

Standing Committee on Practitioners Affairs

2016



THE
LAW SOCIETY
OF HONG KONG
香港律師會

The Standing Committee oversaw the work of 27 Committees, 12 Working Parties, and ad hoc Task Groups in various practice areas. It assisted also in the administrative work of the Joint Tribunal, which was set up to resolve disputes between solicitors and barristers in relation to fees.

The Standing Committee met on seven occasions and conducted the rest of its business by emails. It received draft submissions rendered by the various committees and working parties and supervised their administration, such as review of chairmanship and membership.

Apart from the above, the Standing Committee was involved in overseeing the following.

Non-Disclosure of Solicitors' Names in Disciplinary Proceedings

The Standing Committee revisited the Judiciary's proposal to amend Order 106 rule 12(1) Rules of High Court which aimed to remove the anonymity of solicitors' names in the titles of disciplinary proceedings. It considered the provisions in the *Legal Practitioners Ordinance*, Cap 159 ("LPO") and case law, and in October rendered its views to the Council for deliberation.

Solicitor Advocates Interest Group

A gathering was organised for solicitor-advocates in April. The gathering provided a platform for solicitor-advocates to discuss various practice issues, such as fee agreements and promotion of solicitor-advocates' practices generally.

Visit by the Law Society of Singapore

In November, The Law Society received a delegation from the Law Society of Singapore ("LSS"). The delegation was led by Ms. KUAH Boon Theng, Vice-President of the Council of LSS. It consisted of LSS members from various practice committees and staff from the secretariat. Cluster group discussions between the chairmen and committee members of the respective specialist committees of The Law Society and LSS were arranged.

Training

The Standing Committee received from its specialist committees various proposals on training and seminars. The proposals which were approved included an insolvency law conference and a seminar on taxation.

The Standing Committee took note of an arbitration symposium on "*Developing Commercial Law through the Courts: Rebalancing the Relationship between the Courts and Arbitration*" held on 17 October. The speakers of the symposium included Lord Philips of Worth Matravers and Chief Justice Mr. Geoffrey Ma. The seminar was well-received.

Other seminars which received support from the Standing Committee included a three-day training courses on parenting co-ordination by Dr. Matthew J. Sullivan and an update seminar on Unified Screening Mechanism for non-refoulement claims with among others Professor James C. Hathaway as one of the speakers.

ARBITRATION COMMITTEE

The Committee was established to, among other things, make recommendations to the Council on initiatives and matters relating to the development and promotion of arbitration practices of solicitors in Hong Kong and other jurisdictions. One of the key objectives of the Committee was to help explore opportunities on arbitration for members and to arouse their interests in this area of practice. The initiatives the Committee had been looking into included arbitration of partnership disputes for professionals.

The Committee, together with its Arbitrators Admission Sub-Committee (“AAC”), held three meetings during the year. It conducted the rest of its business via emails.

Consultations on arbitration

The Committee had a busy year as it had received and reviewed a number of consultation papers. Views and comments on these consultations were made for Council’s further deliberations.

(a) *Arbitration (Amendment) Bill 2016*

The *Arbitration (Amendment) Bill 2016* was proposed to clarify that disputes over intellectual property (“IP”) rights may be resolved by arbitration and that it is not contrary to the public policy of Hong Kong to enforce arbitral awards involving these rights. The Government believed that specific statutory provisions on the issue of arbitrability of IP rights disputes would serve to clarify the legal position and would attract and facilitate more parties (including parties from other jurisdictions) to settle their IP rights disputes by arbitration in Hong Kong.

The Committee had meticulously reviewed the above proposals and joined the Intellectual Property Committee of The Law Society to produce a consolidated submission.

(b) Consultation on Third Party Funding for Arbitration

A report on the final recommendations on Third Party Funding for Arbitration was released by the Law Reform Commission (“LRC”) of Hong Kong in October. The LRC report set out its recommendations for Hong Kong to take on board the initiative of third party funding for arbitration.

In a summary, the LRC’s report recommendation included the following

- (i) the *Arbitration Ordinance* (Cap 609) (“AO”) should be amended to provide legal basis for arbitration funding in Hong Kong;
- (ii) a set of clear ethical and financial standards for arbitration funders must be developed; and
- (iii) a “step by step” approach should be taken in the regulation of arbitration funding and arbitration funders in Hong Kong.

The Committee agreed it was important to clarify that arbitration funding was not in breach of the law of Hong Kong. Furthermore, arbitration funders should come under the regulation of a set of clear ethical code to be developed.

(c) Consultation on Proposal to Enhance the Financial Dispute Resolution Scheme

The Financial Dispute Resolution Centre (“the FDRC”) published a consultation paper on the *Proposal to Enhance the Financial Dispute Resolution Scheme* in October. A set of amendments were proposed to the FDRC’s Financial Dispute Resolution Scheme in order to enhance the operation of the scheme. The proposal was supported in principle. Comments and views were provided to the Mediation Committee for a consolidated response.

(d) Consultation on the 2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments

Another consultation paper the Committee considered was a paper published in October by the Department of Justice (“DOJ”) on the *2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments*. In general, the draft convention set out the legal basis for recognition and enforcement of foreign judgments on commercial disputes. Comments of the Committee were forwarded to the Civil Litigation Committee for a joint reply.

(e) Report on the Role of Consumer Arbitration in the Alternative Dispute Resolution Regime for Consumer Protection

The Consumer Council published a report on *The Role of Consumer Arbitration in the Alternative Dispute Resolution Regime for Consumer Protection* in August. The report provided recommendations on alternative dispute resolution services for consumer disputes, including the establishment the Consumer Dispute Resolution Centre. The Committee noted those recommendations in the report and would keenly follow and monitor any further development on the matter.

Panel of Arbitrators of The Law Society of Hong Kong

The Committee received various proposals on the establishment of a Panel of Arbitrators for The Law Society of Hong Kong. The Committee welcomed these proposals, as they would on one hand continue to promote arbitration and on the other hand assist the development of this practice area for members. The Committee unhesitatingly supported these proposals. With subsequent approval of the proposals by the Council, the Committee has started the empanelling work. Information on empanelment was put out on among

other things the website of The Law Society.

Promotion of Solicitor-Arbitrators

The Committee had also discussed proposals on the promotion of members' practices in arbitration. These proposals included various initiatives to promote the status of Solicitor-Arbitrators and their arbitration practices in other jurisdictions, such as the Mainland.

Participation in Arbitration Events

(a) Hong Kong Legal Services Forum

A Committee member represented The Law Society to speak on "Investment and Dispute Resolution" at the Belt and Road Session of the Hong Kong Legal Services Forum, organised by the DOJ, in Nanjing from 14 to 15 November.

(b) Visit by the Law Society of Singapore

The Committee helped receive a delegation from the LSS on 29 November and exchanged views with the delegation on various arbitration practices in the two jurisdictions.

(c) Reception of Delegations

The Committee also assisted to receive visits and delegations from different jurisdictions and have exchanged views with them on various arbitration-related issues.

Arbitrators Admission Sub-Committee

The AAC was established to assist the Committee to oversee all matters in relation to the establishment and empanelment of the panel of Solicitor-Arbitrators for The Law Society. It met once in the year and discussed, among other things:

- (a) requirements and procedures proposed for admission to the panel of Solicitor-Arbitrators for The Law Society;
- (b) mechanisms and procedures for appointment of the above Solicitor-Arbitrators;
- (c) training in arbitration for Solicitor-Arbitrators and solicitors;
- (d) code of conducts for Solicitor-Arbitrators; and
- (e) The Law Society Sample Arbitration Clause.

CIVIL LITIGATION COMMITTEE

The Committee met on four occasions and conducted the rest of its business via emails. Two new members were co-opted this year.

Consultation Papers

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

(a) Consultation on Enactment of Apology Legislation in Hong Kong

The Secretary for Justice's Steering Committee on Mediation released a consultation paper on *Enactment of Apology Legislation in Hong Kong: Report & 2nd Round Consultation* for public views in February. The object of the proposed apology legislation is to promote and encourage the making of apologies in order to facilitate the amicable settlement of disputes by clarifying the legal consequences of making an apology.

Various specialist committees were invited to comment on the consultation paper. Those views were sent to the Committee for consolidation and production of a detailed submission. The joint submission was sent to the DOJ in April.

(b) Consultation on Draft Practice Directions 2.1 and 4.1

The Committee received a consultation paper from the Judiciary on its proposal to amend *Practice Directions* ("PDs") 2.1 and 4.1. The proposed amendments were intended by the Judiciary to improve the court's practice and procedures for civil appeals to the Court of Appeal of High Court.

The Committee took considerable time to review the draft revised PDs. Comments were raised on among other things the overall approach of the PDs as well as the wording of the draft revised PDs. A detailed response to the consultation paper was sent to the Judiciary in August.

(c) Consultation on Proposed Changes to the Practice Directions arising from the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016

The Committee and the Insolvency Law Committee of The Law Society jointly reviewed the proposed changes to seven PDs by the Judiciary. The proposed amendments primarily arose from the *Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016*. A joint submission from the above two committees was made to the Judiciary in November.

