

NOTE FOR FINANCE COMMITTEE

Legal expenses for briefing out cases not covered by approved fee schedules (2013-14)

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 Administration 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) within 2013-14 on briefing out cases not covered by the approved fee schedules.

2. 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 in DoJ;
- (b) there is no suitable in-house counsel to appear in court for the Hong Kong Special Administrative Region;
- (c) there is a need for advice or proceedings involving members of DoJ;

/(d)

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). Members also approved at the same meeting a downward adjustment to the rates of the approved fees by 4.3%. The adjusted rates have been effective since 4 July 2003. On 12 June 2007, the authority for approving adjustments to the approved fees was re-delegated to the Permanent Secretary for Home Affairs.

- (d) 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
- (e) the size, complexity, quantum and length of a case so dictate.

In addition, some criminal cases are briefed out with the objective of promoting a strong and independent local Bar by providing work, particularly to the junior Bar, and of securing a pool of experienced prosecutors to supplement those within DoJ. This practice is also intended to help change the commonly-held perception that all prosecutors must be government lawyers whereas the private Bar can represent only the defence in criminal cases.

Encl. 1 3. The approved schedule of fees for 2013-14 is at Enclosure 1.

LEGAL EXPENSES NOT COVERED BY APPROVED FEE SCHEDULES FOR THE YEAR ENDING 31 MARCH 2014

4. During the year ending 31 March 2014, DoJ paid out a total of \$328,695,346 as briefing out expenses. The breakdown of expenditure under *Subhead 000 Operational expenses* is as follows –

	\$
Payment for hire of legal services and related professional fees	
(a) Briefing out of cases according to approved fee schedules	74,550,147
(b) Briefing out of cases at fees not covered by the approved scales	152,550,102
	227,100,249
Payment for legal services for construction dispute resolution	
(c) Briefing out of construction dispute resolution cases at fees not covered by approved scales ²	101,595,097
Total expenditure	328,695,346

/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), 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 \$152,550,102 incurred in 2013-14 involved 679 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 \$101,595,097 incurred in 2013-14 involved 26 cases. Details are set out at Enclosure 3.

Encl. 3

Department of Justice
January 2015

Enclosure 1 to FCRI(2014-15)9

Approved scale of maximum fees for briefing out cases

	For cases briefed up to 28.11.2013 (rate effective since 9.3.2012)	For cases briefed from 29.11.2013 and onwards (rate effective since 29.11.2013)[#]
(a) Court of Appeal	\$	\$
(i) brief fee	29,920	32,700
(ii) refresher fee per day	14,960	16,350
(b) Court of First Instance	\$	\$
(i) brief fee	22,440	24,520
(ii) refresher fee per day	11,220	12,260
(iii) conference per hour	1,170	1,270
Brief fees and refresher fees are subject to a 10% increase on the base figure for each of the second to the sixth defendant.		
(c) District Court	\$	\$
(i) brief fee	14,940	16,320
(ii) refresher fee per day	7,470	8,160
(iii) conference per hour	960	1,040
Brief fees and refresher fees are subject to a 10% increase on the base figure for each of the second to the sixth defendant.		
(iv) brief fee for attending sentencing hearings or procedural applications	2,970	3,240
(d) Magistrates' Court	\$	\$
(i) brief fee	8,970	9,800
(ii) refresher fee per day	4,480	4,890
(iii) brief fee on daily basis	5,970	6,520

[#] On 29 November 2013, with Legislative Council's endorsement, the rates of the approved criminal legal aid fees were adjusted upward by around 9.3%. As the Department of Justice uses the same scale of fees for briefing out, the briefing out fees for cases briefed since that date were adjusted accordingly.

Enclosure 2 to FCRI(2014-15)9

**Hire of legal services and related professional fees
Breakdown of cases briefed out at fees
not covered by the approved scales in 2013-14**

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
Civil		
<p>1. Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012</p> <p>Fees and expenses incurred in relation to briefing a local senior counsel (SC) and two local junior counsel to act for the Director of Marine, the Commissioner of Police and the Director of Fire Services before the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012. The Commission was required to (a) ascertain the causes of the incident and make appropriate findings thereof; (b) consider and evaluate the general conditions of maritime safety concerning passenger vessels in Hong Kong and the adequacy or otherwise of the present system of control; and (c) make recommendations on measures, if any, required for the prevention of the recurrence of similar incidents in future. At the conclusion of a 50-day hearing, the Commission submitted its report to the Chief Executive on 19 April 2013 and a redacted report was published by the Government on 30 April 2013.</p>	3	5,905,983
<p>2. Ubamaka Edward Wilson v Secretary for Security (S for S) and Director of Immigration (D of Imm) (FACV 15/2011)</p> <p>Fees and expenses incurred in relation to briefing a London Queen's Counsel (QC), two local SC and a local junior counsel to advise and appear on behalf of the S for S and the D of Imm in an appeal to the Court of Final Appeal (CFA). The appeal concerned whether section 11 of the Hong Kong Bill of Rights Ordinance (HKBORO) (Cap. 383) applies, in the context of deportation of the Appellant to his home country, to override the right to</p>	4	5,300,624

