

Chapter:	492	COSTS IN CRIMINAL CASES ORDINANCE	Gazette Number	Version Date
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		Long title		30/06/1997
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An Ordinance to provide for costs in criminal cases.

(Enacted 1996)

[17 January 1997] L.N. 25 of 1997

(Originally 39 of 1996)

Part:	I	PRELIMINARY		30/06/1997
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(Enacted 1996)

Section:	1	Short title		30/06/1997
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(1) This Ordinance may be cited as the Costs in Criminal Cases Ordinance.

(2) (Omitted as spent)

(Enacted 1996)

Section:	2	Interpretation	10 of 2008	09/05/2008
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In this Ordinance, unless the context otherwise requires-

"contribution" (分擔費用) has the meaning assigned to it in section 2 of the Legal Aid Ordinance (Cap 91);

"court" (法院) includes a magistrate, the District Court, the Court of First Instance and the Court of Appeal;
(Amended 25 of 1998 s. 2)

"defendant" (被告人) includes-

- (a) an accused person;
- (b) a defendant served with a copy of a notice of prosecution under section 7D of the Magistrates Ordinance (Cap 227);
- (c) any person against whom an information or a complaint is laid or criminal proceedings are instituted;
and
- (d) in the case of a defendant who is appealing against conviction or any other finding or verdict made in respect of him or sentence, an appellant;

"Director of Legal Aid" (法律援助署署長) has the meaning assigned to "Director" in section 2 of the Legal Aid Ordinance (Cap 91);

"District Judge" (區域法院法官) includes a Deputy District Judge; (Amended 25 of 1998 s. 2)

"information" (告發) has the meaning assigned to it in section 2 of the Magistrates Ordinance (Cap 227);

"judge" (法官) means a Justice of Appeal, a judge of the Court of First Instance, a recorder of the Court of First Instance and a deputy judge of the Court of First Instance; (Amended 25 of 1998 s. 2)

"Legal Aid Officer" (法律援助主任) has the meaning assigned to it in section 2 of the Legal Aid ordinance (Cap 91);

"legal officer" (律政人員) has the meaning assigned to it in section 2 of the Legal Officers Ordinance (Cap 87);

"legal or other representative" (法律代表或其他代表) includes any person who has a right of audience or a right to conduct litigation on behalf of any party to the proceedings or who is exercising any such right;

"legally aided defendant" (獲法律援助的被告人) has the meaning assigned to "aided person" in section 2 of the Legal Aid Ordinance (Cap 91);

"party to the proceedings" (法律程序中一方) means the defendant or the prosecutor;

"procedural Ordinance" (程序條例) means the Criminal Procedure Ordinance (Cap 221);

"prosecutor" (檢控人) includes-

- (a) any person who lays an information or a complaint or institutes criminal proceedings; and
- (b) in the case of an appeal by a defendant against conviction or any other finding or verdict made in respect of him or sentence, the respondent in any such appeal;

"wasted costs" (虛耗訟費) means any costs incurred by a party to the proceedings-

- (a) as a result of-
 - (i) any seriously improper act or omission; or
 - (ii) any undue delay or any other serious misconduct, on the part of any representative or any employee of a representative; or
- (b) which, in the light of any such act, omission, delay or misconduct occurring after they were incurred, the court considers it is unreasonable to expect that party to the proceedings to pay. (Replaced 10 of 2008 s. 20)

(Enacted 1996)

Part:	II	DEFENCE COSTS		30/06/1997
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(Enacted 1996)

Section:	3	Defence costs in summary proceedings	14 of 2003	09/05/2003
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(1) Where-

- (a) an information or complaint laid before a magistrate is not proceeded with;
- (b) a magistrate inquiring into an indictable offence determines not to commit the defendant for trial;
- (c) a magistrate dealing with a summary offence or any offence summarily dismisses the information or complaint or acquits the defendant; or
- (d) a magistrate, under section 104 of the Magistrates Ordinance (Cap 227)- (Amended 14 of 2003 s. 10)
 - (i) on the application of the defendant or on his own initiative reviews his decision, and on that review reverses or varies his decision; or
 - (ii) on the application of the prosecutor reviews his decision, and on that review confirms his decision, (Amended 14 of 2003 s. 10)

the magistrate may order that costs be awarded to the defendant.

(2) An order for costs under subsection (1) shall not exceed \$30000, unless-

- (a) the defendant and the prosecutor have agreed upon the terms of any order to be made by the magistrate for costs exceeding that sum; or
- (b) the magistrate, in the absence of any such agreement, orders that those costs be taxed.

(3) The Chief Justice may, with the approval of the Legislative Council, by order, amend the sum specified in subsection (2).

(Enacted 1996)

Section:	4	Defence costs if not tried	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

Where a defendant is not tried for an offence for which he has been indicted or committed for trial, the District Court or the Court of First Instance may order that costs be awarded to the defendant.

