

## Chapter 2

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

#### 1. Introduction

- 1.1 The demand side study was conducted through two large scale questionnaire surveys, one covering SMEs<sup>1</sup>, and the other individual households. The data collection for the SME survey was carried out during the period from February to September 2006. In all 3,347 SMEs were sampled across the main industry sectors and 1,813 of them were successfully interviewed, achieving a response rate of around 60%. 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%.
- 1.2 The report is essentially based on the views and information provided by respondents in the surveys. A number of preliminary in-depth interviews and focus group discussions were conducted to assist the drafting of the questionnaires before the commencement of the survey. Since only a small number of people were involved, these views were not necessarily representative and were therefore not separately reported.

#### 2. Survey Methodology

- 2.1 The survey was conducted on a representative sample of SMEs in Hong Kong through the use of a structured questionnaire. Information solicited in the survey was as follows:
  - Types and frequency of justiciable problems encountered by SMEs;
  - 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;
  - 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
  - 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.
- 2.2 Data collection was carried out during the period from February to September 2006. A multi-wave, multi-mode data collection was adopted, with every effort made to minimise inconvenience to the respondents:

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<sup>1</sup> 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.

- a) The respondents were first contacted by mail, explaining the purpose of the survey and assuring them that the information supplied would be kept strictly confidential. A simplified, self-administered version of the questionnaire was also enclosed to give the respondents an idea of the types of information required. It also served as a screening questionnaire;
- b) For those respondents who returned the completed questionnaires by post or fax, they were contacted by telephone and/ or face-to-face interviews to obtain further elaboration or clarifications on the answers they had given (e.g. to clarify missing items and inconsistent responses);
- c) For those who did not return the completed questionnaires within a specified period of time, they were contacted by telephone. As the majority of respondents did not return the completed questionnaires on time, telephone follow-ups and visits were necessary to remind the respondents to return the completed questionnaires. In most cases, face-to-face interviews were required as the questionnaire was fairly long and complicated; and
- d) If the respondent could not be contacted by telephone, a visit was made to conduct a face-to-face interview. Repeated visits were often required in order to increase the response rate of the survey.

2.3 The following considerations were taken into account in the questionnaire design:

- a) The main focus of the survey was to obtain factual information. Opinion-type questions were limited to essential areas like opinions on the quality of legal services obtained;
- b) Efforts were made to keep the questionnaire as short as possible in order to obtain a high response rate in the survey, even though the questionnaire was quite long as a lot of information was required to be collected;
- c) Many respondents were reluctant to answer sensitive questions (e.g. amount of money involved). Attempt was made in the survey to obtain such information in broad terms (e.g. by asking respondents to give the approximate amount of money involved rather than the exact figures);
- d) Most respondents did not respond to open-ended questions. On the other hand, it was considered desirable to allow the respondents to air their views freely. Thus, a balanced and pragmatic approach was adopted by having most questions as closed-ended questions (where the respondents were merely required to “tick” the appropriate boxes) and a few open-ended questions;
- e) To facilitate completion of the questionnaires or interviews, the questionnaire flow was kept as simple and straight-forward as possible, avoiding unnecessary branching and jumping between questions; and
- f) To facilitate respondents in recalling incidents of justiciable problems encountered, a screening questionnaire was also used.

### **3. Profile of Respondents**

- 3.1 About 70% of the interviewees who had completed the questionnaires were owners, directors, managers or company secretaries of the companies enumerated, and the remaining 30% were other employees of the companies. This indicates that the information provided by the respondents was likely to reflect the actual experience of the companies concerned. The majority (76%) had an employment size of less than 10 and a further 11% had an employment size of 10–19. Only about 4% of companies had an employment size of 50–99.
- 3.2 About 26% of the SMEs enumerated indicated that they had employees outside Hong Kong. For these companies, about 34% were employing less than 10 staff outside Hong Kong and another 14% had 10–19. About 20% had 100 or more employees outside Hong Kong. This indicates that a number of local SMEs were in fact rather big companies. This is not surprising given that most manufacturing activities and a sizable proportion of businesses in the services sector have relocated to the Mainland.
- 3.3 The majority (75%) of companies did not have any legal support from in-house lawyers or through other legal support arrangements. About 6% had in-house lawyers and a further 12% had access to regular legal services through retainer arrangements.

