JUDICIAL INDEPENDENCE

The independence of the Judiciary is constitutionally provided for and enshrined in Article 85 of the Basic Law. Judicial independence is of fundamental importance in the Hong Kong legal system, and forms a core element in the concept of the separation of powers between the Executive, the Legislature and the Judiciary with checks and balances as between them. The courts' role is to ensure that executive and legislative actions fully comply with the Basic Law and the law.

An independent Judiciary must be, and must be perceived by the public to be, independent. Everyone is equal before the law. Judges resolve disputes as between citizens and as between citizen and government in an impartial manner.

The principle of judicial independence also involves the independence of each judge to adjudicate according to law without any interference. A judge is bound on matters of law by decisions of the higher courts and his/her decisions are subject to appeal. But he/she has the independence to decide each case on his/her own without interference.
SAFEGUARDS FOR JUDICIAL INDEPENDENCE

Appointment of Judges

Article 92 of the Basic Law provides that judges of the courts of the Hong Kong Special Administrative Region shall be chosen on the basis of their judicial and professional qualities. Article 88 provides that judges shall be appointed by the Chief Executive on the recommendation of an independent commission. The commission, as prescribed by the Judicial Officers Recommendation Commission Ordinance (Cap. 92), consists of nine members who, apart from the ex-officio members, are appointed by the Chief Executive. The Commission consists of:

- three judges (including the Chief Justice as the ex-officio chairman);
- three lawyers (including the Secretary for Justice as the ex-officio member, a barrister and a solicitor who are appointed in consultation with the governing councils of the professional bodies); and
- three lay persons not connected with the practice of law.

A resolution of the Commission is not effective if there are more than two votes not in favour.
The Judicial Oath

Judges and Judicial Officers are required under the law to take the following judicial oath on their appointment:

I swear that, in the Office of a Judge of the Judiciary of the Hong Kong Special Administrative Region of the People's Republic of China, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China, serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity, safeguard the law and administer justice without fear or favour, self-interest or deceit.
Security of tenure and undertaking

The tenure of office of judges is protected both by the Basic Law and by legislation. Upon their appointment, District Court Judges and above have to give an undertaking to the Chief Executive that after they have completed their service, they will not practise as a barrister or solicitor in Hong Kong. In the case of Judges of the Court of Final Appeal, such prohibition is statutory. Such severance of any possible ties with private practice prevents any real or perceived conflict of interests and enhances the independence of judges and the perception of such independence.

Removal of Judges

Article 89 of the Basic Law provides that a judge may only be removed from office 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 and consisting of not fewer than three local judges. As for the removal of the Chief Justice, the Basic Law provides that this can only be done on account of 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.
Immunity from Legal Action

Article 85 of the Basic Law provides that members of the Judiciary shall be immune from legal action in the performance of their judicial functions.

ADMINISTRATION OF JUSTICE

The fundamental importance of an independent Judiciary for the maintenance of the rule of law is beyond question. The challenge for the Judiciary is to perform its role with competence so that it commands the respect and confidence of both the domestic and the international community.

The Judiciary has a vital constitutional role to ensure that the Executive and the Legislature act within the Basic Law and the law, that there is no abuse of power and that the fundamental rights and freedoms of citizens are safeguarded. These values are recognised in various international covenants and are enshrined in the Basic Law. Our judges act fearlessly, irrespective of popular acclaim or criticism.
The Judiciary has to maintain and continue to improve the court system so that it meets the rising expectations of society. Court time is a public resource and is inevitably limited. Judges must ensure that this public resource is fairly and efficiently allocated and used.

There must be a fair and efficient system for the resolution of disputes. Such a system would have to tackle and tackle successfully the inter-related problems of cost and delay. The Chief Justice established a Working Party to review and reform the Civil Justice System (see Chapter 1), as part of our overall efforts to face the exciting challenges in the administration of justice in the 21st century. The Working Party finalised its recommendations in March 2004 and its report was approved by the Chief Justice.

