

NOTE FOR FINANCE COMMITTEE

Legal expenses for briefing out cases not covered by approved fee schedules (2021-22)

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 fee schedule. 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 2021-22 on briefing out cases not covered by the approved fee schedules.

2. 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 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 DoJ.

- Encl. 1 3. The approved schedules of maximum fees for briefing out criminal cases are at Enclosure 1.

LEGAL EXPENSES NOT COVERED BY APPROVED FEE SCHEDULES FOR THE YEAR ENDED 31 MARCH 2022

4. During the year ended 31 March 2022, DoJ paid out a total of \$261,569,783 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 schedules	141,430,813
(b) Briefing out of cases at fees not covered by the approved fee schedules	76,150,909
	<u>217,581,722</u>
Payment for legal services for construction dispute resolution	
(c) Briefing out of construction dispute resolution cases at fees not covered by any approved fee schedules ²	43,988,061
Total expenditure for 2021-22	<u>261,569,783</u>

/5.

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

5. Regarding paragraph 4(b) above, DoJ briefed out various matters which were not covered by the approved fee schedules to lawyers, accountants, expert witnesses, consultants and appointed arbitrators/mediators. The amount of \$76,150,909 incurred in the financial year of 2021-22 involved 401 cases. Please refer to Enclosure 2 for further information.

Encl. 2

6. As regards paragraph 4(c) above, DoJ briefed out various matters which were not covered by any approved fee schedules to private practitioners engaged to undertake specialised work relating to construction dispute resolution. The amount of \$43,988,061 incurred in the financial year of 2021-22 involved 12 cases. Please refer to Enclosure 3 for further information.

Encl. 3

Department of Justice
December 2022

Enclosure 1 to FCRI(2022-23)16

Approved schedules of maximum fees for briefing out criminal cases

	For cases briefed out from 20 July 2020 to 7 October 2021	For cases briefed out from 8 October 2021 onwards
	\$	\$
(a) Court of Appeal		
(i) brief fee ^{Note}	53,050	54,480
(ii) refresher fee per day ^{Note}	26,530	27,240
(b) Court of First Instance		
(i) brief fee ^{Note}	39,780	40,850
(ii) refresher fee per day ^{Note}	19,880	20,410
(iii) conference per hour	2,050	2,100
(iv) brief fee for plea and sentence	7,070	7,260
(c) District Court		
(i) brief fee ^{Note}	26,460	27,170
(ii) refresher fee per day ^{Note}	13,220	13,570
(iii) conference per hour	1,680	1,720
(iv) brief fee for plea and sentence	3,310	3,390
(d) Magistrates' Court		
(i) brief fee	15,890	16,310
(ii) refresher fee per day	7,930	8,140
(iii) brief fee on daily basis	11,850	12,160

^{Note} Brief fees and refresher fees are subject to a 10% increase on the base figure for each of the second to the sixth defendant/appellant.

Hire of legal services and related professional fees

**Breakdown of cases briefed out
at fees not covered by the approved fee schedules in 2021-22**

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
Civil		
1. Kwok Cheuk Kin v Director of Lands (Director), Chief Executive in Council and Secretary for Justice (SJ), Heung Yee Kuk as the Interested Party (FACV 2/2021, FACV 3/2021 & FACV 4/2021)	3	3,085,690

Fees incurred in engaging one local Senior Counsel (SC), one local senior junior counsel and one local junior counsel to act for the Director. The Applicant challenged the constitutionality of the Small House Policy (SHP) based on Article 40 of the Basic Law. The Court of First Instance (CFI) found the SHP partially unconstitutional. All parties appealed. The Court of Appeal (CA) ruled in favour of the Director and Heung Yee Kuk, finding the SHP constitutional in its entirety. The Applicant appealed. After hearing on 11 and 12 October 2021, the Court of Final Appeal handed down judgment on 5 November 2021 dismissing the Applicant's appeal.

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>2. Kwok Cheuk Kin v SJ (CACV 8/2019) Lui Chi Hang, Hendrick v SJ and Chief Executive of the Hong Kong Special Administrative Region (HKSAR) (CACV 10/2019) Leung Chung Hang, Sixtus v SJ (CACV 87/2019) Leung Kwok Hung v Secretary for Transport and Housing (CACV 88/2019)</p> <p>Fees and expenses incurred in briefing two local SC and one local junior counsel to resist the Applicants' appeals against the decision of CFI dated 13 December 2018 which upheld the constitutionality of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance (Cap. 632). CA handed down judgment on 11 June 2021 upholding the constitutionality of the said Ordinance and dismissing the appeals. There was no further appeal and the case was concluded.</p>	3	1,674,600
<p>3. Fees and expenses incurred in 372 other civil cases under \$1.5 million^{Note} each</p>	-	42,143,396
<p>Sub-total: 374 cases</p>		46,903,686

^{Note} As per FCRI(2021-22)15, details of cases with briefing out expenses at \$1.5 million or above per case will be reported to the Finance Committee for information. We will continue to keep in view and consider adjustment to the reporting threshold as appropriate.

