

Standing 5
Committee on 1
Practitioners 0
Affairs 2



The Standing Committee on Practitioners Affairs met on seven occasions. It oversaw the work of 32 Committees, 13 Working Parties and ad hoc Task Groups. It also assisted in supervising the Law Society's work in relation to the Joint Tribunal.

The Committees under the Standing Committee included the following:

1. Arbitration Committee
2. Arbitrators Admission Sub-Committee
3. Civil Litigation Committee
4. Company Law Committee
5. Competition Law Committee
6. Constitutional Affairs And Human Rights Committee
7. Criminal Law & Procedure Committee
8. Employment Law Committee
9. Family Law Committee
10. Higher Rights of Audience Committee
11. Hong Kong Solicitors Indemnity Fund Ltd.
12. Insolvency Law Committee
13. Insurance Law Committee
14. Intellectual Property Committee
15. Investment Products and Financial Services Committee
16. Joint Standing Committee on Probate Practice
17. Land Use Planning and Environmental Law Committee
18. Legal Aid Committee
19. Liaison Committee with the CSD
20. Liaison Committee with the Police
21. PIS Claims Committee
22. PIS Investment Subcommittee
23. PIS Panel Solicitors Selection Board
24. Personal Injuries Committee
25. Probate Committee
26. Professional Indemnity Advisory Committee
27. Property Committee (with Subgroup on LTO Forms)
28. Retirement Schemes Committee
29. Revenue Law Committee
30. Reverse Mortgage Committee
31. Solicitor Advocates Interest Group
32. The Council Sub-Committee On Competition Ordinance

The Working Parties reporting to the Standing Committee were:

1. Working Party On Charities and Trust
2. Working Party On Enduring Power Of Attorney
3. Working Party On Enforcement in Civil Proceedings
4. Working Party On Interpreters
5. Working Party On Land Titles Ordinance
6. Working Party On Litigation Funding
7. Working Party On PIS Gross Fee Income Reports And Contributions

8. Working Party On Party and Party Rates
9. Working Party On Personal Data (Privacy) Ordinance
10. Working Party On Revised DMC Guidelines
11. Working Party On Review of Non-Consent Scheme Forms
12. Working Party On Resolution Regime
13. Working Party On Taxation In Civil Proceedings

ARBITRATION COMMITTEE

The Committee conducted its business via emails during the year and reviewed various matters on arbitration.

Establishment of the Arbitrators Admission Sub-Committee

The Sub-Committee was set up to establish and maintain a reputable panel of Solicitor-Arbitrators. The Sub-Committee met once during the year and deliberated on various matters including the following:

- (a) Requirements and procedures for empanelment;
- (b) Mechanisms and procedures for appointment of Solicitor-Arbitrators;
- (c) Training in arbitration for Solicitor-Arbitrators and solicitors; and
- (d) Law Society Sample Arbitration Clause.

Promotion of Solicitor-Arbitrators

The Committee discussed and participated in different internal and external initiatives to help promote arbitration and members' practices in arbitration. Among other things, the Committee canvassed various proposals to promote the status of Solicitor-Arbitrators and their arbitration practices in Hong Kong and in other jurisdictions, such as the Mainland.

Consultations on various areas relating to practices in arbitration

(a) *Arbitration (Amendment) Bill 2015*

The Committee reviewed the *Arbitration (Amendment) Bill 2015* and attended a meeting of the Bills Committee of the LegCo in March to discuss the Bill.

(b) Consultation on Security of Payment Legislation for the Construction Industry

The Committee reviewed the consultation paper jointly with the Civil Litigation Committee. The Committee agreed to revisit the matter when a draft bill was released for consultation.

(c) Consultation on Third Party Funding for Arbitration

The Committee together with the Working Party on Litigation Funding reviewed a consultation paper on Third Party Funding for Arbitration released by the Third Party Funding for Arbitration Sub-Committee of Law Reform Commission (“LRC”) in October. The views of the Committee and the Working Party were included in a response paper to LRC.

Participation in Arbitration and Relating Events

(a) Hong Kong Arbitration Study and Survey 2015 and Roundtable on Training and Professional Development of Arbitrators and Arbitration Practitioners

In May and July, the Committee assisted the Hong Kong Arbitration Study and Survey 2015 and the Roundtable on Training and Professional Development of Arbitrators and Arbitration Practitioners respectively. These two events were jointly organised by the Department of Justice (“DOJ”) and the Hong Kong Trade Development Council (“HKTDC”) to bring together information on the strengths and competitiveness of Hong Kong as a leading international arbitration centre in the Asia-Pacific region. It was the first study of its type in the region. The information collected would be used for the development and promotion of Hong Kong’s arbitration services.

(b) Meeting of the Development of the Mainland Market by Professional Services Sub-Group of the Consultative Committee on Economic and Trade Co-operation Between Hong Kong and the Mainland

The Chairman and a Member of the Arbitration Committee attended a meeting of the Sub-Group in May and made a presentation on the arbitration services in Hong Kong.

CIVIL LITIGATION COMMITTEE

The Committee met on six occasions and conducted the rest of its business via emails. The Committee also received a deputation from Australia in September.

Consultation Papers

The Committee received and reviewed various Consultation Papers by the Government and the Judiciary, inclusive of the following:

(a) Information Technology Strategy Plan (“ITSP”)

In February, members of the Committee and the Technology Committee attended a joint meeting with the Judiciary and other stakeholders and discussed the application of technology in court premises under the ITSP. A written submission

jointly prepared with the Criminal Law and Procedure Committee and the Technology Committee was submitted in April.

(b) Review of the Implementation of Civil Justice Reform (“CJR”)

In April, in response to the Judiciary’s draft LegCo paper on the Review of the Implementation of CJR, the Committee raised various issues, such as time taken in the delivery of civil judgments after hearing in the High Court, taxation of costs, pre-action protocols and enforcement of judgments.

The Committee received positive feedback from the Chief Judge of the High Court that the Judiciary would put in place an enhanced measure to notify parties to a hearing the estimated time for handing down a reserved judgment.

The Committee will continue to monitor the issues relating to CJR closely.

(c) Consultation Paper on the Draft Provisions in the *Judiciary (Five-Day Week) (Miscellaneous Amendments) Bill 2015*

In April, the Judiciary invited comments on the draft provisions in the *Judiciary (Five-Day Week) (Miscellaneous Amendments) Bill 2015*. Several primary and subsidiary legislations would be amended in order to allow those Judiciary offices with a public interface to switch to a five-day week. The Committee, the Criminal Law and Procedure Committee and the Insolvency Law Committee reviewed the consultation paper and made a joint reply to the Judiciary.

(d) Consultation Paper on Proposed Amendments to Suitors' Funds Rules

In April, the Judiciary invited further views on its proposed legislative changes to the following suitors' funds rules for various courts and tribunals:

- *Hong Kong Court of Final Appeal Suitors' Funds Rules*;
- *High Court Suitors' Funds (Amendment) Rules 2015*;
- *District Court Suitors' Funds (Amendment) Rules 2015*;
- *Lands Tribunal (Suitors' Funds) Rules*;
- *Labour Tribunal (Suitors' Funds) (Amendment) Rules 2015*; and
- *Small Claims Tribunal (Suitors' Funds) (Amendment) Rules 2015*.

The Committee reviewed the consultation paper and expressed no further comment. The above six sets of amendment rules were published in the Gazette and tabled in the LegCo for negative vetting in July.

(e) Consultation on the Proposed Security of Payment Legislation for the Construction Industry

In June, the Committee reviewed a consultation paper on the Proposed Security of Payment Legislation for the Construction Industry. The proposal aimed to enhance

cash flow in construction projects by providing a process for claiming payments, responding to claims and resolving disputes. The proposed system would be applicable to all contracts and sub-contracts for public sector works. The Committee would keep this matter under review.

