

Hong Kong : The Facts

Legal System



The legal system of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) is based on the rule of law and the independence of the judiciary. The constitutional framework for the legal system is provided by the Basic Law enacted by the National People's Congress of the PRC in accordance with Article 31 of the Constitution of the PRC (Constitution). The Constitution and the Basic Law together form the constitutional basis of the HKSAR. Under the principle of "one country, two systems", the HKSAR legal system, which is different from that of Mainland China, is based on the common law, supplemented by statutes. All legislation in force in the HKSAR is accessible on the Hong Kong e-Legislation website (<https://www.elegislation.gov.hk>).

Law in the HKSAR: The laws in force in the HKSAR include:

- (1) the Basic Law;
- (2) national laws listed in Annex III to the Basic Law as applied to the HKSAR;
- (3) the laws, including the common law and the rules of equity, in force before July 1, 1997, except for any that contravenes the Basic Law or amended by the legislature of the HKSAR; and
- (4) laws enacted by the legislature of the HKSAR.

National laws relating to defence, foreign affairs and other matters outside the limits of the autonomy of the HKSAR may be listed in Annex III to the Basic Law for application in the HKSAR by way of promulgation or legislation by the HKSAR. Currently, 14 national laws are included in Annex III to the Basic Law.

The Judiciary: As prescribed in the Basic Law, the HKSAR has been authorised by the National People's Congress to exercise independent judicial power, including the power of final adjudication. It has also been stated in express terms that the courts of the HKSAR shall exercise judicial power independently, free from any interference. Members of the judiciary shall be immune from legal action in the performance of their judicial functions. As reflected in their judicial oath, in exercising their judicial power, judges are constitutionally required to determine and handle cases strictly in accordance with the law and legal principles.

The courts of justice in Hong Kong comprise the Court of Final Appeal, the High Court (which comprises the Court of Appeal and the Court of First Instance), the Competition Tribunal, the District Court (which includes the Family Court), the Lands Tribunal, the Magistrates' Courts (which include the Juvenile Court), the Coroner's Court, the Labour Tribunal, the Small Claims Tribunal and the Obscene Articles Tribunal.

Department of Justice: There are six professional divisions in the Department responsible for legal work. The Department

is headed by the Secretary for Justice, who is a member of the Executive Council and is the Government's chief legal adviser. The Secretary has ultimate responsibility for making prosecutorial decisions in the HKSAR.

The Constitutional and Policy Affairs Division advises government departments and bureaux on whether proposed legislation, or a particular policy, is consistent with the Basic Law, the provisions of international human rights treaties as applied to Hong Kong, and established principles underlying the legal system. It also has a specialist unit that addresses the need for advice on (and promotes understanding of) Mainland Law.

The Civil Division provides legal advice to the Government on civil law, drafts commercial contracts and franchises and conducts civil litigation, arbitration and mediation on behalf of the Government. On the policy side, it is responsible for implementing initiatives in the promotion and development of Hong Kong's alternative dispute resolution services, mainly mediation and arbitration. It also provides support to the Legal Enhancement and Development Office, the Steering Committee on Mediation and the Advisory Committee on Promotion of Arbitration.

The Law Drafting Division drafts, in Chinese and English, all legislation proposed by the Government and provides professional support to policy bureaux throughout the legislative process. It is also responsible for updating and publishing the consolidated legislation of the HKSAR.

One of the most important functions of the Prosecutions Division is to make prosecutorial decisions, including whether to prosecute, and if so what charges to lay and before which courts. Its counsel provide legal advice to law enforcement agencies and other government departments and agencies on all prosecution, criminal law and procedure related matters, conduct trials and most appeals (up to and including those before the Court of Final Appeal).

The International Law Division advises the Government on international law issues, participates in treaty negotiations and international conferences, and handles requests for international legal co-operation. In collaboration with other divisions as appropriate, the division also takes forward policy initiatives in promoting Hong Kong as a centre for international legal and dispute resolution services in the Asia-Pacific region and under the Belt and Road Initiative at the international level, as well as enhancing Hong Kong as a centre for capacity building in international law.

