

Standing Committee on Practitioners Affairs



THE
LAW SOCIETY
OF HONG KONG
香港律師會

2019

The Standing Committee considers and keeps under review matters relating to law reforms, legal practice and legal procedures, and makes relevant determinations. It receives and reviews draft statements and submissions proposed in response to consultations from the Judiciary Administration, Government departments, Law Reform Commission, financial institutes, and other public bodies. It also provides recommendations at policy levels to the Council on matters pertinent to legislative amendments, as well as law-related policies of the HKSAR Government.

The Standing Committee met on nine occasions this year. It also held numerous deliberations between meetings by email circulation. During the year, the Standing Committee oversaw the work on, among others, 21 submissions prepared by relevant committees in response to consultations sent to the Law Society and helped approve the relevant drafts. The Standing Committee also contributed to press statements issued by the Law Society Council on freedom of speech and demonstrations, compliance with court orders etc.

Access to Justice

The attention of the Standing Committee was brought to various matters relating to access to justice. Those matters which have been canvassed included the following.

The *Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019* was gazetted in March. The stated purposes of the Bill were to address extradition issues in a Taiwan homicide case in 2018 and at the same time to plug the loopholes in Hong Kong's cooperation mechanism in criminal and juridical assistance matters. The Bill caused considerable concern in parts of the community and the Standing Committee received strong and different views on the Bill. After discussions on criminal, constitutional and human rights issues, it put forward a draft statement to Council. The statement was approved by Council and was sent to the HKSAR Government in June.

The Standing Committee also received suggestions regarding better access to legal advice and representation for detained persons and a proposed Mediation Pilot Scheme; both were raised in consequence of the demonstrations and street protests with respect to the Bill. The Standing Committee kept the above matters under close review.

The Standing Committee has followed the progress of the Information Technology Strategy Plan ("ITSP") proposed by the Judiciary Administration. The ITSP set out the information technology direction for the Judiciary in the long term and, as stated, aimed to equip the Judiciary with better tools in improving the work of the courts and access to justice. The Standing Committee has collaborated with the Judiciary Administration in working towards these policy directives and has, for instance, assisted with the proposed legislation and Practice Directions drafted for the implementation of the first phase of ITSP. It consulted the *Working Party on the Judiciary's IT Plan* and various specialist committees, and provided a detailed submission to the Judiciary Administration in April. In September a member of the Standing Committee took part in a demonstration of the Judiciary's 'e-filing' system.

Review of policy initiatives

The Standing Committee considered various policy initiatives on law-related matters. Some examples are set out in the following.

(a) Briefing out Policy for Criminal Cases

The Standing Committee received views on the briefing out policy of the Department of Justice (“DOJ”) and discussed the DOJ’s prosecutorial policy. It provided recommendations to Council which issued a press statement on the matter in February.

(b) Review of Legal Aid

The review of the scope of the Legal Aid schemes, payment of costs to assigned solicitors, and financial eligibility limits for legal aid continue to be important to the work of the Standing Committee. Among other things, the Standing Committee reviewed various initiatives (proposed jointly with the Hong Kong Bar Association) for reform of the legal aid system in Hong Kong.

(c) Mediation funding for personal injuries claims and the Employees Compensation Assistance Fund Scheme

The Standing Committee noted the on-going discussions by the Personal Injuries Committee on mediation funding for personal injuries claims and the Employees Compensation Assistance Fund scheme. Both continued to attract concerns from legal practitioners. Written representations were prepared and sent to the respective bureaux.

(d) Promotion of mediation and arbitration practices in the Greater Bay Area

The attention of the Standing Committee was drawn to various policy initiatives drawn up for the promotion of mediation and arbitration practices in the Greater Bay Area. The Standing Committee awaits further views on the matter.

(e) Government and other Policy directives

Apart from the above, the Standing Committee also rendered contributions regarding policy directions for the Chief Executive’s Policy Address 2019 and the Government Budget 2019-2020, in respect of which detailed submissions were made. Comments and submission were also made on non-refoulement protection as well as various legal policies on different practice areas.

Practice and Procedures

The Standing Committee received views and recommendations submitted from time to time by specialist committees on reforms on practices and procedures, such as the Evidence (Amendment) Bill 2018 (on criminal hearsay evidence), the Consultation Paper No. 2 on 2018 Draft Convention on the Recognition and Enforcement of Foreign Judgments, various amendments to Practice Directions issued or to be issued by the Judiciary. The Standing Committee also reviewed, for example, competition law and practices, the licensing regime under the Property Management Services Ordinance (Cap.

626), the proposed legislative amendments relating to insurance law, as well as the policy proposals relating to the implementation of the Land Titles Ordinance (Cap. 585).

Support to the specialist committees

The Standing Committee oversaw the work of 28 Committees, 9 Working Parties and ad hoc Task Groups. It provided guidance and advices to these committees on their administration, such as co-option, review of membership and enrolment exercises. It also made recommendations to the Council of the Law Society on nominations for external committees.

Working Party on Data Privacy and Records Management

With the support of the Standing Committee, this year a new *Working Party on Data Privacy and Records Management* was set-up. Its membership comprised a cross-spectrum of membership from various specialist committees. The Working Party was tasked to respond to the consultation papers by the Law Reform Commission on archives law and access to information (both released in December 2018), and to review the implementation of and compliance with the Personal Data (Privacy) Ordinance (Cap. 486). The Standing Committee received a draft submission from the above Working Party on their deliberation on the above consultation papers in February.

Joint Tribunal

Apart from the above specialist committees, the Standing Committee continued to help the Joint Tribunal in the discharge of its function. The Joint Tribunal is set up to resolve disputes between solicitors and barristers in relation to fees, in accordance with the agreed Terms of Reference and Procedure.

ARBITRATION COMMITTEE

The Arbitration Committee met twice in the year and conducted the rest of its business by emails.

The Committee kept under review the various developments of and the practices in arbitration in Hong Kong and other jurisdictions. It made recommendations to the Council on policies on the offer of arbitration services to the members and the general public in Hong Kong. To help with the workload, the Committee co-opted two new members in the year.

Promotion of Solicitor-Arbitrators

The Committee put forward initiatives to help promote arbitration practices for members in Hong Kong and the Mainland, including the Greater Bay Area ("GBA"). The initiatives canvassed included the following

(a) Law Society Sample Med-Arb Clause

The Committee worked with the Mediation Committee and provided updates to the Sample Med-Arb Clause of the Law Society. Under the Sample Med-Arb Clause, as updated, the Law Society is designated as the appointing body of arbitrators; the appointment of arbitrators would be made according to the well-received Procedure for Appointment of Arbitrators. The updated Sample Clause lays down clear appointment procedures for the parties and streamlines the appointment, thereby facilitating the parties to gain benefits from arbitration process.

(b) Promotion of Solicitor-Arbitrators in the Mainland

The Committee has been liaising with the Shenzhen Court of International Arbitration and Nanjing Arbitration Commission, and successfully procured their respective agreements for solicitor-arbitrators of the Law Society to apply for admission to their panels of arbitrators. The Committee would continue their lobbying efforts and liaise with other arbitration institutes in the Mainland to explore opportunities for solicitor-arbitrators.

(c) Exploring Business Opportunities in the Greater Bay Area

To explore business opportunities in the GBA, the Committee has busily been liaising with reputable legal and dispute resolution institutes in the GBA. This serves to strengthen the work relationship of the Law Society with those institutes. For instance, the Committee was working with the Macau Lawyers Association and the WTC Macau Arbitration Centre for a meeting to exchange views and initiatives on the use of and the development of arbitration practices in GBA. The visit to Macau would take place early next year.

(d) Promotion to the Business Sector

With a view to promoting the use of arbitration in business, the Committee is meeting with the business community. These meetings and exchanges help promote arbitration as an effective dispute resolution model for commercial disputes in the business sector, and helped promote the branding of solicitor-arbitrators. Most recently, a meeting was being organized with the EMBA Class students (who were decision-makers in middle to senior management of reputable companies and institutes).

(e) Arbitration Leaflet

One of the promotional initiatives of the Committee was to publish an easy-to-read leaflet for the general public. The leaflet provides basic information on arbitration to disputing parties and the general public. The information leaflet would be available on the website of the Law Society in early 2020.

Panel of Arbitrators of The Law Society of Hong Kong

The Panel of Arbitrators of The Law Society of Hong Kong (“Panel”) comprises solicitors with demonstrably strong experience in resolving disputes of different natures. It was established in October 2016. The Panel is maintained by the Committee with the supports of its sub-committee (the Arbitrators Admission Sub-Committee). As of the end 2019, the Panel had 28 solicitor-arbitrators.

Key Legislative Developments relating to Arbitration

The Committee discussed and/or provided views on the following.

(a) Third Party Funding of Arbitration and Mediation

The Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (“Amendment Ordinance”) provides for funding for arbitration and mediation by third parties. The Amendment Ordinance is to be implemented in different phases. Most of the provisions of the Amendment Ordinance (including those relating to third party funding of arbitration) came into operation on 1 February. Those provisions on mediation funding would be deferred to a future date. The Committee has been holding meetings with other specialist committees of the Law Society and offered views on third party funding of mediation in various practice areas.

(b) Arrangement concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR

The Committee took note of the *Arrangement concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR* (the “Arrangement”) signed in April. After the commencement of the Arrangement, parties to arbitral proceedings in Hong Kong, before the arbitral award is made, can make an application for interim measure to the Mainland courts, including property preservation, evidence preservation and conduct preservation. The Arrangement would help prevent one of the parties to arbitral proceedings from deliberately destroying the evidence or transferring the property and also ensuring that the arbitral proceedings can be carried out effectively. The Arrangement came into effect on 1 October.

(c) Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

The Committee noted the *Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* was adopted in July. This followed an earlier consultation by the Department of Justice (“DOJ”) in 2016 on the *2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments*. The Convention aims at making it easier to enforce civil and commercial court judgments across jurisdictions by creating a single global

framework and thus providing greater predictability and certainty in relation to the global circulation of foreign judgments.

Training Courses in Arbitration

Continual training on arbitration is essential for solicitor-arbitrators and the general membership of the Law Society. It is on the other hand important for members to be made aware of and be equipped with updates on knowledge and skills for arbitration. This year, the Committee initiated or participated in the following trainings:

- SCIA Seminar on New Arbitration Rules (April 2019)
- Seminar on the *2019 HCCH Judgments Convention: Global Enforcement of Civil and Commercial Judgments* (September 2019).

Participation in Arbitration-Related Events

The Committee supported or participated in the following arbitration-related events in 2019:

(a) 16th Vis East Mooting (31 March – 7 April)

The Committee assisted the organiser of the 16th Vis East Mooting and invited solicitor-arbitrators to act as judges or arbitrators in the moot.

(b) 2019 Annual Conference of In-House Lawyers (12 June)

The Chairman of the Committee delivered a presentation on arbitration to the *2019 Annual Conference of In-House Lawyers* on 12 June.

(c) HKI Arb Evening Talk by Mr. Wang Qiangyi (31 July)

The Committee offered support to the Evening Talk by Mr. Wang Qiangyi which was organised by the Hong Kong Institute of Arbitrators on 31 July.

(d) DOJ's Visit to Shanghai (19 - 20 August)

Three members of the Committee joined a DOJ's visit to Shanghai on 19 and 20 August, to join forces to promote Hong Kong's arbitration and dispute resolution services to the Mainland cities.

(e) HKIAC Event – ADR in Asia Conference (17 October)

The Committee recommended to support the *ADR in Asia Conference* organised by the Hong Kong International Arbitration Centre on 17 October.

