

NOTE FOR FINANCE COMMITTEE

Legal Expenses for Briefing Out Cases of the Department of Justice for 1999-2000

INTRODUCTION

This note reports on the expenditure on briefing out cases in the Department of Justice during the period from 1 April 1999 to 31 March 2000, in pursuance of the Administration's undertaking to provide periodic reports on the level of fees approved, which are not on the approved scale of fees, for engaging barristers in private practice in cases of unusual complexity. Starting from 1995-96, we submitted these reports on an annual basis.

LEGAL EXPENSES FOR THE YEAR ENDING 31 MARCH 2000

2. The Department of Justice applies an approved scale of fees in the briefing out of the majority of prosecution cases. During the year ending 31 March 2000, the Department paid out a total of \$27,764,263 as briefing out expenses according to an approved scale of maximum fees. The breakdown is as follows –

Level of court	Number of cases	Expenditure \$
Court of First Instance	46	7,032,503
District Court	489	17,239,210
Magistrates' Court	162	3,492,550
Total	697	27,764,263

Encl. 1 The approved scale of maximum fees for 1999-2000 is at Item I of Enclosure 1.

3. In addition to briefing out on a case basis, the Prosecutions Division of the Department briefs cases out on a daily basis in the Magistrates' Court. Under this arrangement we engage lawyers to prosecute all matters which appear before a particular Magistrate on a particular day. During 1999-2000, the Department incurred a total amount of \$411,050 involving 72.5 days. The approved rate of the maximum fee for briefing out on a daily basis for 1999-2000 in Magistrates' Court is at Item II of Enclosure 1.

4. Additionally, the Prosecutions Division pays lawyers appearing before the District Court an approved sum per case for attending sentencing hearings or procedural applications. During 1999-2000, the department incurred a total of \$14,200 involving seven cases. The approved rate of maximum fee for 1999-2000 is at Item III of Enclosure 1.

5. In addition to the above cases, the Department of Justice briefed out various matters which were not covered by the approved scale of fees to lawyers, accountants, expert witnesses, consultants and appointed arbitrators. The Department incurred a total of \$148,036,122 involving 332 cases during 1999-2000. Details are in Enclosure 2.

Encl. 2

Department of Justice
June 2000

Approved scale/rates of fees

I. Approved scale of maximum fees for criminal cases

(a) Court of Appeal		\$
(i) brief fee		28,430
(ii) refresher fee per day		14,180

(b) Court of First Instance		\$
(i) brief fee		21,330
(ii) refresher fee per day		10,660
(iii) conference per hour		1,130

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		14,210
(ii) refresher fee per day		7,100
(iii) conference per hour		920

Brief fees and refresher fees are subject to a 10% increase on the base figure for each of the second to the sixth defendant.

/(d)

(d) Magistrates' Court	\$
(i) brief fee	8,530
(ii) refresher fee per day	4,260

II. Approved rate of maximum fee for briefing out on a daily basis in the Magistrates' Court

	\$
Maximum fee paid per day	5,670

III. Approved rate of maximum fee for briefing out cases for attending sentencing hearings or procedural applications in the District Court

	\$
Approved maximum rate per case	2,830

**Breakdown of cases briefed out at fees
not covered by the approved scales**

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
Civil		
(1) Campenon Bernard/Maeda Corporation J.V. v The Government of the Hong Kong Special Administrative Region (HKSAR)		
Fees and expenses incurred in relation to arbitration proceedings following the termination and re-entry of two Strategic Sewage Disposal Scheme deep tunnelling contracts, Drainage Services Department (DSD) Contract Nos. DC/93/13 and DC/93/14, with an estimated combined claim value of the parties claims and counterclaims of approximately \$2.5 billion.	20	45,347,190
(2) The Walt Disney Project		
Fees and expenses incurred in relation to briefing solicitors in providing legal advice to this Project and, where appropriate, assistance with the negotiation, preparation and drafting of a detailed Project Agreement incorporating various terms, and other Project-related documentation.	1	13,291,686
(3) The Cyberport Project		
Fees and expenses incurred in relation to briefing solicitors in providing legal advice to this Project and, where appropriate, assistance with the negotiation, preparation and drafting of the whole or significant parts of the Project documentation.	1	8,431,565
		/(4)