(d) Consultation on the 2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments

In October, the DOJ released a consultation paper on *the 2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial matters*. The Committee and other related specialist committees of The Law Society were invited to review and to comment on the consultation paper.

The Draft Convention focused on recognition and enforcement of judgments between Contracting States. It sought to set out the minimum requirements for the courts of one Contracting State to recognise and enforce a judgment rendered in another Contracting State.

A discussion group was convened under the Committee to conduct a preliminary review of the consultation paper. With the assistance of the discussion group, the Committee consolidated and collated views from various specialist committees and produced a joint submission. The joint submission was sent to the DOJ in December.

Other issues on civil practices

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

- Practice Note on Reserved Judgment
- Photocopying charges of documents
- Review of the Implementation of Civil Justice Reform
- Renewed application for extension of time to appeal in the Court of Appeal

The Committee also took note of the following:

- Review Report on mechanism for dealing with Complaints against Judicial Conduct
- Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status
- Recommendations of the Equal Opportunities Commission (“EOC”) to the Government on proposed reforms to the existing anti-discrimination regime
- Questionnaire survey on Statutory Retiring Ages of Judges and Judicial Officers
- Judiciary's enhancement on Daily Cause Lists

In November, Committee members received a delegation from the LSS and exchanged views with the Singaporean counterparts on e-filing system, taxation practice and other developments in civil litigation practice.

COMPANY LAW COMMITTEE

The Committee conducted its business by emails. It had a review of its chairmanship and membership, followed by a co-option of new members to help with the committee's increasing workloads.

The Committee considered a number of consultations from the Government, the ICAC, the Hong Kong Institute of Certified Public Accountants and the Companies Registry. Formal Submissions included the following:

- Securities and Futures Commission (“SFC”) and Hong Kong Exchanges and Clearing Limited’s joint consultation paper on *Proposed Enhancements to The Stock Exchange of Hong Kong Limited’s Decision-Making and Governance Structure for Listing Regulation*
- 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 conducted its business via emails. It had co-opted a new member.

The Committee reviewed a consultation paper on the *2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments* in October. A detailed joint submission was made together with the other specialist committees.

Committee members contributed to speak at seminars on *Competition Ordinance (“CO”)* organised by the Hong Kong Academy of Law Limited (“Academy”) and Standing Committee on Members Services in May and October respectively.

CONSTITUTIONAL AFFAIRS AND HUMAN RIGHTS COMMITTEE

The Committee met five times during the year, and had considered a wide range of constitutional and human rights issues.

2016 LegCo Election

The Committee considered the confirmation form issued by the Electoral Affairs Commission in July for the purpose of the 2016 General Legislative Council (“LegCo”) Election. Candidates seeking election were asked to confirm they would uphold the Basic Law. The constitutional implications arising from the confirmation form were reviewed.

The Committee at the same time kept a close watch on the unseating of two LegCo members, following their taking of the Legislative Council Oath, as well as the interpretation of Article 104 of the Basic Law by the Standing Committee of the National People's Congress.

Unified Screening Mechanism for non-refoulement claims

Unified Screening Mechanism ("USM") was set up by the Government in March 2014 to handle non-refoulement claims. Following the Chief Executive's 2016 Policy Address, in September, the Security Bureau ("SB") wrote to advise that the Immigration Department planned to increase its determination of the non-refoulement claims to 5,000 or more per year, starting 2017-2018. To implement the above plan, the SB proposed to launch a Pilot Scheme to provide publicly-funded legal assistance for non-refoulement claimants.

In the same month, the SB wrote to clarify that "all applicable grounds" the Immigration Department was to consider in the screening of the non-refoulement claims under the USM would include the right to life under Article 2 of the Hong Kong Bill of Rights ("BOR"). The Immigration Department had accordingly updated the relevant claim form, notice and other documentation on non-refoulement claims.

A Task Group was set up under the Committee to review the above. The Task Group had three internal meetings, and met the SB twice. Concerns were raised with the SB on the resources, fee-capping and the independence of the office to be set up under the Pilot Scheme. The Task Group also had a meeting with the Hong Kong Bar Association ("Bar Association") in December and shared with them views on the Pilot Scheme. A tripartite meeting with them and the SB was being scheduled.

The Committee in November organised an updated training course on all applicable grounds for non-refoulement protection in the USM including BOR in light of the Immigration Department's above clarification. Professor C Hathaway was invited to speak at the training course. The training was well-attended.

Mong Kok Riot

The Committee expressed concerns on the riot which took place in Mong Kok in February. It had discussions on constitutional issues arising therefrom, such as the freedom to demonstrate, the carrying of and the use of weapons and a proposal to enact anti-mask law during protests.

Handing over of Hong Kong Residents in Macau to Mainland China

The Committee took notice of a news article, reporting on the handing over of Hong Kong Residents in Macau to Mainland China by the Macau authorities. This raised concerns on the protection of a Hong Kong residents' safety in foreign countries. The Committee resolved to make enquiries with the DOJ on the matter.

Human Rights Commission

On human rights issues, Ms. Anna Wu, Executive Councillor, was invited and attended the Committee meeting in November. She shared with members a proposal to set up a human rights commission in Hong Kong.

Review of constitutional and human rights issues

Apart from the above, the Committee had studied and considered the following constitutional and human rights issues:

- the Reciprocal Notification Mechanism set up with the Mainland Public Security Authorities, in the context of the “missing Causeway Bay booksellers” saga
- The detention of human rights lawyers in the Mainland China, and collective punishments of their relatives
- Pro-independence of Hong Kong
- The use of judicial reviews generally
- Same Sex Marriages
- Proposed guidelines on election-related activities for LegCo election issued by the Electoral Affairs Commission
- Equal opportunities issues, including the Reforms to the Anti-Discrimination legislation
- Taliban bombing at a hospital in Pakistan city of Quetta
- Co-location arrangement for the Guangzhou-Shenzhen-Hong Kong Express Rail Link.

CRIMINAL LAW AND PROCEDURE COMMITTEE

The Committee met on a monthly basis. It co-opted three new members including two young members to help with the discussions of various criminal law and practice.

Review of fees and rates in criminal matters

The Committee noted the Administration of Justice and Legal Services Panel (“AJLS” Panel) of the LegCo at its panel meeting of 22 February had considered a set of proposed increases in the criminal legal aid rates. This followed the discussion the Committee had with the Government last year. The AJLS Panel was in support of the proposed increases. These increases were subsequently scrutinised and approved by the LegCo in June. After the publication of the Commencement Notice in the Gazette on 30 June (L.N. 110 of 2016) and completion of the vetting procedures by the LegCo, the revised criminal legal aid fees and the related prosecution fees came into effect on 14 November. At the same time of the increases, a new category of criminal legal aid fees was introduced for High Court cases involving Solicitor Advocates with higher rights of audience.

The Committee took note of another discussion of the AJLS Panel at its panel meeting on

19 December on the biennial review of criminal legal aid rates. The Committee understood the Government intended to send the proposed revision to the Criminal Procedure Rules Committee chaired by the Chief Judge of the High Court for approval.

The Committee was now considering the seeking of possible review of fees for duty lawyer service.

Unused Materials in Criminal Prosecution

The Committee considered and reviewed the duty by the prosecution to make timely discovery of unused materials to the defence. It took the view that the duty to disclose was a positive duty on the part of the prosecution. In the course of the above review, the Committee revisited the previous version of the Prosecution Code (2009 version). It noted the previous Code contained handy indicia and useful guidelines which were not repeated in the current version in use. The Committee asked the DOJ to reinstate those relevant paragraphs. On the other hand, the Committee had surveyed the discovery regimes in other jurisdictions and suggested the DOJ to consider taking on board those practice and procedures adopted in those jurisdictions. The above views were set out in a submission and were sent to the DOJ in April.

Consultations

The Committee assisted with various consultations on criminal law and practices and, where appropriate, had set up task groups to review those consultations. The consultations the Committee had reviewed included the following:

- Consultation on the Prosecution Works In the Magistracy (issued by the DOJ in June)
- Report Sexual Offences Involving Children and Persons with Mental Impairment (issued by the LRC in November)

Visit by the Law Society of Singapore

Members of the Committee, with other specialist committees of The Law Society, received a delegation from the LSS in November. Relevant information were exchanged with the Criminal Practice Committee of LSS on criminal practices in the two jurisdictions, including the use of technology in criminal matters, and the set up and the use of Community Courts in Singapore.

Criminal Practices and Procedures

The Committee reviewed a variety of criminal practices, including the following. Where relevant, circulars on the subject matters were issued to general members for their information:

- Provision of List of Prosecution witnesses in Labour Department's Prosecution
- Use of PTR Questionnaires in magistracy courts

- Sentencing discount following the judgment in *HKSAR v Ngo Van Nam et al* (CACC 418/2014 & CACC 327/2015)
- Judgments of joint enterprise in *R v Jogee* [2016] UKSC 8 and in *HKSAR v Chan Kam Shing* FACC No. 5 of 2016
- Review of special magistracy grade

The Committee was now reviewing a draft *PD* on Criminal Proceedings in the Court of First Instance. That *PD* was intended to supersede *PD* 7.2 on “*Court of First Instance – Criminal Running List*” and *PD* 9.3 on “*Criminal Proceedings in the Court of First Instance*”.

