

NOTE FOR FINANCE COMMITTEE

Legal expenses for briefing out cases not covered by approved fee schedules (2019-20)

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 Government 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 (DoJ) during the financial year of 2019-20 on briefing out cases not covered by the approved fee schedules.

2. The DoJ has been briefing out certain criminal and civil cases, according to approved fee schedules¹, or at negotiated fees in specified circumstances. Briefing out is mainly to meet operational needs. In general, DoJ may resort to briefing out when –

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

¹ Under the current arrangement, adjustments to prosecution fees and duty lawyer fees are made administratively by the Director of Administration with reference to the prevailing rates of criminal legal aid fees which are approved by the Legislative Council in accordance with the Criminal Procedure Ordinance (Cap. 221).

- (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 the DoJ.

In addition, where appropriate, 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 DoJ.

Encl. 1 3. The approved schedule of fees for 2019-20 is at Enclosure 1.

LEGAL EXPENSES NOT COVERED BY APPROVED FEE SCHEDULES FOR THE YEAR ENDING 31 MARCH 2020

4. During the year ending 31 March 2020, DoJ paid out a total of \$311,140,383 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	106,534,795
(b) Briefing out of cases at fees not covered by the approved scales	126,457,878
	232,992,673
Payment for legal services for construction dispute resolution	
(c) Briefing out of construction dispute resolution cases at fees not covered by approved scales ²	78,147,710
Total expenditure for 2019-20	311,140,383

/5.

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.

5. Regarding paragraph 4(b), DoJ briefed out various matters which were not covered by the approved scale of fees to lawyers, accountants, expert witnesses, consultants and appointed arbitrators. The amount of \$126,457,878 incurred in the financial year of 2019-20 involved 432 cases. Details are set out at Enclosure 2.

Encl. 2

6. As regards paragraph 4(c), DoJ 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 amount of \$78,147,710 incurred in the financial year of 2019-20 involved 13 cases. Details are set out at Enclosure 3.

Encl. 3

7. In accordance with the established practice, details of cases with briefing out expenses equal to or over \$1 million are set out in Enclosures 2 and 3. This reporting threshold was adopted in 1989 to highlight details of more significant cases while streamlining the presentation of this note. With the passage of time and taking into account price adjustments over the years, we will revise the reporting threshold with effect from the next issue.

Department of Justice
June 2021

Enclosure 1 to FCRI(2021-22)4

Approved scale of maximum fees for briefing out cases

	For cases briefed out up to 31 March 2019 (rate effective since 3 April 2018) \$	For cases briefed out from 1 April 2019 and onwards (rate effective since 1 April 2019) \$
(a) Court of Appeal		
(i) brief fee	51,010	51,010
(ii) refresher fee per day	25,510	25,510
(b) Court of First Instance		
(i) brief fee	38,250	38,250
(ii) refresher fee per day	19,120	19,120
(iii) conference per hour	1,980	1,980
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 plea and sentence	6,800	6,800
(c) District Court		
(i) brief fee	25,450	25,450
(ii) refresher fee per day	12,720	12,720
(iii) conference per hour	1,620	1,620
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 plea and sentence	3,190	3,190
(d) Magistrates' Court		
(i) brief fee	15,280	15,280
(ii) refresher fee per day	7,630	7,630
(iii) brief fee on daily basis	7,300	11,400

Enclosure 2 to FCRI(2021-22)4

**Hire of legal services and related professional fees
breakdown of cases briefed out
at fees not covered by the approved scales in 2019-20**

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
Civil		
<p>1. Commission of Inquiry into the Construction Works at and near the Hung Hom Station Extension under the Shatin to Central Link (SCL) Project (<i>formerly the Commission of Inquiry into the Diaphragm Wall and Platform Slab Constructions Works at the Hung Hom Station Extension under the SCL Project</i>) (MIS 618/2018)</p> <p>Fees and expenses incurred in relation to briefing a local Senior Counsel (SC), three local junior counsel and three local experts to act for the Government in the inquiry before the Commission appointed by the Chief Executive in Council (CE-in-C) about the steel reinforcement fixing works and other irregularities concerning the construction works at the Hung Hom Station Extension. The Commission submitted its interim report and final report to the Chief Executive (CE) on 25 February 2019 and 27 March 2020 respectively on its findings and recommendations.</p>	7	25,743,775
<p>2. Appeals to the Board of Review (Inland Revenue Ordinance) (the Board) by Two Companies (the Taxpayers) (MIS 213-215/2017)</p> <p>Fees and expenses incurred in relation to briefing a London Queen's Counsel (QC), a local SC, a local junior counsel and an intellectual property valuation expert in defending three tax appeals before the Board. The Board unanimously dismissed the Taxpayers' three appeals. The parties were granted</p>	4	3,705,871