### **4. Nature of difficult-to-solve Problems or Disputes**

#### **Overview**

- 4.1 About 30% of the SMEs indicated that they had experienced difficult-to-solve problems or disputes that either occurred in Hong Kong or had a significant connection with Hong Kong in the past year. A further 16% had such problems in the past 5 years. The remaining 54% did not experience such problems.
- 4.2 Of the incidents that ever happened, 35% were business related and a further 26% were related to other money matters. The proportion was lower for incidents related to renting out of company properties (2%), properties owned by company (4%) and intellectual property (4%). Only one-third (33%) of the incidents were considered important, including 22% with actions taken and 10% with no actions taken. For these incidents, about 30% were business related and 35% were related to other money matters.<sup>2</sup> Labour disputes or related problems accounted for another 11%.<sup>3</sup> Slightly less than one third (31%) involved consumers, and a further 21% involved business friends. Employees accounted for 19% and business corporations, 15%. More than three quarters (78%) of the problems that were important involved money.

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<sup>2</sup> The Small Claims Tribunal hears civil claims within its jurisdiction of up to \$50,000. Hearings are informal and no representation by lawyers is allowed.

<sup>3</sup> The Labour Tribunal hears cases where the amount of claim exceeds \$8,000 for at least one of the claimants in a claim or where the number of claimants in the claim exceeds ten. Hearings are informal and no representation by lawyers is allowed.

### **Labour disputes or related problems**

- 4.3 The majority (80%) of the SMEs that had experienced difficult-to-solve problems or disputes did not have incidents relating to labour disputes or related problems. About 10% had such incidents in the 12 months, and another 10% had these in the past 5 years but not in the past 12 months. For those that had such experience in the past year, about 59% had only one incident during the period. The average per company was 2.7 incidents.
- 4.4 About 32% of these incidents that ever happened were related to misconduct of employees. Incidents related to employment contracts, salaries and bonuses, and other terms and conditions of services accounted for another 59% and a further 9% were related to other employee complaints.
- 4.5 More than half (70%) of the incidents related to labour problems were considered unimportant. 21% were considered important and action was taken and 9% with no actions taken. About 38% of these incidents considered important were related to misconduct of employees, and a further 33% to employment contract with employees. Salaries and bonuses paid to employees accounted for 19%, and for other complaints made by employees, 6%. About 63% of the important incidents involved money.

### **Problems related to renting of premises by company**

- 4.6 Only about 8% of the SMEs that had experienced difficult-to-solve problems had incidents related to the renting of their premises in the last 12 months, and a further 5% experienced these in the last 5 years excluding the past 12 months. For those with such problems in the past 12 months, 77% had only one incident and a further 13% had two incidents. About 7% had 5 or more such incidents. The overall average for these companies was 1.6 incidents.
- 4.7 About 38% of the incidents were related to repairs and maintenance inside premises by landlord. Another 58% of the incidents related to rental agreement, rent payment recovery of rental deposits and termination of rental agreement.
- 4.8 More than half (56%) of the incidents were considered unimportant. About 34% were considered important with actions taken and another 11% no actions taken. About 25% of these were related to rent payments to landlord, 25% to repairs and maintenance inside premises of landlord and a further 22% to rental agreement. Recovery of rental deposits from landlord accounted for 12% of incidents, and termination of rental agreement by landlord, 10%. About 76% of these incidents involved money.

### **Problems related to renting out of company properties**

- 4.9 Among SMEs that had experienced difficult-to-solve problems, only about 2% had incidents related to the renting out of company properties in the last 12 months, and another 2% had these incidents in the last 5 years but excluding the past 12 months. For those that had such incidents in the past year, 66% had only one incident, 18% had two, while 12% had 5 or more incident. Overall, these SMEs had an average of 2.2 incidents.
- 4.10 About 52% of the incidents were related to default of rent payments, and a further 38% to rental agreement. 10% was related to damage of properties by tenants.