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
Criminal		
4. HKSAR v Tong Wai Hung & two others (DCCC 872/2019); HKSAR v Cheung Chi Lun & 23 others (DCCC 871/2019); and HKSAR v Chan Wai Lam & 14 others (DCCC 820/2019)	1	10,000,000

These three cases concerned the riotous events which took place in the Western District in the evening of 28 July 2019.

Regarding DCCC 872/2019, D1 to D3 were jointly charged with one count of riot while D1 and D2 were each further charged with one count of possession of apparatus for radiocommunications, namely, a walkie-talkie, without a licence. D1 to D3 pleaded not guilty to all the respective charges. The trial commenced on 11 May 2020 and was concluded on 15 June 2020 (covering 18 days). On 24 July 2020, D1 to D3 were acquitted of the offence of riot, whereas D1 and D2 were both convicted of the offence of possession of apparatus for radiocommunications and were each sentenced to a fine of \$10,000.

Regarding DCCC 871/2019, D1 to D24 were jointly charged with one count of riot. D15 was further charged with one count of assaulting a police officer in the execution of duty and D4 was further charged with one count of possession of apparatus for radiocommunications, namely, a walkie-talkie, without a licence. D17 pleaded guilty to the offence of riot before trial. As against the remaining 23 defendants, the trial commenced on 22 February 2021 and was concluded on 25 May 2021 (covering 63 days). On 13 November 2021, a total of 20 out of the 23 defendants were convicted of riot after trial. D4 and D15 were additionally convicted of possession of apparatus for radiocommunications and assaulting a police officer respectively.

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>Regarding DCCC 820/2019, D1 to D15 were jointly charged with one count of riot. D15 was further charged with one count of possession of apparatus for radiocommunications, namely, a walkie-talkie, without a licence and possession of an offensive weapon, namely, a laser pointer. D4 pleaded guilty to the offence of riot at the beginning of trial. As against the remaining 14 defendants, the trial commenced on 7 June 2021 and was concluded on 15 July 2021 (covering 26 days) with closing submissions made on 16 August 2021. On 30 December 2021, all 14 defendants were convicted of riot after trial and D15 was additionally convicted of possession of an offensive weapon in a public place.</p> <p>In consideration of the complexity and sensitivity of the cases, and for the sake of consistency, one local SC had been briefed as the leading prosecuting counsel for the three cases.</p>	2	4,090,000
<p>5. HKSAR v Chen Keen & others (ESCC 1834/2012 & HCCC 83/2014)</p>		

It is the Prosecution's case that in May 2009, D1, a co-chairman of a Hong Kong listed company, conspired with D2, the owner of a company in New Zealand, to acquire dairy farms in New Zealand at NZ\$500M ("the Acquisition"). In the course of the Acquisition, D1 and D2 concealed the fact that they were working on the Acquisition project together and that they were parties to a signed commission sharing agreement to share the commission that would be paid by the farm owners upon the successful sale of the farms (Charges 1 and 3), and also falsely represented the gross profit of the farms (Charges 2 and 4). At various stages, in order to make payment to D2 for the Acquisition, with the approval of the Stock Exchange of Hong Kong, convertible notes and an optional bond were issued and released. Part of the proceeds came into the hands of D1 in Hong Kong in the end (Charge 5).

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>All defendants were convicted as charged at the first trial in 2014 but upon their successful appeals, the Court of Final Appeal in 2018 ordered that the convictions of the defendants be quashed and a retrial was ordered for. The retrial was heard at CFI between February and June 2021. In the course of the testimony of a prosecution witness, references to D2's conviction at the first trial were made and the jury were discharged. The retrial is now set down to resume in May 2023.</p>		
<p>6. HKSAR v Wang Xiaoshan & four others (DCCC 652/2020 & 79/2021)</p>	1	3,430,000
<p>This is a case of Letter of Credit fraud. China Railway International Trading (HK) Limited had applied for Letter of Credit with DBS Bank Limited in the total amount of \$75,373,550 for procuring construction materials. However, none of those materials had in fact been supplied. A total of 18 charges, including conspiracy to defraud, conspiracy for an agent to accept advantages and money laundering were variously laid against the five defendants. All defendants pleaded not guilty.</p> <p>Given the complexity and sensitivity of the case, one local SC had been briefed as the leading prosecuting counsel.</p> <p>D1 and D5 were convicted after trial and were both sentenced to four years' imprisonment.</p>		
<p>7. HKSAR v Lai Chee Ying & eight others (DCCC 536/2020)</p>	2	2,540,000
<p>This is a case of unauthorised assembly which took place on 18 August 2019. Nine defendants were charged with "organising an unauthorised assembly" and "knowingly taking part in an unauthorised assembly".</p>		

