

ITEM FOR FINANCE COMMITTEE

HEAD 92 – DEPARTMENT OF JUSTICE

Subhead 243 Hire of legal services and related professional fees

Members are invited to approve supplementary provision of \$35 million.

PROBLEM

The approved provision under Head 92 Department of Justice Subhead 243 Hire of legal services and related professional fees is insufficient to meet anticipated expenditure for the rest of the financial year.

PROPOSAL

2. We propose supplementary provision of \$35 million under this Subhead.

JUSTIFICATION

3. Based on expenditure to date and commitments for the rest of the financial year, we estimate that expenditure under this Subhead for 2000-01 will exceed the approved provision of \$169,107,000 by \$35 million, calculated as follows -

	\$'000
(a) Actual expenditure up to 28 November 2000	107,400
(b) Commitment as at 28 November 2000	61,000

/Add

		\$'000
<u>Add</u>	(c) Estimated additional expenditure from 29 November 2000 to 31 March 2001	35,600
	(d) Estimated expenditure for 2000-01 [(a) + (b) + (c)]	204,000
<u>Less</u>	(e) Approved provision for 2000-01	169,107
	(f) Shortfall [(d) - (e)]	34,893
	say	35,000

Encl. 1 4. The estimated shortfall of \$35 million is mainly due to additional requirements on hire of legal services in respect of civil cases. Enclosure 1 gives a breakdown of the estimated expenditure of \$204 million and a summary of the major civil cases each with estimated expenditure at \$1 million or more. Some of the additional requirements are illustrated below –

(a) **Increased expenditure in respect of major cases**

- *Campenon Bernard/Maeda Corporation J.V. v The Government of the Hong Kong Special Administrative Region (HKSAR)* : It is necessary to increase the estimated expenditure by \$16.4 million from \$26 million to \$42.4 million mainly because of the additional work required to respond to the actions of the opposite party, in particular their substantial revision of their case, the introduction of additional evidence, and generation of a large volume of daily correspondence.
- *The Secretary for Justice v The HK & Yaumati Ferry Co Ltd & Another* : It is necessary to increase the estimated expenditure by \$4.1 million from \$8 million to \$12.1 million mainly because of the extensive work generated by the opposite party's various interlocutory applications.
- *The Government of the HKSAR v Hyder Consulting Ltd* : It is necessary to increase the estimated expenditure by \$4.3 million from \$0.9 million to \$5.2 million mainly because of the additional work arising from extension of the hearing from two weeks to four-and-a-half weeks, including issues on discovery and other technical points.

/(b)

- (b) **New requirements which were unforeseen during the preparation of the 2000-01 draft Estimates**
- *Kowloon Canton Railway Corporation v Director of Environmental Protection (Sheung Shui to Lok Ma Chau spur line case)* : An estimated expenditure of \$2 million is required.
 - *Right of Abode Cases (including items (9) and (10) in Enclosure 1)* : An estimated expenditure of \$5.5 million is required.
 - *Legal proceedings on land resumption for the West Rail project* : An estimated expenditure of \$1.7 million is required.
- (c) **Settlement of bills carried over from the last financial year**
- *The Cyberport Project* : Owing to the time needed to clarify and verify the bills, \$4 million under this project has been carried over from the last financial year.

FINANCIAL IMPLICATIONS

5. If Members approve the proposal, we shall offset the supplementary provision of \$35 million by deleting an equivalent amount under Head 106 Miscellaneous Services Subhead 251 Additional commitments.

BACKGROUND INFORMATION

6. Provision under Head 92 Department of Justice Subhead 243 Hire of legal services and related professional fees is to meet the costs for –

- (a) engaging lawyers (local or overseas) to advise on, or act for the Government of the HKSAR in any matter or proceeding whether criminal or civil (including arbitration) or to appear in such connection in any Hong Kong court, Commission of Inquiry, Inquiry, Tribunal or Board;
- (b) engaging lawyers for overseas work;
- (c) engaging expert witnesses and consultants;
- (d) engaging accountants and arbitrators; and
- (e) engaging other services directly related to legal matters or proceedings.

7. The Subhead covers all the briefing out expenditure in the Department of Justice, with the Civil Division and the Prosecutions Division as the major users. Out of the estimated expenditure of \$204 million for the Subhead, \$58 million is for the Prosecutions Division, which is at a similar level as in previous years, while the bulk of the remaining sum is for the Civil Division.

