

Submission of the Hong Kong Bar Association
to the Legislative Council
in relation to Briefing Out of Civil Cases by Department of Justice

Introduction

1. Legislative Council members have raised questions in relation to the DOJ's practice of briefing out both criminal and civil cases in various occasions, including a meeting with the DOJ on 26 February 2018. The HKBA has encouraged examination of this topic.
2. The main concern appears to be that the selection criteria for selection of counsel responsible for conducting cases on behalf of the DOJ is not clear, especially for civil cases. Whilst there may appear to be some degree of clarity about how barristers are selected for criminal cases, the same cannot be said about the distribution of work on the civil side.
3. Surprisingly, given that public money is being spent, no criteria for selection of counsel are published by the DOJ. In addition, there has been criticism that government legal civil work is given to a limited number of barristers from only a few sets of chambers.
4. In meetings with the DOJ to address this issue, the Bar Council attendees and Legislative Council Members requested, *inter alia*, the following information from the DOJ:
 - (1) The sets of chambers to which the briefed out counsel belonged to in relation to civil cases in recent years (**1st Issue**);
 - (2) Briefing out costs paid to counsel (**2nd Issue**).
5. In a letter dated 25 June 2018 ("**25 June Letter**"), the DOJ replied to the said requests.

1st Issue

6. In relation to its selection criteria, in the 25 June Letter, the DOJ has now provided 3 tables setting out information for the past 3 financial years about the sets of chambers to which the briefed out counsel belonged.
7. Previously, the DOJ claimed that the selection of counsel for civil cases was done in accordance with “*established internal guidelines*” which were said to “*ensure propriety of the process and avoid any possible favouritism*”.¹
8. In the 25 June Letter, the DOJ noted that selection of counsel for civil matters is based on “*established criteria having particular regard to the expertise and skills required in each case*” and that “*the chambers to which a counsel belongs to is not one of the considerations for selection of counsel for briefing out civil cases*”.
9. It is, however, the case that these “*established internal guidelines*” are still not public. We find the reticence to publish the guidelines puzzling as Legco members and the Director of Audit will want to see that the procurement of legal services is being done in a fair way that gives value for money. Further, from the tables provided by the DOJ, it can be seen that more than 65% of all briefed out civil cases were undertaken by counsel in 3 to 4 sets of chambers:
 - (1) In 2014-2015, approximately 68% of all briefed out cases were done by 4 sets of chambers. The 2 sets that received most briefed out cases had 10 and 27 different practitioners respectively receiving instructions
 - (2) In 2015-2016, approximately 70% of all briefed out cases were done by 3 sets of chambers. The 2 sets that received most briefed out cases had 13 and 26 different practitioners respectively receiving instructions.
 - (3) In 2016-2017, approximately 66% of all briefed out cases were done by 3 sets of chambers. The 2 sets that received most briefed out cases had 12 and 32 different practitioners respectively receiving instructions.

¹ LC Paper No. CB(4)619/17-18(04)

- (4) Over past 3 years, the same two sets receiving the most instructions by the DoJ had a disproportionately larger number of practitioners receiving instructions. This is compared with the other 19 remaining sets receiving instructions, of which the vast majority of them received instructions for only 1 or 2 practitioners, and in any event for no more than 5 practitioners a year.
10. This should be enough to prompt a call for the publication of guidelines as the statistics run counter to the supposition that there would be a far greater spread of the briefed out work. As it is, there is an appearance of favouritism and perhaps a suspicion that limiting most of the work to just a few chambers may not be value for money. The HKBA urges the DOJ to publish its internal guidelines on its selection criteria of selecting barristers to undertake civil work and to commit itself publicly to a statement that counsel will be selected to undertake government legal work on a non-discriminatory basis.

