

## **NOTE FOR FINANCE COMMITTEE**

### **Legal expenses for briefing out cases not covered by approved fee schedules (2020-21)**

#### **INTRODUCTION**

At the Finance Committee 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 Government 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 (DoJ) during the financial year of 2020-21 on briefing out cases not covered by the approved fee schedules.

2. DoJ has been briefing out certain criminal and civil cases, according to approved fee schedules<sup>1</sup>, or at negotiated fees in specified circumstances. Briefing out is mainly to meet operational needs. In general, DoJ may resort to briefing out when –

- (a) there is a need for expert assistance where the requisite skill is not available in DoJ;
- (b) there is no suitable in-house counsel to appear in court for the Hong Kong Special Administrative Region;
- (c) the size, complexity, quantum and length of a case so dictate;

/(d) .....

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<sup>1</sup> Under the current arrangement, adjustments to prosecution fees and duty lawyer fees are made administratively by the Director of Administration with reference to the prevailing rates of criminal legal aid fees which are approved by the Legislative Council in accordance with the Criminal Procedure Ordinance (Cap. 221).

- (d) it is deemed appropriate to obtain independent outside counsel's advice or services so as to address possible perception of bias or issues of conflict of interests;
- (e) there is a need for continuity and economy, e.g. where a former member of DoJ who is uniquely familiar with the subject matter is in private practice at the time when legal services are required; and
- (f) there is a need for advice or proceedings involving members of DoJ.

In addition, where appropriate, 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 DoJ.

Encl. 1      3.            The approved scale of maximum fees for briefing out criminal cases is at Enclosure 1.

#### **LEGAL EXPENSES NOT COVERED BY APPROVED FEE SCHEDULES FOR THE YEAR ENDING 31 MARCH 2021**

4.            During the year ending 31 March 2021, DoJ paid out a total of \$277,967,922 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 schedules	111,826,673
(b) Briefing out of cases at fees not covered by the approved scales	89,603,899
	<u>201,430,572</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>	76,537,350
<b>Total expenditure for 2020-21</b>	<u>277,967,922</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), DoJ briefed out various matters which were not covered by the approved scale of fees to lawyers, accountants, expert witnesses, consultants and appointed arbitrators/mediators. The amount of \$89,603,899 incurred in the financial year of 2020-21 involved 407 cases. Please refer to Enclosure 2 for further information.

Encl. 2

6. As regards paragraph 4(c), DoJ 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 \$76,537,350 incurred in the financial year of 2020-21 involved 12 cases. Please refer to Enclosure 3 for further information.

Encl. 3

7. As foreshadowed in FCRI(2021-22)4, the reporting threshold of details of cases will be revised with effect from the current issue. The reporting threshold for briefing out expenses has been adjusted from \$1 million to \$1.5 million, taking into account relevant fee increase rate for lawyers<sup>3</sup>. Details of cases with briefing out expenses of each case at \$1.5 million or above for the financial year of 2020-21 are set out in Enclosures 2 and 3. We will keep in view and consider adjustment to the reporting threshold as appropriate.

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Department of Justice  
October 2021

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<sup>3</sup> We have made reference to the Solicitors' Hourly Rate adopted by the Judiciary for party and party taxations in civil proceedings.

## Enclosure 1 to FCRI(2021-22)15

### Approved scale of maximum fees for briefing out criminal cases

		For cases briefed out up to 19 July 2020 (rate effective since 1 April 2019) \$	For cases briefed out from 20 July 2020 and onwards (rate effective since 20 July 2020) \$
<b>(a) Court of Appeal</b>			
(i)	brief fee	51,010	53,050
(ii)	refresher fee per day	25,510	26,530
<b>(b) Court of First Instance</b>			
(i)	brief fee	38,250	39,780
(ii)	refresher fee per day	19,120	19,880
(iii)	conference per hour	1,980	2,050
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 plea and sentence	6,800	7,070
<b>(c) District Court</b>			
(i)	brief fee	25,450	26,460
(ii)	refresher fee per day	12,720	13,220
(iii)	conference per hour	1,620	1,680
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 plea and sentence	3,190	3,310
<b>(d) Magistrates' Court</b>			
(i)	brief fee	15,280	15,890
(ii)	refresher fee per day	7,630	7,930
(iii)	brief fee on daily basis	11,400	11,850

