



Standing Committee on Compliance



THE
LAW SOCIETY
OF HONG KONG
香港律師會

2017

The Standing Committee oversees The Law Society's administrative and regulatory functions, these responsibilities having been delegated to it by the Council.

The Standing Committee met 12 times during the year and considered 200 agenda items (compared to 139 agenda items in 2016).

The Compliance Department (Conduct and Registration Sections) of the Secretariat supports the work of the Standing Committee.

Conduct Section

The Conduct Section of the Compliance Department is mainly responsible for investigating allegations of professional misconduct against solicitors, foreign lawyers, trainee solicitors and employees of solicitors and foreign lawyers. In 2017, it handled 1,037 complaints (961 in 2016), of which 480 complaints (426 in 2016) were lodged or referred by members of the public and government organisations and 50 complaints (41 in 2016) were made by solicitors. 893 files were closed during the year; of which 308 were closed without seeking an explanation.

INVESTIGATION COMMITTEE

Investigation Committees are ad-hoc sub-committees of the Standing Committee. Three members of the Standing Committee are appointed to each Investigation Committee to consider reports prepared by the Conduct Section and to adjudicate on complaints.

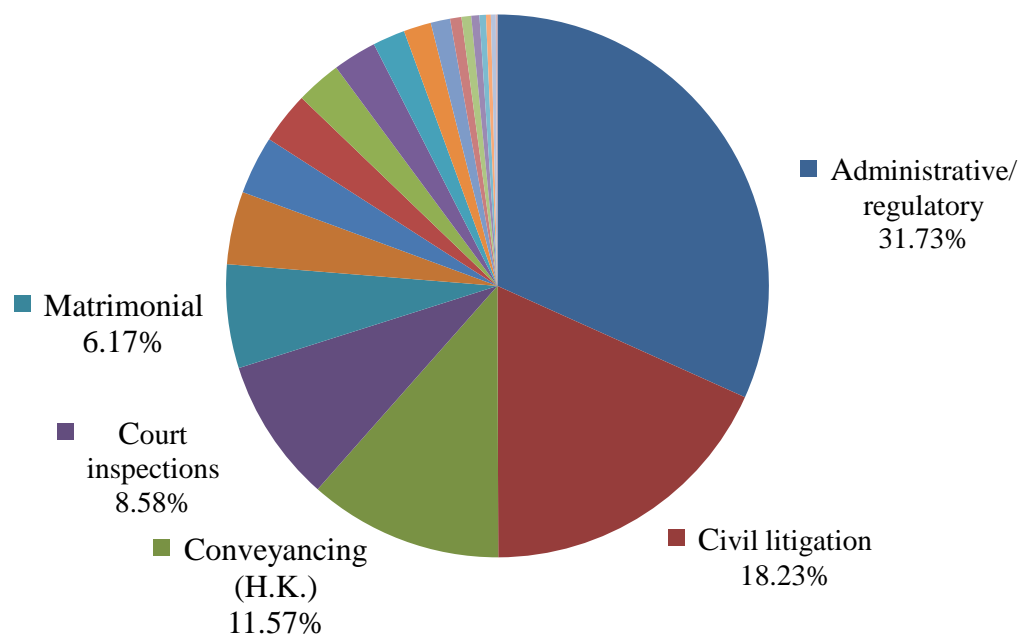
Investigation Committees may recommend to the Standing Committee to issue letters of good practice, regret, or disapproval (or any other sanction authorised by the Council from time to time), and to submit matters to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel.

Investigation Committees considered 370 complaints by circulation of 370 agenda. (In 2016, 285 complaints were considered by circulation of 285 agenda.)

The Standing Committee reviewed five decisions of the Investigation Committees. One review was withheld pending the conclusion of court proceedings. One review was allowed resulting in the withdrawal of six letters of regret all being replaced by letters of good practice. Three decisions of the Investigation Committees were upheld. (In 2016, 11 decisions were reviewed.)