Arbitrators Admission Sub-Committee

The Committee is assisted by a sub-committee, the Arbitrators Admission Sub-Committee, on admission to the Panel of Arbitrators of The Law Society of Hong Kong. The Sub-Committee this year conducted its business by emails, and discussed, among other things:

- (a) applications for admission to the Panel of Arbitrators
- (b) its Terms of Reference
- (c) annual review of membership.

CIVIL LITIGATION COMMITTEE

The Committee met on three occasions and conducted the rest of its business by emails. The Committee also had two meetings with the Judiciary Administration in March and July respectively.

Judiciary's Information Technology Strategy Plan

(a) Consultation Paper on the Proposed Legislation and Practice Directions

In February, the Judiciary released the following proposed legislation and Practice Directions for the first phase of the implementation of the Judiciary's Information Technology Strategy Plan for views:

- the Court Proceedings (Electronic Technology) Bill
- the Court Proceedings (Electronic Technology) (Specification of e-Courts and Tribunals) Rules
- the Court Proceedings (Electronic Technology in District Court Civil Proceedings) Rules
- the Court Proceedings (Electronic Technology in District Court Criminal Proceedings) Rules
- the Court Proceedings (Electronic Technology in Magistrates' Court) Rules
- the Practice Direction for the Summons Courts
- the Practice Direction for criminal proceedings at District Court
- the Practice Direction for civil proceedings at District Court; and
- the consequential amendments proposed to the Rules of the District Court (Cap.336H).

The Committee formed a task group to review the above Consultation Paper. Members of the task group together with members of the Working Party on Judiciary's IT Plan attended a briefing session by the Judiciary Administration in March. The Committee, the Criminal Law and Procedure Committee and the Working Party on Judiciary's IT Plan jointly produced a detailed submission on the Consultation Paper, which was submitted to the Judiciary in April.

The Judiciary Administration, in May, provided comments on the Law Society's submission. The Committee was consulted for views. A supplemental submission

consolidating views from the Committee, other specialist committees and a working party, was produced and, was sent to the Judiciary Administration in July.

Members of the Committee and other specialist committees also had a meeting with the Judiciary Administration in July to discuss various matters, such as the timetable and roadmap of the implementation of the Information Technology Strategy Plan and the technical and practical issues which might arise during its implementation.

(b) Inter-party e-service of documents

The Committee and other specialist committees discussed whether there should be a mandatory and automatic return of receipt for inter-party electronic service (“e-service”), in order to facilitate the deposing of an affidavit to comply with the proposed Court Proceedings (Electronic Technology in District Court Civil Proceedings) Rules. A letter was sent to the Judiciary Administration in November stating, inter alia, that to address the concern, it would be better to have a Practice Direction which provides that the serving party must first make enquiry of the receiving party whether there are any technical limitations which might impact on a document being safely received by e-service and as regards the method by which proof of service should be determined. This proposal is modelled on a UK Practice Direction.

(c) Policy discussion on e-Service for Hong Kong

The Committee and other specialist committees prepared a letter to the Judiciary Administration pointing out the concern on the lack of a clear policy drive on inter partes e-service for litigation in Hong Kong and the absence of consultations with the legal industry on proposed e-service; and suggesting a tripartite meeting with the Judiciary and the Department of Justice (“DOJ”) to discuss e-service for both civil and criminal litigation.

(d) Demonstration

In September, members of the Committee and other specialist committees attended a presentation, which demonstrated the key interfaces and features of the Judiciary Administration’s information technology system to be rolled out for e-filing.

Consultation Paper No. 2 on 2018 Draft Convention on the Recognition and Enforcement of Foreign Judgments

The Committee was consulted on a Consultation Paper No.2 on 2018 Draft Convention on the Recognition and Enforcement of Foreign Judgments released by the DOJ in February. The views of the Committee were provided to the Council for consideration and a letter in response was sent to the DOJ in March.

Consultation Paper on the proposed amendments to the Two-Thirds Rules on Taxation of Costs at the District Court under the Rules of District Court (Cap.336H)

The Committee, together with other specialist committees, reviewed a Consultation Paper on the proposed amendments to the Two-Thirds Rules on Taxation of Costs at the District Court under the Rules of District Court (Cap.336H) released by the Judiciary in October. A written submission by letter was made to the Judiciary in December.

Consultation Paper on the Review of the "Fraud Exception Rule" in Order 14 of the Rules of High Court (Cap.4A) and Order 14 of the Rules of District Court

The Committee reviewed a Consultation Paper on the Review of the "Fraud Exception Rule" in Order 14 of the Rules of High Court (Cap.4A) and Order 14 of the Rules of District Court (Cap.336H) released by the Judiciary in October. A written submission by letter indicating support to the proposed amendments was sent to the Judiciary in November.

Consultation Paper on Construction of six additional courtrooms and associated facilities on the Lower Ground Fourth Floor in the High Court Building

The Committee reviewed a Consultation Paper on construction of six additional courtrooms and associated facilities on the Lower Ground Fourth Floor in the High Court Building released by the Judiciary in September. A written reply was made to the Judiciary in October indicating support to the proposed construction.

Other Issues

The Committee discussed, commented and raised suggestions on various issues pertinent to civil litigation practices, including the following:

- Costs of providing documents by USB/CD-ROM/DVD-ROM
- Possible Reform of the Rules of High Court Order 11
- the Judiciary's External Mediation Master Scheme
- Overseas Recruitment of Judges
- Understudy Arrangement under the Department of Justice
- Women's facilities in Court Buildings
- The Law Society's information leaflets

The Committee took note of the following:

- Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Cases between the HKSAR and Macau SAR
- Code of Practice for Third Party Funding of Arbitration

- 2019-2020 Government Budget Public Consultation
- Judicial Officers (Extension of Retirement Age)(Amendment) Bill 2019
- Consultation Paper on Statutory Cooling-off period for Beauty and Fitness Services Consumer Contracts released by the Commerce and Economic Development Bureau

The Committee also issued the following circulars to assist members in updating the civil court practice procedure:

- Civil Appeals - Case Management
- Summons Day Arrangement in the District Court
- Court Forms - New Case Types
- A survey on the Pilot Scheme on Alternative Listing Arrangements

COMPANY LAW COMMITTEE

The Committee conducted its business by emails.

The Committee considered a number of consultations from the Government, the Securities and Futures Commission and the Stock Exchange of Hong Kong Limited. During the year, submissions were made on the following:

- *A Revised Operational Model for Implementing an Uncertificated Securities Market in Hong Kong*
- *Review of the Environmental, Social and Governance Reporting Guide and Related Listing Rules*
- *Codification of General Waivers and Principles relating to IPOs and Listed Issuers and Minor Rule Amendments*

COMPETITION LAW COMMITTEE

The Committee met on one occasion and conducted the rest of its business by emails. Three members were co-opted under the Annual Review of Membership.

Competition Commission Investigation Processes

The Committee continued its discussions on the two investigation practices that the Competition Commission appeared to have introduced, in the context of investigating suspected infringements of the Competition Ordinance, namely (i) the practice of requiring solicitors firms to produce written confirmation from their lay-client to confirm that the solicitors firm has the necessary authority to act; and (ii) the practice of requiring compulsory document and information requests to corporate bodies to be answered by

their "Proper Officer". The Committee would make the relevant recommendations for Council's consideration.

Other issues

The Committee also considered the following:

- the rulings in CTEA 1/2017 and CTEA 2/2017
- overseas recruitment of judges for the Competition Tribunal
- the Solicitors (General) Costs Rules (Cap.159G) and the Competition Ordinance (Cap.619)
- the casenote of *BritNed v ABB* [2019] EWCA Civ 1840

CONSTITUTIONAL AFFAIRS AND HUMAN RIGHTS COMMITTEE

The Committee had nine meetings during the year, including meetings with the Government bureau and stakeholders. A wide range of constitutional and human rights issues were reviewed and considered. One new member was co-opted to the Committee.

Some of the issues considered by the Committee are set out in the following.

Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 and the Emergency Regulations Ordinance

The Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 (the "Fugitive Offenders Bill") was gazetted in March. The stated purpose of the Bill was to plug the alleged loopholes in the existing mechanisms on surrender of fugitive offenders and mutual legal assistance in criminal matters in Hong Kong. Specifically, the Government suggested that the Fugitive Offenders Bill was to address extradition issues arising from a homicide case in Taiwan.

The Fugitive Offenders Bill courted controversy in the community. Protests and demonstrations were organized. The Committee noted with grave concerns that in some of these public events, there were violent conflicts, vandalism, doxxing, as well as personal injuries, property damage and arson attacks. The above concerns were relayed to the Council for consideration. A Law Society's submission canvassing the Committee's views on the matter, as well as those of other specialist committees of the Law Society, was prepared and was issued in June.

The Committee took note of five public statements issued subsequent to the above (on 13 June, 2 July, 3 September, 13 September and 9 December 2019). These *inter alia* appealed for rational discussions and condemned criminal damage and personal attacks on judicial officers. In two further statements (issued on 1 August and 21 November 2019), the Law

Society set out views with respect to the setting up of an independent inquiry into the recent protests, as well as those comments made on behalf of the Legislative Affairs Commission of the Standing Committee of the National People's Congress concerning a High Court judgment on the Prohibition on Face Covering Regulation enacted under the Emergency Regulations Ordinance (colloquially known as the “anti-mask law”).

Legal Visits by barristers and solicitors

The Committee received inquiries as to whether it was acceptable for barristers to visit detained persons in the absence of instructing solicitors. The Committee studied the matter and provided its views to the other specialist committees and the Council for their deliberation.

Non-Refoulement Protection

The Committee noted the Government intended to amend the Immigration Ordinance (Cap 115) in relation to, *inter alia*, the non-refoulement screening process. The amendments were proposed to fast-track the screening procedures by shortening or imposing short time frames for the process. These came at a time when according to the Government's statistics, the number of outstanding non-refoulement claims has decreased dramatically. Further, the number of immigration officers and adjudicators involved in the screening process has increased and the Government has increased capacity to deal with claims efficiently. The Committee reviewed these proposals and in February provided a detailed submission to the Government. Apart from responding to the above proposed amendments, the Committee requested disclosure of relevant information and statistics to the stakeholders.

Training Programme on the Unified Screening Mechanism

All non-refoulement claims in Hong Kong were exclusively screened by the Immigration Department at first instance and on appeal by the Torture Claims Appeal Board / Non-refoulement Claims Petition Office pursuant to the Unified Screening Mechanism (“USM”). The USM operates as a combined statutory and administrative mechanism for screening non-refoulement protection claims. To assist the general membership to better understand the USM, and also to help those members who intend to apply for admission onto the Panel of the Duty Lawyer Service's panel for non-refoulement claims and/or enroll in the Pilot Scheme on Provision of Publicly-funded Legal Assistance to Non-refoulement Claimants under the USM, the Committee endorsed and assisted to organize a 3-day training programme on USM in September. The training programme was taught by experienced local practitioners and internationally recognised overseas experts. It was well-received by the general membership.

Review of constitutional and human rights issues

The Committee has been keeping a close watch on various constitutional and human rights issues including the disqualification of several legislators, the election petition arising

therefrom, the Hong Kong Democracy and Human Rights Act of 2019 and the annual reporting by the Commissioner on Interception of Communications and Surveillance.

CRIMINAL LAW AND PROCEDURE COMMITTEE

The Committee had ten meetings this year to consider various issues on criminal law and practices.