GUIDE TO JUDICIAL CONDUCT

In September 2002, the Chief Justice appointed a Working Party to advise on the subject of developing a Guide to Judicial Conduct appropriate for Hong Kong. The Working Party is chaired by the Chief Judge of the High Court ex-officio, and comprises judges from each level of court.

In July 2004, after consultation with judges and judicial officers, and drawing on the experience of a number of overseas jurisdictions, the Working Party drew up a Guide to Judicial Conduct appropriate for Hong Kong’s circumstances. The Chief Justice accepted the Working Party’s recommendation that the Guide be adopted and that it should be made available to the public to increase transparency. The Guide will be reviewed from time to time.
The Chief Justice considers that it is of fundamental importance that judges and judicial officers must at all times observe the highest standards of conduct and integrity. This is essential for the maintenance of public confidence in the Judiciary and the administration of justice. The purpose of the Guide to Judicial Conduct is to provide practical assistance to judges in dealing with matters relating to judicial conduct. The Chief Justice is confident that it will serve that purpose.

The Guide to Judicial Conduct was published on 25 October 2004 and is accessible to the public on the Judiciary’s website.
Under Article 90 of the Basic Law, the Chief Justice of the Court of Final Appeal and the Chief Judge of the High Court of the Hong Kong Special Administrative Region shall be Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country.

The Chief Justice

The Hong Kong Court of Final Appeal Ordinance provides that the Chief Justice shall be the head of the Judiciary and shall be charged with the administration of the Judiciary and such other functions as may be lawfully conferred to him. The Chief Justice presides at hearings in the Court of Final Appeal.
The Hon Mr Justice Andrew Li was appointed as the first Chief Justice of the Hong Kong Special Administrative Region on 1 July 1997. Before his appointment, Chief Justice Li practised at the Hong Kong Bar.

Chief Justice Li was born in Hong Kong in 1948. He holds the degrees of Master of Arts and Master of Laws from the Cambridge University. He was called to the English Bar in 1970 and the Hong Kong Bar in 1973. He was appointed Queen’s Counsel in 1988.

Chief Justice Li has a long record of public service. He was a member of the Executive Council and has served on many boards and committees, including as Chairman of the then University and Polytechnic Grants Committee and the Land Development Corporation, as Vice-chairman of the Council of the Hong Kong University of Science and Technology, and as member of the then Judicial Service Commission, the Law Reform Commission and the Securities Commission. He is a trustee of the Friends of Tsinghua University Law School Charitable Trust and a Guest Professor of the Tsinghua University.

Chief Justice Li’s awards include Honorary Degrees awarded by the Hong Kong University of Science and Technology (1993), the Hong Kong Baptist University (1994), the Open University of Hong Kong (1997), the University of Hong Kong (2001), the Griffith University (2001) and the University of New South Wales (2002). He was made an Honorary Bencher of the Middle Temple in 1997 and an Honorary Fellow of Fitzwilliam College, Cambridge in 1999.

Hong Kong Judiciary Annual Report 2004
The Chief Judge of the High Court

The Chief Judge of the High Court is the President of the Court of Appeal as provided for in the High Court Ordinance (Cap. 4). He is the court leader of the High Court responsible for its administration. He is responsible for ensuring the efficient utilisation of judicial resources and court time, and for advising the Chief Justice on matters of policy concerning the operation and development of the High Court.

The Hon Mr Justice Ma was appointed Chief Judge of the High Court on 14 July 2003. Before that, he was a Justice of Appeal (since November 2002). He joined the Judiciary in December 2001 when he was appointed a Judge of the Court of First Instance of the High Court.
Mr Justice Ma was born in 1956 in Hong Kong and received much of his education in England. After attending the University of Birmingham, he read for the Bar and was called to the Bar of England and Wales (in Grays Inn) in 1978. He was called to the Hong Kong Bar in 1980 becoming a Queen’s Counsel in 1993 and a Recorder of the Court of First Instance of the High Court in 2000. He was in private practice at the Hong Kong Bar until his appointment to the High Court in 2001. While in practice, he also appeared in the Singapore courts and was associated with a firm of advocates and solicitors there. He was admitted to the Bar of the State of Victoria in 1983 and to the Singapore Bar in 1990.

