

2. WHO ARE MEDIATORS? 2. WHO ARE MEDIATORS? Mediators would not provide legal advice and would not take sides. They would not impose any decisions on the parties. Unlike Court proceedings or arbitrations, mediators are not there to determine the disputes or issues between the parties but merely to facilitate settlement. There are a number of organizations in Hong Kong which provide lists of mediators. The major providers are: the Hong Kong Bar Association, the Law Society of Hong Kong and the Hong Kong International Arbitration Centre.

1. WHAT IS MEDIATION? 1. WHAT IS MEDIATION? As from 2 April 2009, under the Civil Justice Reform, mediation was introduced as a voluntary resolution process. The aim is to encourage settlement and to achieve cost-effectiveness. The Court may now stay the Court proceedings to enable the parties to explore alternative dispute resolution ( "ADR" ). Mediation is the recommended ADR by the Court. Mediation is not mandatory but the Court could make adverse costs order where a party unreasonably fails to engage in mediation. Mediation is a flexible process conducted confidentially in which a neutral person (the mediator) assists the parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle and the terms of resolution.

2. INTRODUCTION TO THE THE HONG KONG INTERNATIONAL ARBITRATION CENTRE (HKIAC) 2. INTRODUCTION TO THE THE HONG KONG INTERNATIONAL ARBITRATION CENTRE (HKIAC) The Hong Kong International Arbitration Centre (HKIAC) was established in 1985 to act as an independent and impartial focus for the development of all forms of dispute resolution in the HKSAR and the Asia-Pacific region. The HKIAC provides information on dispute resolution and arbitration both in the HKSAR and overseas. It operates panels of international and local arbitrators, and maintains lists of mediators. The HKIAC's office provides 10 purpose-built hearing and conference rooms and full support facilities. For details, please visit the HKIAC website.

1. WHAT IS ARBITRATION? 1. WHAT IS ARBITRATION? Arbitration is a method for resolving disputes that provides an alternative to court proceedings. It is governed by the Arbitration Ordinance (Cap. 609). Before an arbitration takes place, the disputing parties must agree to take their dispute to arbitration. An agreement to take any disputes to arbitration is often made before the dispute arises and is often included as a clause in commercial contracts. In signing a contract with an arbitration clause, the parties have agreed that their dispute will not be heard by the court but by a private individual or a panel of several private individuals (i.e. the arbitrators). Arbitration is a legal process which results in an award being issued by the arbitrator(s). The award is final and binding on the parties and can only be challenged in exceptional circumstances.

3. HOW CAN I BECOME A SOLICITOR? 3. HOW CAN I BECOME A SOLICITOR? Any person wishing to qualify as a solicitor must obtain a Bachelor of Laws (LLB) or Juris Doctor (JD) or equivalent legal studies from the University of Hong Kong, the City University of Hong Kong, the Chinese University of Hong Kong or another recognized tertiary institution under Common Law jurisdiction (or pass the Common Professional Examination of England and Wales (CPE) for non-law graduates), and must obtain a Postgraduate Certificate in Laws. You are also required to satisfactorily complete a period of two years employment as a trainee solicitor in order to be eligible for admission to practice in Hong Kong. The Law Society of Hong Kong also registers and regulates the practice of all foreign lawyers practising in Hong Kong. Foreign lawyers can now be admitted as Hong Kong solicitors either by obtaining an exemption from, or by passing, the Overseas Lawyers Qualification Examination administered by the Law Society of Hong Kong. For details of the qualification and admission requirements, please visit the Law Society of Hong Kong's website.

2. HOW CAN I BECOME A BARRISTER? 2. HOW CAN I BECOME A BARRISTER? A person is qualified for admission as a barrister under section 27(1) of the Legal Practitioners Ordinance if he/she:- (a) is a holder of a Postgraduate Certificate in Laws; or (b) is a solicitor in Hong Kong; or (c) is an overseas lawyer. A person must complete his Bachelor of Laws (LLB) or Juris Doctor (JD) or equivalent legal studies in Hong Kong or other common law jurisdictions or pass the Common Professional Examination of England and Wales (CPE) before taking the Postgraduate Certificate in Laws. For qualified solicitors in Hong Kong, they must have been admitted as such for at least 3 years (either immediately or in any case not more than 12 months) before the date of their

