

Hong Kong's legal system

Overview

Hong Kong's commitment to the **rule of law and judicial independence** is key to the city's prosperity and stability as an international financial centre. The **common law system** continues to be practised as constitutionally guaranteed, making the city the only common law jurisdiction within China.

"One country, two legal systems"

The Hong Kong Special Administrative Region (HKSAR) enjoys a **high degree of autonomy under the principle of "one country, two systems"**. To implement this, the Basic Law is enacted by the National People's Congress of the People's Republic of China (PRC) in accordance with Article 31 of the Constitution of the PRC. With regard to the preservation of the common law system:

- Article 8 of the Basic Law maintains the laws previously in force in Hong Kong (that is, the common law, rules of equity, ordinances, subordinate legislation and customary law) except for any that contravene the Basic Law.
- Article 18 provides that the laws in force in Hong Kong shall be the Basic Law, the laws previously in force in Hong Kong and the laws enacted by the HKSAR legislature.
- National laws do not apply to the HKSAR except for those listed in Annex III to the Basic Law. Only national laws relating to defence, foreign affairs and other matters outside the limits of the autonomy of the HKSAR as specified by the Basic Law may be listed in that Annex for application in the HKSAR by way of promulgation or legislation by the HKSAR.
- Article 35 protects the right to confidential legal advice, access to the courts, choice of lawyers for timely protection of Hong Kong residents' rights and interests or for representation in the courts, and to judicial remedies.
- Article 84 provides that the courts of the HKSAR may refer to precedents of other common law jurisdictions.
- Both English and Chinese are official languages; all local ordinances are enacted bilingually with both texts being equally authentic; cases can be conducted in either Chinese or English or both.
- Court proceedings are generally open to the public and the media. Written judgments are published and are readily accessible on the Judiciary's website.

Hong Kong **ranks No.3 in Asia** in respect of the rule of law in the Worldwide Governance Indicators of the World Bank Group:

- Hong Kong's percentile rank in respect of rule of law has improved from 69.85 in 1996 to 90.4 in 2021.
- 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.5 globally** in the World Competitiveness Yearbook 2022 (International Institute for Management Development), in which Hong Kong **ranks No.1 globally** in **Business Legislation**.

A mature legal system under the Basic Law

- The Basic Law guarantees the **independence of the Judiciary** and ensures that the exercise of judicial power shall be “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**.
- The right to institute legal proceedings in the courts under Article 35 includes those brought against the HKSAR Government.
- Article 39 provides that the provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and international labour conventions as applied to Hong Kong shall remain in force.
- 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 63 entrenches the constitutional principle of **prosecutorial independence**.
- Article 82 vests the **power of final adjudication** of the HKSAR in the **HKSAR Court of Final Appeal** (CFA).
- Article 86 maintains the principle of **trial by jury** previously practised in Hong Kong.
- Article 87 provides that in criminal and civil proceedings, the principles previously applied in Hong Kong and the rights previously enjoyed by parties to proceedings shall be maintained.
- 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 July 1, 1997, has 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 non-permanent Hong Kong judge or one overseas 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

*Judges are appointed by the Chief Executive on the recommendation of an independent commission, which is chaired by the Chief Justice of the CFA with the Secretary for Justice, two other judges, two persons from the legal profession and three lay persons as members. A judge may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the CFA and consisting of not fewer than three local judges. The Chief Justice of the CFA 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.

judge will sit instead.

Appointment of overseas non-permanent judges from other common law jurisdictions

- **Eminent jurists from other common law jurisdictions may be appointed** to the CFA as overseas non-permanent judges.
- Currently, there are **10 overseas non-permanent judges** (from the United Kingdom, Australia and Canada); previous overseas non-permanent judges also include senior judges from New Zealand.
- The association of these eminent judges with the CFA speaks of 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**.

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 November, 2022, there were:

- About 11,000 practising solicitors and 1,600 practising barristers
- About 1,400 registered foreign lawyers from 34 jurisdictions
- About 80 registered foreign law firms

Global legal hub

Hong Kong has a vibrant community of local, Mainland China and overseas legal 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
- Regional Office for Asia and the Pacific of the Hague Conference on Private International Law
- Centre of Effective Dispute Resolution Asia Pacific
- eBRAM International Online Dispute Resolution Centre Limited
- AALCO Hong Kong Regional Arbitration Centre

Hong Kong is committed to taking forward the Legal Hub initiative to further attract reputable international legal services and dispute resolution institutions to provide services and set up offices in Hong Kong.