2nd Issue

11. As for the 2nd Issue, the DOJ has refused to provide the list of counsel instructed by the Civil Division and the briefing out costs paid to such barristers. The reason provided is that it is said that such disclosure is restricted by the Personal Data (Privacy) Ordinance (Cap. 486).
12. The DOJ has provided a table showing its briefing out expenditure for non-standard briefing out (civil cases) for the financial year of 2016-2017,² however, the amount is in a lump sum and includes both counsel fee, expert witness fees, accountants, consultants and arbitrators etc. There is no disclosure as to the expenditure incurred solely on counsel's fees.
13. The argument for non-disclosure of briefing out costs paid to individual barristers is, with respect, not sound. The DOJ is a recipient of public funds. The general public has interest in knowing how public money is spent just as much on the fees paid to a particular barrister as on the fees paid to an engineering or architectural consultant.
14. Further, no barrister who submits a fee note has an expectation that the fee will remain a confidential matter that is between him and the lay and the professional

² LC Paper CB(4)619/17-18(03)

client. This is because a barrister's fees may become an issue in court proceedings, for instance in taxations of court costs.

15. Finally, publicly paid counsel's fees have been the subject of freedom of information requests in other jurisdictions: see for example a recent application (2018) to the Irish Information Commissioner under the reference 'Mr Y v Department of Public Expenditure and Reform, Case No. 170458' about expenditure on barristers' fees by the Director of Public Prosecutions. See also a information request made by the *Guardian* newspaper in 2013 about fees paid to Treasury Counsel: <https://www.theguardian.com/law/2013/oct/23/two-lawyers-3m-fees-government>.
16. The HKBA requests the DOJ to provide, as a minimum, the separate amounts of counsel's fees incurred for the non-standard briefing out for the years 2014-2015, 2015-2016 and 2016-2017, independent from other fees incurred by expert witnesses, consultants and arbitrators etc.

Dated: 15 August 2018

HONG KONG BAR ASSOCIATION

**For discussion on
26 February 2018**

**Legislative Council Panel on
Administration of Justice and Legal Services**

Briefing Out Cases of the Department of Justice

Introduction

The Panel on Administration of Justice and Legal Services (“the Panel”) has raised question previously about the briefing out arrangement of the Department of Justice (“DoJ”) and the high litigation costs incurred owing to the briefing out of cases to senior counsel in private practice, and has requested the DoJ to consider handling more cases in-house.

2. This paper sets out for Members’ information the DoJ’s briefing out policy and expenditure, the mechanism for the selection of fiat counsel, as well as measures to enhance the case-handling capability of both in-house and outside counsel.

DoJ’s briefing out policy

3. The DoJ has been briefing out certain criminal and civil cases, according to fee schedules approved by the Finance Committee¹ (“standard briefing out”), or at negotiated fees in specified circumstances (“non-standard briefing out”). Briefing out is mainly to meet operational needs. In general, the DoJ may resort to briefing out when –

- (a) there is a need for expert assistance where the requisite skill is not available in the DoJ;
- (b) there is no suitable in-house counsel to appear in court for the

¹ At the Finance Committee (“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). On 12 June 2007, the authority for approving adjustments to the approved fees was re-delegated to the Permanent Secretary for Home Affairs. The approved schedule of fees for 2016-17 is at **Annex A**. For equality of arms, the rate for engaging lawyers in private practice on a standard briefing-out basis to prosecute criminal cases on fiat in place of counsel makes reference to the same fee scale as that of the Legal Aid Department (“LAD”), so as to ensure that neither LAD nor DoJ would have unfair advantage in competing for the same pool of lawyers. For fiat counsel prosecuting at the magistracy level in place of Court Prosecutors on a standard briefing-out basis, the briefing out rate is tied to that for duty lawyers.

Hong Kong Special Administrative Region;

- (c) the size, complexity, quantum and length of a case so dictate;
- (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 the DoJ who is uniquely familiar with the subject matter is in private practice at the time when legal services are required, or where it will be economical and in the interest of justice to engage the fiat trial counsel to conduct the relevant appeal; and
- (f) there is a need for advice or proceedings involving members of the DoJ.

4. In addition, some criminal cases are briefed out with the specific objective of promoting a strong and independent local Bar by providing work, particularly to the junior Bar, and of building a pool of experienced prosecutors to supplement those within the DoJ.