application for admission as barrister and during that time they were in practice as solicitors in Hong Kong or were employed by the Government as legal officers (as defined in the Legal Officers Ordinance, Cap. 87). For overseas lawyers to be qualified for admission as barristers in Hong Kong, they must: (a) hold a currently valid certificate of admission as legal practitioner in their jurisdiction of admission; (b) have been in practice for at least 3 years in the jurisdiction of admission; (c) be persons of good standing in the jurisdiction of admission; and (d) pass the Barristers Qualification Examination. Further to having or obtaining the above-mentioned qualifications, applicants must undertake pupillage (similar to being a "trainee") for six months in order to be eligible for admission as barrister. In order to practise, however, they must undertake pupillage for a further six months during which time they have a limited right of practice. When a barrister has attained a substantial level of accomplishment and recognition and has been in practice for at least 10 years, he or she can apply to become a Senior Counsel. The expertise of a Senior Counsel is usually sought in the more complex cases. For details of the qualification and admission requirements, please see the Hong Kong Bar Association website.

1. WHAT ARE THE MAIN DIFFERENCES BETWEEN SOLICITORS AND BARRISTERS? The legal profession in Hong Kong is divided into two distinct branches - barristers (often referred to as "counsel") and solicitors. Solicitors have limited rights of audience before the courts (e.g. they are not allowed to represent their clients to cross-examine witnesses in the High Court or to give oral submissions in the Court of Final Appeal; they will soon be allowed to conduct trials in the High Court after the Law Society has finalized the ground rules). For litigation, solicitors can either (i) represent clients in court hearings or (ii) take instructions from clients and then instruct barristers to represent clients in court (this is an essential procedure if the cases are heard at the High Court or the Court of Final Appeal). Other than litigation, solicitors can also handle documentation files such as the drafting of contracts, preparing the property sale & purchase agreements or wills, etc. They can also act as legal advisors for their clients. Barristers have unlimited rights of audience in all courts (including the High Court and the Court of Final Appeal). They specialize in litigation and giving oral submission in court hearings on behalf of their clients. Similar to solicitors, barristers can also draft legal documents or give legal advice to their clients. Lawyers practising as barristers are not, at the same time, allowed to practise as solicitors (and vice versa). Although the majority of solicitors and barristers are engaged in private practice, some of them work in the legal departments of some Government bodies or commercial corporations, or engaged in teaching and research at one of the Hong Kong's tertiary institutions. The Bar Council of the Hong Kong Bar Association, which is elected annually, is the governing body for barristers. The Law Society of Hong Kong is the governing body for solicitors and its elected council has wide responsibilities for maintaining the professional and ethical standards of this profession. Some solicitors are also admitted to practise as notaries public in Hong Kong. The Hong Kong Society of Notaries is the governing body for notaries public, and the Chief Justice is the appointing authority for Hong Kong notaries.

2. WHAT ARE THE MAJOR FUNCTIONS OF THE DEPARTMENT OF JUSTICE? The Department of Justice comprises six divisions and five of which are professional divisions headed by a Law Officer to whom the Secretary for Justice delegates certain powers and responsibilities. The remaining division deals with administrative, training and personnel matters and the development needs of the department. Providing direct support to the Secretary for Justice is the Secretary for Justice's Office. A principal function of this Office is to assist the Secretary in relation to matters arising from the Executive and Legislative Councils concerning the promotion of legislation or providing answers to legislative councilors' questions. Prosecutions Division The Prosecutions Division is headed by the Director of Public Prosecutions. Lawyers from the division conduct the prosecution in the majority of Court of First Instance and District Court trials and often appear before magistrates in important cases or when difficult points of law arise. However, the majority of cases before Magistrates are prosecuted by Court Prosecutors. In addition to court

