

NOTE FOR FINANCE COMMITTEE

Legal expenses for briefing out cases not covered by approved fee schedules (2016-17)

INTRODUCTION

At the Finance Committee (FC) 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 2016-17 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 fee schedules approved by the FC¹, 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 within the 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)

¹ At the 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.

- (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; 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 building a pool of experienced prosecutors to supplement those within the DoJ.

Encl. 1 3. The approved schedule of fees for 2016-17 is at Enclosure 1.

LEGAL EXPENSES NOT COVERED BY APPROVED FEE SCHEDULES FOR THE YEAR ENDING 31 MARCH 2017

4. During the year ending 31 March 2017, the DoJ paid out a total of \$291,717,313 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	95,409,124
(b) Briefing out of cases at fees not covered by the approved scales	135,877,460
	231,286,584
Payment for legal services for construction dispute resolution	
(c) Briefing out of construction dispute resolution cases at fees not covered by approved scales ²	60,430,729
Total expenditure for 2016-17	291,717,313

/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) above, the 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 \$135,877,460 incurred in the financial year of 2016-17 involved 560 cases. Details are set out at Enclosure 2.

Encl. 2

6. As regards paragraph 4(c) above, the 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 \$60,430,729 incurred in the financial year of 2016-17 involved 15 cases. Details are set out at Enclosure 3.

Encl. 3

Department of Justice
December 2017

Enclosure 1 to FCRI(2017-18)19

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
<p>Brief fees and refresher fees are subject to a 10% increase on the base figure for each of the second to the sixth defendant.</p>		
(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
<p>Brief fees and refresher fees are subject to a 10% increase on the base figure for each of the second to the sixth defendant.</p>		
(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.

**Hire of legal services and related professional fees
Breakdown of cases briefed out at fees
not covered by the approved scales in 2016-17**

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
Civil		
<p>1. An Arbitration between the Government of the Hong Kong Special Administrative Region (HKSAR) and a Company</p> <p>Fees and expenses incurred in relation to appointing three arbitrators as well as engaging two local Senior Counsel (SC) and a financial expert in the arbitration proceedings concerning a dispute over the proper treatment of payments to the Company under the contractual agreement between the Government of the HKSAR and the Company. The arbitration was concluded in June 2016 and the arbitral award was issued in September 2016.</p>	6	5,391,500
<p>2. Hysan Development Company Limited and Others (Hysan) v Town Planning Board (TPB) (FACV 20-22/2015)</p> <p>Fees and expenses incurred in relation to briefing a London Queen's Counsel (QC), a local SC and a local junior counsel to act for TPB in the respective appeals by Hysan and TPB to the Court of Final Appeal (CFA) against the judgment of the Court of Appeal (CA) of 13 November 2014, which arose out of the Hysan's application for judicial review (JR) against TPB's decision not to propose amendments to the Draft Causeway Bay and Wan Chai Outline Zoning Plans (OZPs) in accordance with its representations. TPB's appeal was against CA's ruling regarding the imposition of a 5-metre non-building area at "Hysan Place", whilst Hysan's appeal was in respect of whether or not Articles 6 and 105 of the Basic Law are engaged when planning restrictions are imposed</p>	3	3,154,689

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
<p>and whether such restrictions must satisfy the requirement of proportionality. TPB's appeal was withdrawn prior to the CFA substantive hearing, which was held on 5 to 6 September 2016. CFA handed down its judgment on 26 September 2016 ruling that Articles 6 and 105 are engaged in the case where planning restrictions are imposed, and laying down guidance on what proportionality test is to be applied when examining the constitutionality of those restrictions.</p>		
<p>3. The Chief Executive of the Hong Kong Special Administrative Region (CE) and the Secretary for Justice (SJ) v The President of the Legislative Council (LegCo) (HCAL 185/2016) The CE and SJ v Yau Wai Ching (Yau), Leung Chun Hang Sixtus (Leung) and the President of LegCo (HCMP 2819/2016)</p>	5	3,032,114

Fees and expenses incurred in relation to briefing two local SC, two local junior counsel and an expert to act for CE and SJ in bringing the applications for JR and application under section 73 of the Legislative Council Ordinance (Cap. 542) challenging, *inter alia*, the validity of the LegCo Oaths taken by Leung and Yau on 12 October 2016. Leave for JR was granted on 18 October 2016. Substantive hearing was held on 3 November 2016. By judgment of 15 November 2016, the Court of First Instance (CFI) allowed both applications in favour of CE and SJ and held that both Leung and Yau had respectively declined to take the LegCo Oaths when duly requested to do so and as a consequence should vacate their respective offices as Legislative Councillors.

