

For discussion
on 29 May 2008

LegCo Panel on Administration of Justice and Legal Services

Demand for and supply of legal and related services

Purpose

This paper presents the findings of the reports on the Consultancy Study of the Demand for and Supply of Legal and Related Services (“the Reports”). A copy of the Reports and the Executive Summaries of the Reports are at **Annex A** and **Annex B** respectively.

Background

2. A Consultative Committee comprising representatives from the legal services sector and other professional, academic and community bodies interested in the issue of access to justice, was established under the chairmanship of the Solicitor General to assist the Government in overseeing the relevant research. A list of the Consultative Committee members is at **Annex C**.

3. After careful consideration of the proposals submitted by the organizations, Asia Consulting Group Limited and Policy 21 Limited (“the Consultants”) were selected by the Assessment Panel (comprising members of the Consultative Committee) to undertake the above study.

4. The consultancy study commenced on 29 July 2004 and was completed in January 2008. The Consultants were required to report progress to the Consultative Committee at approximately quarterly intervals and as and when required by the Department of Justice.

Details of the Survey

5. The consultancy study comprises two separate surveys, one focusing on the supply of legal and related services in Hong Kong and the other on the demand for legal and related services.

6. In relation to the survey on the supply of services, the consultancy study involves an examination of the scope of legal and related services, how accessible they are (both substantively and geographically) and their level of quality. The extent, adequacy and potential of free legal advice services in Hong Kong should also be examined under this head. In relation to the survey on the demand for legal and related services, the focus is on identifying the types and frequency of legal or justiciable problems which arise in Hong Kong and what individual households and small and medium enterprises do to redress these problems.

7. On the basis of the supply and demand studies, the Consultants would provide an assessment on the likely gap in service availability and the potential unmet legal needs in the community.

The Reports

8. The Consultants have prepared four reports to the consultancy study, namely the Supply Study Report, Demand Study Report (Part I) on small and medium enterprises, Demand Study Report (Part II) on members of the public and the Combined Analysis Report. A brief outline of the Reports is set out below.

Supply Study Report

9. The statistics included in the Supply Study Report are based on the questionnaires received up to the end of August 2006.

10. The findings provide a broad overview of the structure of the local legal services sector including the range of services offered, the practice economics and accessibility, and establish a reference for assessing potential service gaps between the demand side and the supply side.

11. The focus of the survey was generally on the range of services provided, the workload of the service providers, their specialisation, clientele, location of operation, involvement in pro bono and service promotion activities, and their operational economics.

12. An extract of the key findings contained in the Supply Study Report is at **Annex D**.

Demand Study Report (Part I) – Survey of Small and Medium Enterprises

13. The demand side study was conducted through two large scale questionnaire surveys, one covering small and medium enterprises (SMEs)¹, and the other individual households. The data collection for the SME survey was carried out during the period from February to September 2006. 3,347 SMEs were sampled across the main industry sectors, 1,813 of them were successfully interviewed, achieving a response rate of around 60%.

14. Information solicited in the survey was as follows:

- (a) Types and frequency of justiciable problems encountered by SMEs;
- (b) Responses of SMEs faced with justiciable problems, including the help-seeking behaviour they adopted, their use of legal and para-legal services, alternative dispute resolution methods, self-help and avoidance strategies;
- (c) The motivation for using the courts or alternative forms of dispute resolution and the extent to which the objectives of those using these services were achieved;
- (d) Perceived obstacles to access to justice, the level of knowledge within the community of legal remedies and procedures, and the experiences and perceptions on the legal and related services used.

15. An extract of the result of this part of the survey is at **Annex E**.

¹ SME covers manufacturing firms which employ fewer than 100 persons in Hong Kong and non-manufacturing firms which employ fewer than 50 persons in Hong Kong.

Demand Study Report (Part II) – Survey of Households

16. The report is based on the views and information provided by respondents sampled in the questionnaire survey, which are representative of the general public in Hong Kong.

17. The household survey was carried out during January to November 2006. 3,788 domestic living quarters were covered from a random sample of 6,000 quarters, with 10,385 persons successfully interviewed, achieving a response rate of 92%. The report is essentially based on the views and information provided by respondents in the surveys.