Prosecutorial Decisions

The Committee reviewed relevant legal issues arising from the decision of the Department of Justice (“DOJ”) not to prosecute a high ranking Government official in an incident involving ICAC investigation. The Council considered the views of the Committee and resolved to issue a press statement urging the Government to set out a clear briefing out policy in the Prosecution Code in the interest of greater transparency and accountability. The press statement was issued on 14 February.

Mass demonstrations and street protests

Jointly with the other specialist committees, the Committee reviewed the following, i.e.

- the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 (the “Fugitive Offenders Bill”) on surrender of fugitive offenders
- the Emergency Regulations Ordinance (Cap 241) on prohibition on face covering regulation
- the arrangement for legal visits by barristers and solicitors to persons detained by the law enforcement agencies
- the proposals to expedite court processing of cases relating to the social events.

The above Fugitive Offenders Bill caused concerns to the community, and gave rise to demonstrations and street protests. The Committee received different views on the matter. It helped to put out a submission to the Government in early June.

In a separate statement issued in late June, the rights of freedom of speech, assembly, procession and demonstration were reiterated. It was suggested that the Director of Public Prosecutions must fully evaluate the evidence and the circumstances in deciding whether to prosecute a person. The labelling of an act was irrelevant in the objective decision process.

Law Reform Commission of Hong Kong's Consultation Paper on Causing or Allowing the Death or Serious Harm of a Child or Vulnerable Adult

The Committee reviewed a consultation paper released by the Law Reform Commission (“LRC”) in May on “Causing or Allowing the Death or Serious Harm of a Child or Vulnerable Adult”. The LRC sought public views on the preliminary proposals for reform of the law relating to the criminal liability of parents, carers and others when children or

vulnerable adults died or were seriously harmed as a result of abuse or neglect while in their care. After studying the paper, the Committee in August filed a submission (prepared jointly with other specialist committees of the Law Society) with the LRC.

Evidence (Amendment) Bill 2018

The Evidence (Amendment) Bill 2018 was revisited by the Committee. The Amendment Bill sets out a comprehensive reform of the hearsay regime for criminal practice. In its earlier submission, the Committee has already raised concerns on a number of issues arising from the proposed reform. One of those issues was the deprivation of the rights of cross-examination and the potential risks arising therefrom upon admission of such hearsay evidence. These concerns were highlighted in a further submission rendered to the DOJ in March.

Practice Direction

The Committee reviewed the Practice Direction 4.2 on criminal appeals to the Court of Appeal. Comments on the above Practice Direction were provided to the Judiciary in January.

Biennial Review of Criminal Legal Aid Fees

The Committee noted the Government proposed to adjust the criminal legal aid fees, prosecution fees and duty lawyer fees upwards by 4.0% to reflect the accumulated change in the Consumer Price Index(C) (CPI(C)) recorded between July 2016 and July 2018. The increase in criminal legal aid fees would be implemented by amending Rule 21 and Part 2 of the Schedule to the Legal Aid in Criminal Cases Rules (Cap.221 sub.leg.D), while prosecution fees and duty lawyer fees would be adjusted administratively. The above adjustment followed a biennial review mechanism that took into account changes in CPI(C) during the reference period.

The Committee understood that the above proposed legislative amendments would be submitted to the Criminal Procedure Rules Committee (“Rules Committee”) chaired by the Chief Judge of the High Court for approval. Subject to the Rules Committee’s approval, a resolution would be moved in Legislative Council to effect the legislative changes and to appoint the commencement date. Prosecution fees and duty lawyer fees would be adjusted administratively on the same date as for the implementation of the increased criminal legal aid fees.

Criminal Law Conference 2019

The Criminal Law Conference was held in May at the CGO Conference Hall of the Central Government Office. It was co-organized by the Law Society of Hong Kong, the DOJ and the Hong Kong Bar Association. Criminal law practitioners at the Conference shared views on various topics including sexual offences, computer crimes, money laundering and anti-human trafficking laws.

Training programme

The Committee continued to co-organize a one-day training course with the DOJ and the Hong Kong Bar Association. The training courses this year were held on 30 March and on

14 December. The course comprised of lectures and mock court exercises; it provided criminal advocacy training to participants with less than 5 years' post qualification. The training courses were well received.

Other issues relating to criminal practices

Various matters relating to criminal practices were brought to the attention of the Committee for discussion. These included community legal assistance (modeled on the "Green Form" Scheme in the UK), the National Anthem Bill, a "Mechanism for Identifying and Reporting Suspected Child Abuse Cases" released by the Office of the Ombudsman; a report on Voyeurism and Non-consensual Upskirt-photography and a report on Review of Substantive Sexual Offences (published by the LRC respectively in April and in December). The Committee also held meetings with the Judiciary, the Government departments, the Hong Kong Bar Association, various law enforcement agencies and other stakeholders to deliberate various practice issues.

Apart from the above, the Committee updated two information pamphlets on criminal law-related matters (to be issued to the public in due course). Members of the Committee also assisted in the delivery of talks to school students and other stakeholders on various topics on criminal law and practices.

EMPLOYMENT LAW COMMITTEE

The Committee conducted its business by emails.

Occupational Retirement Schemes (Amendment) Bill 2019

In April, the Government published in the Gazette the Occupational Retirement Schemes (Amendment) Bill 2019, which seeks to update the Occupational Retirement Schemes Ordinance (Cap. 426) to prevent the misuse of Occupational Retirement Schemes as an investment vehicle open to persons who are not employees of the relevant employers of the schemes. The Committee, jointly with the Retirement Scheme Committee, the Revenue Law Committee and the Insurance Law Committee, made a written submission to the Bills Committee in June.

Employment (Amendment) Bill 2019

The Employment (Amendment) Bill 2019 seeks to increase the statutory maternity leave under the Employment Ordinance (Cap. 57) from the current 10 weeks to 14 weeks, and to require employers to pay the maternity leave pay in respect of the extension of maternity leave to their eligible employees on the normal pay day at the existing statutory rate of maternity leave pay (viz. four-fifths of the employees' average daily wages) subject to a cap of \$36,822 per employee. The Bill was published in the Gazette in December.

Other employment law related issue

The Committee also considered/reviewed a Consultation Paper on a legislative proposal on the Judiciary's information technology plan in February.

Ad Hoc Event for Community

In March, the Chairperson spoke at a School Talk relating to the Use of Privacy and Closed-circuit Television.

FAMILY LAW COMMITTEE

The Committee had a very busy year. The Committee held a total of 26 meetings, including 9 Committee meetings and 17 meetings with external bodies, namely the Department of Justice (“DOJ”), the Social Welfare Department, the Legal Aid Department, the Judiciary Administration, the Panel on Administration of Justice and Legal Services of the Legislative Council, the Hong Kong Bar Association, the Hong Kong Family Law Association to discuss a wide range of family law related issues. The Committee also conducted its business by email.

The Committee reviewed an array of family law related issues.

(a) Consultation Paper on Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill and the related Rules

The Committee reviewed a Consultation Paper on the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill and the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules released by the DOJ. Two Committee members attended the Legislative Council Panel on Administration of Justice and Legal Services in February to make representation. The written submissions prepared by the Committee were sent to the DOJ in March.

(b) Consultation Paper on Causing or Allowing the Death or Serious Harm of a Child or Vulnerable Adult

The Hong Kong Law Reform Commission released a Consultation Paper on Causing or Allowing the Death or Serious Harm of a Child or Vulnerable Adult in May for public views. The Committee reviewed the Consultation Paper and provided comments. Those comments were relayed to the Criminal Law and Procedure Committee for consolidation into a written submission. The joint submission was sent to the Hong Kong Law Reform Commission in August.

(c) Proposed Legislation to Implement the Recommendations of the Law Reform Commission Report on Child Custody and Access - Proposed Children Proceedings (Parental Responsibility) Bill

The Committee noted with disappointment that the Government was to postpone the introduction of the Children Proceedings (Parental Responsibility) Bill as the Government explained that they wished to work on the education of the concept of

“Parental Responsibility” and introduce supporting services such as more contact centres before they were to take the Bill to the Legislative Council. The Committee was considering further lobbying and other reforms on parental responsibilities.

(d) Report on Child-Focused Centre

In 2016, the Committee set up a Sub-Committee on Supporting Services for Legal Reform for Family. Of its sub-group, the Working Group on Child-Focused Centre completed its review on the current child contact centre in Hong Kong. The Working Group had at the same time also studied other jurisdictions to see if there were models of child contact centres that could be adopted/modified and be introduced into Hong Kong. With the joint efforts of the Committee members and other stakeholders, a detailed Report on "Child-Focused Centre" was produced. In the Report, the Working Group made 12 recommendations for improvement on the current regime. The Report was sent to the Government for consideration.

(e) Study on the Phenomenon of Divorce in Hong Kong

The Department of Social Work and Social Administration of the University of Hong Kong sought assistance on a study “*Further Study on the Phenomenon of Divorce in Hong Kong*” (“the Study”). The Study was commissioned by the Home Affairs Bureau and aimed to improve evidence-based policy-making on maintenance order. The Committee agreed that the Study was beneficial to long-term policy making, in particular, the proposed setting up of a maintenance board in Hong Kong. The Committee supported the Study and invited general members to participate in the Study. Committee members also attended a briefing session in May on the key objectives, the deliverables and work schedule of the Study.

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

The Committee kept a close watch on the Legal Aid Department's proposal to amend the Legal Aid Ordinance (Cap.91) (“LAO”) to increase the current amount of \$4,800 specified in section 18A(5) to \$8,660 and to increase the amount of \$57,400 specified in section 19B(1)(a) to \$103,510. Both sections 18A(5) and 19B(1)(a) of the LAO serve to provide relief to legally-aided persons who may suffer hardship from the deduction of legal expenses out of what is recovered for them. The Committee noted that the proposed legislative amendments could not be introduced into the Legislative Council within the 2018/2019 session. The Committee would continue monitoring the progress of the proposed legislative amendments.

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

The Committee continued to follow up with the Chief Secretary for Administration's Office, the Legal Aid Department and the Judiciary Administration on the proposed legislative amendments to the District Court (Fixed Costs in Matrimonial Causes) Rules (Cap.336F) to adjust the amount of fixed costs; to extend fixed costs arrangement to the First Appointment, Financial Dispute Resolution hearings, Children's Appointment and Children's Dispute Resolution hearings; and to introduce a regular review mechanism. Three meetings were held amongst the Committee, the Legal Aid Department and the Judiciary Administration in July, October and

November to discuss the fixed costs and how to take forward the proposed legislative amendments.

(h) Consultation Paper on Proposed Amendments to the Two-Thirds Rule on Taxation of Costs at the District Court under the Rules of the District Court (Cap.336H)

The Committee commented upon the proposed amendments to Order 62, rule 32 of the Rules of the District Court (Cap.336H) ("RDC") to give discretionary powers to Judges and Judicial Officers at the District Court to depart from the "Two-Thirds Rule" on taxation of costs as provided under Order 62, rule 32(1A) under exceptional circumstances. Order 62, rule 32(1A) of RDC provides that the District Court shall not on taxation allow the amount of discretionary costs items to exceed two thirds of the amount of such items which would otherwise have been allowed if the taxation is carried out in the High Court. A joint submission, by way of letter, consolidating the views from the Committee and other specialist committees was sent to the Judiciary in December.