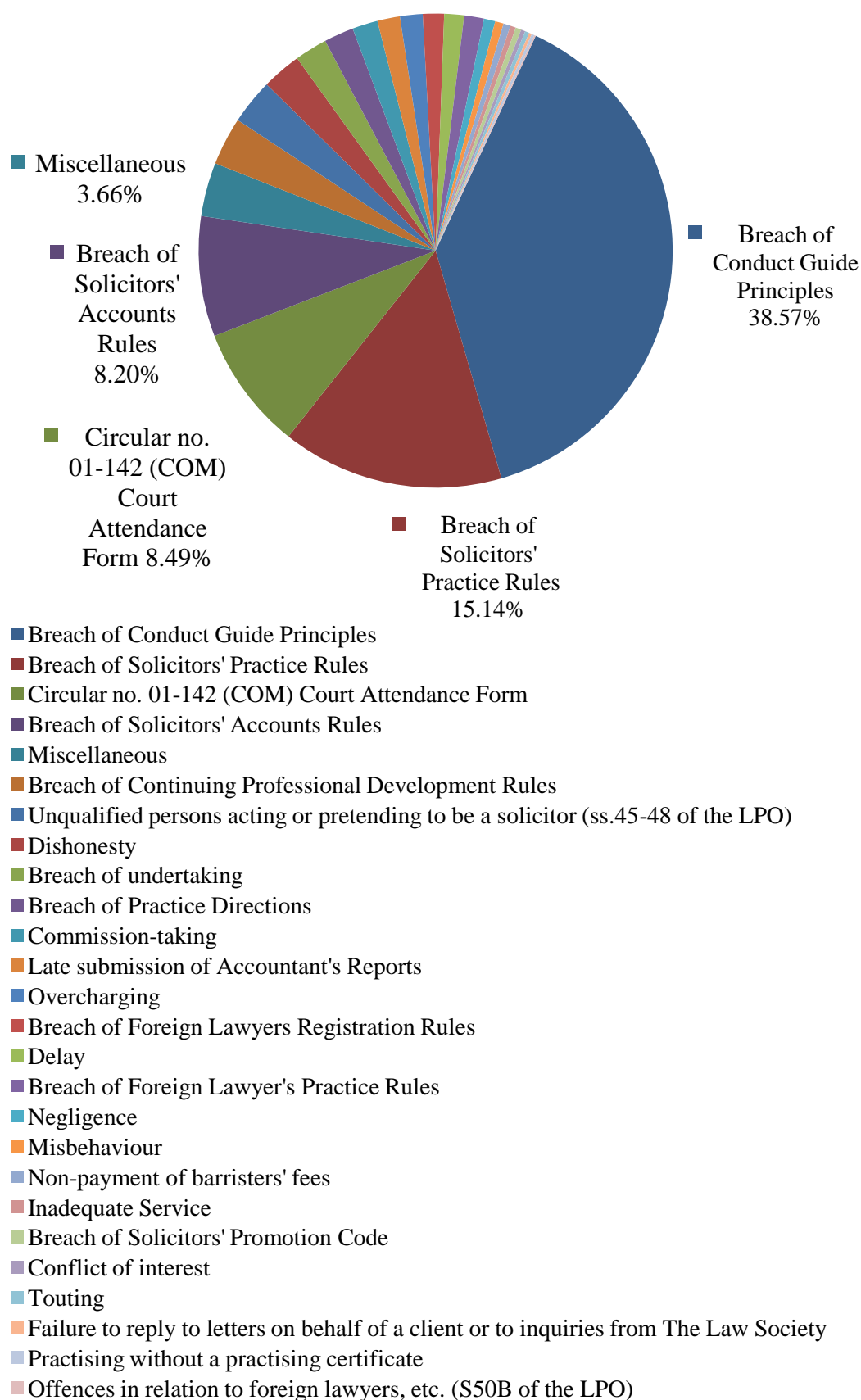
Determination of Complaints in 2017

Figure 1: Subject matters of complaints



Subject Matters of Complaints	2017	2016	2015
Administrative/regulatory	31.73%	42.98%	35.86%
Civil litigation	18.23%	16.13%	20.20%
Conveyancing (H.K.)	11.57%	12.17%	12.61%
Court inspections	8.58%	3.43%	4.04%
Matrimonial	6.17%	4.58%	5.14%
Company/commercial	4.34%	3.85%	3.55%
Criminal	3.47%	2.50%	4.41%
Miscellaneous	3.09%	2.08%	1.59%
Reports of purported law firms	2.70%	2.71%	2.20%
Probate	2.60%	1.56%	3.67%
Conveyancing (other than H.K.)	1.93%	0.83%	0.49%
Owners'/incorporated owners' disputes	1.64%	1.77%	1.84%
Contract	1.16%	1.66%	1.84%
Landlord & tenant	0.68%	1.25%	1.47%
Civil Celebrant	0.58%	0.94%	0.49%
Bankruptcy	0.48%	0.62%	0.49%
Inspections	0.39%	0.21%	—
Legal Visit	0.29%	0.21%	—
Mediation	0.29%	0.21%	—
Media/promotion	0.10%	—	—
Recovery agents	—	0.21%	0.12%
Election	—	0.10%	—

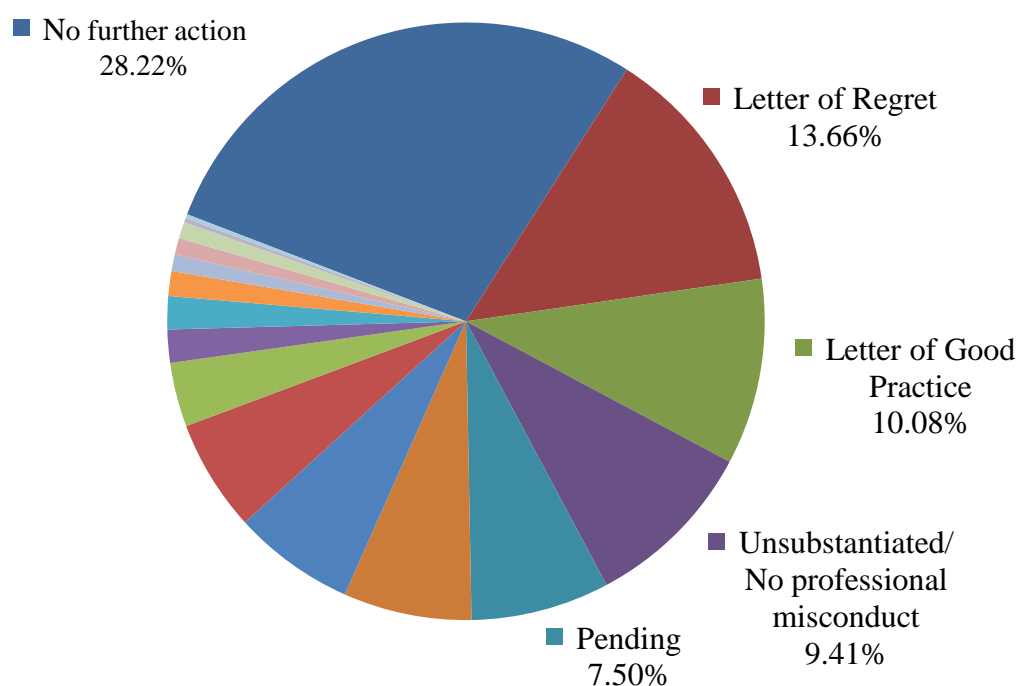
Figure 2: Nature of professional misconduct



Nature of professional misconduct	2017	2016	2015
Breach of <i>Conduct Guide</i> Principles	38.57%	33.51%	41.86%
Breach of <i>Solicitors' Practice Rules</i>	15.14%	27.78%	27.29%
Circular no. 01-142(COM) (Court attendance form)	8.49%	4.79%	4.04%
Breach of <i>Solicitors' Accounts Rules</i>	8.20%	2.91%	3.43%
Miscellaneous	3.66%	3.33%	1.22%
Breach of <i>Continuing Professional Development Rules</i>	3.28%	2.29%	3.79%
Unqualified persons acting or pretending to be a solicitor (ss.45—48 of the <i>LPO</i>)	3.09%	2.91%	2.20%
Dishonesty	2.70%	1.98%	1.71%
Breach of undertaking	2.22%	1.25%	0.98%
Breach of <i>Practice Directions</i>	2.03%	1.04%	0.61%
Commission-taking	1.74%	—	—
Late submission of Accountant's Reports	1.54%	6.76%	1.84%
Overcharging	1.54%	1.56%	1.10%
Breach of <i>Foreign Lawyers Registration Rules</i>	1.45%	2.19%	1.96%
Delay	1.35%	1.25%	0.37%
Breach of <i>Foreign Lawyers Practice Rules</i>	1.35%	1.46%	0.49%
Negligence	0.77%	0.42%	1.59%
Misbehaviour	0.58%	0.42%	1.10%
Non-payment of barristers' fees	0.48%	0.73%	0.73%
Inadequate service	0.39%	0.21%	0.12%
Breach of <i>Solicitors' Practice Promotion Code</i>	0.39%	0.94%	0.61%
Conflict of interest	0.29%	0.42%	0.73%
Touting	0.29%	—	0.24%
Failure to reply to letters on behalf of a client or to inquiries from The Law Society	0.19%	0.10%	0.24%
Practising without a practising certificate	0.19%	—	0.24%
Offences in relation to foreign lawyers, etc. (s.50B of the <i>LPO</i>)	0.10%	0.21%	0.86%
Breach of <i>Solicitors (Professional Indemnity) Rules</i> (general)	—	1.25%	0.61%
Property fraud	—	0.31%	—

