

NOTE FOR FINANCE COMMITTEE

Legal expenses for briefing out cases not covered by Approved Fee Schedules (2007-08)

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 2007-08 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)

- (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 2007-08 is at Enclosure 1¹.

LEGAL EXPENSES NOT COVERED BY APPROVED FEE SCHEDULES FOR THE YEAR ENDING 31 MARCH 2008

4. During the year ending 31 March 2008, the Department paid out a total of \$175,350,024 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	46,747,728
(b) Briefing out of cases at fees not covered by the approved scales	107,284,624
	154,032,352

/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	21,317,672
	175,350,024

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 \$107,284,624 incurred in 2007-08 involved 506 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 \$21,317,672 incurred in 2007-08 involved 24 cases. Details are at Enclosure 3.

Department of Justice
August 2009

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 2007-08**

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
Civil		
1. The Hong Kong Institute of Education (MIS 145/07)	10	7,653,143
Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the former Secretary for Education and Manpower and his then permanent secretary as parties in the proceedings before the Commission of Inquiry on allegations relating to the Hong Kong Institute of Education.		
2. Ng Siu Tung and Others v Director of Immigration (HCAL 81/99)	2	4,105,000
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.		
3. Dr. Kwok-Hay Kwong v The Medical Council of Hong Kong (CACV 373/06)	3	3,096,105
Fees and expenses incurred in relation to briefing leading and junior counsel and solicitors' firm on behalf of the Medical Council as the Appellant in the appeal to Court of Appeal involving declarations on the constitutionality of certain provisions of the Council's professional code of conduct.		

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
4.	Penny's Bay Investment Company Limited v Director of Lands (LDMR 23/99 and LDMR 1/05) Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Director of Lands as the Respondent in the Lands Tribunal proceedings involving a claim from the Applicant on a piece of land owned by it at Penny's Bay with right of marine access under the government lease.	2	2,861,943
5.	Michael John Treloar Rowse v Secretary for the Civil Service, Chief Executive and Chief Secretary for Administration (HCAL 41/07) Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Secretary for the Civil Service ("SCS"), Chief Executive ("CE") and Chief Secretary for Administration ("CS") in the judicial review proceedings instituted by Michael John Treloar Rowse, the then Director-General of Investment Promotion, challenging SCS's decision of accepting the findings of the Inquiry Committee in relation to the Applicant's involvement in Harbour Fest 2003, CE's decision to delegate the consideration of the appeal to CS and CS's decision to uphold the decision of SCS.	2	2,854,750
6.	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 for assessment of Government rent on a development site.	8	2,516,317

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
7.	HIT Finance Ltd. and Hong Kong International Terminals Ltd. v Commissioner of Inland Revenue (FACV 8/07, FACV 9/07, FACV 16 and FACV 17/07)	2	2,150,260
	<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 and if so, whether the deductibility is nonetheless denied by section 61A of the same Ordinance.</p>		
8.	PCCW - HKT Telephone Ltd. v The Telecommunications Authority ((1) Hong Kong CSL Ltd.; and (2) New World PCS Ltd. (Interested Parties)) (HCAL 112/2006)	4	1,991,469

Fees and expenses incurred in relation to briefing leading and junior counsel and solicitors' firm on behalf of the Telecommunications Authority ("TA") in the judicial review proceedings taken out by PCCW-HKT Telephone Ltd. in respect of a consultation exercise carried out by the TA into the basis for charging for interconnection between fixed line and mobile telephone operators. The challenge on the consultation lies, inter alia, on the basis of predetermination and bias.

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
9.	PCCW - HKT Telephone Ltd. v The Telecommunications Authority (HCAL 6/2007)	4	1,978,729
	<p>Fees and expenses incurred in relation to briefing leading and junior counsel and solicitors' firm on behalf of the Telecommunications Authority ("TA") in the judicial review proceedings taken out by PCCW-HKT Telephone Ltd. challenging the decision of the TA to issue a direction on 7 November 2006 in relation to the interconnection between telecommunications network, specifically the access to the "5804" number block, on interim terms.</p>		
10.	Tai Hing Cotton Mill (Development) Ltd. v Commissioner of Inland Revenue (FACV 2/07) (on appeal from CACV 343/05)	2	1,331,016
	<p>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 Final Appeal by the Commissioner against the Tai Hing Cotton Mill (Development) Ltd. concerning the issue of whether the deduction of the expenses claimed by the said company is denied by section 61A of the Inland Revenue Ordinance.</p>		

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
11.	Fairland Overseas Development Co. Ltd. (formerly known as Canadian Overseas Development Co. Ltd.) v Secretary for Justice (HCA 2154/05)	2	1,314,900
12.	PCCW - HKT Telephone Ltd. v The Telecommunications Authority ((1) Hong Kong CSL Ltd.; and (2) New World PCS Ltd. (Interested Parties)) (CACV 60/2007)	4	1,248,347

Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Transport Department to defend an action commenced by the Plaintiff (being the registered owner of the private road Fairview Park Boulevard (FPB) seeking a declaration that there was a binding agreement between the Government and the Plaintiff to erect traffic signs at the junction of FPB with Castle Peak Road roundabout to prohibit vehicles longer than 7M from entering FPB and an order for specific performance.