(f) Consultation Paper on the Enactment of Apology Legislation in Hong Kong

In June, the Steering Committee on Mediation chaired by the Secretary for Justice published a consultation paper on the enactment of apology legislation in Hong Kong. The Committee reviewed the consultation paper. A detailed joint submission was made together with the Mediation Committee, the Personal Injuries Committee, the Insurance Law Committee and the Investment Products and Financial Services Committee.

(g) Consultation Paper on the Review of the Civil Jurisdictional Limits of the District Court and the Small Claims Tribunal

In August, the Judiciary issued a Consultation Paper on the Review of the Civil Jurisdictional Limits of the District Court and the Small Claims Tribunal. The Committee reviewed the consultation paper and agreed in principle to the proposed increases in jurisdictional limits. A written submission was made jointly with other specialist committees.

Other issues

The Committee also discussed various issues pertinent to civil litigation practices, including the following:

- Solicitors' Hourly Rates
- Litigation funding
- The practice of solicitor advocates
- Ad hoc admission of overseas counsel
- Practice Direction (“PD”) 19.1 - Pleadings
- Photocopying charges of documents
- *The Contracts (Rights of Third Parties) Ordinance (Cap.623)*
- New standard directions for Case Management Summons Order and Leave for setting down for trial
- Admission in Form 16C under Order 13A of the *Rules of the High Court (Cap.4)*
- Taxation practice in both the District Court and the High Court
- Engagement and Fee Arrangements with Barristers

In November, the Committee proposed to set up a working party to review the current arrangement in instructing barristers in civil matters, including the financial liabilities of instructing solicitors and to advise on necessary amendments, if any, to written instructions (including a brief or backsheets) to barristers.

COMPANY LAW COMMITTEE

The Committee conducted its business by email circulations. Jointly with the Investment Products and Financial Services Committee, the Committee reviewed and made submissions on the following:

- SFC's Consultation Paper on Principles of Responsible Ownership
- Hong Kong Exchanges and Clearing Limited's Consultation Paper on Review of the Environmental, Social and Governance Reporting Guide.

COMPETITION LAW COMMITTEE

The Committee convened one meeting and conducted the rest of its business via emails.

The *Competition Ordinance* of Hong Kong (Cap. 619) was to bring to Hong Kong a new cross-sector competition regime. For the preparation for the implementation of the *Competition Ordinance*, the Committee reviewed the following.

(a) Four sets of procedural and fees rules for the Competition Tribunal and the Competition Tribunal Practice Directions

In response to the views made by the stakeholders, the Judiciary invited comments on the following four sets of draft procedural and fees rules for the Competition Tribunal and two sets of PDs:

- *Competition Tribunal Rules*
- *Competition Tribunal (Fees) Rules*
- *Competition Tribunal (Suitors' Funds) Rules*
- Amendments to the *Rules of High Court*, Cap.4A
- Competition Tribunal Practice Direction No.1 – Proceedings before the Tribunal
- Competition Tribunal Practice Direction No.2 – Confidential Information.

The Committee reviewed the drafts and made a submission to the Judiciary in February.

The procedural and fees rules for Competition Tribunal and Practice Directions took effect in December. A briefing session by Judiciary representatives on the Competition Tribunal Rules and Practice Directions were held in December.

(b) Revised Draft Guidelines under the CO

In March, the Competition Commission and the Communications Authority published the following Revised Draft Guidelines for public comment:

- Guideline on the First Conduct Rule
- Guideline on the Second Conduct Rule
- Guideline on the Merger Rule
- Guideline on Complaints
- Guideline on Investigations
- Guideline on Applications for a Decision under Sections 9 and 24 (Exclusions and Exemptions) and Section 15 Block Exemption Orders.

The Committee reviewed the Revised Draft Guidelines and produced a detailed submission to the Competition Commission in April.

The Competition Commission released the final Guidelines in July.

(c) Draft Leniency Policy for Undertakings Engaged in Cartel Conduct

In September, the Competition Commission published for public consultation a draft leniency policy for undertakings engaged in cartel conduct. The Draft Cartel Leniency Policy was said to provide clear incentives for cartel participants to cease participating in cartel conduct and to report that conduct to the Competition Commission.

The Committee reviewed the Draft Policy and produced a detailed submission to the Competition Commission in October. A number of suggestions were made to improve the robustness, reliability and efficacy of the regime outlined in the Draft Policy.

The Competition Commission released the final Leniency Policy for Undertakings Engaged in Cartel Conduct in November.

(d) Recommended Fee Guides of The Law Society

The Committee, together with the Reverse Mortgage Committee, the Property Committee, the Probate Committee and the Intellectual Property Committee, provided recommendations to the Council on the Recommended Fee Guides of The Law Society.

CONSTITUTIONAL AFFAIRS AND HUMAN RIGHTS COMMITTEE

The Committee met eight times during the year.

Constitutional Developments

In January the Government released a consultation paper to seek views on various issues pertinent to the method for selecting the Chief Executive of the HKSAR (“CE”) by

universal suffrage.

According to the Basic Law and the Interpretation of National People's Congress Standing Committee ("NPCSC") in 2004, amendments to the method of electing the CE by universal suffrage in 2017 and for forming LegCo in 2016 had to go through the "Five-step Process". The above consultation was issued in preparation for the third step in the Five Step Process, focusing on the appointment of the CE by universal suffrage.

The Committee met on various occasions to review the consultation paper. Among other things, the Committee commented on the composition and formation of the Nominating Committee, procedures for the Nominating Committee to nominate CE candidates, the need for transparency of the nominating procedures, voting arrangement, term of office of the CE, and the desirability of political affiliation of CE. A submission was made in March.

The Committee had reviewed other constitutional law matters on the political structure of Hong Kong. These included a consultation paper released in May on Proposed Guidelines on Election-related Activities in respect of the District Council Election and the *Electoral Legislation (Miscellaneous Amendments) (No. 2) Bill 2015* introduced to the LegCo in December. The Committee was also in the process of reviewing another public consultation paper issued in November on the enhancement of voter registration system.

Independence of the Judiciary

An independent Judiciary is an essential cornerstone to the Rule of Law. In September, the Committee prepared a public statement for consideration by the Council reiterating the importance of an independent judiciary to Hong Kong, the constitutionally entrenched doctrine on the separation of powers between the executive, the legislature and the Judiciary and The Law Society's vouched unequivocal support for the Judiciary. A press release was issued on 20 September.

Refugee asylum seekers

In February, the Government proposed various measures to enhance the effectiveness of the Unified Screening Mechanism ("USM") set up to assess non-refoulement claims. The Committee reviewed these proposed measures. It asked that further improvements be made to the claim forms, provision of screening bundles, scheduling of interviews and standardisation of legal fees. The Committee had further discussions with the Government on these enhancement measures in July, and in October, placed its submissions for consideration by the Government.

In November, a member of the Committee attended a meeting of the Panel of Security of the LegCo on "The Sixth Report of the People's Republic of China under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". Later in the same month, the Committee sent a member to attend on behalf of The Law Society several sessions of the meeting of the United Nations Committee Against Torture held in Geneva.

Other reviews

The Committee noted and reviewed other constitutional and human rights issues including the following:

- Establishment of a Reporting System on the Physical Cross-Boundary Transportation of Large Quantities of Currency and Bearer Negotiable Instruments
- *Interception of Communications and Surveillance (Amendment) Bill 2015*
- National Security Law
- Human Rights Forum on 4 November.

CRIMINAL LAW AND PROCEDURE COMMITTEE

The Committee met on 10 occasions to discuss issues on criminal law and practice.

Biennial criminal legal aid review

The Committee continued discussion with the Home Affairs Bureau on the revision of the criminal legal aid rates. It had two meetings with the Bureau and other stakeholders in March and June. The Committee repeated to the Government that a reasonable rate was important to attract and to pool talents for criminal legal aid work. Apart from rates, the Committee asked the Legal Aid Department (“LAD”) to look into the structural issues on payment of legal aid assignments, e.g. the assessment of and the re-determination of fees payable by LAD.