“*Conduct Guide*” = *The Hong Kong Solicitors' Guide to Professional Conduct* (Volume 1, 2nd and 3rd editions)
“*LPO*” = *Legal Practitioners Ordinance*, Cap. 159

Figure 3: Analysis of closed files decided by Investigation Committees



	2017	2016	2015
No further action	28.22%	17.85%	18.33%
Letter of regret	13.66%	13.39%	16.71%
Letter of good practice	10.08%	12.27%	9.23%
Unsubstantiated/No professional misconduct	9.41%	9.07%	8.23%
Pending	7.50%	8.37%	5.11%
Letter of disapproval	6.94%	5.30%	6.11%
Referred – Independent legal advice (incl. District Office)	6.61%	11.30%	13.97%
Unpursuable	6.05%	6.83%	9.23%
Withdrawn	3.47%	3.77%	4.86%
Referred – Tribunal Convenor	1.79%	1.12%	2.24%
Strong letter of disapproval	1.79%	2.65%	1.25%
Referred – enforcement agencies	1.34%	4.74%	2.12%
Resolved amicably	0.90%	0.98%	0.37%
Referred – relevant Authorities	0.90%	0.84%	0.87%
Referred – taxation	0.90%	0.98%	0.87%
Referred – Joint Tribunal	0.22%	0.14%	0.25%
Referred – Inspection by the Monitoring Accountant	0.22%	—	—
Referred – others (incl. intervention agents)	—	0.28%	0.12%
Referred – other departments of The Law Society	—	0.14%	—
Circular issued	—	—	0.12%

Applications to the Chief Judge under section 9A(2) of the *Legal Practitioners Ordinance, Cap. 159* (“LPO”)

Under section 9A(2) of the *LPO*, where a complaint is made to the Council and the Council does not submit a matter to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel ("the Tribunal Convenor") under section 9A(1) of the *LPO* within six months after receiving the complaint, the Chief Judge may, on application by any person or on his own initiative, submit the matter to the Tribunal Convenor if he considers that the Council ought to have done so.

In 2017, two applications were made to the Chief Judge under section 9A(2) of the *LPO*.

Inspections and visits

Under section 8AA of the *LPO*, the Council is empowered to appoint inspectors to verify compliance with the provisions of the *LPO* or any *Practice Direction* (“PD”) issued by The Law Society, and to determine whether the conduct of those against whom an inspection was made should be inquired into or investigated. Section 8AA of the *LPO* stipulates the powers of an inspector in making such inquiries and investigations.

During the year, Investigation Counsel made 14 visits to eleven law firms. Two of these visits were made under section 8AA of the *LPO*. In addition, three court inspections were conducted by inspectors at magistrates’ courts. For these court inspections, the Council appointed inspectors to verify compliance with rule 5D of the *Solicitors’ Practice Rules* (“SPR”), Cap. 159H and to monitor the proper completion of court attendance forms.

The Monitoring Accountants paid visits to law firms to provide assistance in their accounting procedures/systems and to inspect their books and accounts to ensure compliance with the rules relating to solicitors’ accounting. 94 visits were made to 63 solicitors’ firms and foreign law firms; some firms required more than one visit (84 visits to 55 firms in 2016).

Interventions

The Council’s power of intervention is exercised for the protection of the public and occurs when clients’ interests are at risk. The powers vested in the Council for the exercise of an intervention under Sections 26A, 26B or 26C of the *LPO* are set out in Schedule 2 to the *LPO*. Through the intervention agents, The Law Society first takes control of the office and clients’ monies of the intervened firms and takes possession of the intervened firms’ documents. If necessary, The Law Society may commence court applications to implement the Council’s resolution to intervene. The intervention agents return documents to clients who have specifically requested their return or forward clients’ documents to other firms of solicitors on the instructions of clients. The process of distributing clients’ money of the intervened firms may involve court proceedings and claimants must produce supporting documents to verify their claims. Documents in the possession of the Council are kept in storage in accordance with the guidelines in The Law Society circular 12-475 (PA) or until there is a Court order as to disposal or destruction.

Subject to any Court order for the payment of costs, any costs incurred by the Council in the intervention shall be paid by the solicitor or the foreign lawyer whose practice was being intervened.

The Council has intervened in the practice of two solicitors' firms in 2017.

The Law Society also dealt with taxation and assisted Police investigations related to current and past interventions during the year.

INVESTIGATION COMMITTEE ON DISCIPLINARY MATTERS

The Investigation Committee (Disciplinary Matters) is the only Investigation Committee with a fixed membership drawn from senior members of the Standing Committee. The Committee's work includes monitoring the progress of disciplinary proceedings, appeals and court proceedings (including bankruptcy petitions), giving instructions to prosecutors and The Law Society's legal representatives, and authorising the payments of fees incurred in disciplinary proceedings, appeals and court proceedings.

The Committee considered 73 matters by circulation of 31 agenda. (In 2016, 101 matters were considered by circulation of 39 agenda.)

Disciplinary proceedings, summary disposals, appeals and judicial reviews

The Standing Committee on Compliance resolved to submit nine matters to the Tribunal Convenor concerning the conduct of nine solicitors and three clerks under section 9A(1) of the *LPO* (six matters concerning five solicitors and one foreign lawyer in 2016). In 2017, five matters had been submitted to the Tribunal Convenor (six in 2016).

A Solicitors Disciplinary Tribunal is a statutory tribunal established by the *LPO*. It is independent of The Law Society which is the prosecuting body. Members of the Solicitors Disciplinary Tribunal Panel are appointed by the Chief Justice. The Chief Justice also appoints the Tribunal Convenor and the Deputy Tribunal Convenors who have the responsibility to appoint a panel of three or four members to sit as a Tribunal to determine applications, and who have the power to dispose of certain classes of complaint on a summary basis.