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
leave to appeal to the Court of First Instance (CFI). The Court of Appeal (CA) subsequently granted leave for the appeals to be heard directly by CA.		
3. Kwok Wing Hang and 23 other members of the Legislative Council (LegCo) v CE-in-C, Commissioner of Police (CP) and Secretary for Justice (SJ) (HCAL 2945/2019) Leung Kwok Hung v SJ and CE-in-C (HCAL 2949/2019)	5	3,058,908
Fees and expenses incurred in relation to engaging two local SC, two local senior junior counsel and a London QC to advise and appear on behalf of the Respondents in the Applicants' applications for judicial review (JR) against the constitutionality of the Emergency Regulations Ordinance (Cap. 241) (ERO) and the Prohibition on Face Covering Regulation (Cap. 241K) (PFCR) and related appeals. The proceedings having been heard before CFI, CA and Court of Final Appeal (CFA), CFA upheld the constitutionality of the ERO and the PFCR by judgment dated 21 December 2020.		
4. ZN v SJ, Director of Immigration, CP and Commissioner for Labour (FACV 4/2019)	3	2,657,734
Fees and expenses incurred in relation to briefing a London QC and two local SC to act for the Respondents in the Appellant's appeal before CFA against CA's judgment of 2 August 2018 which allowed the Respondents' appeal (limited to the scope of Article 4 of the Hong Kong Bill of Rights (BOR 4)) and held that the scope of BOR 4 does not cover human trafficking and it does not require the enactment of any specialised criminal offence for combatting human trafficking. Hearing of the appeal was held on 3 and 4 December 2019 with judgment		

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>handed down on 10 January 2020 dismissing the appeal.</p>		
<p>5. MK v the Government of the Hong Kong Special Administrative Region (HKSAR) (HCAL 1077/2018)</p>	4	2,510,124
<p>Fees and expenses incurred in relation to briefing a London QC, a local SC and two local junior counsel to act for the Government in resisting the Applicant's application for JR challenging (1) the lack of legal recognition of same sex partnership in Hong Kong; and/or (2) the failure of the HKSAR Government to provide a legal framework for legal recognition of same sex partnership.</p> <p>CFI dismissed the application for JR on 18 October 2019. The Applicant has lodged an appeal at CA. No hearing date has been fixed yet.</p>		
<p>6. 陳基裘 v CP (HCAL 1747/2019) Kwok Cheuk Kin and Leung Chung Hang Sixtus v Secretary for Security and CP (HCAL 1753/2019) Yeung Tsz Chun v CP (HCAL 2671/2019) Chan Kung Shun, Lo Cham Sze and Ng Hong Luen v CP (HCAL 2703/2019) The Hong Kong Journalists Association v CP and SJ (HCAL 2915/2019)</p>	4	2,348,605
<p>Fees and expenses incurred in relation to briefing two local SC and two local junior counsel to act for the Government in a series of JR cases challenging (1) the non-display of unique identification numbers of certain police officers; (2) the police complaint handling mechanism involving Complaints Against</p>		

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>Police Office and Independent Police Complaints Council; and (3) the alleged breach of positive duty by the Police to facilitate lawful journalistic activities. The CFI ruled against the Government on grounds (1) and (2) by its judgment of 19 November 2020; and dismissed the application for JR in relation to ground (3) by its judgment of 21 December 2020.</p>		
<p>7. Leung Kwok Hung v SJ and CE-in-C (CACV 541/2019) Kwok Wing Hang and 23 other members of the LegCo v CE-in-C and SJ (CACV 542/2019)</p>	4	2,029,875
<p>Fees and expenses incurred in relation to engaging two local SC and two local senior junior counsel in the appeal proceedings before CA arising from the CFI judgments. Please refer to Item 3 for details.</p>		
<p>8. Nam Sang Wai Development Co Limited and Other Companies of the Henderson Group v Town Planning Board (TPB) (MIS 301/2014 & MIS 272/2017)</p>	4	1,704,877
<p>Fees and expenses incurred in relation to briefing two local senior junior counsel (one was subsequently appointed as SC) and one local junior counsel to act for TPB in conducting two town planning appeals and one United Kingdom ecologist as expert witness for TPB to give expert evidence on the concerned ecological issues and matters under the Ramsar Convention. The two town planning appeals were lodged by the developers against the decisions of TPB refusing to grant planning permissions for the proposed comprehensive development comprising residential development and wetland enhancing area at Nam Sang Wai and Lut Chau within the Deep Bay Area (with the development layout and parameters differing in each of the two planning applications) mainly on the ground that the proposed development</p>		

