

Chapter 4

Combined Analysis Report

1. Introduction

- 1.1 In the Combined Analysis Report, attempts are made to compare the information obtained from the supply and demand surveys, with a view to assessing the balance of demand for and supply of legal and related services in Hong Kong. The study is however not designed in such a way 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. Nevertheless, by examining the survey findings together, the gaps in demand or supply, in broad terms, could be identified.
- 1.2 The following sections bring together the findings from the supply and demand surveys, and separately assess the likely gaps in meeting the potential needs of the general public and the SMEs. The study brief does not include making specific recommendations to address any apparent shortfalls identified.

2. Overview of the Demand and Supply Situation

Range of legal and related services offered

- 2.1 The legal profession, government and NGOs in Hong Kong together provide a full range of legal and related services to meet the needs of the community, business corporations, government and various public organisations. The majority of these legal services needs are served by solicitors operating from law firms of different sizes, and by barristers from their chambers.
- 2.2 The range of services provided cover practically all aspects of economic and social activities, although reflecting the characteristics of the community, and of the economy itself, the relative size of the different service areas fluctuates from time to time, which is reflected in the shifting in the deployment of professional resources across different service areas. This is demonstrated in the heavy reliance of the local practices on conveyancing in the boom days of the property market, and in the continued shift towards commercial, initial public offerings and mainland matters in more recent years, with the profession as a whole acquiring new skills along the way.
- 2.3 There is a difference between the service profiles of the large and small practices, the former tends to be full services operations covering the needs of regional and global businesses, government, large corporations and high net worth individuals, while the latter tends to serve a small clientele of SMEs and private individuals, and focusing on less sophisticated practice areas.
- 2.4 The Hong Kong legal services market is however not big, and in some practice areas, eg. shipping law, there is an insufficient critical mass to support specialisation and overseas expertise from London and elsewhere needs to be imported from time to time.

But for people and companies requiring specialist expertise in different areas, and also being able and willing to pay, there appears to be no major problem accessing the needed legal skills. There has also been a significant increase in the size of the profession since the 1990s.

- 2.5 Alternative dispute resolution is not new to Hong Kong, but its relative share of the market is still very small. Both arbitration and mediation are developing, the former often for business matters of high value especially those involving shipping, commercial and building and construction, and the latter mainly for family-related matters for which there was a government subsidised pilot scheme.
- 2.6 A number of government agencies and NGOs provide some legal and related services to the public, including legal aid, Duty Lawyer Service, and various free legal service schemes. Members of the Bar Association and the Law Society also offer free services from time to time as part of the free schemes operated by these professional bodies, or as part of other schemes provided by various NGOs. Being free services, there is a considerable constraint on the amount of services that can be offered by these organisations at different times and locations, against the considerable demand from the community for such services.

Level of service provided

- 2.7 The study is not designed to quantify the level of service supplied and demanded. But a broad indication would be possible with some international benchmarking for reference purposes. Based on a rough comparison across several common law jurisdictions of the level of legal services provided, as represented by the number of lawyers per 1,000 population (including solicitors and barristers) against their levels of economic activity as represented by GDP per capita based on purchasing power parity, the analysis shows that the number of lawyers per 1,000 population, and implicitly the use and supply of legal services, varies among countries with different national income levels. For the developed western countries, this indicator appears to stabilise at the 2-3 lawyers per 1,000 population level. Hong Kong, along with Singapore, has fewer lawyers and therefore uses less legal services per capita than many developed countries for the levels of economic activity achieved.
- 2.8 There are many possible interpretations for the apparent differences in this benchmark indicator. On the one hand, the smaller number of lawyers per capita in Hong Kong probably reflects the underlying disparity of income with most people being unable to afford legal services. On the other hand, the lower level of provision may also reflect the low values involved in most incidents which might not justify using lawyers. The real reasons behind the differences are however unclear. It has been suggested by some that as a Southeast Asian city, Hong Kong should be more appropriately compared with Singapore, and as such the current number of lawyers may not be on the low side.
- 2.9 No suitable indicator is available for legal related services given the limited involvement of local NGOs in providing these services due to resource and other constraints. In comparison, in the UK for example, the Citizens Advice Service helps people resolve their legal, money and other problems by providing free information and advice, using over 20,000 volunteers, helping people to resolve nearly 5.5 million

problems every year (90 problems per 1,000 population). The Hong Kong public and SMEs on the other hand have an estimated 1.5 million problems a year (210 problems per 1,000 population), which are considered important and about 37% of these have action taken. A direct comparison is however not possible given the possible differences in the nature of problems handled and the importance attached by different individuals.

- 2.10 Another indirect indicator of service level is available for pro bono services. About 37% of the solicitors in Hong Kong participated in pro bono services, compared with the 56% in England and Wales. On average the local solicitors as a whole spent about 40 hours on pro bono work a year, against just under 50 hours in Australia and just over 60 hours in England and Wales. It is unclear what the reason is for the lower rates in Hong Kong.

