

## NOTE FOR FINANCE COMMITTEE

### Legal expenses for briefing out cases not covered by approved fee schedules (2017-18)

#### 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 2017-18 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 FC<sup>1</sup>, 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) .....

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<sup>1</sup> 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.

- (d) it is deemed appropriate to obtain independent outside counsel's advice or services so as to address possible perception of bias or issues of conflict of interests;
- (e) there is a need for continuity and economy, e.g., where a former member of DoJ who is uniquely familiar with the subject matter is in private practice at the time when legal services are required; and
- (f) there is a need for advice or proceedings involving members of the DoJ.

In addition, where appropriate, some criminal cases are briefed out with the objective of promoting a strong and independent local Bar by providing work, particularly to the junior Bar, and of securing a pool of experienced prosecutors to supplement those within the DoJ.

Encl. 1 3. The approved schedule of fees for 2017-18 is at Enclosure 1.

**LEGAL EXPENSES NOT COVERED BY APPROVED FEE SCHEDULES FOR THE YEAR ENDING 31 MARCH 2018**

4. During the year ending 31 March 2018, DoJ paid out a total of \$303,504,219 as briefing out expenses. The breakdown of expenditure under *Subhead 000 Operational expenses* is as follows –

	\$
<b>Payment for hire of legal services and related professional fees</b>	
(a) Briefing out of cases according to approved fee schedule	119,952,443
(b) Briefing out of cases at fees not covered by the approved scales	130,026,183
	<b>249,978,626</b>
<b>Payment for legal services for construction dispute resolution</b>	
(c) Briefing out of construction dispute resolution cases at fees not covered by approved scales <sup>2</sup>	53,525,593
<b>Total expenditure for 2017-18</b>	<b>303,504,219</b>

/s. ....

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

5. Regarding paragraph 4(b), DoJ briefed out various matters which were not covered by the approved scale of fees to lawyers, accountants, expert witnesses, consultants and appointed arbitrators. The amount of \$130,026,183 incurred in the financial year of 2017-18 involved 515 cases. Details are set out at Enclosure 2.

Encl. 2

6. As regards paragraph 4(c), DoJ briefed out various matters which were not covered by any approved scale of fees to private practitioners engaged to undertake specialised work relating to construction dispute resolution. The amount of \$53,525,593 incurred in the financial year of 2017-18 involved 15 cases. Details are set out at Enclosure 3.

Encl. 3

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Department of Justice  
March 2019

## Enclosure 1 to FCRI(2018-19)15

### Approved scale of maximum fees for briefing out cases in 2017-18 (effective since 14 November 2016)

	\$
<b>(a) Court of Appeal</b>	
(i) brief fee	49,050
(ii) refresher fee per day	24,530
<b>(b) Court of First Instance</b>	
(i) brief fee	36,780
(ii) refresher fee per day	18,390
(iii) conference per hour	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>	
<b>(c) District Court</b>	
(i) brief fee	24,480
(ii) refresher fee per day	12,240
(iii) conference per hour	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	4,860
<b>(d) Magistrates' Court</b>	
(i) brief fee	14,700
(ii) refresher fee per day	7,340
(iii) brief fee on daily basis	7,020

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## Enclosure 2 to FCRI(2018-19)15

### Hire of legal services and related professional fees Breakdown of cases briefed out at fees not covered by the approved scales in 2017-18

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
<b>Civil</b>		
1. <b>The Secretary for Justice (SJ) v Chau Wan Ying, Chu Wai Lun, Cheung Kai Yin, Chu Pui Yan, Ma Po Kwan, Kwok Yeung Yuk, Shum Lester, Chiu Chi Sum, Chan Po Ying, Cheung Kai Hong, Kwan Siu Wang, Hung Cheuk Lun, Fung Kai Hei, Choi Tat Shing, Szeto Tse Long Jason, Wong Lai Wan, Wong Chi Fung, Mak Ying Sheung, Yeung Ho Wah and Wong Ho Ming (HCMP 774, 776-781, 783, 784, 787-789, 791-798/2015)</b>	3	7,309,975

Fees and expenses incurred in relation to briefing one local Senior Counsel (SC) and two local junior counsel to act for the SJ in bringing committal proceedings in the Court of First Instance (CFI) against 20 persons arrested on 26 November 2014 in Mongkok for interference with the due administration of justice by not complying with the injunction order made by the High Court in HCA 2104/2014. Trial of these proceedings took place in July and August 2017. Out of 20 respondents, 11 of them had admitted liability before the trial commenced. By the judgment of 13 October 2017, the remaining nine respondents were found liable for criminal contempt of court. All the respondents were subsequently sentenced by CFI. Nine respondents appealed against liability and all of their appeals were dismissed by the Court of Appeal (CA). Another respondent has appealed against sentence, which has been fixed for hearing on 3 April 2019.

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
<p>2. <b>Comilang Milagros Tecson and another v Director of Immigration (D of Imm)</b> <b>Luis, Desiree Rante and others v D of Imm</b> <b>Dembele Salifou and others v D of Imm</b> <b>(CACV 59-60/2016 &amp; 149/2016)</b></p> <p>Fees and expenses incurred in relation to briefing two local SC and a local junior counsel to act for the D of Imm in resisting three appeals against the dismissal by CFI of three judicial review (JR) applications against the D of Imm's refusal to give permission to the applicants to remain in Hong Kong as primary carers of their minor children who are Hong Kong permanent residents based on their asserted rights under the Basic Law, international conventions and the common law (including customary international law). In <i>Dembele</i> (CACV 149/2016), the Applicants also challenged that the Director had misapplied the dependant policy not as a family reunion policy, thus constituting discrimination when compared with the One-Way Permit Scheme and that its financial capability requirement was unlawful. The appeals were heard together before CA on 10 to 12 July 2017 and were dismissed by CA's judgment handed down on 26 March 2018. The Applicants in <i>Comilang &amp; Luis</i> (CACV 59-60/2016) had applied to CA for leave to appeal but it was refused on 24 July 2018. They had further applied to the Court of Final Appeal (CFA) for leave to appeal (FAMV 39-40/2018). Leave to appeal was granted by the Appeal Committee on 7 November 2018. The appeal hearing is fixed for 28 February 2019 (with 1 March 2019 reserved). The Applicants in <i>Dembele</i> (CACV 149/2016) have not applied for leave to appeal against the CA judgment dated 26 March 2018.</p>	3	2,283,875
<p>3. <b>Chan Ho Tin, v Lo Ying Ki Alan (Returning Officer for New Territories West Geographic Constituency) and others</b> <b>(HCAL 162/2016)</b></p>	4	2,333,450

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
<p>Fees and expenses incurred in relation to briefing three local SC and a local junior counsel to act for the Returning Officer of the New Territories West Geographical Constituency in resisting the election petition lodged by the Petitioner questioning the election of the nine candidates declared to be elected at the relevant Constituency on the grounds that multiple material irregularities/unlawfulness occurred in relation to the election resulting in the Petitioner's nomination being unlawfully determined by the Returning Officer as invalid. The substantive hearing was held on 17 to 19 May 2017. By judgment of 13 February 2018, the election petition was dismissed. The Petitioner's application filed on 24 April 2018 for (a) leave to appeal to CFA and (b) extension of time to do so was withdrawn on 7 June 2018 with costs to the Returning Officer.</p>	3	2,017,250
<p>4. <b>Lubiano Nancy Almorin v D of Imm (HCAL 210/2016)</b></p>		
<p>Fees and expenses incurred in relation to briefing two local SC and a local junior counsel to act for the D of Imm in resisting a JR application taken out by the Applicant against the policy requirement that foreign domestic helpers (FDHs) shall work and reside in their employers' residence according to their Standard Employment Contracts and undertakings given to the Immigration Department and in compliance with the eligibility criteria for granting FDH visas, on the grounds that (i) the Director does not have lawful authority to impose the live-in requirement; (ii) the live-in requirement heightens the risk of a breach of fundamental rights and thus is unconstitutional; (iii) the live-in requirement is discriminatory; and (iv) the live-in requirement without any general exception is irrational. The JR application was heard on 3, 4 and 9 October 2017. By the judgment handed down on 14 February 2018, CFI dismissed the JR application. The Applicant lodged an appeal to CA on 25 April 2018. Further directions from the Court are pending. No appeal hearing has been fixed.</p>		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
5. <b>Kwok Cheuk Kin &amp; Lui Chi Hang, Hendrick v Director of Lands (D of Lands), and SJ, Heung Yee Kuk as the Interested Party (HCAL 260/2015)</b>	6	1,917,028
<p>Fees and expenses incurred in relation to briefing a local SC, a local senior junior counsel, a local junior counsel and three experts to act for D of Lands and SJ in resisting a JR application taken out by the Applicant against (i) the 1972 Small House Policy (SHP) and the subsequent decisions of the Chief Executive in Council (CEIC) to continue the implementation of SHP; (ii) the decision of D of Lands to implement and his subsequent decisions to continue to implement SHP; and (iii) section 62 and Schedule 5, Part 2, paragraph 2 of the Sex Discrimination Ordinance (Cap. 480) (which renders SHP not unlawful under the Ordinance). Leave to apply for JR was granted by CFI on 18 November 2016. Rounds of evidence had been filed by the parties. The substantive hearing was conducted on 3 to 7 December 2018. On Day 5 of the hearing, the Applicants applied for leave to re-amend the Amended Form 86 to limit their challenge to the D of Lands' decisions as from 8 June 1991 to implement/continue to implement SHP, and strike out their challenge against CEIC in the original Amended Form 86. Judgment reserved.</p>		
6. <b>QT v D of Imm (CACV 117/2016)</b>	3	1,835,246
<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 the D of Imm in resisting an appeal against CFI's judgment of 11 March 2016 dismissing the Applicant's JR application. The JR application challenged the D of Imm's dependant policy excluding same-sex couples from being eligible to apply for a dependant visa as "spouse" on the ground that the policy constituted indirect discrimination based on sexual orientation. CA allowed the Applicant's</p>		