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>is not in line with the planning intention. The hearing took place on diverse dates from November 2020 to March 2021 (22 days in total) and an official site visit on 7 January 2021 with judgment reserved.</p>		
<p>9. Leung Chun Kwong v Secretary for the Civil Service (SCS) and Commissioner of Inland Revenue (CIR) (FACV 8/2018)</p>	3	1,659,846
<p>Fees and expenses incurred in relation to briefing a London QC, a local SC and a local junior counsel to act for SCS and CIR in SCS's appeal and the Applicant's cross-appeal against the relevant parts of CFI's decision. In the underlying JR application, the Applicant, who is a civil servant, challenged the respective decisions of SCS in not recognising his same-sex marriage for the purpose of spousal benefits (the Benefits Decision) and CIR in not recognising the same-sex marriage for the purposes of tax allowances (the Tax Decision).</p> <p>By judgment of 28 April 2017, the part of the JR on the Benefits Decision was allowed while the part of the JR on the Tax Decision was dismissed. Both the Applicants and SCS appealed and by CA's judgment dated 1 June 2018, the SCS's appeal was allowed and the Applicant's cross-appeal was dismissed. The Applicant's appeal was heard before CFA on 7 May 2019. On 6 June 2019, CFA handed down judgment allowing the Applicant's appeal. On 6 September 2019, CFA handed down judgment on relief and costs.</p>		
<p>10. Cheung Tak Wing v Director of Administration (D of Adm) (CACV 577/2018)</p>	3	1,593,817

Fees and expenses incurred in relation to briefing two local SC and one local junior counsel to act for

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>the Respondent in D of Adm's appeal against CFI's judgment in HCAL 136/2014 dated 19 November 2019. The subject matter concerns D of Adm's permission scheme governing the use of the East Wing Forecourt of the Central Government Offices, for public order events. By its judgment of 14 February 2020, CA upheld the constitutionality of the permission scheme. There being no further substantive appeal, the proceedings have come to an end.</p>		
<p>11. Chee Fei Ming Substituted by Pun Lin Fa v Director of Food and Environmental Hygiene (DFEH) & SJ, Lands Department (LandsD) as the interested party (CACV 489/2018) Hung Shui Fung v DFEH and SJ (CACV 490/2018)</p>	3	1,574,225
<p>Fees and expenses incurred in relation to engaging two local SC and one local junior counsel to act for DFEH and LandsD in their appeal against CFI's judgment on 31 August 2018 which, among other things, allowed the JR. The issue involved the constitutionality of a statutory provision which requires prior permission of the Government for display of posters/ banners on Government land. CA allowed the appeal on 16 December 2019, and refused the Applicants' application for leave to appeal to CFA on 13 August 2020. The CFA's Appeal Committee heard the leave application to appeal to CFA on 13 May 2021 and dismissed it on the same day.</p>		
<p>12. Baynard Ltd. and Golden Organise Ltd. v SJ and Others (HCA 4073/2002)</p>	3	1,526,605
<p>Fees and expenses incurred in relation to briefing a solicitors' firm and two local SC on behalf of Director of Lands (D of Lands) in this action. CFI handed</p>		