Quality of service delivered

- 2.11 The study did not include an assessment on the technical aspects of service quality, for which considerable legal expertise and sector experience would have been required for such an assessment to be done properly. Nevertheless, in the household and SME surveys, questions were asked indirectly to show the perceived level of service quality from the perspective of the customers. The indicators included for example satisfaction level and willingness to recommend service providers to other people in similar situations, and the perception on lawyers being able to help solve legal problems.
- 2.12 Overall the community and SMEs appeared satisfied with the services provided by the Government Free Legal Advice Scheme, Legal Aid and the solicitors, or found these services useful.
- 2.13 The surveys indicated that more than half of the respondents had confidence in the ability of lawyers to help people solve their legal problems. This view was shared by 58% of the respondents in the household survey, and 55% in the SME survey.
- 2.14 The survey findings are also supported by the Law Society's complaint statistics, which show a decline in the number of cases for professional misconduct and professional negligence in the past few years.

Cost of legal services

- 2.15 The cost of legal services in Hong Kong has always been considered a major obstacle to people seeking help to solve their justiciable problems. This perception is broadly supported by the survey results. The majority of household and SME respondents agreed that most people could not afford legal services even if they did not go to court (74% and 67% respectively), while even more felt that most people could not afford to go to court without legal aid (78% and 69% respectively). Further, more respondents felt lawyers' charges were unreasonable for the work they do, than those who considered otherwise (36% vs 32% for household respondents and 45% vs 23% for SMEs).

- 2.16 During the preliminary interviews, it was suggested by some interviewees that one of the reasons for the higher cost of legal services in Hong Kong was the inefficiencies in the existing system, where cases could extend over a long time incurring unnecessary resources and expenses for the parties involved. This problem is being addressed by the Judiciary as part of its major initiative on civil justice reform.
- 2.17 There were also suggestions from other interviewees that a higher degree of market competition with a larger supply of quality legal practitioners and a more open profession, with freer entry of foreign practitioners and more transparency in fee levels, could help to bring cost levels down to a more affordable level.

Access and channels to services

Service knowledge and access

- 2.18 Despite the promotional work already done by government, the professional bodies and the practitioners, the level of knowledge in the community is low when it comes to the handling of difficult problems, the support services available and the cost involved. About 44% of the individual respondents and 56% of the SMEs considered there were not enough channels of free legal advice when they seek such services.
- 2.19 As regards solicitor services, most of the clients come in through personal referrals from friends and other lawyers, with a smaller proportion being walk-ins. Other channels of acquiring clients like pro bono work, advertisements, seminars, promotional leaflets are less commonly used. Many solicitors also do not consider service promotion part of their work. Partly because of professional ethics reasons, the profession is generally rather passive in making known their services and charges to the community. Barristers are not allowed to promote their services and primarily work with clients via solicitors.
- 2.20 Given the increased competition for business at the lower end, some legal practices have started to adopt more modern marketing techniques in the promotion of their services in recent years, e.g. the use of advertising in the media, and have made an impact in some practice areas by appealing directly to targeted market segments, e.g. divorce, bankruptcy, personal injury cases, sometimes with competitive all-in fee packages. Other small and medium legal practices have also started retainer arrangement for SMEs, making their services available at an economical price.
- 2.21 For the legal related services, these are often provided by the government and NGOs and are accessible to their intended clientele through government promotions, and via the main services provided by specific NGOs and other supporting organisations. The problem with these services is however less a problem of promotion or publicity than a limitation of service supply due to resource constraints.

Location of Services

- 2.22 The great majority of solicitor firms are located in Central or Admiralty, with a small proportion operating from Kowloon and regional urban centres in the New Territories. Bar chambers are traditionally based in Central and Admiralty probably because of the proximity to the higher courts and the solicitor firms.
- 2.23 For free legal services and other legal related services, the providers are widely distributed geographically. Some of these services are provided from government premises, housing estates, and other locations operated by various NGOs, often as an extension of their main operations. For these services, for which the intended customers are mostly low to middle income or not-so-well educated individuals spread throughout the territory, but with a high proportion in the New Territories, any geographical mismatch due to limitation of service delivery points might impose an access problem given the transportation time and cost involved.

The balance of supply and demand

- 2.24 By the standards of developed countries, the supply of legal services as represented by the number of lawyers in Hong Kong is lower than the level that would be expected for an economy of Hong Kong's standing and the size of its population. Various local factors probably explain part of the discrepancy, but the difference appears significant.
- 2.25 In the 12 months before the survey, there were an estimated 1.5 million difficult-to-solve problems encountered by individuals and SMEs, which were considered important. Of these, only 37% or 0.6 million had action taken. The prevalence of difficult-to-solve problems, against the backdrop of a apparent lower number of legal practitioners and higher than affordable fee levels, probably points to an under-supply in the legal services sector.
- 2.26 However, some of the mismatch could be more apparent than real. A possibility is that most of the difficult-to-solve problems, even though considered important by the individuals or SMEs involved, are not really the types of problems that would warrant the services of the legal practitioners. For example, the survey findings indicated that most of the important problems involving money only involved a relatively small amount, well within the range covered by the Small Claims Tribunal and therefore unlikely to be sought after as potential business by the lawyers.
- 2.27 On the other hand, the individuals or SMEs themselves might not even want to take legal action on their cases given the time that might be involved, the generally conciliatory local culture, and the uncertainty of the outcome of legal action which might backfire on the parties involved. In this respect, it is interesting to note that in 36% of the incidents of SMEs with action taken, the impact of the action on the SMEs involved was loss of money. In 35%, the impact was that they had to spend a lot of time, and in 23% they felt very upset by the action taken. These percentages compare with the 9% with money loss for incidents experienced by individuals, 30% with a lot of time spent, and 18% feeling upset. There seems to be a mismatch between the potential benefits of taking action and the costs of taking action in terms of time and money.