18. Information solicited in the survey was as follows:

- (a) Types and frequency of justiciable problems encountered by members of the public;
- (b) Responses of members of the public faced with justiciable problems, including the help-seeking behaviour they adopted, their use of legal and para-legal services, alternative dispute resolution methods, self-help strategies and avoidance strategies;
- (c) The motivation for using the courts or alternative forms of dispute resolution and the extent to which the objectives of those using these services were achieved; and
- (d) Perceived obstacles to access to justice, the level of knowledge within the community of legal remedies and procedures, and the experiences and perceptions on the legal and related services used.

19. An extract of the result of this part of the survey is at **Annex F**.

Combined Analysis Report

20. In the Combined Analysis Report, the information obtained from the supply-side and demand-side surveys are compared, with a view to assessing the balance of demand for and supply of legal and related services in Hong Kong, focusing on individuals and small and medium enterprises. The study however is not designed to derive in quantitative terms any shortfalls or surpluses, nor what proportion of any possible shortfalls should be addressed by any class of suppliers of legal services.

21. The main conclusions are summarised at **Annex G**.

Department of Justice
May 2008

List of the Consultative Committee Members

1. Mr Ian Wingfield
Solicitor General
Department of Justice
(Chairman)
2. Professor Hazel Genn
Faculty of Laws
University College London
3. The Hon Margaret Ng
Legislative Council Member
4. The Hon Audrey Eu Yuet-mee, SC, JP
Legislative Council Member
5. Mr Patrick Moss
The representative of The Law Society of Hong Kong
6. Mr M K Wong, SC
The representative of the Hong Kong Bar Association
7. Miss Emma Lau
Judiciary Administrator
8. Mr William Chan
Deputy Director
Legal Aid Department
9. Dr John Bacon-Shone
Director, Social Sciences Research Centre
The University of Hong Kong
10. Dr Anne Cheung
Department of Law
University of Hong Kong
11. Ms Jane Pik Shan Tsuei
Core Business Director
The Hong Kong Council of Social Service

Annex D

Some key findings of the Supply Study Report –

1. A full range of legal and related services was available in Hong Kong. Some practitioners had to turn away work from time to time.
2. Most of the legal professionals were probably fully engaged in their professional work, although there appeared to be concerns about quality at the lower end where an over-supply situation was said to exist.
3. About 41% of chambers had a policy of specialisation in service provision. The areas of specialisation were mainly civil cases related to personal and family, administrative, human rights and advocacy, commercial, land and property, and PRC matters, as well as criminal cases.
4. A higher proportion of solicitor firms (52%) had a policy of specialisation in service provision. The areas of specialisation were mainly conveyancing, commercial, litigation, personal injury, intellectual property and wills and probate.
5. Just under 60% of barristers' time was spent on civil cases, compared with 86% for solicitors.
6. Barristers on average devoted more time to commercial and company cases, both criminal and civil. For solicitors, apart from commercial and company cases, they also devoted more time to land and property.
7. About one third of the time spent by barristers was on cases funded by government, with the remaining two-thirds undertaken for non-government clients. For solicitors, on the other hand, the majority of their time (86%) was devoted to non-government work.

8. As a profession, the barristers and solicitors did a significant amount of pro bono work, possibly sometimes as part of service promotion activities.
9. As a whole, the legal profession was relatively conservative in making their services known to the public, and clients usually came from referrals through personal networks.
10. Factors affecting the choice of solicitors by clients were mainly past experience with the solicitors, experience of solicitors, reputation of solicitor firms and solicitors, fee level and recommendation by friends. Factors like ability to offer one-stop service, size and location of firm and advertising were less important.
11. Factors affecting the choice of barristers by solicitors were similar. The more important factors were past experience with the barristers, experience of barristers, performance records of barristers, fee level, reputation of barristers and recommendation by other solicitors.
12. Nearly half of the chambers had pupil barristers, though the great majority of them did not pay pupil barristers. For solicitor firms, on the other hand, about 24% of them had trainee solicitors.
13. The hourly fee rates charged for legal work were generally within the \$1,001 - \$5,000 range, but were mostly between \$2,001 and \$3,000. The rates for civil cases tended to be higher than those for criminal cases. And the rates for businesses and private individuals tended to be higher than for government or legal aid or Duty Lawyer Scheme work.
14. Alternative dispute resolution was developing in Hong Kong, particularly for arbitration, but the mediation sector remained small.
15. The NGOs and the voluntary sector were engaged in a range of legal or related services, especially on employment and family related matters, but appeared to need resources to grow.

