

The Power of Final Adjudication

- The CFA, based in Hong Kong and established on 1 July 1997, 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 common law 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-permanent judge will sit in his place



中文

English

Language

- In Hong Kong, cases can be conducted in either or both Chinese or English – the two official languages of the HKSAR – in accordance with the Official Languages Ordinance (Cap. 5)

Appointment of Common Law Non-permanent Judges

- Eminent jurists from other common law jurisdictions may be appointed to the CFA as non-permanent judges
- Currently, there are 12 non-permanent judges from other common law jurisdictions (the United Kingdom and Australia); previous common law non-permanent judges also include senior judges from New Zealand; appointments of two more judges to the CFA, one from the United Kingdom and one from Canada, have been endorsed by the Legislative Council and would begin their terms in July
- The association of these eminent judges with the CFA speaks for Hong Kong's judicial independence, and helps maintain a high degree of confidence in the legal system, and allows Hong Kong to maintain strong links with other common law jurisdictions



Independence of the Judiciary and the Rule of Law



Overview



- Hong Kong's judiciary is well-respected globally for its independence, quality and transparency
- Independent judicial power is guaranteed under the Basic Law
- The Basic Law also provides that the common law system shall be maintained
- The Court of Final Appeal (CFA) is vested with the power of final adjudication
- Judges and other members of the Judiciary may be recruited from other common law jurisdictions
- Court proceedings are generally open to the public and the media; written judgments are published and are readily accessible on the Judiciary's website
- The principle of judicial independence also involves the independence of each judge to adjudicate according to law without any interference



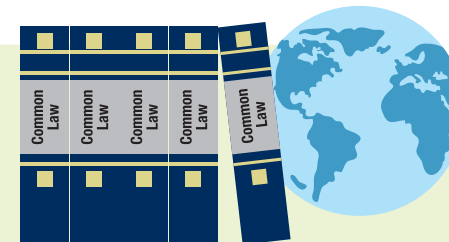
High Level of Confidence in the Judicial System

- No.1 in Asia and No.13 globally in judicial independence (World Economic Forum's Global Competitiveness Report 2017-18)



Basic Law

- The Basic Law refers to the independence of the Judiciary, free from interference, in three different provisions (Articles 2, 19 and 85)
- Article 25 stipulates that all Hong Kong residents shall be equal before the law
- Articles 8 and 81 provide that the laws previously in force and the judicial system previously practiced in Hong Kong (i.e. the common law system) shall be maintained
- Article 82 vests the power of final adjudication of the Hong Kong Special Administrative Region (HKSAR) in the CFA
- Articles 88, 89, 90 and 92, *inter alia*, set out the requirements and mechanisms for the appointment and removal of judges¹
- 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



Continuation of the Common Law System

- The Basic Law provides for the continuous application of the common law system in Hong Kong
- The common law is robustly applied in Hong Kong and our court rulings are from time to time cited in other common law jurisdictions
- Transparency of the operations of the courts – openness of court proceedings² and reasoned judgments – highlights the independence of the Judiciary

¹Judges are appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors. Judges 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 Court of Final Appeal and consisting of not fewer than three local judges. The Chief Justice of the Court of Final Appeal 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.

²Except for sensitive cases such as those involving children, or when confidential matters are to be considered (e.g. in an application for a Mareva injunction or an Anton Piller order), the public are always able to see for themselves the judicial process in operation.



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