

LEGAL SERVICES COUNTRY PROFILE

HONG KONG

International Legal Services Advisory Council

Attorney-General's Department

Australia

January 1998

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Introduction

The International Legal Services Advisory Council (ILSAC) was established in late 1990 by the Australian Government to assist in improving Australia's international performance in legal and related services. To help achieve this purpose profiles for seventeen countries and economies of the Asia Pacific region have been prepared. The Profiles, which are intended as a guide only, cover Australia, Cambodia, China, Fiji, Hong Kong, India, Indonesia, Japan, Laos, Malaysia, Papua New Guinea, The Philippines, Singapore, South Korea, Taiwan, Thailand and Vietnam.

ILSAC is chaired by the Hon Sir Laurence Street AC KCMG and comprises representation from private legal practice, the Law Council of Australia, commercial dispute resolution centres, education institutions and relevant Government departments and agencies.

This third edition of the Profiles is designed to provide an overview of the legal and related services sector in each country or economy. The information in the Profiles is organised under the following main headings:

1. General information:	key data, legal language, form of government and economic indicators.
2. Basic legal information:	system and sources of law, structure and regulation of the legal profession, law-making bodies and professional legal education.
3. Legal services market:	professional legal associations, local, Australian and foreign law firms, and commercial dispute resolution.
4. Market access requirements:	foreign lawyer admission requirements, regulation and restrictions on foreign lawyers/firms and recent regulatory changes.
5. Australian legal services:	prospects for Australian legal services; Australian dispute resolution services and Australian legal education and training services.
6. References/sources:	list of source material and date of information contained in the profile.

Comments, additional information or corrections, and suggestions for improvement of this Profile would be welcome.

How to order

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**ILSAC Secretariat
Commonwealth Attorney-General's Department
Robert Garran Offices
National Circuit
Barton ACT 2600
Australia**

**Telephone +61-2-6250 6704; Facsimile +61-2-6250 5952
Email: ilsac.secretariat@ag.gov.au
<http://law.gov.au/aghome/advisory/ilsac/ilsac.htm>**

1 General information

Official name

Hong Kong.

Population

At the end of 1993, the population of Hong Kong was estimated at 6.02 million.²⁴ Approximately 98 per cent of Hong Kong's population are of Chinese descent, mostly from the Guangdong province. About 60 per cent of these Chinese were born in the colony and have a non-resident British passport. This does not entitle them to settle in the United Kingdom, as under the *British Nationality Act 1981*, they are "*British Dependant Territories Citizens*". The other 40 per cent of Chinese arrived from the mainland over the last forty years. Most of these have no passport and are Chinese nationals who have travelled on Certificates of Identity issued by the Government of Hong Kong. There are about 70,000 non-Hong Kong Commonwealth residents and many of other nationalities including around 100,000 to 120,000 Filipinos.^{1/9}

Languages

English is generally understood by educated Chinese businesspersons, but most of the population speak mainly Cantonese and Putonghua, which is gaining in popularity as closer ties with China develop.^{1/13} There are two official languages: English and Chinese (the latter since 1974 with the adoption of the *Official Languages Ordinance*).⁹

Legal language

English is the official language of legal proceedings in the higher courts whilst in the Magistrates Courts and tribunals Chinese may be used. It is now the Government's policy to move towards greater use of Chinese in the courts and a Justice of Appeal has been appointed to head a working party to look into the issue. Legislation is published in English. Since August 1989, new amended legislation has been translated into Chinese, while new Ordinances are drafted bilingually.^{3/13}

Form of government

Hong Kong is a British Dependent Territory until 30 June/1 July 1997 when the territory will revert to China under a Sino-British agreement reached in 1984. China has agreed that Hong Kong will be a Special Administrative Region (SAR) under the Sino/British Joint Declaration and the 1990 Basic Law (which is regarded as Hong Kong's mini-Constitution), and will be able to maintain its own autonomous social and economic and legal system for at least 50 years (ie until 2047). Hong Kong will have administrative autonomy for internal

affairs, but China would be responsible for Hong Kong's defence and foreign affairs.²⁴

The Basic Law provides that the Chief Executive of the Hong Kong SAR will be accountable to the Peoples' Republic of China Government.