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
4. The CE and SJ v The President of LegCo (with Nathan Law Kwun Chung (Law), Leung Kwok Hung (Leung KH), Lau Siu Lai (Lau) and Yiu Chung Yim (Yiu) as interested parties respectively) (HCAL 223-226/2016) SJ v Law, Leung KH, Lau and Yiu respectively (HCMP 3378, 3379, 3381, 3382/2016)	4	2,061,275

Fees and expenses incurred in relation to briefing two local SC and two local junior counsel to act for CE and SJ in bringing the applications for JR and applications under section 73 of the Legislative Council Ordinance (Cap. 542) challenging, inter alia, the validity of the LegCo Oaths purportedly taken by Law, Leung KH, Lau and Yiu on 12 October 2016 and on other dates. Substantive hearing was held on 1 to 3 March 2017. By judgment of 14 July 2017, CFI allowed the applications in favour of CE and SJ and held amongst others that the LegCo Oaths purportedly taken by Law, Leung KH, Lau and Yiu were invalid, that they have been disqualified from assuming and entering on their respective offices as Legislative Councillors, and that their respective offices are vacant. Leung KH and Lau lodged respective appeals on 11 September 2017, which have not yet been fixed for a hearing.

5. Designing Hong Kong Limited (DHKL) v TPB (CACV 184/2015)	3	1,257,850
--	---	-----------

Fees and expenses incurred in relation to briefing a local SC and two local junior counsel to act for TPB in resisting the application by DHKL for leave to apply for JR, interim relief and a Protective Costs Order (PCO). The application for JR challenged TPB's decision to uphold the amendments to the zoning of the "Central Military Dock" site under the draft Central District (Extension) OZP from "Open Space" to "Other Specified Uses" annotated "Military Use (1)". Leave to apply for JR was granted on 21 July 2014 and interim stay of CFI proceedings was granted on 23 July 2014. On 30 April 2015, CFI

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
refused the PCO application. On 28 July 2015, CFI granted leave for the Applicant to appeal to CA against the PCO's decision. Substantive hearing of the appeal was held before CA on 29 November to 1 December 2016. CA dismissed DHKL's appeal on 16 February 2017. DHKL's application for leave to appeal to CFA was dismissed on 7 June 2017. On 5 July 2017, DHKL further applied for leave to appeal to CFA from the Appeal Committee. On 30 October 2017, the Appeal Committee granted leave for DHKL to pursue the substantive appeal, which has been fixed for 19 April 2018.		
6. DHKL v TPB (MIS 321/2016)	3	2,309,016
Fees and expenses incurred in relation to briefing a London QC, a local SC and a local junior counsel to act for SJ as intervener in the appeal referred to in Item 5 above on the issue of PCO.		
7. Ho Loy and another v Director of Environmental Protection (DEP) & The Airport Authority Hong Kong (AAHK) as the Interested Party (HCAL 21/2015)	2	1,960,700
Fees and expenses incurred in relation to briefing a local SC and a local junior counsel to act for DEP resisting a JR application taken out by the Applicant against DEP's decisions dated 7 November 2014 (i) to approve the Environmental Impact Assessment Report for the "Three-Runway System" (3RS) Project of the Hong Kong International Airport; and (ii) to grant and issue the Environmental Permit to the AAHK for the construction and operation of the 3RS. The substantive hearing was held on 5 to 8 July 2016. CFI handed down its judgment on 22 December 2016 dismissing the JR. The Applicant's appeal was dismissed by CA on 21 July 2017.		

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
<p>8. Chee Fei Ming substituted by Pun Lin Fa pursuant to consent order dated 13 October 2014 v Director of Food and Environmental Hygiene (DFEH) and SJ with Lands Department (LandsD) as Interested Party (CACV 219/2014) Hung Shui Fung v DFEH and SJ (CACV 220/2014)</p>	3	1,669,200

Fees and expenses incurred in relation to briefing two local SC and a local junior counsel to act for DFEH, SJ and LandsD in resisting the Applicants' appeals against CFI's judgments in refusing leave for JR (HCAL 73&110/2013). The JR applications challenged DFEH's decision to remove the unauthorized non-commercial publicity materials displayed by Falun Gong followers at various locations in Hong Kong on the grounds that the relevant statutory provisions governing DFEH's power are unconstitutional and violate amongst others Article 27 of the Basic Law (regarding freedom of speech, assembly and right of demonstration). By CA's judgment dated 6 June 2016, the appeals were dismissed while leave for the JR was granted on two new constitutional grounds, and the substantive hearing of which before CFI is scheduled for 21 to 23 March 2018.