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>down its Order 14A judgment on 11 April 2019, answering all issues in dispute in favour of the Government. By a further decision dated 29 May 2019, CFI also declared, inter alia, that (1) the individual owners of Tuen Mun Town Lot No. 238 (the Lot) are not entitled to objecting to the two lease modifications in respect of the Hong Kong Gold Coast development situated on the Lot, and that the two lease modifications are legally valid; and (2) the Plaintiffs are not obliged to seek or obtain the consent of the individual owners of the Lot in submitting any proposed amendments to the Master Plans or the Landscape Plans for the approval of D of Lands. The Plaintiffs' claims against the Government in this action were dismissed and the Government's costs of the proceedings were to be paid by the Plaintiffs.</p>		
<p>13. Phase I of the SCL Project</p>	1	1,524,693
<p>Fees and expenses incurred in relation to engaging a solicitors' firm to advise on matters relating to Phase I of the SCL Project for the commissioning of the Tuen Ma Line.</p>		
<p>14. Sham Tsz Kit and Yeung Kwok Ming v CP and SJ (HCAL 2670/2019)</p>	3	1,513,500
<p>Fees and expenses incurred in relation to engaging three local SC (one of whom was appointed as SC after our engagement) to act for the Putative Respondents in resisting the Applicants' application for JR challenging the (i) lawfulness of the decision by the Police on 12 June 2019 to disperse the public meeting organised by the Civil Human Rights Front using tear gas outside Citic Tower; (ii) constitutionality of ss. 17(2)(a) and 17(3)(a) of the Public Order Ordinance (Cap. 245); and (iii) lawfulness of the Police's Notice of Prohibition issued on 12 June 2019. Judgment handed down on 24 March 2021, refusing leave in respect of the</p>		

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
constitutional challenge while granting leave for the Applicants to apply by a certain date for an order that the operational challenge be continued by writ action.		
15. Kung Kwok Wai David, the Executor of the Last Will of Kung Wong Sau Hin, Deceased v Commissioner of Estate Duty (CED) (HCED 1/2011)	2	1,406,225
Fees and expenses incurred in relation to engaging one SC and one junior counsel to act for CED in an estate duty appeal concerning the estate of the Deceased. By Originating Summons dated 11 February 2011, the executor of the estate brought an appeal to challenge the Certificate of Assessment dated 23 November 2010 issued by CED. The issues in contention concern genuineness of the alleged liabilities of the estate and valuation of a piece of land. The trial was held on 8 to 15 January, 13 to 16 October, 28 October and 5 November 2020 with judgment reserved.		
16. Kwok Cheuk Kin & Lui Chi Hang, Hendrick v D of Lands & SJ, Heung Yee Kuk as the Interested Party (HCAL 260/2015)	3	1,238,483
Fees and expenses incurred in relation to briefing a local SC, a local senior junior counsel and a local junior counsel to act for D of Lands and SJ in resisting a JR application taken out by the Applicants against (i) the decision of D of Lands on and after 8 June 1991 to implement and his subsequent decisions to continue to implement the Small House Policy (SHP); and (ii) section 62 and Schedule 5, Part 2, paragraph 2 of the Sex Discrimination Ordinance (Cap. 480) (which renders the SHP not unlawful under the Ordinance). Substantive hearing before CFI was conducted from 3 to 7 December 2018. By judgment handed down on 8 April 2019 and ruling dated 30 April 2019, CFI		

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>found the SHP unconstitutional in so far as it related to Private Treaty Grant and Land Exchange (involving government land) under the SHP. All parties appealed to the CA (CACV 234/19, CACV 319/19 & CACV 317/19). By its judgment handed down on 13 January 2021, the CA allowed the Government's and Heung Yee Kuk's appeals and dismissed the Applicant's appeal (finding that the SHP was constitutional in its entirety), pending ruling on costs.</p>		
<p>17. Appeal to the Board of Review (Inland Revenue Ordinance) (the Board) by a company (the Taxpayer) (MIS 574/2018)</p>	2	1,150,400
<p>Fees and expenses incurred in relation to briefing a SC and a junior counsel in resisting the Taxpayer's tax appeal before the Board.</p>		
<p>The hearing of the appeal was held on 17, 18 and 21 June 2019. The Board issued its decision on 30 November 2020 allowing the Taxpayer's appeal.</p>		
<p>18. Junior Police Officers' Association and AA v Electoral Affairs Commission, Chief Electoral Officer and Electoral Registration Officer (HCAL 3042/2019)</p>	4	1,100,250
<p>Fees and expenses incurred in relation to engaging two local SC and two local senior junior counsel to advise and appear on behalf of the Respondents in the Applicants' application for JR against the decision/practice of the Respondents in relation to public inspection and provision of extract of the Final Register containing the electors' personal data. CFI handed down judgment on 8 April 2020 dismissing the JR application with costs to the Respondents. On 21 May 2020, CA partly allowed the Applicant's appeal against the CFI judgment.</p>		