Training programme

The Committee continued to organise a one-day training courses jointly with the DOJ and the Bar Association. The training course was held on 5 March and was repeated on 20 August. The course comprised of lectures and mock court exercises; it provided criminal advocacy training to participants with less than 5 years' post qualification. The two training courses were well received.

Criminal Law Conference

The Committee received an invitation from the DOJ to co-organise a criminal law conference in May 2017. It already had various working meetings to discuss preliminary preparatory work.

Talks on criminal practices

Members of the Committee had given speeches and talks to outside organisations on pro bono basis:

- on criminal procedures for mentally challenged people for the Hong Chi Association on 16 April
- on “*The Right to a Fair Trial: Enhancing Equal Access to Justice through Protective Measures for Victims of Sexual Violence in the Courtroom*” for the Centre for Comparative and the Public Law and Association Concerning Sexual Violence Against Women on 7 June
- on “*Rule of law and the criminal justice system*” for the Education Bureau for its Business-School Partnership Programme on 18 October.

EMPLOYMENT LAW COMMITTEE

The Committee conducted its business by emails.

Consultation on Draft Code of Practice for Employment Agencies

In April, the Labour Department published a Draft Code of Practice for Employment Agencies ("Code") for public consultation. The Code consisted of two major parts, namely statutory requirements in relation to operating an employment agency and minimum standards which the Commissioner of Labour expected from employment agencies. The Committee reviewed the Code and produced a submission to the Labour Department in June.

Employment Law Related Issues

The Committee took note of the following:

- a Report on "Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status" released by the EOC.
- *Employment (Amendment) Bill 2016* was introduced into the LegCo in February. The Bill aimed to, amongst others, empower the Labour Tribunal to make an order for reinstatement or re-engagement as requested by an unreasonably and unlawfully dismissed employee, without having to secure the employer's prior agreement if such an order is considered appropriate and practicable.
- Submissions to the Government on the Discrimination Law Review published by the EOC.
- a *Consultation on Working Hours Policy Directions* launched by the Standard Working Hours Committee.
- the discussion of the arrangement of offsetting severance payments and long service payments against mandatory provident fund accrued benefits at the meetings of the LegCo.
- the discussion of the provisions on maternity leave under the Employment Ordinance at the meeting of the Panel of Manpower of the LegCo.

FAMILY LAW COMMITTEE

The Committee had a very busy year meeting on 26 occasions including two meetings on Saturday mornings; and eleven meetings with different government bureaus and departments, legislative councillors and other stakeholders.

Three members were co-opted to the Committee this year.

Consultation Papers

The Committee reviewed a number of Consultation Papers, including the following:

- (a) **Consultation on the Proposed Legislation to Implement the Recommendations of the Law Reform Commission Report on Child Custody and Access**

The Committee had been actively working on the reform in the past few years. It

welcomed the issuance of the consultation paper, which embraced the significant proposal to introduce a parental responsibility model into Hong Kong family law. The Committee had meticulously reviewed the consultation paper, and had a clause-by-clause scrutiny of the draft *Children Proceedings (Parental Responsibility) Bill*. In the course of the review, several committee members attended a consultation forum and met with 21 welfare non-governmental organisations (“NGOs”). The Committee had also attended meetings of the LegCo's Panel on Welfare Services in March and exchanged views with Legislative Councillors and various stakeholders on the draft Bill. After the thorough study of the draft Bill, the Committee submitted a detailed written submission to the Labour and Welfare Bureau in March.

In response to the concerns expressed by the NGOs on the reform, the Committee in December set up a Sub-committee on Supporting Services for Legal Reform. The Sub-committee had organised four working groups and invited representatives from various NGOs to consider and to study, with a view to putting forward to the Government proposals on the introduction of mandatory education for separating/divorcing parents before proceedings, the setting up of a child-focused centre, the introduction of a Hong Kong model on Parenting Coordination (“PC”) services and the possibility of establishment of a Maintenance Board in Hong Kong.

(b) Consultation on a Proposed Arrangement with the Mainland on Reciprocal Recognition and Enforcement of Judgments on Matrimonial and Related Matters

In June 2016, the DOJ released a consultation paper on a proposed arrangement with the Mainland on reciprocal recognition and enforcement of judgments on matrimonial and related matters for public views. The Committee welcomed the proposal and gave full support to the arrangement which was necessary to deal with cross border issues, one of which was on the abduction of children by their parents. The Committee had a thorough review of the consultation paper and had researched on the relevant Hague Conventions. Several committee members also attended a meeting of the LegCo's AJLS Panel in June rendering preliminary views. A detailed submission was produced and submitted to the DOJ in August.

(c) Consultation on the 2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments

The Committee reviewed a consultation on the “*2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments*” issued by the DOJ in October. Jointly with various specialist committees of The Law Society, a submission was produced and sent to the DOJ in December.

(d) Consultation on Practice Directions 2.1 and 4.1

The Committee considered a consultation paper on PDs 2.1 and 4.1 and provided views to the Civil Litigation Committee of The Law Society for consolidation of views. A joint submission was sent to the Judiciary in August.

Other Reviews

The Committee also reviewed an array of family law related issues:

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

The last review of fixed costs in matrimonial litigation took place in 2000. The Committee had been requesting for an update of the costs regime and had, since 2014, been working on a set of proposals on costs scale. Over the last two years, it had 22 meetings to discuss the review, including two formal meetings with the Legal Aid Department (“LAD”) in October 2015 and in January.

(b) Director of Legal Aid's First Charge on maintenance payment under section 18A of the *Legal Aid Ordinance* (Cap.91)

In September, the Committee had a joint meeting with the Director of Legal Aid (“DLA”) and the Bar Association to review the threshold at HK\$4,800 for the First Charge of the DLA on interim maintenance for the other spouse and subsequent final orders. The DLA was requested to consider either to raise the threshold or if possible to waive the First Charge on interim maintenance. The DLA agreed to look into this matter.

(c) Domestic Violence

The Committee continued its review of the Police protocols and procedures in handling domestic violence. Apart from various correspondences continuously exchanged with the Hong Kong Police throughout the year, the Committee in August had a meeting with the Police. At the meeting, Committee members expressed concerns on some of the practices of the frontline police officers in handling domestic violence cases. After clarifying with the Police on various practices, a circular on Injunction Order with Authorization of Arrest was issued in October.

The Committee also sought to update The Law Society's Panel of Solicitors on Domestic Violence.

(d) Child Abuse

In June, the Committee had a meeting with the Social Welfare Department and the Against Child Abuse to exchange views on the protocol of handling child abuse cases, the current procedure of Multi-disciplinary Case Conference, the preparation of the social investigation reports by the court and the provision of parenting coordination service.

(e) Proposed introduction of 1996 and 2007 Hague Conventions into Hong Kong

The Committee had been discussing ways to improve Hong Kong's current legal protections against child abduction. It considered the operation of *the 1980 Hague Convention on the Civil Aspect of International Child Abduction*. After reviewing the above, the Committee recommended to introduce *the 1996 Hague Convention on*

Jurisdictions, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children and the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance into Hong Kong. In October it put forward its views on the above to the Labour and Welfare Bureau for consideration.

(f) Draft Proposed Revised Form J for Children's Dispute Resolution

In January, the Committee reviewed the draft proposed revised “Form J” for Children's Dispute Resolution in the Family Courts.

(g) Practice Direction SL9 - Pilot Scheme on Private Adjudication of Financial Disputes in Matrimonial and Family Proceedings

The Committee reviewed the usage of the pilot scheme on private adjudication of financial disputes in matrimonial and family proceedings which was launched in 2015 for a period of 3 years.

(h) Social Investigation Reports - Singapore

The Committee considered non-disclosure of Social Investigation Reports issued in Singapore to the parties to the matrimonial proceedings in Hong Kong. In October, it wrote to the Ministry of Social and Family Development, Singapore to make inquiries.

(i) Draft Practice Direction on Hearing Bundles for Family Cases

In December, the Committee had a meeting with the representatives from the Bar Association and the Hong Kong Family Law Association to discuss and exchange views on a draft PD on Hearing Bundles for Family Cases.

(j) Separate Family Court Jurisdiction

The Committee continued its review on the current Family Court jurisdiction and considered the family court system in other comparable jurisdictions with a view to making proposal, if appropriate, a separate Family Courts Jurisdiction.