- Head of State: Queen Elizabeth II, represented in the Territory by a Governor.
- Executive Council President: The Governor, Mr Christopher Patten is the Head of Government. The 13 member Executive Council (ExCo) serves as an advisory body to the Governor. There are three *ex officio* members and ten appointed members.
- Legislative Council (LegCo): LegCo is a 60 member council responsible for enacting legislation with the approval of the Governor. LegCo comprises 3 *ex officio* members and 57 non-official members. Of the 57 members, 18 are appointed by the Governor and 39 are elected. Of the elected members, 21 are elected by functional constituencies representing an economic, social or professional sector, and 18 are elected by direct elections in geographic constituencies covering the whole territory.
- Main political groups:
 - the pro-democracy United Democrats of Hong Kong (UDHK), which won the most votes and sixteen seats in the first direct election for LegCo recently combined with Meeting Point, a moderate, small-sized liberal grouping, to form the Democratic Party;
 - the Co-operative Resources Centre (CRC) which is the main umbrella organisation of conservative appointees and indirectly elected members of LegCo;
 - the Liberal Democratic Federation (LDF) which won little support in the 1991 elections; and
 - the Democratic Alliance for the Betterment of Hong Kong (DABHK) which was formed in May 1992 and echoes official Chinese policy towards Hong Kong.^{14/2}

Economic information

Basic indicators (fiscal year)	1990	1991	1992	1993
GDP at market prices \$USm	71,649	82,803	96,705	110,113
GDP growth at 1980 prices	3.2	4.1	5.6	5.6
Inflation %	9.8	12.0	9.4	8.5
Exports (\$HKm)	639,874	765,886	924,953	1,046,251
Imports (\$HKm)	642,530	778,982	955,295	1,072,597
Current account US\$b	-1.7	-4.8	-1.7	.05

Source: Hong Kong, Country Economic Brief, Department of Foreign Affairs and Trade, Australia, October 1994.

Per cent of GDP in Services Sector

The Hong Kong economy is dominated by services. The services sector, which comprises the finance, insurance, real estate and business services, is the fastest growing sector of the Hong Kong economy rising from 64.5 per cent in 1980 to 75.4 per cent in 1992. In 1993, services accounted for 76 per cent. The majority of these services are exported to China, particularly in areas such as law, accountancy, merchant banking etc.²⁴

Total two-way trade with Australia (1993-94) A\$'000	3,585,942
as % of total Australian trade	2.8
rank in total Australian trade	10
Value of Australian exports (1993-94) A\$'000	2,784,908
as % of Australian exports	4.3
market ranking in Australian exports	7
% growth (five-year trend)	21.8
Value of Australian imports (1993-94) A\$'000	801,034
as % of Australian imports	1.2
market ranking in Australian imports	18
% growth (five-year trend)	-0.4

Source: Department of Foreign Affairs and Trade, *Composition of Trade - Australia, 1993-94*.

2 Basic legal information

Legal system

Hong Kong's legal system is based on English common law insofar as it is applicable to local circumstances.²³

Sources of law

The main sources of law in Hong Kong are:

- the Law of England (as at 5 April 1843);
- local legislation; and
- Chinese customary law which only applies in the New Territories and is only relevant to matrimonial or inheritance law matters.¹³

In order to ensure that by 1997 the law of Hong Kong will not contravene the Basic Law of the Hong Kong Special Administrative Region of the Peoples' Republic of China, and due to the need to localise UK law applicable in Hong Kong, a Localisation and Adaptation of Law Unit has been established by the Government. The Localisation and Adaptation of Law Unit provides legal advice on the localisation of UK legislation which presently applies to Hong Kong and advises on the appropriate adaptation of the laws of Hong Kong. A review of all Hong Kong ordinances is now being undertaken.²⁸

Structure of the legal profession

The legal profession is closely modelled on the English legal profession, that is, the distinction between barristers and solicitors is maintained, although this has been recently challenged by the Law Society of Hong Kong.^{9/20}

Barristers

Barristers have an exclusive right of audience in the High Court and the Court of Appeal, but they must be instructed by solicitors and they share that right with solicitors in Chambers matters.³ The Bar is a mix of English trained barristers, locally trained barristers and barristers from other Commonwealth countries. Barristers are organised in the Bar Association of Hong Kong.

Solicitors

Solicitors, once admitted, can appear in any Magistrates or District Court in Hong Kong and in chamber and bankruptcy proceedings in the High Court.³ Solicitors are organised in the Law Society of Hong Kong.⁹

Notaries public

Notaries Public authenticate important documents.³

Regulation of the legal profession

Solicitors and foreign lawyers practising in Hong Kong are regulated by the Law Society of Hong Kong.¹⁴ Barristers are regulated by the Bar Association of Hong Kong.