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**Enclosure 2 to FCRI(2021-22)15**

**Hire of legal services and related professional fees  
breakdown of cases briefed out  
at fees not covered by the approved scales in 2020-21**

<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>Kwok Cheuk Kin &amp; Lui Chi Hang, Hendrick v Director of Lands, Chief Executive in Council (CE-in-C) and Secretary for Justice (SJ), Heung Yee Kuk as the Interested Party (CACV 234, 317 &amp; 319/2019)</b>	<b>3</b>	<b>4,617,411</b>

Fees and expenses incurred in relation to engaging one local Senior Counsel (SC), one local senior junior counsel and one local junior counsel to act for Lands Department in resisting a judicial review (JR) application against the Small House Policy (SHP). Court of First Instance (CFI) heard the JR from 3 to 7 December 2018, and handed down decisions on 8 and 30 April 2019. CFI found the SHP unconstitutional in relation to its component parts of Private Treaty Grant and Land Exchange (involving government land). All parties appealed to the Court of Appeal (CA). CA allowed the Government and Heung Yee Kuk's appeals and dismissed the Applicants' appeal. CA found the SHP constitutional in its entirety. Kwok Cheuk Kin has appealed to the Court of Final Appeal (CFA) and the appeal was heard on 11 and 12 October 2021 with judgment reserved.

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>2. <b>Kwok Wing Hang and 23 other members of the Legislative Council v CE-in-C and SJ (FACV 6, 7 &amp; 9/2020)</b>  <b>Leung Kwok Hung v SJ and CE-in-C (FACV 8/2020)</b></p>	4	3,237,900

Fees and expenses incurred in relation to engaging two local SC and two local senior junior counsel to advise and appear on behalf of the Respondents in the Applicants' applications for JR against the constitutionality of the Emergency Regulations Ordinance (Cap. 241) (ERO) and the Prohibition on Face Covering Regulation (Cap. 241K) (PFCR) and related appeals. The proceedings were heard before CFI, CA and CFA, and CFA upheld the constitutionality of the ERO and the PFCR by judgment dated 21 December 2020.

<p>3. <b>Nam Sang Wai Development Co Limited and Other Companies of Henderson Group v Town Planning Board (TPB)</b>  <b>(MIS 301/2014 &amp; MIS 272/2017)</b></p>	3	2,694,500
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Fees and expenses incurred in relation to engaging one local senior junior counsel (now becoming SC), one local junior counsel and one expert witness (on ecological issues) to act for TPB. The developers appealed against TPB's rejection of their proposed comprehensive development on wetlands in Nam Sang Wai and Lut Chau. Hearings took place intermittently from November 2020 to March 2021 (22 days in total), with a site visit on 7 January 2021. Judgment is reserved.

	Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
4.	<b>Lubiano Nancy Almorin v Director of Immigration (CACV 112/2018)</b>  Fees and expenses incurred in relation to engaging two local SC and a local junior counsel to advise and appear on behalf of the Director of Immigration in the Applicant's appeal against CFI's judgment of 14 February 2018 dismissing the Applicant's application for JR against the policy requirement that foreign domestic helpers shall work and reside in their employers' residence (Live-In Requirement). The appeal was heard on 17 and 18 March 2020. By judgment dated 21 September 2020, CA upheld the legality of the Live-In Requirement and dismissed the appeal.	3	1,744,770
5.	<b>Fees and expenses incurred in 365 other civil cases under \$1.5 million each</b>	-	51,348,836
	<b>Sub-total: 369 cases</b>		<b>63,643,417</b>

