

Hong Kong's legal system

Overview

A key element in Hong Kong's success and continuing attraction is the city's commitment to the rule of law and judicial independence. The Basic Law guarantees the maintenance in Hong Kong of its common law system, which differs from the legal system of Mainland China.

"One country, two legal systems"

The Hong Kong Special Administrative Region enjoys a high degree of autonomy under the principle of "one country, two systems" as implemented by the Basic Law:

- Access to justice under a common law system
- Overseas judges from other common law jurisdictions sitting at the apex court with the power of final adjudication
- Over 260 multilateral treaties apply to the Hong Kong Special Administrative Region, and the Hong Kong Special Administrative Region has signed over 250 bilateral agreements on its own in certain areas covering air services, investment promotion and protection, surrender of fugitive offenders, mutual legal assistance in criminal matters, transfer of sentenced persons, avoidance of double taxation and tax information exchange
- Both English and Chinese are official languages; all local ordinances are enacted bilingually with both texts being equally authentic

Hong Kong **ranks No.2 in Asia** and **World No. 15** in respect of the rule of law in the Worldwide Governance Indicators project of the World Bank Group:

- Hong Kong's percentile rank in respect of rule of law has improved from 69.9 in 1996 to 93.3 in 2016
- Hong Kong has scored above 90 (out of 100) consistently since 2003 in the aggregate indicator in respect of the rule of law

Hong Kong **ranks No.1 in Asia** and **World No.2** in the Human Freedom Index 2017 (Cato Institute) by scoring 8.88 (out of 10), with **Integrity of Legal System scored at 8.3**.

Basic Law

- The Basic Law refers to the independence of the Judiciary, free from interference, in three different provisions (Articles 2, 19 and 85)
- Article 25 stipulates that all Hong Kong residents shall be equal before the law

- Articles 8 and 81 provide that the laws previously in force and the judicial system previously practised in Hong Kong (i.e. the common law system) shall be maintained
- Article 82 vests the power of final adjudication of the Hong Kong Special Administrative Region (HKSAR) in the Court of Final Appeal (CFA)
- Articles 88, 89, 90 and 92, *inter alia*, set out the requirements and mechanisms for the appointment and removal of judges*
- Article 92 provides that judges and other members of the Judiciary shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions

The power of final adjudication

- The CFA, based in Hong Kong and established on 1 July 1997, replaced the Judicial Committee of the Privy Council in London as the highest appellate court for the HKSAR
- The CFA, when sitting, will comprise five judges – usually the Chief Justice, three permanent judges and one common law non-permanent judge; if the Chief Justice is not available to sit, one of the three permanent judges will preside and an additional Hong Kong non-permanent judge will sit; if a permanent judge is not available to sit, again a Hong Kong non-permanent judge will sit in his place

Appointment of common law non-permanent judges

- Eminent jurists from other common law jurisdictions may be appointed to the CFA as non-permanent judges
- Currently, there are 14 non-permanent judges from other common law jurisdictions (the UK, Australia and Canada); previous common law non-permanent judges also included senior judges from New Zealand
- The association of these eminent judges with the CFA speaks for Hong Kong’s judicial independence, and helps maintain a high degree of confidence in the legal system, and allows Hong Kong to maintain strong links with other common law jurisdictions

* Judges are appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors. Judges may only be removed for inability to discharge his or her duties, or for misbehavior, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges. The Chief Justice of the Court of Final Appeal may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges, and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with procedures prescribed in the Basic Law, including obtaining the endorsement of the Legislative Council.

Deep pool of legal talent

Hong Kong's robust and transparent legal system is bolstered by the support of a community of quality, independent and international legal practitioners in different areas of law. As of 31 July 2018, there are:

- About 9,600 solicitors and over 1,400 barristers
- About 1,400 registered foreign lawyers from over 30 jurisdictions
- More than 80 registered foreign law firms

Global legal hub

Hong Kong has a vibrant community of local, Mainland China and overseas professionals and is a base for prominent law-related organisations and international bodies, including:

- Hong Kong International Arbitration Centre
- Secretariat of the International Court of Arbitration of the International Chamber of Commerce Asia Office
- China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center
- China Maritime Arbitration Commission Hong Kong Arbitration Center
- Asia Pacific Regional Office of The Hague Conference on Private International Law
- Centre of Effective Dispute Resolution Asia Pacific

An international dispute resolution centre

Hong Kong is a prime venue for dispute resolution through arbitration and mediation:

- Hong Kong arbitral awards are enforceable in over 150 Contracting States to the New York Convention. This is complemented by respective arrangements for reciprocal enforcement with Mainland China and Macao
- Intellectual property disputes are arbitrable
- The number of dispute resolution cases handled by the Hong Kong International Arbitration Centre (HKIAC), including both arbitration and mediation, reached 532 in 2017; the total disputed amount in all the administered cases was about US\$4.7 billion in 2017
- HKIAC **ranked first** for location, perceived value for money, helpfulness of staff and IT services by the Global Arbitration Review Hearing Centres Surveys 2016, 2017 and 2018
- Since 2015, Hong Kong has been among **the top 5 preferred seats for arbitration globally** according to the International Arbitration Surveys conducted by Queen Mary University of London
- Mediation is the mechanism for resolving investment disputes under the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA)