

Legal system upheld by judiciary, law fraternity
(by Secretary for Justice, Ms Teresa Cheng, SC)
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1. The common law legal system in Hong Kong is underpinned by an independent judiciary and a strong and independent legal fraternity comprising two branches, the barristers (around 1,600) and solicitors (around 11,000). Both branches of the profession are obliged to provide professional, frank and impartial advice to their clients. Of particular interest is the "cab-rank rule" applicable to barristers, meaning they must take up any case that comes their way. For these reasons, the legal profession does not distinguish or categorise a case as sensitive or otherwise, as it is their professional duty to provide legal services, independently and without fear or favour, when called upon to do so. Those who are not able to segregate their personal preferences or political views when handling cases or providing legal advice will not be serving the interests of justice nor upholding the rule of law. Similarly, those who refuse to take on a matter simply because it is to him or her sensitive is unbecoming of a barrister and may violate the code of conduct of the Bar. The provision of honest, impartial and professional legal services by our solicitors and barristers underpins our legal system. This bedrock has never been shaken notwithstanding some bad-faith or misinformed reports suggesting otherwise.

2. The Legislative Council, the lawmaking body in Hong Kong, has always been composed of members who have a legal background.

There were 12 members with a legal background in the sixth-term Legislative Council. After the improvement to the electoral system in Hong Kong in 2021, there are now 14 members with a legal background in the seventh-term Legislative Council. This simple comparison illustrates that after the improvement to the system, broader and more-balanced representation has been achieved.

3. While lawyers acting professionally are pivotal to our legal system, they are not treated any differently should they be brought before the law. Article 25 of the Basic Law of the Hong Kong Special Administrative Region guarantees equality before the law for all. Hence, it is only natural that, be they politicians or legal representatives in cases, if a lawyer violates the law, he or she will face the same legal consequences like all others.

4. The other core element of our legal system is the independent judiciary. Suggestions that our independent judiciary has disappeared are not only baseless but ridiculous. The laws of Hong Kong (both legislations and case law) are freely available online; the process of the court is transparent, and due process always observed. The legislation applicable to Hong Kong, including the National Security Law for Hong Kong, is drafted with certainty and clarity. Courts apply the statutes fairly and offer explanations through case laws under our common law system. There is adherence to the procedural guarantees on fairness of the legal process, which may at times necessitate more time and interlocutory hearings, but these are all safeguards to the

parties' rights under the laws of Hong Kong, which must be observed. If I may finally quote what the Chief Justice of the Court of Final Appeal said at the Ceremonial Opening of the Legal Year 2022: "For those who are interested in finding out how the constitutional guarantee on judicial independence in Hong Kong is practised on the ground, our court hearings are open to the public, our judicial decisions are publicly announced, and the courts' reasons are published for everyone to study".

5. One may also wish to be informed that the infrastructure that guarantees judicial independence is mainly set out in the Basic Law: the security of tenure, the immunity of judges, and Article 85, which guarantees judicial independence, free from any interference. These safeguards ensure that our judges, who took the judicial oath upon their appointments, would administer justice without fear or favour and without bias, based only on the law and evidence before them.
6. Hong Kong common law provides a solid foundation for the capitalist system practised in Hong Kong under the "one country, two systems" policy. One of the major advantages of common law is that it is largely doctrinal but capable of adapting to societal values and changing circumstances, thus providing certainty and predictability and yet also flexible to deal with businesses' changing needs by creating a favourable commercial-friendly environment.

7. Common law is the cornerstone of Hong Kong's status as an international financial centre and an international legal and dispute resolution hub, supporting the capitalist system under "one country, two systems". The Vice Chairman of the National Committee of the Chinese People's Political Consultative Conference and the Director of the Hong Kong and Macao Affairs Office of the State Council, Mr Xia Baolong, was recently quoted as saying that "one country, two systems" remains unchanged for 50 years and, after that, it would not be necessary to change, reaffirming its steadfast and successful implementation. He also stressed that the common law and the legal system in Hong Kong would also remain unchanged.

8. Mr Xia has reiterated the unequivocal support and stern determination repeatedly expressed by President Xi Jinping and various leaders of the Central People's Government over the implementation of "one country, two systems". His remarks were also justified and informed. First of all, Article 5 of the Basic Law guarantees that Hong Kong shall retain the capitalist system and way of life for 50 years. It does not mean that this will cease thereafter. Second, as a matter of common sense, if "one country, two systems" functions effectively and serves our country and Hong Kong well, there is no reason for it to change. Third, as can be seen in the discussions surrounding the formulation and implementation of "one country, two systems", and as stated by Mr Deng Xiaoping, 50 years was just "a figure of speech", and "for the first 50 years it cannot be changed, and after that, it would not be necessary to change".

9. Hong Kong is the only jurisdiction in the world that has a truly bilingual common law system, English and Chinese, and is the only common law jurisdiction in our country. If we are able to uphold, honour and respect the fundamental precondition of "one country", the "two systems" underpinned by common law will continue.

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