

# Chapter 1

## Supply Study Report

### 1. Introduction

- 1.1 The consultancy study on the demand for and supply of legal and related services in Hong Kong (the Study) encompasses three key components, viz:
- A review of the current status of the legal and related services sector in Hong Kong and the supply of these services to the community;
  - A study on the demand for legal and related services from individuals and small and medium enterprises (SMEs) in Hong Kong; and
  - On the basis of the supply and demand studies, an assessment on the likely gap in service availability and the potential unmet legal needs in the community.
- 1.2 The Supply Study Report summarises the findings of the supply side study. The findings provide a broad overview of the structure of the local legal services sector including the range of services offered, the practice economics and accessibility, and establish a reference for assessing potential service gaps when the demand side picture is also brought into place.
- 1.3 In completing the supply side study, the work carried out by the consulting team included background research on existing local and overseas literature, preliminary discussions with selected legal services practitioners, legal professionals from the Judiciary, and other relevant parties such as the Bar Association, the Law Society, the Hong Kong International Arbitration Centre and the Hong Kong Mediation Centre, through a series of individual interviews and focus group discussions.
- 1.4 The preliminary work provided an overview of the local legal services sector and a basic understanding of the relevant access to justice issues. This was followed by a number of large scale questionnaire surveys covering different categories of legal services providers, including barristers and their chambers, solicitors and their firms, non-governmental organisations (NGOs), as well as legislative and district councillors. The fieldwork was thereafter followed by detailed analysis of findings, culminating in the compilation of the supply study report.
- 1.5 The statistics included in this report are based on the questionnaires received up to end August 2006 and the figures are weighted, taking into account the probabilities of selection and response rates. In addition, information obtained during in-depth interviews and focus group discussions with providers of legal and related services has also been incorporated into the Report under the relevant sections. Where appropriate figures relating to criminal cases were also included for reference purposes, but the focus of the Study remains with civil cases. The sizes of the base data sets included for the detailed analysis are also shown in the charts by the respective figures in brackets.

## **2. Overview of the Legal Services Sector**

- 2.1 With a system based on a common law jurisdiction, the legal services sector in Hong Kong is primarily comprised of barristers and solicitors in practice, judges serving at different levels of the court system, lawyers in some government and quasi-government organisations, and arbitrators and mediators providing alternative dispute resolution services. There are also foreign lawyers in Hong Kong, who practise according to the laws of foreign jurisdictions. Outside of these mainstream service providers, there are many NGOs which provide the public with some form of legal and related services, often focusing on particular segments of the local community. There are also in-house lawyers working in companies, but their services are not available to the public.
- 2.2 There are over 800 barristers in Hong Kong, who are legal practitioners expert in advocacy and specialising in litigation. Generally, only barristers have the right of audience in Hong Kong's High Court, Court of Appeal and the Court of Final Appeal. They operate as individual professionals, and many share common office facilities by forming into chambers.
- 2.3 As a rule, barristers do not market their services to the public, and access to barristers by the general public is normally through solicitors. The distancing of the barrister from the client helps to maintain impartiality. In some instances, barristers may also be directly instructed by other professionals, such as accountants, company secretaries, arbitrators, tax advisors and surveyors.
- 2.4 A practising barrister is usually bound to accept any instruction to appear before a Court in the field in which he professes to practise at his or her usual fee, having regard to the type, nature, length and complexity of the case. Barristers generally charge fee rates which are linked to their seniority or years of experience.
- 2.5 There are over 4,517 solicitors practising in 667 solicitor firms, the largest of which has more than 20 partners or 160 solicitors. In comparison, about 44% of the firms are sole practitioners, with another 48% being 2-5 partner practices. The services of the solicitors are regulated by the Law Society, which also has an important role in providing continuing professional education. The solicitor firms offer a wide variety of legal services, ranging from land and property, personal and family, to commercial, and criminal matters. Until a decade ago, many of the smaller practices had relied on conveyancing as their main business, but today the range of services offered is more diversified and fees tend to be more competitive at this level. The larger firms generally have a wide service range and charge higher fee rates for their services. Many also provide services on a regional basis and often have a more international clientele. Many firms also offer People's Republic of China (PRC) related services as social and business interactions between Hong Kong and the mainland continue to grow.
- 2.6 According to government statistics, the total revenue of the legal services sector in 2004 was \$10.1 billion, with an employment of 13,610 persons. Roughly 43% of the establishments had an annual business receipt of less than \$1 million, another 41% between \$1-5 million, and the remainder above \$5 million. The largest 31 establishments had an average annual receipt in excess of nearly \$170 million. For the sector as a whole, about two-third of the revenue was accounted for by employee

compensations and other operating expenses.

