil Aspects of International Child Abduction. The amendments in the Bill were based on, inter alia, the recommendations made in the report of the LRC of Hong Kong on International Parental Child Abduction.

The Committee reviewed the Bill and sought clarification and proposed amendments on, among other things, the preamble to the amendment Ordinance, the making of the location order, the powers of the officers of the Immigration Department and the scope of the removal orders to be made under the Ordinance.

Direct Judicial Communication in International Family Disputes Affecting Children

The Judiciary issued the above draft guidance note to cover direct judicial communications between judges of different jurisdictions in cases where there were concurrent proceedings in different jurisdictions with the same parties. This practice was set up under the Hague Convention and was aimed to encourage communication with judges in non-Hague countries.

The Committee provided comments on the draft, and has made submissions to the Judiciary.

Stop Orders

The Committee took note that at the moment, the stop orders to prevent children leaving Hong Kong issued by the family courts were not standardised and from time to time, it caused inconsistency in matrimonial practice and confusion on enforcement. The Committee discussed with the family judges on the possibility of issuing a set of draft standard orders. Meetings with the Immigration Department were held in October and December to exchange views on the subject matter.

Members of the Committee:

Dennis C.K. HO (*Chair*)
Sherman CHEUNG
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

Secretary: Director of Practitioners Affairs

Working Group on Children's Welfare

Dennis C.K. HO

Family Court Users' Committee

Dennis C.K. HO

Jonathan C.Y. MOK

Working Group on Mediation

Catherine K.G. POR

Working Group on CDR

Dennis C.K. HO

INSOLVENCY LAW COMMITTEE

The Insolvency Law Committee conducted its business by e-mail circulation.

Touting in Bankruptcy Cases

It has been brought to the attention of the Committee that unqualified persons offered assistance and advice to people seeking to file petitions for self-bankruptcy. Such activities could constitute touting. The court documents drafted by these unqualified persons were often saddled with mistakes, thereby disrupting and delaying normal court proceedings.

The Committee met with the Registrar and Masters of High Court in February and the Official Receiver's Office ("ORO") in March to voice its concern. A circular was issued to advise members of the touting activities and invited comments.

Consultation on Legislative Proposals on Corporate Insolvency Law

The Financial Services and Treasury Bureau issued a consultation paper in July to seek the views of the public on proposals to amend and update the legislations governing corporate insolvency. The last major reform of corporate insolvency law in Hong Kong took place in 1984, which was about 30 years ago. The Administration considered it necessary to modernise the corporate insolvency legislations. An Advisory Group was formed in January to provide technical input and expert advice for consideration.

The Advisory Group, after deliberation, put forward 46 legislative proposals. These proposals covered various aspects of the winding-up proceedings and its administration. The Committee in principle supported the proposals and provided the relevant submissions to the Administration.

Reduction on Fees payable in relation to Bankruptcy and Winding-up Proceedings

The Law Society was invited by the LegCo's "*Subcommittee on proposed resolutions under the Bankruptcy Ordinance and the Companies Ordinance*" to comment on various proposed resolutions under the *Bankruptcy Ordinance* and the *CO*. These proposed resolutions aimed at reducing certain fees, deposits and charges payable to the ORO in relation to bankruptcy and winding-up proceedings. Such proposals covered 31 statutory fees, charges and deposits charged by the ORO.

The Committee supported the proposed resolutions. These fees, as revised, came into effect on 1 November.

STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Attending outside meetings

The Chair of the Committee represented The Law Society to attend various meetings with the Administration, such as the Advisory Group to advise on corporate insolvency law, the Insolvency Advisory Group to advise on the reduction of fees payable in relation to bankruptcy and winding-up proceedings and the ORO Services Advisory Committee to receive reports and to advise on the services provided by the ORO.

Members of the Committee:

Keith M.K. HO (*Chair*)

Victor K.S. CHIU (*Vice-Chair*)

Ian R. De WITT

Camille JOJO

Richard M. TOLLAN

Jimmie K.S. WONG

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

INSURANCE LAW COMMITTEE

The Committee met twice this year to continue to discuss the public consultation from the Administration on the establishment of an Independent Insurance Authority ("IIA").

Establishment of an IIA

The Committee studied the voluminous consultation paper and reviewed the various proposals put forward by the Administration. It supported in principle the establishment of an IIA, but sought clarification from the Administration on its regulatory functions, the definition of various terms, the policy objectives and the intention underlining those terminologies and concepts. It also commented upon:

- the governance structure of the proposed IIA, the licensing regime for insurance intermediaries and the regulatory powers of the IIA
- the introduction of different categories of licenced insurance intermediaries, exemption from licensing, the operation of the licensing system on their proposed regulatory powers
- the conduct requirements, enforcement and disciplinary sanctions proposed

A detailed submission was made to the Administration.

Other matter

The Committee was also consulted on the proposal by the DOJ to remove from the loose leaf edition of the Laws of Hong Kong the list of forms and the index. It supported the proposal and made the relevant submission to the DOJ.

Members of the Committee:

Martin C.V.M. LISTER (*Chair*)

Denis G BROCK

Christine M. KOO

Nicholas J.E. LONGLEY

MAK Hon Ming

Christopher A. POTTS

Gary MEGGITT (*joined in April*)

Mark F. REEVES

Rupert C. SKRINE

TSUI Kwok Sum

Shane F. WEIR

WONG Kwok Yan

Angela S.Y. YIM

Fergus F. C. LU (*joined in April*)

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

INTELLECTUAL PROPERTY COMMITTEE

Consultation on Treatment of Parody under the Copyright Regime

Concerns were raised by netizens on the *Copyright (Amendment) Bill 2011* regarding the issue of parody and their rights to have their freedom of speech protected as recognised by Article 27 of the Basic Law. The Administration introduced the Bill in the LegCo but failed to pass the Bill as filibustering had cut short the available time. In order to formulate a policy with a view to re-introducing a new amendment bill, the Commerce and Economic Development Bureau engaged the public in another consultation and published a Consultation Paper on *Treatment of Parody under the Copyright Regime*. The Consultation Paper provided an overview of the legislation in place in comparable jurisdictions and set out three options for consideration:

- (1) clarifying the existing general provisions for criminal sanction;
- (2) introducing a specific criminal exemption for parody; and
- (3) introducing a fair dealing exception for parody.

