

## NOTE FOR FINANCE COMMITTEE

### Legal expenses for briefing out cases not covered by Approved Fee Schedules (2012-13)

#### 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 2012-13 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<sup>1</sup>, 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) .....

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<sup>1</sup> 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, the authority for approving adjustments to the approved fees was re-delegated to the Permanent Secretary for Home Affairs.

- (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 2012-13 is at Enclosure 1.

**LEGAL EXPENSES NOT COVERED BY APPROVED FEE SCHEDULES FOR THE YEAR ENDING 31 MARCH 2013**

4. During the year ending 31 March 2013, the Department paid out a total of \$283,885,715 as briefing out expenses. The breakdown of expenditure under *Subhead 000 Operational expenses* is as follows –

	\$
<b>Payment for hire of legal services and related professional fees</b>	
(a) Briefing out of cases according to approved fee schedule	56,586,215
(b) Briefing out of cases at fees not covered by the approved scales	126,977,776
	<u>183,563,991</u>
<b>Payment for legal services for construction dispute resolution</b>	
(c) Briefing out of construction dispute resolution cases at fees not covered by approved scales <sup>2</sup>	100,321,724
<b>Total expenditure</b>	<u>283,885,715</u>

/5. ....

<sup>2</sup> 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.

5. Regarding 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 amount of \$126,977,776 incurred in 2012-13 involved 648 cases. Details are set out at Enclosure 2.

Encl. 2

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 amount of \$100,321,724 incurred in 2012-13 involved 24 cases. Details are set out at Enclosure 3.

Encl. 3

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Department of Justice  
November 2013

**Approved scale of maximum fees for briefing out cases  
(rate effective since 9.3.2012<sup>#</sup> )**

**(a) Court of Appeal**

	\$
(i) brief fee	29,920
(ii) refresher fee per day	14,960

**(b) Court of First Instance**

	\$
(i) brief fee	22,440
(ii) refresher fee per day	11,220
(iii) conference per hour	1,170

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	14,940
(ii) refresher fee per day	7,470
(iii) conference per hour	960

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	2,970
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**(d) Magistrates' Court**

	\$
(i) brief fee	8,970
(ii) refresher fee per day	4,480
(iii) brief fee on daily basis	5,970

<sup>#</sup> On 9 March 2012, with Legislative Council's endorsement, the rates of the approved criminal legal aid fees were adjusted upward by around 1.6%. As the Department uses the same scale of fees for briefing out, the briefing out fees for cases briefed since that date were adjusted accordingly.

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**Enclosure 2 to FCRI(2013-14)11**

**Hire of legal services and related professional fees  
Breakdown of cases briefed out at fees  
not covered by the approved scales in 2012-13**

<b>Brief description of case/matter</b>	<b>Number of counsel/legal firms/other professionals involved</b>	<b>Expenditure \$</b>
<b>Civil</b>		
1. <b>New Hong Kong Tunnel Co. Ltd. (NHKTC) v The Secretary for Justice (SJ) on behalf of the Government of the Hong Kong Special Administrative Region (HKSAR) (MIS 295/11)</b>	10	6,889,387

Fees and expenses incurred in relation to briefing a London Queen's Counsel (QC), a local senior counsel (SC) and a local junior counsel to act for the Government in the Eastern Harbour Tunnel Toll Increase Arbitration (the Arbitration) instituted by NHKTC pursuant to section 55 of the Eastern Harbour Crossing Ordinance (Cap. 215). Fees and expenses also incurred in engaging experts to advise the HKSAR Government in the Arbitration, and paying the two arbitrators and an umpire for the Arbitration.

The arbitration took place between 16 and 19 July 2012. By 22 October 2012, the arbitrators released to the parties the Partial Final Award and Reasons for Award. The arbitrators determined that NHKTC's application for an upward variation in the tolls failed and was to be dismissed. On 22 January 2013, NHKTC's solicitors confirmed that NHKTC would not (i) be making any application or appeal in respect of the award; and (ii) object to the usual order that costs follow the event, subject to costs being taxed if not agreed.