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
<p>protection against inhuman treatment under Article 3 of the Hong Kong Bill of Rights (HKBOR). The CFA held that section 11 of the HKBORO is constitutionally valid but subject to the right under Article 3 of the HKBOR, which is absolute and non-derogable. The appeal was nonetheless dismissed as the CFA found that the evidence did not show ill-treatment approaching the extent of severity required to amount to cruel, inhuman or degrading treatment or punishment for the purpose of Article 3 of the HKBOR.</p>		
<p>3. Penny's Bay Investment Company Ltd. (PBIL) v Director of Lands (LDMR 23/1999)</p>	2	1,485,574
<p>Fees and expenses incurred in relation to briefing a London QC and a local junior counsel to act for the Director of Lands before the Lands Tribunal in determination of compensation payable to PBIL under 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. Hearing was conducted before the Lands Tribunal from 8 to 12 and 15 to 19 October 2012, 20 to 22 March and 23 to 26 April 2013. Judgment was handed down on 15 October 2014 and compensation in the sum of \$10,925,500.00 was awarded to PBIL. Both parties had then sought leave to appeal against the said Judgment to the Court of Appeal (CA). The Lands Tribunal heard the parties' leave applications on 19 December 2014 with judgment reserved.</p>		
<p>4. The Real Estate Developers Association of Hong Kong v Town Planning Board (HCAL 58/2011)</p>	3	1,655,735
<p>Fees and expenses incurred in relation to briefing a London QC, a local SC and a local junior counsel to act for the Town Planning Board (TPB) in resisting a judiciary review (JR) application taken out by the Real Estate Developers Association of Hong Kong (REDA). In the JR, REDA sought to challenge the TPB's powers and</p>		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
<p>procedures at a systemic level and to quash the TPB's decisions in relation to planning restrictions imposed in four Draft Outline Zoning Plans. The JR application was heard by the Court of First Instance (CFI) on 18 to 21 February 2013 with judgment reserved.</p>		
5. Kong Yunming v Director of Social Welfare (FACV 2/2013)	2	2,342,853
<p>Fees and expenses incurred in relation to briefing a London QC and a local junior counsel to act for the Director of Social Welfare in resisting the appeal by the Appellant, against the judgment of the CA handed down on 17 February 2012 dismissing the Appellant's appeal against the judgment of the CFI handed down on 23 June 2009 which upheld the policy requiring all applicants for Comprehensive Social Security Assistance (CSSA) to be Hong Kong residents for at least seven years (the seven-year residence requirement) as being constitutional and consistent with Basic Law Article 25, HKBOR Article 22 and International Covenant on Civil and Political Rights Article 26 (on equality before the law) and Basic Law Article 36 & 145 (on the right to social welfare and formulation of social welfare policy). The appeal was heard by the CFA from 18 to 19 November 2013. By judgment handed down on 17 December 2013, the CFA allowed the appeal and declared that the seven-year residence requirement is unconstitutional and restored the pre-existing one-year residence requirement for CSSA.</p>		
6. Chinachem Charitable Foundation Ltd. v Secretary for Justice (SJ) (CACV 44/2013)	3	1,754,233
<p>Fees and expenses incurred in relation to briefing a London QC, a local SC and a local junior counsel to advise and appear for the SJ as the Respondent in an appeal to the CA against the CFI judgment (HCMP 853/2012) dated 22 February 2013 holding that the estate of the testatrix was vested in the Appellant, being an incorporated body and a registered charity, as trustee for the charitable</p>		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
purposes specified in the will. The hearing took place before the CA from 25 to 27 February 2014 and judgment was handed down on 11 April 2014 dismissing the Appellant's appeal.		
7. Vallejos Evangeline Banao also known as Vallejos Evangeline B. v Commissioner of Registration and Another (FACV 19/2012) Domingo Daniel L. v Commissioner of Registration and Another (FACV 20/2012)	4	3,719,074
Fees and expenses incurred in relation to briefing a London QC, a local SC and a local junior counsel to act for the Commissioner of Registration in resisting the appeals by two foreign domestic helpers against the judgment of the CA handed down on 28 March 2012 (in respect of one of the two foreign domestic helpers, but agreed by the parties to be binding on the other foreign domestic helper in respect of the same point of law subject to further appeal) allowing the Commissioner's appeal against the judgment of the CFI handed down on 30 September 2011 which quashed the Commissioner's refusal to issue a Hong Kong Permanent Identity Card to the subject foreign domestic helper and the Registration of Persons Tribunal's dismissal of her appeal against the refusal. An outside local expert on constitutional law and the Basic Law was also engaged to give advice on relevant issues.		
The appeals were heard by the CFA from 26 to 28 February 2013. In dismissing the appeals by judgment handed down on 25 March 2013, the CFA declared that the relevant provision of the Immigration Ordinance (Cap. 115) constitutional.		
8. W v Registrar of Marriages (FACV 4/2012)	3	1,755,254
Fees and expenses incurred in relation to briefing a London QC and two local SC on behalf of the Registrar of Marriages as the Respondent in this final appeal to the CFA arising from the JR proceedings instigated by "W", a post-operative male-to-female transsexual, to challenge		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
the decision of the Respondent in disallowing her marriage registration with her male partner and the constitutionality of sections 21 and 40 of the Marriage Ordinance (Cap. 181). The appeal was heard by the CFA from 15 to 16 April 2013 and judgment was handed down on 13 May 2013 allowing the appeal with final orders made on 16 July 2013.		
9. Kwok Cheuk Kin v Secretary for Constitutional and Mainland Affairs (HCAL 72/2012)	3	1,737,648
Fees and expenses incurred in relation to briefing a London QC, a local SC and a local junior counsel to act for the Secretary for Constitutional and Mainland Affairs in resisting the JR taken out by the Applicant, who challenged the constitutionality of section 39(2A) of the Legislative Council Ordinance (Cap. 542), which disqualifies a person from being nominated as a candidate at a by-election within six months of his resignation as a member of the Legislative Council. The JR was heard by the CFI on 10 December 2013 and was dismissed by judgment handed down on 5 March 2014.		
10. Moulin Global Eyecare Trading Ltd. (in liquidation) (formerly known as Moulin Optical Manufactory Ltd.) v Commissioner of Inland Revenue (FACV 5/2013)	2	1,909,658
Fees and expenses incurred in relation to briefing a London QC and a local junior counsel to advise and appear for the Commissioner of Inland Revenue as the Respondent in an appeal to the CFA. The legal issues involved were whether the guilty knowledge of the fraudulent directors should be attributed to the Appellant in the context of the case and whether the liquidators could rely on section 64 of the Inland Revenue Ordinance (Cap. 112) to seek extension of time for lodging an objection as well as section 70A of the Ordinance for repayment. The hearing took place before the CFA from 17 to 19 February 2014 and judgment was handed down on 13 March 2014 dismissing the Appellant's appeal.		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
11. Ho Loy v Director of Environmental Protection (DEP) and Chief Executive in Council (CEIC) (HCAL 100/2013)	2	1,404,100
<p>Fees and expenses incurred in relation to briefing a local SC and a local junior counsel to act for the DEP and CEIC (and Civil Engineering and Development Department (CEDD) as the Interested Party) in resisting a JR application taken out by the Applicant against the decisions of DEP and CEIC dated 10 May 2013 and 4 June 2013 respectively not to exercise their respective powers under sections 14(1) and 14(3) of the Environmental Impact Assessment Ordinance (Cap. 499) to suspend or cancel the Environmental Permit for CEDD's project to develop a bathing beach at Lung Mei, Tai Po. The substantive hearing was held on 18 February 2014. CFI handed down its judgment on 12 August 2014 dismissing the JR. The Applicant lodged an appeal against the said judgment on 4 November 2014.</p>		
12. C & Others v D of Imm and S for S (FACV 18-20/2011)	6	4,669,714