- 2.7 There has been an increasing trend in the use of alternative modes of dispute resolution in recent years. These relate primarily to arbitration, but there is also increasing interest in mediation. The development of arbitration services is supported by the Hong Kong Arbitration Centre, where qualified arbitrators are able to handle commercial disputes more cost effectively than the formal legal process, for which settlement can be enforced more readily across national boundaries. The Centre carried out 281 arbitration cases in 2005, most of which involved construction, commercial and shipping cases. There are 263 qualified arbitrators on the Centre's panel at present, including 40 from Hong Kong.
- 2.8 Mediation is a less formal process of dispute resolution, which is promoted by the Hong Kong Mediation Council operating under the Hong Kong Arbitration Centre. This mode of alternative dispute resolution is not widely used at present, but has potential and is gaining popularity. The government has recently financed a scheme on family mediation in collaboration with some NGOs, with success in reducing the number of cases that eventually have to go to the courts.
- 2.9 The legal profession, via their professional bodies, provides a number of legal services to people in need of such services, partly on a pro bono basis. These include the Duty Lawyer Service, a joint organisation led by the Bar Association and the Law Society. The service is comprised of the Duty Lawyer Scheme which provides legal representation, the Free Legal Advice Scheme which provides preliminary legal advice, and the Tel-Law Scheme which is a telephone recorded information service. The Bar Association also operates a Bar Free Legal Service Scheme which provides assistance to people in need of legal services on worthy cases.
- 2.10 In addition to the above service providers, some of the NGOs, many of which under the Hong Kong Council of Social Services (HKCSS), also provide some form of legal and related services to the general public in the areas of family, employment, money and other related matters.
- 2.11 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. Some of these are provided in collaboration with legal professionals or rely on referral to other legal schemes, but those councillors who are lawyers themselves also often provide their own services.
- 2.12 Several government departments and quasi-public organisations are involved in providing legal and related services to the public. This include the Legal Aid Department which provides legal aid to eligible applicants requiring the services of barristers or solicitors; the Home Affairs Department which provides referral services to the Free Legal Advice Service and free advice on building management matters; the Labour Department which helps to resolve disputes between employees and their employer; the Rating and Valuation Department which provides free advice on tenancy matters; the Trade and Industry Department which provides legal and other advice to SMEs through its free advisory service; and the Department of Justice which contributes to 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.

- 2.13 The Judiciary in Hong Kong runs a highly respected court system, comprising the Court of Final Appeal and the High Court at the top, the latter including the Court of Appeal and Court of First Instance, followed by the District Court (including Family Court), Magistrates' Courts, and a number of tribunals and a specialised court. As of September 2005, there were 154 judges and judicial officers. As one of its more important initiatives, the Judiciary has embarked on a project in recent years to reform the civil justice system in Hong Kong, with a view to enhancing its effectiveness and efficiency, and ultimately to improve the access to justice in the community. The Judiciary also operates a Resource Centre for Unrepresented Litigants to provide some support to this type of litigants, and a family mediation information service to assist couples seeking mediation to help resolve their problems in a non-adversarial way instead of through expensive litigation.

### **3. Provision of Legal Services by Barristers**

#### **Survey methodology**

- 3.1 There were 822 barristers working in 116 chambers at the time of the survey, ranging in size from 1 to over 10 barristers. A stratified random sampling design was adopted for the survey, with the stratification factor being years of experience to ensure the inclusion of barristers of different seniority. A sample of 231 barristers was selected. The enumeration results are summarised below.

Categories	Total number	Number sampled	Number enumerated	Response rate (%)
Heads of Chambers	116	69	35	51%
Barristers	822	231	95	41%

#### **Types of services**

- 3.2 All chambers and 69% of the barristers indicated that they offered legal services for civil cases in 2005. In comparison, about 90% of the chambers and 64% of the barristers provided services for criminal cases.
- 3.3 In terms of civil cases, all chambers offered services for personal or family matters, and about 94% for administrative, human rights and advocacy matters, 85% for commercial, and 78% for land and property matters. A smaller proportion (29%) was providing services for PRC related matters.
- 3.4 All chambers offered services on civil cases. A larger proportion of the chambers provided services on personal injuries (accounting for 92% of all chambers), advocacy services (89%), commercial and company (83%), employment (76%) and land and property (76%). A smaller proportion provided services on shipping (26%), PRC (29%), consumer services (35%), discrimination (41%) and human rights matters (41%). In comparison, about 90% of the chambers provided legal services on criminal cases, including advocacy and advisory services.

- 3.5 The services provided by the barristers largely reflected the service profiles of the chambers. For civil cases, a larger proportion of barristers provided services on commercial and company matters (68%), advocacy services (58%), land and property (56%) and personal injuries (53%). A smaller proportion of barristers provided services on civil cases related to PRC (21%), immigration (20%), intellectual property (18%), human rights (15%), shipping (12%), consumer services (10%) and discrimination matters (7%).

### **Quantum of services provided**

- 3.6 On average, barristers worked 43.2 hours a week, out of which 34.8 hours were devoted to litigation related work, 7.7 hours to non-litigation work and 0.7 hour to arbitration or mediation work. About 10% of barristers worked 20 hours or less a week, 42% worked 21–40 hours a week, 26% worked 41–50 hours and the remaining 22% worked more than 50 hours a week.
- 3.7 All barristers were involved in litigation related work and 55% of the barristers spent more than 30 hours a week on litigation work. About 54% of barristers were also involved in non-litigation work, with the majority of whom working 10 hours or less a week on such work. About 6% of barristers were involved in arbitration or mediation work, on which the great majority worked 10 hours or less a week.
- 3.8 The barristers spent on average 59% of their time on civil cases, including commercial and company (10% of their time), advocacy services (9%), personal injuries (6%) and land and property (4%). They devoted less time to human rights (1%), shipping (1%), immigration (1%), defamation (1%), discrimination (less than 1%) and consumer services (less than 1%). The remaining 41% of their time was spent on criminal cases, acting mainly on the defence side.

### **Anticipated changes in volume of work**

- 3.9 70% of the chambers providing services on family related civil cases considered that there was no change in the work volume in 2005. For general civil cases, about 45% were of the view that work volume increased, and 44% considered that there was no change. In comparison, 71% of chambers offering services on criminal cases considered that there was no change in work volume. A broadly similar feedback was provided by barristers.
- 3.10 As high as 73% of barristers indicated that they had turned away requests for services in the past six months before enumeration, the great majority (91%) of whom referred the requests to other barristers. The main reasons for doing so were that they did not have time to entertain the requests (accounting for 74% of barristers concerned), that the requests were not in their areas of specialisation (45%), that the requests clashed with their other commitments (22%), or that the fees offered were too low (8%).
- 3.11 By examining barristers working different hours a week, a much smaller proportion of barristers who worked 20 hours or less a week had turned away requests for services. The percentage was higher for barristers who worked 21–50 hours a week.