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
2. <b>Vallejos Evangeline Banao also known as Vallejos Evangeline B. v Commissioner of Registration and Another (HCAL 124/10)</b>	3	3,645,816
<p>Fees and expenses incurred in relation to briefing a London QC, one local SC and a local junior counsel to act for the Commissioner of Registration in resisting a Judicial Review (JR) application taken out by a foreign domestic helper seeking right of abode in Hong Kong. The decisions under challenge were the Commissioner's refusal to issue to the Applicant a Hong Kong permanent identity card on 2 December 2008 and the Registration of Persons Tribunal's dismissal on 4 June 2010 of the Applicant's appeal against the Commissioner's refusal. The JR application was heard by the Court of First Instance (CFI) on 22 and 23 August 2011 and was allowed by the judgment handed down on 30 September 2011. Part of the fees was settled in the fiscal year of 2012-13 due to the time taken for briefing-out Counsel to issue their fee notes and the processing of such fee notes.</p>		
3. <b>Azeus Systems Ltd. v The Government of the HKSAR (MIS 137/11)</b>	4	3,352,238
<p>Fees and expenses incurred in appointing an independent arbitrator, briefing a local SC and a local junior counsel, and engaging an independent IT expert in an arbitration between the HKSAR Government and Azeus Systems Ltd. on a contract dispute in relation to the implementation of the Client Information System for the Social Welfare Department, and in settling other miscellaneous expenses for the arbitration proceedings and hearing. The arbitration was heard in late November and early December 2012, and the arbitral award was published on 21 March 2013.</p>		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
4. <b>Best Origin Ltd. v Commissioner of Rating and Valuation (FACV 21/11)</b>	2	3,257,692

Fees and expenses incurred in relation to briefing a London QC and a local junior counsel to act for the Commissioner of Rating and Valuation (CRV) in Best Origin Ltd.'s appeal to the Court of Final Appeal (CFA) against the judgment of the Court of Appeal (CA) of 19 November 2010 in CRV's favour concerning CRV's assessment of the ratable value of a development site. The appeal was heard by the CFA on 26 and 28 to 30 November 2012, and by its judgment handed down on 21 December 2012, the CFA dismissed Best Origin Ltd.'s appeal.

5. <b>Vallejos Evangeline Banao also known as Vallejos Evangeline B. v Commissioner of Registration and Another (CACV 204/11)</b>	5	3,122,699
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Fees and expenses incurred in relation to briefing a London QC, one local SC and two local junior counsel to act for the Commissioner of Registration in appealing against the judgment of the CFI handed down on 30 September 2011 which quashed the Commissioner of Registration's refusal to issue a Hong Kong Permanent Identity Card to a foreign domestic helper and the Registration of Persons Tribunal's dismissal of the foreign domestic helper's appeal against the refusal. The CFI judgment also declared that the foreign domestic helper had the right of abode in Hong Kong and a provision of the Immigration Ordinance (Cap. 115) unconstitutional. An outside local expert on constitutional law and the Basic Law was also engaged to give advice on relevant issues. The appeal was heard by the CA on 21 to 23 February 2012 and was allowed by the judgment handed down on 28 March 2012. The decision of the CA was upheld in a subsequent appeal to the CFA.

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
6. <b>Penny's Bay Investment Company Ltd. (PBIL) v Director of Lands (LDMR 23/99)</b>	2	2,944,271

Fees and expenses incurred in relation to briefing a London QC and local junior counsel to act for the Director of Lands before the Lands Tribunal in determination of compensation payable to PBIL under the Foreshore and Sea-bed (Reclamations) Ordinance (Cap.127) in respect of a piece of land owned by it with right of marine access under the government lease. Hearing was conducted before the Lands Tribunal on 8 to 12 and 15 to 19 October 2012, 20 to 22 March and 23 to 26 April 2013. Judgment will be handed down in due course.