Consultations

The Committee reviewed a number of consultations related to criminal law and practices. Different Task Groups were convened to review the consultations and the proposals. In some other cases, joint discussions were held with other specialist committees.

The consultations reviewed by the Committee included the following:

- **Provision of screens for sexual offence victims in the course of trial proceedings**

The Judiciary proposed to amend Practice Direction - 9.3 "Criminal Proceedings in the Court of First Instance" and Practice Direction - 9.4 "Criminal Proceedings in the District Court" to require, as a matter of standing procedure, the counsel to advise the presiding judge of the following during the Pre-trial Review of every sexual offence case, i.e. (i) whether the complainant had requested a screen; and (ii) whether the prosecution considered it appropriate to make such an application.

- **Establishment of a Reporting System on the Physical Cross-Boundary Transportation of Large Quantities of Currency and Bearer Negotiable Instruments**

The Government proposed to establish a system to detect the physical cross boundary transportation of large quantities of currency and bearer negotiable instruments as an effort to move towards compliance with international standards established under Recommendation 32 of the Financial Action Task Force on anti-money laundering and counter-financing of terrorism.

- **Proposals on the implementation of the information technology strategy plan of the Judiciary**

The Judiciary sought views from stakeholders on the application of technology in court premises under the ITSP.

Legal Visits

Following the discussions with the various law enforcement agencies in the previous year, the Committee continued to review the various logistical arrangements for legal visits. Further views were exchanged with various law enforcement agencies and other stakeholders.

Training programme

The Committee assisted in organising a one-day training programme jointly with the DOJ and the Hong Kong Bar Association (“Bar Association”). The training was held twice, respectively on 7 March and 26 September. The programme comprised lectures and mock court exercises, and was aimed to provide criminal advocacy training to participants with less than 5 years' post qualification experience. The two training programmes were well received.

Criminal Law Conference

Another training event that the Committee helped organise jointly with the DOJ and the Bar Association was the *Criminal Law Conference 2015*. The Conference was held on 24 October at the Justice Place (formerly Central Government Offices). It covered four major topics, namely human rights consideration in the operation and reform of the hearsay rule in criminal proceedings; enhancing the rehabilitative nature of the criminal justice system; test of "reasonable prospect of conviction" for the purpose of making prosecutorial decisions and money laundering.

The Honourable Mrs. Justice Maura McGowan of the High Court of Justice of England and Wales delivered a speech on the topic concerning hearsay rule in criminal proceedings. Her Ladyship and the Honourable Justice Mark Weinberg of the Court of Appeal, Supreme Court of Victoria, Australia acted as moderators for the debates and discussions.

Criminal practices and procedure

Apart from the above, the Committee also discussed and issued circulars from time to time to advise members of the updated criminal practices.

EMPLOYMENT LAW COMMITTEE

The Committee conducted its business by emails and kept in view the following matters:

- The *Employment (Amendment) Ordinance 2014* which came into operation in February
- The revised Statutory Minimum Wage rate at \$32.5 per hour effective from May
- The discussion on the proposed Standard Working Hours.

The Committee had a co-option exercise in February. Five new members joined the Committee in June to help with the increase in workload.

FAMILY LAW COMMITTEE

The Committee met on 12 occasions.

Consultation Papers

The Committee reviewed the following Bills and Consultation Papers:

(a) *Human Reproductive Technology (Amendment) Bill 2015*

The Committee considered the *Human Reproductive Technology (Amendment) Bill 2015*, which aimed to amend the *Human Reproductive Technology Ordinance* (Cap.561) to provide for a new offence in respect of publishing or distributing advertisements purporting to promote sex selection services. A submission was made to the LegCo Bills Committee in April.

(b) Consultation on a Draft Practice Direction on the Mode of hearing, anonymisation of the parties and publication of judgments concerning matrimonial and family proceedings

The Committee reviewed the Draft Practice Direction on the Mode of hearing, anonymisation of the parties and publication of judgments concerning matrimonial and family proceedings and made a submission to the Judiciary in April.

In June, the Judiciary issued Practice Direction 15.15 – “**Matrimonial and Family Proceedings – Miscellaneous**”, which took effect in July.

(c) Final Report on the Review of Family Procedure Rules

The Chief Justice's Working Party on Family Procedure Rules released the Final Report on the Review of Family Procedure Rules in May. The Committee would closely monitor the development of this matter.

(d) Consultation Paper on the Review of the Civil Jurisdictional Limits of the District Court and the Small Claims Tribunal

The Committee reviewed the Consultation Paper on the Review of the Civil Jurisdictional Limits of the District Court and the Small Claims Tribunal. The views of the Committee, together with those from other specialist committees, were consolidated and sent to the Judiciary in December.

(e) Consultation on the Proposed Legislation to Implement the Recommendations of the LRC Report on Child Custody and Access

The Committee actively pursued the reform recommended by the LRC to change the existing law on Custody and Access and introduced the concept of “Parental Responsibility” under the LRC Report in March 2005. The Committee met with several stakeholders and organised meetings and conferences lobbying for the reform. The Labour and Welfare Bureau released a consultation paper on the proposed legislation to implement the Recommendations of the LRC Report on Child Custody and Access in November. The Committee was in the course of preparing a submission on the consultation.

Other issues

The Committee also considered a wide range of issues:

(a) Domestic Violence

In January, the Committee had a meeting with the Hong Kong Police Force to discuss the updated protocol of the police in handling the domestic violence cases. To beef up the support to victims in domestic violence cases, the Committee invited general members with the relevant post qualification experience and knowledge to join the Panel of Solicitors on Domestic Violence by circulars.

(b) Hague Conference on Private International Law

In February, the Committee met with Dr. Christophe Bernasconi, Secretary General of Hague Conference on Private International Law and exchanged views on international child abduction.

(c) Children's Dispute Resolution Pilot Scheme

The pilot scheme on Children's Dispute Resolution was introduced in the Family Court in October 2012. The Committee noted that the Judiciary was in the course

of reviewing the pilot scheme and issued an updated Practice Direction 15.13 in September.

(d) District Court (Fixed Costs in Matrimonial Causes) Rules, Cap. 336F

The latest review of the fixed costs for matrimonial matters took place in 2000. The Committee considered that it was a time for a review of the fixed costs. It proposed to amend the Rules to update the scale of the fixed costs and extend the fixed costs arrangement to the new family court practices, such as Children's Appointment and Children Dispute Resolution Hearings. In October, the Committee had several meetings with the LAD and exchanged views on the matter. The Committee would continue to engage the LAD to progress the matter.

(e) Parenting Coordination

The Committee considered using parenting coordination to assist the court to deal with children in high conflict cases.

(f) Draft Checklist for Pre-Trial Review ("PTR")

The Committee reviewed a draft checklist for PTR which aimed to assist the parties to prepare for the proceedings.

Family Court Users Committee

On the recommendations of the Family Court Users Committee, the Committee had approved and issued circulars to members on the following:

- Case Management
- Personal Data Privacy
- Running Bundle of Correspondence
- Fixing hearing date for New Application.

The Committee had also issued circulars to assist members in updating their family law practice and procedure on the following:

- PD15.15 - "**Matrimonial and Family Proceedings – Miscellaneous**"
- Child Custody and Access - (i) Leaflet entitled "Parenthood Goes On" and (ii) List of Counselling Services Providers.

Events

- **Seminar on Private Financial Adjudication for Family Disputes**

Practice Direction SL 9 - "Pilot Scheme on Private Adjudication of Financial Disputes in Matrimonial and Family Proceedings" was promulgated in January. The Honourable Mr. Justice Lam VP of the Court of Appeal and Deputy High

Court Judge Bebe Chu (as she then was) were invited to speak at a seminar entitled “Private Adjudication of Financial Disputes in Family Cases” on the new Practice Direction.

- **Training for the Social Welfare Department**

In October, four members of the Committee presented training courses for the Social Welfare Department on domestic violence and child custody.