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>Given the complexity and sensitivity of the case, one local SC and one senior junior counsel had been briefed as prosecuting counsel.</p>		
<p>Two defendants pleaded guilty before trial. As against the remaining seven defendants, the verdict was given on 1 April 2021 and they were convicted of both charges. All defendants were sentenced on 16 April 2021.</p>		
<p>8. HKSAR v Li Wan Man & 13 others (DCCC 707/2019)</p>	2	2,502,700

The Prosecution case is that D1 to D4 arranged for about 240 persons to register as electors of the Information Technology Functional Constituency with false qualifications in order for them to vote for a particular candidate at the 2016 Legislative Council General Election.

D1 to D4 were charged with one count of conspiracy to defraud. D1, D5, D6 and D9 were charged with one count of conspiracy to engage in corrupt conduct at an election by offering an advantage to others whilst each of D5 to D14 were individually charged with engaging in corrupt conduct at an election by accepting an advantage.

Given the complexity, sensitivity and wide policy implications of the case, one co-leading counsel and one junior counsel, in addition to the in-house counsel, were briefed to prosecute the case.

D1, D2, D3, D5, D6, D9 and D14 were convicted upon their own plea whilst D10 to D13 were convicted after trial. The charges against D4, D7 and D8 were left on court file upon plea bargain.

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
9. Fees and expenses incurred in 22 other criminal cases under \$1.5 million ^{Note} each	-	6,684,523
Sub-total: 27 cases		29,247,223
Total expenditure (401 cases)		76,150,909

Legal services for construction dispute resolution

**Breakdown of cases briefed out
at fees not covered by any approved fee schedules in 2021-22**

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>1. 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 Queen's Counsel (QC), a London junior counsel, a structural steel expert, a project management/programming/quantum expert and a geotechnical expert to provide legal and expert advice on matters relating to the XRL-HK section Project.</p>	6	11,735,699
<p>2. 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 the Government of the Hong Kong Special Administrative Region (the Government)</p> <p>Fees and expenses incurred in relation to appointing an arbitrator as well as engaging a solicitors' firm, a local junior counsel and a delay/programming expert and a quantum expert in an arbitration in respect of claims brought by the Contractor against the Government for variations, missing items and re-measurement.</p>	5	11,329,330

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>3. Hong Kong-Shenzhen Western Corridor - Contract No. HY/2002/21 Arbitrations/court proceedings between the Government and Gammon-Skanska-MBEC Joint Venture, VSL Hong Kong Limited and Ove Arup & Partners HK Limited</p>	6	10,457,803
<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, a material expert and a bridge expert in the arbitrations and court proceedings in respect of claims brought by the Government against the parties involved in the design, construction and supervision of the grouting works for the external prestressed tendons of the bridge.</p>		
<p>4. Enhancement of Footbridges in Tsim Sha Tsui East - Contract No. HY/2007/15 Arbitration between Yee Hop Engineering Company Limited and the Government</p>	8	7,695,250
<p>Fees and expenses incurred in relation to appointing an arbitrator as well as engaging a solicitors' firm, a local Senior Counsel (SC), a local junior counsel, a stainless steel expert, a quantum and programming expert, a structural engineering expert and a stainless steel procurement expert in an arbitration 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.</p>		

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>5. 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 Government</p> <p>Fees and expenses incurred in relation to appointing an arbitrator as well as engaging a solicitors' firm, a local SC, 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 breach of contract, valuation, missing items and delay claims.</p>	5	1,801,727
<p>6. Fees and expenses incurred in seven other construction dispute resolution cases under \$1.5 million^{Note} each</p>	-	968,252
Total expenditure (12 cases)		43,988,061

^{Note} As per FCRI(2021-22)15, details of cases with briefing out expenses at \$1.5 million or above per case will be reported to the Finance Committee for information. We will continue to keep in view and consider adjustment to the reporting threshold as appropriate.