The Committee reviewed the options and considered that option (3) would be the most appropriate as this provided a balanced approach to any competing claims made by parodists and copyright owners, which would be determined by the court on a case by case basis. The Committee will monitor developments and make further submissions if necessary.

Business of Intellectual Property ("BIP") Asia

As it did last year, The Law Society agreed to sponsor the *BIP Asia Forum 2013*. This is an annual flagship intellectual property ("IP") event, jointly organised by the Hong Kong Trade Development Council, the Hong Kong Design Centre and the Government, to discuss the latest developments and business trends in IP worldwide. The forum took place on 5th and 6th December at the Hong Kong Convention and Exhibition Centre.

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

The Committee meets the IPD twice a year to discuss various IP laws, practices and related matters. Matters canvassed at the most recent meetings included, inter alia,

- Consultation on Parody
- Review of Patent System
- The use of e- filing with IPD
- The need for co-ordination between the parties for IP trading
- Review of Form T2
- Time extension applications in inter partes trade mark cases

External Representation

The Committee continued to be represented on the BIP Asia Steering Committee.

Members of the Committee:

A. Clinton D. EVANS (*Chair*)
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 S. T. TSOI
Henry J. H. WHEARE
Kenny K. S. WONG

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

INVESTMENT PRODUCTS AND FINANCIAL SERVICES COMMITTEE

The Committee reviewed and made submissions on the following:

- Financial Services and Treasury Branch and Hong Kong Monetary Authority's joint Consultation on Stored Value Facilities and Retail Payment Systems in Hong Kong
- Securities and Futures Commission's Consultation on Professional Investor Regime and the Client Agreement Requirements
- *Securities and Futures (Amendment) Bill 2013*

Members of the Committee:

Simon H. BERRY (*Chair*)
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: Assistant Director, Practitioners Affairs (I)

LAND USE PLANNING AND ENVIRONMENTAL LAW COMMITTEE

The Government introduced the *Air Pollution (Amendment) Bill 2013* into LegCo on 20 March. In order to bring Hong Kong's air quality in line with international standard, the Bill proposed to adopt a set of updated Air Quality Objectives ("AQOs"), subject to a transitional arrangement for designated projects with environmental permits granted under the *Environmental Impact Assessment Ordinance*. The Committee reviewed the said Bill and submitted, inter alia, that exemption from application of the new AQOs should be granted on a case by case basis. It also proposed to include "public interest" as a factor to be considered so as to allow the Government to take into account, for example, the undesirability of extensive delay caused by application of the new AQOs to the delivery of an important infrastructure project.

Members of the Committee:

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

MA Ho Fai
Andrew W. Y. NG
Christopher TUNG

Secretary: Assistant Director, Practitioners Affairs (I)

LEGAL AID COMMITTEE

The Committee met once this year, and conducted the rest of the business by e-mails.

ILAA

The LASC submitted to the Chief Executive its recommendations on the feasibility and desirability of establishing an ILAA in Hong Kong in April, together with the report of a consultancy study on the issue. The LASC agreed with the consultant that there was no immediate need to establish the ILAA. It also received recommendations from the consultant on the following: no separation of operation of the Official Solicitor's Office from the LAD; rights to be given to the LASC to nominate candidates eligible for the position of the directors; evaluation of the performance of the directors, and that the LAD should be re-positioned and placed directly accountable to the Chief Secretary for Administration.

The Committee noted with regret the LASC's agreement that there was no immediate need for an ILAA. This stance was the antithesis of the position LASC previously held since 1998, and yet no convincing reasons have been provided on the change of the position of LASC. The Committee reiterated that when a person who wished to initiate action against the government applied unsuccessfully for legal aid, he may have the perception that refusal of his legal aid application was due to the fact that the LAD was a government department and the decision on such application lacked independence.

The Committee repeated that provision of legal aid was an integral part of the administration of justice. An ILAA would ensure that those who required legal aid advice should be able to do so absent undue influence from any source and this premise was fundamental. It invited the Administration to re-consider the establishment of an ILAA.

The Committee was invited to attend a meeting of the AJLS Panel in June. The above comments were repeated to the LASC and the Administration. The Administration, who was present at the meeting, agreed to provide further information on the issue.

Unethical Touting

The Committee has been in correspondence with the LAD on the problem of unethical touting, and noted the proposal by LAD to implement a declaration/nomination system in order to combat the problem. Under this proposal, the LAD was to ask successful legal aid applicants to make a declaration in a nomination form, if they intended to nominate their own solicitors to act in their legally aided proceedings. New conditions of assignment were introduced and incorporated into the certificates of assignment.

The Committee, together with other related specialist committees, have reviewed the above proposal and made recommendations to the LAD on their proposed system. The proposal was implemented in September. The Committee was keeping in view the new declaration system.

Other Legal Aid related matters

The Committee also discussed various legal aid practice issues, such as entitlement to interest on profit costs, payment of interim payment and the amount of such payment, and solicitors' lien.

Members of the Committee:

Junius K. Y. HO (*Chair*)

Alison C. LIU

Patrick M. BURKE

Sherlynn G. CHAN

Dennis C. K. HO

WAN Charn Wing (*joined in May*)

Rebecca V. I. HO

Kenneth H. S. NG

Leslie K. L. YEUNG

Arthur K.H. HONG (*joined in May*)

Virginia W.L. SZETO (*joined in May*)

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

Director of Practitioners Affairs (*since November*)

PERSONAL INJURIES COMMITTEE

The Committee met three times this year and discussed various issues on personal injuries practice. It conducted the rest of its business by e-mails.

