

LCQ3: Litigations to which the Government was a party

Following is a question by Hon Ronny Tong Ka-wah and a reply by the Secretary for Justice, Mr Wong Yan Lung, SC, in the Legislative Council today (November 16):

Question:

It has been reported recently that the Hong Kong SAR Government has lost in a number of high-profile criminal and judicial review cases, resulting in the Government having to pay large amounts of legal costs. In this connection, will the Government inform this Council:

(a) of the respective types, outcome and win-lose ratios of litigations to which the Government was a party in each of the past 10 years, including criminal and judicial review cases in the High Court and District Court, but not those in Magistrates' Courts;

(b) of the aggregate amount of public funds expended by the Government on the cases in (a) in each of the past 10 years, and the amount for paying the fees of the attorneys of the winning parties among such public funds, together with a table setting out such figures in detail; and

(c) whether the authorities have analyzed the aforesaid data to review and examine if the quality of the legal advice received by the SAR needs to be enhanced, and if the policy stances have deviated from the law; if such an analysis has been made, of the outcome; if not, the reasons for that?

Reply:

President,

There are established principles in respect of the appropriation of legal costs borne by parties involved in

prosecution and litigation cases. In the context of prosecution, the general rule is that an acquitted defendant is entitled to be compensated by the prosecution of his/her costs, and in case of an appeal, also the costs of the appeal. On the other hand, in case of conviction or dismissal of the defendant's appeal, save in exceptional circumstances, it is not the practice of the prosecution to seek costs from the defendant. This is because in a criminal case the defendant enjoys the constitutional right of presumption of innocence and the prosecution bears the burden of proving the offence. Whilst the majority of prosecutions have resulted in convictions, there still remain a number of less successful prosecutions where the Government has to bear the costs of the defendants.

As for civil cases (including judicial review (JR) cases), the Government could either be the plaintiff or the defendant. The general rule on costs is that the successful party is entitled to recover its costs from the unsuccessful party. However, in exceptional circumstances, the Court may in its discretion order each party to bear its own costs or that the successful party is entitled to recover only part of its costs from the unsuccessful party.

The expenditure for court costs awarded against the Government is contingent upon a number of factors, for example the outcome of the trials and appeals, merits of the case, the orders made by the courts, the progress and result of the relevant cost negotiations, etc. The level of payment therefore varies from year to year.

On the three parts of the question raised by the Hon Ronny Tong, my reply is as follows -

(a) Based on information readily available, the annual number and outcome of criminal cases, JR and civil cases heard in the Court of Final Appeal, the High Court, the District Court and various Tribunals (as applicable) in the past 10 years in which the Government was involved, classified according

to the levels of court at which the cases were heard, is set out in Annex A.

As noted from the figures, for criminal cases, the conviction rates at the District Court and Court of First Instance levels remain relatively stable at about 70% excluding guilty plea (or about 90% if guilty plea is included) with a rising trend in the past ten years. For appeals from the defendants (including appeals against sentence), about 70% were dismissed at the Court of Appeal level; as regards the Court of Final Appeal level, about 85% of the applications for leave to appeal were dismissed, while the success rate for the substantive appeals varied from year to year.

For the JR cases, the outcome of about 80% of the cases in recent years was in favour of the Government. For civil cases other than JR, the percentage of cases with favourable outcome is about 79% in the Court of Final Appeal, about 80% in the Court of Appeal and about 79% in the Court of First Instance. As for the District Court and the various Tribunals, the rate is about 82% and 90% respectively.

(b) Government expenditure in handling prosecution and litigation cases mainly involves internal staff costs for handling such cases, costs for outside counsel service acting on behalf of the Administration where a case is briefed out to counsel in private practice, as well as the payment of court costs (if applicable).

We have not maintained expenditure statistics on internal staff for handling the cases in question, although when a costs order is made in favour of Government in specific cases, Department of Justice (DoJ) will include our staff costs, plus the costs for outside legal service (if applicable), in our claim for costs.

As for expenditure information on court costs and briefing out costs for court cases, they are calculated on a financial-year basis. For the payment of court costs, we

only maintain the annual aggregate number of cases and expenditure covering cases handled at all court levels, and the figures are set out in Annex B.

As for the annual aggregate expenditure for briefing out (including expenditure for representation for the Government in court on prosecution and litigation cases, and for the provision of other legal advice generally), it is set out in Annex C. The figures in Annex C do not include Magistracies cases.