- 2.28 Given the profile of the difficult-to-solve problems in Hong Kong, and the unwillingness of the community in general to go for legal action, for cost and other reasons, there seems to be a large potential for mediation and other alternative forms of dispute resolution. These services are however not yet fully developed and are not well known to would be users except for employment and family-related incidents. Arbitration is more developed but it can be as costly as formal legal action and is unlikely to be a solution for individuals or SMEs.
- 2.29 It is noted that overall the Hong Kong community and the SMEs do not know what to do when faced with legal problems; have difficulty finding information on specialisation and experience of lawyers; and do not know how much cost might be involved in taking legal action. And despite the available services provided by the government, the professional bodies and the NGOs, more people felt there are insufficient channels for free legal advice than those who felt otherwise.

3. Members of the Public

- 3.1 The study shows that a sizable proportion (40%) of members of the public had experienced difficult-to-solve problems that occurred in Hong Kong or had a significant connection with Hong Kong in the past 12 months. However, for more than half (63%) of the incidents considered important, no action was taken by the respondents concerned. Furthermore, for only about 1% of the incidents with action taken, the respondents concerned had applied for legal aid from the Legal Aid Department. And for only about 3% of incidents with action taken, assistance from solicitors was obtained. The percentage of incidents for which alternative dispute resolution mechanism was used was even lower.
- 3.2 Against the considerable number of important incidents encountered, there is an apparent gap between the supply of legal or related services, and the demand or potential demand for these services. The following are possible factors that may affect the ability or willingness of members of the public in utilising these services, and access to justice in general.

Knowledge

- 3.3 The study shows that the majority of respondents were of the view that “most people do not know what to do when faced with legal problems” (accounting for 79% of the respondents enumerated). Even for those who had sought the assistance of solicitors in tackling their problems, the percentage which shared this view was quite high, at 71%.
- 3.4 Furthermore, more than half (71%) of the respondents considered that it was difficult for most people to find out information on the specialisation and experience of lawyers. This was shared by 81% of those with action taken on their incidents, and 70% of those who had used the services of solicitors. For incidents with assistance from solicitors, the main channels for finding the solicitors were referrals by friends or relatives (accounting for 66% of incidents concerned), and personal friends (12%). The others included referrals by social workers or voluntary agencies, contacts through free legal advice service provided by voluntary agencies, and advertisement.

- 3.5 One of the channels of information dissemination is via the lawyers' service promotion efforts. Nevertheless, only about 42% of solicitors had taken measures to promote the services of their firms, mainly through seminars or social functions.
- 3.6 It is also worth noting that the reasons for members of the public not taking action on problems considered important were that they did not know what action to take (account for 24% of such problems), did not know how to take action (23%) or did not believe anything could be done (18%).
- 3.7 In short, there is a significant knowledge gap among members of the public on how to deal with difficult problems and how to find suitable lawyers. They also had problems seeking free legal advice.
- 3.8 On the other hand, there are a number of channels for members of the public to obtain assistance or advice on how to tackle their problems. The legal profession provides a number of legal services to people in need of such services, partly on a pro bono basis. These include for instance the Legal Advice Scheme which provides preliminary legal advice, and the Tel-Law Scheme which is a telephone recorded information service.
- 3.9 About 29 NGOs were providing community legal education, mainly in the form of seminars and talks. In addition 41 organisations were providing other related legal services including assistance in applying for legal aid, and referral services. Although there are many such organisations, they are only meeting a small proportion of the potential demand from members of the public. During discussions with voluntary agencies that offered free legal advice, it transpired that these agencies lacked adequate and regular funding to extend their free legal advice service, by offering advice on problems other than family issues and making their services more readily accessible in terms of geographical coverage.

Confidence

- 3.10 The majority of members of the public had a lot of confidence in the judiciary. For instance, most respondents were of the view that "if I go to court, I will get a fair hearing" (accounting for 71% of respondents). Nevertheless, it is a cause for concern that for those who had sought assistance of solicitors, a lower proportion (61%) believed that "if I go to court, I will get a fair hearing". More than one third (36%) of them did not believe so.
- 3.11 Furthermore, while 69% of members of the public believed that "courts are an important way for ordinary people to enforce their rights", a lower proportion (58%) of those who had sought assistance from solicitors shared such a view. In this respect the survey findings also indicate that for 66% of the incidents with assistance from solicitors, the respondents concerned were very satisfied or satisfied with the services provided by their solicitors, and for only about 16%, the respondents were not very satisfied or not satisfied.
- 3.12 On the other hand, it is noted that the majority had confidence in the independence of judges and the level of confidence was more or less the same for respondents who had and who had not sought assistance from solicitors.