Fatal Accident Claims

The Committee was advised that there were different practices of commencing a fatal accident claim without the grant of probate. These practices apparently were endorsed by different personal injury courts at different levels. There seemed to be no uniformity on procedures, and there could also be costs consequences. The Committee drew the above to the attention of the Personal Injury Judge of the High Court, and understood that the Judge was currently reviewing the practice and procedures in this regard.

Employees Compensation Assistance Scheme ("ECAS") Claims

The Committee's attention was brought to the Judgement of *Lau Yuk Hung v Tsang Kwong Ming* HCPI 284/2010, whereby the Personal Injury Judge noted that although the plaintiff was successful in his personal injury claim against the ECAS Fund Board, the ECAS Fund Board was not liable to pay interest on those damages that have been awarded, or costs incurred by the plaintiff in proving his case in court in obtaining the judgment. The personal injury Judge suggested in the judgement that steps should be taken to remedy this situation.

The Committee agreed to the above observation and wrote to the ECAS Fund Board to suggest discussion on ways to deal with the situation.

Pre-action Accident Investigation Discovery

The Committee was advised that recently, personal injuries practitioners have been facing difficulties with the law enforcement agencies and government departments in pre-action discovery/investigation. In the past, parties in a personal injuries accident could rely on the case of *Lily Tse Lai Yin and others v the Incorporate owners of Albert House and others* [1999] 1HKC 386 and seek relevant information on witnesses, investigation reports, sketch plans, etc. from the law enforcement agencies and departments. The above requests have been declined recently by the agencies and government departments, apparently on the basis of data privacy. The refusals to supply accident information in the pre-action stage seriously prejudice both the plaintiffs and the defendants in the preparation of their cases. This was also contrary to the Civil Justice Reform objectives and rendered it impossible for the parties to comply with the mandatory requirements under *Practice Directions* 18.1 and 18.2.

In recognition of the above problem, the Committee initiated a meeting with and met with the representative of the Office of the Privacy Commissioner. The Committee relayed to the Office the concern of the practitioners on the above. The Committee has also written to the DOJ and invited a meeting with them to discuss the above issues.

The Case of Chan Pak Ting

The Committee noted with keen interest the case of *Chan Pak Ting v Chan Chi Keung and others*, HCPI 235/2011 in which the Court was invited to review the use of discount rates in personal injury litigation. The discount rate was largely undisturbed since *Chan Pui Kei v Leung On* [1995] 3 HKC 732. In its very detailed judgment, the Court in this case stated that the assumption of the net rate of return of 4.5% per annum was no longer valid in Hong Kong, and observed that it was appropriate to set different discount rates for plaintiffs with different future needs.

Members of the Committee:

Mark F. REEVES (*Chair*)
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: Assistant Director, Practitioners Affairs (II) (*until October*)
Director of Practitioners Affairs (*since November*)

PROBATE COMMITTEE

The Probate Committee continued to review issues and attend to members' enquiries relevant to probate practice and procedure. The Committee maintains 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 the Committee. The Committee also assisted in processing applications for publication in the weekly Enquiries from Solicitors on Wills, Codicils and other Testamentary Dispositions. A total of 398 applications were received and processed this year.

Review of the Pigeon Box System

The Committee has been reviewing, with the Probate Registry, the new arrangement for the Pigeon Box System which was introduced by the Probate Registry in October 2012. Among other things, the Request Form was revised to require both the signature of the solicitor authorising retrieval of files and endorsement of the firms' chop. This aims to tighten up security control. Furthermore, the revised Form now makes it clear that only the files where the Grant of Representation has not been issued and the withdrawn files will be kept in the pigeon box. The revised Form has been effective since January and members were informed of the same by circular.

Guide to Non-Contentious Probate Practice

The Judiciary issued the Guide To Non-Contentious Probate Practice in January. The Committee reviewed and discussed the Guide with the Probate Registry. The Probate Registry observed certain common types of non-compliance with the Guide. A Table of Statistics showing the percentage of non-compliance with reference to the relevant parts/paragraphs of the Guide and illustrating the same with examples was compiled by the Probate Registry. The Table was circulated to members to advise them of these common types of non-compliance. To further improve compliance of the registry practice, the Committee has invited the Probate Registry to conduct a seminar on probate practice and will follow up with the Probate Registry.

Fast Track List for Complicated Cases

The Probate Registry introduced a Fast Track for Complicated Cases in April for prompt and efficient handling of more complicated probate applications. The Committee reviewed the Fast Track mechanism with the Probate Registry and, in order to improve the operational efficiency, a new Form was designed for priority to process applications and setting down in the Fast Track List for Complicated Cases. The new Form became effective in October. Members were informed of this Fast Track arrangement and the related Form by circulars.

Chan Mei Ling alias Wong Ah Ho, the deceased HCAG 13429/2012

The Committee reviewed the Registrar's decision in the above case which covered a number of probate practice issues, such as the application to include an alias in the grant. A circular was issued to inform members of the decision.

Will Search Inquiry

The Committee reviewed the operation of the Enquiries from Solicitors on Wills, Codicils and other Testamentary Dispositions. To assist practitioners to identify the deceased named in the weekly Will Search Notice, the Committee revised the contents of the Notice. The deceased's date of death has accordingly been added to the Notice.

Will-writing Service

Will-writing is not a reserved activity in Hong Kong, and it is neither so in the United Kingdom. Following a consultation in the UK, the Legal Services Board in the UK ("LSB") published a final report in February and recommended that will-writing should be made a reserved legal activity, so that will-writing can only be performed by persons regulated by an approved regulator. Any bodies interested to be an approved regulator/licensing authority may apply to LSB. The Committee reviewed the report and noted that the LSB's recommendation could enable a variety of different types of providers to provide will-writing service. The Committee noted that LSB will submit its recommendation to the Lord Chancellor for consideration and will keep this matter under review.

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 improving the quality of probate services. Matters discussed include review of the new pigeon box system, the Guide to Non-Contentious Probate Practice, common types of non-compliance with the Guide, Fast Track for Complicated Cases and proposed seminar on probate practice by Probate Masters.