Family Court Users Committee

On the recommendations of the Family Court Users Committee, the Committee had approved and issued circulars to members on various subject matters, including the following: -

- Case Management Measures
- Running Bundles
- Use of Court Rooms

The Committee had also issued circulars to update members on various family law

practices and procedures, including the following:

- Parental Responsibility - Pilot Project on Children Contact Service
- Handbooks for the Separated / Divorced Parents and Their Children
- Child Abduction Legislation (Miscellaneous Amendments) Ordinance 2014 – Information Leaflets
- *Domestic and Cohabitation Relationships Violence Ordinance* (Cap.189) – Injunction with Authorization of Arrest Attached
- PD 15.13 - Children's Dispute Resolution
- PD 15.14 - Transfer of Proceedings from the Family Court to the Court of First Instance

Events

(a) Training Course on Parenting Co-ordination

Upon the joint recommendation of the Committee and the Mediation Committee, a training course on PPC for solicitors was organised by the Academy in November.

(b) Visit by the Law Society of Singapore

In November, committee members received a delegation from the LSS and exchanged views with the Singaporean counterparts on various family law practices, such as the appointment of Family Judges in Singapore.

(c) Talk on "Child's Human Rights" by the Hong Kong Judicial Institute

The Committee attended a talk on "Child's Human Rights" in October upon the invitation by the Hong Kong Judicial Institute.

(d) Site Visit to Parent-child Contact Centre

The Committee in November conducted a site visit to a Parent-Child Contact Centre at Lai Chi Kok, which came into operation in September.

HIGHER RIGHTS OF AUDIENCE COMMITTEE

The Higher Rights of Audience Committee conducted its business by emails. In February, the Committee co-opted two young members to help with its discussion.

Section 39P of the *LPO* provides for the issuance of the certificates to solicitor-advocates. A certificate to be issued under the above section must be in a form prescribed by rules made under section 73(1)(de) of *LPO*. The formulation by the DOJ of these rules, viz. the Solicitor Advocates (Higher Rights of Audience Certificates) Rules, had not been completed. The Committee had assisted in the formulation of the above rules and supplied to the DOJ views on various issues pertinent thereto.

INSOLVENCY LAW COMMITTEE

Bankruptcy (Amendment) Ordinance 2016

The *Bankruptcy (Amendment) Ordinance 2016* was enacted by the LegCo on 17 March. The Ordinance aimed to abolish the regime under section 30A(10) of the Bankruptcy Ordinance (“BO”) for the suspension of the relevant period under section 30A(1) and set up a new regime under which the relevant period may be treated as not commencing to run on the date of the bankruptcy order. The new “non-commencement” regime came into effect on 1 November.

The Chairman of the Committee spoke at a Continuing Professional Development (“CPD”) seminar titled “*Bankruptcy (Amendment) Ordinance 2016*” in June to update practitioners the bankruptcy law practice.

Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016

The *Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016* (“Amendment Ordinance”) was enacted by the LegCo on 27 May. The Amendment Ordinance aimed to improve and modernised Hong Kong's corporate winding-up regime by providing measures to increase protection of creditors and to streamline and to further enhance the integrity of the winding-up process. Except for Division 7 of Part 8, the Amendment Ordinance would come to effect in February 2017.

In September, the Judiciary invited comment on its proposed amendments to PDs arising from the Amendment Ordinance. Jointly with the Civil Litigation Committee, the Committee reviewed the proposed changes to the following PDs and made submissions to the Judiciary in November:

- PD 3.1 on Bankruptcy and Winding-up Proceedings;
- PD 3.3 on Voluntary Mediation in Petitions presented under sections 724 of the Companies Ordinance and 177(1)(f) of the *Companies (Winding Up and Miscellaneous Provisions) Ordinance* (Cap.32);
- PD 3.4 on Case Management for Bankruptcy Petitions, Winding-up Petitions and Petitions under Section 724 of the *Companies Ordinance*;
- PD 8.2 on Vacation Business in the High Court;
- PD 11.1 on *Ex Parte*, Interim and Interlocutory Applications for Relief (including Injunctive Relief);
- PD 14.2 on Proceedings before Masters; and
- PD 25.1 on Chambers Hearings in Civil Proceedings in the High Court, the District Court and the Lands Tribunal.

Proposals on a Statutory Corporate Rescue Procedure and Insolvent Trading Provisions

In June, upon the invitation of the Financial Services and the Treasury Branch (“FSTB”), the Committee reviewed a paper setting out a number of specific issues regarding the introduction of a statutory corporate rescue procedure and insolvent trading provisions.

In August, the FSTB issued a consultation paper to seek views on whether and if so how, the proposed corporate rescue procedure should be applicable to non-Hong Kong companies. The Committee reviewed the consultation paper and produced a submission in November.

The Committee was advised that FSTB was drafting instructions for an amendment bill to introduce a statutory corporate rescue procedure and insolvent trading provisions. The Committee shall keep in view the progress of any relevant amendment bill.

Attending outside meetings

The Chairman of the Committee, as a representative of The Law Society, attended regular meetings of the Official Receiver's Office Services Advisory Committee and Advisory Group on Modernization of Corporate Insolvency Law throughout the year.

INSURANCE LAW COMMITTEE

The Committee met twice this year and conducted the rest of the business via email.

Insurance Companies (Amendment) Ordinance 2015

The Committee was keeping a close watch on the progress of the implementation of the *Insurance Companies (Amendment) Ordinance 2015* (“Amendment Ordinance”). The Amendment Ordinance provided for, among other things, the establishment of an independent Insurance Authority which was to exercise new statutory powers to license and regulate insurance intermediaries. The Amendment Ordinance would commence in three stages to allow for a smooth transition to a new regime. The first stage of transition commenced in December 2015 with the setting up of the Provisional Insurance Authority.

Other insurance law related topics

The Committee also reviewed a wide range of insurance law related topics including the following:

- the requirement of insurable interest under section 64B of the *Insurance Companies Ordinance* (Cap.41);
- the application of statutory trust under section 13 of the *Married Persons Status Ordinance* (Cap.182);

- the doctrine of material non-disclosure;
- the current mechanism of complaints against insurers;
- the proposed establishment of the policyholders' protection fund;
- the revitalisation of reinsurance arbitrations in Hong Kong; and
- the new Insurance Act 2015 (UK).

INTELLECTUAL PROPERTY COMMITTEE

The Committee met on several occasions and conducted the rest of its business via emails and telephone conferences.

The Committee had been busily dealing with the following.

Consultations and Review

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

Arbitrability of Intellectual Property Disputes

In late December 2015, the Government put forward a proposal to amend the *AO*, to clarify that disputes over IP rights may be arbitrated and that it was not contrary to the public policy of Hong Kong to enforce arbitral awards involving IP rights. The proposal also aimed to update the Arbitration (Parties to New York Convention) Order.

The Committee studied the Government's proposal in details and had a discussion with the Arbitration Committee. It met with the Intellectual Property Department ("IPD"), the DOJ and the Asian Patents Attorney Association at two joint meetings respectively on 22 January and 9 March. While the Committee supported the initiative to offer and boost Hong Kong's arbitration services over IP disputes in order to assist in the promotion of Hong Kong as an intellectual property trading hub, in its submission in May, the Committee expressed concerns over certain aspects of arbitrability of IP disputes, especially validity and infringement, which were not universally recognised. Subsequently, in August, a revised *Arbitration (Amendment) Bill 2016* was produced. This revised bill received scrutiny by the Committee. Notwithstanding the revision, the Committee noticed with reservations the proposed definitions of IP rights and the definition of third party licensees. Further submissions on the above were made to the DOJ in October.

Copyright (Amendment) Bill 2014

The *Copyright (Amendment) Bill 2014* ("Bill") which was introduced into the LegCo in June 2015 continued to court controversies and arguments, in particular (1) adoption of the American open-ended fair use exception instead of the specific fair dealing exceptions, which has been used for a long time; (2) addition of a user-generated content exception;

and (3) express provision to disallow contract override.

The Committee asked for the passing of the Bill without further delay and helped The Law Society to issue a press release on 28 January, to reiterate its support on the Bill. Notwithstanding the efforts of The Law Society and other stakeholders, the Committee noted with disappointment that the Bill was withdrawn on 13 April.

Consultation on draft *Copyright Tribunal Rules*

Following the submission on the draft *Copyright Tribunal Rules* rendered to the IPD of last year, the Committee was in August consulted on a set of revised draft rules. Although most of the Committee's previous suggestions had been accepted, there were still concerns on, inter alia, the consequences of a party being debarred from taking part further in proceedings, compellability of evidence and transparency of the Tribunal. Views of the Committee on the above were relayed to the IPD in October.

Consultation Paper on the 2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments

The Committee, together with other related specialist committees, were approached by the DOJ with a consultation paper on the "2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments". The Consultation Paper was on a draft convention proposed by the Hague Conference on Private International Law. That draft convention was on recognition and enforcement of judgments between Contracting States. It sought to set out the minimum requirements for the courts of one Contracting State to recognise and enforce a judgment rendered in another Contracting State.

The Committee studied the Consultation Paper and provided its comments on, among other things, possible discrepancy with national IP laws and the identification of registrable IP rights.