(i) Child Fatality Review - Initial Findings for Responses

The Committee reviewed the initial finding on child death cases in the years 2014 and 2015 released by the Social Welfare Department, and submitted a set of responses to the Social Welfare Department. The Committee noted that part of the responses was incorporated into the Fourth Report of the Child Fatality Review Panel on prevention of child death published in May.

(j) Draft Guidance Notes on Family Proceedings

The Judiciary's Family Proceedings Court Users' Committee in April released a set of draft Guidance Notes on Family Proceedings for comments. Various small group discussions with representatives from other stakeholders were held. Comments and amendments to the draft Guidance Notes (drawn up jointly with other stakeholders) were passed on to the Judiciary in October.

(k) Guides to Good Practice for Family Law Practitioners

The Committee, together with other stakeholders, met on 5 occasions and prepared a draft Guide to Good Practice for Family Law Practitioners setting out good practice, on a constructive and conciliatory approach to be adopted in Family Law work. Deliberations of the draft Guide were continuing.

(l) 2019-2020 Government Budget

The Committee provided views on 2019-2020 Government Budget. Those views together with views from other specialist committees were collated into a submission, which was sent to the Financial Secretary in January.

Other family-related matters

The Committee took note of and/or considered the following:

- Consultation Paper No.2 on the 2018 Draft Convention on the Recognition and Enforcement of Foreign Judgments
- Consultation Paper on the Draft Revised Procedural Guide on Protecting Children From Maltreatment
- The Children Summit organized by the Hong Kong Committee on Children's Rights in November to celebrate 30th Anniversary of the United Nations Convention on Rights of the Child
- The Judgment of *Leung Chun Kwong v Secretary for the Civil Service and Another* [2019] HKCFA 19
- The *Judgment of MK v The Government of HKSAR* [2019] HKCFI 2518
- Practice Direction 16.1 and Order 42 rule 5 of the Rules of High Court on drawing up of orders
- Service of documents to parties in the Mainland (the issue of substituted service)
- Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Cases between the Mainland and the Hong Kong Courts
- Guidelines for the release of data collected by visiting centre
- Media reports on child abuse incidents
- The Direct Investigation Report on Mechanism for Identifying and Reporting Suspected Child Abuse cases released by the Office of the Ombudsman in October
- The Notice regarding Application for Search of Record of Birth or Marriage in Hong Kong and Request for Certified Copy issued by the Immigration Department in October
- The services provided by an organization known as "Support Through Court" in the United Kingdom
- Marriage and Family Therapy Service provided by the Asian Academy of Family Therapy
- The setting up of Five Co-Parenting Centres by the Social Welfare Department and Non-governmental Organizations
- Procedure and Practice of the Family Court

Circulars

The Committee approved and issued circulars to members relating to the following.

- Judgment of *LLC v LMWA and Another* CAMP 143/2018, 27 February 2019, [2019] HKCA 347
- Practice Directions PDSL 10.1, 10.2 and 10.3
- Hong Kong Family Law Conference 2019

The Circular No.12-906 on Family Law Practice was also under review by the Committee.

Events

(a) Hong Kong Family Law Conference 2019

The Committee assisted the Law Society in organizing the Hong Kong Family Law Conference 2019 jointly with the Hong Kong Bar Association and the Hong Kong Family Law Association on 25-27 April. The Conference was well-attended with more than 100 participants.

(b) Training Courses for the Social Welfare Department

In September and October, two Committee members helped present training courses for the Social Welfare Department on Understanding of Related Ordinances and Court Proceedings on Divorce and Child Custody; and the Domestic and Cohabitation Relationships Violence Ordinance and Application for Injunction Order.

Publications

The Committee helped update an information pamphlet on Divorce and Ancillary Relief/Financial Matters. On the recommendation of the Committee, a new information pamphlet on Divorce and Children Matters was prepared.

Co-option

A new member was co-opted to the Committee in November upon Annual Review of Membership.

INSOLVENCY LAW COMMITTEE

The Committee conducted its business by emails.

Public Consultation on Government Budget 2019-2020

The Government conducted a public consultation on Government Budget 2019-2020. The views of the Committee, together with those from other specialist committees, were consolidated into a submission, which was sent to the Government in January.

Other matters

The Committee also considered/reviewed the following:

- Consultation Paper No.2 on the 2018 Draft Convention on the Recognition and Enforcement of Foreign Judgments, released by the Department of Justice in February.
- Study Report released by the Consumer Council in September, putting forward recommendations to reform the Money Lenders Ordinance (Cap. 163) and the trade practices of the industry to offer a fairer and transparent marketplace for consumer protection.
- Law Society's public information pamphlet on Touting - Bankruptcy cases

Attending outside meetings

- In January, upon the invitation of the Official Receiver's Office, a Committee member attended a meeting with the Official Receiver's Office regarding its information technology plan.

- In May, upon the invitation of the Greater China Affairs Committee, a Committee member attended a meeting with the Wenzhou Bankruptcy Administrators Association.
- Two members of the Committee, as representatives of the Law Society, attended regular meetings of the Official Receiver's Office Services Advisory Committee throughout the year.

INSURANCE LAW COMMITTEE

The Committee met formally on three occasions and conducted the rest of its business by emails. The Committee also had a joint meeting with other specialist committees to discuss insurance-related matters.

Consultation Papers issued by the Insurance Authority

The Committee considered and reviewed the following consultation papers released by the Insurance Authority on the new regulatory regime for the insurance industry in Hong Kong. Detailed submissions were rendered on those papers where deemed appropriate.

(a) Stakeholder Discussion Paper on Proposed Group-Wide Supervision Framework for Insurance Groups in Hong Kong

The Committee considered a Stakeholder Discussion Paper on Proposed Group-Wide Supervision Framework for Insurance Groups in Hong Kong issued by the Insurance Authority. A detailed submission was made in December.

(b) Consultation Paper on Draft Codes of Conduct for Licensed Insurance Agents and Licensed Insurance Brokers

The Committee considered a Consultation Paper on Draft Codes of Conduct for Licensed Insurance Agents and Licensed Insurance Brokers issued by the Insurance Authority. A very detailed submission was made in June.

(c) Consultation Paper on the Draft Guideline on Exercising Power to impose Pecuniary Penalty in respect of Regulated Persons under the Insurance Ordinance (Cap. 41)

The Committee considered a Consultation Paper on the Draft Guideline on Exercising Power to impose Pecuniary Penalty in respect of Regulated Persons under the Insurance Ordinance (Cap. 41) and made a submission in January.

(d) Consultation Conclusions on the Draft Insurance (Maximum Number of Authorized Insurers) Rules

The Committee's attention was brought to the Consultation Conclusions on the Draft Insurance (Maximum Number of Authorized Insurers) Rules, which were released by the Insurance Authority in April.

(e) Consultation Conclusions on the Draft Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules

The Committee's attention was brought to the Consultation Conclusions on the Draft Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules, which were released by the Insurance Authority in April.

Occupational Retirement Schemes (Amendment) Bill 2019

The Occupational Retirement Schemes (Amendment) Bill 2019 was introduced into the Legislative Council in April. The Bill seeks to update the Occupational Retirement Schemes Ordinance (Cap. 426) to prevent the misuse of Occupational Retirement Schemes as an investment vehicle open to persons who are not employees of the relevant employers participating in the schemes. The Committee, together with the Revenue Law Committee, the Retirement Schemes Committee and the Employment Law Committee reviewed the Bill and made a joint submission to the Bills Committee in June.

Proposed Law Reform on Insurance Law in Hong Kong

The Law Society wrote to the Law Reform Commission, in August 2018, inviting them to set up a sub-committee to look at law reform on insurance law in Hong Kong, with particular reference to the statutory reforms in the UK. The Committee received an interim reply from the Law Reform Commission in September 2018. A letter to the Law Reform Commission seeking progress was prepared, which has at the date of this Report been sent.

Insurance Law related issues

The Committee discussed a wide range of insurance law related issues including the following and will keep these issues under review:

- a proposal to amend the Building Management Ordinance (Cap.344) to the effect that the insurance cover should be required to be taken out by the incorporated owners of buildings to which the public have access for death, personal injury and other loss of property (insofar as the current regulations do not already require such cover)
- a proposal on marine insurance in Hong Kong waters - whether a fund similar to the Motor Insurers' Bureau of Hong Kong could be set up to provide insurance for marine accidents causing personal injuries.

The Committee took note of the following:

- the full implementation of the Voluntary Health Insurance Scheme in April
- the provisional statistics of Hong Kong insurance industry for 2018, released by the Insurance Authority in March
- the insurance-related initiatives announced in the outline development plan for the Guangdong-Hong Kong-Macao Greater Bay Area, released by the Insurance Authority in February.

INTELLECTUAL PROPERTY COMMITTEE

Discussions and Reviews

The Committee was continuously engaged in the review of various matters on intellectual property ("IP") law and practices. On top of email communication and various telephone conferences, the Committee had two committee meetings, and met the Intellectual Property Department ("IPD") of the HKSAR Government twice. Some of the matters deliberated are set out below.

(a) Madrid Protocol

The discussion on the application of Madrid Protocol to Hong Kong continued. The IPD commenced to prepare the drafting instructions on proposed trade mark subsidiary legislation for the implementation of the Madrid Protocol. It also proposed amendments to the Trade Marks Rules (Cap. 559A) ("TMRs") for the purpose of implementation of the Protocol. The Committee had been invited by the IPD to participate in various focus group meetings to consider the new procedural rules for the Madrid Protocol. In December, the Committee attended two focus group meetings to discuss with the IPD on the legislative drafting of proposed revision to TMRs that were drawn up to expedite resolution of contentious hearing proceedings before the Registrar of Trade Marks and to refine certain registry procedures in the light of operational experience.

(b) Trade Marks (Amendment) Bill 2019

The Committee studied the proposed amendments in the Trade Marks (Amendment) Bill 2019 ("Bill"). It was proposed that the Trade Marks Ordinance (Cap. 559) ("TMO") and the Trade Marks Rules (Cap. 559A) were amended to require provision of information by corporate licensee or security interest holder on its place of incorporation on a mandatory basis. Furthermore, certain amendments were proposed to section 46(2) of the TMO for trade mark registration. It was proposed in the Bill that any disclaimer, limitation or condition, colour claim, 3-D shape claim or description etc. attached to the earlier registered mark as appearing on the register should in principle be "carried forward" to the "resultant mark" (which term refers to the mark applied for plus the added representation of the earlier registered mark) subject to the discretion of the Registrar of Trade Marks to modify the description where appropriate. The proposed legislative amendment was said to aim at precluding an unintended extension of the protection originally granted under the registered mark and ensuring that the scope of the protection conferred on the resultant mark would be clearly defined. The Committee together with other stakeholders provided comments to the IPD on the Bill.

(c) IP Specialist List and New Practice Direction

An IP specialist court was set up last year to further enhance dispute resolution services for IP matters in Hong Kong, and in preparation thereof, a new Practice Direction was drawn up. The new Practice Direction was to replace the existing practice direction of the Trade Marks Ordinance (Cap. 559), and to kick start the

implementation of the IP specialist list. The Committee was consulted on the draft and rendered comments thereon.

The above Practice Direction (PD 22.1 "Intellectual Property List") was subsequently issued in April to provide for the detailed operation of the specialist list on IP. A circular was issued to inform the general membership.

(d) Patent

The Committee noted that the IPD launched a new patent system in December. The new system essentially comprises an original grant patent ("OGP") system which creates a direct route for seeking standard patent protection in Hong Kong with a maximum term of 20 years, as an alternative to the existing "re-registration" route. OGP applications are subject to substantive examination by the Registry for determining the patentability of the underlying inventions. The Patents Registry of the IPD has started accepting and examining filings under the new patent system.

