

Hong Kong: The Facts

Judiciary



The Judiciary of the Hong Kong Special Administrative Region is responsible for the administration of justice in Hong Kong. It hears all prosecutions and civil disputes, including disputes between individuals and the Government.

As prescribed in the Basic Law, the Hong Kong Special Administrative Region is vested with independent judicial power, including the power of final adjudication. It states in express terms that the courts of the Hong Kong Special Administrative Region shall exercise judicial power independently, free from any interference. Members of the judiciary shall be immune from legal action in the performance of their judicial functions. As reflected in the Judicial Oath, in exercising their judicial powers, judges are constitutionally required to handle and determine cases strictly in accordance with the law and legal principles.

The courts of justice in Hong Kong comprise the Court of Final Appeal, the High Court (comprising 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.

The Chief Justice of the Court of Final Appeal is the head of the Judiciary. He is assisted in his administrative duties by the Judiciary Administrator.

A bilingual court system in which either or both Chinese and English can be used has been put in place, in accordance with the requirement of the Basic Law.

The Court of Final Appeal: It was established on July 1, 1997 upon the commencement of the Hong Kong Court of Final Appeal Ordinance (Cap. 484). It replaced the Judicial Committee of the Privy Council in London as the highest appellate court in Hong Kong, to safeguard the rule of law after June 30, 1997. The Court, when sitting, will comprise five judges — usually the Chief Justice, three permanent judges and one non-permanent judge from another common law jurisdiction; 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. There is, at present, a panel of four non-permanent Hong Kong judges and six non-permanent judges from other common law jurisdictions.

The Court of Appeal of the High Court: It hears appeals on civil and criminal matters from the Court of First Instance and the District Court, as well as appeals from the Competition Tribunal and the Lands Tribunal. It also makes rulings on questions of law referred to it by the lower courts. Headed by the Chief Judge of the High Court, it has an establishment of 14 Justices of Appeal.

The Court of First Instance of the High Court: It has unlimited jurisdiction in both civil and criminal matters. It also exercises jurisdiction in admiralty, bankruptcy, company winding-up, family, adoption, probate and mental health matters. In its appellate jurisdiction, it hears appeals from the Magistrates' Courts, the Labour Tribunal, the Small Claims Tribunal and the Obscene Articles Tribunal, as well as appeals from the Minor Employment Claims Adjudication Board.

Unless the law stipulates otherwise, serious criminal cases such as murder, manslaughter, rape, armed robbery and substantial drug trafficking offences are tried by a judge in the Court of First Instance of the High Court sitting with a jury of seven or, when the judge so orders, a jury of nine. Headed also by the Chief Judge of the High Court, there are 34 Judges of the Court of First Instance on the establishment.

The Competition Tribunal: The Competition Tribunal has primary jurisdiction to hear and adjudicate competition-related cases. All Judges of the Court of First Instance are members of the Competition Tribunal, while the Registrar, Senior Deputy Registrars and Deputy Registrars of the High Court hold the corresponding positions in the Competition Tribunal.

The District Court: The District Court includes the Family Court. It has civil and criminal jurisdiction and powers as are conferred upon it by enactment. Its general civil jurisdiction is limited to claims up to \$3 million, or for recovery of land where the annual rent, rateable value or annual value of the land does not exceed \$320,000. The maximum term of imprisonment it may impose in criminal cases is seven years. There is no jury trial in the District Court.

The District Court is led by the Chief District Judge, who is assisted by the Principal Family Court Judge. There are, at present, 42 District Judges on the establishment who also sit in the Family Court and the Lands Tribunal. The District Court Registry is headed by the Registrar, who is assisted by Deputy Registrars. They mainly deal with case management, interlocutory applications and taxation matters.

The Family Court: The Family Court has 14 courts. It hears applications pertaining to divorce and separation as well as other related family and/or matrimonial matters such as applications concerning children and financial relief. Notwithstanding the limited general civil jurisdiction of the District Court, there is no monetary limit in the Family Court. Applications under the domestic violence legislation and the Inheritance (Provision for Family and Dependents) Ordinance (Cap. 481) are also dealt with here. Most hearings in the Family Court are conducted in private save for defended divorces and enforcement actions.

The Magistrates' Courts: Magistrates exercise criminal jurisdiction over a wide range of offences. Although there is a general limit of two years' imprisonment or a fine of \$100,000, certain statutory provisions give Magistrates the power to sentence up to three years' imprisonment and to impose a fine up to \$5,000,000.

Prosecution of all indictable offences commences in the Magistrates' Courts, but the Secretary for Justice may apply to have a case transferred to the District Court or committed to the Court of First Instance of the High Court for trial depending on the seriousness of the case.

There are a total of 71 full-time Magistrates. They sit in various Tribunals and seven Magistrates' Courts: Eastern, Kowloon City, Kwun Tong, West Kowloon, Shatin, Fanling and Tuen Mun. A Principal Magistrate is in charge of each Magistrates' Court. The Chief Magistrate is the overall in charge whose chamber is at the West Kowloon Law Courts Building.

Appeals against Magistrates' decisions are heard by a Judge of the Court of First Instance of the High Court.