Expenditure in Briefing Out in the past five years

5. A table showing the briefing out expenditure of the DoJ in the past five financial years is at **Annex B**. It is noted from the figures that although the amount of briefing out expenditures for different types of cases fluctuated from year to year, there was, in the overall, no substantial increase in briefing out expenditure : comparing the figures for 2012-13 and those for 2016-17, the increase in total briefing out expenditure was only 2.8%.

6. In the immediate past financial year (2016-17), the payment for standard briefing out incurred (i.e. under item (a) of Annex B) was \$95,409,124 (involving 1 753 cases conducted by fiat counsel in place of Government Counsel, plus 5 711 court days undertaken by fiat counsel to prosecute in place of Court Prosecutors²). These cases only cover criminal cases. Due to varying complexity and nature of cases, civil cases (including construction disputes) are generally briefed out to outside professionals on a non-standard basis³.

² Fiat counsel engaged to prosecute in the Magistrates' Courts in place of Court Prosecutors are required to attend to all cases before a particular magistrate on each day or half day basis, hence their engagement is on a court-day basis rather than case-based.

³ While civil cases are mostly briefed out at negotiated rates, certain types of case, which are relatively standard in nature and considered more economical to be briefed out (e.g. death inquests and proceedings before disciplinary boards), are briefed to junior counsel by reference to the scale fees for fiat counsel in criminal cases.

7. As regards payment for non-standard briefing out (i.e. under items (b) and (c) of Annex B), a total amount of \$196,308,189 (\$135,877,460 plus \$60,430,729) was incurred in the financial year of 2016-17, involving 575 cases. Most of these cases were civil cases (covering 528 cases involving payment of \$104,794,119), while the amount involved for construction dispute resolution was also quite substantial (covering \$60,430,729 involving 15 cases). Although a substantial part of the payment is for counsel fee, the expenditure also covers fees paid to accountants, expert witnesses, consultants and appointed arbitrators whom we engaged in the proceedings.

Selection of briefed out counsel

8. The selection of briefed out counsel is made in accordance with established internal guidelines on briefing out. For standard briefing out (i.e. cases under paragraph 6 above), cases are assigned to fiat counsel on a rotation basis. For non-standard briefing out (i.e. cases under paragraph 7 above), outside counsel are selected based on established selection criteria including the briefed out counsel's years of experience and suitability in terms of areas of expertise and availability for the case concerned in light of its nature and complexity etc.. The level of fees charged by the briefed out counsel is also one of the factors to be taken into account, as public money is involved.

9. In the case of engagement of local Senior Counsel and/or overseas counsel, we have been acting most cautiously to ensure that cases are so briefed out only where circumstances so warrant, having regard to, for example, complexity regarding points of law, significant constitutional, policy or financial implications or public interest, controversy of the issues involved, the legal representation of the opposite party etc. They are selected based on established criteria mentioned in paragraph 8 above and the Secretary for Justice would necessarily be consulted on the selection in those briefing out cases, which are complex and significant. Further, where an overseas counsel is to be engaged to perform the work of local barristers in Hong Kong, it will be subject to approval of their admission by the Court of First Instance, which may impose such restrictions and conditions on the admission as it may see fit. In respect of such admission applications, section 33 of the Legal Practitioners Ordinance (Cap. 159) grants a general right of audience to the Bar Council and requires the papers to be served on it.

Enhancing the case-handling capability of both in-house and outside counsel acting for DoJ cases

Development of advocacy skills of DoJ counsel

10. Strengthening the advocacy capability of prosecutors, especially the younger ones, has been a priority of the Prosecutions Division ("PD"). (In fact, six additional Government Counsel posts are created in PD in 2017-18 to

provide additional manpower so as to allow counsel more opportunities to handle court work.) Besides, for new recruits, they would have the opportunity to be posted to the advocacy subdivision for about one year to gain hands-on prosecuting experience. Moreover, after gaining some on-the-job experience, they will also be arranged to attend a short term overseas advocacy course. All these measures provide good opportunities for the young counsel to develop /enhance their advocacy skills.