<b>Brief description of case/matter</b>	<b>Number of counsel/legal firms/other professionals involved</b>	<b>Expenditure  \$</b>
<p>appeal on 25 September 2017. D of Imm applied for leave to appeal to CFA and leave was granted by CA on 4 December 2017. CFA heard the appeal on 4 June 2018 and handed down judgment on 4 July 2018 dismissing the Director's appeal.</p>		
<p>7. <b>Leung Chun Kwong v Secretary for the Civil Service (SCS) and Commissioner of Inland Revenue (CIR)</b> <b>(CACV 126/2017)</b></p>	4	1,767,126
<p>Fees and expenses incurred in relation to briefing two London QC, a local SC and a local junior counsel to act for SCS and CIR in SCS's appeal and the Applicant's cross-appeal against the relevant parts of the CFI's decision. In the underlying JR application, the Applicant, who is a civil servant, challenged the respective decisions of SCS in not recognising his same-sex marriage for the purpose of spousal benefits (the Benefits Decision) and CIR in not recognising the same-sex marriage for the purposes of tax allowances (the Tax Decision). The substantive hearing of JR was held on 15 and 16 December 2016. By judgment of 28 April 2017, the part of the JR on the Benefits Decision was allowed while the part of the JR on the Tax Decision was dismissed. Both the Applicant's and SCS's appeals were heard by the CA on 11 and 12 December 2017. By judgment dated 1 June 2018, the SCS's appeal was allowed and the Applicant's cross-appeal was dismissed. The Applicant applied to CA for leave to appeal to CFA on 7 August 2018. CA granted leave to appeal on certain questions of law on 24 September 2018. The substantive hearing has been fixed on 7 May 2019.</p>		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
<p>8. <b>PCCW-HKT Telephone Ltd (PCCW-HKT) &amp; Hong Kong Telecommunications (HKT) Ltd (HKT) v the Secretary for Commerce and Economic Development (SCED) and the Communications Authority (CommAuth) (FACV 11/2017)</b></p> <p>Fees and expenses incurred in relation to briefing a local SC and a local junior counsel to act for the SCED and CommAuth in resisting the appeals by PCCW-HKT and HKT against CA's dismissal of the appeal against the CFI's judgment of 11 August 2015 which dismissed the JR application challenging the joint decision of the SCED and CommAuth not to further reduce certain telecommunication licence fees. Upon substantive hearing of the appeals held on 19 and 20 April 2016 and by judgment of 17 May 2016, CA dismissed the appeal. By judgment of 11 November 2016, CA also dismissed PCCW-HKT's and HKT's applications for leave to appeal to CFA. Leave to appeal to CFA was granted by the Appeal Committee at the hearing on 27 April 2017. The substantive appeal was heard by CFA on 30 November 2017 and by judgment dated 27 December 2017, the appeal was allowed.</p>	2	1,638,850
<p>9. <b>Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL-HK section) (MIS 480/2017 &amp; HCAL 453, 455, 458, 460/2017)</b></p> <p>Fees and expenses incurred in relation to briefing two local SC, a local junior counsel and an expert to act for and/or advise the Government in resisting four applications for JR against the decision of the CEIC on 25 July 2017 on the proposed co-location arrangement of customs, immigration and quarantine procedures at West Kowloon Station for the XRL-HK section (the Decision), seeking relief including quashing the Decision, declaring that the Decision is unconstitutional and/or illegal, and interim injunctive relief. Two applications were withdrawn shortly</p>	4	1,568,875