appearances, Government Counsel in the Prosecutions Division advise the law enforcement agencies and other Government departments responsible for the prosecution of offences (e.g. the Hong Kong Police). Civil Division The Civil Division, headed by the Law Officer (Civil Law), provides legal advice on civil law to all Government bureaux and departments. It also represents the Government both as solicitors and as barristers in all civil litigations, including arbitrations. Specialist units advise on building and planning law, on the drafting of Government contracts and on the role of the Government as an employer. The division advises on the adequacy of existing legislation in relation to civil law and on the preparation of drafting instructions in respect of new legislation or amendments to existing legislation. Law Drafting Division The Law Drafting Division, headed by the Law Draftsman, is responsible for drafting all Government legislation of the HKSAR. Counsel in the division also advise the Government on legal issues identified in the course of developing the draft legislation. When the final draft of a piece of legislation is submitted to the Executive Council for consideration and to the Legislative Council to go through the legislative process, the draftsman has to attend meetings of each Council together with representatives from the relevant Government bureau in order to answer questions relating to drafting the legislation and general legal issues. Reflecting the Draftsman's role as keeper of the statute book, the division also vets all proposed legislation that is initiated by persons or bodies other than the Government. This function is performed to ensure that all legislation conforms to the requirements as to the form of bills and to the general form of Hong Kong legislation. To establish standardized Chinese equivalents for English legal expressions, the division has compiled an English-Chinese Glossary of Legal Terms and a Chinese-English Glossary of Legal Terms. These glossaries refer to the bilingual legal expressions used in our legislation. Hong Kong e-Legislation is a database of the Laws of Hong Kong which is developed and maintained by the division. It is a free service to the public and is available on the Internet. The division also maintains the Loose-Leaf Edition of the Laws of Hong Kong. Legal Policy Division The Legal Policy Division serves the needs of the Solicitor General and gives legal policy advice in respect of matters currently being considered by the Government. The division also advises on issues affecting the administration of justice, human rights, the legal system, the Basic Law, constitutional law and the law in Mainland China. The division plays an active role in promoting the understanding of Hong Kong's rule of law and the Basic Law locally, overseas and on the Mainland. The counsel who work in the Law Reform Commission Secretariat are also part of this division. International Law Division The International Law Division is headed by the Law Officer (International Law) and provides advice on public international law to the Government. It also negotiates or provides legal advisers on negotiations for bilateral agreements with foreign countries. Counsel from the division also participate, as members of the Chinese delegation, in the negotiation of multilateral treaties on public and private international law. The Mutual Legal Assistance Unit under this Division handles and co-ordinates requests to and from the HKSAR concerning the surrender of fugitive offenders, mutual legal assistance and the transfer of sentenced persons to / from overseas. Administration and Development Division The Administration and Development Division is headed by the Director of Administration and Development. As controlling officer, the Director is responsible for reporting to the Legislative Council on the finances of the Department of Justice. The division deals with the many and varied matters involved in running a major government department including administrative, financial, accounting and management services, office automation, training, library, general translation services, recruitment, personnel, and office accommodation.

1. WHO IS IN CHARGE OF THE DEPARTMENT OF JUSTICE? WHAT ARE THIS GOVERNMENT OFFICIAL'S KEY DUTIES? 1. WHO IS IN CHARGE OF THE DEPARTMENT OF JUSTICE? WHAT ARE THIS GOVERNMENT OFFICIAL'S KEY DUTIES? The Secretary for Justice is the head of the Department of Justice. This government official is appointed by the Central People's Government of China after being nominated by the Chief Executive of the HKSAR Government. The Secretary for Justice is the principal legal adviser to the Chief Executive, to the HKSAR Government and to the individual Government departments and agencies. The Secretary is also a member of the Executive Council. In addition to duties

and responsibilities in relation to the conduct of criminal proceedings, the Secretary for Justice is the defendant in all civil actions brought against the Government. The Secretary for Justice also has a right to intervene in any case involving a matter of great public interest e.g. to apply for judicial review to enforce public legal rights. The Secretary is also the ex officio chairman of Law Reform Commission. The Commission considers for reform those aspects of the laws of Hong Kong which are referred to it by the Secretary for Justice or the Chief Justice of the Court of Final Appeal.

