

NOTE FOR FINANCE COMMITTEE

Legal expenses for briefing out cases not covered by Approved Fee Schedules (2003-04)

INTRODUCTION

At the Finance Committee (FC) meeting on 14 October 1981, Members delegated to the then Attorney General (now Secretary for Justice) and the Solicitor General the authority to negotiate and approve payment of higher fees for engaging barristers in private practice in cases of unusual complexity or length; and fees for professionals on matters briefed out which are not covered by the approved scale of fees. At the same meeting, the Administration agreed to provide Members with periodic reports indicating the levels of fees so negotiated and approved. This note reports on the expenditure incurred by the Department of Justice (the Department) within 2003-04 on briefing out cases not covered by the approved fee schedules.

2. The Department has been briefing out certain criminal and civil cases according to fee schedules approved by the FC, or at higher fees in specified circumstances. Briefing out is mainly to meet operational needs. In general, the Department 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 in court for the Hong Kong Special Administrative Region;
- (c) there is a need for advice or proceedings involving members of the Department;
- (d) there is a need for continuity and economy, e.g. where a former member of the Department who is uniquely familiar with the subject matter is in private practice at the time when legal services are required; and
- (e) the size, complexity, quantum and length of a case so dictate.

In addition, some criminal cases are briefed out with the objective of promoting a strong and independent local Bar by providing work, particularly to the junior Bar, and of securing a pool of experienced prosecutors to supplement those within the Department. This practice is also intended to help change the commonly-held perception that all prosecutors must be government lawyers whereas the private Bar can represent only the defence in criminal cases.

Encl. 1 3. The approved schedule of fees for 2003-04 is at Enclosure 1¹.

LEGAL EXPENSES NOT COVERED BY APPROVED FEE SCHEDULES FOR THE YEAR ENDING 31 MARCH 2004

4. During the year ending 31 March 2004, the Department paid out a total of \$175,131,851 as briefing out expenses. The breakdown of expenditure under *Subhead 000 Operational expenses* is as follows –

	\$
<i>Payment for hire of legal services and related professional fees</i>	
(a) Briefing out of cases according to approved fee schedule	34,277,203
(b) Briefing out of cases at fees not covered by the approved scales	113,025,321
	147,302,524

/Payment

¹ Since October 1992, Members delegated to the then Secretary for the Treasury (now Secretary for Financial Services and the Treasury) the authority to approve future revisions of the approved fees biennially subject to any increase being no greater than inflation (as measured by the Hang Seng Consumer Price Index, now retitled as Consumer Price Index (C)). At the FC meeting held on 13 June 2003, Members gave approval for the Director of Administration (instead of the Secretary for Financial Services and the Treasury) to exercise the delegated authority to make adjustments no greater than the movement of the Consumer Price Index (C). Members also approved at the same meeting a downward adjustment to the rates of the approved fees by 4.3%. The new rates took effect from 4 July 2003.

Payment for legal services for construction dispute resolution

(c) Briefing out of construction dispute resolution cases at fees not covered by approved scales ²	27,829,327
	<u>175,131,851</u>

Encl. 2 5. As regards paragraph 4(b), the Department briefed out various matters which were not covered by the approved scale of fees to lawyers, accountants, expert witnesses, consultants and appointed arbitrators. The \$113,025,321 incurred in 2003-04 involved 507 cases. Details are at Enclosure 2.

Encl. 3 6. As regards paragraph 4(c), the Department briefed out various matters which were not covered by any approved scale of fees to private practitioners engaged to undertake specialised work relating to construction dispute resolution. The \$27,829,327 incurred in 2003-04 involved 22 cases. Details are at Enclosure 3.

Department of Justice
July 2005

² There is no approved scale of fee for construction dispute resolution because it is not possible to fix scale fees for construction or other civil cases which vary by complexity and nature.

Enclosure 1 to FCRI(2005-06)4

Approved scale of maximum fees for briefing out cases

		Prior to 4 July 2003	From 4 July 2003 onwards
(a)	Court of Appeal	\$	\$
(i)	brief fee	28,430	27,210
(ii)	refresher fee per day	14,180	13,610
(b)	Court of First Instance	\$	\$
(i)	brief fee	21,330	20,410
(ii)	refresher fee per day	10,660	10,210
(iii)	conference per hour	1,130	1,080
Brief fees and refresher fees are subject to a 10% increase on the base figure for each of the second to the sixth defendant.			
(c)	District Court	\$	\$
(i)	brief fee	14,210	13,600
(ii)	refresher fee per day	7,100	6,800
(iii)	conference per hour	920	880
Brief fees and refresher fees are subject to a 10% increase on the base figure for each of the second to the sixth defendant.			
(iv)	brief fee for attending sentencing hearings or procedural applications	2,830	2,710
(d)	Magistrates' Court	\$	\$
(i)	brief fee	8,530	8,160
(ii)	refresher fee per day	4,260	4,080
(iii)	brief fee on daily basis	5,670	5,430

**Hire of legal services and related professional fees
Breakdown of cases briefed out at fees
not covered by the approved scales in 2003-04**

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
Civil		
(1) Cheng Ho Kee and others v Secretary for Justice (HCA 16883/99)		
Fees and expenses incurred in relation to briefing leading counsel (overseas and local) and junior counsel on behalf of the Secretary for the Civil Service and the Commissioner of Correctional Services in damages claims before the Court of First Instance which were instituted by a total of approximately 3 600 Correctional Services Department (CSD) staff in respect of alleged underpayment of standby allowances and alleged failure to give time off in lieu thereof for performing overnight on call at almost all of the institutions managed by CSD and extending back to as early as 1953.	3	10,324,982
(2) Allied Group Ltd. and Allied Properties (HK) Ltd. v Secretary for Justice and another (MIS 658/01, HCA 4246/01 and CACV 1/03)		
Fees and expenses incurred in reimbursement of legal fees and expenses incurred by an inspector appointed under the Companies Ordinance, who has been sued as a Defendant in a claim for damages for alleged filing of misleading evidence in judicial review proceedings which took place in 1993. The item also includes fees and expenses incurred in relation to briefing leading and junior counsel and a solicitors firm on behalf of the Financial Secretary, who has been sued as a co-defendant in the action.	5	7,762,662

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(3) Secretary for Justice v Wembley International (HK) Ltd. & Wembley Plc (HCA 8518/98)		
Fees and expenses incurred in relation to briefing leading counsel, junior counsel and expert witnesses on behalf of the Director of Leisure and Cultural Services in a claim against the former manager of the Hong Kong Stadium for damages for breach of the management agreement which was terminated by the former Provisional Urban Council on 26 May 1998.	8	6,125,044
(4) Ng Siu Tung and others v Director of Immigration (HCAL 81/99)		
Fees and expenses incurred in relation to briefing leading counsel and junior counsel on behalf of the Director of Immigration as Respondent in judicial review proceedings involving right of abode claims and the scope and application of the Government's Concession policy in respect of the Appellants including appearance before the Court of First Instance for determination of specific factual issues in some of the outstanding disputed cases remitted by the Court of Final Appeal.	2	4,095,900
(5) Swire Properties Ltd. & others v The Government of the HKSAR (MIS 173/94)		
Fees and expenses incurred in relation to briefing overseas leading and junior counsel, solicitors firm and accounting expert and engaging an arbitrator on behalf of the Director of Lands in arbitration proceedings in the determination by the arbitrator of the valuation dates for the purpose of quantifying the amount of premium payable and the method of calculating interest arising out of Government's claim for payment of land premium and interest in respect of certain redevelopments at Taikoo Shing.	5	3,469,053

/(6)

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(6) Shiu Wing Steel Limited v Director of Environmental Protection (HCAL 184/02)		
Fees and expenses incurred in relation to briefing leading counsel, junior counsel and expert on behalf of the Director of Environmental Protection as Respondent in the judicial review regarding whether it is lawful and reasonable for the Director to approve an Environment Assessment Impact Report and to grant an Environmental Permit to Hong Kong Airport Authority to build a permanent aircraft fueling facility at Tuen Mun Area 38 which is next to the Applicant's steel factory.	4	2,583,991
(7) Best Origin Ltd. v Commissioner of Rating and Valuation (LDGA 14/98)		
Fees and expenses incurred in relation to briefing leading counsel, junior counsel and expert witnesses on behalf of the Commissioner of Rating and Valuation in appeal proceedings on Government rent payable for development sites.	7	1,980,324
(8) PCCW – HKT Telephone Ltd. (PCCW) v The Telecommunications Authority (TA) (HCAL 152/2002)		
Fees and expenses incurred in relation to briefing one Queen's Counsel from the UK, one local senior counsel and one local junior counsel on behalf of the TA in respect of PCCW's application for leave to apply for judicial review to quash the TA's direction made under the Telecommunications Ordinance to secure interconnection between telecommunications system and services.	3	1,931,610

/(9)

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(9) Society for Protection of the Harbour Limited v Town Planning Board (HCAL 19/03)		
Fees and expenses incurred in relation to briefing leading counsel and junior counsel on behalf of the Town Planning Board as Respondent in the judicial review involving the draft Wan Chai North Outline Zoning Plan and the proper construction of section 3 of the Protection of the Harbour Ordinance.	4	1,927,767
(10) Society for Protection of the Harbour Limited v Town Planning Board (FACV 14/03)		
Fees and expenses incurred in relation to briefing leading counsel, junior counsel and other legal experts on behalf of the Town Planning Board as Appellant in the first-ever “leapfrog” appeal before the Court of Final Appeal involving the draft Wan Chai North Outline Zoning Plan and the proper construction of section 3 of the Protection of the Harbour Ordinance.	4	1,823,249
(11) Society for Protection of the Harbour Limited v (i) Chief Executive (CE) in Council (ii) Secretary for Housing, Planning and Lands (SHPL); and (iii) Secretary for the Environment, Transport and Works (SETW) (HCAL 102/03)		
Fees and expenses incurred in relation to briefing leading counsel, junior counsel and administrative law expert in an application for judicial review against the decisions of the CE in Council, SHPL and SETW with regard to the continued implementation of Central Reclamation Phase III, including an application for an interlocutory injunction.	3	1,598,698

/(12)

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(12) Lau Fong v Director of Immigration (FACV 10/03)		
Fees and expenses incurred in relation to briefing one leading counsel and one senior counsel on behalf of the Director of Immigration in judicial review proceedings before the Court of Final Appeal involving the issue of the right of entry of a person whose non-permanent identity card was considered by the Director of Immigration as having been obtained by fraud.	2	1,559,692
(13) Ying Ho Company Limited & Others v Secretary for Justice (CACV 291/02 on appeal from HCA 10834/98)		
Fees and expenses incurred in relation to briefing one leading counsel and two junior counsel on behalf of the Secretary for Housing, Planning and Lands, the Director of Lands and the Director of Civil Aviation in an appeal before the Court of Appeal which was lodged by the Plaintiffs against the Court of First Instance's judgment handed down on 4 March 2002 dismissing their claims made in the Court of First Instance proceedings (HCA 10834/98) for (a) repayment of liquidated damages and premium and (b) damages for loss of profits or income in respect of the land in Tsuen Wan arising from the height restriction imposed thereon.	3	1,547,200
(14) Baynard Limited and Golden Organise Limited v Secretary for Justice (HCA 4073/02)		
Fees and expenses incurred in relation to briefing leading and junior counsel and a solicitors' firm on behalf of the Director of Lands in this action for declarations that two lease modifications in respect of the Hong Kong Gold Coast development are invalid and for the refund of modification premiums paid.	3	1,397,005

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(15) Swire Properties Limited & Others and The Government of the HKSAR (FACV 13/02 on an appeal from CACV 1058/01 & MIS 173/94)		
Fees and expenses incurred in relation to briefing leading and junior counsel and a firm of solicitors on behalf of the Director of Lands in resisting Swire's application for leave to appeal against Court of First Instance's order refusing them leave to appeal certain part of the liability award in the arbitration proceedings concerning a dispute over the liability for premium and / or damages in respect of the redevelopment of Taikoo Shing.	4	1,322,445
(16) Arrowtown Assets Limited v Collector of Stamp Revenue (FACV 4/03 on appeal from CACV 118/02)		
Fees and expenses incurred in relation to briefing leading counsel from UK and local junior counsel on behalf of the Collector of Stamp Revenue as Appellant in a stamp duty appeal before the Court of Final Appeal involving the issue of whether the relevant property transaction (conveyance between associated companies) is exempted from stamp duty under S.45 of the Stamp Duty Ordinance, Cap.117.	3	1,202,117
(17) PCCW-HKT Telephone Ltd. (PCCW) v The Telecommunications Authority (TA) (MIS 528/02)		
Fees and expenses incurred in relation to briefing one overseas leading counsel and one local leading counsel on behalf of the TA as Respondent in the appeal lodged by PCCW to the Telecommunications (Competition Provisions) Appeal Board against TA's decision whereby TA disapproved PCCW's application to revise its published tariff concerning a promotion to be offered to residents moving into 14 newly-completed or soon to be completed estates in respect of Residential Direct Exchange Lines services.	2	1,152,573

/(18)

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(18) Fees and expenses incurred in 462 other civil cases under \$1 million each	-	48,808,545
Sub-total: 479 cases		<u>100,612,857</u>
Criminal		
(19) HKSAR v Lee Ming-tee and another (The Allied Case) (HCCC 191/1999)		
Fees and expenses incurred in the prosecution of the captioned complex fraud case, including lodging an appeal to the Court of Final Appeal from 24 June 2003 to 9 July 2003.	4	3,163,835
(20) Hui Yat Fai & Associates (The Bank of China case) (HCMP 5714 of 2001)		
Fees and expenses incurred in the restraint proceedings of the largest money laundering case in Hong Kong. Approximately \$800 million assets were restrained and Receivers were appointed to manage the restrained assets.	2	2,751,393
(21) HKSAR v Wan Hin-chung, Mike & others (HCCC 233 of 2001)		
Fees and expenses incurred in the prosecution of 12 defendants for lending at excessive interest rates, criminal damage and money laundering. This was a complex case and the trial took about 120 court days.	2	1,100,000
(22) Fees and expenses incurred in 24 other criminal cases under \$1 million each	-	4,274,401
Sub-total: 27 cases		<u>11,289,629</u>

/Hire

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
Hire of consultant		
(23) Fees and expenses for engaging legal consultant	1	1,122,835
Sub-total: 1 case		<u>1,122,835</u>
Total expenditure	(507 cases)	<u>113,025,321</u>

Enclosure 3 to FCRI(2005-06)4

**Legal services for construction dispute resolution
Breakdown of cases briefed out at fees
not covered by the approved scales in 2003-04**

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
<p>(1) Aoki Corporation v The Government of the HKSAR – Contract No. DC/94/12 North West Kowloon Sewerage Stage II and Stage III (Phase I)</p> <p>Fees and expenses incurred in relation to an arbitration of various claims relating to variation, extension of time and prolongation.</p>	8	15,157,330
<p>(2) TDD Contract No. TM 87/98 – Wong Chu Road Improvements and Noise Mitigation Works, Tuen Mun (Mediation between Hong Kong Construction-Amec JV and HKSARG)</p> <p>Fees and expenses incurred in relation to obtaining quantum and programming experts views on the various claims made by the Contractor.</p>	1	2,507,140
<p>(3) Secretary for Justice (SJ) v The HK & Yaumati Ferry Co. Ltd. (HYF) & another – Contract No. UA 11/91, Indemnity Agreement, HCA 15329 of 1999</p> <p>Fees and expenses incurred in relation to briefing leading counsel, a solicitors firm and two junior counsel in recovery action for additional costs from HYF under an Indemnity Agreement between Government and HYF.</p>	4	2,445,825

/(4)

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(4) Campenon Bernard / Maeda Corporation JV v The Government of the HKSAR Strategic Sewage Disposal Scheme Stage I – Contracts DC/93/13 and DC/93/14	5	2,359,343
Investigation into potential claims against the Engineer, Montgomery Watson (now MWH Hong Kong Limited).		
(5) Consultancy Agreements Nos. CE 49/90 & CE 45/91 The Government of the HKSAR v Mott MacDonald Hong Kong Ltd.	4	1,458,564
Fees and expenses incurred in relation to briefing leading counsel, a solicitors' firm and expert witness in mediation between Government and its consulting engineer over the preparation of contract documents.		
(6) (i) Contract No. 501 Hong Kong Central Station and Tunnels (ii) Tung Chung Development Entrustment Agreements with MTRCL	1	1,088,349
Fees and expenses incurred in relation to briefing a solicitors' firm to advise on the merits of claims arising from the above contracts between the Territory Development Department and MTRCL.		
(7) Fees and expenses incurred in 16 other civil cases under \$1 million each	-	2,812,776
Total expenditure	22 cases	<u>27,829,327</u>