(Enacted 1996. Amended 25 of 1998 s. 2)

Section:	5	Defence costs in case of acquittal	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

Where after trial in the District Court or the Court of First Instance a defendant is acquitted, the District Court or the Court of First Instance may order that costs be awarded to the defendant.

(Enacted 1996. Amended 25 of 1998 s. 2)

Section:	6	Defence costs in case of partial acquittal on multiple charge	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

Without affecting the power conferred on a magistrate under section 3(1)(c) or, on the District Court or the Court of First Instance under section 5 to order that costs be awarded to a defendant who is acquitted, where a defendant who is charged with the commission of more than one offence is acquitted of one or more than one but not all of any of such offences, the court may in relation to all or any of such acquittals order that costs be awarded to the defendant.

(Enacted 1996. Amended 25 of 1998 s. 2)

Section:	7	Defence costs on discharge after committal without a hearing		30/06/1997
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Where a judge directs that a defendant be discharged under section 16 of the procedural Ordinance, the judge may order that costs be awarded to the defendant.

(Enacted 1996)

Section:	8	Defence costs on appeal from magistrate		30/06/1997
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Where a judge-

- (a) allows an appeal to which section 105 or 113 of the Magistrates Ordinance (Cap 227) applies, in the exercise of his powers under section 120 of that Ordinance; or
- (b) in any appeal against sentence imposed by a magistrate, quashes the sentence and in place of it imposes a less severe punishment than that so imposed,

the judge may order that costs be awarded to the defendant.

(Enacted 1996)

Section:	9	Defence costs where appeal allowed by Court of Appeal		30/06/1997
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(1) Where the Court of Appeal allows an appeal to which this section applies, the Court of Appeal may order that costs be awarded to the defendant.

(2) This section applies to any appeal-

- (a) under section 82 of the procedural Ordinance against conviction;
- (b) under section 83G or 83H of the procedural Ordinance against sentence, if and only if, the Court of Appeal quashes the sentence and in place of it imposes a less severe punishment than that imposed by the court below, under section 83I(4) of that Ordinance;
- (c) under section 83J of the procedural Ordinance against verdict of not guilty by reason of insanity, except where the Court of Appeal deals with the appeal under section 83K(4)(a) of that Ordinance;
- (d) under section 83M of the procedural Ordinance against a finding under section 75 of that Ordinance that the defendant is under a disability, except where the Court of Appeal deals with the appeal under section 83N(3) of that Ordinance.

(Enacted 1996)

Section:	9A	Defence costs where Court of Appeal dismisses appeal by way of case stated	23 of 2002	19/07/2002
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If the Court of Appeal dismisses an appeal under section 84 of the District Court Ordinance (Cap 336), the Court of Appeal may order that costs be awarded to the defendant.

(Added 23 of 2002 s. 9)

Section:	9B	Defence costs on unsuccessful application by prosecutor for a certificate of Court of Appeal or Court of First Instance	10 of 2005	08/07/2005
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Where the prosecutor unsuccessfully applies to the Court of Appeal or the Court of First Instance for a certificate under section 32(2) of the Hong Kong Court of Final Appeal Ordinance (Cap 484), and the Court of Appeal or the Court of First Instance, as the case may be, is satisfied that the application is without merit, the Court of Appeal or the Court of First Instance, as the case may be, may order that costs be awarded to the defendant.

(Added 10 of 2005 s. 45)

Section:	10	Defence costs to be a charge on the general revenue or recoverable as a civil debt		30/06/1997
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Any costs awarded to a defendant by virtue of an order made under this Part shall-

- (a) in respect of criminal proceedings instituted by or on behalf of the Government, be charged on the general revenue;
- (b) in respect of criminal proceedings instituted by or on behalf of any person other than the Government, be a charge against such person and a debt due to the defendant from that person and be recoverable as a civil debt.

(Enacted 1996)

Part:	III	PROSECUTION COSTS		30/06/1997
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(Enacted 1996)

Section:	11	Prosecution costs in summary proceedings		30/06/1997
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(1) Where-

- (a) a defendant is convicted by a magistrate or a magistrate makes an order on complaint in respect of a defendant under the Magistrates Ordinance (Cap 227); or
- (b) a magistrate, under section 104 of that Ordinance, on the application of the defendant reviews and subsequently confirms his decision to convict a defendant or to make an order on complaint in respect of a defendant,

the magistrate may order that costs be awarded to the prosecutor.

(2) An order for costs under subsection (1) shall not exceed \$30000, unless-

- (a) the defendant and the prosecutor have agreed upon the terms of any order to be made by the magistrate for costs exceeding that sum; or
- (b) the magistrate, in the absence of any such agreement, orders that those costs be taxed.