Mr Justice Ma has a long record of public and community service. Before joining the Judiciary in December 2001, he was a member of the Chief Justice’s Working Party on Civil Justice Reform. He was also Chairman of the Appeal Tribunal Panel (Buildings) and of the Environmental Impact Assessment Appeal Board Panel; Deputy Chairman of the Securities and Futures Appeals Panel and the Securities and Futures Commission Takeovers Appeal Committee. Mr Justice Ma served as a member of the Criminal and Law Enforcement Injuries Compensation Board, a member of the Hong Kong Futures Exchange Disciplinary Appeals Tribunal, an adjudicator of the Registration of Persons Tribunal, a member and the Vice Chairman of the Management Committee of the Consumer Legal Action Fund, and the Deputy Chairman of the Board of Review (Inland Revenue). He was also the Honorary Legal Advisor to the Hong Kong Society of Endocrinology, Metabolism and Reproduction Ltd., a charitable organisation. He remains closely involved with arbitration in Hong Kong and became a member of the Council of the Hong Kong International Arbitration Centre in 2003.
The Chief District Judge

The Chief District Judge is the court leader of the District Court responsible for its administration. Apart from judicial duties, the Chief District Judge is responsible for ensuring the efficient utilisation of judicial resources and court time, and for advising the Chief Justice on matters of policy concerning the operation and development of the District Court and the Lands Tribunal.

His Honour Judge Fung was appointed the Chief District Judge on 16 May 2001. Born in Hong Kong in 1960, Judge Fung was educated in Wah Yan College, Hong Kong and Barker College, Australia. He holds the Bachelor of Commerce and Bachelor of Laws degrees from the University of New South Wales and the Postgraduate Certificate of Laws from the University of Hong Kong. He was admitted as Barrister, New South Wales in 1985, and called to the Hong Kong Bar in 1986. He is also a Fellow of the Australian Society of Certified Practising Accountants and an Associate of the Chartered Institute of Arbitrators in the United Kingdom.

Judge Fung was in private practice before he joined the Judiciary as a Magistrate in 1993. He was appointed District Judge in 1998 before he became the Chief District Judge in 2001.

Judge Fung is a director of the Hong Kong Children’s Choir, Member of the Board of the Advocacy Institute of Hong Kong and a Visiting International Alumni Fellow of the University of New South Wales.
The Chief Magistrate

The Chief Magistrate is the court leader of the Magistrates’ Courts, the Small Claims Tribunal, the Labour Tribunal, the Obscene Articles Tribunal and the Coroner’s Court. He is responsible for the administration of the Magistrates’ Courts and these Tribunals, ensuring the efficient utilisation of judicial resources and court time, and advising the Chief Justice on matters of policy concerning the operation and development of the Courts and Tribunals within his purview.

Mr Patrick Li was appointed the Chief Magistrate on 3 October 2000. Born in 1955 in Hong Kong, Mr Li holds the Bachelor of Laws degree and Postgraduate Certificate of Laws from the University of Hong Kong. He was called to the Hong Kong Bar in 1987.

Mr Li worked in the then Legal Department of the Hong Kong Government before he joined the Judiciary in 1993. He was appointed as a Principal Magistrate in 1999 and as Chief Magistrate in 2000.
**OUR JUDGES**

The judiciary has a team of competent, experienced and committed judges and judicial officers. As at 30 September 2004, there are 156 judges and judicial officers. The majority is in the age range of 40-59. About 79% are male.

![Bar chart showing age distribution of judges and judicial officers as at 30 September 2004.]