- 3.13 However, people’s confidence in the ability of lawyers was lower with about 57% of respondents considered that “most people have confidence in the ability of lawyers to help people solve their legal problems”.

Free Legal Advice Scheme

- 3.14 From the survey findings, it is estimated that for about 2% of the incidents with action taken, assistance was obtained through the Free Legal Advice Scheme of the government. These incidents were mainly related to employment problems (accounting for 34% of incidents concerned), family problems (19%), problems related to damage and disturbances caused by others (13%), consumer-related (6%) and problems related to injuries or health problems in the workplace (6%).
- 3.15 The survey findings also reveal that for the majority of problems related to services provided by professionals (with 80% of such problems for which no action was taken), government departments and government officials (80%), and injuries or health problems outside the workplace (77%) that were considered important, action was not taken by the respondents concerned. During a discussion with members of a patients association, it was pointed out that they had great difficulties in obtaining legal services, including free legal advice, on cases involving possible negligence by professionals.
- 3.16 It is also worth noting that for the remaining 98% of incidents with no assistance from the Free Legal Advice Scheme, the reasons for not seeking assistance or advice through the Scheme were that the respondents “did not think it could help” (accounting for 32% of incidents concerned) and they were “not aware of such a service” (19%). Also, only for about half (53%) of the incidents with assistance obtained through the Scheme, the respondents considered that the assistance was helpful or very helpful. For about 31%, the respondents concerned considered the assistance not very helpful or not helpful at all.
- 3.17 Based on feedback from barristers, slightly more than half (52%) of them had provided pro bono services to members of the public. For solicitors, about 37% of them had provided pro bono services to members of the public. The activities undertaken were mainly the Free Legal Advice Scheme, community legal education, free legal advice services offered by NGOs and other organisations like the District Council, or acting as legal advisors to NGOs. Although the proportion of barristers and solicitors providing pro bono services to the public is not small, in absolute terms, the number involved is very small compared to the members of the public who did not know how to deal with difficult-to-solve problems.
- 3.18 A number of the Legislative and District Councillors also provide some legal or related services to the public as part of their services to their constituencies. Based on the feedback from them, about 62 % of Legislative Councillors and 58% of District Councillors were providing legal related services to members of the public like referrals to lawyers and assistance in applying for legal aid. About 32% of Legislative Councillors and 18% of District Councillors were also involved in providing community legal education. The more common types of legal services provided were debts and bankruptcy, wills and probate, matrimonial and family, employment,

landlord and tenant, land and property, and building management.

- 3.19 Furthermore, several government departments and quasi-public organisations are involved in providing legal advice and related services to the public. For example, the Home Affairs Department provides referral services to the Free Legal Advice Service and free advice on building management matters. The Labour Department helps to resolve disputes between employees and their employer, and the Rating and Valuation Department provides free advice on tenancy matters. On the other hand, the Department of Justice has initiated the development of a web based Community Legal Information Centre to provide information on a wide range of legal and related topics. Other agencies involved in delivering some form of legal and related services to the public include the Equal Opportunities Commission, the Privacy Commissioner's Office, and the Office of the Ombudsman.
- 3.20 Despite the variety of free legal services offered by different parties mentioned above, the fact that many members of the public did not take any action on their difficult-to-solve problems because they did not know how to do so is a concern.
- 3.21 The survey findings also show that about 45% of respondents did not consider that there were enough channels available for most people to seek free legal advice. When members of the public were in need of legal advice, they found that the channels for getting free legal advice were not adequate at all.

Legal aid

- 3.22 The study shows that for only about 1% of incidents with action taken, the respondents concerned had applied for legal aid from the Legal Aid Department. For these incidents, they were mainly related to family problems (accounting for 50% of such incidents), employment problems (13%), and injuries or health problems suffered by employees in the work place (12%). Incidents in which the respondents would more likely not take any action, such as problems related to services provided by professionals (5%) and problems related to injuries or health problems outside the workplace (4%), accounted for only a small proportion of cases in which the respondents had applied for legal aid.
- 3.23 In about 15% of incidents in which the respondents concerned had not applied for legal aid, the reason was that they were not aware of such a service.

Legal services of solicitors

- 3.24 The study shows that a sizable proportion (40%) of members of the public had experienced difficult-to-solve problems or disputes that occurred in Hong Kong or had a significant connection with Hong Kong in the past 12 months. The majority (85%) of such problems were considered important. Among these problems, about 30% were consumer-related, 27% were related to damage and disturbances caused by others and 12% were related to employment.
- 3.25 Based on the information provided by solicitors, on the other hand, on average about 86% of their time were spent on civil cases. For these cases, solicitors devoted more time on cases related to land and property (accounting for 11% of solicitors' time),

matrimonial and family (7%), landlord and tenant (6%), personal injuries (5%) and wills and probate (5%). They devoted on average less time to cases on human rights (1%), discrimination (less than 1%), defamation (1%), consumer services (1%), notarial services (1%), building management (2%), professional negligence (2%), immigration (2%) and employment (3%). The low proportion of solicitors' time devoted to personal injuries and employment related problems reflects the lower proportion of incidents in which assistance was sought from solicitors that were related to these practice areas.

