

NOTE FOR FINANCE COMMITTEE

Legal Expenses for Briefing Out Cases of the Department of Justice for 2001-02

INTRODUCTION

At the Finance Committee meeting on 14 October 1981, Members delegated to the then Attorney General (now Secretary for Justice (SJ)) 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. Starting from 1995-96, we have been submitting information on these on an annual basis. This note reports on the expenditure on briefing out cases in the Department of Justice (the Department) with fees details covering the period from 1 April 2001 to 31 March 2002.

2. Briefing out is mainly to meet operational needs. In general, the Department may resort to briefing out when –

- (a) there is a need for expert assistance where the requisite skill is not available in the Department;
- (b) there is no suitable in-house counsel to appear in court for the Hong Kong Special Administrative Region;
- (c) there is a need for advice or proceedings involving members of the Department;
- (d) there is a need for continuity and economy, e.g. where a former member of the Department who is uniquely familiar with the subject matter is in private practice at the time when legal services are required; and
- (e) the size, complexity, quantum and length of a case so dictate.

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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.

LEGAL EXPENSES FOR THE YEAR ENDING 31 MARCH 2002

3. During the year ending 31 March 2002, the Department paid out a total of \$166,642,034 as briefing out expenses. The breakdown of expenditure is as follows –

	\$
<i>Payment under Subhead 243 Hire of legal services and related professional fees</i>	
(a) briefing out by cases according to an approved scale of maximum fees	38,642,080
(b) briefing out on a daily basis in the Magistrates' Court at fees not exceeding the approved rate of maximum fee	4,776,490
(c) briefing out by cases for attending sentencing hearings or procedural applications in the District Court at fees not exceeding the approved rate of maximum fee	5,400
(d) briefing out by cases at fees not covered by the approved scales	86,621,766
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	130,045,736
 <i>Payment under Subhead 287 Legal services for construction dispute resolution</i>	
(e) briefing out by cases for construction dispute resolution at fees not covered by the approved scales ¹	36,596,298
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	166,642,034

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¹ There is not an 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.

4. As regards paragraph 3(a), the cases briefed out were criminal cases which did not represent particular legal difficulty but required a competent and experienced counsel to present them at court. These cases were briefed out by the Prosecutions Division of the Department according to an approved scale of maximum fees. A breakdown of expenditure under this category by level of court and the approved scale of maximum fees for 2001-02 are at Enclosure 1.
- Encl. 1
5. As regards paragraph 3(b), the cases concerned were briefed out on a daily basis in the Magistrates' Court. Under this category, the Prosecutions Division engaged lawyers to prosecute all matters which appeared before a particular Magistrate on a particular day. The approved rate of maximum fee for briefing out on a daily basis in the Magistrates' Court for 2001-02 is \$5,670 per day. During 2001-02, the Department incurred a total amount of \$4,776,490 involving 843 days.
6. As regards paragraph 3(c), the Prosecutions Division paid lawyers appearing before the District Court an approved sum per case for attending sentencing hearings or procedural applications. The approved rate of maximum fee for 2001-02 is \$2,830 per case. During the year, the Department incurred a total of \$5,400 involving three cases, none of which were paid at maximum rate.
7. As regards paragraph 3(d), 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 Department incurred a total of \$86,621,766 involving 431 cases during 2001-02. Details are at Enclosure 2.
- Encl. 2
8. As regards paragraph 3(e), the Department briefed out various matters which were not covered by the approved scale of fees to private practitioners engaged to undertake specialised work relating to construction dispute resolution. The Department incurred a total of \$36,596,298 involving 29 cases during 2001-02. Details are at Enclosure 3.
- Encl. 3

/BACKGROUND

BACKGROUND INFORMATION

9. In November 1979, Members approved a scale of maximum fees for lawyers in private practice assigned to conduct legal aid criminal cases. The Department also adopts the same scale of fees to engage counsel in private practice to appear in court in criminal cases. This is designed to ensure that both the defence and the prosecution are represented by counsel of broadly similar experience and ability and that neither the SJ nor the Director of Legal Aid has an unfair advantage in competing for counsel.

10. Initially, the scale of fees was revised at irregular intervals. Since October 1992, Members have agreed that the fees will be reviewed biennially in future. On that occasion, Members further delegated to the then Secretary for the Treasury (now Secretary for Financial Services and the Treasury) the authority to approve future revisions of the fees if outcome of the reviews justified an increase no greater than inflation (as measured by the Hang Seng Consumer Price Index, now retitled as Consumer Price Index (C)). In all other circumstances, Members' approval for any change in scale of fees will be sought.