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
<p>before the hearing on 22 September 2017. On 27 September 2017, CFI dismissed the remaining applications for leave. On 11 October 2017, appeals were lodged but they were subsequently withdrawn and dismissed by consent in April 2018.</p>		
<p>10. <b>Kwok Cheuk Kin v Secretary for Constitution and Mainland Affairs (SCMA) (FACV 12/2016)</b></p>	3	1,520,830
<p>Fees and expenses incurred in relation to briefing a London QC, a local SC and a local junior counsel to act for SCMA in an application for JR challenging the constitutionality of section 39(2A) of the Legislative Council Ordinance (Cap. 542) as amended in 2012 to restrict a resigned member of the Legislative Council (LegCo) from standing for a by-election within six months after the resignation. CFI's judgment (5 March 2014) dismissing the JR was upheld by CA (22 October 2015). The Appeal Committee granted leave to appeal to CFA on 29 September 2016. The substantive final appeal heard on 20 June 2017 was unanimously dismissed by CFA on 11 July 2017.</p>		
<p>11. <b>Designing Hong Kong Limited (DHKL) v Town Planning Board (TPB) (FACV 4/2018)</b></p>	2	1,290,000
<p>Fees and expenses incurred in relation to briefing two local SC to act for SJ as the Intervener in resisting the application by DHKL for leave to appeal to CFA and DHKL's appeal before CFA in respect of 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) Outline Zoning Plan 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 refused the PCO application. On</p>		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
<p>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 by CA 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. CFA dismissed DHKL's appeal on 15 May 2018.</p>		
<p>12. <b>The Chief Executive of the Hong Kong Special Administrative Region (CE) and SJ v The President of LegCo CE and SJ v Yau Wai Ching (Yau) and Sixtus Leung Chung Hang (Leung) (FAMV 7-10/2017)</b></p>	4	1,164,000
<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 on 24 and 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 to the Appeals Committee for leave to appeal to CFA were heard before the Appeal Committee on 25 August 2017 and were dismissed on the same day.</p>		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
13. <b>XRL-HK section and Phase I of the Shatin-Central Line (SCL) Projects</b>	1	1,121,202
Fees and expenses incurred in relation to engaging a solicitors' firm to advise on matters relating to the XRL-HK section and SCL Projects.		
14. <b>Q, R and Tse Henry Edward v Commissioner of Registration (CoR) (HCAL 229/2015, 154 &amp; 189/2017)</b>	3	2,359,999
Fees and expenses incurred in relation to briefing a local SC leading two local junior counsel to act for CoR in resisting the JR applications by the Applicants who were pre-operative female-to-male transgenders and challenged the CoR's refusal to change the sex entry on their respective Hong Kong Identity Cards from "female" to "male". The grounds of JR are that the refusal and its underlying policy breach Articles 1, 3, 14 and 22 of the Hong Kong Bill of Rights and/or Articles 7 and 17 of the International Covenant on Civil and Political Rights, Article 25 of the Basic Law and sections 5 and 38 of the Sex Discrimination Ordinance, (Cap. 480). The rolled-up hearing (all three cases heard together) was held on 9 to 11 January 2018. The Court dismissed all the JR applications on 1 February 2019.		
15. <b>Cheermark Investment Limited, Happy Enough Limited v D of Lands (CACV 165 &amp; 184/2016)</b>	3	1,203,875
Fees and expenses incurred in relation to briefing one local senior junior counsel and two local junior counsel to act for D of Lands in conducting an appeal against the judgments of the Lands Tribunal (LT) dated 3 November 2015 and 17 March 2016 respectively in relation to compensation for land resumed for use by Urban Renewal Authority. Upon substantive hearing of the appeals on 1 to 3 November 2017 and by judgment of 24 November 2017, CA allowed the		