- 3.26 Based on the above analysis, there is seemingly a mismatch in the types of services offered by solicitors and the types of problems faced by members of the public. The more common problems faced by members of the public, including consumer-related problems, damage caused by others and employment related problems, accounted for only a very small proportion of the solicitors' caseload. This is not surprising given many of the problems are relatively small, but there may be room for service expansion if the public has better knowledge of how lawyers can help.
- 3.27 For the majority (63%) of problems that were considered important, action was not taken by the respondents concerned. In particular, for a much higher proportion of problems related to services provided by professionals (accounting for 80% of such problems), government departments and government officials (80%), injuries or health problems outside the workplace (77%), action was not taken by respondents concerned. These were also the types of incidents that took up a very small proportion of the solicitors' work.
- 3.28 For the great majority (97%) of incidents with action taken, assistance was not sought from solicitors. The reasons were that the respondents concerned did not want to pursue legal action (accounting for 30% of incidents concerned); did not think it was related to legal issues (26%); did not think solicitors could help (12%); "no need" (7%) or could not afford legal fee (6%). On the other hand, based on information supplied by solicitors, about 86% of their time was spent on cases for non-government clients, of which 31% was for private individuals. In other words, about 27% of solicitors' time was spent on cases for members of the public, which translates to only 3% of incidents considered important and with action taken by members of the public.

Legal services of barristers

- 3.29 For less than 1% of the incidents with action taken, the respondents concerned were represented by barristers in court proceedings. For incidents with no such assistance, the reasons were mainly that the respondents concerned could not afford the fees (accounting for 34% of incidents concerned) or were already represented by a solicitor (23%). For about 6% of cases with no assistance from barristers, the respondents wanted to represent themselves in court, and for a further 1%, the respondents did not think barristers could help.
- 3.30 On the other hand, based on information provided by barristers, about 58% of their time was spent on civil cases, of which 40% was spent on cases for private individuals.
- 3.31 In recent years, there has been a substantial increase in the number of unrepresented litigants in the courts of Hong Kong. While a worldwide phenomenon, in Hong Kong,

the apparent reasons for the increase in unrepresented litigants mainly include an inability to afford high legal fees, a lack of confidence in the services provided by legal professionals, and a perception that these litigants may be given a more sympathetic hearing. This development is a cause for concern as these litigants may have difficulty in standing up for their best interest in the court proceedings, and as the judges move to address the issue by providing more guidance, they have created a problem for the efficient operation of the courts. An analysis on the unrepresented litigants and their general profiles is shown in Appendix R to the Combined Analysis Report (see full version of the Reports of the Consultancy Study).

Services of consultants or claims agents

- 3.32 In only about 0.6% of incidents with action taken, the respondents concerned had used the services of consultants or claims agents. Based on the small number of such incidents, about 41% were related to injuries or health problems in the workplace. Another 21% were other money matters and a further 20% were employment related.

Mediation services

- 3.33 In only about 0.9% of the incidents with action taken, the respondents concerned had used mediation services. Based on the small number of such incidents, about 42% of these were concerned with labour disputes or problems. Other main categories of incidents included those related to family problems, landlord problems, consumer-related matters and injuries or health problems in the workplace. For respondents that did not use mediation, the main reasons were they were “not aware of such a service” (accounting for 50% of incidents concerned); they “did not think mediation can help” (29%); or they had “no need” (20%).
- 3.34 Based on information provided by NGOs, there were 16 NGOs providing free mediation services, 3 of which also provided mediation services at a fee. The types of mediation services provided were mainly in respect of employment related matters (provided by 9 NGOs), matrimonial and family members (4) and debt and bankruptcy (4).

Arbitration services

- 3.35 In only about 0.4% of incidents with action taken, the respondents concerned indicated that they had used arbitration services. Most (65%) of these incidents were related to employment disputes or problems, with the others related to family problems, landlord problems and problems related to owners of residential properties. For respondents that did not use arbitration services, the main reasons were they were “not aware of such a service” (accounting for 49% of incidents concerned); they “did not want to pursue arbitration” (28%); or they had “no need” (19%).
- 3.36 At present, the Hong Kong International Arbitration Centre offers members of the public alternative means of dispute resolution other than litigation, but the focus of arbitration tends to be on high value cases, usually among parties capable of using legal services.

Outcome of action taken to tackle problems

- 3.37 For about 61% of incidents with action taken, all or most issues were resolved and the problems were no longer there. In another 26% the issues or problems being tackled had not yet been resolved and they were still recurring. In other words, a sizable proportion of incidents had not yet been resolved.
- 3.38 Moreover, for about 28% of incidents with action taken, the objectives of taking action to solve the problems were not achieved at all, and for another 10%, the objectives were only achieved to a small extent.