Members of the Committee:

Billy W. Y MA (*Chair*)

Helen Y. P. CHAN

Viola HUNG

Patricia LAM (*resigned in February*)

NG Kin Yuen

TAM Sau Hing

TSANG Kam Chuen

Herbert H. K. TSOI

WONG Tak Shing

Secretary: Assistant Director, Practitioners (I)

PROPERTY COMMITTEE

The Committee reviewed issues and legislative proposals relating to conveyancing practice at regular monthly meetings, and also met with representatives of Government departments and other organisations on specific property-related issues. In addition, members of the Committee continued to consider and determine applications for waivers of Deed of Mutual Covenant Guidelines (448 applications) ; and applications for deviations from forms of Agreement for Sale and Purchase approved under Rule 5C of the *SPR* (1 application). Members also served on internal Working Parties, and represented The Law Society on external Committees/Working Parties on property-related issues.

Residential Properties (First-hand Sales) Ordinance

The Ordinance was scheduled to take full effect on 29 April. The Committee was given a very tight schedule to review all draft guidelines, practice notes and FAQs prepared by the Government which aimed to familiarise stakeholders with the new statutory requirements. The Committee arranged to issue circulars on the drafts in January to invite members' comments, and attended three meetings with the Government on the drafts and proposed amendments. The guidelines, practice notes and FAQs were finalised by the Government in or about early April and posted on its website. The Committee suggested workshops to brief conveyancing practitioners and other stakeholders on the new statutory requirements, and recommended the Academy to organise a CPD seminar on the Ordinance. Representatives from the Government were invited to explain the new statutory requirements. The Committee keeps in view the application of the Ordinance and work closely with the Sales of First-hand Residential Properties Authority to seek clarification of any issues arising out of the Ordinance.

Consent Scheme

In view of the changes brought by the Ordinance, the Lands Department had introduced amendments to its agreement for sale and purchase under the Consent Scheme. The Committee had reviewed those amendments and raised comments thereon.

Non-Consent Scheme

The Committee considered and approved the following documents recommended by the Working Party on Review of the Non-Consent Scheme Forms:

- (a) two new agreements designed for the sale and purchase of first-hand residential properties in uncompleted and completed development respectively; and
- (b) amendments to the Statutory Declaration in light of the new requirements under the Ordinance.

Practice Direction A12

The Committee also reviewed various forms of Warning to Purchasers under *PD* A12. Taking into account the requirements in the Ordinance and to reduce complexity and avoid confusion, the Committee consolidated all forms into one. The consolidated form took effect in October and members were informed thereof by circular.

Stamp Duty (Amendment) Bill 2012

Following the Government's announcement on 26 October 2012 to tighten up Special Stamp Duty ("SSD") and introduce Buyer's Stamp Duty ("BSD") for residential properties, the *Stamp Duty (Amendment) Bill 2012* was introduced into LegCo in January. Subject to passage of this amendment Bill, the measures are deemed to have taken effect on 27 October 2012.

The Law Society's Property Committee and Revenue Law Committee jointly reviewed the Bill and prepared submissions to the Bills Committee. In the joint submissions, the Committees expressed their concerns on the Government's failure to conduct analytical review of SSD and BSD in order to ascertain its success; there was also a lack of information from the Government on its policy. The scope of exemption was not only narrow, but also uncertain and confusing and that has made it difficult for practitioners to advise their clients.

The two Committees met the Government's representatives in June to discuss the matter further. The first proposed draft Committee Stage Amendments were introduced in or about October. The Committee reviewed the same and sought from the Government clarification on several issues including, inter alia, the admissibility of instrument not duly stamped with BSD as evidence in civil proceedings. The Committee will monitor the progress of the amendment Bill.

Stamp Duty (Amendment) Bill 2013

The third round of special measures to try to curb unhealthy property price increases — double rates for ad valorem stamp duty ("DVD") for both residential and non-residential properties — were announced by the Government on 23 February. The *Stamp Duty (Amendment) Bill 2013* implementing such measures was introduced into the LegCo on 17 April.

Both The Law Society's Property Committee and Revenue Law Committee attended a briefing session by the Government's representative in March. Two written submissions, prepared jointly by the two Committees, were made on 3 and 30 April. Apart from the narrow scope and uncertainty of the exemptions, there was also concern that the stamp duty regime has become unduly complicated and confusing. There was no sunset clause in the Bill, although DVD was said to be only a temporary measure. A further meeting with the Government was held in December to discuss the Committee's concern including all risks, uncertainties and inconveniences arising out of the delay in processing the amendment Bill. The Committee shall keep in view the progress thereof.

Hong Kong People Hong Kong Land

The Committee met the representatives from the Lands Department in March to discuss the Government's proposed scheme "*Hong Kong People Hong Kong Land*". At the meeting, the Committee raised their concern on the certainty of the scheme and the inconveniences/difficulties to the purchasers which could potentially arise out of the actual operation of the scheme. The Lands Department indicated that it would work closely with stakeholders in fine-tuning the detailed arrangements before its actual implementation.

Fully Profit (Asia) Limited v Secretary for Justice FACV 17/2012

The CFA in the above case adopted a contextual approach to interpret the term "house". This approach appeared to be inconsistent with the guidelines set out in the Lands Department's Practice Note 3/2000. The Committee considered the possible implications of the above case on conveyancing practice and wrote to the Development Bureau, asking for views and policy arising from the case. The Government replied that it has given special attention, and is considering the matter. The Committee is keenly waiting for further replies from the Government.

Consultation on Adverse Possession

The Committee and the Working Party on Land Titles Ordinance reviewed the Consultation Paper issued by the LRC on the law of adverse possession. The Committee and the Working Party considered that whilst there were advantages to retain the law of adverse possession, the law should be uniform for both regimes — unregistered and registered land. Standardisation of the law for both regimes will not only achieve consistency, but also avoid confusion. A written submission was delivered to the LRC in March.

Land Titles Ordinance

The Land Titles Ordinance Steering Committee issued a paper LTOSC No.13 in June setting out its revised proposal on the conversion mechanism and rectification/indemnity arrangement. The Committee reviewed the proposal and approved a submission prepared by the Working Party on Land Titles Ordinance.