Patents (Amendment) Bill 2015

The Committee exchanged views with the IPD on its Patents (Amendment) Bill 2015, and received revised draft provisions, which were tabled before the Bills Committee of the LegCo for discussion at its meeting in April.

The Committee noted that the *Patents (Amendment) Ordinance 2016* was gazetted on 10 June.

Meetings and Conferences

Bi-annual Meetings with IPD

The Committee attended bi-annual meetings with IPD on 16 February and 29 September and discussed a number of issues relating to IP laws, practices and related matters, including the following:

- New Copyright Tribunal Rules
- Amendments to the Copyright Ordinance
- Implementation of the “original grant” patent system
- Proposed application of Madrid Protocol to Hong Kong
- IP Arbitration
- IP Trading

Business of Intellectual Property Asia 2016

BIP Asia Forum was an annual IP forum, jointly organised by the Government, Hong Kong Trade Development Council and Hong Kong Design Centre. It aimed to promote Hong Kong as the regional IP marketplace. The forum took place on 1 and 2 December in the Hong Kong Convention and Exhibition Centre. The Law Society was one of the supporting organisations of the forum.

Similar to previous years, the Committee rendered support to the forum. Among other things two committee members spoke in one of the break-out sessions entitled “Social Media Law”. The session was well attended.

Intellectual Property Consultation Service by IPD

The IPD in collaboration with the Committee had been providing pro bono IP advisory services to small and medium sized enterprises (“SME”) since 2014. This pro bono service on a pilot scheme basis was well received by the SMEs. To assist more SMEs to upgrade their business through IP trading, the Committee helped the IPD to formally launch the pro bono scheme on a long term basis in order that the advisory service could be made available to a wider range of SMEs. Guidelines and other documentation for the advisory scheme were drawn up. Circulars were issued to invite general members to join the scheme as advisors. The IP Consultation Service was formally launched in September. The Law Society was a supporting organisation to the Scheme.

The Committee was advised that since its launch, the Scheme received very positive feedbacks from all the SMEs who met the advisors.

Other reviews

Apart from the above, the Committee had been keeping close watches on the following:

- IP Evaluative Mediation
- Proposed application of the protocol relating to the Madrid Agreement concerning the international registration of marks to Hong Kong Special Administrative Region

External Representation

The Committee continued to be represented on the Business of IP Asia Steering Committee. The Committee also had representatives on the Focus Group on Review of the Patent System in Hong Kong of the IPD.

Representatives of the Committee also participated in the following:

- Speaking at the IP Symposium organised by the Shenzhen IP Office and Hong Kong IPD in June
- Attending a breakfast meeting organised by IPD in September with other IP bodies to note various IP initiatives and developments.

INVESTMENT PRODUCTS AND FINANCIAL SERVICES COMMITTEE

The Committee conducted its business by emails. It considered various consultations and made submissions on the SFC's Consultation on *Proposed Enhancements to the Position Limit Regime and the Associated Amendments to the Securities and Futures (Contracts Limits and Reportable Positions) Rules and Guidance Note on Position Limits and Large Open Position Reporting Requirements*.

LEGAL AID COMMITTEE

The Committee had three meetings this year including a meeting jointly held with the Personal Injuries Committee and the Criminal Law and Procedure Committee in May and a meeting with the DLA and his deputy directors in June. Three new members were co-opted.

The Committee, together with other specialist committees, reviewed the following legal aid matters:

- monitoring of the legal aid assignments, including the fairness of the assignments, the competence of the assigned solicitors and the availability of counsel with sufficient seniority for assignments;
- the non-availability of interpreters in the application and processing for legal aid applications;
- the processing of legal aid applications for judicial reviews;
- the issuance of the legal aid certificates for equal opportunities and discrimination cases;
- the protocol of obtaining section 9 opinions and the costs liability thereof;
- the costs capped for the assigned solicitors under Order 13A regime; and
- the interim payment of costs.

The Committee also discussed issues relating to criminal legal aid, including assessment of preparation upon assignment of criminal legal aid and the taxation of criminal aid cases.

Apart from the above formal meetings, the Committee maintained dialogues with the DLA and other stakeholders and discussed with them various practices on legal aid from time to

time. Among other things, the Committee received the following:

- the recommendations of the Legal Aid Services Council submitted to the Chief Executive regarding the further expansion of the Supplementary Legal Aid Scheme; and
- the proposed increase of criminal legal aid fees by the Home Affairs Bureau (“HAB”) and the new fees took effect in November.

A CPD seminar entitled "*Update on Legal Aid Schemes*", as recommended by the Committee, was held in September. The seminar offered to more than 100 attendees updates and practical tips in handling legal aid assignments.

To further assist members, information on civil legal aid practice issues were sourced from the LAD, including all-inclusive settlement order, assessment of common fund costs, reporting to the LAD, interim billings, interest on costs claimed by the assigned solicitors, e-submission of documents and legal aid appeal hearings. A circular on the above were issued in December.

MEDIATION COMMITTEE

The Committee met four times in the year and conducted the rest of its business by emails.

Parenting Co-ordination

(a) Establishment of the Panel of Parenting Co-ordinators of The Law Society of Hong Kong

PC is a model of dispute resolution for high conflict divorced couples with parenting issues. Subject to the contractual agreement between the parties and the Parenting Co-ordinator, and/or the applicable statutory provisions in the jurisdiction(s), the Parenting Co-ordinator might be empowered to make decisions for the parties on minor issues.

In the light of the growing importance of this practice area, the Committee recommended to Council that a Panel of Parenting Co-ordinators of The Law Society of Hong Kong (“Panel”) be established. The Mediator Admission Committee shall oversee all the establishment and maintenance of the Panel. In December the Council considered and accepted these recommendations.

(b) Training Course on Parenting Co-ordination

A three-days training course on PC was organised in November. Dr. Mathew J. Sullivan was invited to speak on the course. Apart from Dr Sullivan, representatives from the Judiciary of Singapore and local mental health sector were invited. They shared views and experience on PC. The course was well-received.

Pilot Scheme on Mediation Helpline

The Committee assisted in the launch of the Mediation Helpline in November 2014. The Mediation Helpline, under the umbrella of the Free Legal Helpline, aimed to improve public awareness of and understanding on mediation; it also helped to promote mediation and solicitors' mediation practices in Hong Kong. The Helpline was first launched for a trial period of six months. In this trial period, a panel of Solicitor-Mediators together with the Mediation Co-ordinator provided information on mediation and mediation services to the telephone callers. The Helpline had been receiving positive feedbacks and in the light thereof, the Committee recommended the Pro Bono Committee to extend the Mediation Helpline until 31 December 2017.

Evaluative Mediation

Evaluative mediation was one of the initiatives proposed by the Hong Kong Government to promote Hong Kong as an international hub for dispute resolution services. The Committee had various discussions on this mode of mediation, including its scope and application to Hong Kong. In general, the Committee considered evaluative mediation could bring both opportunities and challenges to mediation practitioners; good preparation was required for the benefit of the whole mediation profession and mediation service users.

The Committee was monitoring closely the further developments on evaluative mediation and other ADR initiatives in Hong Kong.

Qianhai Mediation Panel

The Law Society was invited by the Qianhai-Hong Kong Chamber of Commerce ("Chamber") to establish a Panel of Lawyer-Mediators in Qianhai.

The Committee considered the matter and rendered to Council recommendations on the admission requirements of the Panel of Lawyer-Mediators and logistic supports on mediation services in Qianhai. These recommendations were endorsed by Council in April. Co-option circulars were issued and a list of nominated mediators together with the admission requirements and logistic supports were provided to the Chamber for consideration.

Consultations on various areas relating to practice in mediation

The Committee had considered the following consultations:

(a) Consultation on Enactment of Apology Legislation in Hong Kong

The Secretary for Justice's Steering Committee on Mediation issued a consultation paper on *Enactment of Apology Legislation in Hong Kong: Report & 2nd Round Consultation* in February. The consultation paper included a draft bill of the proposed apology legislation which set out the legal framework of apology legislation in Hong Kong. The Committee reviewed the consultation paper and, jointly with other

specialist committees of The Law Society, made a submission in April.

(b) Consultation on Proposal to Enhance the Financial Dispute Resolution Scheme

Another consultation paper was issued in October by the FDRC on the *Proposal to Enhance the Financial Dispute Resolution Scheme*. In this consultation paper a set of amendments to the FDRC's Financial Dispute Resolution Scheme was proposed. These aimed to among others enlarge the scope of and thus enhance the availabilities of the dispute resolution scheme to the public. The Committee reviewed the above proposal and was, in principle, in support. The Committee jointly with the Arbitration Committee made a submission in December.

(c) Consultation on Third Party Funding for Arbitration

A report on *Third Party Funding for Arbitration* was issued by the LRC of Hong Kong in October. The Committee discussed the report insofar as those were relevant to mediation and generally agreed with the proposal that third party funding should also be allowed for mediation. The Mediation Ordinance should therefore be also amended to provide a clear legal basis for mediation funding. The Committee provided its views to the Arbitration Committee for a consolidated submission.