Fees and expenses incurred in relation to briefing a London QC, a London junior counsel (for advice only), two local SC and a local junior counsel to advise and appear on behalf of the S for S and the D of Imm in an appeal to the CFA. An expert on Basic Law was also engaged to provide advice on the case. The appeal concerned whether Hong Kong has a legal obligation under alleged customary international law to screen claims for refugee status independently of the United Nations High Commissioner for Refugees (UNHCR). The CFA did not make a ruling on the customary international law issue (on which the CFI and the CA held in favour of the Government) but held that on the basis of the Hong Kong's policy/practice to take into account humanitarian considerations before removing a person from Hong Kong and to take persecution risk in the receiving state as a relevant consideration, Hong Kong is obliged to assess independently of the UNHCR a person's persecution risk prior to removal.

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13. Designation Criteria for Hong Kong Based Carriers	2	1,700,950
<p>Fees and expenses incurred in relation to briefing a London QC and a local junior counsel to advise the Transport and Housing Bureau on their review of the framework for designation of Hong Kong based carriers under air services agreements or arrangements.</p>		
14. Nice Cheer Investment Ltd. v Commissioner of Inland Revenue (CIR) (FACV 23/2012)	3	1,644,666
<p>Fees and expenses incurred in relation to briefing a London QC, a local SC and a local junior counsel to advise and appear on behalf of the CIR in an appeal to the CFA. The appeal concerned the taxability of unrealised gains of trading securities held by the Taxpayer at its financial year-end and recorded in its accounting statements prepared in accordance with prevailing commercial accounting standards. The appeal was heard by the CFA from 16 to 17 October 2013. By a judgment dated 12 November 2013, the CFA dismissed the CIR's appeal holding that unrealised profits are not chargeable to tax.</p>		
15. Hysan Development Co Ltd. and eight others, Leighton Property Co. Ltd. and Lee Theatre Realty Ltd. v Town Planning Board (CACV 232/2012 & CACV 233/2012)	2	1,133,675
<p>Fees and expenses incurred in relation to briefing a local SC and a local junior counsel to act for the TPB in resisting appeals lodged by the Applicants (being companies of the Hysan group). In the appeals, the Applicants sought to challenge the TPB's powers and procedures and to quash the TPB's decisions in relation to planning restrictions imposed in two Draft Outline Zoning Plans. The appeals were part heard by the CA from 11 to 13 February 2014 and the hearing resumed from 22 to 23 July 2014. On 13 November 2014, CA handed down its judgment allowing the appeals.</p>		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
<p>16. Ho Chun Yan Albert v CY Leung and SJ (FACV 1/2013)</p> <p>Fees and expenses incurred in relation to briefing two local SC and a local junior counsel to appear for the SJ as an Intervener in the Appellant’s appeal involving the scope and procedure of lodging election petitions under the Chief Executive Election Ordinance (Cap. 569) and their relationship to JR proceedings. This appeal also concerned an order for costs made by the CFI against the Appellant. By the CFA judgment of 13 July 2013, the Appellant’s appeal was partly dismissed and partly allowed.</p>	3	1,175,670
<p>17. Oriental Generation Ltd. (OGL) v TPB (CACV 127/2012 & CACV 129/2012)</p> <p>Fees and expenses incurred in relation to briefing a London QC, a local SC, a local junior counsel and an expert to act for the TPB in its appeal and in OGL’s cross appeal against the CFI judgment dated 11 May 2012. In the appeals, the TPB sought to challenge the CFI judgment quashing certain planning restrictions imposed on OGL’s Kai Tak Mansion Site in the subject Draft Outline Zoning Plan, while OGL argued in its cross appeal that the CFI had erred in dismissing its grounds of JR (illegality, procedural impropriety, etc.) on which it failed in the three JR applications (HCAL 62/2011, HCAL 109/2011 and HCAL 34/2012). The appeals were heard by the CA from 18 to 20 February 2014. On 13 November 2014, CA handed down its judgment dismissing the TPB’s appeal and holding it unnecessary to grant the relief sought by OGL in its cross-appeal.</p>	4	1,197,970
<p>18. Victims of Vessels Collision near Lamma Island on 1 October 2012</p> <p>Fees and expenses incurred in relation to briefing a London QC (also being a local SC), a London junior counsel and a local junior counsel (now being a local SC) to advise on the legal issues relating to the vessels collision near Lamma Island on 1 October 2012.</p>	3	1,214,504