Settlement of Rates/Government Rent at the time of Completion

The Committee took note of members' concern on the accuracy and reliability of information provided by the Rating and Valuation Department ("RVD") on arrears of Rates and Government Rent, and discussed the same with RVD. It was pointed out that the above was important in the settlement of apportionment account on completion. RVD in reply agreed to revise the disclaimer in its PIO platform on 21 March by deleting the words "*no warranty or guarantee, express or implied, is given by the RVD as to the accuracy of the information*".

Payment of SSD

Under the existing payment arrangement, payment of DVD and SSD must be made and processed together under one single application. Members expressed concerns over the inconveniences and risks which may arise out of the above payment arrangement. The Committee discussed the above arrangement with the Stamp Office. The Stamp Office agreed to introduce in July additional methods of payment; now a vendor can pay SSD to the Stamp Office separately and directly. A circular was issued in July to inform members of the above.

Valuation Clause in Tenancy Agreement/Lease

The Committee met the representatives from the Royal Institution of Chartered Surveyors ("RICS") in November to discuss the valuation clause in tenancy agreement/leases. The Committee and RICS also discussed the holding of CPD seminars on the skills of drafting valuation clause. Representatives from RICS will be invited to participate as speakers. The Committee will follow up with RICS on the proposed seminar.

Levy on Conveyancing Transactions

The Advisory Committee set up by the Home Affairs Department ("HAD") proposed to set up a mandatory licensing regime for the property management industry and to establish a licensing body to be known as Property Management Services Authority ("PMSA"). Among other things, it was proposed that the PMSA should be partly financed by levies to be imposed on conveyances on sale, as property owners should benefit from the proposed licensing system. The Committee reviewed the proposal and made submissions to HAD; it considered that there is no direct relevance between such levy and property transactions. Owners of some buildings have not appointed any manager and it is unfair for them to bear the costs of the PMSA, when they cannot benefit from the proposed licensing regime. The levy will also increase the burden of purchasers.

The Committee also considered/reviewed other property related matters, such as:

- Legalisation of oversea documents for use in Hong Kong
- Registration of Licences
- Consultation on Long Term Housing Strategy

STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

External Work:

The Committee has representatives on the following group and committee:

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

Members of the Committee:

Emily Y. M. LAM (*Chair*)

Debbie F. CHEUNG

Keith P. K. CHEUNG (*joined in April*)

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

Late Wilfred G. K. TONG (*joined in January until March*)

David P. H. WONG

Raymond M. W. WONG

Terry P. L. YEUNG

Secretary: Assistant Director, Practitioners Affairs (I)

WORKING PARTY ON LAND TITLES ORDINANCE

Consultation on Adverse Possession

The LRC issued a Consultation Paper on Adverse Possession with seven recommendations including, inter alia, that the law of adverse possession should be retained but would be recast under the prospective registered land system.

The Working Party and the Property Committee reviewed the recommendations with reference to the models and experiences in other comparable jurisdictions. A submission was made to the LRC suggesting that the law of adverse possession should be retained with uniform application to the unregistered and registered (when in operation) land system to maintain consistency and avoid confusion.

Land Titles Ordinance

After much discussion on the correct form of conversion mechanism and the rectification/indemnity arrangement, the Land Titles Ordinance Steering Committee issued a paper LTOSC No.13 on 3rd June to set out the Government's revised proposals on the 2-stage conversion mechanism and the rectification/indemnity arrangement.

The Working Party reviewed the revised proposals and submitted that, in order to maintain the certainty of registered land title and to avoid abuse of the system, a holder of subsisting interest who had registered a caution against full conversion must commence a legal action within a prescribed period and should be liable for all damages if there is any abuse. Similarly, if an owner is to be given a choice to opt out from full conversion, there must be a timeframe for exercising such option.

As to indemnity, the Government is still considering different options.

The Working Party reserved further comment on the final proposal. The Working Party also noted that the Government will launch a public consultation to be followed by drafting and introducing into the LegCo the amendment legislation.

The Working Party has representatives on the following external committees:

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

Members of the Working Party:

John DAVISON (*Chair*)
Judith SIHOMBING (*Vice-chair*)
Peter P. AHERNE
AU Fun Kuen
Dora S. Y. CHAN
Emily Y. M. LAM

Ambrose S. K. LAM (*resigned in May*)
Alexander H. S. LEUNG
Vincent W. S. LIANG
Andy O. T. NGAN
Anthony H. Y. SHIN
Huen WONG

Secretary: Assistant Director, Practitioners Affairs (I)

WORKING PARTY ON REVIEW OF NON-CONSENT SCHEME FORMS

To cope with the full operation of the *Residential Properties (First-hand Sales) Ordinance*, the Working Party reviewed the Non-Consent Scheme documents under a tight schedule and recommended the following:

- two new agreements were proposed for the sale and purchase of first-hand residential properties in uncompleted and completed development respectively
- the Statutory Declaration was revised in light of the new agreements and requirements in the Ordinance

These new agreements and revised Statutory Declaration were approved by the Council and the Chief Justice and were put into effect on 29 April. Members were informed of the same by a circular. The Working Party is now conducting a further review of the Non-Consent Scheme forms.