- 3.12 When analysed by years of experience, a larger proportion of barristers with 6 – 10 years and 16–20 years of experience had turned away requests for services.
- 3.13 When analysed by the types of services provided, a larger proportion of barristers who were providing legal services for criminal cases (61%) and civil cases related to advocacy services (59%), commercial and company matters (69%), personal injuries (51%) and land and property matters (56%) had turned away requests for their services.

### **Service specialisation**

- 3.14 About 41% of the chambers indicated that they had a policy of specialisation in service provision. The remaining 59% had no such policy, mainly because they had to undertake a wide variety of legal services (accounting for 24% of chambers concerned), they considered specialisation not suitable for them (11%), or there was no need to specialise (11%). A larger proportion of chambers that provided legal services on civil cases related to personal and family matters (42%) and administrative, human rights and advocacy matters (40%) had a policy of service specialisation. There was an apparent tendency for barristers working on civil cases to specialise in areas such as commercial, intellectual property, personal injuries and administrative law.

### **Types of clients**

- 3.15 The majority (73%) of barristers had taken up cases funded by legal aid or the Duty Lawyer Scheme in the past six months prior to enumeration. For those who had not, the main reasons were that they were not on the panel (accounting for 34% of barristers concerned), that they had not received any assignment instructions (17%), that they were not interested (5%), that they did not have time to take up such cases (4%), or that they considered the fee too low (4%).
- 3.16 It is estimated that about 23% of the time spent by barristers was devoted to cases funded by legal aid or the Duty Lawyer Scheme, about 11% to cases funded by government and the balance 66% to cases funded by clients other than government.
- 3.17 For civil cases, about 40% of the time spent by barristers was on cases undertaken for private individuals. This compared with 25% for large corporations and 33% for SMEs.

### **Location**

- 3.18 77% of the chambers were located in Central, with another 20% in Admiralty. The great majority (91%) of the chambers did not have any plan to relocate to other districts. The main reasons were that their present offices were convenient, that they were used to working in their present locations, or that it was a practice to maintain chambers offices in the Central District. For the remaining 9% that had plans to relocate, the districts in mind were Central District and Admiralty and the reasons were that more office space was available, or that these locations were nearer to the High Court.

### **Pro bono services**

- 3.19 Slightly more than half (52%) of the barristers had provided pro bono services to the public in the past six months prior to enumeration. For these barristers, the kinds of pro bono activities undertaken were the Free Legal Advice Scheme (accounting for 70% of barristers who had undertaken pro bono work), the Bar Free Legal Advice Scheme (18%), community legal education (13%), free legal advice services offered by NGOs (10%) and other organisations like the District Council (12%), and acting as legal advisors to NGOs (8%).
- 3.20 Taking all types of pro bono work together, 66% of barristers who had undertaken such work devoted less than 5 hours per month to these activities, and a further 19% devoted 6–10 hours.
- 3.21 A relatively larger proportion of those working 51 hours or above a week, or 20 hours or less a week, had undertaken pro bono work. In terms of seniority, a much smaller proportion of barristers with 21 or more years of experience had undertaken such work. When analysed by years of experience, a much smaller proportion of barristers with 21 years of experience or more had undertaken pro bono work.

### **Promotion of services**

- 3.22 About 11% of barristers indicated that they had taken measures to make known their services to solicitors, other than through the Bar List. About 5% had taken measures to make known their services to the public. Measures taken were mainly attending conferences and seminars, giving talks and writing articles, or networking through friends. For the majority who did not take any such measures, the main reasons were that they considered such measures not allowed by the profession, or that they did not feel there was a need to do so.

### **Pupil barristers**

- 3.23 About 47% of the chambers had pupil barristers, with an average of 3 pupils per chambers among those that had pupil barristers. For the 53% of chambers without pupil barristers, the main reasons were that there was no need or that none of their barristers were keen to take on pupils. A larger proportion of chambers with 11 or more barristers had pupil barristers, with 90% of these chambers employing pupil barristers. The great majority (91%) of the chambers did not pay their pupil barristers. About 19% of chambers had a policy on pupil barristers. Elements of such policy included personal qualities of pupils (e.g. good academic record and mature personality), recruitment and vetting by a pupillage committee, or requirement that all barristers in the chambers had to train pupil barristers.

### **Finance**

- 3.24 The average monthly running cost per chambers in 2005 was \$158,022 which was 13% higher than the average in 2004. Office accommodation accounted for 53% of the total running cost in 2005. The monthly costs paid by barristers for the operation of their chambers varied considerably. On average, a barrister had to pay \$21,800 per month for the running costs of his/ her chambers. About 34% contributed \$25,000 or more per month, while about 37% paid less than \$15,000 per month.