Promotion of IP

(a) Business of Intellectual Property ("BIP") Asia

The Law Society was a supporting organization to BIP Asia Forum 2019. This Forum was jointly organized by the HKSAR Government, the Hong Kong Trade Development Council and the Hong Kong Design Centre. It brought together IP professionals from Hong Kong and other jurisdictions to discuss the latest developments in the IP world, and also to explore business opportunities. The Chairman of the Committee was a member of the Steering Committee of the Forum.

The Forum took place on 5 and 6 December at the Hong Kong Convention and Exhibition Centre.

The Committee continued to render support to the forum. The Chairman of the Committee spoke at the plenary session, while 4 committee members spoke at various break-out sessions. As usual, the sessions were well-attended.

(b) IP Ambassador Programme

The Committee was invited to attend the welcome reception of the IP Ambassador Programme 2019-2020 jointly organized by the IPD, Faculty of Law of the University of Hong Kong, Faculty of Law of the Chinese University of Hong Kong and School of Law of City University of Hong Kong. The Programme was first launched in the school year (2016-2017). The purpose of the Programme was to recruit law students as "IP Ambassador" to take part in promoting the respect for IP rights and knowledge of IP to students by conducting school talks to local primary and secondary school students. The reception was now being scheduled.

(c) Guangdong – Hong Kong IP Symposium

For over 15 years, the Committee has supported IPD and its Guangdong counterparts to participate in an annual symposium for local SMEs in different cities of Guangdong Province to advocate the importance of IP. The symposium was held in September in

Guangzhou. The Chairman of the Committee gave a presentation on the popular topic of IP Due Diligence.

(d) LAWASIA Conference 2019

A Committee member spoke at this conference for the legal profession in the region about enforcement of IP rights.

Meetings and Visits

(a) Bi-annual Meetings with IPD

The Committee meets the IPD usually twice a year to discuss various IP laws, practices and related matters. These meetings are useful for the parties to exchange views on IP practices and updates in the markets. The meetings this year were held on 25 March and 5 September. The matters discussed included

- Proposed legislative amendments to the Copyright Ordinance (Cap. 528)
- Patents (General)(Amendment) Rules 2019
- Examination Guidelines of the Patents Registry
- Madrid Protocol
- Inland Revenue (Amendment) Ordinance 2018
- Proposed Arrangement with the Mainland on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters
- Draft Convention on the Recognition and Enforcement of Foreign Judgments

(b) Visit by the U.S. Department of Justice

The Chairman of the Committee received a delegation from the U.S. Department of Justice in February to exchange views on intellectual property crime and cybercrime.

(c) Visit by the CIPA International Liaison Committee

The Committee together with other professional bodies attended a delegation from the Chartered Institute of Patent Attorneys in the UK and shared information on UK and HK IP law and practice and for the furtherance of professional relationship.

(d) Visit by the Beijing Municipal IP Office

The Committee received the deputy director of the Beijing Municipal IP Office in July. The director relayed to the Committee various matters, including the Intellectual Property Rights Protection in China.

(e) Visit by a Shenzhen Delegation of Government Officials organized by Hong Kong TaKung International Media College

The Committee accepted a discussion session with over 20 government officials from Shenzhen in July. Regrettably, the session was cancelled due to a typhoon.

(f) Other IP related matters

The Committee has been keeping in view various IP-related matters and has, from time to time, issued circulars to the general membership. These included the

following:

- the *"Trade Mark Registry Work Manual"*
- the *"New Integrated IT System"*
- the *"New/Amended Practice Directions for Intellectual Property Specialist List"*, *"New Case Prefix for IP Cases in the High Court"* and *"IP Judge"*

(g) New Integrated IT System

The Committee attended a briefing of the New Integrated IP IT System ("NIS") launched by the IPD in February. The NIS was to replace the existing Online Search System, the E-filing System and the internal electronic processing systems of the Trade Marks Registry, Patents Registry and Designs Registry, which was adopted by phases from 2003.

(h) New IPD Director

The new IPD director assumed his duties in March and the Committee organised a welcome meeting with him. The Committee also held a farewell for the retiring director in conjunction with two other professional IP institutions.

(i) Regulation of the Trade Mark Profession

The Committee continued discussions with other IP professional bodies about the possible framework for the regulation of the trade mark profession.

Consultations

The Committee considered a Consultation Paper No. 2 on a 2018 Draft Convention on the Recognition and Enforcement of Foreign Judgments and provided comments to Council for consideration. It also took note of various other consultations on matters such as a proposed regime of case management conference for dispute resolution.

External Representation

The Committee continued to be represented on the BIP Asia Steering Committee. The Committee had also representatives on a focus group set up by the IPD on Review of the Patent System in Hong Kong.

INVESTMENT PRODUCTS AND FINANCIAL SERVICES COMMITTEE

The Committee considered a number of consultations from the Government, the Securities and Futures Commission and the Stock Exchange of Hong Kong Limited. During the year, submissions were made on the following:

- *A Revised Operational Model for Implementing an Uncertificated Securities Market in Hong Kong*
- *OTC derivatives regulatory regime for Hong Kong to – (1) mandate the use of Unique Transaction Identifiers for the reporting obligation, (2) revise the list of designated jurisdictions for the masking relief of the reporting obligation and (3) update the list of Financial Services Providers under the clearing obligation*
- *Proposals to establish a Limited Partnership Regime for Funds*

LEGAL AID COMMITTEE

The Committee met on three occasions and conducted the rest of its business by emails. In addition, it met with the Chief Secretary for Administration and the Director of Legal Aid to discuss legal aid services.

(a) Meeting with the Chief Secretary for Administration on Legal Aid Policy

In February, the two branches of the legal profession together with the Hon. Dennis Kwok met the Chief Secretary for Administration to discuss legal aid policy. For the purpose of the meeting with the Chief Secretary for Administration, the Committee had a meeting with the representatives from the Hong Kong Bar Association in January and jointly prepared and submitted a Position Paper on Review of Legal Aid Regime. The Committee in the Paper asked that the Financial Eligibility Limits should be reviewed, and that the scope of the Supplemental Legal Aid Scheme should be expanded. It also put forward a proposal to set up schemes similar to the "Green Form Scheme" in the UK, as well as a suggestion for the Government to provide umbrella insurance for pro bono services and payment of costs.

Among other things, the Committee received positive feedbacks from the Government that:

- the Government proposed to increase the annual recurrent expenditure of the Legal Aid Department by \$320.4 million from 2019-2020, together with a one-off allocation of \$183.2 million to the Legal Aid Department over the course of 2019-2020 and 2020-2021. As a result, the estimates for the Legal Aid Department for 2019-2020 would substantially be increased by 41% to \$1,590.2 million. The Government would also create 12 civil service posts in the Legal Aid Department from 2019-2020 to strengthen the support in processing applications and assessing bills.
- the Legal Aid Department included in the Policy Address the proposed increase of the financial eligibility limits for both the Ordinary Legal Aid Scheme and the Supplementary Legal Aid Scheme by around 30%.

(b) Meeting with the Director of Legal Aid on Legal Aid Practices

The Committee continued its effort in monitoring the development of and matters pertinent to the legal aid practice. The following matters were raised for discussion with the Director of Legal Aid and his deputy directors at a meeting in May:

- costs liability of section 9 opinions

- legal aid appeals
- payment of solicitors' costs
- legislative amendments to update the Director of Legal Aid's First Charge
- review of the District Court (Fixed Costs in Matrimonial Causes) Rules, Cap.336F
- the possibility of extending legal aid assistance to cover Private Adjudication of Financial Disputes For Matrimonial and Family Proceedings
- monitoring of legal aid assignments
- provision of a list of interpreters/experts
- additional resources for legal aid services
- preliminary proposal to introduce a “Green Form” scheme for Hong Kong

The Committee would keep the matters under review and continue to maintain an on-going dialogue with the Director of Legal Aid.

(c) Payment of Costs to Assigned Solicitors

Amongst the above discussion items, the Committee prepared and submitted to the Legal Aid Department a paper on the payment of solicitors' costs pursuant to Legal Aid Ordinance. The paper set out, inter alia, the following problems encountered by assigned solicitors on payment of costs by the Legal Aid Department:

- liabilities on payment
- delays
- assessment
- requirement upon the assigned solicitors

The Paper also set out proposals to standardize payment of costs.

The Committee also attended upon the following.

(d) 2019-2020 Government Budget Public Consultation

The Committee provided views on 2019-2020 Government Budget Public Consultation. The Committee considered, inter alia, that there should be improvements to the Financial Eligibility Limits and the extension of the scope of the Supplementary Legal Aid Scheme; and more resources should be allocated to the Legal Aid Department. Views of the Committee, together with views of other specialist committees were consolidated into a submission, which was sent to the Financial Secretary in January.

(e) Financial Eligibility Limits of Legal Aid Applicants

The Committee, in April, noted a proposal by the Chief Secretary for Administration's Office that the financial eligibility limits of Ordinary Legal Aid Scheme and Supplemental Legal Aid Scheme would be adjusted upward from \$307,130 and \$1,535,650 to \$314,190 and \$1,570,970 respectively.

(f) Expansion of the Supplementary Legal Aid Scheme

By a Resolution of the Legislative Council made and passed under section 7(b) of the Legal Aid Ordinance (Cap.91), Part 1 of Schedule 3 to the Legal Aid Ordinance is amended to add a type of civil proceedings for which legal aid may be given under the Supplementary Legal Aid Scheme, namely, civil proceedings brought in respect of a monetary claim in respect of derivatives of securities, currency futures or other futures in those derivatives, futures or contracts by fraud, deception or misrepresentation. Subject to negative vetting, the amendments will come into operation on 1 April 2020.

(g) Delegation from Shenzhen Legal Aid Department

In August, the Vice President and the Chairman of the Committee received a 20-member delegation from the Shenzhen Legal Aid Department.

MEDIATION COMMITTEE

The Committee is tasked to review and make recommendations on mediation-related matters; and to assist the Council in formulating policies and services on these matters for the general members, solicitor-mediators and solicitor-mediation advocates. This year, it co-opted one new member to help with the work of the Committee.

The Committee met three times in the year and conducted the rest of its business by emails. The Chairlady attended a meeting of the Panel on Administration of Justice and Legal Services (“AJLS Panel”) of the Legislative Council in March.

Development of Mediation in the Greater Bay Area

The Committee continued its effort to promote the practice of solicitor-mediators and solicitor-mediation advocates in Hong Kong and the Mainland, including the Greater Bay Area (“GBA”). One of the initiatives put forward by the Committee was to advocate for a wider application of Hong Kong law in mediation for international or cross-border commercial disputes in the GBA. That helped not only the promotion of mediation practice, but also the expansion of work opportunities for solicitor-mediators and solicitor-mediation advocates.

The Committee would keep on liaising with local and Mainland authorities and professional bodies and explore business opportunities for solicitor-mediators and solicitor-mediation advocates.

Two new mediator panels were established this year. These were the Panel of International General Mediators and the Panel of International Family Mediators. These two panels aimed to provide members and the general public with a database on suitably qualified solicitor-mediators for international and cross-border disputes. As of the end of this year,

17 International General Mediators and eight International Family Mediators were empanelled.

The Chairlady of the Committee attended a meeting of the AJLS Panel of the Legislative Council in March to articulate the Law Society's support in promoting the use of arbitration or mediation for dispute resolution in both Hong Kong and the Mainland. The HKSAR Government was urged to provide funding for the training of arbitration and mediation talents and accommodation of arbitration and mediation institutes.