<b>Brief description of case/matter</b>	<b>Number of counsel/legal firms/other professionals involved</b>	<b>Expenditure  \$</b>
Director's appeal on construction of government lease but dismissed the Director's appeals against compensation awarded to Cheermark and Happy Enough.		
16. <b>Penny's Bay Investment Company Ltd. v D of Lands (FACV 1-9/2017)</b>	2	1,202,858
Fees and expenses incurred in relation to briefing one London QC and a local junior counsel to act for the D of Lands in the Appellant's appeal and the Director's cross-appeal against the relevant parts of the CA's decision. In the underlying LT application, the Appellant claims compensation for the loss of its marine rights at Penny's Bay off Lantau Island. On 15 October 2014, LT awarded compensation in the sum of \$10,952,500 (subsequently adjusted to \$9,431,000). The parties first appealed to CA against LT's award and each being unsatisfied with the different aspects of CA's judgment, appealed to CFA. The outstanding issues for CFA were (a) whether a use for "godown purposes" in the Grant included mid-stream operation or open storage of containers (the Appellant's appeal) and (b) whether the "After Value" should be calculated on the assumption that the Container Terminal Scheme (the CT Scheme) was bound to be carried out (the Director's cross-appeal). The hearing before CFA was held on 11 September 2017. By its judgment dated 16 October 2017, CFA (a) dismissed the Appellant's appeal and held that "godown purposes" would mean the use of a building in which storage takes place, and (b) allowed the Director's cross-appeal and held that the "After Value" should be assessed on the assumption that the CT Scheme was bound to be carried out.		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
<p>17. <b>Chee Fei Ming and Hung Shui Fung v Director of Food and Environmental Hygiene (DFEH) and SJ (HCAL 73 &amp; 110/2013)</b></p> <p>Fees and expenses incurred in relation to briefing two local SC and a local junior counsel to act for DFEH, SJ and D of Lands in resisting the Applicants' application for JR against the DFEH's decision to remove the unauthorised non-commercial publicity materials displayed by Falun Gong at various locations in Hong Kong on the grounds that the relevant statutory provisions governing the DFEH's power are unconstitutional. By CA's judgment dated 6 June 2016, the appeals were dismissed while leave for the JR was granted on two new constitutional grounds for remitting to CFI for determination (i.e., whether the requirement to seek the DFEH's approval to display non-commercial publicity materials on government land under section 104A of the Public Health and Municipal Services Ordinance (Cap. 132) is "prescribed by law" and satisfies the "proportionality test"). Upon an inter-partes substantive JR hearing before CFI from 21 to 23 March 2018, judgment was handed down on 31 August 2018 which, among other things, allowed the JR on the "prescribed by law" ground but did not deal with the limited proportionality ground. The Government then lodged an appeal against the CFI judgment on 28 September 2018. Hearing date of the appeal has not yet been fixed. Proceedings relating to the determination of whether leave should be granted by the Appeal Committee for appeal to CFA on the other two grounds of review which had been refused leave to JR are currently adjourned sine die with liberty to restore.</p>	3	1,782,500
<p>18. <b>Fees and expenses incurred in 460 other civil cases under \$1 million each</b></p>	-	52,810,968
<p><b>Sub-total : 477 cases</b></p>		<p><b>87,127,907</b></p>

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
<b>Criminal</b>		
19. <b>The Government of the Hong Kong Special Administrative Region (HKSAR) v Chow Heung Wing Stephen &amp; two others (HCCC 437/2015)</b>	3	12,024,700

This is a complicated case in which two medical doctors (D1 and D3) and a laboratory technician (D2) have been charged with Manslaughter. In gist, the Deceased in this case received healthcare treatment offered by D1's companies by way of infusion of processed blood products. D2 is the laboratory technician responsible for the processing of the blood infusate product and D3 is the medical doctor administering the infusion into the Deceased. D1 had no direct involvement with the Deceased's treatment but given his overall control of the companies, he was in breach of his duty owed to the Deceased; and hence as with his co-defendants, he was prosecuted for Manslaughter by gross negligence.

Taking into account the complexity of the case and the length of the trial (involving evidence from 85 prosecution witnesses and five defence witnesses), one local SC and two local junior counsel were briefed to prosecute the case.

The trial ran from 17 May 2017 until verdict was given on 13 December 2017. D1 and D2 were convicted while the jury was unable to reach a verdict on the case of D3. D1 and D2 subsequently launched appeals against their respective conviction and sentence while the prosecution applied for retrial of the case of D3. The application for retrial was granted but hearing date has not yet been fixed. Upon the Court of Appeal ruling against D3's application on a question of law (CAQL 1/2018, judgment dated 16 Nov 2018), D3 filed a Notice of Motion to appeal to CFA.