Fees and expenses incurred in relation to briefing leading and junior counsel and solicitors' firm on behalf of the Telecommunications Authority ("TA") in an appeal to the Court of Appeal by PCCW-HKT Telephone Ltd. concerning whether the TA was biased and had predetermined the issues for consultation in a consultation exercise carried out by the TA into the basis for charging for interconnection between fixed line and mobile telephone operators.

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
13.	Wharf Realty Limited v Director of Lands (HCAL 14/05)	2	1,223,375
	Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of Director of Lands (“D of L”) in the judicial review proceedings instituted by Wharf Realty Limited (“Wharf”) against the decisions of D of L in (i) rejecting Wharf’s application for surrender and re-grant of the Lease of the Ocean Terminal which would otherwise expire in 2012; and (ii) disposing of same by open competition in due course.		
14.	Chinachem Charitable Foundations Ltd. (MIS 289/07)	4	1,205,120
	Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Secretary for Justice as a party to the probate action as protector of charities relating to dispute on the validity of two alleged wills made by Nina Wang, deceased, in 2002 and 2006 respectively. The 2002 will contains donations to charities.		
15.	Wu Shu Bun v Commissioner of Police (HCPI 1348/00)	3	1,009,200
	Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Commissioner of Police in defending a claim for damages based on alleged assaults by police officers on four separate occasions, resulting in psychiatric illness of the Plaintiff.		
16.	Fees and expenses incurred in 456 other civil cases under \$1 million each	-	51,274,339
Sub-total: 471 cases			87,814,013

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
Criminal		
17. HKSAR v TSE Sui-luen and Four Others (DCCC 350/2006)	4	5,324,844

Fees and expenses incurred in engaging Senior Counsel and a junior counsel in prosecuting this trial which is about Tse Sui Luen Jewellery Company Limited (“TSL”). TSE Sui-luen (D1) and his son Tommy Tse (D2) were successive Chairmen of TSL. The other Defendants were its senior staff members. The Defendants were convicted of (i) conspiring to pay illegal rebates to employees of local travel agencies (“the corruption”); (ii) conspiring to conceal from the Inland Revenue Department of commission payments made to travel agencies (“the false accounting”); and (iii) D1 and D2, with the assistance of staff members of TSL, stealing money from TSL (“the theft”). Expenses were also incurred in taking commissioned evidence in the United States, as one of the important witnesses, who lives in Los Angeles, was unable to come to Hong Kong to give evidence because of his medical condition. The trial lasted for 99 days. The Defendants have appealed against their convictions but no date has yet been fixed for the hearing of their appeals.

	Number of counsel / legal firms / other professionals involved	Expenditure \$
18. HKSAR v LU Dayong and Two Others (DCCC 127/2005)	5	3,378,345

Fees and expenses were incurred in engaging a Senior Counsel and a junior counsel in prosecuting this trial which is a case of corruption-facilitated cigarette smuggling. The Defendants applied for a stay of proceedings and challenged the admissibility of evidence obtained. The Court ruled in favour of the prosecution. The trial proper continued for a total of 80 days at the end of which all Defendants were convicted and sentenced to varying periods of imprisonment. The Defendants have appealed against their convictions but no date has yet been fixed for the hearing of their appeals.

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
19.	HKSAR v HO Wing-cheong and Three Others (HCCC 10/2006)	3	2,309,432

This is the case concerning Fu Cheong International Holdings Ltd. It was alleged that the Defendants conspired together to defraud the Stock Exchange by over-stating its turnover and profits figures so as to induce Stock Exchange to approve the listing application and also conspired together to defraud its shareholders, investors, creditors and the Stock Exchange by misrepresenting its turnover and profits figures in the Annual Report. Moreover, it was also alleged that HO Wing-cheong conspired with others to defraud various banks by means of bogus transactions involving letters of credit. The case was severed into two parts on defence application. The first part, which was prosecuted by two counsel and concerned three of the Defendants, was tried for 77 days, resulting in the conviction of all three Defendants who received prison sentences ranging from six years nine months to nine years six months. The second part, which involved the remaining Defendant, was prosecuted by one counsel. It finished on 19 February 2008 and resulted in conviction of the remaining Defendant who was sentenced to nine years' imprisonment. The Defendants have appealed against their conviction and these appeals will be heard from 10 to 11 November 2009.