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>19. Kwok Cheuk Kin v President of LegCo and 39 members of the LegCo (with SJ as Intervener) (HCAL 1094/2017) Leung Kwok Hung v President of the LegCo for and on behalf of the LegCo (with SJ as Intervener) (HCAL 1120/2017)</p>	2	1,078,600
<p>Fees and expenses incurred in relation to engaging a local SC and a local junior counsel to act for SJ in resisting the two applications for JR challenging the constitutionality of the resolution passed by the LegCo on 15 December 2017 reducing the quorum of a Committee of the Whole Council from “not less than one half of its Members” to 20 members. CFI dismissed both JR applications on 12 June 2019. CA dismissed the appeals in HCAL 1120/2017 and HCAL 1094/2017 on 24 November 2020 and 22 December 2020 respectively.</p>		
<p>20. Kwok Cheuk Kin v Director of Public Prosecutions of Department of Justice and SJ (HCAL 2882/2018) Tsang Kin Shing v SJ (HCAL 687/2019)</p>	2	1,060,250

Fees and expenses incurred in relation to engaging two local SC to act for SJ and the Director of Public Prosecutions in resisting the two Applicants' applications for leave to JR against the decision not to prosecute (i) Mr Leung Chun Ying (former CE) and (ii) the Hon. Holden Chow Ho-ding (LegCo member) for various alleged criminal offences relating to the UGL incident. By a judgment handed down on 6 September 2019, the two applications for leave to JR were dismissed.

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>21. Re A (SJ as intervener) (Applicant’s name anonymised as “A” by court order) (HCMP 2728/2017)</p> <p>Fees and expenses incurred in relation to engaging a local SC and a local junior counsel to act for SJ (as Intervener) in resisting the Applicant’s application for a declaration that the proposed third party funding of his own proceedings shall not breach the laws of champerty and maintenance on the ground that the proposed funding arrangement falls into the “access to justice” exception. The substantive hearing was heard on 25 and 26 June 2019. By a judgment handed down on 19 March 2020, the application was dismissed.</p>	2	1,025,150
<p>22. K v CP, Hospital Chief Executive, Queen Elizabeth Hospital as the interested party (HCAL 2643/2019)</p> <p>Fees and expenses incurred in relation to engaging (i) two local SC and a local senior junior counsel to act for the CP in resisting the Applicant’s application for JR against the Police’s refusal to provide her with the search warrants, allegedly infringing the Applicant’s right of access to court and privacy right; (ii) a local SC and the same local senior junior counsel to act for the CP in resisting the Applicant’s interim injunction application. The substantive hearing of the JR took place on 4 November 2019. Judgment of CFI was handed down on 17 December 2019 dismissing the JR application with costs to the CP. The Applicant’s appeal was dismissed by the CA on 21 April 2021.</p>	4	1,015,350
<p>23. Fees and expenses incurred in 372 other civil cases under \$1 million each</p>	-	41,584,475
<p>Sub-total: 394 cases</p>		<p>103,811,638</p>

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
Criminal		
24. HKSAR v Yung Wai Yip & Yuen Chi Kui (HCCC 408A/2016)	2	6,610,000
<p>This is the case of riot which took place on 8 and 9 February 2016. Consolidated with the retrial of one count of riot against three Defendants in a connected case (HCCC 408/2016), the trial of HCCC 408A/2016 commenced on 8 November 2018 and lasted for 91 days.</p> <p>Given the complexity and sensitivity of the case, one local SC and one local junior counsel had been briefed as prosecuting counsel for both HCCC 408/2016 and HCCC 408A/2016.</p> <p>One Defendant pleaded guilty before trial. As against the remaining four Defendants, the verdict of the jury was given on 22 March 2019. One Defendant was convicted of some of the charges against him. Other Defendants were acquitted of some of the charges. The jury could not reach a majority verdict in relation to the same count which the previous jury could not reach majority verdict in HCCC 408/2016. Upon consideration, the prosecution applied to leave that count on court file and not to proceed with that count without the leave of the Court. The two Defendants who were convicted on their plea and after trial respectively were sentenced on 9 May 2019.</p>		
25. HKSAR v Cheung Chun Yuen Barry (DCCC 718/2017)	2	1,862,500
<p>This is a case of “Conspiracy to Defraud” in which the Chairman (D1) and the Chief Financial Officer (D2) of Hong Kong Mercantile Exchange Limited (HKMEx) had conspired together to defraud the Securities and Futures Commission (SFC) into acting contrary to its public duties by concealing from the SFC material information in relation to HKMEx’s</p>		