11. For civil cases, in-house counsel responsible for such cases will have the opportunity to enhance their advocacy skills either through appearing in hearings before various statutory tribunals/ boards and the courts, or as junior counsel to leading counsel in appropriate briefed-out cases. Similar to counsel in PD, selected counsel from the civil law stream will also have the opportunity to join overseas advocacy training courses.

Assistance to young lawyers in private practice

12. As mentioned in paragraph 4 above, it is our aim to build a pool of experienced prosecutors outside the DoJ to supplement those within the DoJ to handle prosecution cases, by providing work to the Bar, particularly to the junior Bar. To facilitate our young lawyers in private practice to take up prosecution work, since 2012, we have been organising a biannual Joint Training Programme together with the Hong Kong Bar Association and the Law Society of Hong Kong for new lawyers in private practice (i.e. those with less than five years' post-qualification experience) who are interested in prosecuting cases for the DoJ. The programme comprises a one-day training course and (subject to satisfactory completion of the course) a two-week supervised engagement to prosecute in the Magistrates' Courts (at a fixed fee of \$47,080 for the whole period). During the two-week attachment, participants will be assessed on their suitability for inclusion in the PD Magistrates' Courts Fiat Counsel list. We also stand ready to work with the two legal professional bodies to provide assistance in the enhancement of their training for their young lawyers in criminal law and procedures, so as to further facilitate young lawyers to take up prosecution work.⁴

13. On top of training opportunities mentioned above, in order to equip junior counsel with the experience and the skills in prosecuting cases, counsel with less than 10 years' experience are engaged, at a token daily rate of \$1,000, to act as an understudy to Senior Counsel / senior junior counsel who is

⁴ In this regard, PD has recently participated in a cooperation project spearheaded by the Bar on "Professional Training Course for Prosecutors" whereby in-house prosecutors of the DoJ, judicial officers and senior members of the Bar will give lectures and practical guidance to participants on topics including drafting of court documents, techniques of examining witnesses, the adjectival law on conducting cases in the magistrates' courts as a prosecutor, etc.

briefed to prosecute a complex and sensitive case for PD. Looking ahead, we will actively consider expanding the scheme to a wider range of criminal cases so as to further increase young lawyers' exposure to criminal advocacy work and to equip them with the necessary skill sets and capabilities to take up fiat work on their own.

14. While the briefing out of civil cases necessitates different considerations due to their diversified nature and complexity as well as the requirements of court or tribunal procedures, certain types of cases (e.g. death inquests and proceedings before disciplinary boards) which are relatively standard in nature are considered suitable and more economical for briefing out to junior counsel with fewer years of experience (see footnote 3 above). In suitable circumstances, we also briefed out cases to junior barristers (with relatively fewer years of post-qualification experience) to enhance efficiency, e.g. to act as a second junior counsel to provide assistance to Senior Counsel and undertake some ground work, such as conducting legal research, summarising legal issues and authorities for advice and preparing draft documents. These assignments will provide very good opportunities for junior counsel in private practice to consolidate and further develop their skills and to gain experience in handling civil cases. We will continue to identify suitable areas of work for engagement of junior counsel while taking into account the need for exposure and training of our in-house counsel.

Department of Justice
February 2018

Approved scale of maximum fees for briefing out cases

	For cases briefed up to 13 November 2016 (rate effective since 29 November 2013)	For cases briefed from 14 November 2016 and onwards (rate effective since 14 November 2016) [#]
	\$	\$
(a) Court of Appeal		
(i) brief fee	32,700	49,050
(ii) refresher fee per day	16,350	24,530
(b) Court of First Instance		
	\$	\$
(i) brief fee	24,520	36,780
(ii) refresher fee per day	12,260	18,390
(iii) conference per hour	1,270	1,910
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	16,320	24,480
(ii) refresher fee per day	8,160	12,240
(iii) conference per hour	1,040	1,560
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	3,240	4,860
(d) Magistrates' Court		
	\$	\$
(i) brief fee	9,800	14,700
(ii) refresher fee per day	4,890	7,340
(iii) brief fee on daily basis	6,520	7,020

[#] On 14 November 2016, with Legislative Council's endorsement, the rates of the approved criminal legal aid fees were adjusted upward by around 50%. As the Department uses the same scale of fees for briefing out, the briefing out fees for cases briefed since that date were adjusted accordingly.