3. WHAT ARE THE DUTIES OF JURORS? 3. WHAT ARE THE DUTIES OF JURORS? In a criminal trial, jurors decide whether the defendant is guilty or not guilty according to the facts brought forward in court. Jurors will also pass verdict on an accused individual (or corporation) in some civil proceedings. For a death inquest in Coroner's Court, jurors decide the cause of and the circumstances connected with a death. Although the trial judge decides which evidence the jury may hear in court, it is for the jury to decide the weight or the importance of such evidence when considering their verdict. For details regarding the jury service, please visit the Hong Kong Judiciary website.

2. WHO IS ELIGIBLE TO SERVE AS A JUROR (I.E. MEMBER OF A JURY)? 2. WHO IS ELIGIBLE TO SERVE AS A JUROR (I.E. MEMBER OF A JURY)? A Hong Kong resident is eligible to serve as a juror if he/she - has reached the age of 21 but is not yet 65; is of a sound mind and has no disabilities such as hearing or visual impairments that might prevent him / her from serving as a juror; is of good character; and has sufficient knowledge of the language of the court proceedings (Chinese or English as the case may be). Jurors are not legal experts and so they will be given clear directions on points of law by the trial judge. Some people such as qualified solicitors or barristers are exempted from jury service.

1. WHAT ARE THE DIFFERENCES BETWEEN CRIMINAL AND CIVIL LITIGATION IN HONG KONG? 1. WHAT ARE THE DIFFERENCES BETWEEN CRIMINAL AND CIVIL LITIGATION IN HONG KONG? The main difference between criminal and civil proceedings is that the former are instituted under the name of the HKSAR to suppress crimes and to punish criminals, while the latter are taken to protect and to recover properties or to enforce obligations.

Criminal Proceedings The Secretary for Justice of the HKSAR Government has overall responsibility for conducting criminal prosecutions in Hong Kong. It is for the Secretary and those who prosecute on the Secretary's behalf to decide whether or not a prosecution should be instituted in any particular case. In determining whether or not to prosecute, the Secretary considers two issues: First, is the evidence sufficient to justify the institution of proceedings? Second, if it is, does the public interest require a prosecution to take place? In making that decision the Secretary for Justice is not subject to any instructions or directions from Government Executive bodies. In practice, many prosecutions at the summary level (less serious or simple cases) which are processed by the Police or other investigative bodies do not require the specific involvement of the Secretary for Justice. At the same time, all such cases are scrutinized at the Magistrates Courts by Senior Court Prosecutors acting on behalf of the Secretary. The most serious criminal offences such as murder, manslaughter, rape, armed robbery and certain drug offences are tried by a judge at the Court of First Instance of High Court with a jury of seven or nine people. The sole duty of the jury is to decide whether the accused is guilty or not guilty. A judge will urge a jury to strive for unanimity in reaching their verdict but a jury may return a majority verdict of five to two or seven to two. A number of principles of defence in criminal cases, which are in accordance with Article 14 of the International Covenant on Civil and Political Rights (which has been applied to Hong Kong by the Hong Kong Bill of Rights Ordinance (Cap. 383), have been incorporated in the Criminal Procedure Ordinance (Cap. 221), Legal Aid in Criminal Cases Rules (Cap. 221D), or absorbed into the common law. The Basic Law guarantees the preservation of these rights and some of the major rights include:- the presumption of innocence before conviction; the burden of proof lies on the prosecution; the standard of proof is one of beyond reasonable doubt; the right to have legal representation; the right to appeal against conviction and/or sentence.

Civil Proceedings Civil proceedings can be instituted by: i) The Government against individuals (including private corporations) and vice versa; or ii) individuals against other individuals. The standard of proof is based on the balance of probabilities and is

easier to discharge in a civil case than in a criminal case. A jury may also be present in some civil cases (e.g. defamation) when the plaintiff or the defendant applies to the court to have the case tried by a jury. The principal branches of civil law include contract, tort, property, administrative, family and revenue law. The law of contract is concerned with the many different types of agreements in which persons or corporations enter into during their daily business. The law of tort is concerned with claims arising out of breaches of a duty of care owed by one individual to another. The law of property governs the ownership of and the rights in property. This includes land and buildings, and intellectual property such as trademarks, patents and copyright. Administrative law is designed to protect the individual against the abuse of power by the Government or public bodies. Family law deals with divorce and disputes over the custody of children, maintenance of spouse and children and the division of property. Revenue law is relevant to the assessment and recovery of taxes and duties.