(d) Report on the Role of Consumer Arbitration in the Alternative Dispute Resolution Regime for Consumer Protection

The Committee's attention was brought to a report by the Consumer Council on *The Role of Consumer Arbitration in the Alternative Dispute Resolution Regime for Consumer Protection* issued in August. The report provided recommendations on dispute resolution services for consumer disputes, including the establishment the Consumer Dispute Resolution Centre. The Committee would continue to monitor the further development on these proposals.

Promotion of Solicitor-mediators

To promote solicitors' mediation practices, the Committee had:

- reviewed policies in relation to solicitors' practice in mediation
- organised CPD and Risk Management Education ("RME") activities on mediation and other related subjects
- liaised with stakeholders on matters in relation to mediation
- monitored and updated solicitors on the latest development of mediation in Hong Kong.

Organisation of and Participation in Mediation Events

The Committee organised the following events as part of its continual efforts to promote mediation services to members:

- *Dementia, Sound Mind, Mediation in Elder Care* (25 January)
- *Information Session on Qianhai Mediation Initiative* (23 March)
- *What are the challenges faced by solicitor-mediators in their practice?* (22 April)
- *Mediation Cases Sharing Session* (8 July)
- *Information Session on HKMAAL and JMHO* (14 July)
- *Risk Management in Evaluative Mediation Practice* (18 October)
- *Training Course on Parenting Co-ordination* (28-30 November)
- *Mediation Miscellaneous: Confidentiality and Settlement Negotiation issues* (7 December)

The Committee also helped organise or provided sponsorship to the following:

- 3rd Shanghai-Hong Kong Commercial Mediation Conference on 17 March
- JMHO SME Mediation Conference on 13 June
- Seminar on “*Evolution of Intellectual Properties Disputes*” on 19 October.

Mediation Services

The Committee continued to provide support services for mediation to The Law Society’s members. This year, six requests for nomination of mediators were handled.

PERSONAL INJURIES COMMITTEE

The Committee had one meeting and conducted the rest of its business by email circulation.

Employees Compensation Assistance Fund Board

Section 20B of the *Employees Compensation Assistance Ordinance*, Cap 365 (“ECAO”) provides that the amount of the relief payment to an eligible person under the ECAO shall be the amount of damages for which the employer is liable to pay the eligible person after that amount is reduced by any employees’ compensation received, or any amount of damages already paid by the employer. Section 20B(3) of *ECAO* further provides that, notwithstanding the definition of “damages”, for the purposes of determining the amount of a relief payment, any interest payable on any amount, and any costs arising from proceedings in respect of any damages, shall not be included. This provision limits the amount of the relief payment to damages and excludes from the amount of the relief payment, any amount due by way of interest on damages, and any amount incurred by way of costs.

The Committee considered that the above provision under section 20B(3) was unfair to a plaintiff in a personal injury claim, who was to pray for relief payment under the *ECAO*. That plaintiff needed to incur costs to obtain a judgment for damages from the District Court or from the High Court, which amount of costs cannot be recovered from the Employees Compensation Assistance Fund Board and which, in the absence of any other

sources of income or capital, must come out of the relief payment made to the plaintiff. In effect, the relief payment had to be utilised to fund a judgment which was a prerequisite of eligibility to claim the relief payment.

The Committee took the view that the above inherent unfairness with the statutory scheme should be addressed. It met the Bar Association in September to discuss this matter, and provided further views thereon. After discussion with the Bar Association, a letter was written to the Employees Compensation Assistance Scheme Board to urge them to conduct their involvement in proceedings in a manner to limit irrecoverable costs. However it was concluded that a permanent solution will have to be obtained through amendments of the *ECAO* to provide for payment of the plaintiff's common law costs by the Board. The Committee noted that the Board now have very substantial reserves built up and should be in a financial position to cope with such payments.

Consultation on Apology Legislation

The Committee in late February received the second consultation paper on the proposal to enact apology legislation in Hong Kong. This consultation paper was released by the Steering Committee on Mediation of the Government. It summarised the responses received from the previous consultation, and sought further views on three specific matters, viz. (1) excepted proceedings to which the proposed apology legislation shall not apply; (2) whether the factual information conveyed in an apology should likewise be protected by the proposed apology legislation; and (3) a draft Apology Bill as prepared by the DOJ. The Committee studied the consultation paper and rendered views in response thereto. The said views, which were consolidated with views from other specialist committees, were submitted to Council for further deliberations.

Appendix D under Practice Direction 18.2

With a view to assisting personal injuries practitioners in complying with PD 18.2, in August the Committee wrote to the Employees Compensation Judge of the District Court on the practice of filling in and filing of Appendix D to the above PD. A circular on the matter was issued in September.

Meeting with the Director of Legal Aid

The Committee, together with the Legal Aid Committee and the Criminal law and Procedure Committee both of The Law Society, met the LAD on 17 June. It discussed various legal aid practices at the meeting and exchanged with the DLA and his deputies views issues such as the monitoring of the legal aid assignments, availability of interpreters, section 9 opinions and costs capped under Order 13A regime.

Other reviews

Apart from the above, the Committee had been considering various proposals and initiatives relating to the personal injury practices, e.g. a proposal to set up an insurance scheme for marine accidents.

PROBATE COMMITTEE

The Committee met twice this year and conducted the rest of its business via emails.

The Committee continued to review issues and attend to member enquiries relating to probate practice and procedure. The Committee maintained close contact with the Probate Registry through the Joint Standing Committee on Probate Practice which comprises of 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 608 applications were received and processed this year.

The Committee has considered the following:

- stamping of Deed of Family Arrangement and Assent (Close Relative Relief) under the Stamp Duty Ordinance.
- amendment to the will search application form to accommodate applications from mentally incapacitated persons.

In November, Committee members received a delegation from the LSS and exchanged views with the Singaporean counterparts on a wide range of probate issues.

JOINT STANDING COMMITTEE ON PROBATE PRACTICE

The Committee met the Probate Registry in October and exchanged views on, among others, the use of the New Checklist for Application for Grant and probate practices. The discussion was followed up by the issuance of a circular drawing members' attention to:

- New Checklist;
- Payment of Court Fee
- Joint and/or several appointments of executors under wills

Apart from the above, circulars on other probate practices were issued from time to time to general members.

PROPERTY COMMITTEE

The Committee had monthly meetings to discuss issues and legislative proposals relating to conveyancing practice. Where relevant and appropriate, meetings were arranged with Government departments and other organisations to consider various property-related issues. Apart from the above, Committee members continued to assist and to determine applications for waivers of Deed of Mutual Covenant Guidelines (466 applications); and application for deviations from forms of Agreement for Sale and Purchase approved under Rule 5C of the *Solicitors Practice Rules* (Cap. 159H) (4 applications).

Committee members served on internal Working Parties, and represented The Law Society on external Committees/Working Parties on property-related issues. Four members were co-opted in September upon annual review of membership.

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

In *Fully Profit (Asia) Limited v The Secretary for Justice for and on behalf of the Director of Lands* (FACV 17/2012), the Court of Final Appeal was asked to construe the meaning of the word “house” in restrictive covenants. It examined, among others, the clauses in and the relevant factual circumstances underlying the relevant Conditions of Exchange and the Government Leases. The Court of Final Appeal held that the meaning of the word “house” in the restrictive covenants must have reference to those characteristics of the houses which were actually standing on the Lots at the time the Government Leases were entered into.

The Committee noted with concerns the above judgment, as the judgment posed serious implications on lease enforcement actions against existing developments in respect of the "house" restriction in Government leases or land grants and title requisitions in conveyancing transactions. The subsequent release by the Lands Department of a Practice Note (No.3/2000A) in the opinion of the Committee did not assist to clarify the position.

The Committee met with the Lands Department to discuss issues arising therefrom; it was also engaged in numerous correspondences with the Department. Among other things, the Committee invited the Director of Lands to issue a comfort/confirmation letter to the effect that the Government will take no action to enforce the "house" restriction in the relevant Government lease against any buildings.

With continuous efforts made over three years on the matter, the Committee in January received a positive feedback from the Director of Lands. The Director rendered a helpful clarification on lease enforcement actions against existing developments in respect of the "house" restriction in Government leases or land grants. A circular on the aforesaid was issued in February.

Property Fraud

The Committee’s attention was brought to property frauds which seemingly were increasing. It had a meeting with the Hong Kong Police Force and the Immigration Department in July and discussed the modus operandi of these fraud cases. At the meeting, measures to combat property frauds were deliberated. In response to the comments by the Committee, the Immigration Department in October started an Immigration Offence Hotline for law firms on a trial run basis.

Furthermore, the Committee updated its circular on Property Fraud. More information were included for members’ reference. The updated circular was issued in December.

A CPD seminar on Property Fraud, as recommended by the Committee, was organised by

the Academy in September. Representatives from the Hong Kong Police Force and the Immigration Department shared with members, among others, experience and tips on discerning false identification documents.