Availability of legal services by district

- 3.39 The survey findings show that the great majority (82%) of respondents who had encountered justiciable problems were living in Kowloon and the New Territories, with 28% of them living in Kowloon, 18% in Tsuen Wan and Kwai Tsing, 16% in Shatin and Sai Kung, 9% in Yuen Long and Tuen Mun and 9% in Tai Po, New Territories North and the Islands District. Those living on Hong Kong Island accounted for only 18%. The location of suppliers of legal services, on the other hand, was mainly on the Hong Kong Island. For instance, 77% of barrister's chambers were located in Central, with another 20% in Admiralty. For solicitor firms, 64% were located in Central, 9% in Admiralty, 14% elsewhere on Hong Kong Island. Only 14% were in Kowloon and the New Territories. Given the geographical clustering of the legal practices, there is an apparent mismatch in the delivery of legal services. However, with the efficient transportation network in Hong Kong and the small geographical area, this is probably not a major issue.
- 3.40 The legal related services are spread throughout the territory and are delivered through government offices and other facilities operated by NGOs. These are more widely dispersed and are theoretically more accessible to the population, but this is constrained by the scale of operations and delivery capacity.
- 3.41 Given the geographical constraints, it is not surprising to find that as high as 60% of respondents living in Yuen Long and Tuen Mun did not take any action on their problems. The percentage was also higher for those living in Tai Po, New Territories North and the Islands District (59%), Tsuen Wan and Kwai Tsing (57%) than those living on Hong Kong Island (46%).
- 3.42 The disparity in the willingness to take action on important problems as observed among the districts is more likely to be associated with the underlying income levels of the households in the different districts, and the education levels of their members. For respondents who were employed, the percentage who did not take any action on their problems was higher for those with lower earnings. For example, the percentage was 60% for those with monthly earnings of \$5,000 or below, and only 48% for those with monthly earnings of more than \$40,000. Apparently, ability to pay is a factor, but the causal relationship is not obvious as the analysis is also complicated by the eligibility for legal aid and other schemes.
- 3.43 The disparity may also be related to educational attainment. The percentage of respondents who did not take any action on their problems was higher for those with

lower level of education. For example, the percentage was 67% for those with no formal education and only 49% for those with university education or above.

Affordability and legal fees

- 3.44 The study showed that members of the public in general had little knowledge about the legal fees, with the majority (77%) of respondents agreeing that most people did not know how much it would cost to use legal services to tackle a problem. Even for those who had sought assistance from solicitors, the majority (74%) shared the same view.
- 3.45 Only about 32% of respondents agreed that lawyers' fees were reasonable for the work they did, while another 36% disagreed. In particular, a much higher proportion (51%) who had sought assistance from solicitors disagreed that lawyers' charges were reasonable.
- 3.46 Furthermore, the majority of respondents were of the view that most people could not afford paying for legal services even if they did not go to court (74%).
- 3.47 In addition, the majority of respondents also considered that most people could not afford to go to court if they were not eligible for legal aid (78%). In particular, the percentage was slightly higher for those who had encountered justiciable problems, including those who had sought assistance from solicitors. This indicates that in general respondents considered that in terms of legal fees the affordability of most people in Hong Kong was quite low. Nevertheless for those who were eligible for legal aid, affordability might not be an issue for justiciable problems covered by legal aid.
- 3.48 The amount of money involved in connection with justiciable problems encountered by members of the public was in general not huge. For incidents involving money, the great majority (81%) involved \$10,000 or less, and 13% involved \$10,001-\$50,000, i.e. within the jurisdiction of the Small Claims Tribunal where legal representation is not allowed. Incidents involving more than \$50,000, and therefore outside the Small Claims Tribunal limit, accounted for just over 2% of all incidents. The median amount of money involved was \$5,000.
- 3.49 Moreover, for incidents with assistance from solicitors, the respondents were charged on average \$9,295. The average charge was higher, at \$10,000, if barristers were also used, and was lower if no barristers were involved, at \$9,263. In about 38% of incidents, the amount charged by solicitors was below \$5,000. For another 11%, the amount was \$5,001-\$10,000, and for 9%, above \$10,000. Compared with the average hourly rate of \$3,300 charged by barristers for civil cases of private individuals and the corresponding average hourly rate of \$2,500-\$2,700 charged by solicitors, the amount of legal charges paid by the respondents were probably on the lower end of the range charged. Given these findings, it is possible that the major problem may be the lack of awareness of possible solutions at a rate more reasonable than the generally perceived high levels.

4. Small and Medium Enterprises

- 4.1 The study shows that a sizable proportion (30%) of SMEs had experienced difficult-to-solve problems or disputes that occurred in Hong Kong or had a significant connection with Hong Kong in the past 12 months. Among the 33% of incidents that were considered important, action was taken in 69% of these incidents. For about 20% of the incidents with action taken, the SMEs concerned had sought assistance from solicitors. The percentage of incidents for which alternative dispute resolution mechanism was sought was even lower, accounting for only about 0.9% of the incidents with action taken.
- 4.2 Having regard to the low percentage of incidents in which these services were used, the following are possible factors that may affect the willingness and possibly the ability of SMEs in utilising these services.

