

NOTE FOR FINANCE COMMITTEE

Legal expenses for briefing out cases not covered by Approved Fee Schedules (2005-06)

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 2005-06 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, 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) 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 2005-06 is at Enclosure 1¹.

LEGAL EXPENSES NOT COVERED BY APPROVED FEE SCHEDULES FOR THE YEAR ENDING 31 MARCH 2006

4. During the year ending 31 March 2006, the Department paid out a total of \$144,940,970 as briefing out expenses. The breakdown of expenditure under *Subhead 000 Operational expenses* is as follows –

	\$
Payment for hire of legal services and related professional fees	
(a) Briefing out of cases according to approved fee schedule	39,324,288
(b) Briefing out of cases at fees not covered by the approved scales	83,777,031
	123,101,319

/Payment

¹ 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, along with Members' approval for making changes to the 2007-08 Estimates to implement the re-organisation of policy bureaux of the Government Secretariat taking effect from 1 July 2007, the authority for approving adjustments to the approved fees was re-delegated to the Permanent Secretary for Home Affairs.

\$

Payment for legal services for construction dispute resolution

(c) Briefing out of construction dispute resolution cases at fees not covered by approved scales ²	21,839,651
	144,940,970

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 \$83,777,031 incurred in 2005-06 involved 590 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 \$21,839,651 incurred in 2005-06 involved 22 cases. Details are at Enclosure 3.

Department of Justice
July 2007

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	27,210
(ii) refresher fee per day	13,610

(b) Court of First Instance

	\$
(i) brief fee	20,410
(ii) refresher fee per day	10,210
(iii) conference per hour	1,080

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	13,600
(ii) refresher fee per day	6,800
(iii) conference per hour	880

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	2,710
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(d) Magistrates' Court

	\$
(i) brief fee	8,160
(ii) refresher fee per day	4,080
(iii) brief fee on daily basis	5,430

**Hire of legal services and related professional fees
Breakdown of cases briefed out at fees
not covered by the approved scales in 2005-06**

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
Civil		
1. Ng Siu Tung and Others v Director of Immigration (HCAL 81/99)	2	7,560,600
Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Director of Immigration as Respondent in a series of judicial review proceedings taken out by different claimants involving right of abode claims and the scope and application of the Government's concession policy in respect of the Appellants.		
2. Best Origin Ltd. v Commissioner of Rating and Valuation (LDGA 14/98)	9	5,407,352
Fees and expenses incurred in relation to briefing leading counsel, junior counsel and various expert witnesses on behalf of the Commissioner of Rating and Valuation in an appeal on assessment of government rent on a development site.		
3. (1) Henry Tai Hon Leung and (2) Lisa Lam Lai San & William Lam Chun Ming v Insider Dealing Tribunal (CACV 333/04 & CACV 334/04)	3	2,501,000
Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Financial Secretary in the appeals challenging the findings of the Insider Dealing Tribunal in March and October 2004 that the Appellants were guilty of insider dealing and that they be disqualified as directors or liquidators or receivers or managers of a listed company. The two appeals were fixed together for hearing.		

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
4.	(1) Li & Fung (Trading) Ltd. and (2) Yim Kam Chuen v Commissioner of Inland Revenue (MIS 633/04 & MIS 912/04)	3	1,995,184
	Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Commissioner of Inland Revenue in the appeals to the Board of Review by the above-named taxpayers against the Commissioner's determinations concerning the source of profits and deductibility of commission paid to a group company in the British Virgin Islands. The two appeals were fixed together for hearing.		
5.	Chu Woan Chyi, Liao Hsiao Lan, Lu Lih Ching, Chang Jenn-Yeu, Kan Hung Cheung and Hong Kong Association of Falun Dafa v Director of Immigration (HCAL 32/03)	2	1,640,066
	Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Director of Immigration in the judicial review proceedings challenging, among other things, the decisions of the Director to refuse to give permission to land to the first to the fourth Applicants.		
6.	Super Lion Enterprises Ltd. & 193 Others v Commissioner of Rating and Valuation (HCAL 71, 78-92/2005, 95, 96 & 110/2005 - 19 government rent judicial review cases)	3	1,229,278
	Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Commissioner of Rating and Valuation in the judicial review proceedings taken out by some major property developers against the Commissioner's decision to withdraw the holding-over orders for payment of government rent in relation to development sites pending the final determination of the relevant government rent appeals.		