Five sets of disciplinary proceedings were determined by the Solicitors Disciplinary Tribunal in 2017 (compared to nine in 2016) which resulted in the following orders being made:

Respondent	Position	Charge(s)	Penalty	Fine (HK\$)
1	Clerk	<ul style="list-style-type: none"> • 2 counts of disgraceful, dishonourable and discreditable conduct within the meaning of section 2(2) of the <i>LPO</i>. 	<ul style="list-style-type: none"> • prohibited from being employed by any solicitor's firms or foreign law firms in Hong Kong for a period of 10 years; and • to pay costs. 	N/A
1	Clerk	<ul style="list-style-type: none"> • 1 count of disgraceful, dishonourable and discreditable conduct within the meaning of section 2(2) of the <i>LPO</i>. 	<ul style="list-style-type: none"> • prohibited from being employed by any solicitor firms or foreign law firms in Hong Kong for a period of 8 years; and • to pay costs. 	
1	Solicitor	<ul style="list-style-type: none"> • 1 count of conducting unbecoming a solicitor. 	<ul style="list-style-type: none"> • censured; • suspended from practice for a period of one and a half years from the filing by the Clerk to the Tribunal of the Order with the Registrar; and • to pay costs. 	
1	Solicitor	<ul style="list-style-type: none"> • 1 count of breach of rule 7 of the <i>SAR</i>; • 1 count of breach of rule 10(1) of the <i>SAR</i>; • 1 count of breach of 10(3) of the <i>SAR</i>; • 1 count of breach of 10A of the <i>SAR</i>; and • 1 count of breaches of rule 5B(1) and (2) of the <i>SPR</i> and rule 11(1) and (2) of the <i>SAR</i>. 	<ul style="list-style-type: none"> • censured; and • to pay costs. 	<ul style="list-style-type: none"> • Fined HK\$10,000 in respect of Complaint 1 • Fined HK\$20,000 in respect of Complaint 2 • Fined HK\$5,000 in respect of Complaint 4 • Fined HK\$5,000 in respect of Complaint 5

Respondent	Position	Charge(s)	Penalty	Fine (HK\$)
				<ul style="list-style-type: none"> • Fined HK\$5,000 in respect of Complaint 6
1	Solicitor	<ul style="list-style-type: none"> • 3 counts of breach of Principle 4.16 of the <i>Conduct Guide</i>. 	<ul style="list-style-type: none"> • censured; and • pay costs 	<ul style="list-style-type: none"> • Fined HK\$6,000 in respect of Complaint 1, 2 and 3.

“LPO” = *Legal Practitioners Ordinance*, Cap. 159

“SPR” = *Solicitors’ Practice Rules*

“SAR” = *Solicitors’ Accounts Rules*

“*Conduct Guide*” = *The Hong Kong Solicitors’ Guide to Professional Conduct (Volume 1, 2nd editions)*

Litigation proceedings

In March, a bankruptcy order was made against a solicitor as a result of the bankruptcy petition filed by The Law Society.

In May, a solicitor lodged with the Court of Appeal a Request for Dismissal of Appeal by Consent to withdraw his appeal against the Findings of the Tribunal and was granted an order in terms in June.

In May, the High Court dismissed an application for judicial review against The Law Society. The Law Society was ordered to pay 60% of the Applicant’s costs.

In May, the High Court allowed an application for judicial review against The Law Society and made a costs order nisi in favour of the Applicant.

CONSENTS COMMITTEE

The Consents Committee is a sub-committee of the Standing Committee on Compliance.

The Consents Committee decides on applications made under the *LPO*, its subsidiary legislation and The Law Society's *PD* for (i) registration by solicitors; (ii) registration as a (a) trainee solicitor, (b) foreign lawyer and (c) foreign law firm; and (iii) consent and waiver.

The Committee met 20 times during the year and considered 612 items (in 2016, 21 meetings and 477 items). A further 69 matters were dealt with by circulation of five agenda (in 2016, 40 matters by circulation of three agenda).

Registration Section

The Registration Section of the Compliance Department processes applications and handles applications considered by the Consents Committee.

As with previous years, in conjunction with the Conduct Section, the Registration Section reviewed, processed and filed the "employees' returns" submitted by all solicitors' firms and foreign law firms in January of each year, and the Notification of Changes to a Practice on firms' particulars submitted by solicitors' firms and foreign law firms throughout the year.

Nature of applications

Applications considered by the Consents Committee and those processed by the Registration Section during the year included:

Nature of applications	2017	2016	2015
Admissions	574	637	575
Certificates of eligibility for admission	586	615	600
Practising certificates: English	9,463	9,076	8,647
Chinese	4,402	4,137	3,749
Practising certificates – removal of conditions under s.6(6) <i>LPO</i> (solicitors)	243	216	186
Membership	10,798	10,345	9,869
First registration as a foreign law firm	9	8	9
First registration as a foreign lawyer	413	335	352
Renewal of registration as a foreign lawyer	1,393	1,310	1,270
Removal of conditions on certificates of registration (foreign lawyers)	70	79	70
Registration as an Association	8	9	8
Removal of name from the roll of solicitors	5	5	6
Restoration of name to the roll of solicitors	1	2	1
Admission of English barristers	—	—	1
Qualifications for admission s.4(1A) <i>LPO</i>	104	108	115
Employment of staff: s.53(1) <i>LPO</i>	6	1	2
s.53(3) <i>LPO</i>	2	2	3
Practising certificates – removal of conditions under s.6(6A) <i>LPO</i>	34	27	47
Practising certificates – Special Conditions	10	10	6
Registration of first trainee solicitor contracts	606	537	371
Registration of subsequent trainee solicitor contracts	74	109	96
Special leave to employ trainee solicitors	10	20	10
Other trainee solicitor matters	222	191	165
Law costs draftsmen	—	—	2
Accountant’s report – solicitors’ firms	874	868	848
Accountant’s report – foreign law firms	84	86	90
Firm name and letterhead	24	13	14
Waiver applications – general	*1	*16	*7
Waiver applications – <i>PD</i>	3	3	1
Registration of new associate member	3	4	—
Certificates of standing	618	1,258	762
Letters of no objection [#]	411	798	854
Authorised solicitors’ clerks	30	19	10

“*LPO*” = *Legal Practitioners Ordinance, Cap. 159*

“*PD*” = *The Law Society’s Practice Directions*

* Applications were under the *LPO, Cap 159*; the *SPR, Cap. 159H*; the *SAR, Cap.159F*; the *FLRR, Cap.159S*, and the *FLPR, Cap.159R*

[#] “No objection” letters were issued to applicants for employment or training work visas.