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
19. Asif Ali v D of Imm and S for S (FACV 17/2011)	4	1,178,047

Fees and expenses incurred in relation to briefing a London QC, a local SC and a local junior counsel to advise and appear on behalf of the S for S and the D of Imm as the Appellants in an appeal to the CFA. The appeal concerned the issue whether by virtue of section 2(4)(b) of the Immigration Ordinance (Cap. 115), the Respondent's period of ordinary residence in Hong Kong was truncated by a period (which was not *de minimus*) of detention pursuant to an Order of the District Court pending trial which resulted in conviction and imprisonment of the Respondent.

In the judgment handed down on 25 March 2013, the CFA held that there is a fundamental qualitative difference between detention pending trial, which is not punitive, and imprisonment pursuant to the sentence of the court after trial, which serves the very purpose of being punitive. Hence, the Respondent's period of ordinary residence in Hong Kong should not be truncated by the period of detention pending trial.

20. Gutierrez Josephine B v The Commissioner of Registration & Another (CACV 21/2012) Gutierrez Joseph James, a minor by Gutierrez Josephine B, also known as Gutierrez Josephine Balando, his mother and next friend v The Commissioner of Registration & Another (CACV 22/2012)	3	1,037,891
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Fees and expenses incurred in relation to briefing a London QC, a local SC and a local junior counsel to act for the Commissioner of Registration in resisting the appeals by a foreign domestic helper and her son against the judgment of the CFI handed down on 10 November 2011 refusing their respective JRs challenging (a) the Commissioner of Registration's refusal to issue a Hong Kong permanent identity cards to them; and (b) the Registration of Persons Tribunal's dismissal of their

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
<p>respective appeals against the Commissioner's refusal. The mother's appeal (CACV 21/2012) was withdrawn before the substantive hearing as a binding CFA judgment had been handed down beforehand. The CA dismissed the son's appeal (CACV 22/2012) by judgment of 7 June 2013.</p>		
<p>21. Jade's Realm Ltd. v The Director of Lands for and on behalf of the Government of the Hong Kong Special Administrative Region (HKSAR) (HCA 1509/2012)</p>	2	1,076,250
<p>Fees and expenses incurred in relation to briefing a local leading counsel and a local junior counsel to act for the Director of Lands in resisting this action instituted by the Plaintiff, Jade Realm's Ltd.: the Plaintiff claimed adverse possession, encroachment and/or propriety estoppel, and sought a declaration that the Government's right to recover the subject Government land was extinguished. On the other hand, the Government counterclaimed for delivery of immediate vacant possession of the subject Government land, mesne profits and damages.</p>		
<p>22. GA v D of Imm (FACV 7/2013) PA v D of Imm and S for S (FACV 8/2013) FI v D of Imm (FACV 9/2013) JA v D of Imm (FACV 10/2013)</p>	3	4,046,880
<p>Fees and expenses incurred in relation to briefing a London QC, a local SC and a local junior counsel to advise and appear on behalf of the S for S and the D of Imm in a series of appeals to the CFA. The appeals concerned challenges by mandated refugees and the first screened-in torture claimant against the D of Imm's policy not to permit them to take up paid employment in Hong Kong pending their resettlement save in exceptional circumstances, praying in aid Article 33 of the Basic Law, Articles 3 and 14 of the HKBOR, Article 6 of the International Covenant on Economic, Social and Cultural Rights and the alleged right to work under</p>		