The National Security Prosecutions Division was established in accordance with Article 18 of the Law of the People's Republic of China on Safeguarding National Security in the HKSAR ("National Security Law"). The Division is responsible for prosecuting offences endangering national security and handling other related legal proceedings, as well as refining laws and policy measures relating to the

safeguarding of national security. It provides legal advice in different areas to continuously prevent, suppress and impose punishment for acts and activities endangering national security. The Division also promotes education on the National Security Law and relevant laws, and assists in promoting national security education.

Under the direct steer of the Secretary for Justice, the Legal Enhancement and Development Office (LEAD Office) has been established since October 2022 to pursue the policy objectives of the Government in promoting the rule of law education, promoting and enhancing Hong Kong's status as an international legal and dispute resolution services centre, and strengthening legal co-operation and the interface of legal practices between Hong Kong and the Mainland. The Law Reform Commission Secretariat, which provides research and secretariat support to the Commission, reports directly to the Secretary for Justice who serves as chairman of the Commission.

Law Reform Commission: The Law Reform Commission considers for reform those aspects of the laws of Hong Kong which are referred to it by the Secretary for Justice or the Chief Justice of the HKSAR. Its membership includes judges, academics, practising lawyers and prominent non-lawyer members of the community.

The Commission has published reports covering subjects as diverse as commercial arbitration as well as funding and fee arrangements for dispute resolution, the law of evidence, double jeopardy, personal data protection, family law, charities, enduring powers of attorney, privity of contract, sale of goods and supply of services, insolvency, the substantive offence of and that on causing or allowing the death or serious harm of a child or vulnerable adult as well as a comprehensive review of sexual offences. The recommendations in many of its reports have been implemented, either in whole or in part. It is currently considering references on archives law, access to information, and cybercrime.

The Legal Profession: As at September 19, 2023, the HKSAR had 1 653 practising barristers, 11 447 practising solicitors and 931 Hong Kong law firms, plus 75 registered foreign law firms, 1 432 registered foreign lawyers and 34 registered associations between registered foreign law firms and Hong Kong law firms.

Legal Aid Department (LAD): The Director of Legal Aid is responsible for the administration of legal aid. Eligible persons are provided with legal representation depending on their financial circumstances.

Legal Aid for Civil Cases: Legal aid is available for civil proceedings in the District Court, the Court of First Instance and the Court of Appeal (both part of the High Court), and the Court of Final Appeal. It also covers proceedings in the Mental Health Review Tribunal and cases in the Coroner's Court if it is in the interests of public justice to do so.

An applicant must satisfy both the 'means test' and the 'merits test' as provided by the Legal Aid Ordinance (Cap.91). For the means test, a person whose total financial resources

do not exceed \$440,800 may be granted legal aid. If applicants have reached the age of 60, an amount equal to the aforementioned financial eligibility limit will be disregarded from their capitals, irrespective of their employment status, when calculating their disposable capital. Applicants can make use of the Means Test Calculator to give them an idea whether they are eligible for legal aid by accessing the webpage of LAD at www.lad.gov.hk. The Director of Legal Aid may waive the financial eligibility limit in meritorious cases when a breach of the Hong Kong Bill of Rights Ordinance or inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong is an issue. For the merits test, the Director must be satisfied that an applicant has reasonable grounds for bringing or defending the civil proceedings to which the application relates. A person aggrieved by a decision of the Director may appeal to the Registrar of the High Court.

Legal Aid for Criminal Cases: Legal aid is available for committal proceedings in the Magistrates' Courts; cases tried in the District Court and the Court of First Instance of the High Court; and appeals from the Magistrates' Courts and to the Court of Appeal of the High Court or the Court of Final Appeal.

An applicant must satisfy the means test criteria which are the same as for civil cases. Notwithstanding that an applicant's financial resources exceed the statutory limit, the Director of Legal Aid may grant legal aid to the applicant if the Director is satisfied that it is desirable in the interests of justice to do so. For appeal cases, the Director of Legal Aid must be satisfied that there are reasonable grounds for appeal.