Briefing Out Expenditure by Type of Cases from 2012-13 to 2016-17

	2012-13 (\$)	2013-14 (\$)	2014-15 (\$)	2015-16 (\$)	2016-17 (\$)
Payment for hire of legal services and related professional fees¹					
(a) Briefing out of cases according to approved fee schedule (involving criminal cases) ²	56,586,215 [909 cases + 4 579 court days]	74,550,147 [1 329 cases + 5 297 court days]	87,967,246 [1 617 cases + 5 152 court days]	94,694,047 [1 848 cases + 5 617 court days]	95,409,124 [1 753 cases + 5 711 court days]
(b) Briefing out of cases at fees not covered by the approved scales, comprising					
● Civil cases	96,780,873[589]	109,829,465[618]	75,568,585[483]	105,790,709[563]	104,794,119[528]
● Criminal cases	30,196,903[59]	42,720,637[61]	68,136,516[45]	31,559,616[45]	31,083,341[32]
	183,563,991	227,100,249	231,672,347	232,044,372	231,286,584
Payment for legal services for construction dispute resolution¹					
(c) Briefing out of construction dispute resolution cases at fees not covered by approved scales ²	100,321,724 [24]	101,595,097 [26]	103,291,625 [22]	90,927,839 [25]	60,430,729 [15]
Total annual expenditure in briefing out	283,885,715	328,695,346	334,963,972	322,972,211	291,717,313

¹ The number of cases is denoted in square brackets; for criminal cases briefed out according to approved fee schedule, fiat counsel engaged to prosecute in the Magistrates' Courts in place of Court Prosecutors are required to attend to all cases before a particular magistrate on each day or half day, hence their engagement is on court-day basis rather than case-base.

² There is no approved scale of fee for civil cases or construction dispute resolution because it is not possible to fix scale fees for such cases which vary by complexity and nature.

立法會
Legislative Council

LC Paper No. CB(4)619/17-18(04)

Ref : CB4/PL/AJLS

Panel on Administration of Justice and Legal Services

Meeting on 26 February 2018

**Background brief on briefing out of criminal and civil cases
by the Department of Justice**

Purpose

This paper provides background information on briefing out of criminal and civil cases by the Department of Justice ("DoJ") and summarizes major views and concerns of Members on this subject.

Background

2. DoJ's purview includes providing legal advice to Government bureaux and departments, and represents the Government in courts for judicial proceedings. Where necessary, DoJ engages solicitors or barristers in private practice to provide assistance in handling certain criminal and civil cases.

3. According to the Administration, briefing out is mainly to meet operational needs. Generally speaking, DoJ may resort to briefing out when –

- (a) there is a need for expert assistance where the requisite skill is not available within 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) 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.

4. DoJ has been briefing out cases according to fee schedules approved by the Finance Committee ("FC")¹("the approved fee schedules") or at negotiated fees in specified circumstances. During the year ending 31 March 2017, DoJ paid out a total of \$291,717,313 as briefing out expenses. The number of cases conducted and court days undertaken by in-house counsel and fiat counsel in 2015 and 2016 respectively are shown in **Appendix I**.

Major views and concerns of Members

5. Major views and concerns of Members on briefing out of criminal and civil cases by DoJ are summarized in the ensuing paragraphs.

Briefing out of criminal cases

6. There was a view that the work relating to making prosecution decisions, in particular those relating to the "controversial cases" (such as "Occupy Central Movement" cases), should be handled by in-house government counsels and hence DoJ should consider recruiting more Government Counsels to handle the cases. Some Members raised queries whether private legal practitioners could be able to handle prosecution matters in an objective manner and whether overseas legal private practitioners engaged to handle prosecution cases were familiar with Hong Kong's situation.