- **The *Third Children's Issues Forum 2015***

The Law Society was a major sponsor and co-organiser of the *Third Children's Issues Forum*. The Forum was held in November, and attended by top judges, other professionals and academics in Hong Kong and other jurisdictions. Guest speakers included the Chief Justice, the Secretary of Labour and Welfare Bureau, the Chief Justice of the Family Court of Australia and a Judge from England’s Court of Appeal. It highlighted legislative developments in Hong Kong including the proposal for a Children's Bill, a review of the implementation of the Children's Dispute Resolution Practice Direction and the challenges entailed in representing children's perspectives in legal proceedings. The Forum was well-received.

Feature articles on Family Law

Members of the Committee contributed to feature articles on the *South China Morning Post* and *Hong Kong Lawyer* on matrimonial law and practice. These articles were published in July and August.

INSOLVENCY LAW COMMITTEE

The Insolvency Law Committee conducted its business by email circulations.

Bankruptcy (Amendment) Bill 2015

The Bill was placed before LegCo in April. The Bill aimed to amend the *Bankruptcy Ordinance* (Cap.6) (“BO”), having regard to a ruling made by the Court of Final Appeal on the constitutionality of a relevant provision of the abscondee regime under the BO. The Committee reviewed the Bill and made a written submission to the Bills Committee.

The Chairman of the Committee, as the representative of The Law Society, attended a Bills Committee meeting in July and gave a presentation based on the written submission.

Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015

The Financial Services and the Treasury Bureau (“FSTB”) invited comments on the Draft

Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill in July. The proposed amendments set out in the Draft Bill were to amend the *Companies (Winding Up and Miscellaneous Provisions) Ordinance* (Cap.32) and its subsidiary legislation, with a view to improving Hong Kong's corporate insolvency law. The Committee had provided their comments in the course of the previous consultation process and expressed no further comments on the Draft Bill. The Draft Bill was introduced into the LegCo in October.

Proposals on a Statutory Corporate Rescue Procedure and Insolvent Trading Provisions

The Committee had been keeping in view the progress of the relevant amendment bill on a Statutory Corporate Rescue Procedure and Insolvent Trading Provisions.

Advisory Group on Modernisation of Corporate Insolvency Law

The Chairman of the Committee, as a representative of The Law Society, attended regular meetings of the Advisory Group on Modernisation of Corporate Insolvency Law throughout the year.

INSURANCE LAW COMMITTEE

The Committee conducted its business via email and had a meeting with the Honorable Mr. Dennis Kwok, Legislative Councillor, in March.

Insurance Companies (Amendment) Ordinance 2015

The proposed establishment of an Independent Insurance Authority (“IIA”) is an important development in the insurance industry in Hong Kong, and was provided for in the *Insurance Companies (Amendment) Bill 2014*. Following the submissions made to the Bills Committee on the *Insurance Companies (Amendment) Bill 2014*, the Committee had a meeting with the Honorable Mr. Dennis Kwok, Legislative Councillor, in March. At the meeting, the Committee expressed its views and continuing concerns on the Bill, in particular, the "best interests" requirement for insurance agents and the multiple roles of the IIA. The Committee was advised that those views had been relayed and canvassed in the legislative process.

The Bill was passed in July as *Insurance Companies (Amendment) Ordinance 2015*. This marked a significant milestone in the development of the regulation of the insurance industry in Hong Kong with the elimination of self-regulation and consolidation of all regulatory functions under one statutory independent regulator. The Committee was advised by the FSTB that they would embark on the preparatory work for the establishment of the IIA and the process would take about two to three years.

The Committee will keep under review the progress of the setting up of the IIA.

Second Consultation Paper on an Effective Resolution Regime for Financial Institutions in Hong Kong

The Committee was consulted on the Second Consultation Paper on an Effective Resolution Regime for Financial Institutions in Hong Kong, which was jointly published by the FSTB, the Hong Kong Monetary Authority (“HKMA”), the Securities and Futures Commission (“SFC”) and the Insurance Authority in January. The views of the Committee, together with those from other specialist committees of The Law Society, were considered and a consolidated submission was made in April.

Consultation Paper on Enactment of Apology Legislation in Hong Kong

The Committee was consulted on the Consultation Paper on Enactment of Apology Legislation in Hong Kong released by the DOJ. The Committee commented on, amongst other issues, the effect of the apology legislation on insurance contracts. The views of the Committee, together with those from the Mediation Committee, the Civil Litigation Committee and the Personal Injuries Committee on the other parts of the Consultation Paper, were consolidated and sent to the DOJ in August.

Consultation Conclusions on a Risk-based Capital Framework for the insurance industry of Hong Kong

The Committee took note of the Consultation Conclusions on a Risk-based Capital Framework for the insurance industry of Hong Kong released by the Office of the Commissioner of Insurance in September.

INTELLECTUAL PROPERTY COMMITTEE

The Intellectual Property Committee met on nine occasions and conducted the rest of its business via emails and telephone conferences. The Committee had a very busy year dealing with various matters.

Consultations and Review

The Committee reviewed a number of consultations, legislative proposals and issues relating to intellectual properties.

Consultation on proposed application of the protocol relating to the Madrid Agreement concerning the international registration of marks to Hong Kong Special Administrative Region (“Madrid Protocol”)

In November 2014, the Government issued the consultation on the Madrid Protocol. The consultation was on a proposed protocol to allow trademark owners to apply for registration in one or more countries or jurisdictions by filing a single application and paying one set of fees. The trademark owners may also manage their trademark portfolios

through a single procedural step. The Committee expressed reservation on the proposal and took the view that it was not clear that the time, effort and financial resources involved in becoming a member of the Madrid Protocol would be of sufficient benefit to Hong Kong or Hong Kong businesses. The Committee made a written submission in January.

Consultation on draft *Copyright Tribunal Rules*

This consultation was launched to seek views on a set of draft new rules to regulate proceedings before the Copyright Tribunal. The new rules were to replace *the Copyright Tribunal Rules*, Cap.528 currently in force. The Committee considered that there were ambiguities in the draft new rules, and had relayed its observations and queries to the Government at a meeting with the Government's Intellectual Property Department ("IPD") and also by way of a written submission.

Review of fees and charges by the IPD

The IPD reviewed the costs and services provided by its various registries and proposed to increase the costs of applications and searches and reduce the costs of renewals. Amendments to the related legislation for the proposed fees revision were put forward. The Committee noted the policy intent but did not agree to the proposed reduction of the trade mark and registered design renewal fees for a number of reasons. One reason was the concern that low renewal fees might encourage the maintenance or renewal of disused rights. The Committee prepared a submission on the above, which was sent to the LegCo and the IPD in January.

Consultation on *Patent Protection of Inventions relating to second or further medical use*

The IPD sought views on a consultation on patent protection and invited the Committee to comment on their proposed amendments to section 94 of *the Patents Ordinance*, Cap.514 ("PO") to specifically address the issue of novelty of inventions relating to second or further medical use. The Committee supported the proposed amendment. It further suggested the proposed provision to be applied retrospectively. A written submission was made in August.

Review of draft *Patents (Amendment) Bill 2015*

The IPD proposed, by way of the *Patents (Amendment) Bill 2015*, certain legislative amendments to the *PO* to implement a new patent system. The proposed amendments aimed to introduce an "original grant" patent system for standard patents, refine the short-term patent system and implement interim regulatory measure for local patent practitioners pending development of a fully-fledged regulatory regime. The Committee submitted its observations, particularly on the short-term patent system to the IPD in September. The Committee repeated its views on the short-term patent system to the Bills Committee of the LegCo in December.

Copyright (Amendment) Bill 2014

The *Copyright (Amendment) Bill 2014* was introduced into the LegCo in June to update the copyright regime of Hong Kong. It generated heated debates at the LegCo and in the community. The most controversial topics were (i) adoption of the American open-ended fair use exception instead of the specific fair dealing exceptions, which had been used for a long time; (ii) addition of a user-generated content exception; and (iii) express provision to disallow contract override.

