

Hong Kong's legal system

Overview

Hong Kong's commitment to the **rule of law and independent judicial power** 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 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 and regulatory quality and **ranks No. 2 in Asia** in respect of control of corruption in the Worldwide Governance Indicators of the World Bank Group (2024 updates). Besides, Hong Kong **ranks No.5 globally** in the World Competitiveness Yearbook 2024 (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, in three different provisions (Articles 2, 19 and 85), guarantees that Hong Kong enjoys **independent judicial power** and ensures that the courts exercise judicial power independently, “free from any interference”.
- 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 (including the common law) and the judicial system previously practised in Hong Kong 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 set out, inter alia, 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-

*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, one barrister, one solicitor and three persons who are not connected in any way with the practice of law 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.

permanent judge will sit instead.

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

- **Eminent jurists from other common law jurisdictions may be appointed** to the CFA as overseas non-permanent judges.
- The appointment of these eminent judges as non-permanent judges of the CFA 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 2024, there were:

- About 11,700 practising solicitors and 1,700 practising barristers
- About 1,500 registered foreign lawyers from 31 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
- Asia Pacific Regional Office of the Hague Conference on Private International Law
- Centre for 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 170 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 19 mediators designated by those institutions.
- The CEPA Amendment Agreement on Trade in Services signed in October 2024 introduced the measures of “allowing Hong Kong-invested enterprises to adopt Hong Kong law” and “allowing Hong Kong-invested enterprises to choose for arbitration to be seated in Hong Kong” as facilitation measures for Hong Kong investors, supporting Hong Kong-invested enterprises registered in pilot cities in the GBA to choose Hong Kong or Macao law as the governing law for their contracts; and Hong Kong-invested enterprises registered in the nine Mainland municipalities in the GBA to choose Hong Kong or Macao as the seat of arbitration. These measures enhance flexibility and convenience for Hong Kong-invested enterprises, facilitating their further investments and business development in the Mainland.
- 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.
- The number of new dispute resolution cases handled by the Hong Kong International Arbitration Centre, including both arbitration and mediation, reached 500 in 2023; the total amount in dispute in all the administered cases was about HK\$86 billion (about US\$11.1 billion) in 2023.
- 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 came into effect in January 2024 which establishes 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 and the Hong Kong Legal Cloud.

- The **Hong Kong Legal Cloud** services was launched in March 2022, with services provided by eBRAM International Online Dispute Resolution Centre. It is an online facility situated in Hong Kong equipped with advanced information security technology to provide safe, secure and affordable data storage services for the local legal and dispute resolution industries.
- 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.
- eBRAM International Online Dispute Resolution Centre launched its **Online Arbitration platform** and **Online Mediation platform** in October 2022. It further launched its **Deal-Making Portal** in December 2023 to provide small and medium enterprises with a more convenient way to conduct business transactions, and to expand their services in the GBA and overseas for professional services, including the legal disputes industry.
- The **Consultation Group on LawTech Development** will be set up within Q1 2025 to help the Government formulate policies and measures on LawTech and promote its application in relevant sectors.

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