As noted from the figures, the expenditure in respect of briefing out has remained relatively steady in recent years, while payment of court costs varied from year to year. The annual figures vary due to a number of reasons. Whether Government is required to pay costs to a large extent also depends on the merits of the case and the outcome as found by the court, and the amount of court costs to be paid will depend on the individual cases. Generally speaking, the more complex a case, the higher the legal costs given the level of legal representation required and the longer duration of the trial.

(c) The prosecution policy, which has been consistently applied, is that a prosecution is only to be brought if there is a reasonable prospect of conviction. That said, after court proceedings commenced, the outcome is to be decided by the court, and a case which appears strong on prima facie evidence may turn out to be not as strong for various reasons: evidence may be ruled inadmissible, witnesses may not be available or may not come up to proof, the credibility of those who testify may wither under cross-examinations. As a matter of fact, given we still maintain the arrangements under the common law where the prosecutions will not interview witnesses (other than expert witnesses) before trial, there is a certain degree of risks regarding the reliability of witnesses. Moreover, the defendants, who enjoy the right of silence and are generally under no duty to disclose their case to the prosecution before trial, may present evidence or

defences during the trial which are not known to the prosecution in advance.

In respect of civil cases where Government is the plaintiff, DoJ will advise on the merits of the cases and whether legal proceedings should be commenced taking into account a host of factors including client's instructions, the legal principles, case implications and costs. In respect of civil cases where Government is the defendant, DoJ will assess the merits of defending the cases and will defend or negotiate a settlement as appropriate. Moreover, where there are cases which involve important points of law or important legal principles, in such circumstances, Government must press ahead to seek the court's clarification on important points of law. Furthermore, in certain cases, complicated issues and points of law are involved and different lawyers (or even judges) may have different opinion on such matters. Under such circumstances, we are duty-bound to adduce evidence and present arguments that are of relevance to the court, so as to enable the court to make a ruling on the legal principles or view points through the judicial process. The DoJ strictly adheres to the principles and abide by the law to ensure proper handling of such cases.

As a matter of fact, the conviction rate/success rate of the Government in these cases or the amount of expenditure of the Government in handling these cases should not be taken as performance indicators in our handling of the cases, nor a reflection of our standard in handling the cases concerned. In any event, as reflected by the information presented in the Annexes, the figures over the years have remained quite steady without substantial changes in any specific area. That said, DoJ will of course continue to take forward prosecution and litigation cases in a prudent manner, and at the same time carefully monitor the outcomes as well as payments in relation to the cases which may provide useful reference for case handling and preparation in future.

Thank you, President.

Ends/Wednesday, November 16, 2011

Outcome of Court Cases involving the Government
(2001 to 2010)

Criminal Cases

Conviction Rates

Trial (District Court)

Year*	No. of defendants convicted on own plea	No. of defendants convicted after trial	No. of defendants acquitted after trial	Conviction rate after trial	Conviction rate including guilty plea
2001	954	416	247	62.7%	84.7%
2002	1 170	526	271	66.0%	86.2%
2003	1 110	483	228	67.9%	87.5%
2004	1 259	376	179	67.7%	90.1%
2005	1 152	365	216	62.8%	87.5%
2006	1 080	434	135	76.3%	91.8%
2007	1 096	331	149	69.0%	90.5%
2008	925	258	94	73.3%	92.6%
2009	1 190	274	122	69.2%	92.3%
2010	1 056	275	90	75.3%	93.7%

Trial (Court of First Instance)

Year*	No. of defendants convicted on own plea	No. of defendants convicted after trial	No. of defendants acquitted after trial	Conviction rate after trial	Conviction rate including guilty plea
2001	379	102	49	67.5%	90.8%
2002	375	120	54	69.0%	90.2%
2003	296	84	49	63.2%	88.6%
2004	302	73	46	61.3%	89.1%
2005	318	85	43	66.4%	90.4%
2006	273	96	31	75.6%	92.3%
2007	279	63	24	72.4%	93.4%
2008	276	73	19	79.3%	94.8%
2009	321	66	35	65.3%	91.7%
2010	355	71	28	71.7%	93.8%