- 3.25 Most barristers charged an hourly rate of \$1,001-\$5,000 for civil cases funded by legal aid (accounting for 90% of barristers involved), or undertaken for business corporations (83%), the government or public bodies (83%), NGOs (80%) and private individuals (82%).
- 3.26 The great majority (91%) of the barristers had a definite fee structure, comprising an initial brief fee and a daily refresher fee. Most (67%) charged a brief fee of \$50,000 or below. About 17% charged on average a brief fee in the range of \$50,001 to \$100,000 and 16% charged over \$100,000. As regards refresher fees, most barristers (70%) charged a fee of \$20,000 or below per day. About 14% charged a refresher fee in the range of \$20,001 to \$30,000 per day and 16% charged over \$30,000. Overall, the average brief fee was \$49,940, and for refresher fees, \$15,850 per day. About 42% of barristers indicated that they were very often able to give an estimate of the total cost of the case to their clients, and a further 34% were sometimes able to do so. About 16% seldom and another 9% never gave such an estimate.
- 3.27 About 35% of barristers had never charged an “all-in” fee during the six months prior to enumeration. About 10% often charged an “all-in” fee. A further 24% sometimes and 30% rarely did so. It was considered by a number of barristers during discussions that it was difficult to estimate the amount of legal fees involved, as barristers had little control over the time required for court hearings and the amount of work involved.
- 3.28 During discussions with a number of barristers, it was pointed out that the fees charged by barristers were determined by market forces. Fees were usually related to experience of barristers and increased rapidly with their years of experience. For civil cases, most barristers were inclined to disclose their hourly rates. In comparison, it was sometimes difficult to set an hourly rate for criminal cases, as much depended on the complexity of the case and the defenders involved.
- 3.29 Based on experience in the past 3 years, 70% of the barristers had less than 10% of their bills remained unpaid after one year, and a further 17% had 10-20% in a similar situation. On the other hand, 9% of them had 20-30% of their bills remained unpaid after one year and the remaining 5% had 30% or more.

#### **Views on balance of demand and supply and others**

- 3.30 About 41% of heads of chambers expressed views on the balance of demand for and supply of legal services in Hong Kong, and more than half of them expressed concern about the over-supply of services. Junior professionals in large chambers were said to be overworked, an indication that there was considerable demand for quality work even if at higher fees or there was a shortage of people for quality work. The reference to flexibility in fees probably meant there was an insufficient demand for some barristers at the fee levels charged.



## 4. Provision of Legal Services by Solicitors

### Survey methodology

- 4.1 There were 4,517 local solicitors from 667 solicitor firms, ranging in size from 1 to over 160 solicitors. 103 of these firms had branch offices in or outside Hong Kong. Representative samples of solicitor firms and solicitors were selected for the questionnaire survey.
- 4.2 A stratified systematic random sampling design was adopted for the selection of the solicitor firms, which were stratified by geographical district. Within each district, the firms were sorted in ascending orders of size and systematic sampling was used to ensure firms of different sizes were selected. A sample of 190 firms was selected and their senior partners requested to complete the questionnaires for their firms. For individual solicitors, a random sample of solicitors working in the firms sampled was selected. A two-stage stratified random sampling design was adopted, with the stratification factor at the second stage being the positions of the solicitors. A total of 582 solicitors were sampled for the survey, including 87 sole practitioners, 199 partners, 91 consultants and 205 assistant solicitors/ associates.
- 4.3 The enumeration results for the survey of solicitors are as follows.

Categories	Total number	Number sampled	Number enumerated	Response rate (%)
Solicitor firms	667	190	48	25%
Solicitors	4,517	582	181	31%

### Types of services provided

- 4.4 All solicitor firms offered services on civil cases. A larger proportion provided services on landlord and tenant (accounting for 94% of all firms), land and property (92%), wills and probate (92%) matrimonial and marriage (92%) and commercial and company (85%). A smaller proportion of the firms offered services on human rights (5%), shipping (11%), discrimination (13%), administrative and constitutional (28%) and consumer services matters (30%). In comparison, about 76% of the firms offered services for criminal cases.
- 4.5 About 98% of the solicitor firms provided litigation services and about 89% provided non-litigation services for civil cases. These compared with the 76% and 35% respectively for criminal cases. For litigation work relating to civil cases, a larger proportion of the firms offered services on personal or family matters (accounting for 93% of all firms), commercial and related matters (89%) and land and property (86%), and a smaller proportion provided services on PRC related matters (34%). About half of the time (50%) spent by solicitors was on civil litigation cases heard at the High Court or the Court of Final Appeal, and another 42% at the District Court. In comparison, slightly more than half of the time (51%) spent by solicitors on criminal cases was on those heard at the Magistrates' Courts, a further 36% at the District Court and 12% at the High Court or the Court of Final Appeal.

## **Quantum of services provided**

- 4.6 On average, solicitors worked 47 hours a week during the six months prior to enumeration. They spent 86% of their time on civil cases and the remaining 14% on criminal cases. About 9% of the solicitors worked 30 hours or less a week, 25% worked 31–40 hours a week, 37% worked 41–50 hours and the balance 28% worked more than 50 hours a week. A large proportion of sole practitioner/ partners and assistant solicitors/ associates worked more than 40 hours a week, while the majority of consultants worked 40 hours or less a week.
- 4.7 Not all solicitors worked on litigation work, and for those who did, they spent on average 21 hours per week on the related services. The corresponding average for those who worked on non-litigation related work was 22 hours a week. About 14% of solicitors worked on arbitration or mediation work, spending on average 7 hours a week.
- 4.8 For civil cases, solicitors devoted more time on cases related to commercial and company (accounting for 18% of solicitors' time), land and property (11%), matrimonial and family (7%), landlord and tenant (6%), PRC matters (6%), personal injuries (5%) and wills and probate (5%). They devoted on average less time to administrative and constitutional (1%), human rights (1%), discrimination (less than 1%), defamation (1%), consumer services (1%) and notarial services.