- 4.11 For incidents considered important, the great majority (88%) were related to default in payment of rents. Incidents related to rental agreements accounted for another 10%. About 95% of these important incidents involved money, of which about 11% involved \$10,000 or less, and another 65% involved \$10,001-\$50,000. A further 21% involved \$50,001 - \$100,000.

#### **Problems related to properties owned by the companies**

- 4.12 Only about 5% of the SMEs that had difficult-to-solve problems had incidents related to company owned properties in the past 12 months, and a further 2% had these in the last 5 years excluding the past 12 months. For those with such incidents, 63% had only one incident during the period, but about 6% had 10 or more. The overall average was 2.6 incidents for these companies.
- 4.13 About 42% of the incidents in the past year were related to repairs and maintenance of communal properties, and a further 25% related to repairs and maintenance inside premises. Sale and purchase and other property management matters accounted for about 11% and 20% respectively.
- 4.14 The majority (76%) of the incidents related to company owned properties were considered unimportant. About 17% were considered important and action was taken. For the remaining 7%, they were also considered important but no action was taken.
- 4.15 For incidents considered important, about 37% were related to repairs and maintenance of communal properties and 17% to repairs and maintenance inside premises. Another 42% were related to other property management issues.

#### **Business-related matters**

- 4.16 About 28% of the SMEs with difficult-to-solve problems had experienced business-related incidents in the past 12 months, and a further 16% had such incidents in the past 5 years excluding the past 12 months. About 39% of the SMEs that had experienced such incidents in the past year had only one incident during the period, while another 22% had 5 or more. The overall average was 3.7 such incidents.
- 4.17 63% of the business-related incidents in the past year were related to quality of goods and services sold to customers or bought from suppliers, and a further 15% related to negligence of company staff.
- 4.18 Among incidents concerning business-related matters, the majority (72%) were considered unimportant. About 18% were considered important with action taken. For the remaining 10% of incidents, they were also considered important but no action was taken.
- 4.19 For incidents considered important, about 41% were related to quality of goods or services bought from suppliers and a further 33% to quality of goods or services sold to customers. Negligence of company staff accounted for 11% of incidents, and for other disputes related to business transactions with companies, another 8%.

### **Other money matters**

- 4.20 About 30% of the SMEs that had experienced difficult-to-solve problems had incidents related to other money matters in the past 12 months, and a further 24% had such incidents in the past 5 years excluding the past 12 months. For those with such experience, more than half (61%) had only one incident during the period, while another 10% had 5 or more. The overall average was 2.2 incidents.
- 4.21 56% of these incidents were related to getting money back from debtors, and a further 23% were related to dispute over money with other companies. About 9% were related to insurance claims.
- 4.22 About 44% of the incidents were considered important, including 32% with actions taken and 13% with no actions taken. For these incidents, about 64% were related to getting money back from debtors and a further 27% related to disputes over money with other companies. Insolvency or bankruptcy related problems accounted for 3% of the incidents, and claims related to insurance, a further 3%.

### **Intellectual property**

- 4.23 Among SMEs that had experienced difficult-to-solve problems, about 7% had incidents related to intellectual property in the past 12 months, and a further 3% had such experience earlier. For those with such incidents in the past 12 months, 68% had only one incident during the period and about 12% had 5 or more. On average, these SMEs had 1.9 such incidents.
- 4.24 About 35% of these incidents the past year were related to applications for patents, trademarks, service marks or copyright, and a further 52% related to violations or alleged violations of patents, trademarks, service marks or copyright.
- 4.25 About 30% of the incidents were considered important, including 24% with actions taken and 7% with no actions taken. About 51% of these were violations of the company's patents, trademarks, service marks or copyright and a further 41% were alleged violations.