* denotes period from 1 January to 31 December for each year

Outcome of Appeals

Court of Appeal

Year *	Appeal by the Defendants (including appeal against sentences)		Appeal by the Prosecutions			
	Allowed	Dismissed	To review sentences		By way of case stated	
			Allowed	Dismissed	Allowed	Dismissed
2001	96 (33%)	195 (67%)	12 (85.7%)	2 (14.3%)	1 (100%)	0 (0%)
2002	82 (20.7%)	315 (79.3%)	0 (0%)	0 (0%)	2 (100%)	0 (0%)
2003	106 (31.7%)	228 (68.3%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
2004	115 (31.2%)	254 (68.8%)	4 (80%)	1 (20%)	1 (100%)	0 (0%)
2005	111 (31.5%)	241 (68.5%)	0 (0%)	0 (0%)	1 (100%)	0 (0%)
2006	84 (30.9%)	188 (69.1%)	4 (80%)	1 (20%)	0 (0%)	1 (100%)
2007	113 (34.3%)	216 (65.7%)	1 (100%)	0 (0%)	0 (0%)	0 (0%)
2008	117 (33.5%)	232 (66.5%)	1 (33.3%)	2 (66.7%)	1 (100%)	0 (0%)
2009	92 (30.3%)	212 (69.7%)	9 (100%)	0 (0%)	4 (57.1%)	3 (42.9%)
2010	121 (35.6%)	219 (64.4%)	5 (100%)	0 (0%)	0 (0%)	1 (100%)

Court of Final Appeal (CFA)

Year*	Appeal by the Defendants				Appeal by the Prosecutions			
	Application for leave to appeal to CFA		Appeal before CFA		Application for leave to appeal to CFA		Appeal before CFA	
	Allowed	Dismissed	Allowed	Dismissed	Allowed	Dismissed	Allowed	Dismissed
2001	6 (16.7%)	30 (83.3%)	2 (50%)	2 (50%)	-	-	3 (100%)	0 (0%)
2002	5 (14.3%)	30 (85.7%)	1 (20%)	4 (80%)	1 (100%)	0 (0%)	0 (0%)	1 (100%)
2003	6 (14.0%)	37 (86.0%)	6 (85.7%)	1 (14.3%)	1 (100%)	0 (0%)	1 (100%)	0 (0%)
2004	19 (28.4%)	48 (71.6%)	9 (81.8%)	2 (18.2%)	-	-	-	-
2005	12 (15.2%)	67 (84.8%)	10 (76.9%)	3 (23.1%)	2 (100%)	0 (0%)	-	-
2006	10 (13.2%)	66 (86.8%)	8 (66.7%)	4 (33.3%)	2 (100%)	0 (0%)	1 (33.3%)	2 (66.7%)
2007	8 (14.3%)	48 (85.7%)	5 (45.5%)	6 (54.5%)	2 (66.7%)	1 (33.3%)	1 (100%)	0 (0%)
2008	9 (13.8%)	56 (86.2%)	3 (50%)	3 (50%)	2 (50%)	2 (50%)	0 (0%)	2 (100%)
2009	9 (12.9%)	61 (87.1%)	2 (25%)	6 (75%)	2 (100%)	0 (0%)	1 (100%)	0 (0%)
2010	12 (15%)	68 (85%)	6 (60%)	4 (40%)	2 (50%)	2 (50%)	1 (33.3%)	2 (66.7%)

* denotes period from 1 January to 31 December for each year

Judicial review (JR) cases

(Note

- *“In favour” denotes outcome in favour of the Government*
- *“Not in favour” denotes outcome not in favour of the Government)*

Year*	Court of First Instance			Court of Appeal			Court of Final Appeal			Grand Total	Average Rate	
	In favour	Not in favour	Sub-Total	In favour	Not in favour	Sub-Total	In favour	Not in favour	Sub-Total		In favour	Not in favour
2001	80 (62%)	49 (38%)	129	22 (71%)	9 (29%)	31	4 (80%)	1 (20%)	5	165	64%	36%
2002	71 (85%)	13 (15%)	84	4 561 (99.8)	7 (0.2%)	4 568	7 (70%)	3 (30%)	10	4 662	99.5%	0.5%
2003	37 (82%)	8 (18%)	45	48 (84%)	9 (16%)	57	23 (96%)	1 (4%)	24	126	86%	14%
2004	59 (91%)	6 (9%)	65	33 (80%)	8 (20%)	41	0 (0%)	4 (100%)	4	110	84%	16%
2005	65 (78%)	18 (22%)	83	17 (74%)	6 (26%)	23	6 (100%)	0 (0%)	6	112	79%	21%
2006	78 (91%)	8 (9%)	86	22 (71%)	9 (29%)	31	2 (40%)	3 (60%)	5	122	84%	16%
2007	44 (83%)	9 (17%)	53	23 (79%)	6 (21%)	29	2 (50%)	2 (50%)	4	86	80%	20%
2008	54 (71%)	22 (29%)	76	27 (73%)	10 (27%)	37	7 (78%)	2 (22%)	9	122	72%	28%
2009	45 (71%)	18 (29%)	63	16 (84%)	3 (16%)	19	4 (40%)	6 (60%)	10	92	71%	29%
2010	56 (77%)	17 (23%)	73	25 (93%)	2 (7%)	27	3 (100%)	0 (0%)	3	103	82%	18%
Total	589 (78%)	168 (22%)	757	4 794 (99%)	69 (1%)	4 863	58 (73%)	22 (28%)	80	5 700	95%	5%