Law-making bodies

The Executive Council advises the Governor and is the highest policy and decision-making body in Hong Kong.⁹ Policy is formulated in the Government Secretariat, the offices of the Chief Secretary, the Financial Secretary and the Attorney-General. The Legislative Council acts as the legislative arm of the government.⁹

Law derived from Australia

While not derived directly, the presence of Australian lawyers in the judiciary, government and private practice has been influential in areas such as administrative law, telecommunications law and criminal law.²⁸

Court structure

The courts of justice in Hong Kong include the following:

- *The Supreme Court* which is composed of the *Court of Appeal* and the *High Court*. An appeal from the Supreme Court ultimately lies with the Privy Council in England (for civil cases where the amount in dispute is greater than HK\$500,000);
- *The Court of Appeal*, which is the highest court in Hong Kong, hears civil and criminal appeals from the High Court and the District Court. The Court also deals with appeals from the Lands Tribunal. It has the jurisdiction to make rulings on questions of law referred to it from the lower courts;
- *The High Court*, which has unlimited original jurisdiction in civil and criminal matters as well as jurisdiction in bankruptcy, company closures, adoption, probate and lunacy cases; and
- *The District Court*, which has limited jurisdiction in civil matters (claims up to HK\$120,000, or in the cases of the recovery of land, no more than HK\$100,000) and more serious criminal cases (excluding murder, manslaughter and rape).

Other courts include the Magistrates Court, the Coroner's Court, the Immigration Tribunal, the Inland Revenue Board of Review and the Juvenile Court. There is also the Lands Tribunal, the Labour Tribunal, the Small Claims Tribunal and the Obscene Articles Tribunal.^{14/18}

At the 20th meeting of the Sino-British Joint Liaison Group in September 1991, Britain and China agreed on the establishment of a Court of Final Appeal before 1997 to replace the Judicial Committee of the Privy Council as Hong Kong's highest appellate body.²⁹

Recently, there has been a lot of publicity surrounding the Bill to be introduced into LegCo in respect of the establishment of the Court of Final Appeal. Much debate (especially amongst the legal profession in Hong Kong) has centred on the latest draft which will restrict the number of foreign judges sitting on the Court to one. Those who are opposing the Bill have said that the latest draft is in breach of the Basic Law (see Article 82), which seems to suggest that more than one foreign judge can be appointed to sit on the Court. In any case, it is expected that the Bill to establish the Court of Final Appeal will be introduced into LegCo in 1995 with the hope that the Court will be established before June 30, 1997.¹⁰

Professional legal education

Primarily trained

The majority of practising solicitors obtained their first professional legal qualification in Hong Kong. The remainder were admitted in the United Kingdom (primarily England) prior to admission in Hong Kong. Some of these previously trained in other jurisdictions (including Australia).¹⁴

Qualifications for practice

The Bachelor of Laws degree is a three year degree. Law graduates may apply for admission to the one year full-time Post-graduate Certificate in Laws (PCLL) or the Solicitors' Final Examination (SFE) held in England.

Since 1991, graduates with a degree other than law may undertake the Common Professional Examination of England and Wales. Upon satisfying the University of Hong Kong as to their competence in the law of evidence and company law, they are eligible to apply for admission to the PCLL or the SFE.

After completing either course, prospective lawyers are required to be employed, by a practising solicitor, as a trainee solicitor for two years, in order to be admitted as a solicitor in Hong Kong.^{14/15}

Principal university

The University of Hong Kong offers a three year Bachelor of Laws degree.¹⁵

Other domestic training institutions

The City University of Hong Kong offers a three year Bachelor of Laws (honours) course.¹⁵

Post-graduate legal courses

The University of Hong Kong offers the following post-graduate law courses:

- Postgraduate Certificate in Laws (PCLL) (one year full-time or two years part-time);
- Master of Law (one year full-time or two years part-time);
- Post-graduate Diploma in the Law of the Peoples' Republic of China (one year part-time);
- Post-graduate Diploma in Commercial Law (one year part-time);
- Master of Philosophy; and
- Doctor of Philosophy.

The Polytechnic University offers the following post-graduate law courses:

- Master of Arts (Arbitration);
- Higher Diploma in Legal Studies;
- Post-graduate Certificate in Hong Kong Law; and
- Post-graduate Certificate in Law.¹⁵

Other domestic legal qualifications

Trainee solicitors and solicitors in their first year of practice are required to comply with the Continuing Legal Education Scheme. Solicitors who have practised elsewhere may be given exemption from the practical legal training requirement.¹⁴

See also *Qualifications for practice* above.

Practical legal training

See *Qualifications for practice* above.

Foreign legal training

Sources

The United Kingdom and Australia are the main overseas study destinations for legal training.²

A survey commissioned by the Hong Kong Law Society and conducted by Survey Research Hong Kong Ltd (SRH) in 1990 showed the percentage of Hong Kong lawyers who:

- possess overseas professional legal qualifications
 - United Kingdom 63%
 - Australia 25%
 - New Zealand 3%
 - Singapore 2%
 - Canada 1%
 - United States 1%
- and who intend to acquire overseas qualifications
 - Singapore 14%
 - United Kingdom 12%
 - Australia 10%
 - Canada 5%
 - United States 4%
 - New Zealand²⁶ 1%

Skills obtained

Information not available.

3 Legal services market

Professional associations (law societies/bar associations)

The Hong Kong Bar Association
LG2 Floor
The Supreme Court Buildings
38 Queensway
Hong Kong

The Law Society of Hong Kong⁶
1403 Swire House
Charter Road
Central District
Hong Kong

Local legal firms

Local legal firms

As at 30 November 1994, there were 466 local law firms practising Hong Kong law²² 182 of which were sole practitioners.²⁵ The 466 local law firms includes international firms, such as Baker & McKenzie and firms based in the United Kingdom such as Linklaters & Paines, Slaughter & May, Freshfields and Clifford Chance, which are recognised as local law firms.

The international law firm of Baker & McKenzie, with some 160 lawyers in Hong Kong, was established there in 1974 by two Australian solicitors. The lawyers in the Hong Kong firm have an extensive practice in China and support the office of the firm in Beijing.

Local lawyers

As at 30 November 1994, there were 3,282 practising solicitors³⁹ and 500 barristers in Hong Kong.²⁴

Proportion in international commerce

International work is the preserve of the major local firms and foreign firms.¹³

Value of legal services

Information not available.

Local legal firms involved in international work

Information not available.

Practice mix

Information not available.

Australian and other foreign legal firms

Generally the major Australian firms associate themselves with local firms and practise Australian as well as local law.

Firms from the United Kingdom operate as local firms.

Firms from other jurisdictions operate only as “offshore” firms practising international law and the laws of jurisdictions other than Hong Kong.²¹

Australian firms: connections with Hong Kong

There are no Australian firms established as foreign firms in Hong Kong. The principals of some local firms are Australian solicitors. There are a number of local firms which have formed an association with Australian firms.¹⁴

- The international network Baker & McKenzie has an office in Hong Kong in which 160 solicitors, including some 30 Australian solicitors, are employed;
- Bateson Starr in association with Mallesons Stephen Jaques. David Bateson and Paul Starr have practised in Hong Kong since 1980 and 1985 respectively. Bateson Starr’s specialities include construction, commercial litigation and dispute resolution. There are four Mallesons lawyers, headed by a partner, practising corporate law. They have eight lawyers in support. Mallesons has also recently become the first and only Australian-based firm to be granted a licence to practise in Beijing;²⁶
- Dunstan Styles & Co. in association with Allens Arthur Robinson (previously the Australian Legal Group). Dunstan Styles & Co. was established in 1988 and has Hong Kong-resident Australian and Chinese lawyers admitted to practice in Hong Kong, China, England, the United States and Australian jurisdictions. Dunstan Styles & Co. is a full-service Hong Kong firm with a strong regional financial practice, as well as infrastructure, telecommunications, corporate and commercial practices;
- McKenna & Co in association with Minter Ellison. The office employs four Australian lawyers and sixteen local lawyers;
- Sly and Weigall’s associated office is Deacons which is in association with Graham & James (a US based firm). The association completes an Asian network of nine offices in seven jurisdictions. Deacons is one of the oldest and

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largest Hong Kong firms. Australian lawyers Chris Shine and Tony Corel are involved with the firm's Asian telecommunication and broadcasting practice;²⁹

- Clayton Utz is associated with the English law firm of Lovell White Durrant (which has an office in Hong Kong) through the Pacific Rim Advisory Council (PRAC);¹⁹
- Barker Gosling's associated firm is Victor Chu & Co;
- Michell Sillar has an associated office in Hong Kong;
- Power & Power has an associated firm arrangement in Hong Kong; and
- Maddock Lonie & Chisholm, Melbourne and Colin Biggers & Paisley, Sydney are linked though *Advoc asia* with Fred Kan & Co., Hong Kong.¹⁷

Australian lawyer

See *Australian firms* above.

