

# **立法會**

## **Legislative Council**

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### **Panel on Administration of Justice and Legal Services**

#### **Background brief prepared by the Legislative Council Secretariat for the meeting on 22 June 2009**

#### **Demand for and supply of legal and related services**

#### **Purpose**

This paper gives a brief account of the past discussions of the Panel on Administration of Justice and Legal Services (the Panel) on the demand for and supply of legal and related services, including free legal advice service.

#### **Background**

##### Consultancy study on the demand for and supply of legal and related services

2. On 7 November 2001, a motion was passed by the Council urging, inter alia, the Government to conduct a comprehensive review on the demand for and supply of legal and related services. A Consultative Committee chaired by the Solicitor General and comprised representatives from the legal services sector and other professional, academic and community bodies was established to oversee the consultancy study on the demand for and supply of legal and related services in Hong Kong (the Consultancy Study) commissioned by the Department of Justice (DoJ).

3. The Consultancy Study started on 29 July 2004 and was completed in January 2008. It encompasses three key components, viz:

- (a) a review of the current status of the legal and related services sector in Hong Kong and the supply of these services to the community;
- (b) a study on the demand for legal and related services from individuals and small and medium enterprises (SMEs) in Hong Kong; and
- (c) on the basis of the supply and demand studies, an assessment on the likely gap in service availability and the potential unmet legal needs in the community.

4. There are four reports to the Consultancy Study, namely the Supply Study Report,

Demand Study Report (Part I) on SMEs, Demand Study Report (Part II) on members of the public and the Combined Analysis Report (the Reports). Extracts of the key findings contained in each of the four reports are given in **Appendices I to IV**. The Executive Summary of the Reports and the full Reports are available at DoJ's website (<http://www.doj.gov.hk/eng/public/consultancy.htm>).

#### Review of existing free legal advice service

5. At the meeting on 22 October 2007, the Panel agreed that it was opportune for the Administration to review the Free Legal Advice Scheme under the Duty Lawyer Service. As free legal advice services were covered in the Reports of the Consultancy Study, the Panel also agreed that the subject be discussed in the broader context of the demand for and supply of legal and related services in Hong Kong.

6. The Free Legal Advice Scheme, one of three legal assistance schemes under the Duty Lawyer Service, provides members of the public with free preliminary legal advice. The service is provided by the legal profession on a pro bono basis. The Government provides the venue (District Offices) and referral services to enable members of the public to meet with volunteer lawyers by appointment without passing any means test.

#### **Discussions of the Panel**

7. The Panel was briefed on the findings of the Consultancy Study at its meeting on 29 May 2008. The issue of review of existing free legal advice service had been raised in the Panel's past discussions on provision of legal aid services. The major views/concerns raised by members during these discussions are summarized in the ensuing paragraphs.

#### Assistance to unrepresented litigants

8. Members noted from the Reports of the Consultancy Study that unrepresented litigants constituted a sizable proportion of all litigants and expressed concern about the pressure exerted by the growing number of unrepresented litigants on judicial time and resources. Members were of the view that the Administration should take the lead to explore how pro bono work could be steered to cater for the need of unrepresented litigants. The issue of assistance to unrepresented litigants was also raised during the discussion on the operation of the Judiciary's Resource Centre for Unrepresented Litigants (the Resource Centre) at the Panel meeting on 13 January 2009. Members noted that the Resource Centre could only provide unrepresented litigants with information on court rules and procedural matters, and considered it important to enhance assistance to unrepresented litigants by providing them with free legal advice service. The Administration was requested to consider members' suggestion of setting up a free legal advice scheme, similar to the Duty Lawyer Scheme, with volunteer lawyers giving free preliminary legal advice to unrepresented litigants at an office located near the Resource Centre. The office accommodation would be provided by the

Judiciary while the costs of operating such service, which involved mainly the hiring of a few administrative staff, would be borne by the Administration.

#### Extension of the scope of legal aid to cover legal advice

9. During its past discussions on the issue of provision of legal aid services, members expressed the view that consideration should be given to extending the scope of legal aid from litigation to legal advice. Dr Margaret NG considered the existing Free Legal Advice Scheme inadequate as it only provided preliminary legal advice but not detailed analysis of the merits of individual cases and their prospects of winning. She pointed out that the money spent by the Legal Aid Department in obtaining legal advice from lawyers in private practice to facilitate its assessment of the merits of legal aid applications might as well be used for providing legal advice to the applicants directly to help them better appreciate the strengths and weaknesses of their own cases. The Administration undertook to make its best efforts to revert to the Panel on its preliminary thinking on the proposal of extending the scope of legal aid to legal advice at the upcoming meeting on 22 June 2009.

#### Demand for and supply of legal and related services

10. Dr Margaret NG expressed concern about the existence of mismatches between the demand for and supply of legal and related services. She pointed out that the findings of the Reports revealed that there was a mismatch between the types of services barristers did for a living (i.e. criminal-defence cases) and the types of pro bono services provided (i.e. matrimonial and family matters), and between the types of services provided by lawyers (e.g. commercial and company cases) and the types of services demanded by household respondents (i.e. consumer-related matters). She suggested that the Administration might start working on the demand side by identifying major areas of problems and exploring how the demand could be met. For instance, how to resolve the mismatches mentioned, and whether free legal advice should be provided, apart from legal aid. In this regard, members noted from the Reports that a number of non-governmental organizations and legislative/district councillors had been providing legal and related services to the general public.

11. The Administration advised that it would discuss internally to map out the way forward. As consumer related matters were the major demand of household respondents, the question was open as to whether such a need should be met by the legal profession or the Consumer Council by expanding its legal advisory services. The Panel requested the Administration to consider how to make use of the information in the Reports and report its consideration to the Panel. The Law Society was also invited to put forth a proposal on the supply of legal and related services.

#### **Latest development**

12. The Administration is scheduled to revert to the Panel on its views on the Reports of the Consultancy Study at the upcoming meeting on 22 June 2009.

## **Relevant papers**

13. A list of the relevant papers which are available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix V**.

Council Business Division 2  
Legislative Council Secretariat  
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## **Appendix I**

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.

### **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.

## **Appendix III**

### **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.

### 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.

**Demand for and supply of legal and related services**

**Relevant documents**

<b><u>Meeting</u></b>	<b><u>Meeting Date</u></b>	<b><u>Paper</u></b>
Legislative Council	7 November 2001	<p>Official Record of Proceedings of the Council on the motion moved by Hon Audrey EU on "Upholding the rule of law" urging, inter alia, the Government to conduct a comprehensive review on the demand for and supply of legal and related services</p>
Panel on Administration of Justice and Legal Services	29 May 2008	<p>Paper provided by the Administration on "Demand for and supply of legal and related services"  <a href="#">[LC Paper No. CB(2)2039/07-08(01)]</a></p> <p>"Reports of the Consultancy Study on the Demand for and Supply of Legal and Related Services" commissioned by the Department of Justice  <a href="http://www.doj.gov.hk/eng/public/consultancy.htm">(http://www.doj.gov.hk/eng/public/consultancy.htm)</a></p> <p>Submission from the Law Society of Hong Kong on "Study on demand for and supply of legal and related services"  <a href="#">[LC Paper No. CB(2)2093/07-08(01)]</a>  <i>(English version only)</i></p> <p>Consultant's response to the Law Society's submission  <a href="#">[LC Paper No. CB(2)2124/07-08(01)]</a>  <i>(English version only)</i></p> <p>Submission from the Consumer Council on "Reports of the Consultancy Study on demand for and supply of legal and related services"  <a href="#">[LC Paper No. CB(2)2352/07-08(01)]</a>  <i>(English version only)</i></p> <p>Minutes of meeting  <a href="#">[LC Paper No. CB(2)2724/07-08]</a></p>
Legislative Council	17 December 2008	<p>Oral question raised by Dr Hon Margaret NG on "Free Legal Advice Scheme and Duty Lawyer Service"  <a href="#">[Hansard (Floor) page 14]</a></p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
Panel on Administration of Justice and Legal Services	13 January 2009	Minutes of meeting (paragraphs 10 to 20) <a href="#">[LC Paper No. CB(2)1063/08-09]</a>
	30 March 2009	Minutes of meeting (paragraphs 25 to 26) <a href="#">[LC Paper No. CB(2)1603/08-09]</a>

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