Annex E

Some key findings of the Demand Study Report (Part I) – Survey of Small and Medium Enterprise –

1. 46% of SMEs indicated that they had experienced difficult-to-solve problems or disputes that occurred in Hong Kong or had a significant connection with Hong Kong, including 30% in the past 12 months. Problems encountered were mainly business related and money related matters. 33% of these problems were considered important, of which 69% had action taken.
2. The most common action taken to tackle difficult-to-solve problems was talking to the other side. About 11% of incidents with action taken went to courts or tribunals, while less than 1% went to mediation or arbitration.
3. In about 20% of cases which had action taken, the services of solicitors were used, and in less than 1%, the companies were represented by barristers in court proceedings.
4. The SMEs had a high level of confidence in the judicial system in Hong Kong, but generally considered legal services costly and unaffordable. They also had insufficient knowledge about how to deal with justiciable problems, the cost involved and how to find suitable lawyers.

Annex F

Some key findings of the Demand Study Report (Part II) – Survey of Households –

1. 40% of the respondents indicated that they had experienced difficult-to-solve problems or disputes that occurred in Hong Kong or had a significant connection with Hong Kong, out of which 19% had experienced such problems in the past 12 months. About 86% of these incidents were considered important by the respondents and were mainly related to consumer matters and damage or disturbances caused by others. Action had been taken by respondents concerned on only about 37% of the problems that were considered important. This indicates that most people do not take any action to tackle difficult-to-solve problems encountered.
2. The most common action taken by respondents to tackle their difficult-to-solve problems was talking to the other side (76%). For about 19% of incidents, complaints were made to government department or relevant authorities, and 21% sought advice on how to solve their problems. Only about 4% of incidents with action taken went to courts or tribunals, while alternative dispute resolution mechanisms such as mediation or arbitration both accounted for less than 1%.
3. In a small proportion of incidents (3%), the services of solicitors were used. Furthermore, in only about 1% of incidents, the respondents concerned had applied for legal aid. A prevalence of difficult-to-solve problems, coupled with low usage of legal and related services, points to the possible existence of a mismatch in the sector.

Annex G

Main conclusions in the Combined Analysis Report –

1. A considerable amount of difficult-to-solve problems are being encountered by private individuals and SMEs, which are considered important by them. No action has been taken on a large proportion of these important problems for a variety of reasons, eg. the size and impact of the problems, the amount of money involved, the potential benefits, and the cost of taking action in terms of time and money. Many of the problems with no action taken are not the types that would normally be expected to be resolved through formal legal channels, but the individuals and SMEs may still require some support from the legal or related services, eg. free legal advice, pro bono services, mediation etc.
2. The legal profession in Hong Kong provides a full range of legal services with the larger practices servicing the needs of global businesses, large corporations and government, and the large number of smaller practices mainly serving local companies and private individuals. Given the considerable number of important problems encountered each year, and the low market awareness and knowledge about legal services, there is likely to be some unmet potential demand for services especially at the lower end of the market.
3. The number of lawyers in Hong Kong is probably on the low side compared with many developed countries for the size of the local population and the level of economic activity. The reasons behind the difference are however unknown. Nevertheless the current figure compares reasonably with those of Singapore or Malaysia.
4. Legal cost levels in Hong Kong are generally considered high and unaffordable, an important factor which discourages the greater use of legal services by private individuals and SMEs.

5. The users are generally satisfied with the services provided by legal practitioners, indicating good service quality, and more than half have confidence in the ability of lawyers to help solve legal problems.
6. Knowledge about legal services is generally lacking in the community despite the current promotional efforts of government, professional bodies and practitioners. 79% of household and 65% of SME respondents considered that most people did not know what to do when faced with a legal problem. There is also insufficient information for the public to know about lawyers' specialisation, their experience and fee levels. Nearly half of the respondents felt that there were insufficient channels to seek free legal services.
7. Alternative dispute resolution services are still in a developing stage, with few private individuals and SMEs being aware of these services, let alone using them.
8. A wide range of legal related services is currently provided by NGOs which are eager to expand their services both in terms of service variety and geographic coverage. They are nevertheless constrained by limited resources and inadequate professional support.