Figure 4: Admission of solicitors 2008—2017

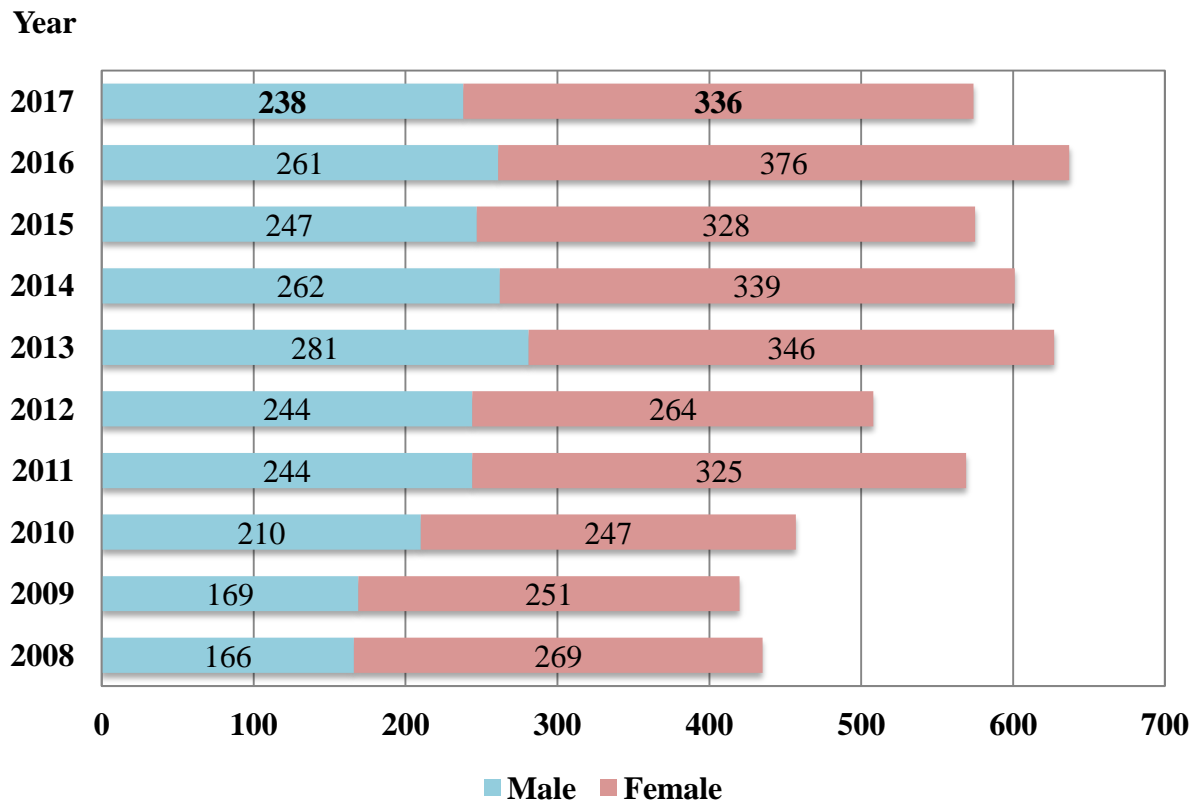


Figure 5: Solicitors holding practising certificates 2008—2017

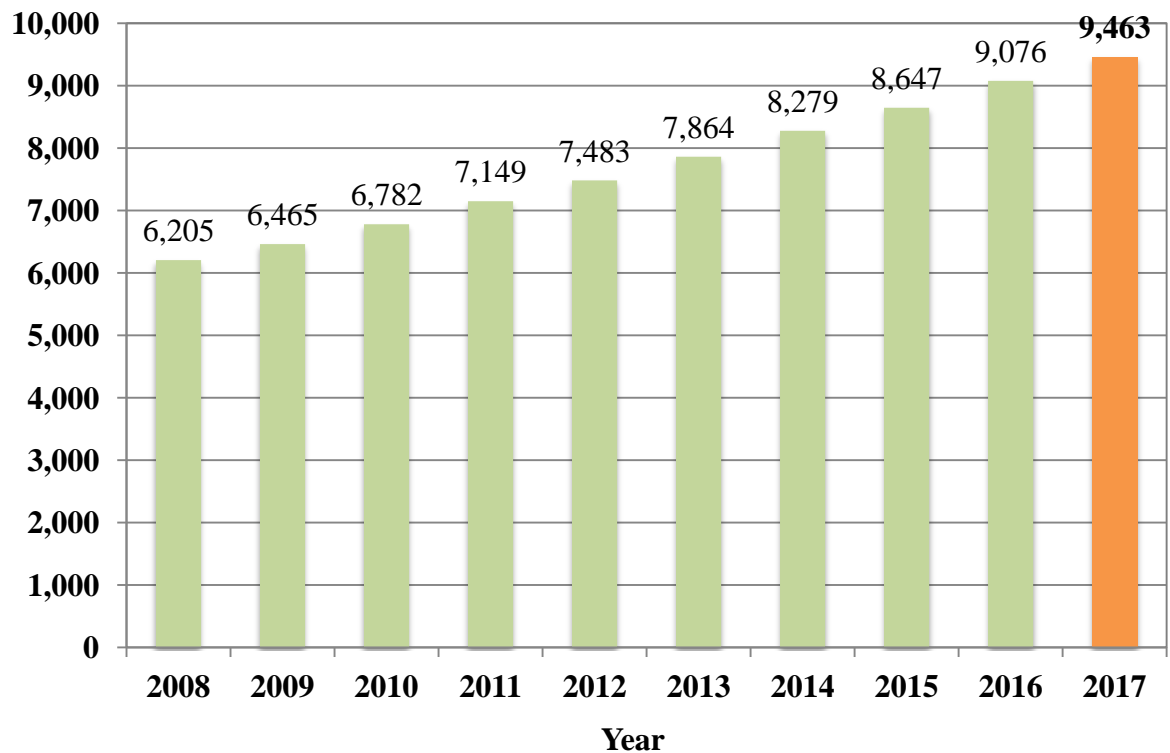


Figure 6: Years of admission - solicitors holding a 2017 practising certificate

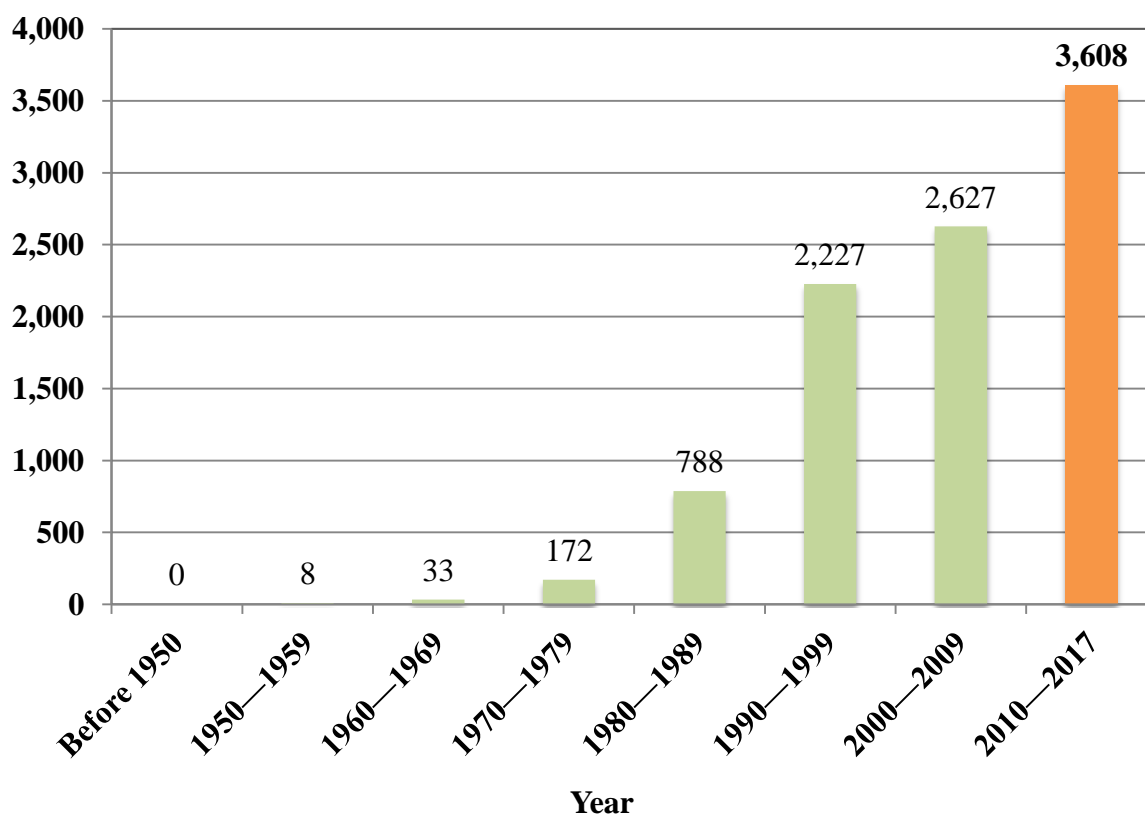


Figure 7a: Gender ratio – Solicitors holding a practising certificate (2012 – 2017)