An international dispute resolution centre

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

- The National 14th Five-Year Plan explicitly supports Hong Kong to establish itself as the centre for international legal and dispute resolution services in the Asia-Pacific region.
- Hong Kong arbitral awards are enforceable in over 160 Contracting States to the New York Convention. This is complemented by respective arrangements for reciprocal enforcement with Mainland China and Macao.

- Hong Kong is the first jurisdiction outside the Mainland where, as a seat of arbitration, parties to arbitral proceedings administered by designated arbitral institutions will be able to apply to the Mainland courts for interim measures under the **Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR**.
- A mediation mechanism for resolving investment disputes has been established under the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA). The lists of mediation institutions and mediators mutually agreed by the two sides include two mediation institutions of Hong Kong and 43 mediators designated by those institutions.
- The Greater Bay Area (GBA) Mediator Accreditation Standards, the GBA Mediator Code of Conduct Best Practice as well as the GBA Cross-boundary Disputes Mediation Model Rules under the **GBA Mediation Platform** as endorsed by the Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference in December 2021 and December 2022 will facilitate the use of Hong Kong's mediation services for cross-boundary disputes within the GBA.
- Hong Kong-owned enterprises registered in the Qianhai Cooperation Zone are allowed to agree on the choice of applicable law, including Hong Kong law, in their civil and commercial contracts despite the absence of "foreign-related elements". The Opinions of the Supreme People's Court also demonstrated the feasibility for Hong Kong-owned enterprises registered in the pilot free trade zones to agree for the arbitration of their contract disputes in Hong Kong. The HKSAR Government will continue to explore with the Mainland authorities to further allow Hong Kong-owned enterprises in Shenzhen as well as all the 9 Mainland municipalities in the GBA to choose Hong Kong law as the applicable law and choose Hong Kong as the seat for arbitration in the absence of "foreign-related elements".
- The number of new dispute resolution cases handled by the Hong Kong International Arbitration Centre, including both arbitration and mediation, reached 514 in 2021; the total disputed amount in all the administered cases was about HK\$39.3 billion (about US\$5 billion) in 2021.
- Hong Kong ranks **the third most preferred seat for arbitration globally** according to the 2021 International Arbitration Survey conducted by Queen Mary University of London.
- Hong Kong has a comprehensive and up-to-date legislative framework for arbitration. Recent statutory amendments clarify that intellectual property disputes are arbitrable, and third party funding of arbitration is permissible in Hong Kong. Legislative amendments were also passed to allow clients and their lawyers to enter into outcome related fee structures for arbitration. This new regime became fully operative in December 2022 providing additional flexibility in fee arrangements.
- A new law was passed in October 2022 which, when fully implemented, would establish a more comprehensive mechanism for reciprocal recognition and enforcement of judgments in civil and commercial matters between Hong Kong and the Mainland (including conciliatory statements and judgments given in respect of certain types of disputes over intellectual property rights). This enhances Hong Kong's competitiveness as an international legal and dispute resolution service centre and intellectual property trading centre in the Asia-Pacific Region in line with the National 14th Five-Year Plan.

Law Tech

Hong Kong is taking forward the development and promotion of LawTech, including the development of online dispute resolution (ODR) platforms, as well as the development of the Hong Kong Legal Cloud to provide safe, secure and affordable data storage services for the local legal and dispute resolution communities.

- The **Hong Kong Legal Cloud** services was launched on March 1, 2022, with services provided by the eBRAM International Online Dispute Resolution Centre.
- Hong Kong, China opted into the APEC Collaborative Framework for ODR of Cross-Border Business-to-Business Disputes in 2020, and eBRAM International Online Dispute Resolution Centre from Hong Kong, China has been listed as one of the first batch of ODR service providers under the Framework since May 2022.

(Revision date: December 15, 2022)

DECEMBER 2022