7. <b>Ubamaka Edward Wilson v Secretary for Security and Director of Immigration (FACV 15/11)</b>	5	1,743,427
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Fees and expenses incurred in engaging a London QC, two local SC and a local junior counsel to advise and appear on behalf of the Secretary for Security and the Director of Immigration, and an expert on Basic Law to provide advice, in an appeal to the CFA. The appeal concerns whether section 11 of the Hong Kong Bill of Rights Ordinance (HKBORO) (Cap. 383) applies, in the context of deportation of the Appellant to his home country, to override the right to protection against inhuman treatment under Article 3 of the Hong Kong Bill of Rights (HKBOR). The CFA held that section 11 of the HKBORO is constitutionally valid but subject to the right under Article 3 of the HKBOR, which is absolute and non-derogable. The appeal was nonetheless dismissed as the CFA found that the evidence did not show ill-treatment approaching the extent of severity required to amount to cruel, inhuman or degrading treatment or punishment for the purpose of Article 3 of the HKBOR.



Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
8. <b>Smartone Mobile Communications Ltd. v The Telecommunications Authority (MIS 528/10)</b>	3	1,704,070
<p>Fees and expenses incurred in relation to briefing a London QC and a local junior counsel on behalf of Telecommunications Authority in the proceedings taken out by Smartone Mobile Communications Ltd. (Smartone) before the Telecommunications (Competition Provisions) Appeal Board. PCCW-HKT Telephone Limited was joined as an intervener. After rounds of case management conferences, Smartone withdrew the case in April 2012. Fees and expenses also incurred in engaging a local law firm to carry out the solicitors' work in this case.</p>		
9. <b>Joseph Lo Kin Ching &amp; Derek Lai Kar Yan, The Joint &amp; Several Administrators of the Estate of Kung Nina also known as Nina Kung &amp; Nina T H Wang and Chinachem Charitable Foundation Ltd (Foundation) (HCMP 853/12)</b>	3	1,557,467
<p>Fees and expenses incurred in relation to briefing a London QC, a local SC and a local junior counsel to advise and appear on behalf of SJ as the protector of charities in the proceedings taken out by SJ to ascertain the proper construction of Nina Wang's will dated 28 July 2002. The case was heard by the CFI on 17 to 19 December 2012 and judgment handed down on 22 February 2013, upholding the construction contended by SJ that the Foundation holds the estate of the late Nina Wang as a trustee.</p>		
10. <b>Aviation Fuel Supply Company Limited v Commissioner of Inland Revenue (CACV 150/11)</b>	2	1,357,568
<p>Fees and expenses incurred in relation to briefing a London QC and a local SC to advise on and appear on behalf of the Commissioner of Inland Revenue (CIR) in his appeal to the CA against the decision of the CFI dated 8 July 2011. The main issue is whether a lump sum received by the Taxpayer pursuant to a contractual</p>		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
arrangement is chargeable to profits tax. The appeal was heard on 13 and 14 November 2012 and the CA dismissed the CIR's appeal on 4 December 2012.		
11. <b>Ho Chun Yan Albert v Leung Chun Ying and Another (HCAL 85/12)</b>	3	1,190,025
Fees and expenses incurred in relation to briefing a London QC (also being an SC) (for advice), and local SC and junior counsel for SJ's participation (as intervener) in the Applicant's Election Petition against the Respondent, challenging that the Respondent was not duly elected. The Applicant also argued that section 34(1) of Chief Executive Election Ordinance (Cap. 569), which requires an election petition to be lodged within seven working days after the election result is declared, is inconsistent with Article 35 of the Basic Law (regarding the right of access to the courts) and thus unconstitutional. Judgment was handed down on 12 September and 5 October 2012, holding the 7-day time limit to be constitutional subject to a remedial interpretation to include a power for the court to extend time, and refusing to grant time extension for the Applicant to lodge the election petition out of time.		
12. <b>Nice Cheer Investment Ltd. v CIR (CACV 135/11)</b>	3	1,143,360
Fees and expenses incurred in relation to briefing a London QC, a local SC and a local junior counsel to advise on and appear on behalf of the CIR in his appeal to the CA against the decision of the CFI dated 28 June 2011. The main issue is whether unrealised gains in the Taxpayer's accounts are chargeable to profits tax. The appeal was heard from 22 to 23 May 2012 and the CA dismissed the CIR's appeal on 19 June 2012.		

	Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
13.	<b>The Real Estate Developers Association of Hong Kong v Town Planning Board (HCAL 58/11)</b>	3	1,111,354
	<p>Fees and expenses incurred in relation to briefing a London QC, a local SC and a local junior counsel to act for the Town Planning Board (TPB) in resisting a JR application taken out by the Real Estate Developers Association of Hong Kong (REDA). In the JR, REDA sought to challenge the TPB's powers and procedures at a systemic level and to quash the TPB's decisions in relation to planning restrictions imposed in four Draft Outline Zoning Plans. The JR application was heard by the CFI from 18 to 21 February 2013 with judgment reserved.</p>		
14.	<b>Favourable Issue Co Ltd. v SJ (HCA 3344/01)</b>	2	1,048,000
	<p>Fees and expenses incurred in briefing a local junior counsel and engaging an independent civil engineering expert for the Government in defence of the Plaintiff's claim and in the Government's counterclaim in relation to a piece of leased land in Tsuen Wan held by the Plaintiff. The Plaintiff claimed for declarations to the effect that the Government has waived the breaches of the terms of the relevant Government lease and short term tenancy. The Government denied the Plaintiff's claim and counterclaimed for outstanding waiver fee and rent. On 19 October 2012, the CFI handed down a judgment upholding part of the Plaintiff's claim and part of the Government's counterclaim with no order as to costs.</p>		
15.	Fees and expenses incurred in 575 other civil cases under \$1 million each.	-	62,713,499
	<b>Sub-total: 589 cases</b>		<b>96,780,873</b>

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
<b>Criminal</b>		
16. <b>HKSAR v Chan Chun Chuen (ESCC 2233/2011) (HCCC 182/2012)</b>	2	3,150,453
<p>The case against the accused arises from a probate action initiated by the Foundation. In the course of the probate action, the accused sought to rely on a will purportedly made by the late Madam Nina WANG by which her entire fortune was left to him. At the end of the probate action, the trial Judge found that the will produced by the accused was a forged document.</p>		
<p>Following the trial Judge’s comments on the forged will, investigation was conducted against the accused, resulting in the accused being charged for one count of “forgery” and one count of “using a false instrument”. Given the complexity of the issues involved, an overseas QC was briefed to handle the case (including the preliminary inquiry, pre-trial reviews and preliminary hearing on legal argument). Additionally, a local junior counsel was briefed to assist in the actual trial which ran between May and July 2013 in the CFI. The accused was subsequently found guilty and has lodged an appeal against both his conviction and sentence.</p>		
17. <b>HKSAR v Hui Rafael Junior &amp; Four Others (HCCC 98/2013)</b>	6	3,013,833
<p>Defendant (D)1 is a former Chief Secretary for Administration of the HKSAR. D2 and D3 were the Vice-Chairmen and Managing Directors of a publicly listed company while D4 was an Executive Director of the company. The case involves eight charges – three of misconduct in public office (MIPO), contrary to Common Law; three of conspiracy to commit misconduct in public office, contrary to Common Law and Section 159A of the Crimes Ordinance (Cap. 200); one of conspiracy to offer an advantage to a public servant, contrary to Section 4(1)(a) of the Prevention of Bribery Ordinance (POBO) (Cap. 201) and Section 159A of the Crimes Ordinance;</p>		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
<p>and one of furnishing false information, contrary to Section 19(1)(b) of the Theft Ordinance (Cap. 210). D1 faces all eight charges while each of the remaining defendants faces two of the charges.</p> <p>The defendants were charged on 13 July 2012. On 8 March 2013, the defendants were committed for trial before the CFI which has been fixed for 8 May to 15 August 2014, with a second pre-trial review set down on 3 December 2013.</p> <p>Having regard to the background of the defendants and the company in question, the complexity of the case given its nature and the gravity of the crime involved, as well as the extensive array of local SC and juniors as well as overseas QC engaged by the defendants, we need to handle this case with a high level of professional competency to ensure that due care and attention are being exercised in every step we take. Apart from setting up a dedicated team internally to manage the case, we also need to engage outside lawyers (including local SC and overseas QC, plus junior counsel) to handle the actual prosecution work.</p>	1	3,010,000

This was a case of conspiracy to defraud and money laundering. D1, the chairman of a listed company, arranged with D2, financial controller of the company, for a commercial property which D1 had a beneficiary interest, to be sold through intermediaries (including D3, an in-house treasury advisor of the company), to the company with a financial gain of \$11.5M. Throughout the transaction, D1 did not disclose his personal interest in the property. By doing so, D1 avoided the need to comply with the requirements under the Listing Rules of the Hong Kong Stock Exchange.