11. Before July 1990, briefing out expenditure on all cases were met from Subhead 243 Hire of legal services and related professional fees. In July 1990, Members approved the creation of a new recurrent Subhead 287 Legal services for projects relating to the Port and Airport Development Scheme (PADS) for briefing out legal work related to the PADS projects, which required special expertise and substantial legal input. In 2001-02 Estimates, we expanded the ambit of Subhead 287 to cover both PADS projects and other construction cases and the title of the subhead was changed to "Legal services for construction dispute resolution".

**Breakdown of criminal cases briefed out
according to an approved scale of maximum fees in 2001-02**

I. Breakdown of expenditure

Level of court	Number of cases	Expenditure \$
Court of First Instance	77	7,615,941
District Court	576	27,899,602
Magistrates' Court	151	3,126,537
Total	<u>804</u>	<u>38,642,080</u>

II. Approved scale of maximum fees

(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) Magistrates' Court

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

Subhead 243 Hire of legal services and related professional fees
Breakdown of cases briefed out at fees
not covered by the approved scales in 2001-02

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
Civil		
(1) Kowloon Canton Railway Corporation (KCRC) v The Director of Environmental Protection (DEP) (Sheung Shui to Lok Ma Chau Spur Line Case) (MIS 768/00)		
Fees and expenses incurred in relation to briefing solicitors firm, leading counsel, junior counsel, expert witnesses and court reporting services on behalf of the DEP in the appeal by KCRC to the Appeal Board established under the Environmental Impact Assessment Ordinance (Cap 499) in respect of DEP's decision not to approve the Environmental Impact Assessment report for the Sheung Shui to Lok Ma Chau Spur Line and not to issue an Environmental Permit for the project.	11	13,980,821
(2) Ying Ho Co. Ltd. and seven others v The Secretary for Justice (SJ) (HCA 10834/98)		
Fees and expenses incurred in relation to briefing one leading counsel, two junior counsel, one expert witness and transcript services on behalf of the Director of Lands in a claim for repayment of premia and liquidated damages, damages and loss of profits for the Government's delay in deciding the height restriction imposed on a Lot in Tsuen Wan acquired by the Plaintiffs.	5	6,825,253

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(3) Wong Wan Leung, Wong Kam Por and Wong Siu Chung as the Managers of Wong Wai Tsak Tong (the Tong) v The Director of Lands (LTMR 10/96)		
Fees and expenses incurred in relation to briefing two leading counsel, one junior counsel and one expert witness on behalf of the Director of Lands in respect of the Tong's application for compensation lodged pursuant to the Block Crown Lease (Cheung Chau) Ordinance.	4	3,339,642
(4) Equal Opportunities Commission v The Director of Education (MIS 462/00; HCAL 1555/00)		
Fees and expenses incurred in relation to briefing leading counsel, junior counsel, expert witnesses on behalf of the Director of Education in judicial review proceedings brought by the Equal Opportunities Commission challenging that the Secondary School Places Allocation system involved unlawful sex discrimination.	8	2,325,862
(5) New Franchise for Cross-Harbour Tunnel, Western Harbour Crossing and Eastern Harbour Crossing (L/M(121) to ADV 5006/23C)		
Fees and expenses incurred in relation to briefing solicitors in providing legal advice for the grant of new franchise and, where appropriate, assistance with the negotiation, preparation and drafting of the documentation leading to the grant of the franchise.	1	1,983,206

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Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(6) Ng Siu Tung and others v The Director of Immigration (FACV 1/01)		
Fees and expenses incurred in relation to briefing leading counsel and junior counsel on behalf of the Director of Immigration as Respondent in judicial review proceedings before the Court of Final Appeal involving right of abode issues as to (i) whether the Appellants are persons unaffected by the Interpretation of the Standing Committee of the National People's Congress of Articles 22(4) & 24(2)(3) of the Basic Law; and (ii) the scope and application of the Government's Concession policy in respect of the Appellants.	3	1,345,484
(7) Sin Hoi Chu and others v The Director of Immigration (FACV 3/01)		
Fees and expenses incurred in relation to briefing leading counsel and junior counsel on behalf of the Director of Immigration as Respondent in judicial review proceedings before the Court of Final Appeal involving right of abode issues as to (i) whether the Appellants are persons unaffected by the Interpretation of the Standing Committee of the National People's Congress of Articles 22(4) & 24(2)(3) of the Basic Law; and (ii) the scope and application of the Government's Concession policy in respect of the Appellants.	3	1,290,584