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
20.	HKSAR v Gong Beiying and Others (DCCC 980/2006)	2	1,185,000
	<p>This case is a prosecution of seven persons for their criminal conduct relating to the takeover of a Hong Kong publicly listed company. The Defendants include lawyers and financial advisers. All Defendants were convicted after trial. Once the Defendants were convicted they applied for bail pending appeal. The appeals will be heard from 7 to 25 September 2009.</p>		
21.	HKSAR v Kanjanapas Chong-kwong, Derek and Three Others (CACC 8/2006, CACC 248/2006 and CACC 140/2007)	2	1,121,354
	<p>Fees and expenses are incurred in engaging a Queen's Counsel from London and a local barrister to prosecute the above appeals. It was alleged that the Defendants, which included a solicitor and a barrister, made a bogus application to the Court of First Instance for a writ of habeas corpus with a view to gaining access to a participant in the ICAC Witness Protection Programme. All the Defendants, except the barrister, were convicted of the main offence. They subsequently appealed against their convictions and sentences and the prosecution appealed against the acquittal of the barrister on the main charge and sought to review the sentences of the solicitor together with another Defendant. The barrister won his appeal but the other Defendants lost their appeals. The conviction appeals and the case stated were heard in July 2008 and the sentence appeals were heard on 7 May 2009.</p>		
22.	Fees and expenses incurred in 28 other criminal cases under \$1 million each	-	4,551,872
Sub-total: 33 cases			17,870,847

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
Hire of Consultant		
23. Fees and expenses for engaging legal consultants	2	1,599,764
Sub-total: 2 cases		<hr/> 1,599,764 <hr/>
Total expenditure	(506 cases)	<hr/> 107,284,624 <hr/>

**Legal services for construction dispute resolution
Breakdown of cases briefed out at fees
not covered by the approved scales in 2007-08**

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
<p>1. 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>	9	3,523,330
<p>2. Strategic Sewage Disposal Scheme Stage I - Contracts DC/93/13 and DC/93/14</p> <p>Arbitration between the Government of the HKSAR and Montgomery Watson Hong Kong Ltd. (now MWH Hong Kong Ltd.)</p> <p>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. (now MWH 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.</p>	6	2,816,031

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
3. Advanced Engineering Infrastructure Works for Pak Shek Kok Development - Contract No. TP 31/99	2	2,745,749
Arbitration between Downer EDI Works (Hong Kong) Limited (formerly known as Downer EDI Engineering (Hong Kong) Ltd.) and the Government of the HKSAR		
Fees and expenses incurred in relation to briefing a solicitors' firm and counsel in an arbitration in respect of claims brought by the Contractor against the Government for time-related and non-time related costs.		
4. Secretary for Justice v The Hong Kong and Yaumati Ferry Co. Ltd. (HYF) and Hong Kong Ferry (Holdings) Co. Ltd. (HKF) (CACV 22/2007)	3	1,781,012
Fees and expenses incurred in relation to briefing a solicitors' firm, leading counsel and junior counsel in an appeal to the Court of Appeal by the HYF and HKF against a judgment of the Court given on 22 December 2006.		

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
5. Maintenance and Repairs to Seawalls, Piers and other Port Works - Contract No. CV/99/03	6	1,734,410
Arbitration between Chevalier (Civil Engineering) Ltd and the Government of the HKSAR		
Fees and expenses incurred in relation to appointing an arbitrator and briefing counsel and a quantum expert in an arbitration in respect of claims brought by the Contractor against Government for the Engineer's failure to carry out a re-rating of the whole of the Works.		
6. Water Front Park at Area 33 Tai Po - Arch SD Contract No. TP 26/93	3	1,712,514
Arbitration between Wan Chung Construction Co. Ltd. and the Government of the HKSAR		
Fees and expenses incurred in relation to briefing solicitors and counsel in an arbitration in respect of claims brought by the Contractor against the Government for extension of time, prolongation costs, and additional costs.		

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
<p>7. 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 and experts in proceedings in relation to the quantum trial on assessment of the Government's claim for 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.</p>	5	1,544,915
<p>8. School Improvement Programme Phase 3, Package 3 Group 1 - Contract No. ALF 305</p> <p>Arbitration between Shing Hing Construction Co. Ltd. and the Government of the HKSAR</p> <p>Fees and expenses incurred in relation to appointing an arbitrator, briefing counsel and an expert in an arbitration brought by the Contractor against the Government relating to claims for extensions of time, prolongation costs, and additional costs plus interest.</p>	3	1,088,800

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
9. Adopting the New Engineering Contract (NEC) for delivery of Government Construction Works - the NEC Pilot Project	1	1,076,688
Fees and expenses incurred in relation to briefing an external legal consultant to provide advice to assist the Government in the preparation of the tender/contract documentation based on the NEC.		
10. Fees and expenses incurred in 15 other civil cases under \$1 million each	-	3,294,223
Total expenditure	(24 cases)	<hr/> 21,317,672 <hr/>