Notwithstanding the refusal of a legal aid application by the Director of Legal Aid, a judge may himself grant aid if the applicant has satisfied the means test. Applicants in cases involving an offence endangering national security the maximum penalty for which is life imprisonment, murder, or an offence under section 19 of the Crimes Ordinance (piracy with violence) may apply to a judge for granting of legal aid, and exemption from the means test and from payment of contribution.

Supplementary Legal Aid Scheme: This scheme provides legal representation to the middle class whose financial resources are above the upper eligibility limit for legal aid (i.e. \$440,800) but do not exceed \$2,204,030. It covers cases involving personal injury or death, professional negligence claims against 12 professions including doctors, dentists, lawyers, certified public accountants (practising), registered architects, registered professional engineers, registered professional surveyors, registered professional planners, authorized land surveyors, registered landscape architects, estate agents and financial intermediaries licensed or registered for Type 1, Type 2 or Type 8 regulated activities within the meaning of the Securities and Futures Ordinance (Cap.571); negligence claims against insurers or their intermediaries in respect of the taking out of the personal insurance products; monetary claims against vendors in the sale of completed or uncompleted first-hand residential properties; and monetary claims in respect of derivatives or securities, currency futures or other futures contracts on the basis that the person was induced to deal in those derivatives, futures or contracts by fraud, deception or misrepresentation,

where the claim for damages is likely to exceed \$75,000. The scheme also covers claims under the Employees' Compensation Ordinance and representation for employees in appeals against awards made by the Labour Tribunal irrespective of the amount of the claim.

The Duty Lawyer Service: Four schemes of legal assistance, administered by the council of the Duty Lawyer Service which includes representatives from the Law Society and Bar Association of Hong Kong and lay members, are subvented by the Government.

The Duty Lawyer Scheme rosters barristers and solicitors in private practice to appear in the Magistrates' and Juvenile Courts on a remunerated basis. The scheme provides representation to all juveniles (defendants under 16) and to most adult defendants charged in the Magistrates' Courts who cannot afford private representation. The defendants are required to pay a handling charge of \$620 upon granting of Duty Lawyer representation. In 2022, 18 023 defendants were assisted.

The Care or Protection Proceedings Scheme under the Duty Lawyer Scheme covers care or protection proceedings under Section 34 of the Protection of Children and Juveniles Ordinance. The scheme provides legal representation to children and juveniles who are detained or likely to be detained thereby being deprived of their liberty. In 2022, the number of subjects averaged about 40 per month.

The Free Legal Advice Scheme, staffed by 1 321 volunteer lawyers, operates 12 sessions per week at nine evening centres. In 2022, 6 583 cases were processed. The scheme is not means tested.

A free Tel-Law Service offers trilingual (Cantonese, Putonghua and English) taped information on 81 topics. Eight telephone lines operate 24 hours. Scripts were also available online. In 2022, 8 988 calls and 369 699 website hit were received. The Legal Assistance Scheme for Non-refoulement Claimants provides legal assistance to eligible claimants who have made claims to the Immigration Department under Part VIIC of the Immigration Ordinance, Cap.115, Article 2 and Article 3 of Section 8 of the Hong Kong Bill of Rights Ordinance, Cap.383 and the risk of persecution with reference to the non-refoulement principle under Article 33 of the 1951 Convention relating to the Status of Refugees. Up to 2022, a total of 24 178 cases were handled.

Administration Wing, Chief Secretary for Administration's Office: The Legal Advice Scheme for Unrepresented Litigants on Civil Procedures provides free legal advice on civil procedural matters for unrepresented litigants. The scheme assists unrepresented litigants who (a) have not been granted legal aid and have not engaged lawyers; (b) are parties or who wish to join as parties to civil proceedings; and (c) are not seeking advice for limited companies, societies, associations.

The Land Registry: The Land Registry is responsible for registration of instruments affecting land under the Land Registration Ordinance (Cap.128) and providing services for search of the Land Register and related records to the public.

The Land Registry is also responsible for registration of owners' corporations under the Building Management Ordinance (Cap.344) and providing services for search and filing of documents of the owners' corporation records.

