

NOTE FOR FINANCE COMMITTEE

Legal expenses for briefing out cases not covered by Approved Fee Schedules (2002-03)

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 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 2002-03 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 Finance Committee, or at higher 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)

- (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 2002-03 is at Enclosure 1¹.

LEGAL EXPENSES NOT COVERED BY APPROVED FEE SCHEDULES FOR THE YEAR ENDING 31 MARCH 2003

4. During the year ending 31 March 2003, the Department paid out a total of \$150,465,159 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 of cases according to approved fee schedule	40,282,639
(b) Briefing out of cases at fees not covered by the approved scales	84,762,580
	125,045,219
	/Payment

¹ Since October 1992, Members delegated to the then Secretary for the Treasury (now Secretary for Financial Services and the Treasury) the authority to approve future revisions of the approved fees biennially subject to any increase being no greater than inflation (as measured by the Hang Seng Consumer Price Index, now retitled as Consumer Price Index (C)). In June 2003, Members gave approval for the Director of Administration (instead of the Secretary for Financial Services and the Treasury) to exercise the delegated authority to make adjustments no greater than the movement of the Consumer Price Index (C).

Payment under Subhead 287 Legal services for construction dispute resolution

(c) Briefing out of construction dispute resolution cases at fees not covered by approved scales ²	25,419,940
	<u>150,465,159</u>

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 \$84,762,580 incurred in 2002-03 involved 480 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 \$25,419,940 incurred in 2002-03 involved 27 cases. Details are at Enclosure 3.

Department of Justice
July 2004

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	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.

(iv) brief fee for attending sentencing hearings or procedural applications	2,830
---	-------

(d) Magistrates' Court

	\$
(i) brief fee	8,530
(ii) refresher fee per day	4,260
(iii) brief fee on daily basis	5,670

**Subhead 243 Hire of legal services and related professional fees
Breakdown of cases briefed out at fees
not covered by the approved scales in 2002-03**

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
Civil		
(1) Best Origin Ltd. v Commissioner of Rating and Valuation (LDGA 14/98)		
Fees and expenses incurred in relation to briefing leading counsel, junior counsel and expert witnesses on behalf of the Commissioner of Rating and Valuation in appeal proceedings on Government rent payable for development sites.	9	5,417,258
(2) Wong Wan Leung, Wong Kam Por and Wong Siu Chung as the Managers of Wong Wai Tsak Tong (the Tong) v Director of Lands (LTMR 10/96)		
Fees and expenses incurred in relation to briefing two senior counsel, one junior counsel and one expert witness on behalf of the Director of Lands in respect of Part I Trial of the Tong's application for compensation lodged pursuant to the Block Crown Lease (Cheung Chau) Ordinance.	4	3,031,455
(3) Allied Group Ltd. and Allied Properties (HK) Ltd. v Secretary for Justice and another (MIS 658/01, HCA 4246/01)		
Fees and expenses incurred in relation to briefing two leading counsel, one junior counsel and a solicitors firm on behalf of the Financial Secretary in a claim for damages for allegedly misleading evidence produced in judicial review proceedings which took place in 1993.	4	2,464,355

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(4) Gurung Kesh Bahadur v Director of Immigration (FACV 17/01)		
Fees and expenses incurred in relation to briefing leading counsel on behalf of the Director of Immigration as Respondent in judicial review proceedings before the Court of Final Appeal involving the issue of the right of re-entry of a non-permanent resident within his unexpired period of limit of stay.	2	1,544,715
(5) Ng Siu Tung and others v 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 involving right of abode claims and the scope and application of the Government's Concession policy in respect of the Appellants including appearance before the Court of First Instance for determination of specific factual issues in some of the outstanding disputed cases remitted by the Court of Final Appeal.	2	1,363,900
(6) Yin Shuen Enterprises Ltd. and the other v Director of Lands (FACV 2 & 3/02)		
Fees and expenses incurred in relation to briefing leading counsel, junior counsel and expert on behalf of the Director of Lands as Respondent in a land resumption appeal before the Court of Final Appeal concerning whether the compensation payable on resumption should reflect a price in excess of the real value of the land which purchasers are willing to pay in the hope or expectation of obtaining a modification of the lease.	3	1,303,000

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(7) PCCW – HKT Telephone Ltd. (PCCW) v The Telecommunications Authority (TA) (MIS 448/02)		
Fees and expenses incurred in relation to briefing one Queen’s Counsel from the UK and one local senior counsel on behalf of the TA in respect of PCCW's application to quash the TA's direction made under the Telecommunications Ordinance to secure interconnection between telecommunications system or services. Costs of briefing out have subsequently been recovered from TA.	2	1,294,632
(8) Swire Properties Ltd. & others v The Government of the HKSAR (CACV 1058/01)		
Fees and expenses incurred in relation to the application by Swire Properties Group for leave to appeal against the Court of First Instance's order refusing them leave to appeal against three declarations made in the liability award in the arbitration proceedings concerning a dispute over the liability for premium and/or damages in respect of the redevelopment at Taikoo Shing.	3	1,274,850
(9) Arrows Town Assets Ltd. v Collector of Stamp Revenue (CACV 118/02 on appeal from DCSA 52/00)		
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 before the Court of Appeal involving the issue as to whether the relevant transaction (conveyance between associated body corporates) is exempted from stamp duty under section 45 of Stamp Duty Ordinance.	2	1,001,996