7. The Administration advised that the majority of the prosecutions, including the "controversial cases", were conducted by public prosecutors, i.e. in-house staff of DoJ. However, there was a need for briefing out some of the prosecution cases arising out of the controversial cases where there was a need

¹ According to DoJ, it currently adopts the same fee scale as that of the Legal Aid Department for criminal legal aid fees as prescribed in the Legal Aid in Criminal Cases Rules (Cap. 221D) under the Criminal Procedure Ordinance (Cap. 221), as well as that for the duty lawyer fees under the duty lawyer scheme, as appropriate, when engaging lawyers in private practice on a standard briefing-out basis to prosecute criminal cases on fiat. This will ensure that neither the defence nor the prosecution would have unfair advantage in competing for the same pool of lawyers, thus ensuring parity between the defendants and the prosecution.

for expert assistance or it was deemed appropriate to obtain independent outside counsel's advice or services so as to address possible perception of bias or issues of conflict of interest. The Administration stressed that the Director of Public Prosecutions and his staff in the Prosecutions Division would consider the circumstances of each case thoroughly in deciding whether to prosecute, and the sensitivity of a case in deciding whether it should be briefed out. DoJ had been acting cautiously to monitor the briefed-out cases to ensure that the cases were dealt with strictly in accordance with law and legal principles and in an objective manner.

8. The Administration further advised that, where appropriate, some criminal cases were briefed out with the objective, among others, 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. This practice was 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.

9. In respect of the concern of briefing out of cases to overseas counsel, the Administration advised that cases were briefed out to overseas counsel only where circumstances so warrant, having regard to, for example, complexity regarding points of law, significant constitutional, policy or financial implications or public interest, sensitivity of the issues involved, the legal representation of the opposite party, etc. Besides, admission of overseas barristers to conduct cases before the Hong Kong court was ultimately subject to the court's approval.

Briefing out of civil cases

10. Given that one of the stated objectives of DoJ's policy to brief out cases is to promote a strong and independent local Bar, particularly to the junior Bar, some Members raised queries whether DoJ would consider briefing out civil cases to a greater diversity of junior counsels in different sets of chambers.

11. The Administration advised that unless under special circumstances (e.g. the engagement of a junior counsel for a selected senior counsel in the same chambers for better work efficiency where the circumstances so required), the chambers to which a counsel belonged was not one of the considerations of selecting a briefed out counsel.

12. The Administration added that the selection of briefed out counsel for the handling of civil cases was made in accordance with established internal guidelines on briefing out so as to ensure propriety of the process and avoid any possible favouritism. For cases briefed out according to the approved fee

schedules, they were assigned to fiat counsel on a rotation basis. For cases briefed out not covered by the approved fee schedules, outside counsel were selected based on established selection criteria including the years of experience, suitability in terms of areas of expertise and availability for the case concerned, and the level of fees charged by the counsel concerned. Where appropriate, DoJ would allow junior counsel to participate in the handling of civil cases.

13. The Administration emphasized that while it supported the promotion of a strong and independent local Bar, such a factor was not and could not be the sole factor when briefing out civil cases.

Briefing out of Magistrates' Court cases to outside counsel

14. Noting that the conviction rate after trial of Magistrates' Court cases was about 49.4% in 2016, some Members enquired about the number of trial cases prosecuted by Court Prosecutors and fiat counsel respectively.

15. The Administration advised that in 2016, the number of cases conducted by fiat counsel in place of Government Counsel at the Magistracy level was 957. The number of court days undertaken by Court Prosecutors and that undertaken by fiat counsel in place of Court Prosecutors are 8 939 and 5 636 respectively. For cases with adverse rulings, the Administration had not maintained information on whether such cases were prosecuted by Court Prosecutors or fiat counsel, or the offences involved. The Administration pointed out that a lot of factors might affect the result of court cases (for example, whether witnesses come up to proof or whether new evidence emerged at a late stage), and these factors were not entirely within the control of DoJ or the prosecutors.

16. The Administration further advised that the caseload of criminal prosecutions in 2016 was around 150 000 cases while there were only around 70-80 public prosecutors working in the Magistrate Courts. Owing to the manpower situation in DoJ, the private bar had been employed to conduct prosecutions for a considerable number of cases in the Magistrates and the District Courts on a regular basis.