After the purchase, D2 and D3 helped channel the money through various bank accounts. The money laundering

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
<p>charges arose from the dealing of the proceeds from the sales of the property, part of which routed back to a company in de facto control of D1.</p> <p>Because of the complexity of the case, and the background of one of the defendants (the chairman of a listed company) and the seniority of his defence counsel, the Prosecution decided to engage an outside counsel of proven ability in prosecuting commercial fraud to prosecute the case. D1 and D3 were found guilty after trial and were sentenced to imprisonment for five months and seven months respectively, and they have applied for leave to appeal against conviction, while D2 was acquitted.</p>	2	2,546,529
<p>19. <b>HKSAR v Sze Mei Mun and Four Others</b> <b>(DCCC 3/2011)</b></p>		

This case pertains to the offences of smuggling marked oil and money laundering. As a result of cross-border operation between the Guangdong Anti-smuggling Bureau and the Hong Kong Customs and Excise Department, five Hong Kong residents were prosecuted for one count of “Conspiracy to export unmanifested cargo” to the Mainland and seven counts, either jointly or separately, of “Dealing with proceeds known or believed to represent proceeds of indictable offence”. The total sum of the laundered money was over HK\$2.9 billion.

Trial was heard before a District Court Judge for more than 70 days, including proceedings in Hong Kong and Letter of Request proceedings in the Shenzhen Municipal Intermediate People’s Court, during which 46 prosecution witnesses, four immunized witnesses and one defence witness testified. All the defendants were convicted of the conspiracy to smuggle charge and most of the money laundering charges. They were sentenced to imprisonment for six years (for D1, D2, D3 and D5) and four years (for D4) respectively.

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
Given the complexity of this case and that D1 and D2 were represented by an SC, the prosecution considered it appropriate and necessary to brief an SC to lead the case.		
20. <b>HKSAR v Cheng Kit Yin Kelly and Four Others (DCCC 153/2010)</b>	2	1,875,126

This is a case of letter of credit fraud victimizing four banks with ensuing money laundering to cleanse the proceeds. The Defendants were all associated with one listed company, in favour of which the letters of credit were issued. The Defendants were charged with conspiracy to defraud and money laundering.

This case has a protracted history and is of great complexity since over ten separate civil proceedings had been instituted by the Defendants against the liquidators of the company, some of which had reached the CFA.

The Defence applied for permanent stay of the criminal proceedings but failed. After an unsuccessful stay application in May/June 2012, the Defence renewed it in July 2012. Both applications were also dismissed. The Defendants subsequently applied for leave to apply for JR to challenge the refusal of stay. The application was dismissed by the CFI in January 2013. The appeal against the refusal of leave was also dismissed by the CA on 25 September 2013.

As for the actual criminal case, it was heard on 19 February 2013 on a preliminary legal issue with further mention dates on 18 March, 10 May and 31 July 2013 and Pre-trial Review on 10 September 2013. Hearing of the trial proper commenced on 17 October 2013, with 30 days reserved.

The defence team consisted of two local SC as well as one junior counsel. The Defendants were also represented by one QC, one local SC and one local junior in the stay application. Initially, one local SC was briefed to prosecute the matter on fiat. As the matter progressed with increasing complexity and sensitivity, it was considered

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
necessary to engage one more local SC with sufficient experience, calibre and standing to be the overall leading counsel for the prosecution.		
21. <b>HKSAR v Ng Ka Ki, Robert and Nine Others (DCCC 810, 813 and 934/2011)</b>	1	1,426,500

This case pertains to false statements made in various applications for Hong Kong Jockey Club (HKJC) memberships and solicitation/acceptance of advantages by members of HKJC in connection with sponsoring membership applications. A total of ten defendants were prosecuted in two trials (Parts A and B respectively) under the same case numbers.