Mediation Pilot Scheme

Mediation provides an alternate platform to resolve disputes in an effective and amicable manner. The Committee considered that mediation should be amenable to resolve social and community disputes, in demonstrations and street protests in Hong Kong that took place in the latter half of the year. It set up a Task Force to study and to make recommendations on those initiatives which could be deployed to resolve these disputes. The Task Force comprised members from the Law Society and other stakeholders. After considering various models, the Task Force drew up a Mediation Pilot Scheme for the HKSAR Government. The proposed Mediation Pilot Scheme aimed to assist in the resolution of the above disputes. It was submitted to the Chief Executive for consideration in August.

External Mediation Master Scheme

The Judiciary introduced an External Mediation Master Scheme (“Scheme”) to the District Court to assist the resolution of general civil claims (with exception for certain specified cases such as personal injury claims). Under the Scheme, an “external mediation master” would be appointed to assist the parties to try to settle their disputes through mediation. The Scheme was launched on a pilot basis. To assist members to better understand the Scheme, the Law Society, the Academy of Law and the Judiciary jointly organized a seminar on the Scheme in August. The seminar was well-received with over-subscription.

Assistance to Solicitor-Mediators

The Committee was made aware of the difficulties some solicitor-mediators encountered when they tried to obtain professional guidance and/or practice opportunities in mediation practice. To render assistance to these solicitor-mediators and also to members generally, the Committee proposed to provide a one-off sponsorship to solicitor-mediators if they were to participate in a mediator mentorship scheme for mediation cases conducted in the West Kowloon Mediation Centre. The mentorship scheme as described serves to provide opportunities to the less experienced solicitor-mediators to work with more experienced mediators and to co-mediate real-life cases. Members who meet the eligibility requirements could apply for sponsorship for the above mentorship scheme. Details on the sponsorship would be announced early next year.

Mediation Training Programme in General Mediation

The Committee received a suggestion that its Mediation Training Programme on General Mediation for solicitors and other non-member participants should be re-introduced. That helped the provision of high standard mediation training courses in Hong Kong. After careful consideration, the Committee agreed to reinstate its Mediation Training Programme on General Mediation. The above suggestion, along with the views of the Committee, was forwarded to the Mediator and Parenting Co-ordinator Admission for consideration and follow up.

Sample Mediation Clause and Sample Med-Arb Clause

Another initiative to help develop the practice of solicitor-mediators was to promote the Law Society's Sample Mediation Clause and Sample Med-Arb Clause. These sample clauses serve as user-friendly templates for disputing parties so that they could more readily refer their disputes to mediation conducted by solicitor-mediators under the Law Society Mediation Rules. The sample clauses are available on the website of the Law Society.

Pilot Scheme on Mediation Helpline

The Law Society's Mediation Helpline ("Helpline") was launched in November 2014. The Helpline, under the supervision of the Committee, arouses public awareness of and understanding on mediation. It also helps to promote mediation in general, as well as solicitors' mediation practices in Hong Kong. The Helpline was initially launched for a trial period of six months. During the trial period, a panel of Solicitor-Mediators, with the assistance of the Secretariat, provided information on mediation and mediation services to the public. The Helpline received positive feedbacks and the trial period of the Helpline was repeatedly extended.

Updates of the Mediation Leaflet and Mediation Webpage

The Committee was engaged to provide updated information on mediation and Law Society's mediation services to the general members and general public. The Committee updated the contents of an information leaflet and created a new webpage on the Law Society's website to provide information of all Law Society's Panels of Mediators. The updated information leaflet and the new webpage would be available in early 2020.

Other Promotion for the Solicitor-mediators

To promote solicitors' mediation practices, the Committee has:

- reviewed the policies on solicitors' practice in Mediation and Parenting Co-ordination ("PC");
- organised Continuing Professional Development ("CPD") activities on Mediation, PC and related subjects;
- liaised with stakeholders on matters relating to Mediation; and

- monitored and updated solicitors on the latest development of Mediation, PC and Early Neutral Evaluation in Hong Kong.

Mediation Services

The Committee continues to provide support services for mediation to The Law Society's members. This year, 15 requests for nomination of mediators were processed.

Draft Code of Practice for Third Party Funders of Mediation

The Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 was enacted in June 2017. Among other things, the Amendment Ordinance provided for the establishment of an authorized body to formulate the ethical and financial standards of third party funders for arbitration and mediation; and the publication of a Code of Practice for Third Party Funding of Arbitration and a Code of Practice for Third Party Funding of Mediation.

In 2018, the Committee and other specialist committees of the Law Society submitted a joint submission on the draft Code of Practice for Third Party Funding of Arbitration and Mediation to the DOJ. Divisions 3 and 5 of new Part 10A of the Arbitration Ordinance and the Code of Practice for Third Party Funding of Arbitration came into operation from 1 February 2019; the commencement of section 4 of the Amendment Ordinance insofar as it relates to section 7A(c) and (d) of the Mediation Ordinance and the issuance of the Code of Practice for Third Party Funding of Mediation was deferred to a future date.

The Committee held discussions on various occasions with other specialist committee on third party funding for mediation in different practice areas, including personal injuries.

Organisation of and Participation in Mediation Events

The Committee helped organise and/or promote the following CPD activities as part of its continual efforts to promote mediation services to members:

- *Interface Between Mediation and Parenting Co-ordination* (26 March)
- *Mediation Advocacy* (8 April)
- *International Dispute Resolution Conference 2019 – New Era of Global Collaboration* (17 April)
- *Mediate First Pledge Event 2019* (24 May)
- *Negotiation in Mediation* (6 June)
- *Foothills of Alienation* (19 August)
- *Sharing Session on External Mediation Master Scheme* (28 August)
- *United Nations Convention on International Settlement Agreements Resulting From Mediation* (18 September)
- *Mediation for International and Cross Border Disputes* (26 September)
- *Investment Law and Investor-State Mediator Training* (25 October – 3 November)

PERSONAL INJURIES COMMITTEE

The Committee held various meetings with the Judiciary, the Hong Kong Bar Association and other stakeholders to discuss issues of concern for personal injuries practices. It met five times this year. Some of the issues considered by the Committee are set out below.

Mediation Funding for Personal Injuries Claims

The Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (“Amendment Ordinance”) was gazetted in June 2017. The Amendment Ordinance provides for funding for arbitration and mediation by third parties in Hong Kong. After the enactment of the Amendment Ordinance, the Department of Justice (“DOJ”) published a Code of Practice for Third Party Funding of Arbitration in December 2018. The Code provides for the practices and standards with which third party funders are ordinarily expected to comply in carrying on activities in connection with third party funding of arbitration. The promulgation of the Code of Practice for Mediation Funders is deferred to a future date.

The Personal Injuries Committee expressed concerns on the regime for third party funding for mediation as applied to personal injuries litigation. Among other, the Committee considered that mediation funding could be abused by claim agents to “legalize” their touting businesses. These concerns were conveyed to the DOJ on various occasions.

Coverage of insurance for marine accidents

The Committee received views that under the current law and the applicable conventions, the coverage for personal injuries accidents happening at seas, as well as the level of damages payable to plaintiffs who were awarded damages in marine accidents, were unsatisfactory. There were proposals for reform of the above and it was suggested that the reforms could be modelled on the scheme for claims handled by the Motor Insurers’ Bureau of Hong Kong (“MIB”) for third party bodily injuries arising out of an accident involving the use of the vehicle on a road.

The Committee is studying the above “Marine MIB” proposal with other specialist committees of the Law Society.

Review of bereavement awards under the Fatal Accidents Ordinance, Cap 22

The Fatal Accidents Ordinance (Cap 22) was enacted in 1986 to implement the Report of the Law Reform Commission on Damages for Personal Injury and Death by, inter alia, introducing a statutory bereavement sum of a fixed amount for compensation both for grief and for loss of society and guidance. This bereavement sum was lately adjusted by making reference to the Consumer Price Index (A) and was increased, by a resolution passed in the Legislative Council in July 2018, to HK\$220,000. For the coming and future reviews of the bereavement awards, the DOJ requested views from the Law Society on the methodology to be adopted. The Committee has prepared a response pointing to the readily available Government statistics which reflect and record changes in Hong Kong

economic conditions. The Committee is now carrying out a general review of bereavement awards with a view to making suggestion for possible reform.

Employees Compensation Assistance Fund Board

The Committee continued its discussion on the proposed amendments to Section 20B of the Employees Compensation Assistance Ordinance (Cap 365) (“ECAO”). The ECAO provides for the administration of the Employees Compensation Assistance Fund, which is a last resort fund for injured employees who establish liability for work-related injuries but who are unable to recover from their employers or any insurer.

As presently drafted the Fund does not pay Plaintiff’s either full damages at common law, interest or costs. This leaves uninsured Plaintiffs substantially out of pocket. The ECAO was amended in 2002 due to the Funds’ limited financial means. The Committee understands that the Funds now has a surplus and the Committee believes that it can and should now pay out on fuller common law damages, interest and costs to uninsured Plaintiffs to ensure that the injustice they now suffer from is remedied.

PROBATE COMMITTEE

The Committee met four times this year, and conducted the rest of its business by emails. It attended to member enquiries on probate practices and procedures and held discussions on issues arising therefrom. It helped in processing applications for publication in the weekly *Enquiries from Solicitors on Wills, Codicils and other Testamentary Dispositions*. A total of 676 will search enquiries were received and processed this year.

To help members to better manage their risk exposure in probate applications, the Committee assisted the Academy of Law to organize an RME course on *"Risks and Common Mistakes in Will Drafting and Probate Practices"*. The course (held in May) aimed to raise the awareness of the participants on those pitfalls / mistakes commonly made in probate applications. Members of the Committee in the course shared their knowledge and experience. The course was over-subscribed and received very good responses from the participants. Upon a strong request for a repeat of the course, the Committee was planning to re-run or to organize a similar RME course in the forthcoming year.

Apart from providing service to members, the Committee was also intent to help the general public in understanding probate applications and procedures. The Committee has therefore updated an information pamphlet to provide basic information on probate practices. The updated pamphlet was to be released.

On the other hand, the Committee received a delegation from the Hyogo Prefecture Bar Association from Japan in January and exchanged views on the inheritance practices in Hong Kong and Japan.

External Representation

The Committee is represented in the Joint Standing Committee on Probate Practice. This Joint Standing Committee comprises the Registrar of High Court, Probate Masters, Chief Probate Officer and members of the Committee. It discusses practical issues arising in various probate practices.

PROPERTY COMMITTEE

The Committee met every month to consider issues and legislative proposals on conveyancing practices. It also engaged with different Government departments and other organizations to discuss property-related issues.

Apart from the above, Committee members considered and determined applications for waivers of Deed of Mutual Covenant Guidelines and applications from general members for exemptions/deviations from forms of Agreement for Sale and Purchase as approved under Rule 5C of the Solicitors Practice Rules (Cap. 159H).

(a) *Land Titles Ordinance*

The Committee had frequent discussions with the Land Registry on a number of legal, technical and procedural issues on the implementation of Land Titles Ordinance, Cap 585 ("LTO"). The exchanges of views with the Land Registry were numerous and the Committee was exceptionally busy in this regard.

The chairperson of the Committee sat on the LTO Steering Committee. The Steering Committee oversaw a LTO Review Committee and a Title Registration Education Committee. The Law Society was represented on the above two committees.