Local lawyer

See *Australian firms* above.

Legal firms based in the United Kingdom

See *Local legal firms* above.

International legal firms

There were 30 foreign (non-Australian) firms (not practising Hong Kong law) as at 30 November 1994. The foreign firms and their principle home counties were:²²

Advokatfirman Vinge AB (Sweden);	Morrison & Foerster (USA);
Appleby, Spurling & Kempe (Bermuda);	Nishiyama, Mukai, Leewong, Evans & Saldin (USA);
Boughton Peterson Yang Anderson (Canada);	Osler Renault Ladner (Canada);
Chadbourne & Parke (USA);	Perkins Coie (USA);
Cleary Gottlieb Steen & Hamilton (USA);	Romulo Mabanta Buenaventura Sayoc & de los Angeles (The Philippines);
Conyers Dill & Pearman (Bermuda);	Simpson Thatcher & Bartlett (USA);
Davis Polk & Wardwell (USA);	Skadden Arps Slate Meagher & Flom (USA);
Fulbright & Jawroski (USA);	Stikeman, Elliott (Canada);
Gibson, Dunn & Crutcher (USA);	Sullivan & Cromwell (USA);
Jones Day Reavis & Pogue (USA);	Thelen, Marrin, Johnson & Bridges (USA);
Kaye, Scholer, Fierman, Hays & Handler (USA);	Thieffry & Associates (France);
Lewis, D'Amato, Brisbois, Bisgaard, Buxbaum & Choy (USA);	Tory Ducharme Lawson Lundell (Canada);
Loyens & Volkmaars (The Netherlands);	Walker & Corsa (USA);
Milbank Tweed Hadley & McCloy (USA);	Wee Swee Teow & Co. (Singapore);

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White & Case (USA); and
Winthrop Stimson Putnam & Roberts (USA).

Status of lawyers employed

Local lawyers

Foreign firms, excluding United Kingdom firms, cannot employ local lawyers. The increase in the amount of China work and the imminence of the Peoples' Republic of China regaining sovereignty over Hong Kong has meant an increasing demand by firms from the United Kingdom for local lawyers with both Mandarin and Cantonese language skills.¹⁰

Foreign lawyers

Following its introduction in 1994, the *Legal Practitioners Ordinance* prescribes rules for the practice and registration of foreign lawyers and foreign law firms. These are discussed further at section 4 below.

Principal home countries

The principal home countries for foreign firms are the United States (19), Canada (4), Bermuda (2), Sweden (1), France (1), Philippines (1), Netherlands (1) and Singapore (1).²²

Practice mix

Foreign firms advise local companies on matters relating to home country law (95–100%) and third country law (0–5%).

Principal areas of legal practice for foreign firms in Hong Kong are:

- infrastructure transactions;
- international business investment, including approvals of host governments, joint venture agreements, and other related matters (major activity for United States firms);
- international sale of goods and services, including intellectual property and marketing matters, associated shipping, and other related matters; and
- property transactions (significant activity for Australian and Canadian firms).²

Commercial arbitration

A considerable effort by Hong Kong has been devoted to developing an internationally acceptable arbitration system. In 1982 and 1984, Hong Kong modified its *Arbitration Ordinance* to include selected features of the 1979 United Kingdom reforms of the English arbitration system.⁹

Firms/centres

With private enterprise and government support, Hong Kong established an International Arbitration Centre in 1986.⁹

The Hong Kong International Arbitration Centre

38th Floor

2 Exchange Square

Connaught Road

Central, Hong Kong

Telephone: (852) 525 2381

Facsimile: (852) 845 2171

Secretary-General: Mr Peter S Caldwell²

Principal coverage

The Hong Kong International Arbitration Centre undertakes domestic and international commercial arbitration. There is a significant amount of arbitration in Hong Kong, particularly in construction and shipping disputes. The use of arbitration and other forms of alternative dispute resolution is being encouraged in Hong Kong.