<p>9. TNB Fuel Services and BHD (TNB) v China National Coal Group Corporation (CN) with SJ as Intervener (MIS 428/2016 & HCCT 23/2015)</p>	2	1,642,000
---	---	-----------

Fees and expenses incurred in relation to briefing a local SC and a local junior counsel to act for SJ as Intervener on the issue of Crown immunity in the enforcement proceedings in which TNB (an overseas company) sought to enforce an arbitration award obtained in Malaysia against CN (a state-owned enterprise of the People's Republic of China (PRC)). TNB was granted leave by the Hong Kong Court to enforce the award, and applied for a charging order in

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
respect of CN's assets in Hong Kong. CN opposed the charging order application, claiming that as a department/agent of the PRC government, it enjoyed Crown immunity before the Hong Kong Court. By judgment dated 8 June 2017, the Court dismissed CN's assertion of Crown immunity and granted the charging order absolute.		
10. Uni-creation Investment Limited v SJ (HCMP 2166/2015)	4	1,621,475
Fees and expenses incurred in relation to briefing two local SC and two local junior counsel to act for SJ to resist the Plaintiff's claim against the Director of Lands (D of Lands) for, inter alia, declarations that the columbarium use of seven Old Schedule house lots in Tung Chung does not constitute a breach of the "offensive trade clause" (OTC) held under a Block Government Lease dated 18 March 1905. Trial took place on 7 February 2017. CFI handed down judgement on 28 February 2017 in favour of the plaintiff granting, inter alia, relief against re-entry and a declaration that the columbarium use of the lots concerned does not constitute a breach of the OTC. On 27 March 2017, SJ on behalf of D of Lands lodged an appeal which will be heard by CA on 6 February 2018.		
11. Kwok Cheuk Kin v D of Lands, Chief Executive in Council (CEIC) and SJ, Heung Yee Kuk as the Interested Party (HCAL 260/2015)	3	1,620,210
Fees and expenses incurred in relation to briefing a local SC and two local junior counsel to act for D of Lands, CEIC and SJ resisting a JR application taken out by the Applicant against (i) the 1972 Small House Policy (SHP) and the subsequent decisions of the CEIC to continue the implementation of the SHP; (ii) the decision of D of Lands to implement and her subsequent decisions to continue to implement the SHP; and (iii) section 62 and Schedule 5, Part 2, paragraph 2 of the Sex Discrimination Ordinance		

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
<p>(Cap. 480) (which renders the SHP not unlawful under the Ordinance). Leave to apply for JR was granted by CFI on 18 November 2016. Rounds of evidence have been filed by the parties. The substantive hearing has been fixed for 3 to 12 December 2018.</p>		
<p>12. CE and SJ v The President of LegCo CE and SJ v Yau Wai Ching (Yau) and Sixtus Leung Chung Hang (Leung) (CACV 224 -227/2016)</p>	4	1,560,276
<p>Fees and expenses incurred in relation to briefing two local SC and two local junior counsel to act for CE and SJ in resisting the appeals by Leung and Yau against CFI's judgment of 15 November 2016 which held amongst others that the LegCo Oaths taken by them on 12 October 2016 were invalid. Upon substantive hearing of the appeals held on 24 to 25 November 2016 and by judgment of 30 November 2016, CA dismissed the appeals. By judgment of 16 January 2017, CA also dismissed Leung's and Yau's respective applications for leave to appeal to CFA. Leung's and Yau's further applications for leave to appeal to CFA were heard before the Appeal Committee on 25 August 2017 and were dismissed on the same day.</p>		
<p>13. Leung Chun Kwong v Secretary for the Civil Service (SCS) and Commissioner of Inland Revenue (CIR) (HCAL 258/2015)</p>	3	1,421,331
<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 resisting the JR application of a civil servant against SCS's decision not to recognize his same-sex marriage for the purpose of spousal benefits (the Benefits Decision) and CIR's decision not to recognize the same-sex marriage for the purposes of tax allowances (the Tax Decision). The substantive hearing was held on 15 to 16 December 2016. By judgment of 28 April 2017, the part of the</p>		