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
common law. The appeals were heard by the CFA from 8 to 9 January 2014 and were dismissed by judgment handed down on 18 February 2014.		
23. CLP Power Hong Kong Ltd. (CLP) v Commissioner of Rating and Valuation (CRV) (LDGA 241/2004, LDRA 365/2004, LDRA 366/2004, LDRA 367/2004, LDRA 368/2004 and LDRA 369/2004)	2	2,521,363
Fees and expenses incurred in relation to briefing local SC and a local junior counsel for the CRV in the six rating appeals and Government rent appeals lodged by CLP against CRV's valuation of CLP's "Generation, Transmission & Distribution System/Tenement" for the assessment year of 2004-05 (as test appeals). The main issue of the appeals was on the appropriate valuation method to be adopted. The Lands Tribunal handed down judgment in favour of CLP on 24 April 2013. Both parties applied for review of the judgment on various valuation issues. Review hearing took place on 13 and 16 to 20 December 2013. The Lands Tribunal handed down the review judgment largely in favour of CLP on 3 January 2014. CLP applied for leave to appeal against the judgments of the Lands Tribunal on legal issues, and CRV applied for variation of the costs order nisi in favour of CLP under the main judgment dated 24 April 2013. The said applications were heard on 27 March 2014 with judgment reserved.		
24. Fees and expenses incurred in 595 other civil cases under \$1 million each	-	58,261,149
Sub-total: 618 cases		109,829,465

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
Criminal		
25. HKSAR v Hui Rafael Junior & Four Others (ESCC 2530/2012) (HCCC 98/2013)	5	12,379,023

Defendant (D)1 was a former Chief Secretary for Administration of HKSAR. D2 and D3 were the Vice-Chairmen and Managing Directors of a publicly listed company while D4 was an Executive Director of the company. D5 was the former Chief Operating Officer of the Hong Kong Exchanges and a long-time friend of D1. The case involved eight charges – three of misconduct in public office, contrary to Common Law; three of conspiracy to commit misconduct in public office, contrary to Common Law and Section 159A of the Crimes Ordinance (Cap. 200); one of conspiracy to offer an advantage to a public servant, contrary to Section 4(1)(a) of the Prevention of Bribery Ordinance (Cap. 201) and Section 159A of the Crimes Ordinance; and one of furnishing false information, contrary to Section 19(1)(b) of the Theft Ordinance (Cap. 210). The Defendants were charged on 13 July 2012. On 8 March 2013, the Defendants were committed for trial before the CFI which was set down for trial commencing 8 May 2014. After amendments to the charges in February 2014, D1 faced all eight charges, D2 faced three of the charges, D3 faced four of the charges, and each of D4 and D5 faced two of the charges.

Having regard to the background of the Defendants and the company in question, the complexity of the case given its nature and the gravity of the crime involved, as well as the extensive array of local SC and juniors as well as overseas QC engaged by the Defendants, we needed to handle this case with a high level of professional competency to ensure that due care and attention were being exercised in every step we took. Apart from setting up a dedicated team internally to manage the case, we also needed to engage outside lawyers (including local SC and overseas QC, plus junior counsel) to handle the actual

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
prosecution work. Thus, we have engaged an overseas QC, a local SC, an overseas junior plus a local junior (for the trial before the CFI) to handle the prosecution of the case in court.		
Four of the five Defendants were convicted on 19 December 2014 for some of the offences after trial and on 23 December 2014 were sentenced to imprisonment for durations ranging from 5 years to 7.5 terms of years. D2 and D4 were also fined \$500,000 and disqualified from being directors of any company for periods same as their imprisonment terms. In addition, each of D2 and D4 had to pay \$12.5 million of the prosecution's costs. D1 was further ordered to return \$11.182 million to the HKSAR Government. The four Defendants have since filed notices of appeal.		
26. HKSAR v Chan Chun Chuen (ESCC 2233/2011) (HCCC 182/2012)	2	5,009,733

The case against the Defendant arose from a probate action initiated by Chinachem Charitable Foundation Ltd. In the course of the probate action, the Defendant sought to rely on a will purportedly made by the late Madam Nina WANG by which her entire fortune was left to him. At the end of the probate action, the trial Judge found that the will produced by the Defendant was a forged document.

Following the trial Judge's comments on the forged will, investigation was conducted against the accused, resulting in the Defendant being charged for one count of "forgery" and one count of "using a false instrument". Given the complexity of the issues involved, an overseas QC was briefed to handle the case (including the preliminary inquiry, pre-trial reviews and preliminary hearing on legal argument) while a local junior counsel was also briefed to assist in the actual trial with jury which ran for 32 days in the CFI from May to July 2013. The Defendant was eventually convicted after trial of both charges. The trial judge imposed a concurrent sentence of twelve years'

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
imprisonment. The Defendant has lodged an application with the CA for leave to appeal against conviction and sentence. The hearing date for the application for appeal is not yet fixed.		
27. HKSAR v Chen Keen & Others (ESCC 1834/2012)	1	3,040,182

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 an inflated cost of NZ\$500 million (the Acquisition) and without disclosing their beneficiary interest in the said 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 audit team of D1's company in the due diligence check of the said farms in New Zealand.

D4 and another person, both executive directors of D1's company, also caused to be issued false minutes of Board of Directors meetings to approve the conversion of the convertible notes into shares of the company such that the company would be issuing shares to D2's companies before they had actually acquired the dairy farms in New Zealand, detrimental to the financial interest of D1's company.