Members of the Working Party:

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

LEUNG Siu Hon
Raymond M. W. WONG

Secretary: Assistant Director, Practitioners Affairs (I)

RETIREMENT SCHEMES COMMITTEE

The Committee reviewed the following new/revised Mandatory Provident Fund Guidelines proposed by the Mandatory Provident Fund Schemes Authority and informed members of the changes to the below MPF Guidelines by circulars:

- Continuing Training for Subsidiary Intermediaries (Guidelines VI.4)
- Enrolment and Contribution Arrangements for Relevant Employees other than Casual Employees (Guidelines IV.8)
- Contribution Arrangement of a Self-employed Person (Guidelines IV.17)
- Contribution Arrangement of a Self-employed Person Who Sustains a Loss (Guidelines IV.18)
- Minimum and Maximum Levels of Relevant Income of a Self-employed Person (Guidelines IV.19)
- MPF Exempted ORSO Scheme — Preservation of Benefits (Guidelines V.4)
- MPF Exempted ORSO Scheme — Illustrative Examples (Guidelines V.5)
- Payment of Accrued Benefits — Documents to be Submitted to Approved Trustees (Guidelines IV.4)
- Quarterly Returns of Registered Schemes (Guidelines II.3)
- Election for Transfer of Accrued Benefits (Guidelines IV.3)
- MPF Exempted ORSO Schemes — Withdrawal of Minimum MPF Benefits (Guidelines V.11)
- Annual Returns to be Delivered by Registered Intermediaries (Guidelines VI.3)

Members of the Committee:

David G. ADAMS (*Chair*)
Cynthia W. S. CHUNG
Christine M. KOO
Martin C. V. M. LISTER
Billy W. Y. MA

Sophia W. Y. MAN
TAM Chi Wai
Chung Yin WEI
Judy YANG

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

REVENUE LAW COMMITTEE

Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes)(Amendment) Bill 2012

After the Consultation on Islamic finance in 2012, the Government introduced the Amendment Bill into LegCo in order to provide a framework to attract Islamic financial products, which is one of the fastest growing areas in the global financial system. The Committee reviewed the Amendment Bill and made a submission to the LegCo Bills Committee in March. In the submission, the Committee expressed, inter alia, their concerns over the payment of security for Stamp Duty which could be a disincentive for such transactions, as there was no indication of the amount of security or the length of time it would be held by the Collector of Stamp Duty.

Inland Revenue (Amendment) Bill 2013

Following the consultation in 2012 on whether Hong Kong should amend the *Inland Revenue Ordinance* to provide a legal framework for Hong Kong to enter into Tax Information Exchange Agreements ("TIEAs") with other jurisdictions, the Government introduced the *Inland Revenue (Amendment) Bill 2013* into the LegCo to implement the policy in relation to TIEAs.

Financial Services and the Treasury Bureau asserts that there is no difference “*in substance*” between the Model TIEAs and the Model Exchange of Information (“MEoI”) article in the Comprehensive Avoidance of Double Taxation Agreements (“CDTAs”), as both of them provide effective exchange of information. The principle being asserted is that a jurisdiction cannot refuse to enter into MEoI agreements be they CDTAs or TIEAs with relevant partners. A preference for say a CDTA over a TIEA cannot be a reason for refusing to enter into an MEoI agreement.

The Committee reviewed the Bill and considered that whilst there was general support for the policy objectives, the Government had failed to adequately address concerns over privacy. The Inland Revenue Department has also not codified relevant provisions in its Departmental Interpretation and Practice Notes (“DIPN”) which have no binding force of law. However, it is the Committee’s view that any protection the Government can put into a DIPN or into a TIEA can also be included in our domestic legislation.

Stamp Duty (Amendment) Bill 2012

The Financial Secretary made an announcement on 26 October 2012 to launch another round of special measures to stabilise the property market, which include BSD for residential properties. The *Stamp Duty (Amendment) Bill 2012* was introduced into the LegCo in January accordingly.

The Committee reviewed the Bill and made submissions to the LegCo Bills Committee jointly with The Law Society’s Property Committee. In the submission, the Committee expressed concern on the Government’s failure to conduct analytical review of SSD and BSD in order to ascertain its success and a lack of information from the Government on its policy. The scope of exemption was narrow and there was also no clear guidance on the exemptions resulting in uncertainty and confusion. The submission was followed up by a meeting with the Government in June.

The Committee had also reviewed the draft proposed Committee Stage Amendments from the Government. The Committee will continue to monitor the progress of the Bill.

Stamp Duty (Amendment) Bill 2013

On 23 February, the Government introduced the third round of special measures to try to curb unhealthy property price increases — double rates for DVD for both residential and non-residential properties. The *Stamp Duty (Amendment) Bill 2013* implementing DVD was introduced into LegCo on 17 April accordingly.

The Committee and The Law Society’s Property Committee attended a briefing session by the Government in March. It was followed up by two written submissions on 3 and 30 April prepared jointly with The Law Society’s Property Committee. There were views that, inter alia, the stamp duty regime has become unduly complicated and uncertain. Although DVD was said to be only a temporary measure, there is no sunset clause in the Bill. The Committee had a further meeting with the Government in December to discuss the matter and will continue to monitor the progress of the Bill.

Members of the Committee:

Steven R. SIEKER (*Chair from May*)
William A. THOMSON (*Chair until April*)
James J. BERTRAM
CHAN Chak Ming
Brian GILCHRIST (*resigned in July*)
Sally S. W. IP

Vincent P. C. KWAN
Cynthia S. W. LEE
Gavin P. NESBITT
Archie W. PARNELL (*resigned in April*)
Simon J. G. RAE
Jacqueline Y. M. SHEK

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

REVERSE MORTGAGE COMMITTEE

The Reverse Mortgage ("RM") Programme was launched officially by the Hong Kong Mortgage Corporation Limited ("HKMC") in July 2011. The Law Society agrees to oversee the RM Programme counselling project.

Further to the enhancements made in November 2012, HKMC proposed to launch another round of enhancements. In these enhancements, potential/existing borrowers are allowed to make use of Enduring Power of Attorney so that their appointed attorneys could apply for reverse mortgage on their behalf and to have ongoing management, in the event they have lost their mental capacities. In view of these enhancements, the Committee met HKMC twice to discuss with them and to review the counselling documentation. To enable stakeholders to be familiar with the new arrangement, HKMC organised a seminar titled "*Reverse Mortgage — Enduring Power of Attorney and Part II Order for Mentally Incapacitated Persons — Role of Legal and Medical Practitioners*" in July. Representatives from The Hong Kong College of Psychiatrists/The Hong Kong College of Family Physicians and Mr. Joseph C. W. Li of the Committee were invited to speak at the seminar. The seminar was attended by over 200 audiences. The enhancements took effect on 22 November and members were informed thereof by circulars on 18 and 25 November.