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
<p>JR on the Benefits Decision was allowed while the part of the JR on the Tax Decision was dismissed. SCS lodged an appeal against the part of the judgment on the Benefits Decision on 25 May 2017, while the Applicant lodged an appeal against the part of the judgment on the Tax Decision on 25 July 2017. Both appeals were heard by CA on 11 to 12 December 2017 with decision reserved.</p>		
<p>14. Commissioner of Rating and Valuation (CRV) v CLP Power Hong Kong Limited (CLP) (FACV 7/2016)</p>	2	1,375,000
<p>Fees and expenses incurred in relation to briefing two local SC for CRV in the appeal to CFA against CA’s judgment of 2 February 2016 allowing CLP’s appeal against Lands Tribunal (LT)’s main and review judgments of 24 April 2013 and 3 January 2014 respectively, both in favour of CRV, in six rating and Government rent appeals against CRV’s valuation of CLP’s “Generation, Transmission & Distribution System/Tenement” for the assessment year of 2004-05 (as test appeals), and remitting the matter to LT for re-consideration. The main issue of CRV’s appeal, which was heard by CFA on 27 February 2017, was whether certain disputed items constituted “plant” under section 8A or “machinery” under section 8(b) of the Rating Ordinance (Cap. 116). CFA allowed CRV’s appeal on 17 March 2017 finding that the matter needed not be remitted to LT and the disputed items were all rateable.</p>		
<p>15. Appeal to Board of Review (Inland Revenue Ordinance) by a Company (Board of Review B/R 34/2014, MIS 681/2014)</p>	2	1,372,400
<p>Fees and expenses incurred in relation to briefing a local SC and a local junior counsel to resist the taxpayer’s appeal to the Board of Review against assessment of profits tax. The main issue involved was whether in reality, the taxpayer’s sole role/profit producing activity was to enter into agency and</p>		

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
marketing agreements with its sister company in the United States, thereby allowing the group's profits to be booked in the taxpayer's account. The taxpayer argued that those profits were not taxable in Hong Kong as sourcing and sales activities were carried out offshore. The appeal was heard from 25 to 29 January 2016 and 27 to 28 April 2016 with decision reserved.		
16. Navarro Luigi Recasa v Commissioner of Correctional Services (C of CS) & Commissioner of Police (CP) (HCAL 93/2015)	2	1,322,275
Fees and expenses incurred in relation to briefing a local SC and a local junior counsel to act for C of CS and CP in resisting the JR application by the Applicant who was a male-to-female transgender and who challenged the allegedly discriminatory treatments and/or detention condition whilst the Applicant was under arrest by the Police and whilst the Applicant was imprisoned in a male prison. The grounds of review include breach of Sex Discrimination Ordinance (Cap. 480), Disability Discrimination Ordinance (Cap. 487) and Article 28 of the Basic Law (regarding for instance unlawful search). The substantive JR was heard on 8 and 9 August 2016 with judgment reserved.		
17. Yeung Lai Ping v Director of Health (DH) (MIS 741/2002)	4	1,296,475
Fees and expenses incurred in relation to briefing a local counsel, two experts and a mediator to resist the Plaintiff's common law claim for damages against DH. The issue is whether DH should be held liable for the Plaintiff's wrist injuries when she worked as a Dental Officer in Oral Maxillofacial Surgery and Dental Unit of the North District Hospital during the period from September 1998 to January 2000. The trial lasted for 8 days and was concluded on 2 March 2017 with judgment reserved.		

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
18. Chan Ka Lam v CEIC & TPB (HCAL 28/2015)	2	1,282,350
<p>Fees and expenses incurred in relation to briefing a local SC and a local junior counsel to act for CEIC and TPB in resisting a JR application taken out by the Applicant against the decision of TPB dated 19 December 2014 to submit the draft OZPs for Hoi Ha, Pak Lap and So Lo Pun to CEIC for approval and the decision of CEIC dated 3 February 2015 to approve the OZPs. The substantive JR application was heard before CFI on 17 to 20 October 2016. On 24 November 2017, CFI handed down a judgment allowing the JR application.</p>		
19. Yu Hin Pik v DEP & AAHK as the Interested Party (HCAL 22/2015)	2	1,262,750
<p>Fees and expenses incurred in relation to briefing a local SC and a local junior counsel to act for DEP in resisting a JR application taken out by the Applicant against DEP's decisions dated 7 November 2014 (i) to approve the Environmental Impact Assessment Report for the 3RS Project of the Hong Kong International Airport; and (ii) to grant and issue the Environmental Permit to the AAHK for the construction and operation of the 3RS. The substantive hearing was held on 5 to 8 July 2016. CFI handed down its judgment on 22 December 2016 dismissing the JR. By consent, the Applicant's appeal was dismissed by CA on 12 May 2017.</p>		
20. Sin Chung Yin Ronald and others v The Dental Council of Hong Kong (DCHK) (FACV 6/2016)	3	1,245,850
<p>Fees and expenses incurred in relation to briefing a local SC and two junior counsel to act for DCHK in an appeal brought by the Appellant dentists against the disciplinary order of DCHK in finding them guilty of unprofessional conduct and the sentence of removal from the General Register for periods</p>		

