

Government Structure

The Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China is headed by the Chief Executive.

She is advised on major policy decisions by the Executive Council.

The HKSAR has a two-tier system of representative government. At the central level is the Legislative Council which legislates, approves public expenditure and monitors the performance of the Administration. At the district level, 18 district councils advise on the implementation of policies in their respective areas.

The Administration, the executive arm of the Government, is organised into the Government Secretariat and departments. Government Secretariat Bureaux formulate policies and initiate legislative proposals. Departments implement laws and policies and provide direct services to the community.

The HKSAR has an independent Judiciary. It is responsible for the administration of justice and the adjudication of cases in accordance with laws.

The systems practised in Hong Kong are prescribed by the Basic Law, the constitutional document of the HKSAR which came into effect upon its establishment on July 1, 1997.

THE CHIEF EXECUTIVE

The Basic Law stipulates that the Chief Executive shall be elected by a broadly representative Election Committee in accordance with the Basic Law and appointed by the Central People's Government. The method for selecting the Chief Executive is to be specified in the light of actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

The fifth-term Chief Executive Election was held on March 26, 2017. Mrs Carrie Lam was returned and was formally appointed by the Central People's Government as the fifth-term Chief Executive on March 31, 2017, with her term of office commencing on July 1, 2017.

According to the Basic Law and the relevant Interpretation of the Standing Committee of the National People's Congress (NPCSC), any amendments to the method for selecting the Chief Executive must go through the "Five-step" constitutional process, i.e., the making of a report by the Chief Executive to the NPCSC, the determination by the NPCSC whether to make amendments to the method of selection; the endorsement of a two-thirds majority of all the Members

of the Legislative Council, the consent of the Chief Executive, and the approval by the NPCSC.

Powers and functions of the Chief Executive: The Chief Executive leads the Government of the HKSAR, decides on government policies and issues executive orders. She is responsible for the implementation of the Basic Law and other laws which, in accordance with the Basic Law, apply in the HKSAR.

She signs bills passed by the Legislative Council and promulgates laws. She also signs budgets passed by the Legislative Council and reports the budgets and final accounts to the Central People's Government for record.

The Chief Executive nominates and reports to the Central People's Government for appointment of the principal officials of the HKSAR, and recommends their removal. She appoints or removes judges of the courts and holders of public office in accordance with legal procedures.

She implements the directives issued by the Central People's Government in respect of the relevant matters provided for in the Basic Law and conducts, on behalf of the HKSAR Government, external affairs and other affairs as authorised by the Central Authorities.

The Chief Executive approves the introduction of motions regarding revenues or expenditure to the Legislative Council. She also decides, in the light of security and vital public interests, whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Council or its committees. Her other functions include pardoning of persons convicted of criminal offences or commuting their penalties and handling of petitions and complaints.

EXECUTIVE COUNCIL

Appointment and Removal of Executive Council

Members: Members of the Executive Council of the HKSAR are appointed by the Chief Executive from among the principal officials of the executive authorities, members of the Legislative Council and public figures. At present, the membership of the Executive Council comprises the 16 Principal Officials under the Accountability System and 16 non-official Members. Members' appointment or removal is decided by the Chief Executive.

Terms of Office of Executive Council Members:

Members hold office for a period no longer than the expiry of the term of office of the Chief Executive who appoints them.

Purview of the Executive Council: The Executive Council normally meets once a week. The Chief Executive presides over its meetings. The Chief Executive is required by the Basic Law to consult the council before making important policy decisions, introducing bills into the Legislative Council, making subordinate legislation or dissolving the Legislative Council, but not for example on the appointment, removal and disciplining of officials and the adoption of measures in emergencies.

The council advises the Chief Executive, who then makes a decision. Members tender their advice individually, but the council's conclusions are presented as collective decisions. If the Chief Executive does not accept a majority opinion of the Executive Council, she shall put the specific reasons on record.

The Executive Council advises the Chief Executive on all important policies. Expenditure of public funds for policies decided by the Chief Executive in consultation with the Executive Council is subject to such funds being approved by the Legislative Council. The Executive Council also advises upon all principal legislation before it is introduced into the Legislative Council, and has the power to make subsidiary legislation under a number of ordinances passed by the Legislative Council.

LEGISLATIVE COUNCIL

According to the Basic Law, the Legislative Council of the HKSAR shall be constituted by election. The method for its formation shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.

The composition of the first to sixth terms of the Legislative Council is as follows-

<u>Membership</u>	<u>First term (1998-2000)</u>	<u>Second term (2000-2004)</u>	<u>Third & Fourth Terms (2004-2008 and 2008-2012)</u>	<u>Fifth & Sixth Terms (2012-2016 and 2016-2020)</u>
(a) returned by geographical constituencies through direct elections	20	24	30	35
(b) returned by functional constituencies	30	30	30	35
	10	6	—	—
	60	60	60	70

The Basic Law provides that any amendments to the method for the formation of the Legislative Council and its procedures for voting on bills and motions after 2007 must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the NPCSC for the record.

The motion put by the HKSAR Government concerning the amendment to the method for the formation of the Legislative Council in 2012 was passed by a two-thirds majority of all the Members of the Legislative Council on June 25, 2010. In 2012, the number of Legislative Council seats increased from 60 to 70. Aside from increasing the number of geographical constituency seats by five, the five new functional constituency seats in 2012 is nominated by elected District Council members. They are elected by all registered voters who do not have a right to vote in traditional functional constituencies, on a one-person-one-vote basis. Under this proposal, every registered voter can have two votes in the 2012 Legislative Council election, one for geographical constituency, and the other for functional constituency.

The sixth term Legislative Council election was held on September 4, 2016. The term of the office of the Legislative Council is four years which began on October 1, 2016. The President of the Legislative Council is elected by and from among the members of the Legislative Council.

Functions and Powers of the Legislative Council: As provided for in Article 73 of the Basic Law, the Legislative Council of the HKSAR exercises the following powers and functions:

- To enact, amend or repeal laws in accordance with the provisions of the Basic Law and legal procedures;
- To examine and approve budgets introduced by the Government;
- To approve taxation and public expenditure;
- To receive and debate the policy addresses of the Chief Executive;
- To raise questions on the work of the Government;
- To debate any issue concerning public interests;
- To endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court;
- To receive and handle complaints from Hong Kong residents;
- If a motion initiated jointly by one-fourth of all the Members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the council. If the committee considers the evidence sufficient to substantiate such charges, the council may pass a motion of impeachment by a two-thirds majority of all its

members and report it to the Central People's Government for decision; and

- To summon, as required when exercising the above-mentioned powers and functions, persons concerned to testify or give evidence.

Enacting Laws: Typically, the formulation of legislative proposals may start with discussions between the Government and the relevant Legislative Council panels; the relevant advisory committees; and in many cases, chambers of commerce and trade associations, and district councils. During the course of these discussions, the original proposals may be revised until they command a high degree of general support.

The Government then submits its proposal to the Executive Council and seeks the Chief Executive in Council's approval to introduce the bill into the Legislative Council. Usually, within about two to four weeks after the endorsement of the Executive Council, the bill will be published in the Gazette and introduced into the Legislative Council for its First Reading. After the official in charge of the bill has moved the bill's Second Reading with a speech explaining the merits and principles of the bill, the Second Reading debate on the bill will normally be adjourned. The bill will then be referred to the House Committee for consideration.

Usually at the next House Committee meeting that follows, members will examine the bill and decide whether a Bills Committee should be formed to study the provisions. A Bills Committee thus formed will consider the general merits and principles, and the detailed provisions, of the bill allocated to it and may consider any amendments. At the conclusion of its deliberations, the Bills Committee will report back to the House Committee. The House Committee may then discuss the report of the Bills Committee for the purpose of preparing members for resumption of debate on the bill.

As soon as the above process is completed, the bill may return to the council and resumes its Second Reading debate. If the bill receives Second Reading, it will then go through the committee stage, at which amendments can be moved, after which the bill receives the Third Reading. The bill becomes law after it is signed by the Chief Executive and gazetted.

Controlling Public Expenditure: The Government's budget is presented to the Legislative Council in the form of an Appropriation Bill. Similar to the process for scrutinising other bills, after the debate on the Second Reading of the Appropriation Bill is adjourned, the estimates containing the details of the financial requirements in the bill will be referred to the Finance Committee, which is a standing committee of the council, for examination. After the committee has completed examining the estimates, the debate on the Second Reading of the bill will be resumed. If supported, the bill will also go to committee stage and then proceed to Third Reading.

Other public expenditure proposals not contained in the Appropriation Bill will be scrutinised and approved by the Finance Committee which will note the financial implications of new policies.

Policy Debates: Following the Chief Executive's Policy Address, Members of the Legislative Council will have the opportunity to put forward their comments in the Motion of Thanks debate. This debate usually takes place two weeks after the Chief Executive delivers his Policy Address, to be followed by the Administration's response.

Members frequently hold debates on other issues such as important government policies or on matters of concern to the community at large.

Meetings of the Legislative Council: The council normally meets at 11 am every Wednesday in the Chamber of the Legislative Council Building to conduct its business while in session. The normal business includes: tabling of subsidiary legislation and other papers; reports; addresses; statements; questions; processing of bills; and motion debates.