(3) The Chief Justice may, with the approval of the Legislative Council, by order, amend the sum specified in subsection (2).

(Enacted 1996)

Section:	12	Prosecution costs for indictable offences	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

Where a defendant is convicted of an offence by or before the District Court or the Court of First Instance, the District Court and the Court of First Instance may, in addition to such sentence as may otherwise be passed by law, order that costs be awarded to the prosecutor.

(Enacted 1996. Amended 25 of 1998 s. 2)

Section:	13	Prosecution costs where judge or Court of Appeal dismisses unmeritorious appeal by defendant		30/06/1997
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Where a defendant unsuccessfully-

- (a) appeals to a judge from any conviction, order or determination of a magistrate; or
- (b) appeals to the Court of Appeal against-
 - (i) his conviction of an offence or any other finding or verdict made in respect of him; or
 - (ii) sentence; or
- (c) applies to the Court of Appeal for leave to appeal against any of the matters referred to in paragraph (a),

and the judge or the Court of Appeal is satisfied that the appeal or the application, as the case may be, is or was without merit, the judge or the Court of Appeal may order that costs be awarded to the prosecutor.

(Enacted 1996)

Section:	13A	Prosecution costs where Court of Appeal allows appeal by way of case stated	23 of 2002	19/07/2002
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If on hearing an appeal under section 84 of the District Court Ordinance (Cap 336), the Court of Appeal reverses the verdict or order of acquittal, the Court of Appeal may order that costs be awarded to the prosecutor.

(Added 23 of 2002 s. 10)

Section:	13B	Prosecution costs on unsuccessful application by defendant for a certificate of Court of Appeal or Court of First Instance	10 of 2005	08/07/2005
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Where a defendant unsuccessfully applies to the Court of Appeal or the Court of First Instance for a certificate under section 32(2) of the Hong Kong Court of Final Appeal Ordinance (Cap 484), and the Court of Appeal or the Court of First Instance, as the case may be, is satisfied that the application is without merit, the Court of Appeal or the Court of First Instance, as the case may be, may order that costs be awarded to the prosecutor.

(Added 10 of 2005 s. 46)

Section:	14	Prosecution costs to be recoverable as a civil debt		30/06/1997
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(1) Any costs awarded to a prosecutor by virtue of an order made under this Part shall be a debt due to the prosecutor from the defendant and be recoverable as a civil debt.

(2) Where prior to an order being made under this Part any moneys were taken from a defendant on his apprehension, arrest, being taken into custody or his surrender to custody or were paid into court by a defendant, the court may, on the making of any such order, order that the payment of any costs awarded to the prosecutor or any part thereof be made out of any moneys so taken or paid.

(3) Subsection (2) shall not apply to moneys that are a first charge for the benefit of the Director of Legal Aid within the meaning of section 18A(1) of the Legal Aid Ordinance (Cap 91).

(Enacted 1996)

Part:	IV	GENERAL PRINCIPLES AND UNNECESSARY AND WASTED COSTS		30/06/1997
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(Enacted 1996)

Section:	15	General principles		30/06/1997
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In any criminal proceedings-

- (a) the costs that may be awarded by virtue of an order shall not be punitive but shall be such sums as appear to a court or a judge reasonably sufficient to compensate any party to the proceedings for any expenses properly incurred by him in the course of those proceedings, including any proceedings

- preliminary or incidental thereto;
- (b) a court or a judge may have regard to any assessment laid before it or him for their assistance by any party to the proceedings of the amount of costs properly so incurred by any such party;
 - (c) an order as to costs shall be such as a court or a judge considers just and reasonable;
 - (d) the amount to be paid in pursuance of an order as to costs shall, unless an order for taxation is made under section 20, be specified in that order;
 - (e) the question of whether or not an order as to costs ought to be made in respect of any expenses properly incurred by any party to the proceedings in the course of the proceedings, including any proceedings preliminary or incidental thereto, may be adjourned until the end of those proceedings;
 - (f) a court or a judge may take into account any other order as to costs which has been made in respect of those proceedings.

(Enacted 1996)

Section:	16	Liability for costs of legally aided defendant		30/06/1997
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(1) The Director of Legal Aid shall not be liable for any costs awarded to a prosecutor by virtue of an order made under this Part in respect of a legally aided defendant.

(2) Except in the circumstances and to the extent mentioned in subsection (3), a legally aided defendant shall not be liable for any costs awarded to a prosecutor in respect of him by virtue of an order made under this Part.

(3) The circumstances and extent referred to in subsection (2) are-

- (a) that he has paid or is liable to pay a contribution to the Director of Legal Aid;
- (b) that the maximum contribution paid or payable by him is more than the net liability of the Director of Legal Aid on his account within the meaning of section 18A(2) of the Legal Aid Ordinance (Cap 91) and the Director of Legal Aid has repaid or is liable to repay the excess to him; and
- (c) his liability shall not be more than the amount of that excess.