The Committee considered that much of the discussion on the Bill had been shrouded by misconceptions on the above topics. It prepared a position paper setting out its position on the Bill. The position paper was issued on 29 December. In essence, the Committee supported the passing of the Bill without further delay and also urged the setting of a timetable to further discuss with the stakeholders on those controversial topics, in order to update the copyright regime in Hong Kong in a timely fashion.

Voluntary Fee Guides for Intellectual Property (“IP”) Works

The Committee also reviewed and extensively discussed the voluntary fee guides on intellectual property work. The Council resolved to issue a circular to abolish the IP fee guides and other Law Society fee guides in November.

Meetings and Conferences

Bi-annual Meetings with IPD

The Committee attended bi-annual meetings with the IPD in February and September and discussed a number of issues relating to IP laws, practices and related matters. Matters canvassed at the bi-annual meetings included:

- *New Copyright Tribunal Rules*
- Amendments to the *Copyright Ordinance*, Cap.528
- Patent review
- Proposed application of Madrid Protocol to Hong Kong
- Fee review conducted by the IPD
- Clarification of IPD’s practice regarding colour marks and non-colour marks
- Processing time of deficiency checking of trademark application by the Trade Marks Registry

Guangdong Hong Kong Seminar on IP and Development for Small & Medium Enterprises in Guangzhou in June 2015

As in previous years, the Committee sent a representative to speak at this annual event jointly organised by the Guangdong Intellectual Property Office, the HKTDC and the Guangzhou IP Administration.

Business of Intellectual Property (“BIP”) Asia 2015

BIP Asia Forum is an important annual intellectual property forum, jointly organised by the Government, the HKTDC and Hong Kong Design Centre. The *BIP Asia Forum 2015* took place on 3 and 4 December in the Hong Kong Convention and Exhibition Centre. The Law Society was one of the sponsors of the Forum.

Similar to last three years, the Committee helped coordinate The Law Society’s participation in the Forum. The Chairman and two Committee members spoke on “*Practical Tips to Protect Your IP Assets*” in one of the break-out sessions. The session was well attended.

Pilot Scheme of Intellectual Property Consultation Service by IPD

The IPD in collaboration with the Committee provided pro bono IP advisory programmes to small and medium-sized enterprises (“SMEs”). The SMEs were offered advice on IP issues in order to raise their awareness of IP, as well as to develop effective IP management and commercialisation strategies and to deal with possible challenges in the competitive environment. As of 31 December, 68 consultation service sessions were completed and the SMEs were all satisfied with the consultation service received. Given the positive response and in agreement with the Government’s policy to develop Hong Kong into an IP trading hub, the Committee continued to work with the IPD to carry on the consultation service on a long term basis.

IP Evaluative Mediation

The Committee received from the DOJ and the IPD their proposal to introduce evaluative mediation for intellectual property disputes in Hong Kong. This IP Evaluative Mediation was another initiative brought in to help Hong Kong to become an IP hub. Together with the Mediation Committee of The Law Society, the Committee met the DOJ and the IPD on various occasions to discuss the development and promotion of evaluative mediation in Hong Kong.

External Representation

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

The Committee also had representatives on the IPD’s Focus Group on Review of the Patent System in Hong Kong.

University Talk

The Committee sent a representative to moderate a session on Creativity and IP organised by the IPD at the Chinese University of Hong Kong respectively in March and October.

Attendances

The Committee was represented at the Memorandum of Understanding signing

ceremonies between the Government Intellectual Property Office and the Korean Intellectual Property Office in January and the Mexican Intellectual Property Office in February.

INVESTMENT PRODUCTS AND FINANCIAL SERVICES COMMITTEE

The Committee conducted its business via emails. It reviewed and made submissions on the following:

- Hong Kong Exchanges and Clearing Limited's Consultation Paper on *Proposal for Introduction of Volatility Control Mechanism in the Securities and Derivatives Markets and Closing Auction Session in the Securities Market*
- *Securities and Futures (Amendment) Bill 2015*
- SFC's Consultation on *Securities and Futures (Financial Resources) Rules*
- HKMA and SFC's joint Consultation on *Introducing Mandatory Clearing and Expanding Mandatory Reporting*
- Legislative Proposal to introduce an *Open-ended Fund Company Regime in Hong Kong*
- SFC's Consultation on *Proposed Amendments to the Guidelines for the Regulation of Automated Trading Services*
- SFC's Consultation to *expand the scope of short position reporting and on the corresponding amendments to the Securities and Futures (Short Position Reporting) Rules*

The Committee and the Company Law Committee reviewed and jointly made submissions on the following:

- SFC's Consultation Paper on *Principles of Responsible Ownership*
- Hong Kong Exchanges and Clearing Limited's Consultation Paper on *Review of the Environmental, Social and Governance Reporting Guide*.

LEGAL AID COMMITTEE

The Committee met four times during the year and conducted the rest of its business via emails.

Preliminary Proposal of the Working Group on the Expansion of Supplementary Legal Aid Scheme ("SLAS")

The Committee reviewed a Preliminary Proposal of the Working Group on the Expansion of SLAS issued by the Legal Aid Services Council in July. The Preliminary Proposal listed out recommendations on the 10 types of cases that had been considered by the

Working Group for inclusion in the SLAS. The Committee supported the proposals on the expansion and asked to expedite any further review and the related legislative process.

Consultation on the Review of Civil Jurisdictional Limits of the District Court and the Small Claims Tribunal

In October, the Committee considered a Consultation Paper on the Review of the Civil Jurisdictional Limits of the District Court and the Small Claims Tribunal released by the Judiciary. A joint submission with the Civil Litigation Committee, the Personal Injuries Committee and the Family Law Committee was made in November.

Meeting with the Director of Legal Aid (“DLA”)

There was an on-going dialogue with the DLA on various legal aid issues over the year. The Committee and the Personal Injuries Committee met with the DLA and his deputy directors in May. Among other things, the Committee received positive feedback from the LAD on the following:

(a) Monitoring of Legal Aid Assignments - Declaration System

Two members of the Committee attended a meeting of AJLS Panel as representatives of The Law Society in March. To follow up the discussion at the AJLS Panel meeting, a letter was sent to the DLA on the Declaration System. The views of the Committee on the Declaration System were taken on board by the DLA. The wording of LAD’s Conditions of Assignment to Panel Lawyers were revised in August. A circular was issued to update general members.

(b) Payment of Costs to Assigned Lawyers

In April, the Committee conducted a survey to gather views from general members on payments of interim bills by the LAD and incidental logistics. In general, members expressed dissatisfaction on the unreasonably low percentage and slow payments of interim bills. The survey results were presented at a meeting with the DLA in May for deliberation. As a follow up on the discussion, the Committee proposed to invite the DLA to give a seminar on legal aid schemes, including how to better prepare interim bills to facilitate payment.

Other issues

The Committee also discussed the following issues:

- *Chi Yuk Pui v Grace Mind Corporation Limited* (HCPI 917/2014) on conducting legal aid on a pro bono basis
- *Lo Pok Chung v Chan Tat Ki Robert* (DCPI 316/2015) on costs capped for the assigned solicitors under Order 13A regime
- Setting off of costs under Rule 17 of *Legal Aid in Criminal Cases Rules* (Cap.221D)
- Arrangement on the transfer of papers upon reassignment of legal aid cases

- Disclosure of details of legal aid assignments.

PERSONAL INJURIES COMMITTEE

The Committee met once this year and conducted the rest of its business by email circulations.

Consultation on Apology Legislation

The Committee was consulted in July on a proposal to enact apology legislation. In this consultation, the Steering Committee on Mediation sought views on its suggestion to introduce apology legislation to Hong Kong to facilitate settlement of disputes.

Members reviewed the proposal and commented on the efficacy of offering apologies in personal injuries claims, in particular, with respect to the cultural differences and the admissibility of apologies in legal proceedings.