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
20. <b>HKSAR v Tsang Yam Kuen Donald (HCCC 484/2015)</b>	3	9,201,740

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.

The prosecution has engaged one overseas QC, one local SC and one local senior junior counsel to prosecute the trial.

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.

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. On 6 March 2018, the court granted the prosecution's application for an order for the Defendant to pay one-third of the original trial costs. The Defendant lodged an appeal in relation to the costs order.

On 25 and 26 April 2018, CA heard the Defendant's appeal against conviction, sentence and costs order. By a judgment dated 20 July 2018, CA refused his application for leave to appeal against conviction but allowed his appeal against sentence and Costs Order.

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
<p>The Defendant is now pursuing an appeal to the CFA against the CA's judgment. Leave to appeal to CFA was granted on 20 December 2018. The substantive appeal will be heard on 14 May 2019.</p>		
<p>The prosecution has engaged one overseas QC and one local SC who handled the trial and appeal in the lower courts to prosecute the appeal to CFA together with two in-house counsel.</p>		
<p>21. <b>HKSAR v Wong Toi Yeung &amp; nine others (HCCC 408 &amp; 408A/2016)</b></p>	2	3,287,000
<p>This is the case of riot which took place on 8 and 9 February 2016. There are ten Defendants on the indictment. One Defendant pleaded guilty before trial and two Defendants have since failed to surrender to custody as appointed. Of the remaining Defendants, the court directed for the trial of five Defendants to take place from January to May 2018 (HCCC 408/2016), and the trial of two Defendants to take place from November to December 2018 (HCCC 408A/2016).</p>		
<p>Given the complexity and sensitivity of the case, one local SC and one local junior counsel have been briefed as prosecuting counsel.</p>		
<p>In HCCC 408/2016, the jury delivered its verdict on 18 May 2018. Of the five Defendants, two were each convicted of one count of riot. The jury could not reach majority verdict on one count of riot against three Defendants. The jury otherwise found the Defendants not guilty of all other counts.</p>		
<p>The same outside counsel will continue to have carriage of the prosecution in HCCC 408A/2016, which includes the retrial of the count of riot which the jury could not reach majority verdict on in HCCC 408/2016. The case was still ongoing as at 27 February 2019.</p>		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
22. <b>HKSAR v Luan Gang &amp; Luan Hong (DCCC 788 &amp; 790/2015)</b>	2	4,141,616

This is a cross-border money laundering case against D1 and his younger sister D2. D1 and D2 were originally charged with two joint offences of conspiracy to launder crime proceeds for conspiring to procure the remittance to Hong Kong proceeds of multiple customs tax offences committed by D1 and others in the Mainland, and further conspired to divert part of such proceeds to accounts in the United States.

D2 was arrested in Germany in late 2014, and D1, in the United States a few months later. Both were escorted back to Hong Kong. After obtaining further evidence, the prosecution decided that while Charge 1 (Conspiracy to launder crime proceeds) against D2 be discontinued for lack of evidence, the case would continue to be proceeded with, and for this a Letter of Request (LOR) application was made to the court which was subsequently granted.

The prosecution then opened its case on 10 August, 2017, as ordered by the court. LOR proceedings were conducted in the Mainland between 21 and 24 August 2017, which the Defendants and their representatives chose not to attend. The second stage LOR proceedings commenced at the Shenzhen Court on 10 January 2018 and concluded on 21 March 2018. D1 and D2 did not attend the hearing, but their legal representatives did.

The trial proceedings in Hong Kong resumed on 22 March 2018. On 11 April 2018, the court found a case to answer on both charges. After the court dismissed their stay application, both D1 and D2 elected not to give evidence or call any defence witnesses. The closing submissions concluded on 30 April 2018. By verdict handed down on 10 July 2018, the judge found the Defendants not guilty.

