

# 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 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 or both Chinese or English.
- 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.2 in Asia** and **No. 11 globally** 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 69.85 in 1996 to 95.19 in 2018.
- 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 **No.3 globally** in the Human Freedom Index 2019 (Cato Institute) by scoring 8.81 (out of 10), with the scores on **Judicial Independence at 8.6** and **Integrity of the Legal System at 8.3**.

### **“Vision 2030 for Rule of Law”**

The 2020-21 Budget has set aside about \$450 million for the Department of Justice to implement the **“Vision 2030 for Rule of Law” initiative** to strengthen the community’s understanding of the concept of the rule of law and its implementation.

### **A mature legal system under the 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**.
- 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 for 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**

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\*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.

- The CFA, based in Hong Kong and established on 1 July 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 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 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 **13 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 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**.

### **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 end-August 2020, there were:

- Over 10,500 practising solicitors and 1,500 practising barristers
- Over 1,500 registered foreign lawyers from 33 jurisdictions
- Over 90 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

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:

- 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 and, to date, the only 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**.
- Intellectual property disputes are arbitrable.
- Third party funding of arbitration is not prohibited by the common law doctrines of maintenance and champerty. There are related safeguards specifically put in place for funded parties.
- The number of new dispute resolution cases handled by the Hong Kong International Arbitration Centre (HKIAC), including both arbitration and mediation, reached 503 in 2019; the total disputed amount in all the administered cases was about US\$3.4 billion in 2019.
- 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). 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.

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