To provide greater certainty of title and simplify conveyancing procedures, the Land Titles Ordinance (Cap.585) (LTO) has been enacted for the change from the current deeds registration system to a title registration system. To enable early implementation of title registration system in Hong Kong, the Government will introduce legislative amendments to the LTO so as to implement title registration system first on newly granted land i.e. land granted by the Government after commencement of the amended LTO.

Legal Advisory and Conveyancing Office (LACO): LACO is part of the Lands Department. It provides legal advice primarily to the Lands Administration Office of the Lands Department.

LACO is responsible for drafting and settling government land disposal and lease modification documents. It is also responsible for title checking and preparation of documentation relating to the Government's acquisition of private land and payment of compensation to those private land owners pursuant to its statutory powers.

LACO administers the Lands Department Consent Scheme to approve applications by developers to sell units in uncompleted developments. It also approves Deeds of Mutual Covenant requiring approval under land leases.

LACO handles applications for consent to sell, consent to mortgage or charge and consent to underlet or license residential units under the "Hong Kong Property for Hong Kong People" measure.

LACO provides conveyancing services to The Financial Secretary Incorporated (FSI) for the extension of non-renewable leases, and in the sale and purchase of FSI properties. It also handles applications for the apportionment of premium and government rents under the Government Rent and Premium (Apportionment) Ordinance. In addition, it is responsible for the recovery of arrears of government rents in urban areas other than rents under the Government Rent (Assessment and Collection) Ordinance.

Companies Registry: The Companies Registry (the Registry) is responsible for administering and enforcing the provisions of the Companies Ordinance and related legislation. Its primary functions include the registration of local and non-Hong Kong companies (i.e. companies incorporated outside Hong Kong which have established a place of business in Hong Kong); the registration of statutory returns and documents required by the various ordinances administered by the Registry; the provision of services for members of the public to inspect and obtain company information held on the various statutory registers; the deregistration of defunct solvent companies; and advising the Government on policy, regulatory and legislative issues regarding company law, related legislation and corporate governance. The Registry also processes applications relating to money lenders for public inspection. Since March 1, 2018, the Registry has acted as the licensing authority for

trust and company service providers (TCSPs) under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance. Under the licensing regime, TCSPs are required to apply for a licence from the Registrar of Companies and satisfy a “fit-and-proper” test before they can provide trust or company services as a business in Hong Kong. In addition, the Companies (Amendment) Ordinance 2018, which came into operation on 1 March 2018, introduced the requirement on the keeping of Significant Controllers Registers by companies as part of the Government’s initiatives to enhance Hong Kong’s regulatory regime for combating money laundering and terrorist financing.

Official Receiver’s Office: When appointed by the court or creditors, the Official Receiver is responsible for the proper and orderly administration of the estates of insolvent companies ordered to be wound up by the court under the winding-up provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance and of individuals or partners declared bankrupt by the court under the Bankruptcy Ordinance.

Intellectual Property Department: The Intellectual Property Department serves as the focal point for issues on intellectual property protection. It provides expert advice on intellectual property policies and legislation as well as civil legal advice to the government on intellectual property. It operates the trade marks, patents, designs and copyright licensing bodies registries and exercises quasi-judicial functions on related registration matters. It promotes public awareness of and respect for intellectual property rights. It also facilitates and promotes Hong Kong’s development as a regional intellectual property trading centre.

International Co-operation: Under the Basic Law the HKSAR has a high degree of autonomy in external affairs. With the authority of the Central People’s Government where necessary, it has concluded over 260 bilateral agreements with other jurisdictions. In addition, over 260 multilateral international conventions are applicable to the HKSAR.

Using the name “Hong Kong, China”, the HKSAR participates on its own as a member in international organisations and conferences not limited to states, e.g. the World Trade Organization, the World Customs Organization, the Asia-Pacific Economic Co-operation, etc.

As part of the delegation of the People’s Republic of China, representatives of the HKSAR Government also participate in activities of the Hague Conference on Private International Law, as well as of other international organizations and conferences limited to states, such as the United Nations Commission on International Trade Law, the International Monetary Fund, the World Intellectual Property Organization and the International Civil Aviation Organization.