6. HOW ARE THE JUDGES BEING APPOINTED OR DISMISSED? 6. HOW ARE THE JUDGES BEING APPOINTED OR DISMISSED? The Hong Kong courts are operated by the Hong Kong Judiciary which is independent of both the Executive and the Legislature of the HKSAR Government. The Chief Justice of the Court of Final Appeal is the head of the Judiciary, both in a judicial and an administrative sense. Under the Basic Law, judges are appointed by the Chief Executive of the HKSAR on the recommendation of the Judicial Officers Recommendation Commission. This is an independent statutory body, constituted under the Judicial Officers Recommendation Commission Ordinance (Cap. 92), which is composed of local judges, persons from the legal profession and reputable persons from other sections. All judges and magistrates must have been qualified as legal practitioners either in Hong Kong or in another common law jurisdiction and have had substantial professional experience. The Basic Law stipulates that a judge 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. This tribunal consists of not fewer than three local judges. In the case of dismissal of the Chief Justice, the tribunal (appointed by the Chief Executive instead of the Chief Justice) must consist of not fewer than five local judges. In addition, before a judge of the Court of Final Appeal or the Chief Judge of the High Court may be removed from office, the Basic Law stipulates that the endorsement of the Legislative Council is required.

5. ARE THE JUDGMENTS MADE BY THE HONG KONG COURTS ENFORCEABLE IN OTHER COUNTRIES? 5. ARE THE JUDGMENTS MADE BY THE HONG KONG COURTS ENFORCEABLE IN OTHER COUNTRIES? Civil cases: The judgments and awards of the Hong Kong High Court and above may be enforced in most common law jurisdictions or in consequence of international agreements and arrangements in a number of foreign countries. Reciprocal arrangements exist for the enforcement in Hong Kong of the judgments made by the superior courts of those foreign countries. Similarly, the courts in those countries will also enforce Hong Kong's judgments. Criminal cases: Extradition agreements provide for the surrender of persons who are accused or convicted of a serious criminal offence committed within the jurisdiction of one of the Parties to the agreement but are found in the territories of the other Parties. The courts in Hong Kong also have jurisdiction, on request from a foreign court, to provide evidence in Hong Kong for civil or criminal proceedings in that foreign court. On the other hand, the courts in Hong Kong can also issue Letters of Request to overseas courts for obtaining evidence. Courts in the HKSAR exercise independent judicial power, including the power of final adjudication. The judgments from the courts of Mainland China are not binding on the courts of HKSAR, and vice versa.

4. IS ENGLISH THE ONLY LANGUAGE USED IN COURTS? 4. IS ENGLISH THE ONLY LANGUAGE USED IN COURTS? No, the Official Languages Ordinance (Cap. 5) enables any court in Hong Kong to use either or both of the official languages (i.e. Chinese and English) in any proceedings as it thinks fit. No matter whether English or Chinese is used in the proceedings, everyone has a right to use the language of his choice to give evidence. The court will arrange interpretation facilities.

3. ARE THERE ANY OTHER LAW COURTS IN HONG KONG? 3. ARE THERE ANY OTHER LAW COURTS IN HONG KONG? There are a number of courts and tribunals which have the authority to deliver judgments on disputes relating to specific or defined areas such as the Coroner's Court, the Juvenile Court, the Lands

