

NOTE FOR FINANCE COMMITTEE

Legal expenses for briefing out cases not covered by approved fee schedules (2023-24)

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 2023-24 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 2024

4. During the year ended 31 March 2024, DoJ paid out a total of \$199,437,744 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	113,208,642
(b) Briefing out of cases at fees not covered by the approved fee schedules	54,318,564
	167,527,206
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	31,910,538
Total expenditure for 2023-24	199,437,744

/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 \$54,318,564 incurred in the financial year of 2023-24 involved 362 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 \$31,910,538 incurred in the financial year of 2023-24 involved 11 cases. Please refer to Enclosure 3 for further information.

Encl. 3

Department of Justice
December 2024

Enclosure 1 to FCRI(2024-25)12

**Approved schedules of maximum fees for briefing out criminal cases
(for cases briefed out from 17 March 2023 onwards)**

	\$
(a) Court of Appeal	
(i) brief fee ^{Note}	56,160
(ii) refresher fee per day ^{Note}	28,080
(b) Court of First Instance	
(i) brief fee ^{Note}	42,110
(ii) refresher fee per day ^{Note}	21,040
(iii) conference per hour	2,160
(iv) brief fee for plea and sentence	7,480
(c) District Court	
(i) brief fee ^{Note}	28,010
(ii) refresher fee per day ^{Note}	13,990
(iii) conference per hour	1,770
(iv) brief fee for plea and sentence	3,490
(d) Magistrates' Court	
(i) brief fee	16,810
(ii) refresher fee per day	8,390
(iii) brief fee on daily basis	12,530

^{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.

Enclosure 2 to FCRI(2024-25)12

Hire of legal services and related professional fees

Breakdown of cases briefed out at fees not covered by the approved fee schedules in 2023-24

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
Civil		
1. Joseph Lo Kin Ching & Derek Lai Kar Yan, the Joint & Several Administrators of the Estate of Kung Nina also known as Nina Kung & Nina T H Wang & Chinachem Charitable Foundation Ltd (the Foundation) (HCMP 853/12)	4	4,635,366
<p>Fees and expenses incurred in engaging one local Senior Counsel (SC), and two local counsel to provide advice to and represent the Secretary for Justice (SJ) in seeking the Court's direction on whether the Foundation is qualified for appointment as trustee of the charitable trust established by the Will of the late Kung Nina and in the Court's sanctioning of a scheme for the administration of the charitable trust under the Estate, and one London Counsel to provide expert advice to SJ on the preparation of the scheme. In July 2023, the Court ruled that the Foundation was not qualified to be appointed as trustee. The Court made further directions on the scheme and related matters in December 2023 and February 2024, and eventually approved the scheme on 16 May 2024.</p>		
2. Appeal to the Board of Review (Inland Revenue Ordinance) (the Board) by a company (MIS 351/22)	5	4,297,182
<p>Fees and expenses incurred in engaging a London King's Counsel, a local SC, a local counsel, an accounting expert, and an economic expert in resisting a tax appeal before the Board.</p>		
<p>The hearing of the appeal was held on 29 - 30 January and 2 February 2024. By its decision</p>		

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>on 6 August 2024, the Board dismissed the appeal. The taxpayer's application for leave to appeal against the Board's decision is fixed for 27 February 2025.</p>		
<p>3. Tam Sze Leung, Tam Chung Wai, Kong Chan, Lee Ka Lo (FACV 7/23)</p>	3	2,748,200
<p>Fees and expenses incurred in engaging two local SC and one local counsel to act for the Commissioner of Police (the Commissioner), in defending the Appellants' appeal to the Court of Final Appeal (CFA) from the Court of Appeal's judgment which had set aside the Court of First Instance (CFI)'s declaration that the Letters of No Consent and the No Consent Regime as operated by the Commissioner are ultra vires the Organised and Serious Crimes Ordinance, Cap. 455 and unconstitutional. By judgment dated 10 April 2024, the CFA unanimously dismissed the Appellants' appeal.</p>		
<p>4. Appeal to the Board of Review by a company (MIS 856/20)</p>	3	2,600,572
<p>Fees and expenses incurred in engaging a local SC, a local counsel, and an accounting expert in resisting a tax appeal before the Board.</p>		
<p>The hearing of the appeal was held on 7 - 9, 12 - 13 and 30 June 2023. By its decision on 29 December 2023, the Board dismissed the appeal. The taxpayer's application for leave to appeal against the Board's decision was heard before the CFI on 30 October 2024 with decision reserved.</p>		
<p>5. Fees and expenses incurred in 351 other civil cases under \$1.5 million^{Note} each</p>	-	36,447,202
<p>Sub-total: 355 cases</p>		50,728,522