(Enacted 1996)

Section:	17	Costs unnecessarily or improperly incurred		30/06/1997
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Where at any time in the course of criminal proceedings a court or a judge is satisfied that costs have been incurred in respect of the proceedings by a party to the proceedings as a result of an unnecessary or improper act or omission by or on behalf of the other party to the proceedings, the court or the judge may, after hearing all such parties, order that all or part of the costs so incurred shall be paid to the first-mentioned party to the proceedings by the other party to the proceedings.

(Enacted 1996)

Section:	18	Liability of legal or other representatives for wasted costs	10 of 2008	09/05/2008
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(1) In any criminal proceedings a court or a judge may order the legal or other representative concerned to meet the payment of any wasted costs or any part thereof.

(2) No order under subsection (1) shall be made unless the legal or other representative concerned has been given a reasonable opportunity to appear before the court or the judge and show cause why the order should not be made.

(3) When determining whether or not to make an order under subsection (1), the court or the judge shall, in addition to all other relevant circumstances, take into account the interest that there be fearless advocacy under the adversarial system of justice.

(4) Subject to subsection (5), any wasted costs ordered to be paid by a legal or other representative under subsection (1) shall be a debt due to the party to the proceedings in whose favour such order was made from the representative and enforceable as a civil debt.

(5) Where an order is made under subsection (1) in favour of a legally aided defendant, the wasted costs ordered to be paid shall be a debt due to the Director of Legal Aid and enforceable as a civil debt by the Director in his own name.

(6) Where an order is made under subsection (1) against a legal officer or a Legal Aid Officer having or exercising a right of audience or conducting litigation on behalf of the Government, the wasted costs ordered to be paid shall be charged on the general revenue.

Part:	V	APPEALS, TAXATION AND RULES		30/06/1997
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(Enacted 1996)

Section:	19	Appeals against award of costs	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

(1) Where a court or a judge has made an order that costs be awarded to any of the parties to the proceedings any of such parties may appeal against that order.

(2) A legal or other representative who has been ordered to meet the payment of any wasted costs or any part thereof may appeal against that order.

(3) Where the order for costs which is the subject of an appeal under this section was made-

(a) by a magistrate, the appeal shall lie to the Court of First Instance;

(b) by the District Court or the Court of First Instance, the appeal shall lie to the Court of Appeal.
(Amended 25 of 1998 s. 2)

(4) On an appeal under this section a court or a judge shall, if it or he allows the appeal, quash the order which is the subject of the appeal and subject to subsection (5), make such order for costs in place of it, as it or he thinks appropriate for the case.

(5) An order for costs under subsection (4) may not, in the case where a prosecutor successfully appeals under subsection (1) against an order made in respect of a defendant, include an order that the defendant meet the payment of the prosecutor's costs on that appeal or any part thereof.

(Enacted 1996)

Section:	20	Taxation of costs	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

(1) Where an order for costs is made by a court or a judge under this Ordinance the court or the judge may order that those costs be taxed.

(2) Where an order that costs be taxed is made under this section-

(a) by a magistrate or by the District Court, those costs shall be taxed by the Registrar of the District Court;

(b) by a judge or by the Court of Appeal, those costs shall be taxed by the Registrar of the High Court.
(Amended 25 of 1998 s. 2)

(Enacted 1996)

Section:	21	Review of taxation of costs	25 of 1998	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

A party to the proceedings in respect of whom costs have been taxed who is aggrieved by that taxation may apply for the taxation to be reviewed-

(a) in the case of costs taxed under section 20(2)(a), to the Registrar of the District Court; and

(b) in the case of costs taxed under section 20(2)(b), to the Registrar of the High Court,

and on receipt of any such application, the Registrar of the District Court or the Registrar of the High Court, as the case may be, shall review the taxation accordingly.

(Enacted 1996. Amended 25 of 1998 s. 2)

Section:	22	Rules and orders	30/06/1997
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The Chief Justice may, with the approval of the Legislative Council, make rules and orders providing for-

- (a) practices and procedures under this Ordinance; and
- (b) matters relating to taxation of costs and reviews of such taxation.

(Enacted 1996)

Part:	VI		30/06/1997
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(Enacted 1996)

Section:	23	(Omitted as spent)	30/06/1997
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(Enacted 1996)

Section:	24	(Omitted as spent)	30/06/1997
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(Enacted 1996)

Part:	VII	TRANSITIONAL	30/06/1997
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(Enacted 1996)

Section:	25	Transitional	30/06/1997
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This Ordinance shall not apply to criminal proceedings in respect of offences committed before the coming into operation of this Ordinance.

(Enacted 1996)