Tribunal, the Labour Tribunal, the Small Claims Tribunal and the Obscene Articles Tribunal. Coroner's Court The Coroner's Court inquires into the nature or the cause of deaths which occur as a result of accident or violence or under suspicious circumstances. Juvenile Court The Juvenile Court hears charges against children and young persons under the age of 16 for any offence other than homicide. Children under the age of 10 are deemed not to have reached the age of criminal responsibility and accordingly no court, including the Juvenile Court, has jurisdiction over cases involving such young people. The Juvenile Court also has the jurisdiction to make care and protection orders in respect of young persons under the age of 18. Lands Tribunal The Lands Tribunal deals with cases arising from tenancy disputes and matters in relation to building management. It also hears applications for the determination of compensations caused by land resumption and the appeals against the assessment of rateable value or government rent or market value of properties under the Housing Ordinance. Labour Tribunal The Labour Tribunal deals with claims arising from the alleged breach of terms of employment contracts such as arrears of wages, statutory holiday pay, maternity leave pay, etc. The hearings are informal and no legal representation by lawyers is allowed. To get more information about how to prepare for the trial (from both the Claimant's and the Defendant's perspective), please click here. Small Claims Tribunal The Small Claims Tribunal hears minor monetary claims involving amounts not exceeding \$75,000. The hearings are informal and no legal representation by lawyers is allowed. To get more information about how to prepare for the trial (from both the Claimant's and the Defendant's perspective), please click here. Obscene Articles Tribunal The main function of the Obscene Articles Tribunal is to determine and classify whether or not an article or other matter publicly displayed is obscene or indecent. Commissions and Commissioners In addition to the judicial and administrative tribunals described above, there are a number of other bodies set up to oversee compliance with specific legislation and to which members of the public may have channels to speak out if they feel aggrieved. Some of them may be closely related to our daily lives, such as the Office of the Ombudsman, the Equal Opportunities Commission and the Privacy Commissioner's Office.

2. WHAT TYPES OF CASES WILL BE HEARD IN EACH OF THESE MAJOR LAW COURTS?

2. WHAT TYPES OF CASES WILL BE HEARD IN EACH OF THESE MAJOR LAW COURTS?

Magistrates' Courts Magistrates exercise criminal jurisdiction which covers a wide range of indictable and summary offences. Their powers of punishment are generally restricted to a maximum of two years' imprisonment or a fine of \$100,000. While in respect of certain offences their powers are greater. There are also some special magistrates who deal with cases of a more routine nature, such as hawking and minor traffic offences. District Court The District Court has limited jurisdiction in both criminal and civil matters. In its criminal jurisdiction, the court may hear cases with the exception of a few very serious offences such as murder, manslaughter and rape. The maximum term of imprisonment it can impose is seven years. The District Court has civil jurisdiction to hear monetary claims over \$75,000 but not more than \$3,000,000. Apart from its general civil jurisdiction, the District Court has exclusive jurisdiction over claims brought under the Employees' Compensation Ordinance (Cap. 282), tax recovery claims under the Inland Revenue Ordinance (Cap. 112) and distress for rent under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7). Matrimonial causes (e.g. divorce) and adoption applications must also be commenced in the District Court (the court which handles these types of cases is known as the Family Court). High Court The High Court comprises the Court of Appeal and the Court of First Instance. i) Court of Appeal The Court of Appeal hears appeals on all civil and criminal matters from the Court of First Instance and the District Court. It also hears appeals from the Lands Tribunal and some statutory bodies. ii) Court of First Instance The jurisdiction of the Court of First Instance is unlimited in both criminal and civil matters. The Court of First Instance also hears appeals from Magistrates' Courts, the Labour Tribunal, the Small Claims Tribunal and the Obscene Articles Tribunal. Court of Final Appeal The Joint Declaration and the Basic Law specifically guarantee the establishment of a Hong Kong based Court of Final Appeal on 1 July 1997. It replaced the Judicial Committee of the Privy Council in London as the final appellate court for Hong Kong. It has jurisdiction

conferred on it by the Hong Kong Court of Final Appeal Ordinance (Cap. 484) and it hears appeals on civil and criminal matters from the High Court. The Court of Final Appeal Ordinance provides that an appeal shall be heard and determined by the Court constituting the Chief Justice, three permanent judges and one non-permanent Hong Kong judge or one judge from another common law jurisdiction.

1. WHAT ARE THE MAJOR LAW COURTS IN HONG KONG? 1. WHAT ARE THE MAJOR LAW COURTS IN HONG KONG? The major law courts in Hong Kong include:- the Magistrates' Courts; the District Court (includes the Family Court); the High Court (comprises the Court of Appeal and the Court of First Instance); and the Court of Final Appeal. For more details, please visit the Hong Kong Judiciary website.