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(10) Fees and expenses incurred in 432 other civil cases under \$1 million each	-	38,530,625
Sub-total: 441 cases		<u>57,226,786</u>
Criminal		
(11) HKSAR v Lee Ming-tee and Ronald Tse Chu-fai (The Allied Case)		
Fees and expenses incurred in the trial of the captioned complex fraud case which resumed in the Court of First Instance on 9 October 2002 and the criminal proceedings against the first defendant was ordered to be permanently stayed on 13 December 2002.	10	11,322,937
(12) Hui Yat-fai & Associates (Bank of China Case) (HCMP 5714 of 2001)		
Fees and expenses incurred in the restraint proceedings of the largest money laundering case in Hong Kong. Approximately \$800 million assets were restrained and Receivers were appointed to manage the restrained assets.	1	5,917,945
(13) HKSAR v Shum Kwok-sheer (FACC 1/2002)		
Fees and expenses incurred in the prosecution of the captioned defendant for the offence of misconduct in public office in the Court of Final Appeal. The appeal was heard on 7-10 May 2002.	1	1,400,000

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(14) HKSAR v Ho Siu-hoi and three others (HCCC 169 & 232/2001)		
Fees and expenses incurred in the trial of the captioned letter of credit fraud case which commenced in the Court of First Instance on 8 April 2002 and concluded on 9 July 2002.	2	1,043,865
(15) HKSAR v Chan Kwong-yeo and another (HCCC 219 and 259 of 2001)		
Fees and expenses incurred in the trial of the captioned short piling case which commenced in the Court of First Instance on 5 June 2002 and concluded on 3 September 2002.	2	1,018,590
(16) Fees and expenses incurred in 33 other criminal cases under \$1 million each	-	4,823,990
Sub-total: 38 cases		<u>25,527,327</u>
Hire of consultant		
(17) Fees and expenses for engaging legal consultant	1	2,008,467
Sub-total: 1 case		<u>2,008,467</u>
Total expenditure	(480 cases)	<u>84,762,580</u>

**Subhead 287 Legal services for construction dispute resolution
Breakdown of cases briefed out at fees
not covered by the approved scales in 2002-03**

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
<p>(1) Campenon Bernard / Maeda Corporation JV v The Government of HKSAR Strategic Sewage Disposal Scheme Stage I – Contracts DC/93/13 and DC/93/14</p> <p>Investigation into potential claims against the engineer, Montgomery Watson (now MWH Hong Kong Limited)</p>	8	7,817,425
<p>(2) The Secretary for Justice v The HK & Yaumati Ferry Co. Ltd. (HYF) & another – Contract No. UA 11/91, Indemnity Agreement, HCA 15329 of 1999</p> <p>Court proceedings for recovery of additional costs from HYF under an Indemnity Agreement between Government and HYF. Proceedings ongoing.</p>	7	4,236,757
<p>(3) Aoki Corporation v The Government of HKSAR – Contract No. DC/94/12 North West Kowloon Sewerage Stage II and Stage III (Phase I)</p> <p>Arbitration of various claims relating to variation, extension of time and prolongation.</p>	3	3,111,656

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
(4) Hong Kong Construction – Amec JV v The Government of HKSAR Territory Development Department Contract No. TM 87/98 – Wong Chu Road and Associated Interchanges Improvement and Noise Mitigation Works, Tuen Mun		
Expenditure on the analysis of the claims in preparation of the mediation with the contractor.	2	2,247,244
(5) Aoki Corporation v The Government of HKSAR Contract No. DC/91/06 – East Kowloon Sewerage Improvement and Pollution Controls Stage I – San Po Kong & Kowloon Bay Works		
Arbitration of claims arising out of the above contract. Case settled.	4	1,979,002
(6) Mouchel Halcrow JV (MHJV) v The Government of HKSAR Consultancy Agreement No. CE 1/96 Castle Peak Road Improvement between Area 2 and Ka Loon Tsuen, Tsuen Wan		
Arbitration of claims by the Government’s consultants for payment for additional services and prolongation costs. Case settled.	1	1,498,582
(7) Fees and expenses incurred in 20 other civil cases under \$1 million each	-	4,526,274
Sub-total: 26 cases		25,416,940

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
Hire of consultant		
(8) Fees and expenses for engaging legal consultant	1	3,000
Sub-total: 1 case		<u>3,000</u>
Total expenditure	(27 cases)	<u>25,419,940</u>