The above views were consolidated with comments from other specialist committees in a joint position paper, which was sent to the DOJ in August.

Civil Jurisdictional Limits of the District Court and Small Claims Tribunal

Another paper the Committee reviewed was a consultation released in August by the Judiciary on proposed increases to the civil jurisdictional limits of the District Court and of the Small Claims Tribunal. Members of the Committee relayed their comments on issues such as the adequacy of manpower of the Judiciary to cope with the proposed increases in jurisdiction, and the abolition of the current “2/3” cap rule on District Court rates allowed under Order 62 rule 32(1A) of the *Rules of the District Court*, Cap. 336H. Those views were consolidated with observations of other specialist committees and were considered by the Council. A joint response was produced to the Judiciary in December.

Meetings with the DLA

The Committee, together with the Legal Aid Committee of The Law Society, met the DLA on 22 May to discuss various legal aid practices. The two Committees had a useful exchange of views with the Director on issues such as preparation of a standard checklist for legal aid applications, the payment of costs to assigned solicitors and the monitoring of legal aid assignments.

Other meetings and attendance

In September, members of the Committee received a courtesy visit from an Australian law firm and shared with them views on litigation funding, class actions and disastrous personal injuries claims.

Also in September, a member of the Committee attended a radio interview at the Radio Television Hong Kong, and outlined for the audience the general procedures in personal injuries claims.

In November, the Committee had a meeting with the Personal Injuries Judge and deliberated an array of topical issues including the application of the doctrine set out in the case of *Chan Yim Wah Wallace v New World First Ferry Services Ltd* (HCPI 820/2013), periodical payment orders, listing of Personal Injuries cases, and case management directions.

The Committee issued circulars to general members from time to time to draw their attention to various personal injuries practices.

PROBATE COMMITTEE

The Committee conducted its business via emails. It continued to review issues and attend to member enquiries relevant to probate practice and procedure. The Committee maintained close contact with the Probate Registry through the Joint Standing Committee on Probate Practice which comprises the Registrar of High Court, Probate Masters, Chief Probate Officer and members of 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 about 522 applications were received and processed this year.

New Checklist for Application for Grant

In anticipation of the implementation of the New Checklist for Application for Grant by the Judiciary in June, members of the Committee met with the Judiciary in March to share views and observations on the draft New Checklist.

To assist the practitioners to familiarise themselves with the New Checklist, the Committee organised a seminar to provide the practitioners with an understanding and an update on the New Checklist in October. The Committee members spoke at the seminar and shared their experiences on the use of the New Checklist with the participants. The seminar was well attended by about 400 practitioners and was accredited as a Risk Management Education (“RME”) course.

Recommended Fee Guide for Probate Work

The Committee reviewed the voluntary fee guide on probate work in light of the new *CO* Cap. 619. It issued a circular abolishing the fee guide in November.

JOINT STANDING COMMITTEE ON PROBATE PRACTICE

The Committee met the Probate Registry in October to exchange views on probate services. The Committee also discussed with the Probate Registrar and Probate Masters their experience in completing the New Checklist. Other matters relayed to the Probate Masters included matters such as legalisation of documents executed abroad for use in Hong Kong, certified copy grant and the issues arising from the decision in HCAG 1463/2015.

PROPERTY COMMITTEE

The Committee met on 12 occasions to review various issues and legislative proposals on conveyancing practice, and also had meetings with different Government departments and 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 (“DMC”) Guidelines (519 applications); and application for deviations from forms of Agreement for Sale and Purchase approved under Rule 5C of the *Solicitors Practice Rules* (Cap. 159H) (one application). Members also served on internal Working Parties, and represented The Law Society on external Committees/Working Parties on property-related issues.

The Reform of the Law on Adverse Possession

The Committee made submission to the AJLS Panel of the LegCo in April on the LRC Report on Adverse Possession. Among other things, the Committee considered the recommendation in the Report that the law of adverse possession be re-casted and reformed with the land registration system was not desirable. It set out its views and observations in a submission rendered to the AJLS Panel in April.

Consultation on the *Building Management Ordinance*

The Committee reviewed the Consultation Paper on Review of the *Building Management Ordinance*. The Committee took the view that the Consultation Paper only canvassed limited topics in the Ordinance; a comprehensive review of all aspects in the Ordinance should continue in order to enhance the quality of building management and to provide a sustainable living environment. A written submission on the above was made in February.

Non-Consent Scheme

The Committee continued to review the following in light of the revision of agreements for sale and purchase under the Consent Scheme by the Land Advisory and Conveyancing Office of the Lands Department in or about October:

- amendments to two agreements for sale and purchase of first-hand residential properties in uncompleted and completed developments

- amendments to the two sub-sale and purchase agreements
- consequential amendments to the related Statutory Declaration.

The Committee also worked closely with the Working Party on Review of Non-Consent Scheme Forms, to consider a new agreement for sale and purchase of first-hand non-residential properties in uncompleted developments.

Competition Ordinance, Cap. 619

Members of the Committee attended a meeting with the representatives from the Competition Commission in August to discuss the implications of the *CO*, Cap. 619 on the current practice of the first-hand project conveyancing.

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

There have been continual discussions within the Committee on the implications of the Court of Final Appeal judgment in *Fully Profit (Asia) Ltd. v The Secretary for Justice* (supra) and the Practice Note No.3/2000A, the latter of which was issued by the Lands Department on the conveyancing practice. The Committee met the Director of Land and representatives from Lands Department in November to relay its concerns, including the suggestion to the Lands Department to issue a confirmation letter to clarify its stance on existing developments which were completed prior to the judgment and the Practice Note.

At the same meeting, the Committee also expressed concern on the Lands Department's policy in respect of certain technical breach of the land grant terms, including approval of the design, disposition and height of a development. .

Contract (Rights of Third Parties) Ordinance, Cap. 623

The Committee had been keeping close watches on the *Contract (Rights of Third Parties) Ordinance*, Cap.623, in particular, the implication on (inter alia) the land grants and agreements for sale and purchase of properties. The Committee sought views from the Sales of First-hand Residential Properties Authority on a proposed provision to exclude the application of the Ordinance from the agreements for sale and purchase in respect of first-hand residential properties. On the other hand, the Committee discussed with the Legal Advisory and Conveyancing Office of the Lands Department on the implications of the Ordinance on the standard forms of agreement for sale and purchase under the Consent Scheme, particularly with respect to phased developments.

As to the agreements for sale and purchase under the Non-Consent Scheme for residential and non-residential properties and completed development in respect of first-hand properties, the Committee was considering any necessary exclusion of the application of the Ordinance.

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

- The plans and schemes deposited in the Land Registry under the *Roads (Works, Use and Compensation) Ordinance*, Cap. 370
- Revised DMC Guidelines
- Proposal for implementing the electronic lodgment under the *Land Registration Ordinance*, Cap.128 by the Land Registry.

External Work

The Committee had representatives on the following group and committee:

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

WORKING PARTY ON LAND TITLES ORDINANCE

The Working Party had been in correspondence with the Land Registry on the paper LTOSC No.14 issued in June 2014. The Working Party raised concerns on the paper and exchanged views with the Land Registry.

The Working Party had representatives on the following external committees:

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

WORKING PARTY ON REVIEW OF NON-CONSENT SCHEME FORMS

In light of the changes brought by the Land Advisory and Conveyancing Office of the Lands Department on the agreements for sale and purchase under the Consent Scheme, the Working Party reviewed the following:

- (a) amendments to two agreements for sale and purchase of first-hand residential properties in uncompleted and completed developments;
- (b) amendments to the two sub-sale and purchase agreements; and
- (c) consequential amendments to the related Statutory Declaration.

The Working Party was drafting a new agreement for sale and purchase of first-hand non-residential properties in uncompleted developments.

WORKING PARTY ON REVISED DMC GUIDELINES

The Working Party continued its efforts to review The Law Society's Guidelines for DMC, including Guideline No.29.