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
<p>varying from two to three months. The Appellants' appeal was allowed by the judgment of CFA handed down on 4 November 2016.</p>		
<p>21. 2016 LegCo Election</p>	3	1,210,550
<p>Fees and expenses incurred in engaging one local SC and two local junior counsel to conduct legal research and to advise on constitutional issues and questions in relation to the 2016 LegCo Election (including nomination of candidates and post-election procedures).</p>		
<p>22. An Arbitration between the Government of the HKSAR and a Company (MIS 29/2016)</p>	4	1,198,530
<p>Fees and expenses incurred in relation to appointing an arbitrator as well as engaging a local SC, a local junior counsel and an expert to act for the Government of the HKSAR in an arbitration case arising from a dispute over Environmental Protection Department's review of payments to the Company for its operation of certain facilities pursuant to a contract between the Government and the Company. The arbitral tribunal issued the partial award on jurisdictional matters in March 2017.</p>		
<p>23. The Real Estate Developers Association of Hong Kong (REDA) v Building Authority (BA) (FACV 19/2015)</p>	2	1,160,000
<p>Fees and expenses incurred in relation to briefing two local SC to act for BA in resisting a JR application taken out by REDA. In the JR, REDA sought to challenge BA's powers to reject building plans submitted for approval on the basis that a developer does not own or have realistic prospect of controlling the site shown on the plans, and to require particulars or proof of such ownership or realistic prospect of control of the site. REDA's JR application and appeal were dismissed by CFI in 2014</p>		

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
and CA in 2015 respectively. REDA's further appeal to CFA was dismissed on 19 May 2016.		
<p>24. Lee Chui Sun Sindy, intended administratrix of Choy Tao Leung, deceased, Li Zhenhua, intended administratrix of Tong Qingtao, deceased, Li Zhinan, intended administratrix of Li Qun Zhen, deceased, Xiao Hua, intended administratrix of Lo Kin Wa, deceased v BA (MIS 474-477/2012)</p> <p>Fees and expenses incurred in relation to briefing a local SC and a local junior counsel to act for BA for the contribution proceedings against the landlord of a collapsed building where the deceased plaintiffs died. However, in March 2017, BA and the landlord agreed on their respective contributions for these personal injuries cases and the trial for the contribution proceedings originally scheduled for 21 March to 3 April 2017 was vacated.</p>	2	1,101,150
<p>25. Penny's Bay Investment Company Ltd. (PBIL) v D of Lands (CACV 115-116/2015 & CACV 119-120/2015)</p> <p>Fees and expenses incurred in relation to briefing a London QC and a local junior counsel to act for D of Lands in resisting PBIL's claim for compensation pursuant to the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127) in respect of a piece of land owned by it with right of marine access under the subject Government lease. LT handed down its judgment on 15 October 2014 and awarded compensation in the sum of \$10,925,500 to PBIL. Both parties appealed and the appeals were heard by CA on 19 to 20 April 2016. By its judgment of 16 May 2016, CA only allowed some of the grounds of appeal of the parties. On 11 April 2017, the Appeal Committee granted leave to appeal on one question of law concerning valuation of compensation to each party and the appeals were heard on 11 September 2017 before CFA. By its judgment of 16 October 2017, CFA allowed the D of Lands' appeal and</p>	2	1,076,679

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
dismissed PBIL's appeal. The matter will be remitted to LT for redetermination.		
26. AA and another (Applicants) v The Securities and Futures Commission (SFC) (HCAL 41/2016)	2	1,074,233
Fees and expenses incurred in relation to briefing a local SC and a local junior counsel to act for SJ as intervener in the application for JR by the Applicants against SFC challenging (i) the decision of SFC to transmit certain information obtained from the Applicants to overseas regulators; and (ii) the constitutionality of section 181 of the Securities and Futures Ordinance (Cap. 571) relating to the provision of certain information to SFC. The substantive JR was part-heard on 17 to 18 January 2017, 1 to 3 February 2017 and 26 June 2017. Since then, the case has been adjourned pending decision by the Court.		
27. Appeal to Board of Review (Inland Revenue Ordinance) by a Company (Board of Review B/R 9/2015, MIS 340/2015)	2	1,006,300
Fees and expenses incurred in relation to briefing a local SC and a local junior counsel to resist the taxpayer's appeal to the Board of Review against assessment of profits tax. The main issue involved was whether the taxpayer's trading profits arose in or were derived from Hong Kong and hence chargeable to profits tax under section 14 of the Inland Revenue Ordinance (Cap. 112). The appeal hearing was concluded on 30 March 2017 with the decision reserved.		
28. Fees and expenses incurred in 501 other civil cases under \$1 million each	-	59,107,941
Sub-total: 528 cases		104,794,119

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
Criminal		
29. HKSAR v Tsang Yam Kuen Donald (HCCC 484/2015)	3	13,687,537

This case involves one count of 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.