Knowledge

- 4.3 The study shows that more than half of the SMEs were of the view that most SMEs did not know what to do when faced with legal problems (accounting for 65% of SMEs enumerated). The percentage of SMEs that shared this view was higher for those with an employment size of below 10, at 67%.
- 4.4 For SMEs with regular legal support such as in-house lawyers or retainer arrangement, a lower proportion of them considered that most SMEs did not know what to do when faced with legal problems, although the percentage was still not low (around 41% to 54%). The percentage was much higher for those SMEs with no regular legal support, at 69%.
- 4.5 More than half of the SMEs were also of the view that “it was difficult for most small and medium enterprises to find out information on the specialisation and experience of lawyers” (68%), indicating that SMEs in general had little knowledge about how to deal with justiciable problems and how to find suitable lawyers to help them. Again, the percentage was higher for smaller SMEs.
- 4.6 For SMEs with in-house lawyers or retainer arrangement, the percentage that considered that “it was difficult for most small and medium enterprises to find out information on the specialisation and experience of lawyers” was quite high, at 59% to 68%. The percentage was also higher for those with no regular legal support, at 70%. This indicates that there is room for improvement to provide SMEs with greater and easier access to information on specialisation and experience of lawyers, so that they could be in a better position to find lawyers that best meet their specific needs for legal services.
- 4.7 Only a small proportion considered that there were enough channels for most SMEs to seek free legal advice (24%), indicating that these companies had problems seeking free legal advice. In particular, the percentage holding such a view was more or less the same for smaller or larger SMEs, indicating that this view is quite prevalent among SMEs of different sizes.

Confidence

- 4.8 The majority of SMEs had a high level of confidence in the judiciary. For instance, more than half of the SMEs were of the view that if they went to court, they would get a fair hearing (accounting for 69% of SMEs enumerated). The percentage was higher for those that had used the services of solicitors, at 74%, and was lower for those with action taken but had not sought the assistance of solicitors (65%).
- 4.9 Furthermore, more than half of the SMEs considered that “courts were an important way for small and medium enterprises to enforce their rights” (67%). The survey findings also indicate that for 73% of the incidents with assistance from solicitors, the SMEs concerned were very satisfied or satisfied with the services provided by their solicitors. For about 11%, the SMEs concerned were not very satisfied or not satisfied. The reasons for being not satisfied were that the legal fee was unreasonable or the solicitors were not helpful.
- 4.10 On the other hand, it is noted that SMEs’ confidence in the independence of judges was higher for those that had used the services of solicitors, at 86%, as compared to those having incidents with action taken that had not sought assistance from solicitors (75%) and to all SMEs (74%).
- 4.11 However, SMEs’ confidence in the ability of lawyers was lower with about 55% considered that “most small and medium enterprises had confidence in the ability of lawyers to help people solve their legal problems”. The percentage was even lower for SMEs that had used the services of solicitors (49%).

Legal services of solicitors

- 4.12 The study shows that 30% of the SMEs had experienced difficult-to-solve problems or disputes in the past 12 months. About 33% of these were considered important and among these, about 35% were related to other money matters and 30% were business related. Labour disputes or related problems accounted for another 11%.
- 4.13 Based on information provided by the solicitors, on average about 86% of their time was spent on civil cases and the remaining 14% on criminal cases. For civil cases, solicitors devoted more time on cases related to, as far as SMEs are concerned, commercial and company (accounting for 18% of solicitors’ time), land and property (11%) and PRC related (6%). They devoted on average less time to cases related to employment or related matters (3%).
- 4.14 It is also worth noting that for about 31% of the problems that were considered important, action was not taken by the SMEs concerned. In particular, for a much higher proportion of problems related to injuries and health problems suffered by employees (61%), action was not taken. This was also the type of incidents that took up a very small proportion of solicitors’ caseload. About 29% of the SMEs with employment size below 10 did not take any action on incidents that were considered important. The percentage was lower for SMEs with employment size of 10 or above.
- 4.15 For only about 20% of the incidents with action taken by SMEs, assistance from solicitors was obtained. When analysed by categories, the percentage was higher for

incidents related to intellectual property (accounting for 85% of such incidents) and renting out of company properties. A much lower proportion of incidents with assistance sought from solicitors were problems related to labour or related disputes (11%), injuries or health problems suffered by employees (11%) and business-related matters (13%).

- 4.16 For the majority (80%) of incidents with action taken, assistance was not sought from solicitors. The reasons were that the respondents concerned did not think solicitors could help (accounting for 30% of incidents concerned); they could not afford legal fee (22%); there was no need (18%); or they did not want to pursue legal action (14%).
- 4.17 Based on information supplied by solicitors, about 86% of their time was spent on cases for non-government clients, of which 30% was for SMEs. In other words, about 26% of solicitors' time was spent on cases for SMEs, which translates into only 20% of incidents with action taken by SMEs.
- 4.18 It may also be worth noting that for incidents with assistance from solicitors, the main channels for finding the solicitors were "referrals by friends" (accounting for 53% of incidents concerned), "personal friends" (13%) and "advertisement of solicitors" (13%). On the other hand, about 42% of solicitors had taken measures to promote the services of their firms, mainly through seminars and social functions. Many SMEs considered they did not have sufficient information to help them find suitable solicitors, notwithstanding the information available from the publications of the Law Society and others.