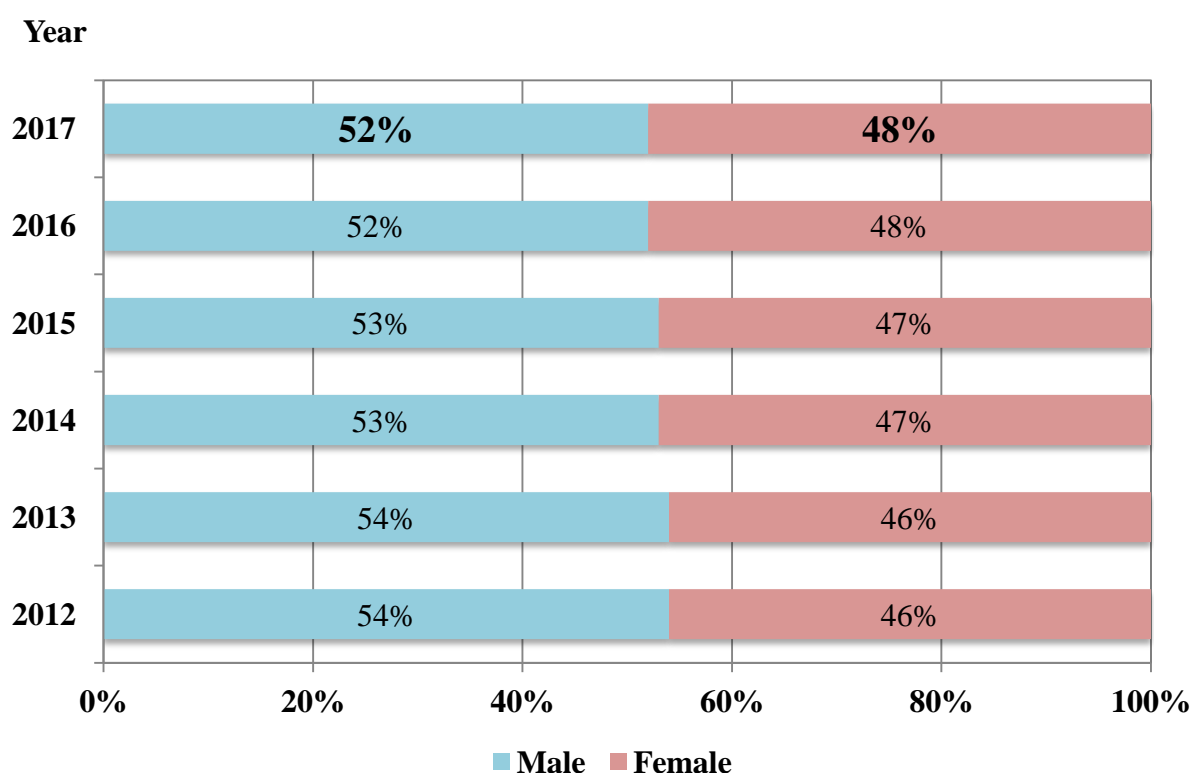


Figure 7b: Gender ratio – Trainee solicitors 2012 – 2017

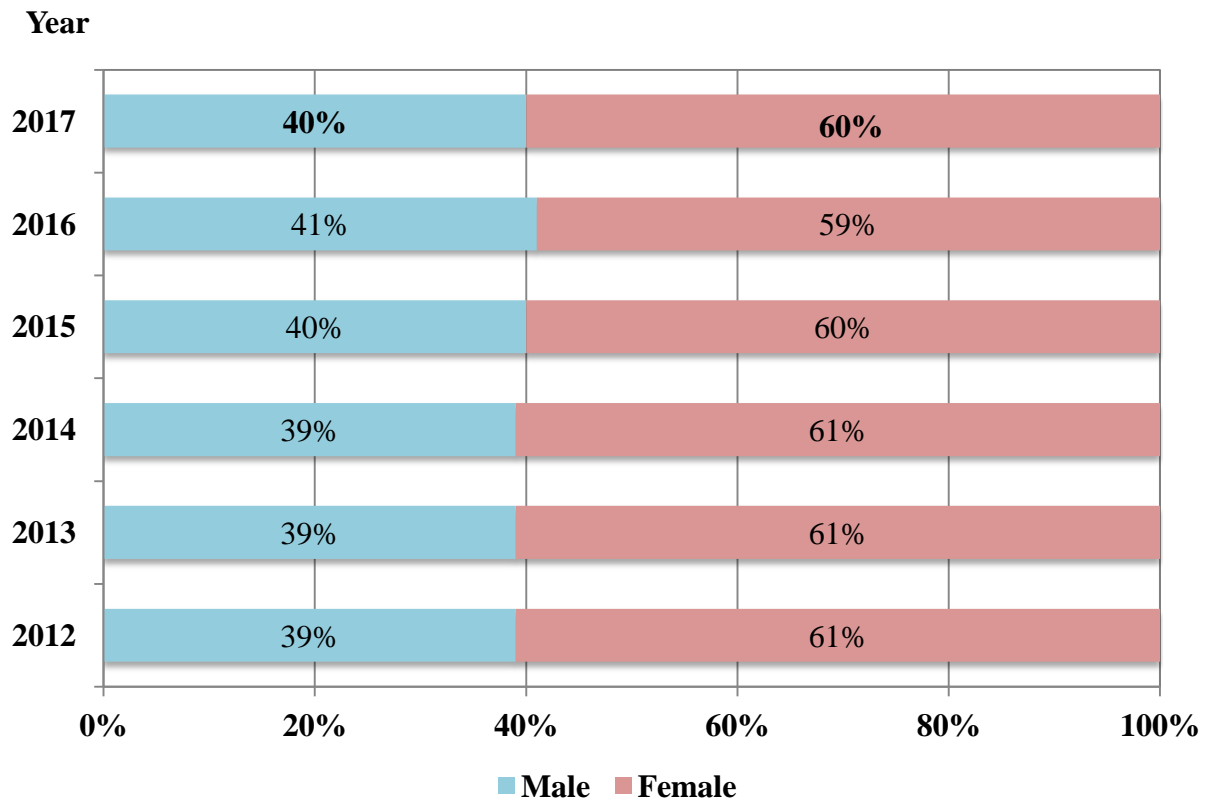


Figure 7c: Gender ratio – Partners 2012 – 2017

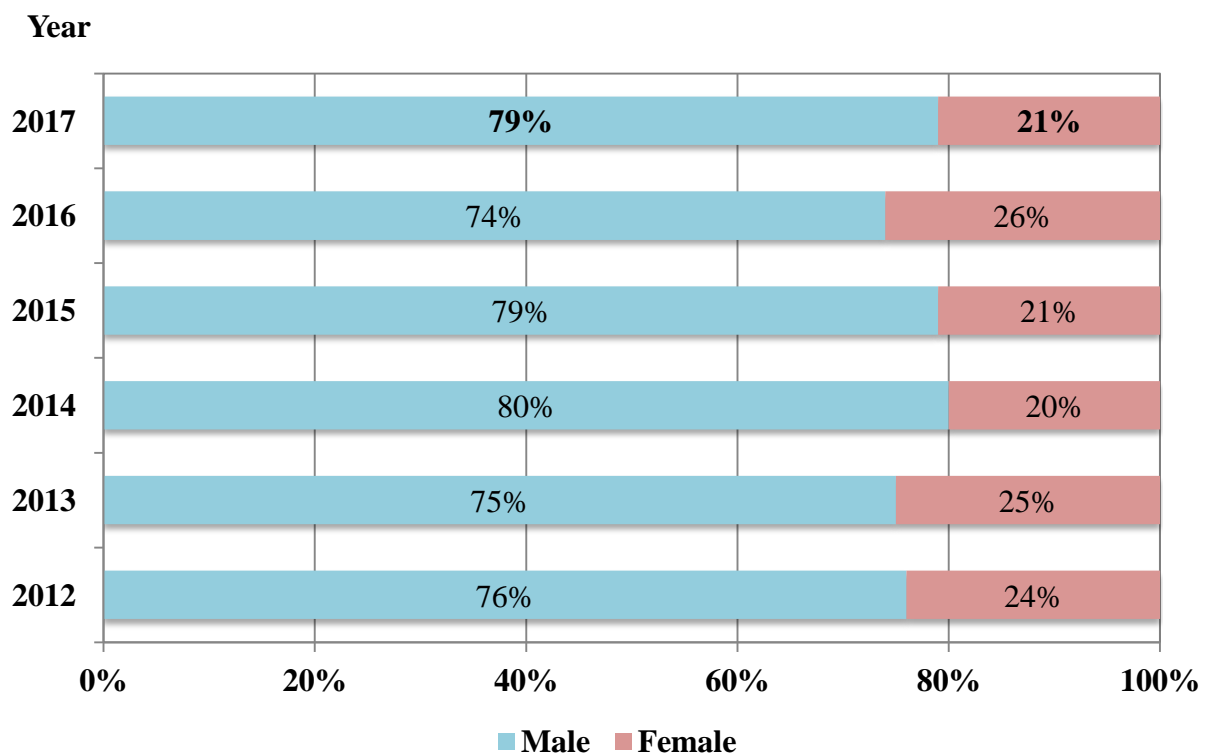


Figure 8: Size of solicitors' firms and number of trainee solicitors in 2017

Size of firm	No. of firms		No. of trainee solicitors	
	2017	2016	2017	2016
Sole practitioners	423	421	74	66
2—5 partners	371	352	339	302
6—10 partners	51	49	217	198
11—20 partners	33	35	264	244
Over 20 partners	14	13	234	208
Total	892	870	1,128*	1,018[#]

[#] excluding 12 in government and 6 working “in-house”

* excluding 20 in government and 8 working “in-house”