Members of the Committee:

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

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

Secretary: Assistant Director, Practitioners Affairs (I)

WORKING PARTY ON INTERPRETERS

The Working Party on Interpreters had one internal meeting, two meetings with Multilingual Interpreters and Translators Association of Hong Kong, two meetings with NGOs and one meeting with a private interpretation service provider to discuss the current provision of interpreting service in Hong Kong. It raised with various stakeholders a number of issues on interpreters and interpretation services in Hong Kong: the level of education of interpreters and the work standard, the fluency, the languages requirement for freelance/part-time interpreters and the problems commonly encountered by the interpreters. Useful and helpful remarks were rendered to the Working Party also on the complaint and disciplinary proceedings, the system of training and accreditation of interpreters. The Working Party was collating different views canvassed from the various stakeholders.

Members of the Working Party

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

Anthony M.C. LAI
Anthony R. UPHAM

Secretary: Assistant Director, Practitioners Affairs (II)
Director of Practitioners Affairs (*since November 2013*)

WORKING PARTY ON PARTY AND PARTY RATES

The Law Society commissioned KPMG to review the scale rates of solicitors, which were last revised by the Registrar of High Court in 1997. The consultant in its report (made available in March) pointed out the low recoverability of costs by the successful parties in civil litigation. This was a de facto erosion of the fundamental policy of “cost follow the event” or “loser pays principle” and was detrimental to the successful litigants who should be entitled to be reimbursed of their reasonable cost from the losing party. The consultant recommended that the solicitors’ hourly rates be raised to better reflect the current market conditions and that the scale rates should be adjusted annually according to an inflation-linked index. These recommendations were accepted by and endorsed by Council.

The Law Society sent a copy of the Report to the Judiciary and requested a meeting to discuss the consultancy report. The Chief Justice has appointed a working party and an advisory group to review the matter and make recommendations. The Law Society is represented on the working party and advisory group.

Members of the Working Party:

Denis G. BROCK (*Chair*)
Nicholas D. HUNSWORTH

Amirali B. NASIR
Kenneth W.Y. WONG

Secretary: Director of Practitioners Affairs

WORKING PARTY ON REVIEW OF THE TRUSTEES ORDINANCE

The Government introduced the *Trust Law (Amendment) Bill 2013* into the LegCo in February, which was formulated after two previous consultations with which The Law Society had been engaged.

The Bill aimed at reforming the trust regime in Hong Kong by introducing statutory provisions on, inter alia, duty of care, power to delegate, power to insure, power to employ agents, nominees and custodians, beneficiaries’ power to appoint and remove trustees, remuneration for trustees acting in business/professional capacity, control of exemption clauses and abolishment of the outdated rules against perpetuities for non-charitable trusts.

The Working Party reviewed the Bill and submitted that the Bill was only modest in scope and was only a first step to bring Hong Kong’s trust regime closer to that of other comparable common law jurisdictions. To reinforce the status of Hong Kong as an international financial center, the Government should carry out further reforms without delay on various outstanding issues on trust, including the right of beneficiaries to information and the need for purpose trust. The Bill was passed on 17 July and had come into effect on 1 December.

Members of the Committee:

Billy W. Y. MA (*Chair*)
James J. BERTRAM
CHAN Chak Ming
Lester G. HUANG

Simon J. G. RAE
Herbert H. K. TSOI
David A. WHITE
WONG Tak Shing

Secretary: Assistant Director, Practitioners Affairs (I)

HONG KONG SOLICITORS INDEMNITY FUND LIMITED ("HKSIFL")

HKSIFL was established by The Law Society and empowered by the *Solicitors (Professional Indemnity) Rules* ("the SPI Rules"), to manage and administer the Professional Indemnity Scheme ("PIS") and the Hong Kong Solicitors Indemnity Fund ("HKSIF") subject to direction in certain areas by the Council.

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

The HKSIFL considered a number of matters including:

- Issues in relation to the conduct of claims
- Contribution reduction
- The performance and appointment of the PIS's Broker and Manager
- The performance of the PIS investments
- Proposed reforms to the PIS and amendments to the Rules
- Consultation from the DOJ regarding the proposal to enable locally qualified lawyers without a practising certificate to provide certain pro bono services
- Ceased firms which failed to submit the final Gross Fee Income Report and/or Quarterly Return
- The monthly management accounts and the audited accounts of the HKSIF and the HKSIFL
- Renewal of Directors' and Officers' liability and Professional Indemnity insurance for the HKSIFL and the Directors
- Renewal of Reinsurance Programme and Insolvency Insurance Programme of the PIS
- Matters arising from the liquidation of HIH Casualty and General Insurance Ltd. and FAI General Insurance Company Ltd. and the provisional liquidation of FAI First Pacific Insurance Co. Ltd.
- The proposal of a levy on conveyancing file payable to the HKSIF
- Enquiries relating to the PIS

A total of 240 notifications of claims were received by the Claims Manager, ESSAR Insurance Services Ltd. ("ESSAR") during the 2012/2013 indemnity year, i.e. from 1 October 2012 to 30 September 2013 and the grace period from 1 October 2013 to 29 November 2013. As at 30 September 2013, 17 of the notifications resulted in proceedings, 7 were closed without payment, 1 was settled with payment and 223 remained as notifications.