(b) **Property Frauds**

The UK Court of Appeal judgment in *P&P Property Limited v Owen White & Catlin LLP, Crownvent Limited and Dreamvar (UK) Limited v Mishcon De Reya (a firm), Mary Monson Solicitors Limited* ([2018] EWCA Civ. 1082) was brought to the attention of the Committee. This judgment potentially raised concerns on imposter frauds in conveyancing (and other commercial) transactions. The Law Society has set up a working party to study the above judgment and to make recommendations. The Committee received views and comments from the Working Party. Those were considered by the Committee at its various meetings, and suggestions were offered to the Working Party for its further deliberation. The Committee would continue to deliberate on the matters.

(c) **Rating (Amendment) Bill 2019**

The Committee noted with concern the Government's proposal to introduce "vacancy tax" or "hoarding tax" on vacant properties. It had several meetings including a meeting with the Government in March to discuss the proposal. The proposal was formally set out in the

Rating (Amendment) Bill 2019 (the "Bill") which was gazetted on 19 September. The vacancy tax as proposed would be imposed on newly built flats and would be applicable where the properties remain unoccupied for six months in any year. Under the Government's proposal, vacancy tax would be levied at the rate of 200% of the property's annual rental value, calculated by reference to market rates as determined by Government assessors. The first reading of the Bill at the Legislative Council was on 23 October, with the second reading of the Bill being adjourned. The Committee would study any amendments to the Bill and would make recommendations to the Council when appropriate.

(d) Property Management Services Ordinance

The Property Management Services Ordinance (Cap 626) and the Property Management Services (Levy) Regulation (the "Regulation") continued to receive attention from the Committee. It reviewed in depth a consultation on a proposed licensing regime for property management companies and property management practitioners and in January provided a written submission to the Property Management Services Authority ("PMSA").

In May, a press release issued by PMSA on subsidiary legislation for the licensing regime for property management companies and property management practitioners came to the notice of the Committee. The Committee raised queries on the scope of the licensing regime and possible impact upon the legal profession. It held meetings to consider the matter, and wrote to the PMSA to seek clarifications.

(e) Use of Information Technology

The Committee kept itself advised of the development of information technology in conveyancing practices. Among other things, the Committee attended a briefing session in May by the Land Registry on a proposal on e-lodgement. On the other hand it discussed the possible use of blockchain technology in property transactions, and had sought meetings with the Government and other stakeholders.

(f) Deed of Mutual Covenants under Land Grant

The Legal Advisory and Conveyancing Office of the Lands Department ("LACO") last year drew up a set of standard clauses and revised several guidelines for the Deeds of Mutual Covenant ("DMC") under conditions of the land grant. In parallel with and in consequence to the above promulgation, the Committee had a thorough review of the Law Society's own DMC Guidelines. The review was completed and a set of updated and revised DMC Guidelines were issued for legal practitioners in June.

(g) Non-Consent Scheme

The Committee worked closely with the Working Party on Review of Non-Consent Scheme Forms to consider and to attend queries from the LACO of the Lands Department on the following:-

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

- amendments to the two sub-sale and purchase agreements.

(h) Pamphlets

To assist the general public to have a basic understanding on purchase of properties and tenancy, the Committee has updated two information pamphlets for the Law Society. The updated pamphlets were to be released.

(i) Other property-related issues

The Committee issued various practice-related circulars to general members, to advise them of the latest practice notes issued by the Buildings Department, the Lands Department, the Planning Department and the Land Registry, such as:

- the Lands Department Practice Notes
- LACO Circular Memorandum
- the Joint Practice Notes of Buildings Department, Lands Department and Planning Department
- Property Alert
- Sale of Home Ownership Scheme Flats 2018 – Sale of Flats by Owners within 5 years from date of first assignment (Hoi Lok Court, Kai Long Court, Yu Tai Court)
- New Administrative Fees for Approval of Legal Documents by the Hong Kong Housing Authority
- New Application Fee for Letter of Nomination under the HOS Secondary Market Scheme by the Hong Kong Housing Authority
- Green Form Subsidised Home Ownership Scheme 2018 – Sale of Flats by Owners within 5 years from date of first assignment (Lai Tsui Court)
- Home Ownership Scheme Secondary Market Scheme
- Residential Properties (First-hand Sales) Ordinance – Setting out Payment Terms in Register of Transactions
- Revised Guidelines for Drafting of Deeds of Mutual Covenant
- Residential Properties (First-hand Sales) Ordinance – Making Available Deed of Mutual Covenant Plans
- Hong Kong Housing Society's Flat-For-Sale-Scheme Secondary Market Scheme

External Work

(a) Urban Renewal Authority

The Urban Renewal Authority ("URA") set up a Building Rehabilitation Platform (the "Platform") in 2017. The Platform proposed by the URA assists building owners in the appointment of consultants, contractors and service providers for building rehabilitation services. A member of the Committee sat on the Service Providers Committee and the Promotion Committee set up under the URA.

(b) Other professional engagements

Apart from the Land Titles Ordinance Steering Committee, the Land Titles Ordinance

Review Committee, the Title Registration Education Committee and the Urban Renewal Authority as described in the foregoing paragraphs, the Committee also had representatives on other external group and committee as follows:-

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

RETIREMENT SCHEMES COMMITTEE

The Committee met in May 2019 to discuss the Occupational Retirement Schemes (Amendment) Bill 2019 ("Bill"). The Bill seeks to update the Occupational Retirement Schemes Ordinance (Cap. 426) to prevent the misuse of occupational retirement schemes as investment vehicles open to persons who are not employees of the relevant employers of the schemes. The Committee also sought views from other specialist committees, and submitted a consolidated submission to the Mandatory Provident Fund Schemes Authority in June.

In addition, the Committee considered the following updates and amendments with regard to the Mandatory Provident Fund (MPF) schemes, and issued circulars to general members, which included, inter alia:

- Guidelines on MPF Intermediary Registration and Notification of Changes (**Guidelines VI.1**)
- Guidelines on Annual Returns to be Delivered by Registered Intermediaries (**Guidelines VI.3**)
- Revised Code on Disclosure for MPF Investment Funds

REVENUE LAW COMMITTEE

The Committee conducted its business by emails.

During the year, the Committee took note of and/or reviewed the following:

- The Occupational Retirement Schemes (Amendment) Bill 2019, which seeks to update the Occupational Retirement Schemes Ordinance (Cap. 426) to prevent the misuse of Occupational Retirement Schemes as an investment vehicle open to persons who are not employees of the relevant employers of the schemes was introduced into the Legislative Council in April. Following a review of this Bill, the Committee, together with the Retirement Schemes Committee, the Insurance Law Committee and the Employment Law Committee, provided a written submission in June.
- The Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Bill 2018 was passed by the Legislative Council in February as the Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Ordinance 2019. The Amendment Ordinance,

which took effect in April, sought to address the concerns of the Council of the European Union over ring-fencing features of the tax regimes for privately offered offshore funds in Hong Kong and enhance the competitiveness of the tax regimes by creating a level playing field for all funds operating in Hong Kong.

- The Inland Revenue (Amendment) (No.7) Bill 2018 was passed by the Legislative Council in February as Inland Revenue (Amendment) (No.2) Ordinance 2019. The Amendment Ordinance sought to amend the Inland Revenue Ordinance (Cap.112) to, amongst others, align tax treatment of financial instruments with their accounting treatment in certain circumstances.
- The Rating (Amendment) Bill 2019 was introduced into the Legislative Council in September. The Bill sought to introduce special rates on vacant first-hand private residential units.
- A Consultation Paper on Limited Partnership Fund Regime released by the Financial Services and the Treasury Bureau in August.
- The Government's proposed legislative amendments to the Inland Revenue Ordinance in response to the recommendations of the Organization for Economic Co-operation and Development in relation to "controlling person".

Joint Liaison Committee on Taxation

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

TRANSPORTATION AND LOGISTICS COMMITTEE

The Committee met twice this year and held a joint meeting with the Personal Injuries Committee and the Insurance Law Committee. The Committee conducted the rest of its business by emails.

Review on Marine Insurance Law for Hong Kong Waters

The Committee, together with the Personal Injuries Committee and the Insurance Law Committee, reviewed the liability limits of the carrier for the death of or personal injuries to a passenger and noted the Government's proposal of amending the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap.434) for implementation of the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. A letter had, in November, been sent to the Marine Department indicating support to the proposal to amend the Ordinance.

The Committees also discussed whether a fund similar to the Motor Insurers' Bureau of Hong Kong could be set up to provide insurance for marine accidents causing personal injuries.

Issues relating to Transportation and Logistics Industries

The Committee took note of the following issues relating to the transportation and logistics industries:

- the Guidelines for the Operations of Unmanned Aircraft Systems released by the Civil Aviation Department
- the Greater Bay Area Policy Area on Transportation and Logistics
- the United Nations Convention on International Settlement Agreements Resulting from Mediation
- the 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters
- the Arrangement between Hong Kong and the Mainland on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters.

CPD seminars on Transportation, Shipping and Logistics

Upon the recommendation of the Committee, the Academy of Law organized two CPD seminars this year, respectively on Drones and Shipping Litigation.

WORKING PARTY ON INTERPRETERS

The Working Party on Interpreters noted the judgment in *HKSAR v Moale Alipate* [2019] 3 HKLRD 20, HKCA 537, [2019] HKEC 147 on a defendant's entitlement to interpretation facilities and that the entitlement was a component to the right to a fair trial.

Views of the Working Party on the non-availability of suitably qualified interpreters and translators in non-refoulement claims were relayed to the Constitutional Affairs and Human Rights Committee for consolidation of a submission on the Government's proposed amendments to the Immigration Ordinance (Cap.115) in relation to, inter alia, the non-refoulement screening process.

WORKING PARTY ON REVISED DMC GUIDELINES

The Working Party was set up to review the proposed revision by the Legal Advisory and Conveyancing Office ("LACO") of the Lands Department to the guidelines for the drafting of the DMC under the Consent Scheme. The Working Party assisted the Property Committee on the proposed amendments to the Law Society's DMC Guidelines in consideration of the set of standard clauses and the revised Guidelines drawn up by LACO for the preparation of the DMC for approval of LACO under conditions of the land grant.

WORKING PARTY ON REVIEW OF NON-CONSENT SCHEME FORMS

In addition to email communications, the Working Party met twice this year to consider, inter alia, the further preparation of the draft agreement forms for use of the non-consent scheme forms. The attention of the Working Party was in particular drawn to

- (a) the agreements for sale and purchase of "residential property" for uncompleted and completed developments; and
- (b) the sub-sale and purchase agreements of "residential property" for uncompleted and completed developments;

Various issues in connection with the above were canvassed and considered. Recommendations were made to the Property Committee and to the Council (where appropriate) for deliberation.

The Working Party continued to keep in view, among others, developments and updates on law and practices in conveyancing as well as agreement forms and amendments issued by the Legal Advisory and Conveyancing Office of the Lands Department on agreements for sale and purchase of residential and non-residential properties under the Consent Scheme for consideration of, for example, any matching amendments to the Non-consent scheme forms.

WORKING PARTY ON DATA PRIVACY AND RECORDS MANAGEMENT

A new Working Party was set up to review and to respond to the consultation papers issued by the Law Reform Commission on (i) archives law and (ii) access to information. The Working Party comprises members coming from different specialist committees.