RETIREMENT SCHEME COMMITTEE

The Committee conducted its business by emails. It reviewed new/revised Mandatory Provident Fund ("MPF") Guidelines proposed by the Mandatory Provident Fund Schemes Authority and informed members of the changes to the following MPF Guidelines by circulars:

- Equities and Other Securities (**Guidelines III.2**)
- Approved Exchange (**Guidelines III.4**)
- Investment Managers (**Guidelines III.5**)
- Transfer Process under Sections 148A and 148B of the Mandatory Provident Fund Schemes (General) Regulation (**Guidelines IV.24**)
- Notification of Events of Significant Nature (**Guidelines II.9**)
- Monthly Returns of Registered Schemes (**Guidelines II.1**)
- Documents to be Submitted to Approved Trustees (**Guidelines IV.4**)
- Enrolment and Contribution Arrangements for Relevant Employees other than Casual Employees (**Guidelines IV.8**)
- Enrolment and Contribution Arrangements for Casual Employees (**Guidelines IV.9**)
- Enrolment and Contribution Arrangements for Self-employed Persons (**Guidelines IV.10**)
- MPF Exempted ORSO Schemes – Preservation of Benefits (**Guidelines V.4**)
- MPF Exempted ORSO Schemes – Withdrawal of Minimum MPF Benefits (**Guidelines V.11**)
- Benefit Payment Statement (**Guidelines IV.27**)
- Quarterly Returns of Registered Schemes (**Guidelines II.3**)
- Monthly Statistical Returns of Registered Schemes (**Guidelines II.8**)
- Revised Disclosure Code
- New Guidelines on Giving of Notices or Documents by Electronic Means (**Guidelines IV.26**)
- Revised Guidelines on Debt Securities (**Guidelines III.1**)

REVENUE LAW COMMITTEE

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

Inland Revenue (Amendment) Bill 2015

Following the consultation on legislative proposal on the extension of profits tax

exemption for offshore funds in private equity funds in 2014, the *Inland Revenue (Amendment) Bill 2015* was introduced into the LegCo in March and passed in July as the *Inland Revenue (Amendment) (No.2) Ordinance 2015*.

Consultation Paper on Automatic Exchange of Financial Account Information in Tax Matters in Hong Kong

In April, the FSTB launched a consultation exercise to gauge views on the proposals to apply Automatic Exchange of Financial Account Information in Tax Matters ("AEOI") in Hong Kong. Members of the Committee attended a briefing session on the proposed implementation of AEOI in Hong Kong. The Committee reviewed the consultation paper and made a detailed submission.

Inland Revenue (Amendment) (No.3) Bill 2015

The Bill was introduced into the LegCo in June. The Bill amended the *Inland Revenue Ordinance*, Cap.112 to enhance the tax appeal mechanism and improve the efficiency and effectiveness of the Board of Review (Inland Revenue Ordinance). With the benefit of reading the submissions made by the Joint Liaison Committee on Taxation ("JLCT") on the Bill, the Committee resolved to adopt the same position as the JLCT. The submission was sent to the Bills Committee in September. The Bill was passed in November as *Inland Revenue (Amendment) (No.3) Ordinance 2015*.

Inland Revenue (Amendment) (No.4) Bill 2015

The Bill was introduced into the LegCo in December. The Bill aimed at amending the *Inland Revenue Ordinance*, Cap.112 to confer profits tax concession to qualifying corporate treasury centres; to make provisions for profit tax purposes regarding interests on money borrowed from or lent to associated corporations; to treat regulatory capital securities as debt securities, and to make consequential and related amendments to the *Inland Revenue Rules*, Cap.112A and the *Stamp Duty Ordinance*, Cap.117 concerning regulatory capital securities. The Committee was in the course of reviewing the Bill.

REVERSE MORTGAGE COMMITTEE

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

The Committee noted the enhancements introduced by the Hong Kong Mortgage Corporation Limited to the Reverse Mortgage Programme in March. The Committee participated in the seminar on these new enhancements on 14 September. Topics such as the role of counsellors under the Reverse Mortgage Programme were broached. The participants were given an overview and an update of the reverse mortgage programme with the life insurance policy-linked enhancement incorporated. The seminar was well received and was attended by 338 participants. As of 31 December, there were 438 practitioners registered with The Law Society as reverse mortgage counsellors.

WORKING PARTY ON ENFORCEMENT IN CIVIL PROCEEDINGS

This Working Party was set up in September to examine issues such as enforcement against insolvent debtors after the bankruptcy orders had been discharged, and any mechanism for reciprocal recognition and enforcement of matrimonial judgments between the Mainland and Hong Kong. It was tasked to review provisions and make recommendations to enhance recovery by judgment creditors. Its membership included members of the Insolvency Law Committee, the Civil Litigation Committee and the Family Law Committee. The Working Party aimed to hold its first meeting in early 2016.

WORKING PARTY ON INTERPRETERS

The Working Party on Interpreters had been considering issues via email circulations. It conducted a detailed study on the court interpreter system in Hong Kong and a number of comparable jurisdictions: England and Wales, Australia, United States, Canada and Singapore. The Working Party was compiling a report making recommendations on improving the current court interpreter system in Hong Kong.

WORKING PARTY ON LITIGATION FUNDING

The Working Party on Litigation Funding conducted its business by emails. It completed its review on the possible introduction of litigation funding to Hong Kong and put forward its recommendations to the Council for consideration in March. The Working Party suggested that litigation funding should be made available for selected areas of practice, e.g. arbitration and insolvency cases. Further, the Working Party recommended that conditional fee and contingency fees arrangements should be revisited.

In October, the Working Party reviewed the LRC's consultation paper on Third Party Funding for Arbitration. Jointly with the Arbitration Committee, the Working Party prepared a response on the Consultation Paper.

WORKING PARTY ON PARTY AND PARTY RATES

The Working Party on Party and Party Rates met on one occasion and conducted the rest of its business by emails. It continued to monitor the progress of the Judiciary's review of the SHRs.

In April, the Judiciary advised that, in response to The Law Society's consultancy report commissioned in 2013 on recoverability gap on profit costs, it intended to adopt a two-stage approach in its own review of SHRs. It would firstly consider the methodology to be adopted for the review and secondly calculate the SHRs based on the approved

methodology. Six months later, in October, the Judiciary delivered to the Working Party a draft interim report on the matter.

The Working Party reviewed the draft report jointly with the Civil Litigation Committee and prepared a draft response. The draft response was considered and endorsed by the Council and was sent to the Judiciary in December.

WORKING PARTY ON RESOLUTION REGIMES

The Working Party conducted its business by email circulations. It reviewed the Second Consultation Paper on an Effective Resolution Regime for Financial Institutions in Hong Kong, which was jointly published by the FSTB, the HKMA, the SFC and the Insurance Authority in January. The Working Party made a detailed submission in response to 54 consultation questions in April.

The *Financial Institutions (Resolution) Bill 2015* was introduced into the LegCo in November. The Bill aimed to establish a cross-sector resolution regime for global systemically important financial institutions with a view to avoiding or mitigating the risks otherwise posed by their non-viability to the stability and effective working of the financial system of Hong Kong and to the continued performance of critical financial functions.

WORKING PARTY ON TAXATION IN CIVIL PROCEEDINGS

A Working Party on Taxation in Civil Proceedings was set up to review the taxation practices in Civil Proceedings at different levels of courts. It aims to address and identify issues, concerns and/or difficulties civil practitioners face in their daily practices. The Working Party consists of members who practise insolvency law, civil litigation, personal injuries, matrimonial law and those with legal aid practices. It met once this year.

At its first meeting in December, the Working Party discussed concerns raised by practitioners during the taxation process. It deliberated issues such as improvement to the current basis of taxation and taxation practice in other common law jurisdictions. The Working Party considered that it would be helpful to canvass views from other stakeholders, and was in the process of arranging meetings with these other stakeholders.