All council meetings are open to the public and are conducted in Putonghua, Cantonese or English with simultaneous interpretation provided. The proceedings of the meetings are recorded verbatim in the *Official Record of Proceedings of the Legislative Council*.

Committee System: Through a system of committee, Members of the Legislative Council perform the important roles of scrutinising bills, controlling public expenditure and monitoring Government's performance. The Legislative Council has three standing committees: the Finance Committee, Public Accounts Committee, and Committee on Members' Interests.

Finance Committee: The Finance Committee consists of all members except the President. The chairman and the deputy chairman are elected from among its members. The committee normally meets in public to scrutinise and approve public expenditure proposals put forward by the Government. Public officers responsible for implementing the relevant policy may be called to answer questions raised by the committee members.

One of the roles of the Finance Committee is to scrutinise the budget presented by the Financial Secretary to the Legislative Council in the form of an Appropriation Bill, which sets out the Government's annual expenditure proposals for the following financial year. After the bill and the draft estimates of expenditure have been examined by the Finance Committee, the bill is brought back to the council for debate.

There are two subcommittees under the Finance Committee: the Establishment Subcommittee and the Public Works Subcommittee. The Establishment Subcommittee examines and makes recommendations to the Finance Committee on the Government's proposals for the creation, redeployment, and deletion of directorate posts, and for changes to the structure of civil service grades and ranks.

The Public Works Subcommittee examines and makes recommendations to the Finance Committee on the Government's expenditure proposals under the Capital Works Reserve Fund for projects in the public

works programme and building projects carried out by or on behalf of subvented organisations.

Public Accounts Committee (PAC): The PAC considers reports of the Director of Audit on the accounts and the results of value-for-money audits of the Government and other organisations which are within the purview of public audit. It may invite public officers and staff of public organisations to attend public hearings to give explanation, evidence or information, or any other persons to assist it in relation to such explanation, evidence or information. The PAC's seven members are appointed by the President in accordance with an election procedure determined by the House Committee.

Committee on Members' Interests: The Committee on Members' Interests considers matters pertaining to members' declaration of interests and matters of ethics in relation to their conduct. It investigates complaints regarding members' registration and declaration of interests, and makes recommendations relating to members' interests. The committee also examines arrangements for the compilation, maintenance and accessibility of the *Register of Members' Interests*. The committee comprises seven members who are appointed by the President of the Council in accordance with an election procedure determined by the House Committee.

House Committee: Apart from the above three standing committees, the Legislative Council also has a House Committee which consists of all members except the President. Its chairman and deputy chairman are elected among members. The committee normally meets every Friday afternoon and is responsible for dealing with matters related to the work of the Legislative Council and prepares members for the full council meetings. It also decides whether bills committees or subcommittees should be formed as appropriate to study bills and subsidiary legislation which have been introduced into the Legislative Council.

Bills Committees: Any member, other than the President, may join a bills committee to consider the principles and merits of a bill allocated to it for scrutiny. It may also consider the bill's detailed provisions and propose amendments relevant to the bill. A bills committee tables a report in council after it has completed its task. It is dissolved on the passage of the bill concerned through the Legislative Council or when the House Committee so decides.

Committee on Rules of Procedure: The Committee on Rules of Procedure is responsible for reviewing the *Rules of Procedure of the Legislative Council* and proposing to the council such amendments as are considered necessary. The committee consists of 12 members and they are appointed by the President in accordance with an election procedure determined by the House Committee.

Panels: To monitor the performance of the Government in different policy areas, the Legislative Council has established 18 panels to monitor and examine government policies. These panels also give

views on major legislative or financial proposals before their formal introduction into the council or Finance Committee, and examine important issues of wide public concern as referred by the council, House Committee or as raised by the panel members themselves.

DISTRICT COUNCILS

The fifth District Council election of the HKSAR was held on November 22, 2015 to return 431 elected members to the 18 District Councils. Besides, there are 27 ex-officio members (who are Rural Committee chairmen in the New Territories). The 18 District Councils advise the Government on matters affecting the well-being of the people and on the adequacy and priorities of government programmes in their respective districts. The District Councils also undertake environmental improvements and promote recreational, cultural and community activities within their respective districts. Their term of office is four years starting from January 1, 2016. The sixth District Council election of the HKSAR will be held on November 24, 2019 to return 452 elected members to the 18 District Councils.

THE GOVERNMENT

The main administrative and executive functions of government are carried out by 13 policy bureaux in the Government Secretariat, and 56 departments and agencies, mostly staffed by civil servants.