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
(4) The Government of the HKSAR v Swire Properties Ltd and others (Taikoo Shing Development)		
Fees and expenses incurred in relation to arbitration proceedings arising from a dispute with the Swire Properties Group over the liability for premium in respect of the redevelopment at Taikoo Shing.	3	5,872,953
(5) Leighton Contractors (Asia) Ltd v The Government of the HKSAR		
Fees and expenses incurred in relation to arbitration proceedings relating to a 24-claim dispute for additional costs relating to the construction of Texaco Road/Tsuen Wan Bypass in Territory Development Department (TDD) Contract No. TW 54/87 with a total estimated claim value of \$100 million.	2	5,836,290
(6) The Government of the HKSAR v Hyder Consulting Ltd		
Fees and expenses incurred in relation to arbitration proceedings for professional negligence against the Consulting Engineers in DSD Contract No. DR/89/04 with an estimated claim value of \$80 million.	7	3,993,316
(7) The Secretary for Justice (SJ) v The HK & Yaumati Ferry Co Ltd (HYF) & Another		
Fees and expenses incurred in relation to Court proceedings for additional costs under an Indemnity Agreement between Government and HYF with an estimated claim value of \$400 million.	5	3,428,258

/(8)

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
(8) Tsing Shan Monastery and Tsing Wan Kun		
Fees and expenses incurred in relation to briefing leading counsel and junior counsel to appear on behalf of SJ in her appeal against the Judgment of Mr. Justice Yam of 26 November 1998 adjudging that Tsing Wan Kun belonged to the Plaintiffs. This is a matter concerning charitable trust and Chinese customary law, and SJ had joined as a party representing the interests of charity.	5	2,586,790
(9) UDL Contracting Ltd v The Government of the HKSAR (Hei Ling Chau Typhoon Shelter case)		
Fees and expenses incurred in relation to arbitration proceedings relating to the Government's termination and re-entry of Civil Engineering Department Contract No. CV/94/11 with an estimated combined claim value of the parties claims and counterclaims of \$362 million.	3	2,380,031
(10) Demutualisation of Stock and Futures Exchanges		
Fees and expenses incurred in relation to briefing solicitors in providing legal advice to the Government in advising upon (and in some cases drafting) the legal documents in relation to the merger and listing of the new company. The appointed solicitors were required to work closely with the Department of Justice and, when appropriate, with the Steering Committee and the Securities and Futures Commission.	1	1,513,600

/(11)

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
(11) Aoki Corporation v The Government of the HKSAR (Light Rail Transport Bridge & Associated Works)		
Fees and expenses incurred in relation to arbitration proceedings relating to the Contractor's claim for delay and prolongation costs in TDD Contract No. TM 53/87 with an estimated claim value of \$9 million.	5	1,130,890
(12) Tobishima Corporation v The Government of the HKSAR		
Fees and expenses incurred in relation to arbitration proceedings relating to the Contractor's claim for general site clearance works in DSD Contract No. DC/94/08 with an estimated claim value of \$78 million inclusive of interest.	4	1,106,350
(13) Lau Kong Yung & others v Director of Immigration		
Fees and expenses incurred in relation to briefing leading counsel and junior counsel on behalf of the Director of Immigration in judicial review proceedings involving right of abode issues and the validity of the National People's Congress Standing Committee interpretation.	4	1,062,577

/(14)

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
(14) Chan Wan v Hang Hau Rural Committee, Sai Kung District Office and Cheung Kam Chuen		
Fees and expenses incurred in relation to briefing leading counsel and junior counsel to appear on behalf of the Sai Kung District Office and SJ in the appeal before the Court of Final Appeal. This appeal relates to the voting rights of non-indigenous villagers in the New Territories.	4	1,049,600
(15) Fees and expenses incurred in 277 other civil cases under \$1 million each.	-	36,282,621
Sub-total: 291 cases		<hr/> 133,313,717 <hr/>

Criminal

(16) The Government of the HKSAR v CHIM Pui-chung and another		
Fees and expenses incurred in the prosecution of Mr. CHIM Pui-chung and another for conspiracy to defraud, forgery and bribery. Mr. Chim was convicted of forgery. He was sentenced to three years' imprisonment. He appealed to the Court of Appeal against conviction and sentence. The appeal against conviction was dismissed. The sentence was reduced to one year. Mr. Chim sought leave to appeal to the Court of Final Appeal. Leave was refused.	1	1,151,500

/(17)

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
(17) The Government of the HKSAR v Ewan Launder		
Fees and expenses incurred in the prosecution of Mr Launder of bribery offences. Mr Launder was convicted of a bribery offence after prolonged extradition proceedings and a re-trial. He was sentenced to five years' imprisonment.	7	1,125,543
(18) Fees and expenses incurred in 35 other criminal cases under \$1 million each.	-	7,344,289
Sub-total: 37 cases		<hr/> 9,621,332 <hr/>
Hiring of consultants		
(19) Fees and expenses for engaging four legal consultants.	4	5,101,073
Sub-total: 4 cases		<hr/> 5,101,073 <hr/>
Total expenditure		<hr/> 148,036,122 <hr/>