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<b>Criminal</b>		
6. <b>Hong Kong Special Administrative Region (HKSAR) v Lam Kit Wai &amp; nine others (DCCC 873/2018 &amp; 757/2019) (consolidated)</b>	1	5,261,491
<p>This is a case of 28 counts of money laundering which took place from January 2009 to August 2012 (period of about 44 months), involving ten Defendants (D1 to D10) controlling 28 bank accounts/Hong Kong Jockey Club betting accounts, and a sum of \$2,835 million.</p> <p>Given the complexity of the case and in particular, the large number of bank accounts/betting accounts, number of transactions and the sums involved, a forensic accounting firm was engaged to compile a report and to testify in trial for the purpose of summing up and analysing the transactions in all bank accounts/betting accounts involved, and to give an opinion that the accounts exhibited hallmarks of money laundering/bookmaking. D1, D2, and D4 to D10 have been convicted and sentenced while the charges against D3 were left on court file.</p>		
7. <b>HKSAR v Lai Wun Yin &amp; another (HCCC 66/2018)</b>	1	2,360,000
<p>This is a case of conspiracy to defraud, in which the two defendants were alleged to have conspired together with D1's husband to defraud the Hong Kong Stock Exchange (HKEx) by dishonestly submitting false financial results and information of China Metal Recycling (Holdings) Ltd. (China Metal), thereby inducing the HKEx to approve the listing application of China Metal to the Main Board of the Stock Exchange. The scheme involved pumping up the company's trade volume and profits by making use of sham suppliers and purchasers.</p>		



Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>Given the complexity and sensitivity of the case, one local senior junior counsel had been briefed as prosecuting counsel.</p>		
<p>D1's husband has jumped police bail and was not charged. D1 and D2 were convicted after trial in the High Court, and were sentenced to seven years' and eight years' imprisonment respectively. D1 was further disqualified from being a company director for ten years.</p>		
<p>8. <b>HKSAR v Lai Chee Ying &amp; eight others (DCCC 536/2020)</b></p>	1	2,160,360
<p>This is a case of unauthorised assembly which took place on 18 August 2019. Nine defendants were charged with "organising an unauthorised assembly" and "knowingly taking part in an unauthorised assembly".</p>		
<p>Given the complexity and sensitivity of the case, one local SC had been briefed as prosecuting counsel.</p>		
<p>Two defendants pleaded guilty before trial. As against the remaining seven defendants, the verdict was given on 1 April 2021 and they were convicted of both charges. All defendants were sentenced on 16 April 2021.</p>		
<p>9. <b>HKSAR v Mak Wan Ling (D3) (the retrial of HCCC 437/2015)</b></p>	1	1,969,050
<p>This is the retrial of D3 of HCCC 437/2015 in which two medical doctors (D1 and D3) and a laboratory technician (D2) were each charged with manslaughter by gross negligence with varying particulars.</p>		
<p>Taking into account the complexity of the case and the length of the retrial (involving evidence from 60 prosecution witnesses along with 487 exhibits being tendered into the court), one local SC was briefed to prosecute the case.</p>		

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>The retrial against D3 ran for 31 days from 14 October 2020 to 2 December 2020. At the conclusion of the retrial, the jury found D3 guilty as charged and she was sentenced to an imprisonment of three and a half years.</p>		
<p>10. <b>HKSAR v Tong Wai Hung &amp; two others (DCCC 872/2019); HKSAR v Cheung Chi Lun &amp; 23 others (DCCC 871/2019); and HKSAR v Chan Wai Lam &amp; 14 others (DCCC 820/2019)</b></p>	1	1,800,000

These three cases concerned the riotous events which took place in the Western District in the evening of 28 July 2019.

Regarding DCCC 872/2019, D1 to D3 were jointly charged with one count of riot while D1 and D2 were each further charged with one count of possession of apparatus for radiocommunications, namely, a walkie-talkie, without a licence. D1 to D3 pleaded not guilty to all the respective charges. The trial commenced on 11 May 2020 and was concluded on 15 June 2020 (covering 18 days). On 24 July 2020, D1 to D3 were acquitted of the offence of riot, whereas D1 and D2 were both convicted of the offence of possession of apparatus for radiocommunications and were each sentenced to a fine of \$10,000.