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>financial position, thereby causing the SFC not to withdraw the authorisation to provide automated trading services for operating a commodities futures market. D1 was further charged with one count of “Fraud” for making a false representation in order to secure a loan of \$30 million.</p> <p>In consideration of the complexity and sensitivity of the case, one local SC and one local junior counsel had been briefed as prosecuting counsel.</p> <p>D2 pleaded guilty to and was convicted of the charge he faced in November 2018. As for D1, his case was initially set down for trial to commence in July 2019. Following a successful application made by D1 for recusal of the trial judge, the trial was refixed to commence in January 2020. In view of public health considerations, the trial was adjourned and later part-heard on 20 to 24, 27 to 29 April 2020, 8 May 2020 and 5 June 2020. Closing submissions was made on 17 June 2020. On 17 July 2020, D1 was convicted of both charges he faced. D1 was sentenced to four years’ imprisonment and a disqualification order of five years was imposed. D2 was sentenced to one year’s imprisonment.</p>	5	1,846,980
<p>26. HKSAR v Li Yam Pui David & others (CACC 425/2015 on appeal from DCCC 25/2015)</p>		
<p>This case involves the sale of “Ding” right (commonly known as “To Ding”). A total of 12 Defendants were convicted after trial in the District Court of charges of conspiracy to defraud for the sale of “Ding” right. All the Defendants (A1 to A12) are now seeking leave to appeal against conviction and sentence.</p> <p>A1, a property developer, conspired separately with each of 22 male indigenous villagers (IVs) to defraud LandsD to grant a Building Licence (B/L) to each IV by falsely representing that the IV was the owner of the land on which a house was sought to be built</p>		

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>pursuant to the B/L and by concealing the agreement between them to dispose of the land and the house. Those 22 IVs included A2 to A12 and another 11 persons, some of whom had testified for the prosecution at the trial under immunity.</p> <p>A1 was convicted of 22 counts of conspiracy to defraud in respect of the 22 B/L applications while A2 to A12 were each convicted of one count of conspiracy to defraud (jointly with A1) in respect of the B/L application in his own name. All 12 Defendants have filed applications for leave to appeal against conviction and sentence, and are on bail pending appeal.</p> <p>The Respondent has engaged one local SC and two local counsel to deal with the constitutionality ground, and one local SC to deal with all other grounds of appeal. The Respondent has also engaged one expert witness (a local historian) to give opinions on New Territories (NT) customs and land matters, and the landholding or ownership customs and practices of IVs in the NT at the time of takeover of the NT in 1898 and afterwards.</p> <p>The appeal hearing has been fixed from 1 to 14 September 2021 (with ten days reserved).</p>	2	1,714,960
<p>27. HKSAR v Tsang Yam Kuen Donald (FACC 29/2018 on appeal from CACC 55/2017)</p> <p>This case involves one count of the CE accepting an advantage, contrary to sections 4(2B)(a) and 12 of the Prevention of Bribery Ordinance (Cap. 201) (Count 1) and two counts of misconduct in public office (MIPO), contrary to Common Law and punishable under section 101I(1) of the Criminal Procedure Ordinance (Cap. 221) (Counts 2 and 3), against a former CE.</p>		