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
<p>Given the complexity of the case and the length of the proceedings, one local SC and one local junior were briefed as the prosecuting counsel.</p>		
<p>23. <b>HKSAR v Chin Kam Chiu &amp; five others</b> <b>(DCCC 919/2015)</b></p>	1	1,434,077
<p>A cross-border syndicate allegedly smuggled a variety of high valued goods (e.g., metals for industrial use, frozen foodstuffs and electronic goods) into the Mainland from Hong Kong by using river trade vessels owned or controlled by the syndicate in the form of unmanifested cargoes between 1 January 2010 and 12 January 2012, both dates inclusive.</p>		
<p>Billions of money, representing in whole or in part the proceeds of the smuggling, were deposited and transferred into 12 bank accounts held by two local companies which were controlled by the syndicate.</p>		
<p>In consideration of the nature of the case, the complexity brought by the LOR proceedings and the background of the Defendants, a local SC has been briefed as the leading prosecuting counsel.</p>		
<p>Between January and June 2017, LOR proceedings were conducted at the Guangzhou Intermediate People’s Court during which evidence of 17 Mainland witnesses were obtained. The LOR proceedings concluded on 21 June 2017.</p>		
<p>At a mention hearing on 16 October 2017, the case was fixed for trial in Hong Kong between 8 October and 17 December 2018 (with 50 days reserved).</p>		
<p>On 29 March 2018, D1 served a notice of application for permanent stay of proceedings, which was subsequently joined by the other five Defendants. The court heard the stay application on 19 June 2018. On 31 July 2018, the court dismissed the application for permanent stay of proceedings made by all Defendants.</p>		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
The trial commenced on 8 October 2018 with a voir dire to determine the admissibility of various pieces of evidence to which the defendants had raised objections. The trial was still ongoing as at 11 February 2019.		
24. <b>HKSAR v Hui Rafael Junior &amp; three others (FACC 12-15/2016 (formerly FAMC 8-11/2016 on appeal from CACC 444/2014))</b>	4	1,695,132

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 appeals 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 MIPO 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.

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
<p>On 12 July 2016, the Appeal Committee of CFA granted leave in relation to Count 5 (Conspiracy to commit MIPO) 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 MIPO?” 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 appeals 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>		
<p>25. <b>HKSAR v Ma Sin Chi &amp; another (HCON 6/2016 (HCCC 290 &amp; 319/2016 (Consolidated))</b></p>	2	1,397,500
<p>This is a retrial ordered by the CA after the Defendants have successfully appealed against their convictions on corruption related offences (CACC 424/2013).</p>		
<p>A local counsel was engaged to prosecute the original trial, following which the Defendants were convicted on their respective charges, i.e., D1 on four counts of agent accepting advantage and D2 on four counts of offering advantage to an agent mirroring D1’s charges. The original D3 to D5 were acquitted after trial.</p>		
<p>D1 and D2 appealed their convictions to CA. After a lengthy hearing (seven days) of argument by parties in respect of multiple factual and legal issues, CA allowed the appeals and ordered that the Defendants be re-tried on fresh indictments. A local SC was briefed as the prosecuting counsel.</p>		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
<p>The four charges against each of the Defendants were amalgamated into one charge against each of them, i.e., one count of agent accepting advantage against D1 and one count of offering advantage to an agent against D2 mirroring D1's charge. After a plea negotiation, the Defendants pleaded guilty to their respective charge. They were each sentenced to 45 months' imprisonment. In addition, D1 was ordered to pay \$6,391,758 to his principal, under a restitution order.</p>	2	1,068,000
<p>26. <b>HKSAR v Wong Kennedy Ying Ho (DCCC 190/2017 (formerly HCCC 409/2015))</b></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 to 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. This was the subject matter of the original Count 2.

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
<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 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 was delivered on 8 January 2018, and the Defendant was acquitted of the charge.</p>		
27. <b>HKSAR v Chen Keen &amp; others (CACC 172/2016)</b>	1	1,384,000
<p>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.</p>		
<p>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</p>		