4. BESIDES THE BASIC LAW, COMMON LAW AND THE RULES OF EQUITY, WHAT SORT OF LAWS EXIST IN THE HONG KONG LEGAL SYSTEM? 4. BESIDES THE BASIC LAW, COMMON LAW AND THE RULES OF EQUITY, WHAT SORT OF LAWS EXIST IN THE HONG KONG LEGAL SYSTEM? Statute law makes up a large component of the Hong Kong laws. It consists of written ordinances of which the majority are passed by legislative procedure in the Legislative Council of the HKSAR, and they eventually become the Laws of Hong Kong (for details of each ordinance, please refer to the "Hong Kong e-Legislation"). In addition, some legislations are made under delegated powers. This is called subsidiary legislation. For example, an ordinance may delegate to the Chief Executive in Council (the Chief Executive with the advice of the Executive Council) the power to make regulations to deal with the details of the implementation of a legislative scheme. However, some ordinances are not made locally such as:- Chinese customary law Some aspects of Chinese customary law apply in Hong Kong. For example, under section 13 of the New Territories Ordinance (Cap. 97) the courts may recognize and enforce Chinese customs or customary rights in relation to land in the New Territories. International law Over 200 international treaties and agreements have been applied to Hong Kong. A treaty does not constitute part of Hong Kong's domestic law until it is given effect by legislation. Nonetheless, it may affect the development of the common law. It may, for example, be resorted to by a court as an aid to interpret certain ordinance. The rapidly developing rules of customary international law can also become absorbed into the common law.

3. HOW ARE THE COMMON LAW AND THE RULES OF EQUITY OPERATING IN HONG KONG? 3. HOW ARE THE COMMON LAW AND THE RULES OF EQUITY OPERATING IN HONG KONG? The most distinguishing feature of common law is the reliance on the doctrine of precedent when making court judgments. It is not restricted to judicial decisions generated within Hong Kong but case law from all jurisdictions throughout the common law world. Article 84 of the Basic Law provides that the Hong Kong courts may refer to case precedents from other countries under common law jurisdictions. In addition, the Court of Final Appeal and the Hong Kong Judiciary are given the power to invite judges from other common law jurisdictions to participate in the judicial processes. The major distinction between common law and the rules of equity is that common law remedies are available as of right, while remedies in equity are discretionary. The court does not have to grant an equitable remedy where it regards the behaviour of the party seeking such an equitable award does not deserve such an award. The usual equitable remedies include injunction (a court order requiring someone to stop doing something) and specific performance (a court order requiring one of the parties to a contract to perform his/her part of the contract).

OTHER GOVERNMENT LEGAL DEPARTMENTS X. OTHER GOVERNMENT LEGAL DEPARTMENTS 1. ARE THERE ANY OTHER GOVERNMENT LEGAL BODIES WHICH RELATE TO OUR DAILY LIVES OR BUSINESS? Here are some of the Government legal bodies which are also closely related to public interests:- Land Registry The main functions of the Land Registry are to: register documents affecting land under the Land Registration Ordinance (Cap. 128) and its Regulations; administer a land registration system by maintaining an up-to-date Land Register and related land records and to provide the public with facilities for search and supply of copies of the Land Register and other land records; and register owners' corporations under the Building Management Ordinance (Cap. 344). Companies Registry The main functions of the Companies Registry are to: incorporate corporate bodies and register local & overseas companies under the provisions of the Companies Ordinance (Cap. 622); register documentation required by the various ordinances administered by the Companies Registry such as the Companies Ordinance, the Limited Partnerships Ordinance (Cap. 37), the Trustee Ordinance (Cap. 29)