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

All Defendants faced charges of conspiracy to defraud (three charges for D1 and D2 respectively, and one charge each for D3 and D4), while D1 also faced one charge 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

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
<p>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. The Preliminary Inquiry overran until February 2014. Expenses were also incurred as a result of an evidence taking exercise held at the New Zealand High Court pursuant to a Mutual Legal Assistance Request.</p> <p>D1, D2 and D3 were committed to the Court of First Instance for trial (HCCC 83/2014). The trial was scheduled to commence on 13 October 2015 with 90 days reserved.</p>	3	3,034,000
<p>28. HKSAR v Yeung Ka Sing Carson (DCCC 860/2011)</p>		

The Defendant was charged with five counts of “money laundering” offences in relation to the bank accounts controlled by him. The offences covered a period of six years involving a total of around \$721 million. At trial, the Defendant was represented by an SC and a junior (and at a later stage three junior counsel) and he engaged two forensic accountants as his expert witness.

In view of the sensitivity and complexity of the case, in particular that the expert evidence was in serious dispute, it was necessary to engage an SC of sufficiently high calibre and with rich experience in commercial crime cases, assisted by a local junior to prosecute the trial.

A forensic accountant was also engaged by the prosecution to examine the pattern of the relevant bank transactions in the bank account of the Defendant and his father to ascertain if there were any hallmarks of money laundering and to deal with the evidence of the two defence experts.

The trial took place between 29 April 2013 and 12 December 2013. After a 58-day trial, the Defendant was convicted on 28 February 2014 of all charges. The

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
Defendant has lodged an appeal against conviction and sentence which has been fixed for 11 March 2015.		
29. HKSAR v Hon Ming Kong & Two Others (CACC 272/2011)	2	2,103,026

It is an appeal against convictions and sentences involving a total of 14 charges against various Defendants.

A prosecution witness (PW1) and the three Defendants (D1, D2 and D3) were prosecuted in relation to allegation for arrangement for funds to be transferred from two publicly listed companies for embezzlement. The Defendants also implemented various plans to cover up their misappropriations. PW1 pleaded guilty to six out of 18 charges and gave evidence against D1 to D3. D1 and D3 intended to call witnesses from the People's Republic of China to give evidence in their defence. They obtained the letters of request but eventually failed to secure the attendance of the witnesses. The Defendants were subsequently convicted after trial which lasted for more than 120 days extending over 38 months.

D1, D2 and D3 applied for appeal against conviction and sentence, and all of them were represented by QC and/or SC plus other counsel. A QC who was experienced and capable to prosecute the appeal, plus a local fiat counsel, were engaged to represent the prosecution.

Hearing lasted for nine days. All Defendants were granted leave to appeal against some of the charges with the sentence imposed in relation thereto set aside, while D2 and D3 were also granted leave to appeal sentence in relation to the charges upheld. Their appeals against the rest of the charges and sentences were all dismissed. They all took out Notices of Motion for certificates to appeal to the CFA and the Motions were all dismissed. All Defendants further applied to the CFA for leave. After hearing on 23 October 2014, the CFA dismissed the applications for leave.

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
30. HKSAR v Chiang Lily & Two Others (CACC 238/2011)	1	1,482,427

D1 was founder of two public listed companies. D2 was a director of one of the two companies and D3 was a director of the other company. D1 was found to have conspired with D2 and D3 to deceive the shareholders of the two companies as well as the regulatory authorities in respect of the true extent of D1's interests in the share options/shares of the two companies.

After trial, D1 and D2 were convicted of conspiracy to defraud while D1 and D3 were found guilty of fraud and of authorizing the issue of a prospectus containing an untrue statement. D1, D2 and D3 were sentenced to imprisonment for three years and a half, two years and 19 months respectively.

D1 and D2 subsequently applied for leave to appeal against convictions only while D3 applied for leave to appeal against conviction and sentence. D1 was represented by 1 SC, 1 QC plus local counsel. Given the complicated questions of law and facts involved in this appeal, a QC was briefed to prosecute the appeal.

The CA dismissed D1, D2 and D3's appeal against conviction but allowed D3's appeal against sentence to the extent that his sentence was reduced by two months.

D1, D2 and D3 further applied for leave to appeal to the CFA but their applications were dismissed by the Appeal Committee of the CFA.

31. HKSAR v Ng Chun To Raymond & Cheng Yuen Yi (CACC 178/2010) (CAAR 5/2010)	1	1,387,570
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The appeal and application arose from the consolidated case of DCCC 405 and 895/2009. Four Defendants were prosecuted involving 23 charges. The prosecution alleged that D1 conspired with those named in the respective charges to take part in schemes which involved the false

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
<p>trading in various warrants issued by different financial institutions in Hong Kong. It was the prosecution's case that D4, the wife of D1, was a person who then dealt with the money made from the fraudulent trading.</p> <p>In that trial, an originally immunised prosecution witness (PW1) refused to testify and the prosecution proceeded without his evidence. D1 and D4 were convicted on the evidence of the other co-conspirators and the corroborating circumstantial evidence. D1 and D4 were sentenced to four years' and three years' imprisonment respectively. After the convictions, it was revealed that PW1 had been coached by three ICAC officers. D1 and D4 thus appealed against their convictions and were presented by a QC and an SC respectively.</p> <p>The appeals involve difficult and complex issues of law in relation to abuse of process, severance and spousal incrimination, and co-conspirator's rule, as well as a large volume of transcripts and consideration of case law from other jurisdictions. An overseas QC, who was a widely recognized expert in criminal cases in the common law world, was therefore engaged to represent the prosecution.</p>	1	1,287,605
<p>32. HKSAR v Nancy Ann Kissel (CACC 66/2012)</p>		

The Applicant was charged with and convicted of murdering her husband after trial in 2005, contrary to Common Law and punishable under section 2 of the Offences against the Person Ordinance, Cap. 212.

