

NOTE FOR FINANCE COMMITTEE

Legal expenses for briefing out cases not covered by Approved Fee Schedules (2004-05)

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 2004-05 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 negotiated 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.

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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 2004-05 is at Enclosure 1¹.

LEGAL EXPENSES NOT COVERED BY APPROVED FEE SCHEDULES FOR THE YEAR ENDING 31 MARCH 2005

4. During the year ending 31 March 2005, the Department paid out a total of \$146,959,369 as briefing out expenses. The breakdown of expenditure under *Subhead 000 Operational expenses* is as follows –

	\$
Payment for hire of legal services and related professional fees	
(a) Briefing out of cases according to approved fee schedule	32,728,393
(b) Briefing out of cases at fees not covered by the approved scales	97,736,202
	130,464,595

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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	16,494,774
	146,959,369

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 \$97,736,202 incurred in 2004-05 involved 617 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 \$16,494,774 incurred in 2004-05 involved 15 cases. Details are at Enclosure 3.

Department of Justice
July 2006

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.

Approved scale of maximum fees for briefing out cases

(a) Court of Appeal

	\$
(i) brief fee	27,210
(ii) refresher fee per day	13,610

(b) Court of First Instance

	\$
(i) brief fee	20,410
(ii) refresher fee per day	10,210
(iii) conference per hour	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	13,600
(ii) refresher fee per day	6,800
(iii) conference per hour	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	2,710
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(d) Magistrates' Court

	\$
(i) brief fee	8,160
(ii) refresher fee per day	4,080
(iii) brief fee on daily basis	5,430

**Hire of legal services and related professional fees
Breakdown of cases briefed out at fees
not covered by the approved scales in 2004-05**

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
Civil		
<p>(1) New Hong Kong Tunnel Co. Ltd. v Secretary for Justice (The Eastern Harbour Crossing Toll Increase Arbitration) (MIS 649/03)</p> <p>Fees and expenses incurred in relation to the costs of arbitrators and briefing leading counsel (overseas and local), financial experts and traffic expert on behalf of the Secretary for Environment, Transport and Works in the arbitration which was initiated by the New Hong Kong Tunnel Co. Ltd as a result of the Chief Executive in Council's rejection of their toll increase application made in September 2002.</p>	11	4,814,346
<p>(2) Ng Siu Tung and Others v Director of Immigration (HCAL 81/99)</p> <p>Fees and expenses incurred in relation to briefing leading 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.</p>	2	3,406,300

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	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(3)	Hong Kong Air Cargo Terminals Ltd. v The Commissioner of Rating and Valuation (LDRA 12/01, 510/01 & 325/02 (consolidated)) Fees and expenses incurred in relation to briefing overseas leading counsel, local junior counsel and expert witnesses on behalf of the Commissioner for Rating and Valuation in the consolidated rating appeals before the Lands Tribunal lodged by the Hong Kong Air Cargo Terminals Ltd. in respect of the rating valuations of the air cargo terminal known as “Superterminal One” situated at Chek Lap Kok.	4	3,130,697
(4)	HIT Finance Ltd., Hong Kong International Terminals Ltd. And Strategic Investments International Ltd. (MIS 654/03, MIS 655/03 & MIS 656/03) Fees and expenses incurred in relation to briefing leading counsel (overseas and local) and junior counsel on behalf of the Commissioner of Inland Revenue in the appeals before the Board of Review lodged by the above-named companies against profits tax assessment and/or additional profits tax assessment. The three appeals had been consolidated for hearing.	5	2,813,501
(5)	Allied Group Ltd. And Allied Properties (HK) Ltd. v Secretary for Justice and Another (MIS 658/01, HCA 4246/01 & FACV 7/04) Fees and expenses incurred in reimbursement of legal fees and expenses incurred by an inspector appointed under the Companies Ordinance (Cap. 32), who has been sued as a Defendant in a claim for damages for alleged filing of false and misleading evidence in judicial review proceedings which took place in 1993. This 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	2,645,035

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	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(6)	Baynard Ltd. and Golden Organise Ltd. v Secretary for Justice (HCA 4073/02) Fees and expenses incurred in relation to briefing 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.	1	2,036,895
(7)	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 and a solicitors' firm on behalf of the Director of Lands, and engaging an arbitrator in arbitration proceedings arising out of Government's claim for payment of land premium and interest in respect of certain redevelopments at Taikoo Shing.	6	2,015,892
(8)	Best Origin Ltd. v Commissioner of Rating and Valuation (LDGA 14/98) Fees and expenses incurred in relation to briefing leading and junior counsel and various expert witnesses on behalf of the Commissioner of Rating and Valuation in a government rent appeal as regards assessment of government rent on development site.	7	1,681,649
(9)	Sakthevel Prabakar v Secretary for Security (FACV 16/03) Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Secretary for Security in judicial review proceedings before the Court of Final Appeal concerning deportation decisions involving claims of torture upon return to home country under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	3	1,618,587

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	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(10)	Ying Ho Company Ltd. & Seven Others v Secretary for Justice (The Nina Tower case) (FACV 17/03 on appeal from CACV 291/02) Fees and expenses incurred in relation to briefing leading and 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 Final Appeal which was lodged by the Plaintiffs regarding their claims 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 height restriction imposed thereon.	3	1,617,850
(11)	Shiu Wing Steel Ltd. v Director of Environmental Protection and HK Airport Authority (CACV 350/2003) Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Director of Environmental Protection in the appeal before the Court of Appeal lodged by Shiu Wing Steel Ltd. against the Court of First Instance's judgment handed down on 30 September 2003 which dismissed the judicial review regarding whether it is lawful and reasonable for the Director to approve an Environmental Impact Assessment Report and to grant an Environmental Permit to Hong Kong Airport Authority to build a permanent aircraft fuelling facility at Tuen Mun Area 38 which is next to the Appellant's steel mill.	2	1,476,500
(12)	PCCW-HKT Telephone Ltd. v The Telecommunications Authority (TA) (HCAL 63/2004) Fees and expenses incurred in relation to briefing overseas leading counsel, local leading and junior counsel on behalf of the TA in an application for judicial review of the TA's determination regarding levels of local access charges of International Direct Dial and facsimile services.	3	1,350,556

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	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(13)	Nishimatsu Construction Co. Ltd. v Commissioner of Inland Revenue (B/R 20/03, MIS 409/2003) Fees and expenses incurred in relation to briefing leading and junior counsel and expert on behalf of the Commissioner of Inland Revenue in a tax appeal before the Board of Review against profits tax assessment.	3	1,327,180
(14)	Julita F. Raza and Nine Others v (1) Chief Executive in Council; (2) Director of Immigration; and (3) Employees Retraining Board (HCAL 30/2003, LIT 696/00C) Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Chief Executive in Council, the Director of Immigration and the Employees Retraining Board in the application for judicial review of the Chief Executive in Council's decisions to impose levy on the employers of foreign domestic helpers and to reduce the minimum allowable wages of foreign domestic helpers.	2	1,297,950
(15)	PCCW-HKT Telephone Ltd. v The Telecommunications Authority (TA) (CACV 274/2003) Fees and expenses incurred in relation to briefing leading counsel (overseas and local) on behalf of the TA to state two questions of law relating to the jurisdiction of the Telecommunications (Competition Provisions) Appeal Board to the Court of Appeal for determination.	2	1,282,092

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	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(16)	Wong Wan Leung, Wong Kam Por and Wong Siu Chung as the Managers of Wong Wai Tsak Tong (the Tong) v Director of Lands (LTMR 10/96) Fees and expenses incurred in relation to briefing leading and junior counsel and expert witness on behalf of the Director of Lands in a claim for compensation arising from termination of the Tong's right as Crown lessee under the Block Crown Lease of Cheung Chau.	3	1,184,050
(17)	Michael Reid Scott (HCAL 38/04) Fees and expenses incurred in relation to briefing leading and junior counsel and instructing solicitors to represent the HKSAR Government in the application for judicial review challenging the Public Officers Pay Adjustments (2004-05) Ordinance (Cap. 580).	3	1,019,176
(18)	Fees and expenses incurred in 561 other civil cases under \$1 million each	-	50,855,278
	Sub-total: 578 cases		<u>85,573,534</u>

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Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
Criminal		
(19) HKSAR v Lee Ming-tee and Another (The Allied Case) (HCCC 191/1999)	7	3,235,123
Fees and expenses incurred in the prosecutions of the captioned complex fraud case. The defendants' application for a permanent stay of proceedings was successfully opposed on 8 June 2004. Thereafter, counsel proceeded to prepare the trial which was scheduled for October 2004. After negotiations before trial, the defendant pleaded guilty on counts 3 and 5 on the indictment and was sentenced on 5 November 2004 to 12 months' imprisonment, and ordered to pay prosecution costs of \$15 million. A four-year disqualification order under Section 16E Companies Ordinance (Cap. 32) was also made against him.		
(20) HKSAR v Kanjanapas Chong-kwong, Derek and Others (DCCC 298/2005)	1	1,021,580
Fees and expenses incurred in the prosecution of the captioned case. Leading counsel was also the advising counsel and one of the elements of the brief was a retainer for counsel to be available to the Department at anytime before trial for continuing advice or such other pre-trial court appearances as might arise. Leading counsel attended a pre-trial court appearance in the District Court on 11 July 2005 and also pre-trial conferences. The case was heard in the District Court between 20 February and 18 May 2006. The verdict was delivered from 12 June to 15 June 2006. The defendants were convicted of various offences and the sentences were passed on 16 June 2006.		
(21) Fees and expenses incurred in 35 other criminal cases under \$1 million each	-	6,425,612
Sub-total: 37 cases		<hr/> 10,682,315 <hr/>

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Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
Hire of consultant		
(22) Fees and expenses for engaging legal consultants	2	1,480,353
Sub-total: 2 cases		<u>1,480,353</u>
Total expenditure	(617 cases)	<u>97,736,202</u>

**Legal services for construction dispute resolution
Breakdown of cases briefed out at fees
not covered by the approved scales in 2004-05**

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(1) Aoki Corporation v The Government of the HKSAR - Contract No. DC/94/12	9	7,493,154
North West Kowloon Sewerage Stage II and Stage III (Phase I)		
Fees and expenses incurred in relation to the costs of an arbitrator and a technical assessor (to assist the arbitrator) and briefing overseas and local counsel and solicitors, and engineering, planning and quantum experts in an arbitration of various claims brought by the Contractor involving variation, extension of time and prolongation issues.		
(2) Secretary for Justice v The HK & Yaumati Ferry Co., Ltd. (HYF) & Another – Contract No. UA 11/91, Indemnity Agreement, HCA 15329 of 1999	5	5,607,614
Fees and expenses incurred in relation to briefing a solicitors' firm, leading and junior counsel, and technical consultants on property and quantity surveying in proceedings on Government's claim for recovery of the additional costs of construction of certain outstanding and omitted works at the re-provided piers at Central; and HYF's counterclaims for return of additional costs paid by HYF for works at the re-provided piers which they alleged to be defective and for the alleged loss of the right to redevelop the piers.		

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(3) Strategic Sewage Disposal Scheme Stage I Contracts DC/93/13 and DC/93/14	2	2,227,440
Investigation into Potential Claims against the Engineer, Montgomery Watson (now MWH Hong Kong Ltd.)		
Fees and expenses incurred in relation to briefing solicitors' firm and technical expert for the investigation into potential claims against the engineer, Montgomery Watson (now MWH Hong Kong Ltd.)		
(4) Fees and expenses incurred in 12 other civil cases under \$1 million each	-	1,166,566
Total expenditure	(15 cases)	<u>16,494,774</u>