Legal services of barristers

- 4.19 In less than 1% of the incidents with action taken, the respondents concerned were represented by barristers in court proceedings. For the small number of incidents that were taken to the District Court or High Court, about 16% involved representation by barristers. For incidents with no such assistance, the reasons were mainly that the SMEs concerned did not think barristers could help (accounting for 35% of incidents concerned) and that they could not afford the legal fees (24%).
- 4.20 Based on information provided by barristers, about 58% of their time was spent on civil cases, of which 33% was spent on cases for SMEs.

Services of consultants or claims agents

- 4.21 In only about 1.2% of incidents with action taken, the respondents concerned had used the services of consultants or claims agents. Based on the small number of such incidents, the bulk of them (94%) were related to other money matters and the others were business-related matters. Clearly, consultants or claims agents are only meeting a negligible portion of the demand for services from SMEs.

Mediation services

- 4.22 In only about 1.2% of the incidents considered important, the SMEs concerned had used mediation services. Based on the small number of such incidents, most (79%) of these were incidents concerning labour disputes or related problems, while a further

16% were related to employee injuries or health problems. For SMEs that did not use mediation, the main reasons were they were not aware of this type of services (accounting for 51% of incidents concerned); they did not think mediation could help (24%); or they had no need (21%).

Arbitration services

- 4.23 No SMEs indicated that they had used arbitration services. The main reasons for not using arbitration services were not being aware of such services (accounting for 41% of incidents concerned), no need (20%) and not wanting to pursue arbitration (10%). Not being able to afford the fees accounted for only 8%.

Outcome of action taken to tackle problems

- 4.24 For the majority of incidents, no further action was being taken, but a sizable proportion of the incidents had not yet been resolved. For about 44% of incidents, agreement had been reached with the other parties and thus no action was being taken. For another 20% of incidents, decision had already been reached in court or tribunal, or through other resolution mechanism, with all issues resolved. For only about 5% of incidents, the issues were either being tackled in court or tribunal, or other legal means. For about 21% of incidents, although agreement had not yet been reached with the other parties, no action was being taken.
- 4.25 Moreover, for more than half (60%) of the incidents, the objectives of taking action were fully or largely achieved. On the other hand, for about 26%, the companies concerned indicated that their objectives were not achieved at all.

Affordability and legal fees

- 4.26 The study shows that most SMEs had little knowledge about legal costs, with the majority (74%) agreeing that most people did not know how much it would cost to use legal services to tackle a problem.
- 4.27 Furthermore, only about 23% of SMEs agreed that lawyers' charges were reasonable for the work they did, while another 44% disagreed. The percentage that disagreed was somewhat higher for SMEs that had used the services of solicitors (at 55%). For those that had not taken action at all, the corresponding percentage was 49%.
- 4.28 More than half of the SMEs were of the view that most SMEs could not afford paying for legal services even if they did not go to court (67%). The percentage was also higher for those that had used the services of solicitors (73%). More than half of the SMEs considered that SMEs could not afford to go to court (69%). The percentage was also higher for those that had used the services of solicitors (74%). This finding indicates that in general the perceived affordability of legal services was quite low.
- 4.29 It may be worth noting that the amount of money involved in connection with justiciable problems encountered by SMEs was in general not large. For incidents involving money, slightly more than one third (35%) involved \$10,000 or less, 27% involved \$10,001-\$50,000, i.e. within the jurisdiction of the Small Claims Tribunal where legal representation is not allowed, and a further 12% involved

\$50,001-\$100,000, i.e. beyond the Small Claims Tribunal limit. Incidents involving more than \$100,000 accounted for 17%. The median amount of money involved was \$25,000

- 4.30 For incidents with assistance from solicitors, the SMEs concerned were charged on average \$11,650. The average charge was higher, at \$60,340, if the services of barristers were also used, and was lower if no barristers were involved, at \$11,300. In about 13% of the incidents, the services were provided free of charge. For another 45%, the amount charged by solicitors was \$10,000 or below, and for 7%, between \$10,001-30,000. More than \$30,000 was charged for about 8% of the incidents.
- 4.31 Compared with the average hourly rate of \$3,430 charged by barristers and the average hourly rate of \$2,830 - \$2,930 by solicitors for civil cases of business corporations, the amount of charges paid by the SMEs were on the lower end of the range charged, reflecting the relatively low affordability for legal services. Given these findings, it appears the major problem may be the lack of awareness of solutions at a reasonable rate, rather than the generally perceived high legal fees.

5. Conclusion

- 5.1 The Combined Analysis Report brings together the main findings of the supply survey and the demand surveys, in a broad assessment of the balance of the demand and supply in the provision of legal and related services in Hong Kong, focusing on individuals and SMEs. The main conclusions are summarised as follows:
- There is a considerable amount of difficult-to-solve problems 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, e.g. 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, e.g. free legal advice, pro bono services, mediation etc.
 - 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.
 - 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.

- 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.
- The users are generally satisfied with the services provided by the legal practitioners, indicating good service quality, and more than half have confidence in the lawyers' ability to help solve legal problems.
- Knowledge about legal services is generally lacking in the community despite the current promotional efforts of the government, professional bodies and practitioners. 79% of the household and 65% of the 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 the lawyers' specialisations, their experience and fee levels. Nearly half of the respondents felt that there were not enough channels to seek free legal services.
- 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.
- A wide range of legal related services are 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 their limited resources and inadequate professional support.