Expenditure on briefed out cases

17. Some Members raised enquiries about the average expenditure for briefed out cases. Some held the view that DoJ's practice of briefing out cases to counsels in the private practice with higher seniority would incur higher litigation costs to another side.

18. In response, the Administration advised that the expenditure for briefing out varies from case to case, depending on its complexity, number of defendants involved, number of trial days, the need for expert witnesses to testify, etc. It was therefore neither appropriate nor helpful to make a comparison amongst briefed out cases solely on the basis of their expenditure. Further, it was also not possible to provide the average briefing out expenditure for cases at the magistracy level because fiat counsel engaged to prosecute in the Magistrates' Court in place of Court Prosecutors were required to attend to all cases before a particular magistrate on each day or half day, hence their engagement was on court-day basis rather than case-base. The Administration also stressed that the Court would assess whether the legal costs were reasonable.

Question raised at Council meeting and other relevant papers

19. A question relating to briefing out of cases by DoJ was raised at the Council meeting on 3 June 2015. The hyperlinks to the question and the Administration's response, together with other relevant papers which are available on the Legislative Council website, are listed in **Appendix II**.

Latest position

20. At the work plan meeting with the Administration on 30 October 2017, the Chairman expressed concerns about the policy on briefing out of criminal and civil cases by DoJ. The Panel will discuss the matter with the Administration at the regular meeting on 26 February 2018.

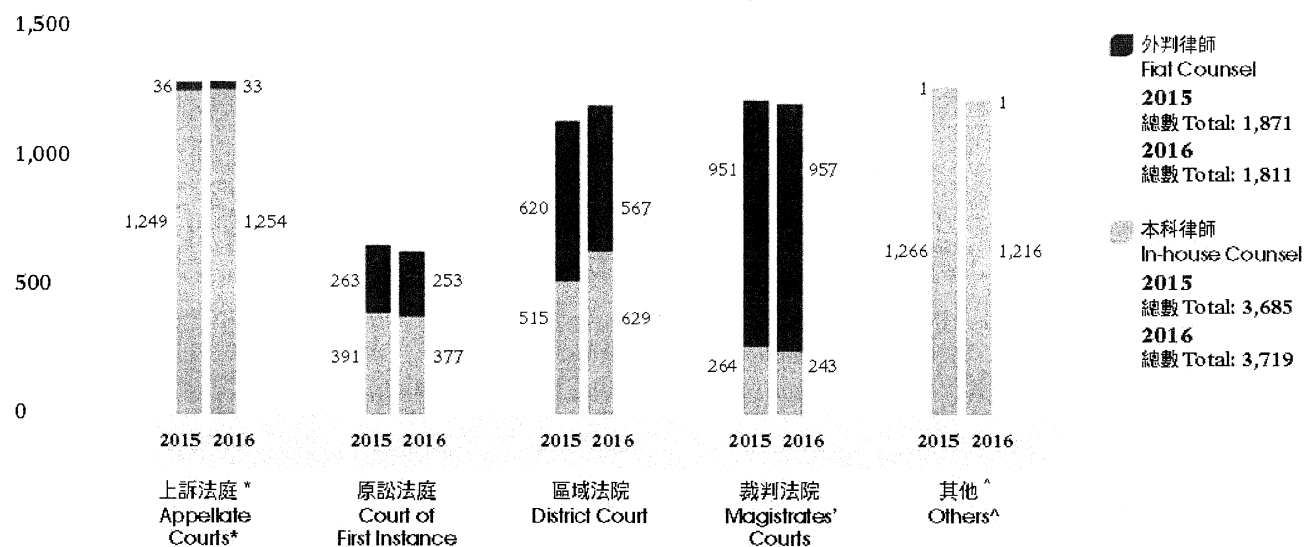
Council Business Division 4
Legislative Council Secretariat
14 February 2018

本科律師及外判律師處理的案件數目及出庭日數

Number of cases conducted and court days undertaken by In-house Counsel and Fiat Counsel