Part A of the proceedings concerned seven defendants and two (D6 and D8) eventually faced trial of one count of aiding and abetting an agent to accept an advantage and three counts of money laundering respectively. The trial lasted for 11 days before a District Judge and they were both convicted of the charges accordingly. D1 pleaded guilty to two counts of agent accepting an advantage and was convicted on his own plea. At the conclusion of Part A of the proceedings. D1, D6 and D8 were sentenced to imprisonment for 30 months, two years and 3½ years respectively.

Part B of the proceedings involved the remaining three defendants. Two of them (D7 and D10) were subsequently tried for seven days before another District Judge in respect of two counts of conspiracy to defraud (for both defendants) and two counts of agent soliciting an advantage in return for sponsoring and arranging others to sponsor membership applications (against D10 only). Both defendants were convicted of the charges of conspiracy to defraud. In view of their advanced age and the lack of proof that they had received bribe in so doing, they were given suspended sentences.

The case was complicated and involved many parties playing different roles. Substantive legal arguments were raised at the proceedings. The nature of the case and the



Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
<p>personalities involved were also sensitive. Taking into account these factors and the fact that the defendants were being represented by experienced or even SC, it was considered appropriate and necessary to brief an SC to lead the case on behalf of the prosecution.</p>		
<p>22. <b>HKSAR v Yip Wan Fung (aka Yim Kim Fung), Yip Kim Po and Four Others (CACC 353/2010)</b></p>	2	1,380,000

This was a case in which the managing officers of a listed company (D1 to D3) and the subsidiaries thereof (the Companies) conspired with others (D4 to D6) to set up some shell companies for the Companies to make bogus purchases in order to get money out of the Companies. Announcements, circular and e-mails containing false allegations that the shell companies were independent third parties and the purchases were conducted at arm's length were issued by D1 and D3. Through the instructions of D4 to D6 given to the banks, most of the money paid for the bogus purchases eventually went back to the Companies so as to make it financially more reliable than it was, while some of the money was stolen by D4.

The six defendants faced a number of charges, including conspiracy to defraud, publishing a false statement, conspiracy to deal with proceeds of an indictable offence, access to a computer with dishonest intent and theft. They were subsequently convicted of all the charges except the alternative charges and were sentenced to three to seven years' imprisonment respectively. They all appealed against conviction and D2 to D4 also appealed against sentence.

In view of the sensitivity of the case, the complexity of legal issues involved, the seniority of the legal representation of appellant's counsel and the efficiency of briefing trial counsel to conduct the appeal, the local SC and junior counsel who represented the Prosecutions in the earlier proceedings (at trial and in the bail pending appeal application made by D2 respectively) were briefed to appear for the prosecution in the appeal.

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
23. <b>HKSAR v John Wong (DCCC 694/2011)</b>	1	1,210,000

This case pertains to two charges of MIPO and two charges of false accounting against a defendant who was the Head of Department of Surgery of the University of Hong Kong (HKU). One of the MIPO offences concerned the defendant using HK\$713,347 from two bank accounts belonging to HKU to settle the employment related expenses of his domestic helper cum driver. For the other MIPO offence, it concerned the defendant not reporting to HKU after learning that a staff working under him had stolen money of not less than HK\$2.67 million belonging to the University. The defendant also lent money to the staff to pay back part of the stolen money to conceal the theft.

With respect to the two false accounting charges, the defendant falsified two Directors' Report and Accounts of a company of which he was the sole shareholder and director by making false entries therein to the effect that a total of HK\$710,366 had been incurred by the company as overseas travelling expenses. In fact, the expenses had been reimbursed to him by HKU. The false claims had resulted in a total tax reduction for the company by HK\$121,764.

The trial lasted for 18 days and the defendant was represented by two SC and one junior counsel. The defendant was convicted after trial of all four offences and was sentenced to 240 hours of Community Service Order. The prosecution is seeking a review of the sentence and the defendant is also seeking leave to appeal against his convictions.

Given the complexity and the sensitive nature of this case and that two SC were acting for the defendant, it was considered appropriate and necessary to brief a SC to lead the case.