Approval of Deed of Mutual Covenants under Land Grant

In October, the Lands Department sought views on its proposal to draw up standard clauses for Deed of Mutual Covenants (“DMCs”) for adoption, in order to reduce processing time for approval of DMCs. The Committee reviewed the proposal and produced a reply to the Lands Department.

Non-Consent Scheme

The Committee worked closely with the Working Party on Review of Non-Consent Scheme Forms to consider and to review the following, in the 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:

- 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; and
- consequential amendments to the related Statutory Declaration.

Legislative Reviews

The Committee had busily been involved in the reviews of various legislation. Apart from the *Residential Properties (First-Hand Sales) Ordinance* (Cap. 621), two of these legislation which members of the Committee had been considering extensively were the *Contracts (Rights of Third Parties) Ordinance* and the *Property Management Services Ordinance*.

Contracts (Rights of Third Parties) Ordinance (Cap. 623)

The *Contracts (Rights of Third Parties) Ordinance* (“the Ordinance”) came into operation in January 2016. A circular on the commencement of the Ordinance was issued in January.

The Committee met a number of times to discuss the implications of the Ordinance, and had written to the following:

- the Sales of First-hand Residential Properties Authority, which had upon the Committee's enquiry issued an *Announcement for the Trade* to clarify the circumstances under which the application of Section 6(1) of the Ordinance to the agreements for sale and purchase could be excluded;
- the Legal Advisory and Conveyancing Office (“LACO”) of the Lands Department on the inclusion of suitable provision(s) into the forms of agreement for sale and purchase for phased developments under the Consent Scheme, and a new form of

agreement with exclusion clause has been introduced under LACO Circular Memorandum No.72C in June 2016.

The Committee was on the other hand reviewing possible exclusion of the application of the Ordinance 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.

Property Management Services Ordinance

With exception of a few sections, the *Property and Management Services Ordinance* came into effect in October. The Committee had a meeting with the Home Affairs Department (“HAD”) in December and exchanged views on the implementation of the Ordinance. Views were put forward to the HAD on the setting up of the Property Management Services Authority, various sets of subsidiary legislation and in particular the levies.

Other property-related issues

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

- Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme of the Buildings Department
- Revised DMC Guidelines
- Payment confirmation of rates and/or government rent issued by the Rating and Valuation Department
- Fireman's Lift Lobby issue under a DMCs
- Solicitors' Undertaking
- Enforcement against Use of Industrial Buildings for Residential Purposes in Breach of the Lease Conditions
- *Solicitors' Accounts (Amendment) Rules 2012*, and implications to conveyancing transactions
- Expiry of Land Leases
- Buyers' Stamp Duty

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 continued the discussion with the Land Registrar regarding the *LTOSC Paper No. 14* in respect of the proposed Two-Stage Conversion Mechanism, Rectification and Indemnity Provisions as well as Different Conversion Options.

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

These matters were discussed with all stakeholders at the 11th Land Titles Ordinance Steering Committee Meeting in December 2016 and The Law Society's position was put by the Chairman of the Working Party.

The Land Registrar was now reviewing the views of stakeholders expressed at the December meeting.

WORKING PARTY ON REVIEW OF NON-CONSENT SCHEME FORMS

The Working Party had a busy year. It had two formal meetings and four telephone conferences. It conducted the rest of its business via emails.

In light of the issuance of a circular memorandum LACO Circular Memorandum 72A by the LACO of the Lands Department in 2013, the Working Party continued its effort in reviewing and making necessary amendments to the following:

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

The revised agreement for sale and purchase of first-hand residential properties and the revised sub-sale and purchase agreement in completed developments were approved by the Council and the Chief Justice and were put into effect on 1 August. Members were informed of the same by a circular.

The Working Party would continue to work on the amendments to the rest of the agreements forms and would conduct a further review of the Non-Consent Scheme forms.

WORKING PARTY ON REVISED DMC GUIDELINES

The Working Party continued to review The Law Society's Guidelines for DMCs and made recommendations on the revision to Guideline 29 for Property Committee's deliberation. In December, two members were co-opted to the Working Party to help with the increase in workload.

RETIREMENT SCHEME COMMITTEE

The Committee conducted its business by emails. It reviewed the new/revised Mandatory Provident Fund (“MPF”) Guidelines proposed by the Mandatory Provident Fund Schemes Authority and issued circulars to general members on the following updates or amendments.

- Revisions to MPF Guidelines relating to Address Change and other Housekeeping Amendments
- Central Securities Depositories (**Guidelines I.7**)
- Relating to Default Investment Strategy (**Guidelines III.14**) & Revised Disclosure Code
- Annual Statements of Registered Schemes (**Guidelines II.4**)
- Internal Control Report for Each Registered Scheme (**Guidelines II.6**)
- Quarterly Statistical Returns of the Default Investment Strategy of Registered Schemes (**Guidelines II.10**)
- Election for Transfer of Accrued Benefits (**Guidelines IV.3**)
- Payment of Accrued Benefits – Documents to be submitted to Approved Trustees (**Guidelines IV.4**)
- Monthly Returns of Registered Schemes (**Guidelines II.1**)
- Monthly Returns of Approved Pooled Investment Funds being Capital Preservation Funds (**Guidelines II.2**)
- Notification of Events of Significant Nature (**Guidelines II.9**)
- Unclaimed Benefits (**Guidelines IV.21**)
- Transfer Process under Sections 148A and 148B of the Mandatory Provident Fund Schemes (General) Regulation (**Guidelines IV.24**)
- Capital Preservation Funds (**Guidelines III.6**)
- MPF Exempted ORSO Schemes – Withdrawal of Minimum MPF Benefits (**Guidelines V.11**)

REVENUE LAW COMMITTEE

The Committee conducted its business via emails.

Consultation on Measures to Counter Base Erosion and Profit Shifting

In October, the Committee received from the Government a consultation paper on Measures to Counter Base Erosion and Profit Shifting. Committee members attended a briefing session on the consultation by the Government in November. The Committee reviewed the consultation paper and produced a submission in December.

Other tax issues

The Committee took note of the following:

- the introduction of the *Inland Revenue (Amendment) Bill 2016*, which aimed to provide a legislative framework for the implementation of Automatic Exchange of Information in Hong Kong.

- the release of a Concept Paper on Proposed Extension Of Profits Tax Exemption To Onshore Privately Offered Open-Ended Fund Companies.
- the Judiciary's *PD 34* on Tax Appeals.
- the enactment of the *Inland Revenue (Amendment) Ordinance 2016*, which gave effect to two major concessionary revenue measures proposed in the 2016-17 Budget.
- the enactment of the *Inland Revenue (Amendment)(No.2) Ordinance 2016*, which, amongst others, enabled, under specified conditions, the deduction of interest payable on money borrowed by a corporation carrying on in Hong Kong an intra-group financing business.

Attending outside meetings

Two committee members, as representatives of The Law Society, attended regular meetings of the Joint Liaison Committee on Taxation throughout the year.

REVERSE MORTGAGE COMMITTEE

The Committee conducted its business via emails.

The Hong Kong Mortgage Corporation Limited extended the Reverse Mortgage Program to subsidised sale flats with unpaid land premium in October. That aimed to help secure a stream of steady cash flow for retirement planning of the owners of both private and subsidised properties. A circular was issued to update members of the above enhancement of program.

WORKING PARTY ON ENFORCEMENT IN CIVIL PROCEEDINGS

The Working Party took note of the two consultation papers released by the DOJ in June and October respectively on (1) the proposed arrangement with the Mainland on reciprocal recognition and enforcement of judgments on matrimonial and related matters and (2) the *2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments*. It was in the course of conducting a study on the current procedures on enforcement in civil proceedings in Hong Kong and in comparable jurisdictions.

WORKING PARTY ON ENGAGEMENT AND FEE ARRANGEMENTS WITH BARRISTERS

Under the current arrangement, in the absence of reasonable excuse a solicitor is personally liable as a matter of professional conduct for the payment of a barrister's proper fees. Failure to obtain funds on account of a barrister's fees shall not of itself constitute reasonable excuse. A Working Party was set up in April under the Civil Litigation

Committee to review the above arrangement in instructing barristers in civil matters. Specifically, the Working Party was tasked to review the financial liabilities of instructing solicitors, and to make recommendations to the Council on proposals on and, where appropriate, to improve the above arrangement.

The Working Party had a meeting in October, and was now preparing a recommendation to the Civil Litigation Committee, other relevant committee(s) and the Council for deliberation.

WORKING PARTY ON INTERPRETERS

The Working Party had a meeting in April to review its preliminary draft recommendations on improving the current court interpreter system in Hong Kong.

In the meantime, members of the Working Party attended a meeting of LegCo's AJLS Panel in May. Representations were made on the perceived problems on the provision of public interpretation services in Hong Kong.

At the same time, the terms of reference of the Working Party was expanded in May to also review issues in relation to:

- proceedings before tribunals, including disciplinary and regulatory proceedings
- proceedings before any person who is acting in a judicial or quasi-judicial capacity
- investigation by law enforcement agencies
- taking instructions from clients relating to and incidental to the above.