### **Problems related to injuries or health problems suffered by employees**

- 4.26 About 9% with difficult-to-solve problems had experienced incidents related to injuries or health problems in the past 12 months, and a further 6% had these earlier but in the past 5 years excluding the last 12 months. For those with such incidents in the past 12 months, 75% had only one incident during the period and about 3% had 10 or more. The overall average was 2.0 incidents.
- 4.27 68% of such incidents were related to accidents in the workplace, 13% related to accidents while on duty outside the workplace, and a further 19% related to health problems caused by the work environment.
- 4.28 About 28% of these incidents related to employee injuries or health problems, were considered important, including 11% with actions taken and 17% with no actions taken. The majority (83%) of these incidents were related to accidents in the workplace, and a further 12% related to accidents while on duty outside the workplace. About 52% of the incidents considered important involved money.

### **Problems related to government departments/ government officials**

- 4.29 Among SMEs that had experienced difficult-to-solve problems, about 8% had incidents related to government departments or government officials in the past 12 months, and a further 4% experienced these incidents in the past 5 years excluding the past 12 months. For those with such experience in the past year, 65% had only one incident during the period and about 12% had 5 or more. The overall average was 2.3 incidents.
- 4.30 About 24% of the incidents in the past year were related to applications for licenses, and a further 22% related to fines imposed by government departments. Tax assessment accounted for another 24% and compliance with government regulations on occupational safety and hygiene, 11%.
- 4.31 About a quarter (24%) of the incidents were considered important, including 16% with actions taken and 8% with no actions taken. About 39% of these were related to tax assessment, 18% related to fines imposed by government departments and a further 14% related to applications for licenses. Compliance with government regulations on occupational safety and hygiene accounted for 8%, and compliance with other government regulations, 12%. About 66% of the incidents considered important involved money.

### **Other difficult-to-solve problems or disputes**

- 4.32 Only about 0.7% of the SMEs with difficult-to-solve problems in the past 12 months had experienced incidents related to defamation, hire of foreign workers, burglaries, or others problems such as damage of company assets, and another 0.4% had experienced these earlier. The great majority (99%) never had such incidents. For those with such experience in the past 12 months, about 58% had only one incident. The overall average was 3.3 incidents.
- 4.33 About 8% of the incidents in the past year were related to defamation, 15% to hire of foreign workers, 54% to burglary and the remaining 26% to the other problems.
- 4.34 About 13% of these incidents were considered important, including 7% with actions taken and 6% with no actions taken. 35% of these were related to defamation, 23% related to hire of foreign workers, and 42% to others. Most of these incidents involved money.

## **5. Handling of difficult-to-solve Problems or Disputes**

### **Types of actions taken**

- 5.1 Overall, actions had been taken by the SMEs on 69% of the incidents that were considered important. For the other 31%, the main reasons for not taking action were “no need” (accounting for 35% of incidents), “believe it will take too much time” (21%), “believe it will cost a lot of money” (16%) and “do not think anything can be done” (13%).
- 5.2 For incidents with action taken, the actions taken were mainly talking to the other side (accounting for 81% of incidents concerned) and seeking advice on how to resolve the problem (19%). About 11% of the incidents were taken to court or tribunals and less than 1% referred to mediation or arbitration. Issuing of lawyer’s letter to the other side accounted

for 11% and threatening the other side with legal action, 6%. Complaints were made to government departments or relevant authorities in respect of 6% of incidents.

#### ***Labour disputes or related problems***

- 5.3 For incidents on labour disputes or related problems with actions taken, the actions were mainly talking to the other side (accounting for 71% of incidents concerned), complaining to government departments or relevant authorities (22%), and seeking advice on how to resolve the problem (18%). Only about 12% of the incidents were taken to court or tribunal and 1% referred to mediation or arbitration. Threatening the other side with legal action accounted for 3% and issuing of lawyer's letter to the other side, 2%.

#### ***Renting of premises by companies***

- 5.4 For incidents related to renting of premises by companies, the actions taken were mainly talking to the other side (accounting for 87% of incidents concerned) and seeking advice on how to resolve the problem (42%). Issuing of lawyer's letter to the other side accounted for about 13% of incidents and threatening the other side with legal action, 6%. Only about 4% of incidents were taken to court or tribunals.

#### ***Renting out of company properties***

- 5.5 For incidents related to renting out of company properties, the types of actions taken were mainly talking to the other side (accounting for 78% of incidents concerned) and issuing of lawyer's letter to the other side (52%). Seeking advice on how to resolve the problem accounted for about 28% of incidents. About 19% of incidents were taken to court or tribunal.