and a large number of miscellaneous incorporation ordinances; provide the public with facilities to search for the information held by the Registry on the various statutory registers, microfilmed or computerized records; and administer and enforce the provisions of the Companies Ordinance and related legislations with particular reference to the regulatory offences such as improper filing of statutory returns and striking off action (to remove a company name from the Registry). Official Receiver's Office (You may also refer to the topic of Bankruptcy and Winding-up for more details) The principal functions of the Official Receiver's Office are to: provide an in-house insolvency management service when appointed by the court and the creditors for the administration of estates, which includes realization of assets, adjudication of claims, distribution of dividends where appropriate, and performing a public sector role when acting as trustee or liquidator of last resort; MEDIATION IX. MEDIATION ARBITRATION VIII. ARBITRATION LEGAL AID VII. LEGAL AID Please go to "Legal Aid". THE LEGAL PROFESSION VI. THE LEGAL PROFESSION THE DEPARTMENT OF JUSTICE V. THE DEPARTMENT OF JUSTICE CRIMINAL AND CIVIL LAW IV. CRIMINAL AND CIVIL LAW COURT STRUCTURE AND THE JUDICIARY III. COURT STRUCTURE AND THE JUDICIARY 2. WHAT IS THE INFLUENCE OF THE BASIC LAW ON THE HONG KONG LEGAL SYSTEM? 2. WHAT IS THE INFLUENCE OF THE BASIC LAW ON THE HONG KONG LEGAL SYSTEM? The Basic Law of the HKSAR was enacted by the National People's Congress in accordance with the Constitution of the People's Republic of China. It is similar to a mini-constitution for the HKSAR. It took effect on 1 July 1997 on the establishment of the HKSAR. The most prominent feature of the Basic Law is the underlying principle of "one country, two systems" whereby the socialist system and policies shall not be practised in the HKSAR and the previous capitalist system and way of life is to remain unchanged for 50 years. Under the Basic Law, all the laws previously in force in Hong Kong (including common law and statutes, etc.) shall be maintained except for any that contravene the Basic Law and subject to any amendment by the HKSAR legislature. National laws of the People's Republic of China shall not be applied in the HKSAR except for a number of such laws relating to defence and foreign affairs. The interpretation and amendment of the Basic Law Article 158 of the Basic Law provides that: "The power of interpretation of this law shall be vested in the Standing Committee of the National People's Congress. The Standing Committee of the National People's Congress shall authorise the courts of the HKSAR to interpret on their own, in adjudicating cases, the provisions of this Law which are within the limits of autonomy of the Region. The courts of the HKSAR may also interpret other provisions of this Law in adjudicating cases. However, if the courts of the Region, in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments on the cases, the courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal of the Region. When the Standing Committee makes an interpretation of the provisions concerned, the courts of the Region, in applying those provisions, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected. The Standing Committee of the National People's Congress shall consult its Committee for the Basic Law of the HKSAR before giving an interpretation of this Law." The power of amendment of the Basic Law is vested in the National People's Congress. The powers to propose bills for amendments to the Basic Law are respectively vested in the Standing Committee of the National People's Congress, the State Council and the HKSAR. 1. WHAT CONSTITUTES THE HONG KONG LAWS? 1. WHAT CONSTITUTES THE HONG KONG LAWS? Hong Kong Laws are generally composed of the Basic Law, Common Law, Rules of Equity and Statute Law SOURCES OF LAW IN HONG KONG II. SOURCES OF LAW IN HONG KONG THE RULE OF LAW I. THE RULE OF LAW 1. WHAT IS THE GENERAL MEANING OF THE "RULE OF LAW"? IS IT APPLICABLE TO THE HONG KONG LEGAL SYSTEM? The rule of law begins with the right of individuals to seek protection through the courts in which justice is administered by unbiased judges. It protects the freedom of individuals to manage their affairs without fear of arbitrary interference by the Government or the improper influence from the rich and powerful. The



rule of law governs the way in which power is exercised in Hong Kong. Its principal meaning is that the power of the Government and all government servants shall be derived from law as expressed in legislation and the judicial decisions made by independent courts. No one, including the Chief Executive, can commit an act which would otherwise constitute a legal wrong or affect a person's liberty unless that person can point to a legal justification for that action. If a legal justification for the action cannot be found, the affected person can resort to a court which may rule that the act is invalid and of no legal effect. Compensation may be ordered in the affected person's favour. This aspect of the rule of law is referred to as the principle of legality. One corollary of the principle of legality can be summarised as equality before the law. It is fundamental that all persons, regardless of their race, rank, politics or religion, are equally subject to the laws of the land. Further, the rule of law requires that the courts are independent of the Government Executive bodies. This independence is crucial if impartial rulings are to be given in judging the legality of the acts carried out by the Government. The Basic Law ensures that the legal system in the HKSAR will continue to give effect to the rule of law by providing that the laws previously in force in Hong Kong shall be maintained, save for any that contravene the Basic Law and subject to any subsequent amendment by the HKSAR Legislature.