Foreign restrictions

A Bill gazetted on 16 June 1989 was intended to amend the *Legal Practitioners Ordinance* to allow foreign lawyers to have the right of audience before arbitral tribunals in Hong Kong. The amendment, however, did not proceed. The *Arbitration Ordinance* was subsequently amended and section 2F provides that relevant sections of the *Legal Practitioners Ordinance* do not apply to arbitrations.⁹

International instruments

The *Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (ICSID)* came into force for Hong Kong on 18 January 1967, as Hong Kong is a constituent of the United Kingdom.

Hong Kong, as a colony of the United Kingdom, became a party to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)* on 24 September 1975 through the accession of the United Kingdom to the Convention. The Arbitration Ordinance outlines Hong Kong's formal recognition of the Convention.

Hong Kong has enacted legislation implementing the *UNCITRAL Model Law on International Commercial Arbitration (1985)*.^{4/9}

A reciprocal arrangement between Australia and Hong Kong also exists whereby the judgements of superior courts in Australia are enforceable in the courts of Hong Kong.⁵

4 Market access requirements

Foreign lawyer/firm regulation

Body responsible

There is a close association between the Hong Kong Law Society and immigration authorities. As a result, any breach of the Law Society's guidelines can result in termination of residency permits.⁹

Laws and regulations

Laws concerning the practice of law by foreign lawyers include the:

- *Legal Practitioners Ordinance* Cap. 159 (Revised Edition 1981). The Ordinance governs both branches of the profession in Hong Kong as well as foreign lawyers;
- *Admission and Registration Rules*. The Rules prescribe the formalities regarding admission to each branch of the profession;
- *Barristers (Qualification) Rules*;
- *Foreign Lawyers Registration Rules*;
- *Foreign Lawyers Practice Rules*; and
- *Overseas Lawyers (Qualification for Admission) Rules*.

The *Foreign Lawyers Registration Rules* and *Foreign Lawyers Practice Rules* both form part of the *Legal Practitioners Ordinance*.

Article 94 of the Basic law of the Hong Kong Special Administrative Region of the Peoples' Republic of China provides that the Government of the Special Administrative Region '...may make provision for local lawyers and lawyers from outside Hong Kong to work and practise in the Region.'

Foreign lawyer admission to practice requirements

Citizenship

Solicitors

By operation of the 1994 amendments to the *Legal Practitioners Ordinance*, there are no longer any citizenship stipulations with regard to admission. There are revised residency requirements set out below.

Barristers

There are no citizenship stipulations.

Educational qualifications

Solicitors

The *Overseas Lawyers (Qualification for Admission) Rules* were introduced into the Legal Practitioners Ordinance in July 1994.

Following the introduction of the Rules, lawyers admitted overseas, including Australia and the United Kingdom, can be admitted as solicitors in Hong Kong if they pass the Overseas Lawyers Qualification Examination (“the examination”). The examination is on all or some of the following subjects, depending on whether the applicant is from a common law or non-common law jurisdiction:

- (a) By written assessment
 - (i) Conveyancing
 - (ii) Civil and Criminal Procedure
 - (iii) Commercial and Company Law
 - (iv) Accounts and Professional Conduct

- (b) By oral assessment, Principles of Common Law.

If the applicant is admitted in a common law jurisdiction, he/she must satisfy the following:

- That he/she has at least 5 years experience in the practice of law and completed either
 - (a) a bachelors degree in law; or
 - (b) a course of study leading to a qualification which is substantially equivalent to that granted by a Hong Kong tertiary institution and in addition an examination equivalent to the Common Professional Examination Certificate of the University of Hong Kong; or
 - (c) a period of not less than 5 years experience as a trainee solicitor or articled clerk, and must have completed courses in, or had practical experience in, Contract, Tort, Property, Criminal Law, Equity, Constitutional and Administrative Law (“the Core Subjects”).

AND must have passed the Examination in (a) (i), (ii), (iii) and (iv) above,

OR If he/she has less than 5 years experience, he/she must have at least 2 years experience as a trainee solicitor or at least 2 years post-qualification experience AND he/she must have passed the Examination in all the written subjects.