Figure 9: Home jurisdictions of registered foreign lawyers

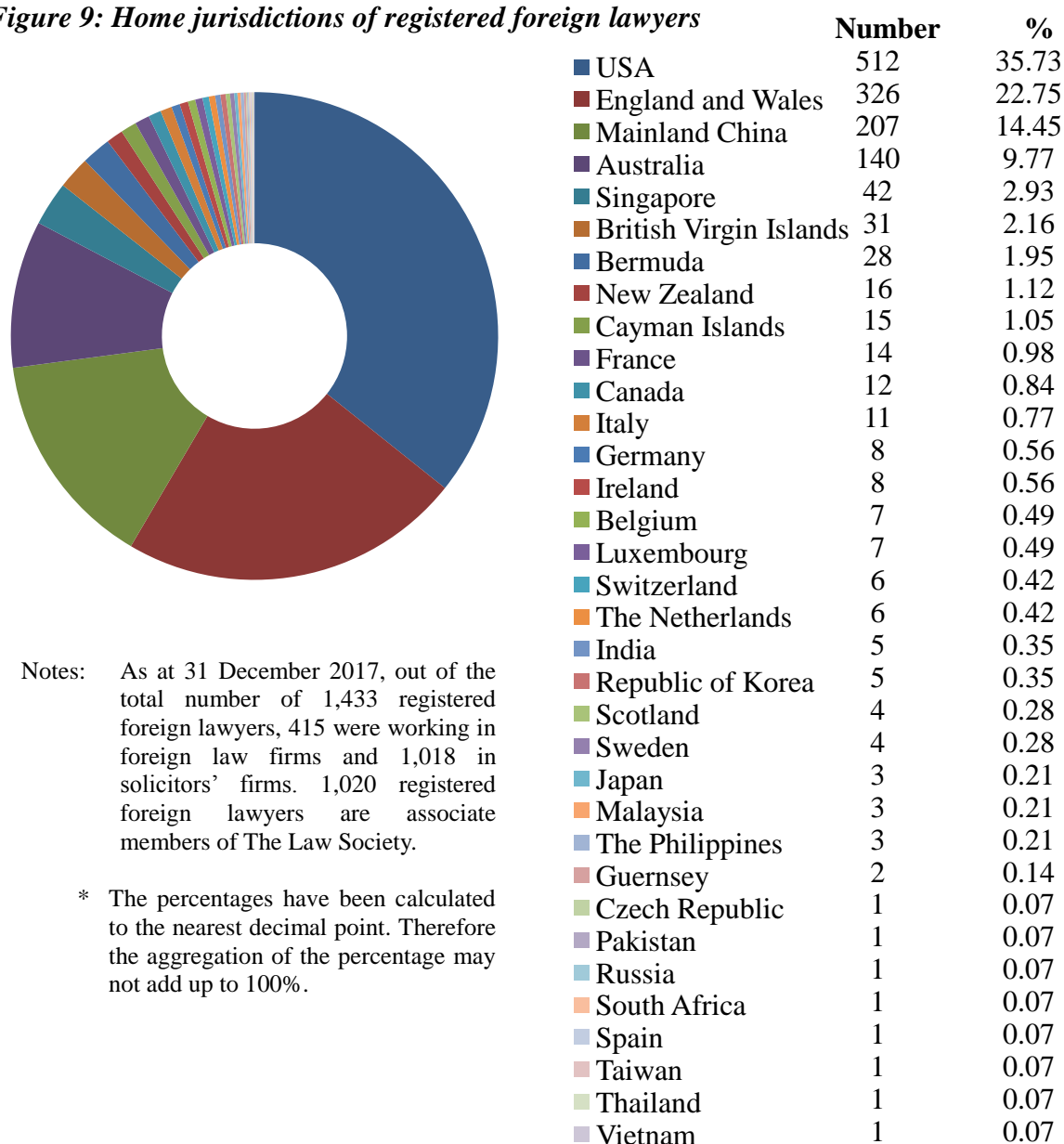
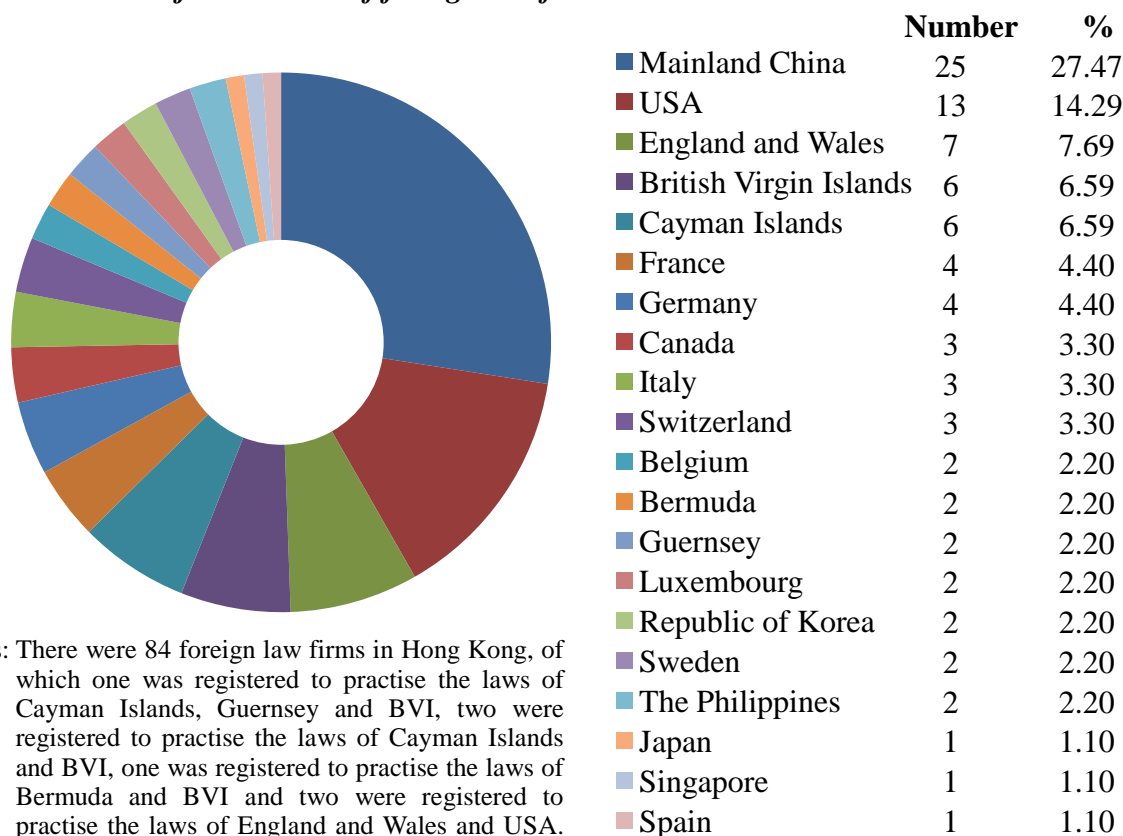


Figure 10: Home jurisdictions of foreign law firms



Notes: There were 84 foreign law firms in Hong Kong, of which one was registered to practise the laws of Cayman Islands, Guernsey and BVI, two were registered to practise the laws of Cayman Islands and BVI, one was registered to practise the laws of Bermuda and BVI and two were registered to practise the laws of England and Wales and USA. (In 2016, there were 81 foreign law firms, of which one was registered to practise the laws of Cayman Islands, Guernsey and BVI, two were registered to practise the laws of Cayman Islands and BVI, and one was registered to practise the laws of Bermuda and BVI.)

* The percentages have been calculated to the nearest decimal point. Therefore the aggregation of the percentage may not add up to 100%.

There were 38 Associations registered between foreign law firms and solicitors' firms (36 in 2016). Eight new foreign law firms commenced practice (10 in 2016). Five foreign law firms were closed, three of which established local practices. (In 2016, six were closed, three of which established local practices.)

There were 15,581 unqualified staff members employed by solicitors' firms at the end of the year (15,312 at the end of 2016). In addition, there were 527 unqualified staff members employed by foreign law firms at the end of 2017 (469 in 2016).

The Standing Committee on Compliance oversees the work of the Conduct Section in administrating the authorised solicitors' clerks scheme and has delegated its power to the Consents Committee to consider applications. By December, there were 835 authorised solicitors' clerks (867 in 2016).

The Law Society continued to waive subscription fees for student members in 2017. By the end of the year, there were 321 student members registered with The Law Society (320 in 2016).

At the end of December, the number of Law Society Approved Law Costs Draftsmen was 33 (36 in 2016).