**Greater Use of Chinese in Court Process**

Judges and judicial officers who are proficient in conducting hearings in both English and Chinese at different levels of courts are as follows:

- 32 females
- 124 males

![Pie chart showing sex distribution of judges and judicial officers as at 30 September 2004.]

**According to the table below,**

- **40岁以下** (below 40)
- **40-49**
- **50-59**
- **60-65**

<table>
<thead>
<tr>
<th>Age Range</th>
<th>No. of JJOs</th>
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<tbody>
<tr>
<td>40-49</td>
<td>62</td>
</tr>
<tr>
<td>50-59</td>
<td>72</td>
</tr>
<tr>
<td>60-65</td>
<td>9</td>
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</tbody>
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**As at 30 September 2004**
### Court Levels

<table>
<thead>
<tr>
<th>Court Levels</th>
<th>No. of Bilingual Judges</th>
<th>Percentage of Total</th>
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</table>
| 終審法院  
Court of Final Appeal                          | 2 名法官  
2 Judges             | 50%                 |
| 高等法院上訴法庭  
Court of Appeal of the High Court             | 4 名法官  
4 Judges             | 44%                 |
| 高等法院原訟法庭  
Court of First Instance of the High Court       | 13 名法官及司法人員  
13 Judges and Judicial Officers | 45%                 |
| 區域法院、家事法庭和土地審裁處  
District Court, Family Court and Lands Tribunal | 18 名法官及司法人員  
18 Judges and Judicial Officers | 56%                 |
| 裁判法院和審裁處  
Magistrates’ Courts and Tribunals              | 62 名裁判官和其他司法人員  
62 Magistrates and other Judicial Officers | 76%                 |

# 截至 2004 年 9 月 30 日為止。雙語法官是指那些能夠說、讀及書寫中文（包括能夠以中文進行審訊和撰寫總結及判決書）的法官和司法人員。

Bilingual Judges are Judges and Judicial Officers who are able to speak, read and write Chinese, including conducting trials and preparing summing-ups and judgments in Chinese. Position as at 30 September 2004.

對合適的案件以中文進行聆訊是一項司法決定。《法定語文條例》（第 5 章）第 5 條規定：

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(1) A judge, magistrate or other judicial officer may use either or both of the official languages in any proceedings or a part of any proceedings before him as he thinks fit.

(2) The decision of a judge, magistrate or other judicial officer under subsection (1) is final.
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The decision as to which language to use is a matter for the Judge or Judicial Officer hearing the case. The paramount consideration is the just and expeditious disposal of the cause or matter before the court, having regard to the circumstances of the case. The factors to be taken into account include the language ability and wishes of the defendants or the litigants; the language ability of the legal representatives; the language ability of the witnesses; the factual and legal issues in dispute; the volume of documents to be translated into the other official language; and the language ability of the Judge or Judicial Officer.

There is an increasing need for proceedings in Chinese. To meet the operational requirements of the courts, the Judiciary’s policy is to strive to increase with such speed as is practicable the bilingual capacity of Judges and Judicial Officers without detriment to judicial and professional quality. At the same time, the Judiciary provides continuous training to enhance the Chinese language ability of Judges and Judicial Officers.

APPOINTMENT AND RETIREMENT OF JUDGES (AT HIGH COURT LEVEL AND ABOVE) IN 2004

In 2004, on the recommendation of the Judicial Officers Recommendation Commission on the filling of judicial offices at High Court level and above, the Chief Executive appointed Mr Robert Ching Tang, S.C. as a Judge of the Court of First Instance of the High Court.

In 2004, the Chief Executive extended the term of office of the Rt Hon the Lord Hoffmann as a Non-Permanent Judge from Other Common Law Jurisdictions of the Court of Final Appeal for a period of three years, on the recommendation of the Chief Justice.

After many years of dedicated and distinguished service, the Hon Mr Justice Jackson, Judge of the Court of First Instance of the High Court, retired from the judicial service in February 2004.

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