#### ***Properties owned by the companies***

- 5.6 For all incidents related to properties owned by companies with action taken, the action always taken was talking to the other side. In addition, for about 5% of incidents, threatened the other side with legal action, and 4% sought advice on how to resolve their problems. Furthermore, about 1% of the incidents were taken to court or tribunal.

#### ***Business-related matters***

- 5.7 For incidents concerning business-related matters, the actions taken were mainly talking to the other side (accounting for 90% of incidents concerned) and seeking advice on how to resolve the problem (18%). Issuing of lawyer's letter to the other side accounted for about 9% of incidents and threatening the other side with legal action, 5%. Only about 3% of the incidents were taken to court or tribunal.

#### ***Other money matters***

- 5.8 For incidents related to other money matters, the actions taken were mainly talking to the other side (accounting for 86% of incidents concerned) and seeking advice on how to resolve the problem (14%). Issuing of lawyer's letter to the other side accounted for about 12% of incidents and threatening the other side with legal action, 10%. About 16% of the incidents were taken to court or tribunal.



### ***Intellectual property***

- 5.9 For incidents related to intellectual property, the actions taken were mainly talking to the other side (accounting for 51% of incidents concerned) and seeking advice on how to resolve the problem (29%). Issuing of lawyer's letter to the other side accounted for about 24% of the incidents. About 21% were taken to court or tribunal, and complaints were made to government departments or relevant authorities for 19% of the incidents.

### ***Injuries or health problems suffered by employees***

- 5.10 For incidents related to employee injuries or health problems suffered, the actions taken were mainly talking to the other side (accounting for 40% of incidents concerned), complaining to government departments or relevant authorities (41%) and seeking advice on how to resolve the problem (20%). About 22% of the incidents were taken to court or tribunal.

### ***Government departments or government officials***

- 5.11 For incidents related to government departments or government officials, the actions taken were mainly talking to the other side (accounting for 34% of incidents concerned) and seeking advice on how to resolve the problem (28%). About 13% were taken to court or tribunal, and complaints were made to government departments or relevant authorities for 15% of the incidents.

### **Contacts with the other parties**

- 5.12 For 96% of the incidents, the companies concerned had attempted to contact the other parties through various means. For these cases, slightly more than half (51%) were satisfactorily settled. The others were not settled because negotiation was still going on, or that the other parties had no response after having been contacted, refused to be contacted or refused to be contacted or to accept the offer, or made counter-offers which were not acceptable.
- 5.13 For the remaining 4% of the incidents, where the companies concerned had not attempted to contact the other parties, the reasons were mainly that it was believed that the problems had to be settled by legal proceedings (accounting for 59% of incidents involved), or that the problems could not be settled through mutual agreement between parties concerned (42%).

### **Help seeking behaviour**

- 5.14 In trying to solve the problems or disputes, the companies usually tried to contact their business friends first (accounting for 22% of incidents), or their business partners (18%), government departments (16%) and solicitors (15%).
- 5.15 As regards the second party the companies tried to contact for assistance, they usually approached government departments (accounting for 33%), solicitors (26%), or insurance companies (22%).
- 5.16 As for the third party, the companies more commonly tried to approach government departments, debt collectors, insurance companies and the representative of the other side.

### **Assistance obtained from outside parties**

- 5.17 Of the incidents with action taken, about one third (34%) had obtained some assistance from outside parties, including e.g. non-legal personnel or organisations, solicitors, barristers, consultants or claims agents, and mediators and arbitrators.

#### *Non-legal personnel or organisations*

- 5.18 For only about 18% of the incidents with action taken, assistance was obtained from non-legal personnel or organisations such as business friends or individuals who were not lawyers, and organisations such as insurance companies and relevant government departments (e.g. Labour Department). For about 35% of these incidents, advice was provided on how to solve the problems. For about 27%, legal advice was obtained. Assistance in referral of solicitors was obtained for about 15% of incidents and assistance in contacting/ negotiating with the other party, 13%.
- 5.19 The companies were able to obtain immediate assistance from parties contacted for about 25% of these incidents, and another 20% within 1-4 days. For about 11%, however, the companies had to wait for 7 days or more before getting assistance.
- 5.20 For about 32% of the incidents assisted, the follow-up action suggested was to “do nothing”. For about 17% of incidents, the companies were suggested to “talk to the other side”. Other follow-up actions suggested by people consulted were to “take the matter to court or tribunal” (accounting for 9% of incidents concerned), “complain to government departments” (7%), “try mediation or arbitration” (5%), or to “threaten other side with legal action” (3%).
- 5.21 For about half of the incidents, the companies concerned considered the assistance provided helpful or very helpful. On the other hand, for about 22%, the companies found the assistance not very helpful or not helpful at all.
- 5.22 In 48% of the incidents, the companies concerned would definitely or probably recommend other companies facing similar situations to seek assistance from non-legal personnel or organisations. On the other hand, in about 15% of incidents, the companies concerned would not recommend seeking assistance from these parties.

#### *Solicitors*

- 5.23 For about 20% of the incidents with action taken, assistance from solicitors was obtained by the companies. The percentage was higher for incidents related to intellectual property, accounting for 85% of incidents renting out of company properties (58%), and government departments/ government officials (28%). For the remaining 80% of incidents, the reasons for not seeking assistance from solicitors were mainly that the companies “did not think solicitors could help” (accounting for 30% of incidents concerned), “could not afford legal fee” (22%), “had no need” (18%) or “did not want to pursue legal action” (14%).
- 5.24 For incidents with assistance from solicitors, the main channel for finding the solicitors was “referrals by friends”, accounting for 53% of incidents concerned, or personal friends of staff (16%). Advertisement of solicitors accounted for 13% of the incidents and retainer service arrangements represented 10%. The main factors affecting the choice of solicitors

were the experience of the lawyer (accounting for 50% of incidents concerned), price (38%), specialisation of lawyer (35%) and reputation of lawyer (30%).

- 5.25 Legal advice and issue of letters to other party accounted for more than half (69% and 68% respectively) of the assistance obtained while assistance in documentation accounted for 43%. For about 13% of the incidents, assistance in the form of appearance in court was obtained. The percentage of assistance in the form of legal advice obtained from solicitors was higher for incidents related to properties owned by company (100%), labour disputes or related problems (89%), intellectual property (89%). In terms of issuing solicitor's letter to the other side, the percentage was higher for incidents related to properties owned by companies (100%), business-related matters (87%), other money matters (79%). As regards solicitors' assistance in the form of documentation, the percentage was higher for incidents involving government departments or government officials (61%), other money matters (52%), and injuries or health problems of employees (50%). The percentage of incidents with solicitors' assistance obtained in the form of appearance in court was higher for those involving injuries or health problems of employees (79%), and those related to government departments or government officials (45%).
- 5.26 For incidents with assistance from solicitors, the companies were charged on average \$11,650. The average charge was higher, at \$60,340, if the service of barristers was also used, and was lower if no barristers were involved, at \$11,300. The average was also higher for incidents related to labour disputes or related problems (at \$32,680), intellectual property (\$23,550) and injuries or health problems suffered by employees (\$20,290). For 66% of the incidents, the companies concerned did not know how the legal fee was calculated and had not asked for such information. For 3% of the incidents, the companies knew how the legal fee was calculated, but the actual amount turned out to be very much different from what was originally calculated.
- 5.27 In about 62% of the incidents with solicitors' assistance, the companies concerned would definitely or probably recommend the solicitors they had consulted to other companies facing similar situations. About 12% would definitely not and a further 6% would probably not make such a recommendation, the main reasons being that they considered the fee was too high (accounting for 31% of incidents concerned) and that they did not want to get involved with disputes of other companies (26%). Poor service of solicitors accounted for only 6% of incidents concerned.
- 5.28 For 73% of the incidents with solicitors' assistance, the companies concerned were very satisfied or satisfied with the services provided. The proportion was higher for incidents related to renting out of company properties, business-related matters, renting of premises by companies and other money matters. For incidents in which the companies concerned were not very satisfied or not satisfied, the main reasons were that the legal fees were unreasonable (accounting for 59% of incidents concerned) or that the solicitors were not helpful (33%).
- 5.29 In about 28% of the incidents with assistance from solicitors, the companies concerned indicated that the other side had also hired lawyers to help. The proportion was higher for incidents related to intellectual property (54%), injuries or health problems suffered by employees (49%) and renting of premises by companies (47%). For about 42% of incidents, the other side had not hired lawyers.