8. Briefing out is mainly to meet operational needs. In general, the Department of Justice may resort to briefing out when –

- (a) there is a need for expert assistance where the requisite skill is not available in the Department;
- (b) there is no suitable in-house counsel to appear for the Government;
- (c) there is a need for advice or proceeding involving members of the Department who are in conflict or dispute with the Government;
- (d) there is a need for continuity and economy; and
- (e) the size, complexity, quantum and length of a case so dictate.

9. The work of the Department of Justice is demand-led. The Department has to be able to provide or procure the necessary services efficiently and effectively to meet the demands placed upon it. These demands vary year over year both in quantitative and qualitative terms. We set out at Enclosure 2 a summary of the approved provision and actual expenditure under Subhead 243 for the past ten years since 1991-92. It can be seen from these statistics that the actual expenditure fluctuates a lot from year to year. Therefore, estimating the briefing out costs required for a particular financial year cannot be an exact science.

Encl. 2

Department of Justice
December 2000

Estimated Expenditure of Cases Briefed Out in 2000-01

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Estimated expenditure \$ million
I. Estimated Expenditure of the Civil Division		
(a) Cases with estimated expenditure not less than \$1 million		
(1) Campenon Bernard/Maeda Corporation J.V. v The Government of the Hong Kong Special Administrative Region (HKSAR)	24	42.4

Fees and expenses incurred in relation to arbitration proceedings following the termination and re-entry of two Strategic Sewage Disposal Scheme deep tunnelling contracts, Drainage Services Department (DSD) contract Nos. DC/93/13 and DC/93/14, with an estimated combined claim value of the parties' claims and counterclaims of approximately \$2.5 billion.

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Estimated expenditure \$ million
(2) The Government of the HKSAR v Swire Properties Ltd and others (Taikoo Shing Development) Fees and expenses incurred in relation to arbitration proceedings arising from a dispute with the Swire Properties Group over the liability for premium in respect of the redevelopment at Taikoo Shing. Hearing of the liability stage concluded on 1 November 2000 and the parties are now awaiting the award on liability.	9	11.5
(3) The Secretary for Justice (SJ) v The HK & Yaumati Ferry Co Ltd (HYF) & Another Fees and expenses incurred in relation to court proceedings for recovery of additional costs from HYF under an Indemnity Agreement between Government and HYF with an estimated combined claim value of the parties' claims and counterclaims of \$480 million.	5	12.1
(4) The Government of the HKSAR v Hyder Consulting Ltd Fees and expenses incurred in relation to arbitration proceedings between the Government and the Consulting Engineers in DSD Contract No. DR/89/04 with an estimated claim value of \$80 million.	8	5.2

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Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Estimated expenditure \$ million
(5) The Cyberport Project Fees and expenses incurred in relation to briefing solicitors in providing legal advice to this Project and, where appropriate, assistance with the negotiation, preparation and drafting of the whole or significant parts of the Project documentation.	1	4.0
(6) Tsing Shan Monastery and Tsing Wan Kun Fees and expenses incurred in relation to briefing leading counsel and junior counsel to appear on behalf of SJ in her appeal against the Judgment of Mr Justice Yam of 26 November 1998 adjudging that Tsing Wan Kun belonged to the To Ka Yi Tso and the To Clan of Tuen Mun. This is a matter concerning charitable trust and Chinese customary law, and SJ had joined as a party representing the interests of charity.	3	3.0
(7) Appeal against Tranche 2 Award for Campenon Bernard/Maeda Corporation J.V. v The Government of the HKSAR Fees and expenses incurred in relation to an appeal against Tranche 2 Award for Campenon Bernard/Maeda Corporation J.V. v The Government of the HKSAR.	1	2.0

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Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Estimated expenditure \$ million
<p>(8) Kowloon Canton Railway Corporation v Director of Environmental Protection (Sheung Shui to Lok Ma Chau spur line case)</p> <p>Fees and expenses incurred in relation to the appeal by Kowloon Canton Railway Corporation in respect of the Environmental Protection Department's decision on the spur line to Lok Ma Chau.</p>	around 5	2.0
<p>(9) Sin Hoi Chu & others v Director of Immigration (D of Imm)</p> <p>Fees and expenses incurred in relation to briefing leading counsel and junior counsel on behalf of the D of Imm as Respondent in the appeal of judicial review proceedings involving right of abode issues including whether the appellants are parties to the proceedings referred to in the last paragraph of the National People's Congress Standing Committee's Interpretation and are therefore unaffected persons, and the scope and application of the Concession Decision.</p>	4	1.7

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Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Estimated expenditure \$ million
(10) Ng Siu Tung & others v D of Imm Fees and expenses incurred in relation to briefing leading counsel and junior counsel on behalf of the D of Imm as Respondent in the appeal of judicial review proceedings involving right of abode issues including whether the appellants are parties to the proceedings referred to in the last paragraph of the National People's Congress Standing Committee's Interpretation and are therefore unaffected persons, and the scope and application of the Concession Decision.	4	1.7
(11) Peter Kwong, Yeung Kwok Ching and Wong Wai Kwan v Director of Fire Services (DFS) and Commissioner of Customs and Excise (C of C&E) Fees and expenses incurred in relation to briefing leading counsel and junior counsel on behalf of the DFS and C of C&E in disability discrimination claims brought by the Plaintiffs with the assistance of the Equal Opportunities Commission.	6	1.5

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Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Estimated expenditure \$ million
<p>(12) UDL Contracting Ltd v The Government of the HKSAR (Hei Ling Chau Typhoon Shelter case)</p> <p>Fees and expenses incurred in relation to arbitration proceedings relating to the Government's termination and re-entry of Civil Engineering Department contract No. CV/94/11 with an estimated combined claim value of the parties' claims and counterclaims of \$262 million.</p>	3	1.4
<p>(13) Shiu Wing Ltd & 2 others v Commissioner of Estate Duty</p> <p>Fees and expenses incurred in relation to briefing leading counsel to advise and appear on behalf of the Commissioner of Estate Duty on an appeal regarding estate duty anti-avoidance to the Court of Final Appeal.</p>	1	1.4
<p>(14) Cheng Ho Kee & others v SJ</p> <p>Fees and expenses incurred in relation to briefing leading and junior counsel to advise and appear on behalf of SJ in these proceedings which were instituted by over 3 000 Correctional Services Department officers on 27 October 1999 against the Government claiming for overtime allowance.</p>	3	1.3

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Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Estimated expenditure \$ million
(15) Tobishima Corporation v The Government of the HKSAR Fees and expenses incurred in relation to arbitration proceedings relating to the Contractor's claim for general site clearance works in DSD Contract No. DC/94/08 with an estimated claim value of \$78 million inclusive of interest.	3	1.3
(16) Chan Wah v Hang Hau Rural Committee, Sai Kung District Office & Cheung Kam Chuen Fees and expenses incurred in relation to briefing leading counsel and junior counsel to appear on behalf of the Sai Kung District Office and SJ in the appeal before the Court of Final Appeal. This appeal related to the election rights of non-indigenous villagers in the New Territories.	2	1.3
(17) Leung Man Cheung and others v the Secretary for Planning and Lands (SPL) and the Chief Executive in Council Fees and expenses incurred in relation to briefing leading and junior counsel to appear on behalf of the SPL and the Chief Executive in Council in relation to an application for judicial review by the Applicants to set aside the recommendation of the Secretary to recommend the resumption of their properties for	2	1.1

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Estimated expenditure \$ million
urban redevelopment and the decision of the Chief Executive in Council to order the resumption of their properties.		
(18) Privatisation of Mass Transit Railway Corporation (MTRC)	1	1.0
Fees and expenses incurred in relation to briefing solicitors in providing legal advice on international law aspects of the partial privatisation of the shareholding of the Government in the MTRC.		
		95.9
(b) Cases with estimated expenditure below \$1 million (about 320 cases)		48.0
Civil Division Total		143.9
II. Estimated Expenditure of the Prosecutions Division		58.0
III. Estimated Expenditure of Other Divisions		2.1
Total		204.0

Enclosure 2 to FCR(2000-01)56

Approved Provision and Actual Expenditure under Subhead 243

Year	Approved provision \$ million	Actual expenditure \$ million	(Over)/Under expenditure \$ million
	(a)	(b)	(c)
1991-92	130.0	162.9	(32.9)
1992-93	146.9	151.9	(5.0)
1993-94	163.1	167.0	(3.9)
1994-95	193.1	191.5	1.6
1995-96	211.3	145.6	65.7
1996-97	189.4	125.1	64.3
1997-98	187.0	108.6	78.4
1998-99	182.9	147.6	35.3
1999-2000	169.4	176.2	(6.8)
2000-01	169.1	204.0 (Estimated expenditure)	(34.9)

**Average variance: +/- \$32.9 million
(in absolute terms)**