<b>Brief description of case/matter</b>	<b>Number of counsel/legal firms/other professionals involved</b>	<b>Expenditure \$</b>
24. <b>“A” v The Commissioner of the Independent Commission Against Corruption (ICAC) (FACC 9/2011)</b>	1	1,187,920

The case involves the constitutional challenge by Appellant “A” of section 14(1)(d) of the POBO (Cap. 201), which empowers the Commissioner of ICAC to require, upon the CFI’s order, a subject person to furnish information and to answer questions for the purpose of an investigation into or proceedings relating to an offence under the POBO. “A” was such a subject person. Under the POBO, failure to comply can be subject to comment by the court and the prosecution, and the statement provided can be used under certain circumstances for the purpose of cross-examination.

“A” contended that his privilege against self-incrimination would be violated should he comply with the requirement. “A” unsuccessfully applied to the CFI to set aside or vary the Court’s order on the grounds of statutory interpretation vis-à-vis the privilege against self-incrimination, and violation of the Basic Law and the Bill of Rights. However, he was granted a certificate and leave to appeal to the CFA contending the same grounds. He sought, amongst other things, to strike down the relevant provisions. He was represented by a QC from London, a local SC and a local junior counsel in all the substantive hearings.

In light of the significance and complexity of the issues involved and the calibre of the Appellant’s legal team, it was considered necessary for the Commissioner of ICAC to be represented in the full hearing before the CFA by a QC together with two legal officers of the Department of Justice (who appeared for the Commissioner in all the proceedings preceding the full hearing).

The CFA subsequently dismissed the appeal of “A”.

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
25. <b>HKSAR v Tsang Wai Lun Wayland and others (CACC 96/2010)</b>	1	1,010,000
<p>This appeal involved five applicants, each made an application to appeal against conviction, with D1, D2 and D4 represented by SC. In gist, the prosecution case alleged that there was a dishonest agreement between D1 and his wife D2, respectively the Chairman and Executive Director of a listed company, together with others, to deceive the company, investors and the Hong Kong Stock Exchange, with a view to allowing D1 to obtain new shares of the listed company on the pretext of a gas project in the Mainland. It was also alleged that all defendants (except D3) conspired together to deal with the proceeds obtained from the disposal of the false gas project which would not be going ahead.</p> <p>As this appeal was difficult and complicated, involving both questions of law and fact, a local SC was briefed to prosecute. Hearing lasted for five days. Save that the appeal against the conviction was allowed regarding the conspiracy charge involving the couple (Charge 1) on a technicality, the Court dismissed all applicants' appeals against conviction.</p>		
26. Fees and expenses incurred in 49 other criminal cases under \$1 million each	-	10,386,542
<b>Sub-total: 59 cases</b>		<b>30,196,903</b>
<b>Total expenditure</b>	<b>(648 cases)</b>	<b>126,977,776</b>

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**Legal services for construction dispute resolution  
Breakdown of cases briefed out at fees  
not covered by the approved scales in 2012-13**

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
<p>1. <b>Route 8 - Lai Chi Kok Viaduct - Contract No. HY/2003/01 Arbitration between Acciona Infraestructuras S.A. (formerly known as NECSO Entrecanales Cubiertas S.A.) and the Government of the Hong Kong Special Administrative Region (HKSAR)</b></p> <p>Fees and expenses incurred in relation to appointing an arbitrator, and briefing a solicitors' firm, two London QC (with one also being a barrister called to the Hong Kong Bar), a local junior counsel, a quantum and programming expert, a bridge design expert, a project management expert and an asphalt expert in an arbitration in respect of claims brought by the Contractor against the Government for various complex issues regarding design, variations, additional work, extension of time, valuation of variations, prolongation costs, disruption costs and management of change costs.</p>	9	39,546,683
<p>2. <b>Shatin New Town, Stage II - Road T3 and Associated Roadworks - Contract No. ST 79/02 Arbitration between MBH Joint Venture (Maeda Corporation, Barbican Construction Co. Ltd, Hsin Chong Construction Co. Ltd) and the Government of the HKSAR</b></p> <p>Fees and expenses incurred in relation to appointing an arbitrator, and briefing a solicitors' firm, a London QC, a London and a local junior counsel, and a quantum and programming expert in an arbitration in respect of claims brought by the Contractor against the Government for the cost of extensions of time, disruption, prolongation, acceleration, variations and missing items.</p>	6	24,300,101