5.30 About 19% of incidents with assistance from solicitors were taken to court or tribunal. The percentage was higher for incidents related to properties owned by companies (100%), injuries or health problems suffered by employees (40%) and other money matters (32%). 57% of the incidents taken to court or tribunal were to the Small Claims Tribunal and another 14% to the Lands or Labour Tribunals. About 17% were dealt with at the District Court and the remaining 12% at the High Court.

#### ***Barristers***

5.31 In only about 0.26% of incidents, the companies concerned were represented by barristers in court proceedings. For incidents that were taken to District Court or High Court, about 16% involved representation by barristers. For incidents with no assistance from barristers, the reasons were mainly that they did not think barristers could help (accounting for 35% of incidents concerned), or they could not afford the legal fee (24%) or they had no such need (15%).

5.32 For incidents represented by barristers, the key factors affecting the choice of barristers were the experience of barrister and their specialisation. Price was also a factor in some incidents.

#### ***Consultants or claims agents***

5.33 In only about 1.2% of the incidents, the companies concerned had used the services of consultants or claims agents. The bulk of such incidents (94%) were related to other money matters. The reasons for using their services were mainly that the companies concerned had confidence that using them could successfully solve the problem (accounting for 49% of incidents concerned), and that the companies did not want to spend more time through other means (40%).

5.34 The channels of finding consultant or claims agents were mainly through direct contacts made by consultants or claims agents (accounting for 43% of incidents concerned), referrals by friends (36%) and advertisements (21%).

5.35 The average fee charged by consultants or claims agents was \$35,590. For 44% of incidents, the companies concerned indicated that they knew how the fees were calculated, which was based on a percentage of money recovered. In the remaining 56%, the companies did not know how the fees were calculated.

5.36 In 79% of incidents in which consultants or claims agents were used, the SMEs were satisfied or very satisfied with the services provided.

#### ***Mediators***

5.37 In only about 1.2% of incidents, the companies concerned had used mediation services. Most (79%) of these concerned labour disputes or related problems, while a further 16% were related to employees injuries or health problems. For companies not using mediation, the main reasons were not being aware of such services (accounting for 51% of incidents concerned), not believing mediation could help (24%) or there was no need to do so (21%).

5.38 For 89% of incidents in which mediation was used, agreement was reached with the other parties, while only 3% failed to reach agreement. In 32% of the accidents, the companies concerned were accompanied to the mediation, mainly by business friends, while for the

remaining 68%, the companies were unaccompanied. For the great majority (97%) of these incidents, the mediation services were provided free of charge. In about 47% of the incidents, the companies concerned would definitely or probably recommend the mediators they had used to other companies facing similar situations.

- 5.39 For 65% of the incidents which used mediation, the companies concerned were satisfied or very satisfied with the services provided. For another 25%, the companies were not very satisfied.

### ***Arbitrators***

- 5.40 No company indicated that they had used arbitration services. The main reasons for not using arbitration services were not being aware of such service (accounting for 41% of incidents concerned), no need (20%) and not wanting to pursue arbitration (10%). Being unable to afford the fee accounted for only 8% of incidents.

## **Outcome of actions taken to tackle difficult-to-solve problems or disputes**

### ***Current status***

- 5.41 For only about 9% of incidents, the issues were still either being tackled in court or tribunal, or through other means. For 44% of incidents, agreement had already been reached with the other parties. For another 20% of incidents decision had already been reached in court or tribunal, or through other resolution mechanism, with all issues resolved, and 21% where no action was being taken despite no agreement yet with the other parties.
- 5.42 As regards the problems or disputes that were still being tackled, more than half (63%) had all or most issues resolved and the problems were no longer there. However, for 30% of the incidents the issues had not yet been resolved and the problems were still recurring.
- 5.43 For the majority of incidents (70%), the companies concerned were not planning to take any further follow-up action. For another 13%, the companies did not know what to do next. For only about 8% of incidents, the companies were contemplating further action, while for a further 2%, the companies were waiting the other side to take action.