The Consultations by the Law Reform Commission

On 6 December 2018, the Archives Law Sub-committee of the Law Reform Commission published a consultation paper to invite public views on whether reform of the current public records management regime was needed and, if so, what kind of reform was to be preferred. The Sub-committee considered there were considerations in favour of the enactment of an archives law in Hong Kong, but there were also practical concerns over its implementation. The Sub-committee believed that Government records formed an integral part of the community's shared heritage that belonged to all.

Another Sub-committee of the Law Reform Commission at the same time released a separate but related consultation paper on Access to Information. In that Consultation Paper, the Sub-committee set out its study on the local situation and a comparative review of the relevant laws on access to information in overseas jurisdictions. The Sub-committee invited public views on whether the current regime relating to access by the public to information held by the Government or public authorities should be reformed and, if so, in what way.

The Working Party studied the above two consultation papers and produced two submissions in response. Among other things, the Working Party highlighted the importance of Legal Professional Privilege when the question on exempt information (i.e. information be withheld from disclosure) was to be considered. It was further emphasized that Legal Professional Privilege remained a fundamental and constitutionally protected right in Hong Kong that was not subject to any competing policy.

Other issues

Apart from the above, the Working Party also took note of various privacy-related matters, including issues arising from doxxing, the data breach investigation by the Privacy Commissioner for Personal Data, as well as a Government Consultation on Advance Directives.

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.

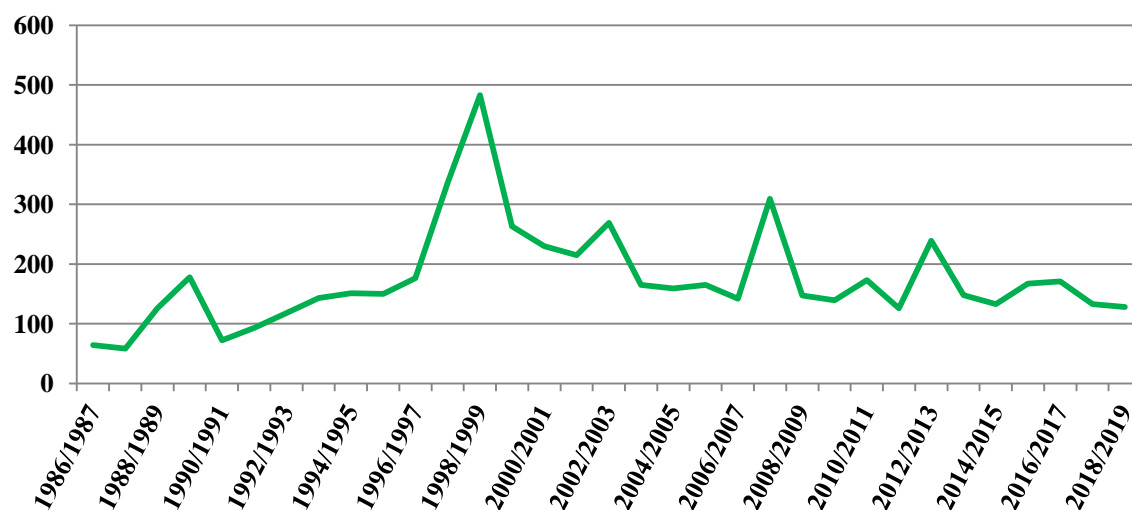
The HKSIFL considered a number of matters including:

- PIS claims and related matters
- PIS seminars
- Automating the production of PIS renewal documents
- Contribution reduction
- Protocol when the Supervising Partner of a PIS Panel Solicitor firm retires or resigns
- The performance of the PIS Broker and Manager
- Investments of HKSIF
- 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
- Profits tax returns of HKSIFL
- Publishing claims statistics on the PIS website
- 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.
- Appointment of an actuary

A total of 128 notifications of claims were received by the Claims Manager, ESSAR Insurance Services Ltd. ("ESSAR") during the 2018/2019 indemnity year, i.e. from 1 October 2018 to 30 September 2019 and the grace period from 1 October 2019 to 29 November 2019. As at 30 September 2019, 11 of the notifications resulted in proceedings, 7 were closed without payment, 2 were settled with payment and 115 (including those closed without payment) remained as notifications.

The number of claims for the last 33 indemnity years and the number of members holding Practising Certificates as at 31 December of each of those years are as follows:-

Figure 1: Number of Claims (1986/1987 – 2018/2019)



Indemnity Year	Number of Claims	Percentage Increase/Decrease from previous year	No of members with Practising Certificates (as of 31 December)
1986/1987	64	-	1,807
1987/1988	58	-9%	1,998
1988/1989	126	117%	2,152
1989/1990	178	41%	2,326
1990/1991	72	-60%	2,479
1991/1992	93	29%	2,721
1992/1993	118	27%	2,981
1993/1994	143	21%	3,307
1994/1995	151	6%	3,596
1995/1996	150	-1%	3,896
1996/1997	176	17%	4,309
1997/1998	336	91%	4,619
1998/1999	483	44%	4,720
1999/2000	263	-46%	4,890
2000/2001	230	-13%	5,070
2001/2002	215	-7%	5,173
2002/2003	269	25%	5,301
2003/2004	165	-39%	5,422
2004/2005	159	-4%	5,593
2005/2006	165	4%	5,757
2006/2007	142	-14%	5,925
2007/2008	309	118%	6,205

Indemnity Year	Number of Claims	Percentage Increase/Decrease from previous year	No of members with Practising Certificates (as of 31 December)
2008/2009	147	-52%	6,465
2009/2010	139	-5%	6,782
2010/2011	173	24%	7,149
2011/2012	126	-27%	7,483
2012/2013	239	90%	7,864
2013/2014	148	-38%	8,279
2014/2015	133	-10%	8,647
2015/2016	167	26%	9,076
2016/2017	171	2%	9,463
2017/2018	133	-22%	9,903
2018/2019	128	-4%	10,344

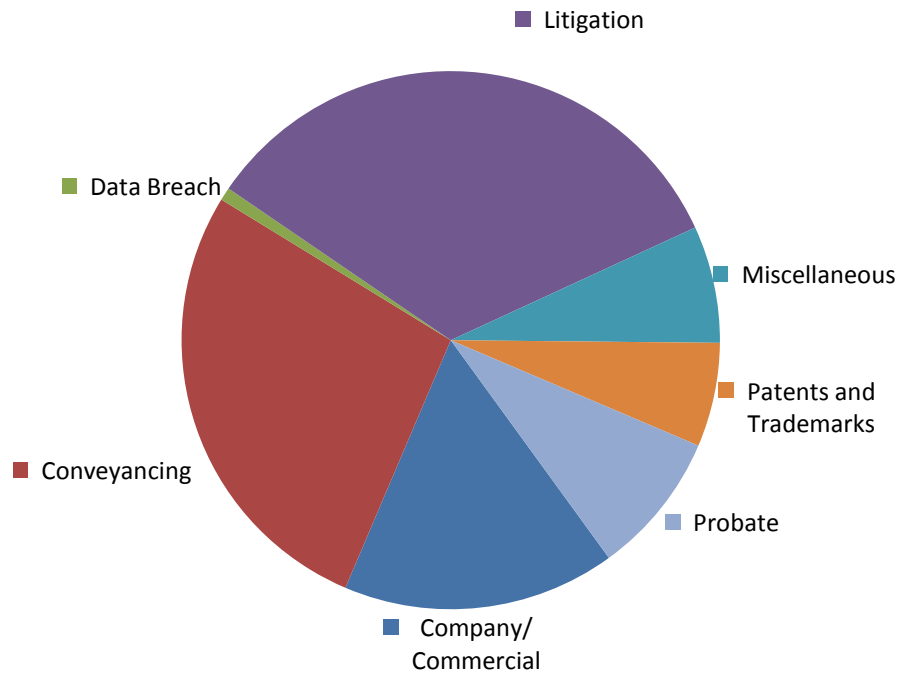
* Number of Claims includes claims notified within the grace period.

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

Claims notified in the 2018/2019 indemnity year were categorised as follows:-

Company/Commercial	21
Conveyancing	35
Data Breach	1
Litigation	43
Miscellaneous	9
Patents and Trademarks	8
Probate	11
	128

Figure 2: Types of Claims notified in 2018/2019



8 fraud claims were received in the 2018/2019 indemnity year.

As at 30 September 2019, the total liability of the PIS for the 2018/2019 indemnity year, calculated on the basis of claims paid and claims reserved, was HK\$6,091,071 of which HK\$5,118,146 consisted of claims paid (including costs) and HK\$972,925 consisted of claims reserved.

The total amount of claims paid (including costs) since the inception of the self-insured PIS in 1986 amounts to HK\$2,086,935,459 and the amount reserved is HK\$143,863,867. The total claims paid and reserved is HK\$2,230,799,326.

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 2019 will be published in the PIS Annual Report for the 2018/2019 indemnity year.

PIS CLAIMS COMMITTEE

Claims are handled by the Claims Committee pursuant to the SPI Rules with the assistance of the Claims Manager, ESSAR. The Claims Committee held six meetings during the year to discuss both new and ongoing claims. It also considered a wide range of urgent claims issues by email circulation.

PIS INVESTMENT SUB-COMMITTEE

The PIS Investment Sub-Committee held five meetings during the year. At each meeting, the Subcommittee and HKSIFL's investment consultant, Mercer Investment Consulting Limited ("Mercer") would meet two of HKSIFL's investment managers in person to discuss their performance and to provide their outlook on market trends.

In between meetings matters arising are considered by emails. These include the consideration of monthly performance and custodian reports, exchanging and discussing information and views and making decisions on relatively minor investment issues.

As of 31 December 2019, the investment managers of the HKSIF are as follows:

- AllianceBernstein Hong Kong Ltd. ("AllianceBernstein")
- MFS Investment Management ("MFS")
- Grantham Mayo van Otterloo ("GMO")
- Ruffer LLP ("Ruffer")
- PIMCO Asia Limited ("PIMCO")

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 2018 and 2019 were as follows:

Investment Manager	Type of portfolio	Net Return		Portfolio Size (In USD)	
		2018	2019	As of 31 Dec 2018	As of 31 Dec 2019
Amundi	Equities and bonds	-4.57%	(up to 30 Nov 2019) 10.88%	144,098,710	0
AllianceBernstein	Bonds	1.70%	7.91%	134,324,039	156,811,158
MFS	Equities	-9.69%	31.58%	47,611,801	87,238,465
GMO	Equities	-13.91%	24.56%	31,373,347	63,736,774

Ruffer	Multi-Asset (mainly equities and bonds)	-4.95%	10.14%	51,881,224	74,833,687
PIMCO	Bonds	-	-	-	94,932,399
Overall portfolio return		-3.9%	13.3%	409,289,121	477,552,483

*Investments were made into the MFS and GMO Funds in December 2011, the Ruffer Fund in December 2017 and the PIMCO Fund in December 2019. Amundi's portfolio was fully redeemed in early December 2019. New funds were injected into the portfolios of some of the managers during the year. The newly injected funds are not treated as returns for calculating the Overall portfolio return as of 31 December 2019.

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 set out that indemnifieds' of the PIS are to be defended by Panel Solicitors appointed by the Council

The Working Party held one meeting 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 PIS 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 April 2018 to 31 March 2023.

The firms which served as Panel Solicitors in 2019 were:

- Deacons
- Dentons (*Appointed on 21 June 2019*)
- Fred Kan & Co.
- Howse Williams
- Mayer Brown
- Norton Rose Fulbright

- P.C. Woo & Co.
- Reynolds Porter Chamberlain

The Selection Board held one meeting during the year and conducted the rest of its business by email circulation.

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.