Her appeal against conviction was dismissed by the CA in 2008 but was allowed by the CFA in 2010 and a retrial was ordered. The case was complex and the Applicant was represented by a QC. A QC from London was engaged to prosecute the retrial. The Applicant was subsequently convicted of murder after the re-trial and was sentenced to life imprisonment.

The Applicant applied for leave to appeal against conviction out of time on 25 February 2012. Given the

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
<p>serious and sensitive nature of this appeal, the substantial and complex factual and legal issues involved, the level of representation by the Applicant and the benefit of continuity of representation, the same QC who prosecuted in the re-trial was briefed to advise and appear as leading counsel for the prosecution at the appeal.</p> <p>The CA dismissed the Applicant's application for leave to appeal against conviction. The Applicant's subsequent applications to the CA for a certificate and to the Appeal Committee for a certificate-cum-leave to appeal to the CFA were also dismissed.</p>	2	1,098,000
<p>33. HKSAR v Mak Chai Kwong & Another (DCCC 956/2012)</p>		

D1, a former Secretary for Development, D2, an Assistant Director of the Highways Department, were suspected of having conspired together to defraud the Hong Kong Government, between 8 June 1985 and 31 December 1990, in claiming and receiving Private Tenancy Allowance (PTA) by falsely representing that they did not have a financial or proprietary interest in the flats that they respectively leased and that the leases were with unrelated third party and by concealing their financial interest in the flats. D1 had allegedly deceived PTA totaling about \$260,000 while D2 allegedly had deceived about \$445,000 PTA in total. Both Defendants faced charges of conspiracy to defraud (one count against D1 and D2 jointly) and of agent using a document with intent to deceive his principal (two counts against D1 solely and three counts against D2 solely). Both Defendants were represented by local SC.

Taking into account the significance and the complexity of this case, and the media attention it would likely attract, a competent SC with rich criminal experience and a junior counsel were briefed to prosecute the case.

The two Defendants were convicted in respect of all offences after trial in the District Court and were each sentenced in August 2013 to a total of eight months'

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
imprisonment suspended for two years. Both Defendants subsequently lodged an appeal against conviction to the Court of Appeal and the appeals were dismissed in November 2014 by the Court of Appeal. They have lodged applications for leave to appeal to the Court of Final Appeal. The matter is now pending directions from the Registrar of the Court of Final Appeal.		
34. HKSAR v Ma Sin Chi & Four Others (HCCC 323/2012)	2	1,190,325

D1 was charged with four counts of agent accepting advantage. D2 to D5 were variously charged with four counts of offering advantage to an agent mirroring D1's charges.

This case was investigated by the ICAC. D1 was a vice president of an overseas bank and D2 to D5 were a family of investors. It was alleged that D1 accepted bribes (totalled HK\$24.8 million) from D2 to D5 in return for D1 giving them information about derivative warrants issued by the Bank which facilitated their trading in those derivative warrants.

The issue in the case was the nature of the money transactions between D1 and D2 to D5.

All Defendants were represented by SC and the evidence involved (consisted mostly of trading records of derivative warrants, bank records, audio recording of telephone conversations of the bank) was voluminous. Therefore, a competent senior junior counsel with rich criminal experience as a trial advocate in the CFI addressing factual issues, who could stand up against SC was engaged. An expert in the trading of derivative warrants was also engaged to analyze the telephone conversations and the trading pattern of the family involved.

The trial was originally set down for 25 days but it overran until 9 December 2013, resulting in a total of 56 days. D1 was convicted of four counts of accepting an advantage

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
while D2 was convicted of four counts of offering advantage of the same amount. Other Defendants were acquitted. Both D1 and D2 filed notices of appeal against conviction and sentence. The appeals are yet to be heard.		
35. Fees and expenses incurred in 51 other criminal cases under \$1 million each.	-	10,708,746
Sub-total: 61 cases		42,720,637
Total expenditure	(679 cases)	152,550,102

**Legal services for construction dispute resolution
Breakdown of cases briefed out at fees
not covered by the approved scales in 2013-14**

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
<p>1. Shatin New Town, Stage II - Road T3 & Associated Roadworks - Contract No. ST 79/02 Arbitration between MBH Joint Venture (Maeda Corporation, Barbican Construction Co. Ltd., Hsin Chong Construction Co. Ltd.) and the Government of the Hong Kong Special Administrative Region (HKSAR)</p> <p>Fees and expenses incurred in relation to appointing an arbitrator and engaging a solicitors' firm, a London QC, a London and a local junior counsel, a quantum and programming expert and a traffic engineering expert in an arbitration in respect of claims brought by the Contractor against the Government for the cost of extensions of time, disruption, prolongation, acceleration, variations and missing items.</p>	7	41,325,576
<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 and engaging a solicitors' firm, a London QC, a local junior counsel, a quantum expert and a programming 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>	6	23,072,422