## **Anticipated changes in volume of work**

- 4.9 For firms providing services on civil cases in 2004, the percentage that considered there was a decrease in 2005 was small (less than 20%) for all types of civil cases, with the exception of debt, insolvency and bankruptcy (34%). A higher percentage considered that there was increase in the areas of shipping, commercial and PRC related work. In comparison, 64% of the firms offering services for criminal cases considered that there was no change in the volume of work in 2005, while 14% considered there was a decrease.
- 4.10 As high as 70% of the firms had turned away requests for services in 2005. The main reasons for doing so were that these were not in their areas of specialisation (accounting for 76% of firms concerned), that they did not have sufficient staff resources (31%), or that the fees offered were too low (25%).

## **Service specialisation**

- 4.11 About 52% of the solicitor firms had a policy of specialisation in service provision. The main areas of specialisation were commercial (accounting for 34% of such firms), conveyancing (29%), litigation work (22%), personal injuries (19%), intellectual property (18%) and wills and probate (16%). The remaining 48% considered that their services were market driven (accounting for 18% of firms without a policy of specialisation), that they were providing a general legal service (22%), or that their firms were too small to specialise (16%).
- 4.12 In terms of litigation work, a larger proportion of solicitor firms providing services on PRC related matters (61% of all solicitor firms) and personal, family and related matters (51%) had a policy of specialisation in service provision. And for non-

litigation work, a larger proportion of those offering services on administrative, human rights and advocacy matters (58%), PRC related matters (57%) and criminal cases (53%) had a similar policy.

### **Types of clients**

- 4.13 The majority (87%) of the solicitor firms had taken up cases funded by legal aid or the Duty Lawyer Scheme in 2005.
- 4.14 Slightly less than half (49%) of the solicitors had taken up cases funded by legal aid or the Duty Lawyer Scheme in the past six months prior to enumeration. For those solicitors who had not taken up such cases, the main reasons were that the services required by the Scheme did not fall within the scope of services of their firms, or that they were not on the relevant panels.
- 4.15 For civil cases undertaken for non-government clients, 31% of the time spent by solicitors was for private individuals. The corresponding percentage for large corporations was 36% and that for SMEs was 30%. These compared with the 72%, 8% and 20% respectively for criminal cases.

### **Location**

- 4.16 64% of the solicitor firms were located in Central, 9% in Admiralty, 14% elsewhere on Hong Kong Island and the remaining 14% across Kowloon and the New Territories. The majority (92%) of the firms did not have any plan to relocate to or set up branches in other districts in Hong Kong. The main reasons were that they did not have sufficient resources to do so (accounting for 28% of firms concerned) or that there was no need to do so (17%).
- 4.17 About 2% of the firms planned to relocate mainly because of rent increase and another 6% planned to set up branches. The main criterion for setting up branches was the availability of sufficient market demand to meet the additional overhead expenses. The preferred locations for relocation or setting up branches were Central, Mongkok and the New Territories.

### **Pro bono services**

- 4.18 About 37% of solicitors had provided pro bono services to the public in the six months prior to enumeration. For these solicitors, the pro bono activities undertaken were the Free Legal Advice Scheme, community legal education, free legal advice services offered by NGOs and other organisations like the District Councils, or acting as legal advisors to NGOs. About 40% of solicitors who had undertaken pro bono work contributed less than 5 hours a month to such activities, and a further 22% spent 5–9 hours a month. As high as 16% devoted 20 hours or more a month to pro bono work. Solicitors who had participated in the Free Legal Advice Scheme spent on average 4.5 hours a month in providing such services. The corresponding figures for free legal advice services provided through NGOs and other channels such as District Councils were 6.5 and 11.7 hours respectively.
- 4.19 A larger proportion of solicitors who were busier had taken up pro bono work. The percentage was 45% for those who worked on average more than 50 hours a week,

which was much higher than the percentage for those who worked 20 hours or less a week (24%). When analysed by the positions of solicitors, a larger proportion of solicitors who were sole proprietors (45%) and partners (42%) had taken up pro bono work. In comparison only 31% of the assistant solicitors or associates were similarly involved.

- 4.20 For the 63% of solicitors who did not participate in any pro bono work, the main reasons were that they had no time (accounting for 69% of solicitors concerned), no interest (30%) or that the location of service was not convenient (11%).

#### **Promotion of services**

- 4.21 While 11% of solicitor firms had a company-wide policy on pro bono work, 44% used pro bono work as a means of promoting their services. Other measures taken by solicitor firms to promote their services were promotional leaflets (accounting for 35% of solicitor firms), seminars (34%) and advertisements (22%).
- 4.22 For solicitors, about 42% indicated that they had taken measures personally to promote the services of their firms. Measures include attending seminars or education related activities, participating in social functions, developing personal networks and maintaining good relationship with others. For solicitors who had not taken such measures to promote legal services of their firms, the reasons were mainly that they did not see the need for promotion, that they considered reputation more important than promotion, that they did not have time for promotion, or that they considered that service promotion was not part of their duties.

#### **Choice of solicitors by clients**

- 4.23 Most solicitor firms considered that the factors which were important or very important in affecting the choice of solicitors by their clients were past experience of clients with the solicitors, recommendations by friends, experience of solicitors, reputation of solicitors, fee levels charged by solicitors, and reputation of firms. Factors that were less important were advertisements, location and size of firms, recommendations by other solicitors, and ability to provide one-stop service.
- 4.24 93% of solicitor firms indicated that their clients came to them for service through recommendations by friends. Other more common channels were referrals by other lawyers (accounting for 66% of solicitor firms) and walk-in's (36%). A small proportion of firms said that their clients came to them after having used their services offered in the form of pro bono work (15%), after reading their advertisements (12%) or promotional leaflets (5%), or attending seminars given by solicitors of the firms (9%).