HONG KONG SOLICITORS INDEMNITY FUND LIMITED

Hong Kong Solicitors Indemnity Fund Limited ("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 Solicitors Indemnity Fund ("HKSIF") subject to direction from the Council.

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

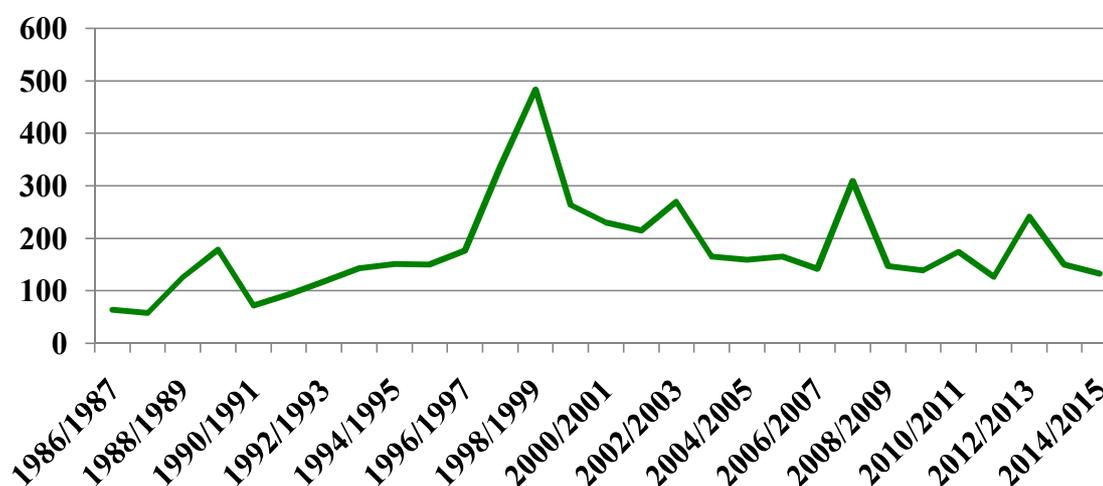
The HKSIFL considered a number of matters including:

- Issues in relation to the conduct of claims
- Contribution reduction
- The performance of the PIS Broker and Manager
- The performance and potential diversification of PIS investments
- Review and update of PIS investment guidelines
- Proposed reforms to the PIS and amendments to the *SPI Rules*
- Ceased firms which failed to submit the final Gross Fee Income Report and/or Quarterly Return and/or pay their final PIS contributions
- The monthly management accounts and the audited accounts of HKSIF and HKSIFL
- Renewal of Directors' and Officers' liability and Professional Indemnity insurance for HKSIFL and the Directors
- Matters arising from the liquidation of HIH Casualty and General Insurance Ltd. and FAI General Insurance Company Ltd. and the provisional liquidation of FAI First Pacific Insurance Co. Ltd.
- Enquiries relating to the PIS.

A total of 133 notifications of claims were received by the Claims Manager, ESSAR Insurance Services Ltd. ("ESSAR") during the 2014/2015 indemnity year, i.e. from 1 October 2014 to 30 September 2015 and the grace period from 1 October 2015 to 29 November 2015. As at 30 September 2015, 11 of the notifications resulted in proceedings, eight were closed without payment and 122 remained as notifications.

The number of claims for the last 29 indemnity years and the number of members holding practising certificates as at 30 September of each of those years are as follows:-

Figure 1: Number of Claims (1986/1987 – 2014/2015)



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	127	-27%	7,381
2012/2013	241	90%	7,717
2013/2014	150	-38%	8,111
2014/2015	133	-11%	8,503

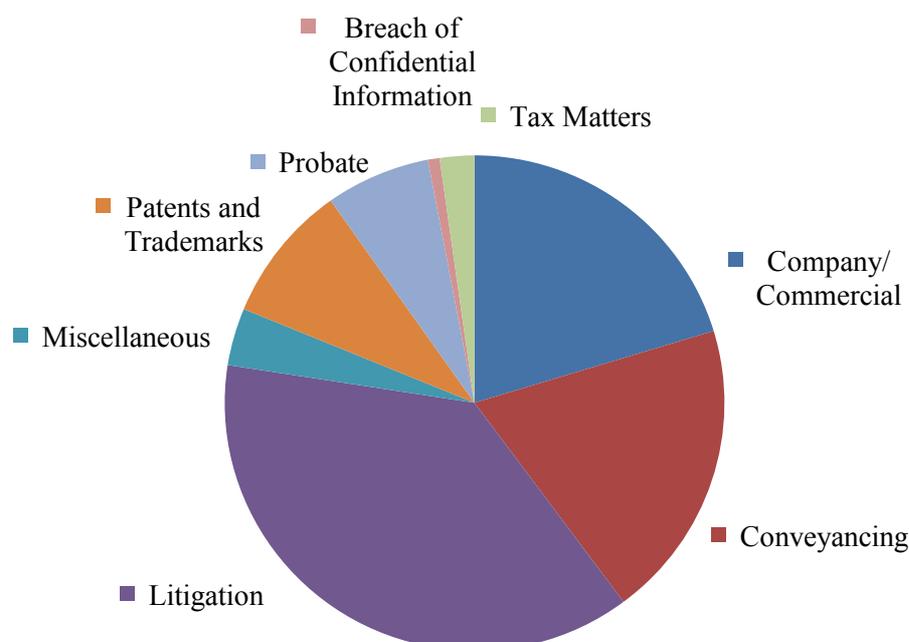
* Number of Claims includes claims notified within the grace period.

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

Claims notified in the 2014/2015 indemnity year were categorised as follows:-

Company/Commercial	27
Conveyancing	26
Landlord & Tenant	0
Litigation	50
Miscellaneous	5
Patents and Trademarks	12
Probate	9
Breach of Confidential Information	1
Tax Matters	3
	133

Figure 2 : Types of Claims notified in 2014/2015



Three fraud claims were received in the 2014/15 indemnity year.

As at 30 September 2015, the total liability of the PIS for the 2014/2015 indemnity year, calculated on the basis of claims paid and claims reserved, was HK\$19,542,853 of which HK\$3,616,022 consisted of claims paid (including costs) and HK\$15,926,831 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\$1,844,389,439 and the amount reserved was HK\$168,750,836. The total claims paid and reserved was HK\$2,013,140,275.

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 2015 will be published in the PIS Annual Report for the 2014/2015 indemnity year.

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.

PIS INVESTMENT SUB-COMMITTEE

The PIS Investment Sub-Committee held five regular meetings during the year.

At each meeting, the Subcommittee would invite HKSIFL's investment consultant, Mercer Investment Consulting Limited and two of the four investment managers 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”)

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

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

The net returns on the portfolios managed by the investment managers for the 12 month period ended 31 December 2014 and 2015 were as follows:

	<u>Type of portfolio</u>	<u>Net Return</u>	
		<u>2014</u>	<u>2015</u>
Amundi	Equity and bonds	3.40%	-0.31%
AllianceBernstein	Bonds	7.22%	0.41%
MFS*	Equity	7.46%	-0.88%
GMO*	Equity	-1.84%	-6.61%

* MFS and GMO were appointed in December 2011.

In addition to monitoring the performance of managers, the Subcommittee also considered diversification of the portfolio and reviewed the investment guidelines of Amundi and AllianceBernstein during the year.

PROFESSIONAL INDEMNITY ADVISORY COMMITTEE

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

This Committee had a Working Party which considered various amendments to the *SPI Rules*. The Working Party held two meetings during the year and conducted the rest of its business by email circulations.

PIS PANEL SOLICITORS 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 current Panel runs from 1 February 2013 to 31 January 2018.

The firms which served as Panel Solicitors in 2015 were:

- Bird & Bird
- Deacons
- Fred Kan & Co.
- Gall (*resigned in October*)
- Howse Williams Bowers
- P.C. Woo & Co.
- Reed Smith Richards Butler
- Smyth & Co.

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.

During the year, the Working Party held one meeting and considered a number of defaults and applications for time extensions by email circulations.