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
7.	Secretary for Justice v Ma Kwai Chun (HCMP 1471/05, MIS 390/05)	2	1,206,600
	Fees and expenses incurred in relation to briefing leading and junior counsel on behalf of the Secretary for Justice in an application for, among other things, a declaration by the court that Madam Ma Kwai Chun has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, and for an Order that no legal proceedings shall without the leave of the Court of First Instance be instituted by Madam Ma in any court.		
8.	Step In Ltd. v Noise Control Appeal Board and Noise Control Authority (FACV 11/04)	1	1,074,669
	Fees and expenses incurred in relation to briefing an overseas leading counsel on behalf of the Noise Control Authority in an appeal to the Court of Final Appeal by the Noise Control Authority concerning the issue of whether the 'not audible' requirement specified in a Noise Abatement Notice is ultra vires the power of the Noise Control Authority, and whether the said Notice is so unreasonable or uncertain as to affect its validity.		
9.	Fees and expenses incurred in 536 other civil cases under \$1 million each	-	47,889,431
	Sub-total: 544 cases		<hr/> 70,504,180 <hr/>

/Criminal

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
Criminal			
10.	HKSAR v Hui Yat-sing and Wong Suet-mui (ESCC 3594/2001)	2	2,192,839

Fees and expenses incurred in the prosecution of a massive cross-border money laundering case involving the stealing of large sums of money from the Bank of China, Kai Ping Branch by its former managers in the 1990's, and the remittance of such funds to the Defendants in Hong Kong, and to companies controlled by them. The charge alleges a conspiracy between Hui & Wong and others to launder such crime proceeds in Hong Kong between 1 September 1995 and 31 October 2001. The total funds received by Hui Yat-sing in his bank and trading accounts during the 74 months' period from 1 September 1995 to 31 October 2001 was "in excess of HK\$1,703 million", according to the investigations of the forensic accountant. Both Hui and Wong were convicted after trial and each were sentenced to six and a half years' imprisonment. Both have lodged appeal against their convictions. Secretary for Justice has applied for the confiscation order, hearing of which has been adjourned until the determination of their appeal.

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
11.	HKSAR v Mo Yuk Ping and Others (DCCC 367/2004, DCCC 1334/2004, DCCC 1360/2004 and DCCC 636/2005)	3	1,875,560
	<p>Fees and expenses incurred in the prosecution of the captioned complex fraud case which related to share market manipulation. Two Defendants' stay applications were successfully opposed. One Defendant's application for the case not to proceed on the basis of insufficient evidence was successfully opposed. The trial lasted for some 60 days. Five of the six Defendants were convicted. Mo was sentenced to three and a half years' imprisonment; and the other Defendants received sentences ranging between six months and three years. Mo's appeal against conviction was heard at the Court of Appeal between 17 and 19 October 2006. The appeal was allowed for one of her two charges but the length of the sentence was not affected.</p>		
12.	HKSAR v Kanjanapas Chong-kwong, Derek and Others (DCCC 298/2005)	2	1,281,443
	<p>Fees and expenses incurred in the prosecution of the captioned case. Leading counsel was also the advising counsel. Leading counsel attended a pre-trial court appearance in the District Court on 11 July 2005 and also pre-trial conferences. The case was heard in the District Court between 20 February and 18 May 2006. The verdict was delivered from 12 June to 15 June 2006. The Defendants were convicted of various offences and the sentences were passed on 16 June 2006. The Defendants are appealing against conviction and sentence. On the other hand, the Prosecution is appealing against the acquittal of the fourth Defendant on the charge of conspiracy to pervert the course of public justice and also seeking review of the sentences of the other three Defendants. Dates are yet to be fixed for the hearing of the appeals.</p>		

	Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
13.	HKSAR v Nina Kung (also known as Nina T H Wang) (ESCC 496/2005)	2	1,128,125
	<p>Fees and expenses incurred in the prosecution of the captioned case. Criminal proceedings were instituted at the Eastern Magistracy against the Accused for the purpose of committing the case to the Court of First Instance for trial. The Accused elected for a preliminary inquiry which was to be heard at the Magistracy. Meanwhile, the Court of Final Appeal heard a final appeal lodged by the Accused in respect of a related probate matter and gave judgment in the Accused's favour. Having considered the judgment of the Court of Final Appeal and other circumstances, the Prosecution decided not to proceed further with the charges against the Accused.</p>		
14.	Fees and expenses incurred in 40 other criminal cases under \$1 million each		4,820,125
	Sub-total: 44 cases		<u>11,298,092</u>
	Hire of consultant		
15.	Fees and expenses for engaging legal consultants	2	1,974,759
	Sub-total: 2 cases		<u>1,974,759</u>
	Total expenditure	(590 cases)	<u>83,777,031</u>

**Legal services for construction dispute resolution
Breakdown of cases briefed out at fees
not covered by the approved scales in 2005-06**

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
<p>1. Penny's Bay Reclamation Stage 1 - Contract No. CV/99/12</p> <p>Arbitration on Misrepresentation Claim</p> <p>Fees and expenses incurred in relation to briefing a solicitors' firm and an overseas counsel, and engaging an arbitrator, a People's Republic of China law expert, engineering and quantum experts in an arbitration of a misrepresentation claim brought by the Contractor.</p>	8	9,219,645
<p>2. Secretary for Justice v The HK & Yaumati Ferry Co. Ltd. (HYF) and Another - Contract No. UA 11/91, Indemnity Agreement (HCA 15329 of 1999)</p> <p>Fees and expenses incurred in relation to briefing a solicitors' firm, leading counsel and junior counsel, as well as engaging technical consultants on piling, property and quantity surveying in proceedings on the Government's claim for recovery of the additional costs of construction of certain outstanding and omitted works at the re-provided piers at Central; and HYF's counterclaims for return of additional costs paid by HYF for works at the re-provided piers which they alleged to be defective and for the alleged loss of the right to redevelop the piers.</p>	6	4,297,527

Brief description of case / matter	Number of counsel / legal firms / other professionals involved	Expenditure \$
3. Shek Wu Hui Development Package 4 - Contract No. FL 20/97	6	2,711,179
Claim for significantly worse sub-surface conditions under SCC 33		
Fees and expenses incurred in relation to briefing a solicitors' firm and counsel, as well as engaging an arbitrator, engineering, programming and quantum experts in an arbitration on a claim brought by the Contractor against the Government for additional payment due to significantly worse sub-surface conditions.		
4. Strategic Sewage Disposal Scheme Stage I - Contract DC/93/13 and DC/93/14	3	1,555,022
Investigation into Potential Claims against the Engineer, Montgomery Watson (now MWH Hong Kong Ltd.)		
Fees and expenses incurred in relation to briefing a solicitors' firm and an overseas leading counsel, as well as engaging a quantum expert in the investigation and instigation of claims against the Engineer for professional negligence and breach of the Consultancy Agreement arising out of the Harbour Area Treatment Scheme (formerly Strategic Sewage Disposal Scheme) Stage I tunnelling works.		
5. Fees and expenses incurred in 18 other civil cases under \$1 million each	-	4,056,278
Total expenditure	(22 cases)	21,839,651