The Coroner's Court: Coroners are empowered to investigate sudden, unnatural or suspicious deaths occurring in Hong Kong (and deaths occurring outside Hong Kong if the body is brought into Hong Kong).

Except when death occurs while the individual is in official custody, or the Secretary for Justice requests, the Coroner decides whether or not to hold an inquest with or without a jury. The inquest is mandatory with a jury where the death occurs in official custody.

The main purpose of an inquest is to ascertain the cause of and the circumstances connected with the death. If appropriate, a Coroner or a jury may make recommendations designed to prevent the recurrence of fatalities similar to that under investigation.

The Juvenile Court: The Juvenile Court has jurisdiction to hear charges against children (aged under 14) and young persons (aged between 14 and 16) for any offence other than homicide. Children under 10 are exempted from criminal responsibility.

Where a child or juvenile under the age of 18 has not received proper care, counselling or treatment during their growth, an application for a protection and supervision order can be made to the Juvenile Court.

A juvenile magistrate will explain the alleged offence to the child or young person in simple language and assist him/her if need arises. Before passing sentence, the magistrate may consider pre-sentencing reports. Press coverage of the proceedings in a juvenile court is restricted to avoid disclosure of the identity of a defendant.

The Juvenile Courts are situated at the Magistrates' Courts in Eastern, Kowloon City, West Kowloon, Fanling and Tuen Mun.

The Lands Tribunal: One of the important functions of the Lands Tribunal is to determine applications by landlords for possession of premises under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) or under the Common Law. In such applications, apart from making orders for possession, the Tribunal also has power to make orders for the payment of rent, mesne profits and any other money which is due under the tenancy, as well as for the disposal of any property left in the premises by the tenant.

Another frequently used jurisdiction of the Tribunal is to

determine building management disputes, such as the interpretation and enforcement of the provisions of the Building Management Ordinance (Cap. 344) and deeds of mutual covenant, the appointment or dissolution of management committees, convening owners' meeting and appointment of administrator.

The Tribunal also has jurisdiction to determine the amount of compensation payable by the Government to a person whose land has been compulsorily resumed or has suffered a reduction in value because of public developments. The majority owner of a property may also apply to the Tribunal for an order for the sale of the land for redevelopment purpose under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545).

The Tribunal also exercises appellate jurisdiction over (i) determinations by the Commissioner of Rating and Valuation under the Rating Ordinance (Cap. 116); (ii) determinations by the Director of Lands under the Government Rent (Assessment and Collection) Ordinance (Cap. 515); and (iii) determinations by the Director of Housing under the Housing Ordinance (Cap. 283).

In exercising its jurisdiction, the Tribunal has the same powers to grant remedies and relief, legal or equitable, as the Court of First Instance of the High Court. Parties may appoint counsel or solicitors to appear before the Tribunal or they may appear in person.

The Tribunal is led by the President who is a High Court Judge and comprises presiding officers who are District Judges and members who may be experienced professional surveyors.

The Labour Tribunal: The Labour Tribunal provides a quick, inexpensive and informal procedure for adjudicating disputes between employees and employers. It deals with claims arising out of a breach of a contract of employment and the relevant provisions of the Employment Ordinance (Cap. 57), Minimum Wage Ordinance (Cap. 608) or the Apprenticeship Ordinance (Cap. 47). Claims may include wages in lieu of notice, arrears of wages, statutory holiday pay, annual leave pay, sickness allowance, maternity leave pay, bonus/double pay, severance pay, and long service payments. Claimants can also seek orders for reinstatement or re-engagement; for awards of compensation or terminal payments.

Proceedings are mostly conducted in Cantonese before a Presiding Officer. Legal representation is not allowed. Any party aggrieved by a decision may appeal on a point of law to the Court of First Instance of the High Court.

There are six full-time Presiding Officers, including one Principal Presiding Officer.

The Small Claims Tribunal: The Small Claims Tribunal deals with monetary claims arising from contract or tort, involving amounts not exceeding \$75,000.

Hearings are informal and usually conducted in Cantonese. Legal representation is not allowed. Parties may authorise, with the leave of the court, persons (other than a lawyer) very closely connected to the parties and fully familiar with the case to be their representative to appear in court. Any party aggrieved by the decision of an Adjudicator may appeal on a point of law to the Court of First Instance of the High Court.

There are four full-time Adjudicators, including one Principal Adjudicator.

The Obscene Articles Tribunal: The Control of Obscene and Indecent Articles Ordinance (Cap. 390) provides for the establishment of the Obscene Articles Tribunal.

The work of the tribunal covers two main aspects. First, it is responsible for the classification of articles submitted by any public officer, author, printer, manufacturer, publisher, distributor, copyright owner, etc. Second, the tribunal has exclusive jurisdiction to determine the question of obscenity or indecency when the issue arises in any civil or criminal proceedings in any court.

The Obscene Articles Tribunal consists of a full-time Magistrate and two or more lay adjudicators. Lay adjudicators are selected from a panel consisting of members of the public.

Appointment of Judges and Judicial Officers: Judges and judicial officers are appointed by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission. The Commission is an independent statutory body composed of local judges, members of the legal profession and eminent persons from other sectors.

Judges are chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions.