

NOTE FOR FINANCE COMMITTEE

Legal expenses for briefing out cases not covered by Approved Fee Schedules (2006-07)

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 2006-07 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.

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 2006-07 is at Enclosure 1¹.

LEGAL EXPENSES NOT COVERED BY APPROVED FEE SCHEDULES FOR THE YEAR ENDING 31 MARCH 2007

4. During the year ending 31 March 2007, the Department paid out a total of \$190,334,215 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	44,783,751
(b) Briefing out of cases at fees not covered by the approved scales	110,406,075
	<hr/> 155,189,826 <hr/>

/Payment

1 At the FC meeting held on 13 June 2003, Members gave approval for the Director of Administration to exercise the delegated authority to make adjustments to the approved fees provided that the extent of adjustment was 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 adjusted rates have been effective since 4 July 2003. On 12 June 2007, along with Members' approval for making changes to the 2007-08 Estimates to implement the re-organisation of policy bureaux of the Government Secretariat taking effect from 1 July 2007, the authority for approving adjustments to the approved fees was re-delegated to the Permanent Secretary for Home Affairs.

\$

Payment for legal services for construction dispute resolution

(c) Briefing out of construction dispute resolution cases at fees not covered by approved scales ²	35,144,389
	190,334,215

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 \$110,406,075 incurred in 2006-07 involved 477 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 \$35,144,389 incurred in 2006-07 involved 18 cases. Details are at Enclosure 3.

Department of Justice
August 2008

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 2006-07**

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
Civil		
<p>1. Best Origin Ltd. v Commissioner of Rating and Valuation (LDGA 14/98)</p> <p>Fees and expenses incurred in relation to briefing leading counsel, junior counsel and various expert witnesses on behalf of the Commissioner of Rating and Valuation in an appeal on assessment of government rent on a development site.</p>	20	24,901,428
<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 the 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	5,484,600
<p>3. Leung Kwok Hung v President of the Legislative Council of HKSAR and Secretary for Justice (HCAL 87/2006)</p> <p>Fees and expenses incurred in relation to briefing leading counsel, junior counsel and two expert witnesses in the judicial review proceedings challenging the decision of the President of the Legislative Council which raises constitutional issues relating to the powers of Members of the Council to propose committee stage amendments which have a charging effect.</p>	6	2,270,215

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
4.	Super Lion Enterprises Ltd. & 193 Others v Commissioner of Rating and Valuation (HCAL 71, 78-92, 95, 96, 110, 134 & 148-152/2005 and HCAL 13, 17, 22-24, 48 & 52/2006 - a total of 32 government rent judicial review cases) Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Commissioner of Rating and Valuation in the judicial review proceedings taken out by some major property developers against the Commissioner's decision to withdraw the holding-over orders for payment of government rent in relation to development sites pending the final determination of the relevant government rent appeals.	2	2,034,500
5.	Harvest Good Development Ltd. v Secretary for Justice and Two Others (HCAL 32/06) Fees and expenses incurred in relation to briefing leading counsel, junior counsel and a solicitor (as expert) on behalf of the Government in the judicial review proceedings taken out by Harvest Good Development Ltd. concerning the constitutionality of sections 7(2) & 17 of the Limitation Ordinance, Cap. 347.	4	1,874,283
6.	Shiu Wing Steel Ltd. v Director of Environmental Protection (FACV 28/2005) Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Director of Environmental Protection in an appeal to the Court of Final Appeal by Shiu Wing Steel Ltd. against the decision of the Director in approving an Environmental Impact Assessment Report submitted by Hong Kong Airport Authority to build a permanent aviation fuel facility at Tuen Mun and issuing an Environmental Impact Assessment Permit with conditions.	3	1,796,950

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
7.	The Catholic Diocese of Hong Kong also known as the Bishop of the Roman Catholic Church in Hong Kong Incorporation v Secretary for Justice (HCAL 157/05)	2	1,725,600
	<p>Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the then Secretary for Education and Manpower in the judicial review proceedings taken out by the Catholic Diocese of Hong Kong challenging the constitutionality of certain provisions of the Education Ordinance, Cap. 279, concerning the establishment of incorporated management committees in so far as they are applicable to its aided primary and secondary schools.</p>		
8.	HIT Finance Ltd. and Hong Kong International Terminal Ltd. v Commissioner of Inland Revenue (HCIA 14/05 and HCIA 15/05)	2	1,602,932
	<p>Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Commissioner of Inland Revenue in the appeals to the Court of Appeal by HIT Finance Ltd. and Hong Kong International Terminals Ltd. concerning the issue of whether the expenditure claimed by the Appellants as expenses are deductible under section 16 of the Inland Revenue Ordinance, Cap 112 and if so, whether the deductibility is nonetheless denied by section 61A of the same Ordinance.</p>		
9.	M v Secretary for Justice (DCEO 8/04)	5	1,438,790
	<p>Fees and expenses incurred in relation to briefing counsel and expert witnesses on behalf of the Secretary for Justice as Defendant in a disability discrimination claim for damages by an Administrative Officer formerly employed by the Government who claims to have suffered from Generalized Anxiety Disorder and that various officers in the Government had harassed and discriminated against him.</p>		

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
10.	Tai Hing Cotton Mill (Development) Ltd. v Commissioner of Inland Revenue (CACV 343/05) Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Commissioner of Inland Revenue in an appeal to the Court of Appeal by the Tai Hing Cotton Mill (Development) Ltd. concerning the issue of whether the expenditure claimed by the Appellant as expenses are deductible under section 16 of the Inland Revenue Ordinance, Cap 112 and if so, whether the deductibility is nonetheless denied by section 61A of the same Ordinance.	2	1,401,601
11.	Chu Woan Chyi , Liao Hsiao Lan, Lu Lih Ching, Chang Jenn-Yeu, Kan Hung Cheung and Hong Kong Association of Falun Dafa v Director of Immigration (HCAL 32/03) Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Director of Immigration in the judicial review proceedings challenging, among other things, the decisions of the Director to refuse to give permission to land to the first to the fourth Applicants.	2	1,317,900
12.	Wetherall Investments Ltd. v Town Planning Board (MIS 414/05) Fees and expenses incurred in relation to briefing leading and junior counsel and an expert witness on behalf of the Town Planning Board and engaging LiveNote services for the hearing in the town planning appeal lodged by Wetherall Investments Ltd. against the Town Planning Board's refusal to grant permission for proposed hotel and open space development at Ship Street and Kennedy Road, Wanchai.	5	1,163,528

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
13.	Rank Profit Industries Ltd. v Director of Lands (HCAL 126/05) Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Director of Lands in the judicial review proceedings taken out by Rank Profit Industries Ltd. against the Director's decision to offer lease modification on condition that it was to discontinue its claim instituted against the Government in High Court Action No. 1076/04.	3	1,117,974
14.	Cheng Ho Kee and Others v Secretary for Justice (FACV 30/05) Fees and expenses incurred in relation to briefing leading and junior counsel in the appeal to the Court of Final Appeal lodged by over 3,300 Correctional Services Officers against the Court of Appeal's judgment dated 7 November 2005 in which the Court of Appeal unanimously dismissed their appeal against the Court of First Instance's decision dismissing their claim for payment of standby allowance for their performance of the overnight on call duty.	2	1,021,200
15.	Fees and expenses incurred in 415 other civil cases under \$1 million each	-	44,935,064
Sub-total: 429 cases			<u>94,086,565</u>

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
Criminal			
16.	HKSAR v Kanjanapas Chong-kwong, Derek and Three Others (DCCC 298/2005)	2	3,100,200

Fees and expenses incurred in engaging a queen's counsel from London and a local barrister to prosecute the captioned case, both at trial and on appeal. The trial lasted for 55 days in the District Court during the period from 20 February 2006 to 16 June 2006. All the Defendants were convicted of various offences of conspiracy to pervert the course of public justice, perjury and attempting to disclose information about the identity of a participant in the ICAC Witness Protection Programme. The judge imposed sentences of imprisonment on the Defendants ranging from two and a half years to four years. There are currently three appeals arising from the trial :

- (a) appeals against conviction by all Defendants;
- (b) case stated by Secretary for Justice against the acquittal of the fourth Defendant of the main charge; and
- (c) Secretary for Justice seeking a review of sentences against the first and the third Defendants.

The first two, as set out above, were heard on 2 to 10 July 2008. These appeals have been concluded and judgment has been reserved. The Secretary for Justice's appeal against sentence has been adjourned until after judgment has been delivered on the appeals against conviction.

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
17.	HKSAR v Hui Yat-sing and Wong Suet-mui (DCCC 660/2005)	2	2,223,123

Fees and expenses incurred in the prosecution of a massive cross-border money laundering case involving the stealing of large sums of money from the Bank of China, Kai Ping Branch by its former managers in the 1990's, and the remittance of such funds to the Defendants in Hong Kong, and to companies controlled by them. The charge alleged a conspiracy between Hui & Wong and others to launder the crime proceeds of the theft in Hong Kong between 1 September 1995 and 31 October 2001. The total funds received by Hui in his bank and trading accounts during the 74 months period from 1 September 1995 to 31 October 2001 was in excess of HK\$1,703 million. Trial commenced on 11 September 2006 in the District Court, and concluded on 19 January 2007. A forensic accountant provided lengthy expert witness evidence. Both Defendants were convicted and sentenced to six and a half years' imprisonment each. The Defendants have lodged appeal against their convictions which was heard on 3 to 5 June 2008. Confiscation proceedings adjourned until after the end of the appeal period. The appeal was dismissed and to date there has been no indication of any further appeal. The appeal period ended on 11 July 2008.

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
18.	HKSAR v Lam Wai-shuen & 17 Others (DCCC 1041/2005 & DCCC 111/2006 (consolidated))	1	1,185,000
	<p>Fees and expenses incurred in the prosecution of the captioned fraud case relating to three companies established to effect Local London Gold/Silver fraud with losses of about HK\$13.5 million. Sixteen Defendants made a preliminary application for a permanent stay of the trial, which was dismissed after about one month of hearing. The trial proper took about 54 days with 15 Defendants being convicted. Sentences of up to two years and eight months' imprisonment were handed down on 30 January 2007. Only two of the Defendants appealed. The appeal was heard on 19 February 2008 and judgment dismissing the appeal was handed down on 3 March. No other expenses are expected to arise in respect of this matter.</p>		
19.	HKSAR v Tai Chi-wah & Another (HCCC 39/2005)	1	1,020,000
	<p>Fees and expenses incurred in the prosecution of the captioned case involving two main Defendants, namely Tai Chi Wah and Lim Hau Chun, the two directors of True Gold Investment Ltd., which was a subsidiary of Gold Face Holdings Ltd. and a developer of a New Territories residential project, Villa Pinada. The two Defendants were charged respectively with three counts of 'conspiracy to defraud' and five counts of 'furnishing false information'. The case involved 26 box files of statements and documentary exhibits. The trial lasted for 48 days during the period from 20 April to 29 June 2006 and 38 witnesses were called. The first Defendant was convicted of all charges and was sentenced to a total of five years' imprisonment. The second Defendant was convicted of the first three charges and was sentenced to a total of four years' imprisonment. No other expenses are expected to arise in respect of this matter.</p>		
20.	Fees and expenses incurred in 42 other criminal cases under \$1 million each	-	6,289,648
	Sub-total: 46 cases		<hr/> 13,817,971 <hr/>

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
	Hire of Consultant		
21.	Fees and expenses for engaging legal consultants	2	2,501,539
	Sub-total: 2 cases		<u>2,501,539</u>
	Total expenditure	(477 cases)	<u>110,406,075</u>

**Legal services for construction dispute resolution
Breakdown of cases briefed out at fees
not covered by the approved scales in 2006-07**

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
<p>1. Secretary for Justice v The Hong Kong and Yaumati Ferry Co. Ltd. (HYF) and Another - Contract No. UA 11/91, Indemnity Agreement (HCA 15329 of 1999)</p> <p>Fees and expenses incurred in relation to briefing a solicitors' firm, leading and junior counsel, technical consultants on piling, property and quantity surveying, as well as a quantum expert in proceedings on the Government's claim for the 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.</p>	11	17,131,847
<p>2. Shek Wu Hui Development Package 4 - Contract No. FL 20/97</p> <p>Claim for significantly worse sub-surface conditions under SCC 33</p> <p>Fees and expenses incurred in relation to appointing an arbitrator, briefing a solicitors' firm, counsel and experts in an arbitration on a claim brought by the Contractor against the Government for additional payment due to significantly worse sub-surface conditions.</p>	8	6,977,807

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
3. Contract NL 6/95 - Tung Chung Development Phase IIB Main Works	6	3,748,965
Arbitration between the Government of the HKSAR and Sun Fook Kong (Civil) Ltd.		
Fees and expenses incurred in relation to appointing an arbitrator, briefing leading counsel, junior counsel and experts in relation to the preparation for an arbitration between the Contractor and the Government in respect of certain disputes that have arisen out of the Contract.		
4. Strategic Sewage Disposal Scheme Stage I - Contracts DC/93/13 and DC/93/14	5	2,841,393
Arbitration between the Government of the HKSAR and Montgomery Watson Hong Kong Ltd. (now MWH Hong Kong Ltd.)		
Fees and expenses incurred in relation to appointing an arbitrator, briefing a solicitors' firm, an overseas leading counsel, junior counsel, technical and quantum experts in the investigation and instigation of claims against the Montgomery Watson Hong Kong Ltd. for professional negligence and breach of the Consultancy Agreement arising out of the Harbour Area Treatment Scheme (formerly Strategic Sewage Disposal Scheme) Stage I tunnelling works.		

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
5. School Improvement Programme Consultancy Agreement No. CAQG28	5	1,773,643
Arbitration between Frank & Vargeson (HK) Ltd. and the Government of the HKSAR		
Fees and expenses incurred in relation to appointing an arbitrator, briefing counsel and a quantum expert in an arbitration brought by the Consultants for additional fees and costs arising out of their performance of the Consultancy Agreement, due to delays and additional services instructed by the Government.		
6. Fees and expenses incurred in 13 other civil cases under \$1 million each	-	2,670,734
Total expenditure	(18 cases)	<u>35,144,389</u>