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
<p>3. 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>	4	12,704,759
<p>Fees and expenses incurred in relation to appointing an arbitrator and engaging a solicitors' firm, a local counsel and a quantum expert in an arbitration in respect of claims brought by the Contractor against the Government for the cost of extensions of time, prolongation, delay, measurement and valuation, variations, additional works and Final Account items.</p>		
<p>4. Rehabilitation of Shek O Quarry - Contract No. GE/93/14 Arbitration between Shek O Quarry Ltd. and the Government of the HKSAR</p>	4	5,152,980
<p>Fees and expenses incurred in relation to engaging a solicitors' firm and a local counsel, a quarry expert and a quantum expert in an arbitration in respect of claims brought by the Contractor against the Government for additional costs, loss of profits, management costs and interest.</p>		
<p>5. Cheung Chau Old Town Road & Drainage Improvements Stage 2 - Contract No. IS 13/04 Arbitration between China Metallurgical Group Corporation and the Government of the HKSAR</p>	4	2,931,062
<p>Fees and expenses incurred in relation to appointing an arbitrator and engaging a solicitors' firm, a local counsel and a quantum expert in an arbitration in respect of claims brought by the Contractor against the Government for the reimbursement of its costs for alleged variation of contract, missing items, disruption and prolongation costs.</p>		

	Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
6.	<p>Western & Central Water Supply Stage 1 Mainlaying in Sheung Wan and Sai Ying Pun - Contract No. 13/WSD/95 Water Supply to West Kowloon Reclamation – Stage 1 Construction of Shek Kip Mei No. 2 Fresh Water Service Reservoir & Associated Mainlaying - Contract No. 14/WSD/94 Arbitration between UDL Contracting Ltd. and the Government of the HKSAR</p> <p>Fees and expenses incurred in relation to engaging a solicitors’ firm, two local SC and a quantum expert in arbitrations in respect of claims brought by the Contractor against the Government for the cost of extension of time, delay, variations, measurement and interest/finance, and obtaining legal advice on the related UDL Scheme of Arrangement.</p>	4	1,822,354
7.	<p>Central Reclamation Phase III - Hinterland Drainage Improvement Works - Contract No. HK 16/03 Arbitration between Wang Kee Construction Co. Ltd. and the Government of the HKSAR</p> <p>Fees and expenses incurred in relation to engaging a solicitors’ firm, a local counsel and a quantum expert in an arbitration in respect of claims brought by the Contractor against the Government for extension of time, prolongation, measurement and variations.</p>	3	1,936,047
8.	<p>Central Reclamation Phase III - Engineering Work - Contract No. HK 12/02 Mediation between Leighton - China State - Van Oord Joint Venture and the Government of the HKSAR</p> <p>Fees and expenses incurred in relation to engaging a solicitors’ firm in a mediation in respect of the substantial claims brought by the Contractor against the Government for costs due to prolongation, disruption, variation and missing items.</p>	1	2,593,208

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
<p>9. Dispute Resolution Proceedings Relating to Re-entry of Contracts - Contract Nos. YL40/98, FL23/99, DC/95/06 & DC/98/01</p> <p>Fees and expenses incurred in relation to engaging a solicitors' firm and a Mainland law expert in arbitrations and/or any alternative dispute resolution processes that may be initiated against the Contractor and/or its successor for recovery of additional costs arising from re-entry of the contracts.</p>	2	1,646,108
<p>10. Highways Department Term Contract (Kowloon West 2003-2006) - Part-time Pedestrianisation Scheme - Contract No. 16/HY/2002 Arbitration between Paul Y. General Contractors Ltd. and the Government of the HKSAR</p> <p>Fees and expenses incurred in relation to appointing an arbitrator and engaging a local counsel and a quantum expert in an arbitration in respect of claims brought by the Contractor against the Government for variations.</p>	3	2,532,647
<p>11. Maeda Corporation, Hitachi Zosen Corporation, Yokogawa Bridge Corporation, Hsin Chong Construction Company Ltd. (Trading as Maeda-Hitachi-Yokogawa-Hsin Chong Joint Venture) and the Government of the HKSAR (CACV 230/2011)</p> <p>Fees and expenses incurred in relation to engaging a solicitors' firm, a London QC, a local junior counsel and a quantum expert in the Contractor's appeal to the CA against the refusal of the CFI to grant leave to appeal against the arbitrator's award. The appeal was subsequently dismissed.</p>	4	1,394,905

Brief description of case/matter	Number of counsel/legal firms/other professionals involved	Expenditure \$
12. Rehabilitation of Shek O Quarry - Contract No. GE/93/14 Mediation between Shek O Quarry Ltd. and the Government of the HKSAR	2	1,116,817
Fees and expenses incurred for the purposes of mediation in relation to engaging a local counsel and a quarry and quantum expert in a mediation in respect of claims brought by the Contractor against the Government for additional costs, loss of profits, management costs and interest.		
13. Fees and expenses incurred in 14 other civil cases under \$1 million each.	-	3,366,212
Total expenditure	(26 cases)	101,595,097