* denotes period from 1 January to 31 December for each year

Civil Cases (other than judicial review cases)

(Note

- *“In favour” denotes outcome in favour of the Government*
- *“Not in favour” denotes outcome not in favour of the Government)*

Year*	Tribunals			District Court			Court of First Instance			Court of Appeal			Court of Final Appeal		
	In favour	Not in favour	Total cases	In favour	Not in favour	Total cases	In favour	Not in favour	Total cases	In favour	Not in favour	Total cases	In favour	Not in favour	Total cases
2001	664 (90%)	74 (10%)	738	363 (92%)	33 (8%)	396	101 (82%)	22 (18%)	123	12 (92%)	1 (8%)	13	2 (67%)	1 (33%)	3
2002	798 (88%)	108 (12%)	906	297 (75%)	97 (25%)	394	173 (86%)	29 (14%)	202	22 (76%)	7 (24%)	29	2 (67%)	1 (33%)	3
2003	776 (87%)	118 (13%)	894	289 (89%)	34 (11%)	323	120 (74%)	43 (26%)	163	24 (80%)	6 (20%)	30	9 (100%)	0 (0%)	9
2004	892 (88%)	116 (12%)	1 008	342 (84%)	65 (16%)	407	97 (72%)	38 (28%)	135	9 (43%)	12 (57%)	21	4 (100%)	0 (0%)	4
2005	735 (89%)	90 (11%)	825	389 (81%)	92 (19%)	481	142 (77%)	43 (23%)	185	29 (88%)	4 (12%)	33	8 (100%)	0 (0%)	8
2006	748 (90%)	79 (10%)	827	376 (76%)	118 (24%)	494	116 (82%)	25 (18%)	141	19 (68%)	9 (32%)	28	6 (75%)	2 (25%)	8
2007	774 (88%)	102 (12%)	876	433 (82%)	94 (18%)	527	123 (82%)	27 (18%)	150	28 (74%)	10 (26%)	38	4 (67%)	2 (33%)	6
2008	855 (92%)	72 (8%)	927	541 (88%)	72 (12%)	613	94 (74%)	33 (26%)	127	41 (89%)	5 (11%)	46	10 (71%)	4 (29%)	14
2009	1 040 (92%)	88 (8%)	1 128	504 (86%)	84 (14%)	588	117 (81%)	27 (19%)	144	33 (80%)	8 (20%)	41	8 (89%)	1 (11%)	9
2010	1 361 (93%)	105 (7%)	1 466	291 (67%)	141 (33%)	432	94 (77%)	28 (23%)	122	52 (90%)	6 (10%)	58	5 (56%)	4 (44%)	9
Average for 2001 to 2010	8 643 (90%)	952 (10%)	9 595	3 825 (82%)	830 (18%)	4 655	1 177 (79%)	315 (21%)	1 492	269 (80%)	68 (20%)	337	58 (79%)	15 (21%)	73

* denotes period from 1 January to 31 December for each year

Annex B

Court Costs Payments
(covering all court levels)
(Financial Year 2001/02 to 2010/11)

Financial Year[#]	Criminal Cases		Civil Cases (judicial review and non-judicial review)	
	No. of Cases	Actual Expenditure (\$'000)	No. of Cases	Actual Expenditure (\$'000)
2001/02	283	47,524	55	26,227
2002/03	274	49,555	83	17,839
2003/04	262	35,355	81	22,178
2004/05	311	42,468	87	46,562
2005/06	271	41,475	137	55,757
2006/07	228	34,152	130	31,865
2007/08	257	29,867	138	43,704
2008/09	406	54,160	123	37,922
2009/10	402	49,610	118	40,331
2010/11	388	64,250	118	22,836

[#] running from 1 April of the prior year to 31 March of the following year

Annex C

Briefing Out Payments
(not including Magistracies cases)
(Financial Year 2001/02 to 2010/11)

Financial Year[#]	Actual Expenditure (\$'000)	
	Criminal Cases	Civil Cases (judicial review and non-judicial review)
2001/02	55,241	64,677
2002/03	58,046	57,227
2003/04	40,244	100,613
2004/05	35,265	85,573
2005/06	42,465	70,504
2006/07	47,385	94,087
2007/08	48,426	87,814
2008/09	57,014	77,197
2009/10	60,359	91,332
2010/11	58,423	84,953

running from 1 April of the prior year to 31 March of the following year