Regarding DCCC 871/2019, D1 to D24 were jointly charged with one count of riot. D15 was further charged with one count of assaulting a police officer in the execution of duty and D4 was further charged with one count of possession of apparatus for radiocommunications, namely, a walkie-talkie, without a licence. D17 pleaded guilty to the offence of riot before trial. As against the remaining 23 defendants, the trial commenced on 22 February 2021 and was concluded on 25 May 2021

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
(covering 63 days). The case has been adjourned to 13 November 2021 for verdict and D17's sentence has been adjourned to a date until further notice.		
Regarding DCCC 820/2019, D1 to D15 were jointly charged with one count of riot. D15 was further charged with one count of possession of apparatus for radiocommunications, namely, a walkie-talkie, without a licence and possession of an offensive weapon, namely, a laser pointer. D4 pleaded guilty to the offence of riot at the beginning of trial. As against the remaining 14 defendants, the trial commenced on 7 June 2021 and was concluded on 15 July 2021 (covering 26 days). The case has been adjourned to 30 December 2021 for verdict and D4's sentence.		
In consideration of the complexity and sensitivity of the cases, and for the sake of consistency, one local SC had been briefed as the leading prosecuting counsel for the three cases.		
11. Fees and expenses incurred in 33 other criminal cases under \$1.5 million each	-	12,409,581
Sub-total: 38 cases		25,960,482
Total expenditure (407 cases)		89,603,899

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## Enclosure 3 to FCRI(2021-22)15

### Legal services for construction dispute resolution breakdown of cases briefed out at fees not covered by the approved scales in 2020-21

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>1. <b>Sludge Treatment Facilities</b> - <b>Contract No. EP/SP/58/08</b> <b>Arbitration between VW-VES(HK) Limited and Hong Kong Special Administrative Region (HKSAR)</b></p> <p>Fees and expenses incurred in relation to appointing an arbitrator as well as engaging a solicitors' firm, a London Queen's Counsel (QC), a London junior counsel, a local junior counsel, a quantum and programming expert, an electrical engineering expert, a fire engineering expert, a statistical/sampling expert, a sludge incineration technology expert, an architectural expert, a structural engineering expert, a tribunal appointed statistical/sampling expert and a tribunal secretary in an arbitration in respect of claims brought by the Contractor against the Government for extension of time and additional payments and a dispute as to levy of liquidated damages.</p>	14	31,737,461
<p>2. <b>Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL-HK section)</b></p> <p>Fees and expenses incurred in relation to engaging a solicitors' firm, a London QC, a local Senior Counsel (SC), a London junior counsel, a structural steel expert, a project management/programming/quantum expert and a geotechnical expert to provide legal and expert advice on matters relating to the XRL-HK section Project.</p>	7	25,571,188

	Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
3.	<b>Enhancement of Footbridges in Tsim Sha Tsui East - Contract No. HY/2007/15</b> <b>Arbitration between Yee Hop Engineering Company Limited and HKSAR</b>	8	7,772,586
	<p>Fees and expenses incurred in relation to appointing an arbitrator as well as engaging a solicitors' firm, a local SC, a local junior counsel, a stainless steel expert, a quantum and programming expert, a structural engineering expert and a stainless steel procurement expert in an arbitration in respect of claims brought by the Contractor against the Government for extension of time, refund of liquidated damages, additional costs, prolongation/disruption costs and the final account.</p>		
4.	<b>Extension of Footbridge Network in Tsuen Wan Footbridge A along Tai Ho Road</b> <b>- Contract No. HY/2007/03</b> <b>Arbitration between Sun Fook Kong (Civil) Limited and HKSAR</b>	5	5,355,099
	<p>Fees and expenses incurred in relation to appointing an arbitrator as well as engaging a solicitors' firm, a local junior counsel and a delay/programming expert and a quantum expert in an arbitration in respect of claims brought by the Contractor against the Government for variations, missing items and re-measurement.</p>		

	Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
5.	<b>Hong Kong-Shenzhen Western Corridor - Contract No. HY/2002/21</b> <b>Arbitrations/court proceedings between HKSAR and Gammon-Skanska-MBEC Joint Venture, VSL Hong Kong Limited and Ove Arup &amp; Partners HK Ltd</b>	5	3,550,412
	<p>Fees and expenses incurred in relation to appointing an arbitrator as well as engaging a solicitors' firm, a London QC, a local junior counsel and a bridge expert in the arbitrations and court proceedings in respect of claims brought by the Government against the parties involved in the design, construction and supervision of the grouting works for the external prestressed tendons of the bridge following rupture instances.</p>		
6.	<b>Fees and expenses incurred in seven other construction dispute resolution cases under \$1.5 million each</b>	-	2,550,604
	<b>Total expenditure (12 cases)</b>		<b>76,537,350</b>

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