On 17 February 2017, following a trial in CFI, the defendant was convicted of Count 2 and acquitted of Count 3. The jury was unable to reach a verdict on Count 1.

On 22 February 2017, the defendant was sentenced to 20 months' imprisonment. On 9 March 2017, he filed to Court the Notice of Application for leave to appeal against conviction and sentence. Leave was granted and hearing was scheduled for 25 and 26 April 2018.

Retrial on Count 1 commenced on 26 September 2017. On 3 November 2017, the jury was unable to reach a verdict. On 6 November 2017, the charge was ordered to be left on the court's file, not to be proceeded with without the leave of the court or without the leave of CA. Prosecution also applied to the Court for an order of one-third of the original trial costs in favour of the prosecution. Parties were directed by the Court to file written submissions on this application.

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
30. HKSAR v Hui Rafael Junior & three others (FACC 12-15/2016 (formerly FAMC 8-11/2016 on appeal from CACC 444/2014))	4	4,156,241

Following their convictions and sentences handed down by the court, the four Defendants (D1, D2, D4 and D5) in HCCC 98/2013 filed notices of application for leave to appeal.

The substantive appeal by D1, D2, D4 and D5 were heard from 2 to 5 November 2015 before CA, with judgment handed down on 16 February 2016. CA dismissed the Defendants' appeals against convictions. In separate Notices of Motion filed on 22 and 23 February 2016, each Defendant applied to CA for certification that points of law of great and general importance were involved in the decision.

On 22 March 2016, CA certified that a point of law of great and general importance arose from its judgment of 16 February 2016, namely "Is the offence of conspiracy to commit misconduct in public office made out on proof that the conspirators intended and agreed that, in return for a payment to be made to a person whom they knew was about to become Chief Secretary of the HKSAR, whilst in public office and as such the recipient would be and remain favourably disposed to the payer or at the direction of the payer?"

Pending CA's certification mentioned above, on 14 and 15 March 2016, D1, D2, D4 and D5 filed separate Notices of Applications for leave to appeal to CFA (FAMC 8-11/2016), seeking leave on both "point of law" and "substantial and grave injustice" limbs.

On 12 July 2016, the Appeal Committee of CFA granted leave in relation to Count 5 (Conspiracy to commit misconduct in public office) on one issue, namely "whether in the case of a public officer, being or remaining favourably disposed to another person on account of pre-office payments, is sufficient to constitute the conduct element of the offence of

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
<p>misconduct in public office?” The substantive appeal was heard before CFA on 9 and 10 May 2017 and the judgment was handed down on 14 June 2017. CFA unanimously dismissed the appeal of all four appellants.</p> <p>For continuity and economy, the prosecution has engaged the same team of overseas QC, local SC, overseas junior and local junior counsel which conducted the trial to handle the appeals and related proceedings.</p>	2	1,478,000
<p>31. HKSAR v Wong Kennedy Ying Ho (DCCC 190/2017 (formerly HCCC 409/2015))</p>		

The Defendant was originally charged with two others with one count of conspiracy to offer advantage to an agent. He was additionally charged with a second count of offering advantage to an agent.

This case was investigated by the Independent Commission Against Corruption. All the original Defendants were members of a consortium (Company A) which successfully obtained the restructuring contract in respect of a publicly listed company (Company B) from the provisional liquidators. In the process, they offered a service contract to the then executive director of Company B (deceased) to employ him as a consultant of Company A. This was the subject matter of the original Count 1.

After Company A successfully restructured Company B, Company B (changed to a different name) successfully acquired five subsidiaries of Company C (another publicly listed company which was in liquidation) in its restructuring. The Defendant, in order to reward the good work of the previous executive director of Company B mentioned above, privately offered him a \$1 share option under which he could acquire 15 million preference shares of Company B for the consideration of \$1.8 million.

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
<p>This was the subject matter of the original Count 2.</p> <p>All of the original Defendants were prominent political/business figures and the trial would be highly sensitive, and it was expected to draw a lot of publicity. The Defendant and the original D3 have engaged SC to represent them at trial. Both the legal and factual aspects of this case are complicated. As no suitable in-house counsel was available to conduct this trial, briefing out was necessary.</p> <p>Trial at CFI originally fixed for 20 February 2017 for 30 days but the case was subsequently transferred to the District Court (DC) on 27 February 2017. As a result of a recent CFA judgment, it was considered that there was no longer reasonable prospect of conviction in relation to the original Count 1. That Count was thus withdrawn, leaving the Defendant as the single Defendant to be tried in DC for the original Count 2 which is now the only charge the Defendant is facing. The DC trial commenced on 30 October 2017 and ended on 28 November 2017. Verdict will be delivered on 8 January 2018.</p>	1	2,310,000
<p>32. HKSAR v Wong Cho Shing & six others (CACC 38/2017 (on appeal from DCCC 980/2015))</p>		