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If the applicant is admitted in a non-common law jurisdiction, he/she must either:

- (a) have not less than 5 years experience in the practice of the law of the jurisdiction of his/her admission; or
- (b) passed all the subjects of the examination by written and oral assessment,

OR If he/she has less than 5 years of experience in practice, then he/she must have:

- (a) completed a one-year full time course of study in the Core Subjects;
- (b) completed a Postgraduate Certificate in Law; and
- (c) completed either a period of service of 3 years as a trainee solicitor in Hong Kong or in that jurisdiction or have at least 3 years post-admission experience in that jurisdiction.

Waiver of any or all of the foregoing is subject to the discretion of the Law Society.

Barristers

Until 1981, foreign barristers could only gain entry to Hong Kong if they were first admitted in the United Kingdom. However, barristers from other countries are now able to gain admission if they obtain the Post-graduate Certificate in Laws from the University of Hong Kong and fulfil the residency requirements.²⁹

Experience

See above.

Residency requirements

Solicitors

The 1994 amendments to the *Legal Practitioners Ordinance* prescribe residence in Hong Kong for at least three months immediately before admission; or intention to reside in Hong Kong for at least three months immediately after admission; or ordinary residence in Hong Kong for at least seven years; or presence in Hong Kong for at least 180 days of each of at least seven years.

Barrister

See *Citizenship* above.

Pupillage period

Barristers

Section 31(1) of the *Barristers (Qualification) Rules* provides that a barrister shall not be qualified to practice as such unless he/she has completed the prescribed qualifying period of active practice. Active practice includes practice as a Barrister anywhere in the Commonwealth, pupillage or completion of the Council of Legal Education's Post Final Practical Course. Twelve months active practice post-admission is the basic requirement, although this may be reduced in certain cases.¹⁴

Solicitors

The general requirement for solicitors is for two years practice under a Hong Kong solicitor before a solicitor may practise on his/her own right.⁶

Government approval

See *Admission authority* below.

Other

Not known.

Admission authority

Barristers

Acting on a motion paper filed with the Registrar and served on the Attorney-General and on the Secretary to the Bar Committee (see Part III of the *Admission Rules*), the Court has the power to admit a barrister (s.27).⁶

Solicitors

The power to admit a solicitor (s.4) is with the Court, however, by virtue of the *Admission and Regulation Rules* and the *Overseas Lawyers (Qualification and Admission) Rules* the applicant must first serve notice on the Law Society, which must issue a certificate upon being satisfied that the applicant has the requisite qualification.⁶ A copy of the papers are also served on the Attorney-General who has the right to object to the admission.¹⁴

Special admission

Barristers

Under section 27(2) of the *Barristers (Qualification) Rules*, the Court may waive the residency requirements and admit a person as a barrister either generally or for any particular case or cases. However, the Bar Committee has opposed several applications because of concerns over the extent of the use of

this law and this has resulted in the Court imposing a series of guidelines.⁶

Solicitors

The Law Society may waive the admission requirements for solicitors.

Additional requirements

Visa restrictions

The Director of Immigration will only grant consent to foreign lawyers (other than British citizens) to reside and work in Hong Kong with the approval of the Law Society of Hong Kong. British citizens do not need a visa or work permit for Hong Kong.¹⁴

Work permits

See *Visa restrictions* above.

Regulation of foreign law firms

Use of firm names

Foreign law firm names are now regulated by the *Foreign Lawyers Registration Rules*, which came into force in September 1994. A person who offers services to the public as a practitioner of a foreign law, other than Hong Kong solicitors or barristers, is required to register with the Law Society as a Foreign Lawyer. Similarly, there is a procedure for registering as a Foreign Firm a practice in which all of the partners who intend to practice in Hong Kong are foreign lawyers, and who intend to have two months after registration a place of business in Hong Kong for the purpose of practising or advising on foreign law. Failure to register is an offence under section 50B of the *Legal Practitioners Ordinance*.

Under the new 1994 *Foreign Lawyers Practice Rules*, the name of a foreign firm must consist solely of the name or names of one or more foreign lawyers who are principals of the firm. However, that does not preclude the use of the name of a predecessor or former partner in that practice or the use of the name of an overseas firm in which the foreign firm is a branch, or the use of a style of firm name in use at the date of the coming into operation of the Rules, or as otherwise approved in writing by the Council of the Law Society.

Employment of local lawyers

Registered foreign lawyers and foreign law firms are not permitted to employ or take into partnership Hong Kong solicitors.