With the expanded scope of work, the Working Party was now working on its draft recommendations for the Council's deliberation.

WORKING PARTY ON RESOLUTION REGIME

Following the enactment of the *Financial Institutions (Resolution) Ordinance 2016* (“the Ordinance”) in June, the Government released a *Consultation Paper on Protected Arrangements Regulations* for public views in November. The consultation covered a set of proposed regulations relating to "protected arrangements" under the Ordinance, namely clearing and settlement systems arrangements, netting arrangements, secured arrangements, set-off arrangements, structured finance arrangements and title transfer arrangements. The Working Party prepared a submission for the Government.

WORKING PARTY ON TAXATION IN CIVIL PROCEEDINGS

The Working Party on Taxation in Civil Proceedings had a meeting with the Law Costs Draftsmen Association in March, and an internal meeting in May.

The Working Party exchanged views with the Law Costs Draftsmen Association on taxation at different levels of the Court generally, and received a suggestion on costs adjudication (in lieu of formal taxation). At the same time, the Working Party considered and endorsed a proposal to organise a seminar on taxation.

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 seven Board meetings during the year and an Annual General Meeting.

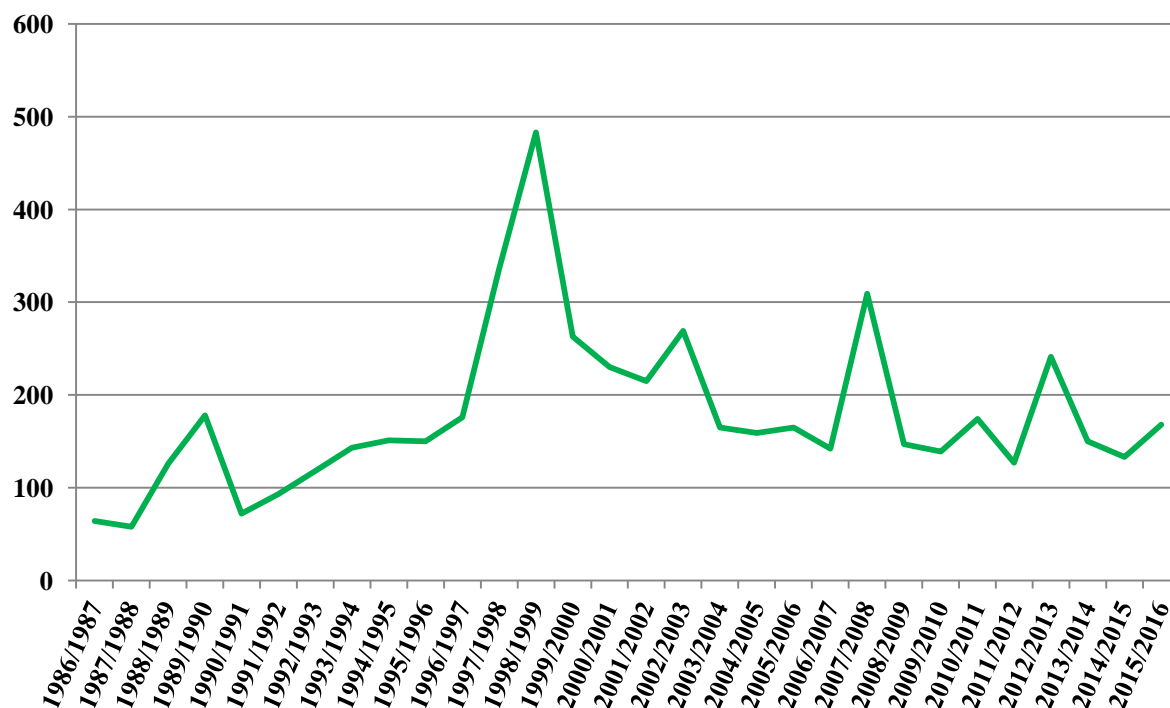
The HKSIFL considered a number of matters including:

- Issues in relation to the conduct of claims
- Contribution reduction
- The performance of the PIS Broker and Manager
- The performance 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 168 notifications of claims were received by the Claims Manager, ESSAR Insurance Services Ltd. ("ESSAR") during the 2015/2016 indemnity year, i.e. from 1 October 2015 to 30 September 2016 and the grace period from 1 October 2016 to 29 November 2016. As at 30 September 2016, 15 of the notifications resulted in proceedings, 10 were closed without payment and 153 remained as notifications.

The number of claims for the last 30 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 – 2015/2016)



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

Indemnity Year	Number of Claims	Percentage Increase/Decrease from previous year	No of members
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
2015/2016	168	26%	8,932

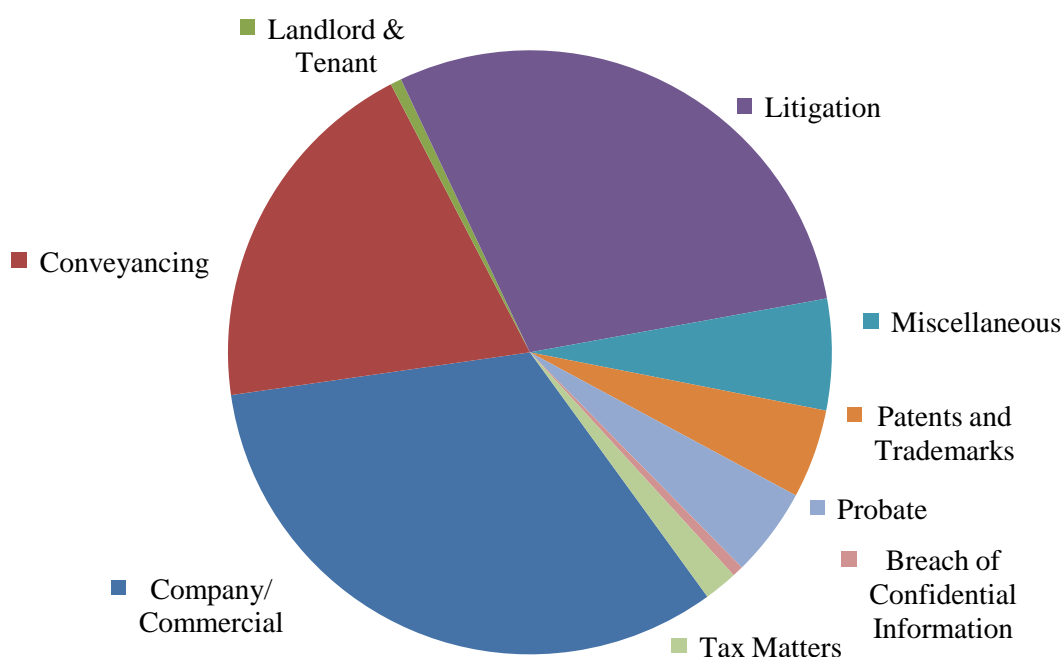
* Number of Claims includes claims notified within the grace period.

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

Claims notified in the 2015/2016 indemnity year were categorised as follows:-

Company/Commercial	55
Conveyancing	33
Landlord & Tenant	1
Litigation	49
Miscellaneous	10
Patents and Trademarks	8
Probate	8
Breach of Confidential Information	1
Tax Matters	3
	<u>168</u>

Figure 2 : Types of Claims notified in 2015/2016



22 fraud claims were received in the 2015/16 indemnity year.

As at 30 September 2016, the total liability of the PIS for the 2015/2016 indemnity year, calculated on the basis of claims paid and claims reserved, was HK\$12,039,748 of which HK\$2,160,417 consisted of claims paid (including costs) and HK\$9,879,331 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\$1,905,279,218 and the amount reserved was HK\$150,184,372. The total claims paid and reserved was HK\$2,055,463,590.

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 2016 will be published in the PIS Annual Report for the 2015/2016 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 five meetings during the year to discuss both new and ongoing claims.

PIS INVESTMENT SUB-COMMITTEE

The PIS Investment Sub-Committee held four 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 2015 and 2016 were as follows:

Investment Manager	Type of portfolio	Net Return	
		2015	2016
Amundi	Equity and bonds	-0.31%	3.03%
AllianceBernstein	Bonds	0.41%	4.10%
MFS*	Equity	-0.88%	6.61%
GMO*	Equity	-6.61%	6.96%

* MFS and GMO were appointed in December 2011.

In addition to monitoring the performance of managers, the Subcommittee also reviewed and updated 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 referred to it by the Council, HKSIFL or the Claims Committee relating to professional indemnity cover under the PIS.

A Working Party of this Committee considered various amendments to the *SPI Rules*, including amendments:

- to improve the cover provided under the PIS;
- consequential to the introduction of *Solicitors Corporation Rules*;
- to incorporate Registered Foreign Lawyers into the calculation of PIS contributions and deductibles.

The Working Party held three meetings during the year and conducted the rest of its business by email circulation.

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 2016 were:

- Bird & Bird
- Deacons
- Fred Kan & Co.
- 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 considered a number of defaults and applications for time extensions by email circulation.