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>On 25 and 26 April 2018, CA heard the Defendant's appeal against conviction of Count 2, sentence and costs order. By a judgment dated 20 July 2018, CA refused his application for leave to appeal against conviction but allowed his appeal against sentence and costs order. The Defendant subsequently applied for leave to appeal to CFA against CA's judgment. Leave to appeal to CFA was granted on 20 December 2018. The appeal was allowed by CFA on 26 June 2019.</p> <p>The prosecution has engaged one overseas QC and one local SC who handled the trial and appeal in the lower courts to prosecute the appeal to CFA together with two in-house counsel.</p>	1	1,360,000
<p>28. HKSAR v Lam Kit Wai & nine others (DCCC 873/2018 & 757/2019) (consolidated)</p> <p>This is a case of 28 counts of money laundering which took place from January 2009 to August 2012 (period of about 44 months), involving ten Defendants controlling 28 bank accounts/Hong Kong Jockey Club (HKJC) betting accounts, and a sum of \$2,835 million.</p> <p>The offences were discovered as a result of raiding of the business premises of a suspected book making syndicate. The known occupation and possible sources of income of each Defendant cannot commensurate with the funds going through their bank accounts/betting accounts. On investigation, the bank accounts/betting accounts exhibited hallmarks of money laundering and bookmaking (such as existence of material cash transactions, concealed sources of funding, unnecessary layering of transactions, substantial use of HKJC betting accounts belonging to others, substantial (disproportionate) monthly betting amounts, substantial transactions shortly before the commencement of the racing season, and substantial transactions before a horse racing fixture).</p>		

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>Given the complexity of the case and in particular, the large number of bank accounts/betting accounts, number of transactions and the sums involved, a forensic accounting firm was engaged to compile a report and to testify in trial for the purpose of summing up and analysing the transactions in all bank accounts/betting accounts involved, and to give an opinion that the accounts exhibited hallmarks of money laundering/bookmaking. On 19 March 2021, D1, D2, D5 to D10 were convicted after trial. Their sentencing hearing was adjourned to 11 May 2021.</p>		
<p>29. HKSAR v APL Co. PTE Limited & Pan Xuejun (DCCC 446/2017)</p>	1	1,000,000

This is a sensitive case involving the importing of strategic commodities (nine ground vehicles) that has caused concern of the Singapore Government (owner of the vehicles) and attracted intense media attention. The vehicles had already been returned to their owner in January 2017 before charges were laid.

D1 and D2 faced a joint charge of importing articles specified in Schedule 1 to the Import and Export (Strategic Commodities) Regulations except under and in accordance with an import licence issued by the Director-General of Trade and Industry, contrary to section 6A(2)(b), (3)(a) of the Import and Export Ordinance, Cap. 60 and Schedules 1 and 2 to the Import and Export (Strategic Commodities) Regulations, Cap. 60G.

The Defendants were first taken to court respectively in March and April 2017, after which their cases were consolidated and transferred to the District Court. Both Defendants were represented by the same leading SC. On 27 July 2017, the matter was set down for legal argument on preliminary issues raised by the defence. The argument hearing which lasted for three days was concluded on 13 December 2017, on which occasion the presiding judge declined to make

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>rulings on the preliminary issues. The case was remitted back to the plea court. On 9 January 2018, the Defendants came to be separately represented with another counsel appeared for D2.</p> <p>The three-day legal argument hearing was briefed to and conducted by a monolingual SC. As the case was subsequently set down for trial in Chinese, and given the sensitive nature and the complexity of the case, another bilingual SC was briefed to replace the monolingual SC, to conduct the trial.</p> <p>The trial hearing commenced on 11 October 2018 and was concluded on 29 April 2019 (covering 12 days). Both D1 and D2 were convicted as charged with D1 sentenced to a fine of \$90,000, and D2 to three months' imprisonment suspended for 18 months and a fine of \$9,000.</p>	1	1,000,000
<p>30. HKSAR v Chin Kam Chiu & five others (DCCC 919/2015)</p>		

A cross-border syndicate allegedly smuggled a variety of high valued goods (e.g. metals for industrial use, frozen foodstuffs and electronic goods) into the Mainland from Hong Kong by using river trade vessels owned or controlled by the syndicate in the form of unmanifested cargoes between 1 January 2010 and 12 January 2012, both dates inclusive.

Billions of money, representing in whole or in part the proceeds of the smuggling, were deposited and transferred into 12 bank accounts held by two local companies which were controlled by the syndicate.

The trial commenced on 8 October 2018 with a voir dire to determine the admissibility of various pieces of evidence to which the defendants had raised objections. The trial was concluded on 3 April 2019. D4 pleaded guilty to Charge 1 on the first day of trial but later applied for reversal of plea.