### ***Whether objectives met***

- 5.44 For more than half of the incidents (53%), the objective of taking action was to recover loan or money lost, or seek compensation, while for another 19%, action was taken to see that justice was done. Other major objectives were to solve the problems as soon as possible (accounting for 12% of incidents), to change the behaviour of the other party (11%), or to prevent the other party from taking action against the companies concerned (9%).
- 5.45 For 60% of the incidents, the objectives of taking action to solve the problems or disputes were fully or largely achieved. On the other hand, for about 26% of incidents, the objectives were not achieved at all.

### ***Impact of action taken on companies***

- 5.46 For about 31% of the incidents with action taken, the companies concerned had spent money in solving the problems. The amount of money spent ranged from \$1,000 or below

(accounting for 19% of incidents with money spent) to more than \$50,000 (9%), but overall 51% spent \$10,000 or less.

- 5.47 For about 22% of incidents with action taken, the companies concerned indicated that the actions had no impact on the companies. For about 36% of the incidents, the companies concerned had lost money and for 35%, the companies indicated that they had spent a lot of time in taking action. In about 23% of incidents, the company staff felt very upset by the actions taken.
- 5.48 In a smaller proportion of incidents, on the other hand, the companies concerned indicated that they were happy with the actions taken (accounting for 10% of incidents), or that there was improvement in their business opportunities (2%), company reputation (1%), or in their relationship with employees (1%) or business partners (1%).

## **6. Views on Access to Justice**

### **Overview**

- 6.1 Twelve questions were asked in the survey to tap the views of SMEs managers on the issues related to access to justice. The majority of these questions could be categorised into three underlying variables, namely “affordability”, “confidence” and “knowledge”.

### **Affordability and legal fees**

- 6.2 Only about 23% of the SMEs agreed that lawyer’s charges were reasonable for the work they did. The percentage was even lower for agreeing that most SMEs can afford paying for legal services even if they do not go to court (13%) or that most SMEs can afford to go to court (11%).

### **Confidence and related views**

- 6.3 Most SMEs agreed to the statements “if my company goes to court, it will get a fair hearing” (accounting for 69% of SMEs enumerated), “courts are an important way for small and medium enterprises to enforce their rights” (67%) and “I have confidence in the independence of judges” (74%), indicating that in general they had high confidence in the judiciary. The percentage agreeing that most SMEs had confidence in the ability of lawyers to help people solve their legal problems” was lower at 55%.

### **Knowledge**

- 6.4 Most SMEs agreed that “most small and medium enterprises did not know what to do when faced with legal problems” (accounting for 65% of SMEs enumerated), “most small and medium enterprises did not know how much it would cost to use legal services to tackle a problem” (74%) and “it is difficult for most SMEs to find out information on the specialisation and experience of lawyers” (68%). This indicated that SMEs in general had little knowledge about how to deal with justiciable problems, the cost involved and how to find suitable lawyers. Furthermore, only a small proportion of SMEs agreed that there were enough channels available for most SMEs to seek free legal advice (24%), indicating that they had problems seeking free legal advice.

## **7. Conclusion**

- 7.1 This is the first time a territory-wide establishment survey was conducted in Hong Kong to find out how SMEs deal with difficult-to-solve problems or disputes. At this stage, before the statistical information is compared with the data from the supply study, it is premature to reach any conclusion related to access to justice. Nevertheless, a number of preliminary observations may be made.
- 7.2 As high as 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.
- 7.3 The most common action taken to tackle difficult-to-solve problems was talking to the other side. About 11% of incidents with action taken were taken to courts or tribunals, while less than 1% resorted to mediation or arbitration.
- 7.4 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.
- 7.5 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.