Under the accountability system for principal officials implemented since July 2002, the Chief Secretary for Administration, the Financial Secretary, the Secretary for Justice and the various Directors of Bureaux are the most important officials within the Government. The Chief Secretary for Administration is the most senior among the three Secretaries of Departments to deputise for the Chief Executive. The Chief Secretary for Administration assists the Chief Executive in supervising the policy bureaux as directed by him and plays a key role in ensuring harmonisation in policy formulation and implementation.

The Civil Service: The civil service system provides staff for all government departments and other executive of the Administration. It employed about 170 300 persons (excluding judges, judicial officers, ICAC officers and locally engaged staff working in overseas Hong Kong Economic and Trade offices), representing about 4 per cent of Hong Kong's labour force, as at December 31, 2017. Wastage from all sources, including resignation and retirement, ranges from 2.5 per cent to 4.7 per cent of strength from 2003/04 up to now. The annual growth of the civil service establishment had been mostly in the range of 1 per cent to 1.9 per cent between 2007/08 and 2017/18. In 2018/19, the civil service establishment is estimated to increase by about 3.7 per cent, so as to provide adequate manpower for implementing the new policies and initiatives introduced by the current-term Government and to tie in with the commissioning of various large-scale cross-boundary infrastructures.

Civil servant appointments are made having regard to the established procedures and all civil servants are subject to similar disciplinary codes. The civil service supports the Chief Executive and the Government of the day in formulating, explaining and implementing policies; conducting administrative affairs; delivering public services; and undertaking law enforcement and regulatory functions.

In accordance with the Basic Law, new recruits appointed to the civil service on or after July 1, 1997 must be HKSAR permanent residents, save for certain specified exceptions.

LEGAL SYSTEM

Criminal Prosecutions: The Secretary for Justice, who heads the Department of Justice, is ultimately responsible for all prosecutions in Hong Kong. It is for her to decide whether or not prosecutions should be instituted in any particular case, and it is her responsibility to conduct and control prosecutions.

The Secretary for Justice plays no part in the investigation of criminal offences, as that is the responsibility of the police force and the other law enforcement agencies. However, once the agencies have completed the investigation it is for the Secretary for Justice to decide whether or not that evidence justifies the preferment of criminal charges against any person. Public interest is also a relevant consideration. In making decisions on prosecution policy, the Secretary for Justice acts as an independent officer, independent, that is, of the Government of which she is a member and of the courts before which the cases are heard. The function which she exercises in this area is part of her function as guardian of the public interest. The principle of prosecutorial independence is guaranteed by Article 63 of the Basic Law, which provides that the Department of Justice of the HKSAR shall control criminal prosecutions, free from any interference.

The Secretary for Justice and her counsel do not themselves advise on every prosecution which is brought. Some minor prosecutions heard before magistrates are routine matters which are dealt with by law enforcement agencies along settled guidelines issued under the authority of the Secretary for Justice and without individual reference to the Department of Justice. The Secretary for Justice does, however, supervise prosecutions generally and she personally, or by way of specific delegation, considers many sensitive cases and all cases where the law provides that prosecutions may not be brought without her consent.

The Organisation of the Judiciary in Hong Kong: 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 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.

Powers and Duties of the Judiciary: The Judiciary is responsible for the administration of justice in Hong Kong. It hears all prosecutions and civil disputes, including disputes between individuals and the Government. It is fundamental to Hong Kong's legal system that members of the judiciary are independent of the executive authorities and legislature.

Independent Trial: The courts shall exercise judicial power independently, free from any interference. This principle has always been applied in Hong Kong. The exercise of the power to govern is itself accountable to the law. Neither the Chief Executive, the civil service nor any police officer is able to exercise a power unless he can point to some authority in law for his acts. An individual can seek redress before the court if the power of government is exceeded or abused. He has against the Government generally the same remedies for wrongdoing as are available against fellow citizens. The Judiciary maintains an independent and effective judicial system which upholds the rule of law, safeguards the rights and freedoms of the individual. Those who frame new laws are inhibited from infringing human rights or well-established legal principles declared and developed by generations of judges.

Jury System: The most serious types of criminal offences, such as murder, manslaughter, rape, armed robbery and drug offences involving large quantities, are tried by a judge of the Court of First Instance of the High Court, sitting with a jury consisting of seven or, when a judge so orders, nine. It is the jury which decides whether the accused is guilty or not guilty and a majority vote is required. The size of the majority required varies according to the situation stipulated in the Jury Ordinance. In some civil cases, a party may apply to the court to have the issues of fact tried by a jury.

If a coroner decides to hold an inquest with a jury, a jury of five will be appointed. In certain defined circumstances an inquest with a jury is mandatory. In a death inquest, the jury decides the cause of and the circumstances connected with a death.