#### **Choice of barristers by solicitors**

- 4.25 For the majority of cases (88%) handled by solicitor firms in 2005, the choice of barristers was made by the solicitors of the firms concerned, with the remaining 12% of cases the choice of barristers was made on the recommendations of clients. Most solicitor firms considered that factors which were important or very important in affecting their choice of barristers were past experience of working with the barristers, the performance records of barristers, their experience, reputation and fee levels.

Factors that were relatively less important were recommendations by other solicitors or friends and the location of the chambers.

### **Trainee solicitors**

- 4.26 About 24% of the solicitor firms already had trainee solicitors, and 30% planned to recruit trainees in the following 12 months. On average there were 2.2 trainee solicitors in each solicitor firm with trainee solicitors. For the remaining 76% of firms that did not have trainee solicitors, the main reasons were economic considerations, that there was no need, or that it was difficult to recruit suitable candidates.
- 4.27 About 16% of solicitor firms had a company-wide policy on trainee solicitors. Elements of such policy included the provision of training through such measures as job rotation. For those that did not have a policy, the main reasons were that the firms were too small, that they did not employ trainee solicitors, or that there was no need to do so.

### **Staffing**

- 4.28 For solicitor firms enumerated in the survey, there were on average 2.4 partners working in the firm at the end of June 2005. 56% of the firms had consultants and there were on average 2 consultants per firm. 52% of the firms had assistant solicitors or associates, with an average of 3.3 assistant solicitors or associates per firm. Only 11% had foreign lawyers and there were on average 1.2 foreign lawyers each firm. 41% had Notaries Public, average 1.4 Notaries Public per firm, and 29% had China Appointed Attesting Officers with an average of 1.7 officers per firm.
- 4.29 The areas of specialisation of lawyers the firms planned to recruit were mainly litigation (26% of the firms concerned), general practice (24%) and commercial (22%). As regards years of experience, the majority of the firms planned to recruit lawyers with 2-5 years experience.
- 4.30 About 84% of solicitor firms employed legal clerks or paralegal staff, with an average of 3.4 such staff. 53% of these firms had 1 to 2 legal clerks or paralegal staff and a further 29% had 3 to 4 such staff. About 92% of solicitor firms employed secretarial and 89% employed clerical staff. On average these firms employed 3.2 secretarial and 3.5 clerical staff per firm. About 58% of firms had other supporting staff (e.g. account clerks, messengers, office assistants and receptionists) and on average employed 2.6 these other supporting staff.

### **Finance**

- 4.31 For civil litigation work, solicitors generally charged an hourly rate of \$1,001-\$5,000, but mostly within the \$2,001-\$3,000 range. For non-litigation work related to civil cases, the pattern was similar to that of litigation work. In comparison, the distribution of hourly rates for criminal litigation work was broadly similar to that for civil cases, with just under half of the solicitors charging an hourly rate of \$2,001-\$3,000. The distribution of hourly rates for non-litigation work related to criminal cases was also similar. About 18% of solicitors said that they did not have a definite fee structure. Among the remaining 82% of solicitors that had a definite fee structure, about 90% of them had a fee structure based on time charge. 77% had a fee structure based on scale

fee and 32% had a lump-sum fee structure.

- 4.32 The majority of solicitor firms (70%) had less than 10% of their bills remaining unpaid after one year, based on experience in the past 3 years, and a further 18% had 10-20% of their bills similarly unpaid. 2% of firms had 50% or more of their bills remained unpaid after one year.

### **Views on balance of demand and supply and others**

- 4.33 About 43% of solicitor firms expressed concern about the balance of demand for and supply of legal services in Hong Kong. Among them, nearly half (47%) expressed concern about the over-supply situation, with another 32% considered that there was excess demand for high quality services, but over-supply of poor quality services.
- 4.34 These views were also reflected in the responses from individual solicitors, 35% of whom expressed a view on demand and supply balance. Among them, 52% had a concern for the over-supply situation, while another 19% opined that there was excess demand for high quality services, but an over-supply of poor quality services.

## **5. Provision of Legal and Related Services by Government and Quasi-public Organisations**

### **Government departments and agencies**

- 5.1 There were a number of government departments and quasi-governmental organisations involved in providing legal and related services to the public and SMEs, and are as follows:
- a) *Legal Aid Department* - providing legal aid to eligible applicants to help them obtain the services of solicitors and barristers, available for proceedings in the District Court, the Court of First Instance and the Court of Appeal, the Court of Final Appeal, Magistrates' Courts (for committal proceedings only), Lands Tribunal, Mental Health Review Tribunal and Coroner's Court;
  - b) *Home Affairs Department* - as one of the referring agencies of the Free Legal Advice Service under the Duty Lawyer Scheme, with its Building Management Resource Centres also providing free consultation to the public;
  - c) *Trade and Industry Department* – its Small and Medium Enterprises Office co-ordinating the efforts to assist SMEs through its Support and Consultation Centre for SMEs;
  - d) *Rating and Valuation Department* - providing the public with free enquiry, assistance and mediatory services on tenancy matters;
  - e) *Labour Department* – its Labour Relations Division offering free conciliation service to help employers and employees in resolving labour disputes;
  - f) *Equal Opportunities Commission* – playing a conciliatory role for the parties concerned in sex, disability and family status discrimination, and if conciliation is not successful, providing legal assistance in bringing relevant cases to court;
  - g) *Privacy Commissioner's Office* - providing some legal services as part of its work

in handling complaints, conducting investigations and follow-up actions; and

- h) *Office of the Ombudsman* – providing services through investigating maladministration of public bodies under the purview of the Ombudsman Ordinance, through processing of complaints from the public or actions initiated by the Office.

5.2 As one of its initiatives to enhance access to justice, the Department of Justice also contributed to the development of a web based Community Legal Information Centre (CLIC), which provided a user-friendly guide to legal information on a wide range of topics affecting people’s daily lives, as well as information on legal services available in Hong Kong.

### **Professional and other public organisations**

5.3 The legal profession offers a variety of legal services through the Duty Lawyer Service and various pro bono services through many NGOs, as summarized below:

- a) The Duty Lawyer Service - providing legal representation for eligible defendants in Magistrates’ Courts, Juvenile Courts and Coroner’s Courts.
- b) The Free Legal Advice Scheme - providing free preliminary legal advice to members of the public with genuine legal problems. The Scheme also assisted other organisations by making arrangements for volunteer lawyers to provide legal advice in similar schemes independently run by the Federation of Women's Centre, Hong Kong Federation of Women, Hong Kong Federation of Women Lawyers and Action for Reach Out.
- c) Tel-Law Scheme - providing free recorded legal information through a 24 hours automatic telephone answering service in Cantonese on a wide range of legal topics including family law, land law, landlord and tenant and employment law.
- d) Bar Free Legal Service Scheme - providing free legal advice and representation by the Bar Association in cases where legal aid is not available or where the applicant is unable to afford legal assistance and the case is thought to be one where assistance should be given.
- e) The Law Week – an annual event with Law Society members and representatives from the Legal Aid Department providing free advice to the public;

5.4 In addition, the Hong Kong International Arbitration Centre offered members of the public alternative means of dispute resolution other than litigation, including negotiation, conciliation and arbitration. In 1994, the Hong Kong Mediation Council was set up within the Hong Kong International Arbitration Centre to promote the development and use of mediation as a method of resolving disputes.

5.5 Among the NGOs, many of the 303 member agencies of the HKCSS were involved in the provision of legal or related services, to members of the public, particular in connection with matters related to marriage, domestic violence, debt and bankruptcy, anti-discrimination, school attendance and employment injuries. Most of the legal services were provided in the form of pro bono services offered by legal professionals. A number of non-profit-making organisations have experimented with providing community legal services, with funding provided by the government, Community Chest and other funding agencies. There were over 40 accredited mediators in 11 agencies involved in providing family mediation services to their clients.

5.6 Among the various HKCSS member agencies, the following were quite active in providing free legal services to members of the public.

- a) *The Hong Kong Federation of Women* – which offered free legal advice services through its Legal Advice Hotline mainly to women on issues related to family, marriage and bankruptcy;
- b) *Hong Kong Federation of Women’s Centre* – which offered free legal advice mainly to women on family, marriage and bankruptcy matters, through an interview session with one of its 70 volunteer lawyer for about 35 minutes, with follow-up assistance and counselling services provided by social workers and “peer counsellors”;
- c) *Association for the Advancement of Feminism* – which offered free legal advice to women on issues related to sex discrimination and family status discrimination, through its hotline operated by a part-time volunteer; and
- d) *Other agencies* – such as the Hong Kong Family Welfare Society, Caritas Family Crisis Support Centre and Po Leung Kuk, which offered free legal advice service to members of the public.

## **6. Provision of Legal and Related Services by Legislative and District Councillors**

### **Survey methodology**

6.1 All of the Legislative and District Councillors were covered in the questionnaire survey as respondents. The questionnaire design and data collection procedures adopted were similar to those for the barristers. The response rates for Legislative Councillors and District Councillors were 78% and 84% respectively.

### **Types of services provided**

6.2 About 75 % of the Legislative Councillors and 81% of the District Councillors provided some form of legal or related services to the public. 47% of Legislative Councillors and 44% of District Councillors provided legal services and 62% and 58% respectively provided related services such as referrals to lawyers and assistance in applying legal aid.

6.3 The legal services provided largely focussed on family and livelihood matters, including debts and bankruptcy (8% of Legislative Councillors and 31% of District Councillors), wills and probate (12% and 22% respectively), matrimonial and family (40% and 40%), employment (56% and 28%), landlord and tenant (32% and 23%), land and property (40% and 16%) and building management (32% and 23%).

6.4 The general mediation services offered related to matrimonial and family (20% of Legislative Councillors and 14% of District Councillors), employment (32% and 7% respectively), landlord and tenant (32% and 9%), land and property (4% and 4%) and building management (4% and 8%). For other related services, the more common types of services provided were matrimonial and family (60% of Legislative



Councillors and 48% of District Councillors), employment (64% and 29% respectively), landlord and tenant (24% and 16%), land and property (24% and 14%) and building management (20% and 31%).

### **Manpower**

- 6.5 About 80% of the Legislative Councillors providing legal or related services employed paid staff for the provision of such services. On average they employed 4.1 paid staff, including full-time and part-time staff. About 66% also recruited volunteers and on average deployed 5.3 persons. For District Councillors who provided legal or related services, about 78% had paid staff, employing on average 1.5 paid full-time or part-time staff, and about 55% of them also recruited volunteers, deploying on average 2.3 volunteers.

## **7. Provision of Legal and Related Services by Non-governmental Organisations**

### **Survey methodology**

- 7.1 There were 303 member agencies under the HKCSS, a number of which provided legal or related services to members of the public. Apart from these organisations, there were also other NGOs which provided similar services. A list of such organisations was drawn up based on information available in telephone directories and in consultation with the HKCSS. A total of 827 organisations were identified and included in the survey, and 683 of these responded to the survey, representing a response rate of 83%.