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
<p>3. <b>Stonecutters Bridge - Reinforced Concrete Paving to Portion of site used as Works Area</b> <b>- Contract No. HY/2002/26</b> <b>Arbitration between Maeda-Hitachi-Yokogawa-Hsin Chong Joint Venture and the Government of the HKSAR</b></p> <p>Fees and expenses incurred in relation to appointing an arbitrator, and briefing a solicitors' firm, a London QC, a London and a local junior counsel, and a quantum expert in an arbitration in respect of claims brought by the Contractor against the Government for missing items in the Bills of Quantities, measurement and valuation of various items in the Bills of Quantities, variations and requests for variations and the Final Account claims. Further fees and expenses incurred in briefing a London QC (also being a barrister called to the Hong Kong Bar) to apply for a consolidation of the Disputes referred to Arbitration by the Contractor.</p>	7	13,716,665
<p>4. <b>Structural System Design and Construction of a Primary School in Area 27 and a Primary School and a Secondary School in Area 101, Tin Shui Wai, New Territories</b> <b>- Contract No. SS H333</b> <b>Arbitration between Hong Kong Construction (Hong Kong) Limited and the Government of the HKSAR</b></p> <p>Fees and expenses incurred in relation to appointing an arbitrator, and briefing a solicitors' firm, a London QC (also being a barrister called to the Hong Kong Bar), a local junior counsel, a quantum expert and a piling expert, in an arbitration in respect of claims brought by the Contractor against the Government for prolongation costs and entitlements under alleged variations.</p>	6	7,819,168

	Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
5.	<p><b>Sha Tin New Town, Stage II Road Works at Areas 34 &amp; 52 in Shui Chuen O &amp; Area 56A in Kau To</b>  <b>- Contract No. ST/2005/02</b>  <b>Arbitration between Penta Ocean - Peako Joint Venture and the Government of the HKSAR</b></p> <p>Fees and expenses incurred in relation to appointing an arbitrator, and briefing a solicitors' firm, a local counsel and a quantum expert, in an arbitration in respect of claims brought by the Contractor against the Government for the cost of extensions of time, prolongation, delay, measurement and valuation, variations, additional works and Final Account items.</p>	4	4,157,227
6.	<p><b>Cheung Chau Old Town Road &amp; Drainage Improvements Stage 2</b>  <b>- Contract No. IS 13/04</b>  <b>Arbitration between China Metallurgical Group Corporation and the Government of the HKSAR</b></p> <p>Fees and expenses incurred in relation to briefing a solicitors' firm, a local counsel and a quantum expert in an arbitration in respect of claims brought by the Contractor against the Government for the reimbursement of its costs incurred for alleged variation of contract, missing items, disruption and prolongation costs.</p>	3	3,026,148
7.	<p><b>Western &amp; Central Water Supply Stage 1 Mainlaying in Sheung Wan and Sai Ying Pun</b>  <b>- Contract No. 13/WSD/95</b>  <b>Water Supply to West Kowloon Reclamation - Stage 1 Construction of Shek Kip Mei No. 2 Fresh Water Service Reservoir &amp; Associated Mainlaying</b>  <b>- Contract No. 14/WSD/94</b>  <b>Arbitration between UDL Contracting Limited and the Government of the HKSAR</b></p> <p>Fees and expenses incurred in relation to appointing an arbitrator, and briefing a solicitors' firm, two local SC and a quantum expert in an arbitration in respect of claims brought by the Contractor against the</p>	5	2,251,385

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
Government for the cost of extension of time, delay, variations, measurement and interest/finance and obtaining legal advice on the related UDL Scheme of Arrangement.		
8. <b>Central Reclamation Phase III - Engineering Works - Contract No. HK 12/02 Mediation between Leighton - China State - Van Oord Joint Venture and the Government of the HKSAR</b>	1	1,577,225
Fees and expenses incurred in relation to briefing a solicitors' firm in a mediation in respect of substantial claims brought by the Contractor against the Government for costs due to prolongation, disruption, variation and missing items.		
9. Fees and expenses incurred in 16 other civil cases under \$1 million each	-	3,927,122
<b>Total expenditure</b>	<b>(24 cases)</b>	<b>100,321,724</b>

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