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Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(8) Arrowtown Assets Ltd. v Collector of Stamp Revenue (CACV 118/02 on appeal from DCSA 52/00)	2	1,047,186
Fees and expenses incurred in relation to briefing leading counsel and junior counsel on behalf of the Collector of Stamp Revenue in a stamp duty appeal to the District Court. The appeal involved issue as to whether the relevant transaction (conveyance between associated body corporates) is exempted from stamp duty under section 45 of Stamp Duty Ordinance and the stamp duty in question is about \$350 million. The Taxpayer has lodged an appeal to the Court of Appeal against the District Court judgment.		
(9) Syed Haider Yahya Hussain & another v The Registrar of Births & Deaths (FACV 6/01)	2	1,033,565
Fees and expenses incurred in relation to briefing leading counsel and junior counsel on behalf of the Registrar of Births and Deaths as Respondent in judicial review proceedings before the Court of Final Appeal involving the issues of whether a person who could not be deported under the Deportations (British Subjects) Ordinance meant that in law that he was free from immigration control in Hong Kong upon return thereto and had in effect a right to land, and whether such right stemming from his status as a person who could not be deported under the Ordinance was one that survived as an accrued right.		
(10) Fees and expenses incurred in 388 other civil cases under \$1 million each	-	31,505,101
Sub-total: 397 cases		<hr/> 64,676,704 <hr/>
		/Criminal

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
Criminal		
(11) Hong Kong Special Administrative Region v Lee Ming-tee and Ronald Tse Chu-fai (The Allied case)		
Fees and expenses incurred in the trial of the captioned case which commenced in the Court of First Instance on 4 November 2001 and in which case the jury was discharged on 22 March 2002.	9	12,604,030
(12) Fees and expenses incurred in 32 other criminal cases under \$1 million each	-	7,116,469
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Sub-total: 33 cases		19,720,499
Hire of consultant		
(13) Fees and expenses for engaging legal consultant	1	2,224,563
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Sub-total: 1 case		2,224,563
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Total expenditure	(431 cases)	86,621,766

**Subhead 287 Legal services for construction dispute resolution
Breakdown of cases briefed out at fees
not covered by the approved scales in 2001-02**

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(1) The Secretary for Justice v The HK & Yaumati Ferry Co. Ltd. (HYF) & another – Contract No. UA 11/91, Indemnity Agreement, HCA 15329 of 1999		
Court proceedings for recovery of additional costs from HYF under an Indemnity Agreement between Government and HYF. Proceedings ongoing.	7	11,013,166
(2) Campenon Bernard / Maeda Corporation JV v The Government of the Hong Kong Special Administrative Region (HKSAR) - Contract Nos. DC/93/13 & DC/93/14		
Mediation of dispute relating to Strategic Sewage Disposal Scheme Stage 1 contracts. Case settled. Settlement reported to the Legislative Council on 4.10.2001 and 1.11.2001.	8	8,208,273
(3) Mediation on a number of claims under Airport Core Programme Lantau and Airport Railways Entrustment Agreements and Essential Infrastructure Agreements between Government and the Mass Transit Railway Corporation Limited		
Mediation concluded.	1	5,800,000

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Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(4) Campenon Bernard / Maeda Corporation JV (CBM JV) v The Government of the HKSAR - Defence of High Court application for leave to appeal by CBM JV (HCCT 92 of 2000, HCCT 4 & 5 of 2001)		
Appeal from awards on liability in arbitration proceedings relating to Strategic Sewage Disposal Scheme Stage 1 contracts. Application withdrawn following settlement of dispute through mediation.	3	2,389,861
(5) Investigation of possible arbitration claim	5	1,565,725
(6) Aoki Corporation v The Government of HKSAR - Contract No. DC/94/12 North West Kowloon Sewerage Stage II and Stage III (Phase I)		
Arbitration of various claims relating to variation, extension of time and prolongation. Proceedings ongoing.	2	1,489,290
(7) Fees and expenses incurred in 22 other civil cases under \$1 million each	-	5,387,440
Sub-total: 28 cases		35,853,755
Hire of consultant		
(8) Fees and expenses for engaging legal consultant	1	742,543
Total expenditure	(29 cases)	36,596,298