The number of claims for the last 27 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	No. of members
1986/1987	64	—	1,384
1987/1988	58	–9%	1,625
1988/1989	126	117%	1,754
1989/1990	178	41%	2,060
1990/1991	72	–60%	2,350
1991/1992	93	29%	2,572
1992/1993	118	27%	2,847
1993/1994	143	21%	3,161
1994/1995	151	6%	3,451
1995/1996	150	–1%	3,784
1996/1997	176	17%	4,197
1997/1998	336	91%	4,494
1998/1999	483	44%	4,612
1999/2000	263	–46%	4,771
2000/2001	230	–13%	4,946
2001/2002	215	–7%	5,086
2002/2003	269	25%	5,191
2003/2004	165	–39%	5,317
2004/2005	159	–4%	5,498
2005/2006	165	4%	5,666
2006/2007	142	–14%	5,831
2007/2008	309	118%	6,092
2008/2009	147	–52%	6,341
2009/2010	139	–5%	6,670
2010/2011	174	25%	7,041
2011/2012	126	–28%	7,381
2012/2013	240	90%	7,717

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

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

STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

Claims notified in the 2012/2013 indemnity year were categorised as follows:

Company/Commercial	20
Conveyancing	114
Landlord & Tenant	6
Litigation	61
Miscellaneous	8
Patents and Trademarks	13
Probate	12
Breach of Confidential Information	5
Data Breach	1
	240

Six fraud claims were received in the 2012/13 indemnity year.

As at 30 September, the total liability of the Scheme for the 2012/2013 indemnity year, calculated on the basis of claims paid and claims reserved, was HK\$22,451,176 of which HK\$3,008,370 consisted of claims paid (including costs) and HK\$19,442,806 consisted of claims reserved.

The total amount of claims paid (including costs) since the inception of the self-insured PIS in 1986 amounted to HK\$1,720,849,120 and the amount reserved was HK\$165,419,872. The total claims paid and reserved was HK\$1,886,268,992.

A detailed account of the operation of the PIS and claims data as well as the audited accounts of the HKSIF as at 30 September will be published in the PIS's Annual Report for the 2012/2013 indemnity year.

Directors of the HKSIFL:

Peter R. GRIFFITHS (*Chair*)

Denis G. BROCK

Albert B.K. DAN

Brian W. GILCHRIST

Christopher G. HOWSE

Peter C.L. LO

Patrick R. MOSS

Amirali B. NASIR

NG Wai Yan

Kevin C.K. SHUM

David G. SMYTH

Norris H.C. YANG

Company Secretary: ESSAR

PIS CLAIMS COMMITTEE

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

Members of the Committee:

Brian W. GILCHRIST (*Chair*)

Colin B. COHEN (*Vice-Chair*)

Charles W. ALLEN

Keith M. BRANDT

Tony K.W. CHOW

Simon P. CLARKE

George D. LAMPOUGH

Jeffrey H. LANE

Ronald W.T. TONG

Secretary: ESSAR

PIS INVESTMENT SUB-COMMITTEE

The PIS Investment Committee received monthly reports from the investment managers and met on a quarterly basis to review the HKSIF's investments and to decide and make recommendations to the Board of Directors of HKSIFL on matters relating to the investments. Matters arising in between the quarterly meetings are dealt with by the Committee through consultations between its members.

At each meeting the Sub-Committee invites the HKSIFL's investment consultant, Mercer Investment Consulting Limited and two of the four investment managers (on a rotating basis) to report on the HKSIF performance and to provide their outlook on market trends.

The current investment managers of the HKSIF are as follows:

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

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

- 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 2012 and 2013 were as follows:

		Net Return	
Type of portfolio		2012	2013
Amundi	Equity and bonds	9.68%	6.44%
AllianceBernstein	Bonds	3.86%	0.27%
MFS*	Equity	24.13%	29.55%
GMO*	Equity	13.56%	19.95%

* MFS and GMO were appointed in December 2011.

Members of the Sub-Committee:

Peter C.L. LO (*Chair*)
John S. GALE
IP Shing Hing
Elen LAU

Kher Sheng LEE
Kevin C.K. SHUM
Norris H.C. YANG

Secretary: Assistant Director, Professional Indemnity Scheme

PROFESSIONAL INDEMNITY ADVISORY COMMITTEE

This Committee is responsible for reviewing and advising on any issue relating to professional indemnity cover referred to it by the Council, the HKSIFL or the Claims Committee.

The Committee held one meeting during the year and considered the operation of claims loading and deductibles under the PIS, as well as the Claims Committee's policy on stale claims after the introduction of the Civil Justice Reforms.

The Working Party of the Committee held two meetings during the year and considered various amendments to the *SPI Rules*.

Members of the Committee:

Robin S. PEARD* (*Chair*)

Kevin R. BOWERS

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

Susan P.S.K. LIANG

NG Wai Yan

Peter K.H. NGAI

David G. SMYTH*

Fiona J. STEWART*

Gareth H. THOMAS

Norris H.C. YANG

Secretary: Assistant Director, Professional Indemnity Scheme

* Members of the Working Party of the Committee

PIS 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 retainer of the Panel from 2008 to 2013 expired on 31 January 2013. The Selection Board held one meeting in 2013 to consider the tender applications for the retainer from 2013 to 2018 and to resolve recommendations to the Council.

The firms appointed to the Panel with effect from 1 February 2013 were:

Bird & Bird

Deacons

Fred Kan & Co.

Gall

Howse Williams Bowers

P.C. Woo & Co.

Reed Smith Richards Butler

Smyth & Co.

Members of the Selection Board:

WONG Kwai Huen (*Chair*)

Stephen W.S. HUNG

Kenneth S.Y. NG

Amirali B. NASIR

Secretary: Assistant Director, Professional Indemnity Scheme

WORKING PARTY ON PIS GROSS FEE INCOME REPORTS AND CONTRIBUTIONS

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

The Working Party held one meeting during the year to consider the defaults and to resolve recommendations to the Council.

Members of the Working Party:

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

NG Wai Yan
WONG Kwai Huen

Secretary: Assistant Director, Professional Indemnity Scheme

WORKING PARTY ON CONVEYANCING LEVY

The Working Party was established by the Council to consider all issues involved in relation to the proposal of imposing a levy on conveyancing files.

The Working Party held one meeting during the year to consider the various alternatives of imposing the levy and their implications. The Working Party's views, together with comments of the HKSIFL and ESSAR were provided to the Council and it was resolved that the levy idea should not be pursued further.

Members of the Working Party:

Billy W.Y. MA (*Chair*)
Ambrose S.K. LAM

Amirali B. NASIR
Sylvia W.Y. SIU

Secretary: Assistant Director, Professional Indemnity Scheme