<b>Brief description of case/matter</b>	<b>Number of counsel/legal firms/other professionals involved</b>	<b>Expenditure  \$</b>
<p>accounting records were then published in the listed company's Announcement and Circular.</p>		
<p>D1, D2 and D3 therefore faced two charges of Conspiracy to Defraud the listed company and SEHK respectively.</p>		
<p>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.</p>		
<p>D1 therefore faced a further count of Dealing with property known or reasonably believed to represent proceeds of an indictable offence.</p>		
<p>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.</p>		
<p>D1, D2 and D3 were committed to CFI for trial (HCCC 83/2014). 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 LOR. All Defendants were convicted on all charges.</p>		
<p>In June and July 2016, all Defendants lodged an appeal to CA and they were being represented by overseas QC. D1 appealed against conviction, while D2 and D3 appealed against both conviction and sentence. Their appeals were all dismissed.</p>		
<p>In April 2018, all Defendants filed Notices of Motion to CA seeking for a certificate to appeal to CFA. All applications were dismissed.</p>		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
<p>In May 2018, all Defendants filed Notices of Motion to CFA, seeking for the leave to appeal. An oral hearing was fixed on 14 December 2018. At the hearing, leave was granted to all Defendants (A1 and A2 on question of law and substantial and grave injustice, whilst A3 on question of law only). The CFA hearing is scheduled on 24 and 25 June 2019.</p> <p>For continuity and economy, the prosecution has engaged the local SC who conducted the trial to handle the related proceedings.</p>	3	1,130,000
<p>28. <b>HKSAR v Wu Wing Kit &amp; another</b> <b>(DCCC 1022/2012)</b></p>		

This case originated from the same sets of events under item 27 above. The two Defendants were each convicted of one count of money laundering at the original trial in August 2014. The other three accused involved in the scam were tried separately in CFI (HCCC 83/2014) (see item 27 above). The two Defendants later appealed against their convictions in CACC 299/2014. On 26 May 2016, CA allowed their appeal and ordered a retrial for them.

In the retrial, the two Defendants were represented by a local SC and an overseas QC respectively. Given that this case had a complicated factual background, the local SC who prosecuted the CFI trial under item 27 above and the local senior junior counsel who represented the prosecution in the original trial of this case and was junior to the overseas QC engaged by the prosecution in the appeal, both of whom were familiar with the evidence and background of the case, were briefed as leading counsel and junior counsel to prosecute the retrial. One expert who is familiar with China Law was also engaged as professional witness.

Judgment was handed down on 13 December 2017. Both Defendants were acquitted after trial.

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure  \$
29. Fees and expenses incurred in 28 other criminal cases under \$1 million each	-	6,134,511
Sub-total: 38 cases		42,898,276
Total expenditure	(515 cases)	130,026,183

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**Enclosure 3 to FCRI(2018-19)15**

**Legal services for construction dispute resolution  
Breakdown of cases briefed out at fees  
not covered by the approved scales in 2017-18**

<b>Brief description of case/matter</b>	<b>Number of counsel/ legal firms/other professionals involved</b>	<b>Expenditure \$</b>
<p>1. <b>Sludge Treatment Facilities - Contract No. EP/SP/58/08 Arbitration between VW-VES(HK) Limited and Hong Kong Special Administrative Region (HKSAR)</b></p> <p>Fees and expenses incurred in relation to appointing an arbitrator as well as engaging a solicitors' firm, a London Queen's Counsel (QC), a local junior counsel and a quantum and programming expert in an arbitration in respect of claims brought by the Contractor against the Government for extension of time and additional payments and a dispute as to levy of liquidated damages.</p>	5	23,084,708
<p>2. <b>XRL-HK section</b></p> <p>Fees and expenses incurred in relation to engaging a solicitors' firm, a London QC, a local Senior Counsel, a structural steel expert and a project management/programming expert to provide legal and expert advice on matters relating to the XRL-HK section Project.</p>	5	11,941,272
<p>3. <b>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 HKSAR</b></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 quantity</p>	6	10,395,752

Brief description of case/matter	Number of counsel/ legal firms/other professionals involved	Expenditure \$
<p>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>		
<p>4. <b>Enhancement of Footbridges in Tsim Sha Tsui East</b> - <b>Contract No. HY/2007/15</b> <b>Arbitration between Yee Hop Engineering Company Limited and HKSAR</b></p>	5	2,765,544
<p>Fees and expenses incurred in relation to appointing an arbitrator as well as engaging a solicitors' firm, a local junior counsel, a quantum and programming expert, and a structural engineering 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>		
<p>5. <b>Salt Water Supply System for Pok Fu Lam Area – Construction of Services Reservoirs, Pumping Stations and Associated Mains</b> - <b>Contract No. 10/WSD/09</b> <b>Arbitration between Law Chi Yip Construction Company Limited and HKSAR</b></p>	4	2,157,734
<p>Fees and expenses incurred in relation to appointing an arbitrator as well as 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>6. <b>Fees and expenses incurred in ten other civil cases under \$1 million each</b></p>		3,180,583
<p><b>Total expenditure</b></p>	<p><b>(15 cases)</b></p>	<p><b>53,525,593</b></p>

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