### **Organisations providing legal or related services**

- 7.2 Non-legal professionals also provided advisory services on legal related matters, sometimes in partnership with the legal profession. Out of the organisations that responded to the survey, 73 offered some form of legal or related services to members of the public. 23 of these provided legal services, including services delivered as part of the Free Legal Advice Scheme or through legal advice programmes of the organisations concerned. 16 organisations were providing free mediation services, of which 3 also offered services at a fee. 29 organisations provided community legal education, mainly in the form of seminars and talks and 41 organisations offered other legal related services.

### **Services availability**

- 7.3 The majority of the organisations (78% of those providing legal services and 88% of those providing mediation services) served clients from all over Hong Kong. The remaining 22% providing legal services, or 5 organisations, provided services in Central and Western, Kwai Chung, North Point, Kwun Tong, Tsueng Kwan O, Sham Shui Po, Kwai Fong, Tuen Mun and Tsuen Wan. For the remaining 12% of those providing mediation services (2 organisations), one was providing services in Central and Western, while the other was providing services in North Point, Kwun Tong, Tsueng Kwan O, Sham Shui Po, Kwai Fong and Tuen Mun.

- 7.4 Using the median as the summary statistics, it took 50 minutes to provide face-to-face legal service to one client and about 15 minutes if the service was provided over the phone. For mediation services, it took about 120 minutes for one client. More than half of the organisations providing legal or mediation services indicated that there was no waiting time for their clients. For 17% of the organisations that offered legal services, the average waiting time was less than 1 week and a further 22%, 1 to 4 weeks. The corresponding percentages for mediation services were 19% and 0% respectively.
- 7.5 About 33% of the organisations had turned away requests for legal or mediation services. The main reasons for doing so were that they did not have sufficient staff resources to handle the requests (accounting for 33% of those that turned away requests for services), or that the requests were not within their range of service provision (58%).

### **Publicity channels and expansion plans**

- 7.6 More than half of the organisations indicated that their clients came to them for service on recommendations of the clients' friends. About half indicated that their clients were referred to them by other NGOs. Advertisement in the mass media was the lowest reported channel with only 14% of the organisations indicating that this was the channel through which their clients came to them.
- 7.7 53% of the 36 organisations providing legal and mediation services publicized their services through promotional leaflets, though such arrangement was not the most common channel through which their clients came to them for service. Other more popular publicity measures adopted by these organisations were Internet website, publicity through other welfare organisations and seminars. According to these organisations, the main reasons for clients to come to them were that their services were free (accounting for 61% of organisations concerned), that their services were able to meet client needs (53%), that the waiting time was short (44%), or that the organisations were able to provide other related services such as counselling (39%).

## **8. Conclusion**

- 8.1 This Report details the findings of the supply side surveys that were carried out as part of the Study. The focus of these main surveys were generally on the range of services provided, the workload of the service providers, their specialisation, clientele, location of operation, involvements in pro bono and service promotion activities, and their operational economics.
- 8.2 Some of the key findings emerging from the Study include:
- A full range of legal and related services was available in Hong Kong. Some practitioners had to turn away work from time to time.
  - Most of the legal professionals were probably fully engaged in their professional work, although there appeared to be concerns about quality at the lower end where an over-supply situation was said to exist.
  - About 41% of chambers had a policy of specialisation in service provision. The areas of specialisation were mainly civil cases related to personal and family,

administrative, human rights and advocacy, commercial, land and property, and PRC matters, as well as criminal cases.

- A higher proportion of solicitor firms (52%) had a policy of specialisation in service provision. The areas of specialisation were mainly conveyancing, commercial, litigation, personal injury, intellectual property and wills and probate.
- Just under 60% of barristers' time was spent on civil cases, compared with 86% for solicitors.
- Barristers on average devoted more time to criminal cases and civil cases related to commercial and company. For solicitors, apart from criminal cases and civil cases related to commercial and company, they also devoted more time to land and property.
- About one third of the time spent by barristers was on cases funded by government, with the remaining two-third undertaken for non-government clients. For solicitors, on the other hand, the majority of their time (86%) was devoted to non-government work.
- As a profession, the barristers and solicitors did a significant amount of pro bono work, possibly sometimes as part of service promotion activities.
- As a whole, the legal profession was relatively conservative in making their services known to the public, and clients usually came from referrals through personal networks.
- Factors affecting the choice of solicitors by clients were mainly past experience with the solicitors, experience of solicitors, reputation of solicitor firms and solicitors, fee level and recommendation by friends. Factors like ability to offer one-stop service, size and location of firm and advertisement were less important.
- Factors affecting the choice of barristers by solicitors were similar. The more important factors were past experience with the barristers, experience of barristers, performance records of barristers, fee level, reputation of barristers and recommendation by other solicitors.
- Nearly half of the chambers had pupil barristers, though the great majority of them did not pay pupil barristers. For solicitor firms, on the other hand, about 24% of them had trainee solicitors.
- The hourly fee rates charged for legal work were generally within the \$1,001-\$5,000 range, but were mostly between \$2,001 and \$3,000. The rates for civil cases tended to be higher than those for criminal cases. And the rates for businesses and private individuals tended to be higher than for government or legal aid or Duty Lawyer Scheme work.
- Alternative dispute resolution was developing in Hong Kong, particularly for arbitration, but the mediation sector remained small.
- The NGOs and the voluntary sector were engaged in a range of legal or related services, especially on employment and family related matters, but appeared to need resources to grow.