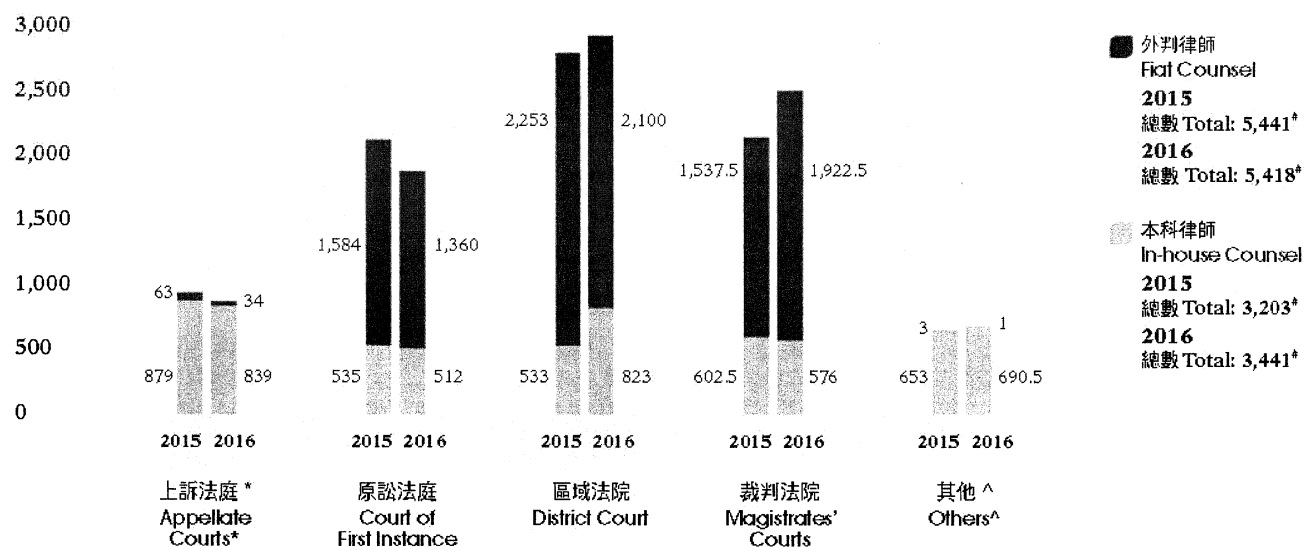
本科律師及外判律師處理的案件數目

Number of cases conducted by In-house Counsel and Fiat Counsel



本科律師及外判律師的出庭日數

Number of court days undertaken by In-house Counsel and Fiat Counsel



* 包括裁判法院上訴案件、在上訴法庭和終審法院聆訊的上訴案件。

This includes magistracy appeals and appeals heard in the Court of Appeal and the Court of Final Appeal.

^ 包括限制令申請、死因研訊、保釋申請、訟費評定及高等法院的雜項程序。

This includes restraint applications, death inquests, bail applications, taxation of costs and High Court miscellaneous proceedings.

以四捨五入方式計算至最近的整數。

The number is rounded up to the nearest whole number.

資料來源：《香港刑事檢控 2016》

Source: Prosecutions Hong Kong 2016

Background brief on briefing out of cases by the Department of Justice

List of relevant papers

Committee	Date	Paper
Council	3.6.2015	<u>Hon Dennis KWOK raised a question on brief out cases</u>
Panel on Administration of Justice and Legal Services	23.1.2017	<u>Minutes of meeting</u>
	18.7.2017	<u>Minutes of meeting</u>
	30.10.2017	<u>Minutes of meeting</u>
	29.1.2018	<u>Administration's paper</u>
Finance Committee	1.4.2016	<u>Examination of Estimates of Expenditure 2016-2017 (Reply Serial No. SJ032)</u>
	3.4.2017	<u>Examination of Estimates of Expenditure 2017-2018 (Reply Serial Nos. SJ002, SJ004, SJ018, SJ023, SJ029, SJ031 and SJ037)</u> <u>Minutes of meeting</u>
	12.2017	<u>FCRI(2017-18)19</u>

Council Business Division 4
Legislative Council Secretariat
14 February 2018