

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 sanctioned by the National People's Congress of the PRC. 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 written law. 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 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, 12 national laws are included in Annex III to the Basic Law.

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 the 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 Competition Tribunal, 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, constitutional development and electoral affairs 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 Mediation Team of the division, jointly with the Arbitration Unit of the Legal Policy Division, pursues the policy objective of the Government in enhancing Hong Kong's status as a leading centre for international legal and dispute resolution services in the Asia-Pacific region.

The Law Drafting Division drafts, in Chinese and English, all legislation proposed by the Administration and provides professional support to policy bureaux throughout the legislative process. It is also responsible for the compilation of the Laws of Hong Kong and maintaining a legislation database which is available on the Internet. As at Sept 2016, it is developing a new legislation database with legal status.

One of the most important functions of the Prosecutions Division is to make prosecutorial decisions as to whether to prosecute, and if so what charges to lay and before which courts. Its counsel provide legal advice to law enforcement agencies on all prosecution 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 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, statutory interpretation, enduring powers of attorney, double jeopardy, class actions and adverse possession. The recommendations in many of its reports have been implemented, either in whole or in part. It is currently considering references on sexual offences, causing or allowing the death of a child, archives law,

access to information, third party funding for arbitration and periodical payments for future pecuniary loss in personal injury cases.

The Legal Profession: As at August 2016, the HKSAR had 1 379 practising barristers, 8 883 practising solicitors and 873 local law firms, plus 76 foreign law firms, 1 329 registered foreign lawyers and 32 registered associations between foreign law firms and local 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 a 'merits test' as provided by the Legal Aid Ordinance (Cap.91). For the means test, a person whose total financial resources do not exceed \$290,380 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. However, in 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 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 middle class whose financial resources are above the upper eligibility limit for legal aid (i.e. \$290,380) but do not exceed \$1,451,900. It covers cases involving personal injury or death, professional negligence claims against 11 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 and estate agents; negligence claims against insurers or their intermediaries in respect of the taking out of the personal insurance products; and monetary claims against vendors in the sale of completed or uncompleted first-hand residential properties, where the claim for damages is likely to exceed \$60,000. 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 \$500 (revised to \$540 on 23 May 2016) upon granting of Duty Lawyer representation. In 2015, over 26 600 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 2015, the number of clients averaged about 81 per month.

The Free Legal Advice Scheme, staffed by over 1 000 volunteer lawyers, operates 12 sessions per week at nine evening centres. In 2015, 6 539 cases were handled. The scheme is not means tested.

A free Tel-Law Service offers trilingual (Cantonese, Putonghua and English) taped information on 80 topics. Eight telephone lines operate 24 hours. Descriptions were also available online. In 2015, 22 053 calls and 397 830 website hit were received.

The Convention Against Torture Scheme (The Publicly-funded Legal Assistance Scheme for Non-refoulement Claimants) provides legal assistance to eligible

claimants who have made claims under Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Up to 2015, a total of 10 147 cases were handled.

Home Affairs Bureau (HAB): The Legal Advice Scheme for Unrepresented Litigants on Civil Procedures (formerly known as the Pilot Scheme to Provide Legal Advice for Litigants in Person) has come into operation since March 2013 to provide free legal advice on civil procedural matters for unrepresented litigants. The scheme assists unrepresented litigants who (a) are parties to civil legal proceedings in the Lands Tribunal, the District Court, the Family Court, the Court of First Instance or the Court of Appeal of the High Court or the Court of Final Appeal (including commencement of proceedings); (b) have not been granted legal aid and have not engaged lawyers; and (c) satisfy the scheme's income eligibility limit of not exceeding a monthly income of \$50,000 or an annual income of \$600,000.

The Land Registry: The Land Registry is responsible for registration of instruments affecting land under the Land Registration Ordinance 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 and providing services for search of the owners' corporation records.

To give greater certainty of title and simplify conveyancing procedures, the Land Titles Ordinance (LTO) has been enacted for the change from the current deeds registration system to a new titles registration system. Upon completion of a comprehensive review of the enacted LTO and passing of an amendment bill to incorporate all necessary amendment proposals resulting from the review, the new system will be implemented. The post-enactment review and preparation of the amendment bill are both underway. Major stakeholders are being consulted on relevant amendment proposals.

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 units 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 (FSI) for the extension of non-renewable leases, and in the sale and purchase of FSI properties. 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 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 provides secretariat support to the Standing Committee on Company Law Reform which advises the Government on amendments to the Companies Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance and related legislation to ensure that they meet the changing needs of the business community.

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 policy advice to the Commerce and Economic Development Bureau on intellectual property policies and legislation as well as civil legal advice to other government departments on intellectual property. It operates the registries for trade marks, patents and designs and exercises quasi-judicial functions on related registration matters. It registers copyright licensing bodies. It also promotes awareness on intellectual property rights and facilitates the development of Hong Kong as an intellectual property trading hub in the region.

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 240 bilateral agreements with other jurisdictions. In addition, over 250 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.