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>On 26 June 2019, D1, D3, D5 and D6 were formally acquitted of the charge of “Conspiracy to export unmanifested cargo” (Charge 1, against which the prosecution had previously offered no evidence). D1, D2, D3 and D6 were also acquitted of the charge of “Conspiracy to money laundering” (Charge 2, for which they were tried), with costs awarded to the same against the prosecution.</p>		
<p>On 28 June 2019, the Court refused D4’s application for reversal of plea on Charge 1. D4 was sentenced to imprisonment for 21 months. D4 applied for leave to appeal against conviction on 22 August 2019. The same SC who handled the trial in the lower court has been briefed (together with a junior counsel) as the leading prosecuting counsel for the appeal. The leave application was heard on 13 January 2021. Judgment was handed down on 1 February 2021 in which the CA dismissed the application for leave. D4 filed a notice of appeal to the CFA on 19 February 2021. Interim proceedings on paper are ongoing, and no hearing date has been fixed yet.</p>		
31. Fees and expenses incurred in 31 other criminal cases under \$1 million each	-	7,251,800
Sub-total: 38 cases		22,646,240
Total expenditure	(432 cases)	126,457,878

Enclosure 3 to FCRI(2021-22)4

**Legal services for construction dispute resolution
breakdown of cases briefed out
at fees not covered by the approved scales in 2019-20**

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>1. Sludge Treatment Facilities - Contract No. EP/SP/58/08 Arbitration between VW-VES(HK) Limited and Hong Kong Special Administrative Region (HKSAR)</p> <p>Fees and expenses incurred in relation to appointing an arbitrator as well as engaging a solicitors' firm, a London Queen's Counsel (QC), a London junior counsel, a local junior counsel, a quantum and programming expert, an electrical engineering expert, a fire engineering expert, a tribunal appointed statistical/sampling expert and a tribunal secretary in an arbitration in respect of claims brought by the Contractor against the Government for extension of time and additional payments and a dispute as to levy of liquidated damages.</p>	10	48,499,003
<p>2. Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL-HK section)</p> <p>Fees and expenses incurred in relation to engaging a solicitors' firm, a London QC, a local Senior Counsel (SC), a London junior counsel, a structural steel expert, a project management/programming expert and a geotechnical expert to provide legal and expert advice on matters relating to the XRL-HK section Project.</p>	7	9,492,296

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>3. Salt Water Supply System for Pok Fu Lam Area – Construction of Services Reservoirs, Pumping Stations and Associated Mains - Contract No. 10/WSD/09 Arbitration between Law Chi Yip Construction Company Limited and HKSAR</p>	5	8,619,295
<p>Fees and expenses incurred in relation to appointing an arbitrator as well as engaging a solicitors' firm, a London QC, a local junior counsel and a quantum and programming expert in an arbitration in respect of claims brought by the Contractor against the Government for valuation, variations, missing items, prolongation costs, Mandatory Provident Fund reimbursements and extension of time.</p>		
<p>4. Extension of Footbridge Network in Tsuen Wan Footbridge A along Tai Ho Road - Contract No. HY/2007/03 Arbitration between Sun Fook Kong (Civil) Limited and HKSAR</p>	6	4,155,309
<p>Fees and expenses incurred in relation to appointing an arbitrator as well as engaging a solicitors' firm, a local junior counsel and a programming expert and two quantum experts in an arbitration in respect of claims brought by the Contractor against the Government for variations, missing items and re-measurement.</p>		
<p>5. Enhancement of Footbridges in Tsim Sha Tsui East - Contract No. HY/2007/15 Arbitration between Yee Hop Engineering Company Limited and HKSAR</p>	4	3,730,209
<p>Fees and expenses incurred in relation to engaging a solicitors' firm, a quantum and programming expert, a structural engineering expert and a stainless steel procurement expert in an arbitration</p>		

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
in respect of claims brought by the Contractor against the Government for extension of time, refund of liquidated damages, additional costs, prolongation/disruption costs and the final account.		
6. Kai Tak Development – Stage 2 Infrastructure Works at North Apron Area of Kai Tak Airport for Residential Development and Government Facilities - Contract No. KL/2010/03 Arbitration between Peako Engineering Co. Limited and the HKSAR	3	2,171,426
Fees and expenses incurred in relation to engaging a solicitors' firm, a local SC and a quantum and programming expert in an arbitration in respect of claims brought by the Contractor against the Government for valuation, missing items, delay and defect claims.		
7. Fees and expenses incurred in seven other construction dispute resolution cases under \$1 million each	-	1,480,172
Total expenditure	(13 cases)	78,147,710