In the evening of 14 October 2014, a large crowd of protestors were present in the vicinity of the Central Government Complex and Tamar Park and caused blockage on Lung Wo Road. In the small hours on 15 October 2014, the Police carried out a clearance operation to disperse the protestors along Lung Wo Road. During the clearance operation, the Police arrested a protester who was alleged to have splashed liquid from a plastic container onto Lung Wo Road while he was on a planter at the embankment of the underpass on Lung Wo Road; as a result, a number of police officers were splashed with the liquid. The protester then resisted the police officers when they subsequently came to apprehend him at or near the planter.

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
<p>It is alleged that the protester was then handed over to plainclothes police officers, namely, D1 to D6, who carried him to outside Lung Wui Road Government Building Pump Station East Substation (“the Substation”) in Tamar Park. D7 joined D1 to D6 at the Substation. It is further alleged that at the Substation, head and body of the protester were kicked and punched, and his back was hit by a “blunt instrument”. The protester was assaulted for approximately four minutes by some or all of D1 to D7. D1 to D7 are jointly charged with one count of causing grievous bodily harm with intent in respect of the alleged assault.</p>		
<p>D5 was additionally charged with one count of common assault, which alleges that after the protester had been taken to the Central Police Station, he was assaulted by D5 inside an interview room in the police station.</p>		
<p>In February 2017, all seven defendants were found not guilty of causing grievous bodily harm with intent, but guilty of assault occasioning actual bodily harm. D5 was also convicted of common assault. They were sentenced to two years’ imprisonment. All seven defendants had taken out application for leave to appeal against both conviction and sentence. Bail pending appeal has been granted to all seven defendants.</p>		
<p>The hearing of D1’s application for leave to appeal against conviction and sentence was held before CA on 23 November 2017. Judgement was delivered on 15 December 2017. Leave was granted for D1 to appeal against sentence. The date of the hearing of the substantive appeal is yet to be fixed. No hearing date has been fixed for the other six defendants.</p>		

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
33. HKSAR v Chen Keen & others (ESCC 1834/2012 & HCCC 83/2014)	1	1,121,998

The prosecution asserted that D1, a co-chairman of a publicly listed company in Hong Kong, conspired with D2, the owner of a company in New Zealand, to acquire dairy farms in New Zealand for D1's company at NZ\$500 million (the Acquisition) without disclosing their beneficiary interest in the Acquisition. The Acquisition was done by way of D1's company taking over D2's company in consideration of cash and convertible notes issued.

D3, an accountant engaged by D2, provided false accounting records of the dairy farms to deceive The Stock Exchange of Hong Kong Limited (SEHK) and the audit team of D1's company in the due diligence check of the said farms in New Zealand. The false accounting records were then published in the listed company's Announcement and Circular.

D1 to D3 therefore faced two charges of Conspiracy to Defraud the listed company and SEHK respectively.

Proceeds raised by the issuance of convertible notes for the acquisition of the farms were subsequently transferred to a company solely owned by D1 in Hong Kong.

D1 therefore faced a further count of Dealing with property known or reasonably believed to represent proceeds of an indictable offence.

The case was complex both in terms of facts and in law given that it involved (a) a publicly listed company with international element; (b) large amount of documentary evidence and complicated financial documents; (c) a substantial amount of money; (d) complicated commercial transactions and tracing of funds; and (e) overseas evidence. A local SC was therefore engaged for the trial.

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
<p>D1 to D3 were committed to CFI for trial (HCCC 83/2014). The trial commenced on 13 October 2015 and concluded on 29 April 2016. D1 was represented by an overseas silk and a local SC. Further expenses were incurred as a result of a second evidence taking exercise held at the New Zealand High Court pursuant to a Mutual Legal Assistance Request and Letter of Request. All Defendants were convicted on all charges.</p> <p>In June and July 2016, all three Defendants filed their Notice to appeal against conviction and/or sentence.</p> <p>All Defendants were represented by overseas silks. The appeal hearing was held between 18 and 31 July 2017 (both dates inclusive). For continuity and economy, the prosecution has engaged the local SC who conducted the trial to handle the appeal and related proceedings.</p>	1	1,008,000
<p>34. SJ v Global Merchant Funding Ltd (FACC 4/2015 (on appeal from HCMA 716/2013))</p>		

The Defendant was prosecuted for the offence of “carrying on business as a money lender without a licence”, contrary to section 29 of the Money Lenders’ Ordinance (Cap.163). The prosecution alleged that the Merchant Cash Advance (MCA) offered by the Defendant in return for a fixed amount of the merchant’s future credit card receivables involved the making of loans within the meaning of the Ordinance. After trial, the Defendant was acquitted and the prosecution’s appeal to CA was also dismissed.

Given that the outcome of this case might have a ramification to the money lending and banking industry, it was considered appropriate to engage a SC to conduct a final appeal before CFA. The substantive appeal hearing was heard on 12 April 2016 (written judgment delivered on 16 May 2016) where CFA dismissed the prosecution’s appeal and

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
found that the MCA was in legal substance and effect an agreement for sale and purchase of receivables rather than a loan governed by the Money Lenders' Ordinance (Cap. 163).		7,321,565
35. Fees and expenses incurred in 26 other criminal cases under \$1 million each	-	7,321,565
Sub-total: 32 cases		31,083,341
Total expenditure	(560 cases)	135,877,460

**Legal services for construction dispute resolution
Breakdown of cases briefed out at fees
not covered by the approved scales in 2016-17**

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
<p>1. Formation and Associated Infrastructure Works for Development at Choi Wan Road and Jordan Valley - Contract No. CV/2000/06 Arbitration between China State Construction Engineering (HK) Limited and the Government of the Hong Kong Special Administrative Region (HKSAR)</p> <p>Fees and expenses incurred in relation to engaging a solicitors' firm, a London Queen's Counsel (QC), a local junior counsel, a quantity surveying expert and a site formation engineering expert in an arbitration in respect of claims brought by the Contractor against the Government for additional costs, measurement and valuation of various claims.</p>	5	16,707,015
<p>2. Stonecutters Bridge - Contract No. HY/2002/26 Arbitration between Maeda-Hitachi-Yokogawa-Hsin Chong Joint Venture and the Government of the HKSAR</p> <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 quantum expert, a programming expert and a general bridge engineering expert in arbitrations in respect of claims brought by the Contractor against the Government for missing items, variations and requests for variations and the Final Account claims.</p>	7	14,174,008

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
<p>3. Enhancement of Footbridges in Tsim Sha Tsui East - Contract No. HY/2007/15 Arbitration between Yee Hop Engineering Company Limited and the Government of the HKSAR</p> <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 quantum and programming expert and a stainless steel expert in an arbitration in respect of claims brought by the Contractor against the Government for extension of time, refund of liquidated damages, prolongation/disruption costs and the final account.</p>	6	7,094,211
<p>4. Sha Tin New Town, Stage II Road Work at Areas 34 & 52 in Shui Chuen O and Area 56A in Kau To - Contract No. ST/2005/02 Arbitration between Penta Ocean-Peako Joint Venture and the Government of the HKSAR</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, a quantum and programming expert and a civil and geotechnical engineering expert in an arbitration in respect of claims brought by the Contractor against the Government for the cost of extension of time, prolongation, delay, measurement and valuation, variations, additional works and Final Account items.</p>	6	5,996,408
<p>5. Route 8 between Cheung Sha Wan and Sha Tin – Design and Construction Assignment - Consultancy Agreement No. CE 50/98 Arbitration between the Government of the HKSAR and AECOM Asia Company Limited (formerly known as Maunsell Consultants Asia Limited) and Hyder Consulting Limited trading as Maunsell Hyder JV</p>	6	5,398,090

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
<p>Fees and expenses incurred in relation to appointing an arbitrator as well as engaging a solicitors' firm, a London QC, an overseas junior counsel, a local junior counsel and a bridge expert in an arbitration in respect of claims brought by the Government against the former Engineer in relation to the works of the Lai Chi Kok Viaduct.</p>		
<p>6. 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 the Government of the HKSAR</p>	3	3,320,241
<p>Fees and expenses incurred in relation to engaging a solicitors' firm, 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>7. Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL)</p>	4	2,377,065
<p>Fees and expenses incurred in relation to engaging a solicitors' firm, a London QC, a local SC and a structural steel expert to provide legal and expert advice on matters relating to the XRL Project.</p>		
<p>8. 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 of the HKSAR</p>	4	1,636,670

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
Fees and expenses incurred in relation to appointing an arbitrator as well as 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.		
9. Sludge Treatment Facilities - Contract No. EP/SP/58/08 Arbitration between VW-VES(HK) Limited and the Government of the HKSAR	3	1,625,145
Fees and expenses incurred in relation to engaging a solicitors' firm, a London QC and a local junior counsel 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.		
10. Fees and expenses incurred in six other civil cases under \$1 million each		2,101,876
Total expenditure	(15 cases)	60,430,729
