



Legal System

The legal system of the Hong Kong Special Administrative Region (HKSAR) 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. 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 local legislation. All legislation in force in the HKSAR is accessible on the internet at www.legislation.gov.hk.

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

- (1) the Basic Law;
- (2) national laws listed in Annex III to the Basic Law;
- (3) the laws, including the common law and the rules of equity, in force before July 1, 1997, apart from a small number of statutory provisions which were declared by the Standing Committee of the National People's Congress to contravene the Basic Law; 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 applied locally by way of promulgation or legislation by the HKSAR. Currently, 11 national laws apply in the HKSAR.

The Judiciary: It is fundamental to Hong Kong's legal system that members of the judiciary are independent of the executive and legislative branches of government.

The courts of justice in Hong Kong comprise the Court of Final Appeal, the High Court (which includes the Court of Appeal and the Court of First Instance), 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 five 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 the prosecution of all offences in the HKSAR.

The Legal Policy Division, as well as the Secretary for Justice's Office, provides professional support in the execution of the Secretary for Justice's duties and provides input on all legal policy issues being considered by the Government. The division advises on issues relating to the administration of justice, the legal system, the legal profession, human rights, the Basic Law and the law of Mainland China. The Law Reform Commission Secretariat, which provides research and secretarial support to the Commission, is within the division.

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.

The Law Drafting Division is responsible for drafting all legislation proposed by the Administration, including subsidiary legislation, in Chinese and English, and assists in steering legislation through the Executive and Legislative Councils. It also has editorial responsibility for the Laws of Hong Kong and for maintaining an up-to-date version of those laws in the *Bilingual Laws Information System*, a computer database which is available free to the public on the internet.

Counsel of the Prosecutions Division conduct most criminal appeals up to and including the Court of Final Appeal. They also conduct the majority of cases in the Court of First Instance and the District Court and, when necessary, they prosecute in the Magistrates' Court. The division also provides legal advice to law enforcement agencies and other government departments.

The International Law Division advises the Government on issues relating to public international law. Lawyers in this division also participate in the negotiation of agreements with other jurisdictions and handle requests to and from the HKSAR for international legal co-operation.

Law Reform Commission: The Law Reform Commission considers and reports on such topics as may be referred to it by the Secretary for Justice or the Chief Justice of the Court of Final Appeal of the HKSAR. Its membership includes academics, practising lawyers and prominent community members.

The Commission has published reports covering subjects as diverse as commercial arbitration, data protection, divorce, sale of goods and supply of services, insolvency, fraud and statutory interpretation. The recommendations in many of its reports have been implemented, either in whole or in part. It is currently considering references on the criteria for service as jurors, hearsay in criminal proceedings, sexual offences, double jeopardy, adverse possession, class actions, causing or allowing the death of a child, charities and enduring powers of attorney.

The Legal Profession: As at May 2008, the HKSAR had 1 059 practising barristers, 5 932 practising solicitors and 710 local law firms, plus some 62 foreign law firms, 1 193 registered foreign lawyers and 20 registered associations between foreign law firms and local law firms.

Legal Aid Department: 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 some tribunals and certain Coroner's Court cases.

An applicant must satisfy both a 'means test' and a 'merits test'. For the means test, a person whose total financial resources do not exceed \$175,800 may be granted legal aid. The Director of Legal Aid may waive the upper financial limit in meritorious cases when a breach of the Hong Kong Bill of Rights 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. However, in appeal cases, the Director of Legal Aid must be satisfied that there are meritorious grounds for appeal with a reasonable prospect of success.

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 a charge of murder, treason or 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 'sandwich class' whose financial resources are above the upper eligibility limit for legal aid (i.e. \$175,800) but do not exceed \$488,400. It covers cases involving personal injury or death, as well as medical, dental or legal professional negligence, where the claim for damages is likely to exceed \$60,000. The scheme also covers claims under the Employees' Compensation Ordinance irrespective of the amount of the claim.

The Duty Lawyer Service: Three programmes of legal assistance, administered by a council 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 \$420 upon granting of Duty Lawyer representation. In 2007, 38 640 defendants were assisted.

The Legal Advice Scheme, staffed by over 900 volunteer lawyers, operates 10 sessions per week at nine evening centres. In 2007, 6 429 cases were handled. The scheme is not means tested.

A free Tel-Law Service offers trilingual (Cantonese, Putonghua and English) taped information on 78 topics. Eight telephone lines operate 24 hours. In 2007, 28 335 calls were received.

The Land Registry: The Land Registry administers the Land Registration Ordinance governing the registration of instruments affecting land and provides facilities for search of the Land Register and related records by the public and government departments. It has responsibility for the registration of owners' corporations under the Building Management Ordinance. To prepare for changing the current deeds registration system to a new title registration system to give greater security to property interests and simplify conveyancing, the Land Titles Ordinance was enacted in 2004 but it will not come into operation until the Land Titles (Amendment) Bill is passed. Preparation of the Amendment Bill is currently underway.

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. LACO is also responsible for the preparation of documentation relating to the acquisition of land from private owners pursuant to statutory powers and the payment of compensation to those owners.

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

LACO also provides conveyancing services to the Financial Secretary Incorporated for the extension of non-renewable leases, the Government Property Agency for the sale and purchase of government properties and the Secretary for Home Affairs Incorporated for the purchase of accommodation for welfare purposes in private developments. It 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 and facilities for members of the public to inspect and obtain company information held on the various statutory registers; the deregistration of defunct, solvent private companies; and advising the Government on policy, regulatory and legislative issues regarding company law and related legislation, corporate governance and other matters affecting the commercial sector. The Registry is also heavily involved in taking forward the rewrite of the Companies Ordinance and provides the secretariat to the Standing Committee on Company Law Reform which reviews the Companies Ordinance regularly to ensure that the legislative framework meets the changing needs of the business community.

Official Receiver's Office: When appointed by the court and 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 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 intellectual property policy, law and registration and public education on intellectual property protection. It provides expert policy advice to the Commerce and Economic Development Bureau and civil legal advice to other government departments on intellectual property. It comments on draft intellectual property bills. It operates the registries and exercise the quasi-judicial functions on trade marks, patents and designs. It is also responsible for registration of copyright licensing bodies.

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 more than 170 bilateral

agreements with other jurisdictions. In addition, over 200 multilateral international conventions are applicable to the HKSAR.

Using the name "Hong Kong, China", the HKSAR also participates on its own as a full 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 participate in activities of the The Hague Conference on Private International Law, as well as of other international organizations and conferences limited to states, such as the International Monetary Fund, the World Intellectual Property Organization and the International Civil Aviation Organization.