^{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		
6. Hong Kong Special Administrative Region v Chen Keen & others (CACC 228/2023 on appeal from HCCC 309/2019)	2	2,105,000

Fees and expenses incurred in engaging two local counsel to represent the Prosecution to conduct the 2nd retrial of this case at the CFI.

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).

All defendants were convicted as charged at the first trial in 2014 but upon their successful appeals, the CFA 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 2nd retrial was heard at CFI between July and December 2023. All defendants were convicted as charged (except for D1 who was acquitted on Charge 5 – Laundering). The defendants lodged an appeal and the appeal hearing has been fixed to commence on 21 January 2025 (with three days reserved).

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
7. Fees and expenses incurred in six other criminal cases under \$1.5 million ^{Note} each	-	1,485,042
Sub-total: Seven cases		3,590,042
Total expenditure (362 cases)		54,318,564

Legal services for construction dispute resolution

**Breakdown of cases briefed out
at fees not covered by any approved fee schedules in 2023-24**

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
<p>1. Hong Kong-Shenzhen Western Corridor - Contract Nos. HY/2002/21 & CE 51/2001 Arbitrations/court proceedings between the Government of the Hong Kong Special Administrative Region (the Government) and Gammon-Skanska-MBEC Joint Venture, VSL Hong Kong Limited and Ove Arup & Partners HK Limited</p> <p>Fees and expenses incurred in relation to appointing an arbitrator, as well as engaging a solicitors' firm, a London King's Counsel, a London counsel, a local counsel, a bridge expert, a quantum expert, a sampling expert, a supervision expert and an expert in prestressing tendons and maintenance 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>	10	16,109,706
<p>2. Hong Kong-Zhuhai-Macao Bridge Hong Kong Boundary Crossing Facilities – Passenger Clearance Building - Contract No. HY/2013/01</p> <p>Fees and expenses incurred in relation to engaging a solicitors' firm in the mediation in respect of claims brought by the contractor against the Government under the contract for additional cost incurred for variation, prolongation and disruption of work.</p>	1	5,266,970

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
3. Central-Wan Chai Bypass Tunnel (North Point Section) and Island Eastern Corridor Link - Contract No. HY/2009/19	1	3,623,490
<p>Fees and expenses incurred in relation to engaging a solicitors' firm in the mediation in respect of claims brought by the contractor against the Government under the contract relating to variation, omitted items in the Bills of Quantities, monetary claims and finance charges.</p>		
4. Hong Kong-Zhuhai-Macao Bridge Hong Kong Boundary Crossing Facilities – Reclamation Works - Contract No. HY/2010/02	2	2,189,427
<p>Fees and expenses incurred in relation to engaging a local counsel and a solicitors' firm in the mediation in respect of claims brought by the contractor against the Government under the contract for extension of time for completion of the works and additional payment incurred for variation, prolongation and finance charges; and in respect of counterclaims brought by the Government against the contractor for damages suffered under subsequent works contracts arising from the contractor's late completion of the works.</p>		
5. Fees and expenses incurred in seven other construction dispute resolution cases under \$1.5 million^{Note} each	-	4,720,945
Total expenditure (11 cases)		31,910,538

^{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.