Local firm associations

Section 29C of the *Legal Practitioners Ordinance* provides that the Law Society may register as an association of a Hong Kong firm and one or more foreign firms, if the Hong Kong firm and the foreign firm or firms have, or intend to have within two months after registration, an agreement under which fees, profits, premises, management or employees are shared between the Hong Kong firm and the foreign firm or firms. Failure to register the association is an offence under section 50B of the *Legal Practitioners Ordinance*.

The number of resident foreign lawyers in association must not exceed the number of Hong Kong solicitors, including partners, in the association. Associations between foreign firms and local firms must be registered with the Law Society.

Government approvals

The Attorney-General's Chamber advises the Immigration Department on applications. An undertaking not to practise local law is required.²⁸

Other

Sharing of premises and staff

A foreign law firm cannot, unless in a registered association with a local firm, share office premises (including waiting rooms and reception areas) with any other person. The staff and facilities must be under the exclusive control of the firm.

Control of employment of unqualified persons

A principal of a foreign firm must ensure that the firm does not employ persons who are not foreign lawyers ("unqualified persons") in number more than 6 plus 8 times the number of resident principals and foreign lawyers employed full-time in the firm.

Restrictions on practice

Local law

Only solicitors admitted in Hong Kong and holding a current practising certificate can advise on Hong Kong law. A registered foreign lawyer is prohibited from practising Hong Kong law. Only solicitors holding an unconditional practising certificate can practise on their own account or in partnership. In general, a solicitor must be employed by a solicitor in private practice for two years before he or she is eligible for an unconditional practising certificate.¹⁴

Home law

Australian law firms wishing to establish in Hong Kong may practise Australian or international law.^{2/14} All Australian firms operating in Hong Kong now do so in association with a local law firm.²¹

Under the 1994 *Foreign Lawyers Registration Rules*, a Hong Kong firm established as the branch of an overseas firm can use the overseas firm's name if:

- (i) for the period 3 years immediately preceding the establishing of the Hong Kong firm, there had been a foreign firm of the same name practising or advising on the law of the foreign jurisdiction;
- (ii) at least one of the principals of the Hong Kong firm is a partner in the overseas firm; and
- (iii) one of the principals of the Hong Kong firm has, for not less than 3 years during the 5 years immediately preceding the establishment of the firm, been a partner or consultancy employee of the foreign firm or the overseas firm.

Foreign law

Foreign firms are not allowed to advise on local law.¹⁴

International law

Foreign and local firms may advise on international law.

Other

As in the United Kingdom, certain areas of legal practice in Hong Kong are reserved to admitted barristers and solicitors, including the right to represent others before the courts and to prepare and issue papers in court proceedings, transfers of land and probate. These restrictions do not affect United Kingdom lawyers because of the relative ease with which they may gain admission in Hong Kong. However, this may now be changing because of the number of lawyers from the United Kingdom gaining admission in Hong Kong, especially in light of the new *Overseas Lawyers Qualification Rules* introduced in July 1994, and the fact that Hong Kong will soon no longer be a British colony.^{7/10}

Recent regulatory changes

See the above changes regarding foreign lawyers and law firms.

5 Australian legal services

Australian law firms

(*Australian law firms and lawyers providing services see 3: *Legal services market* above.)

Prospects for Australian legal services

The Hong Kong and China legal markets are very active. Project finance appears to be booming, as are other related areas. The new airport and other infrastructure projects in the region (China, Thailand, Indonesia, Macau, Vietnam, Pakistan, India and Malaysia) such as telecommunication network development have brought about a high level of business interest. Lawyers are becoming increasingly aware of Hong Kong as a base for the region. China, meanwhile, offers large potential. Mallesons Stephen Jaques have been granted a licence to practise in Beijing, where their office is now open. Baker & McKenzie also has an office in China which opened in 1993. New investment destinations such as Vietnam and Cambodia are also opening up.^{12/26}

The other factor which may impact on Australian lawyers is the Government's localisation policy. In the judiciary, the Hong Kong Government Legal Department and in private practice there is an increasing trend to employ local lawyers, particularly those with Mandarin language skills.²⁸

Dispute resolution services

Centres/firms

Baker & Mackenzie in Hong Kong provides dispute resolution services.

Bateson Starr in association with Mallesons Stephen Jaques is also known to offer dispute resolution services to the construction industry.²⁶

Sly & Weigall, through Deacons offers alternative dispute resolution services to construction clients.

The **Australian Centre for International Commercial Arbitration (ACICA)** provides services for the settlement of international commercial disputes of all kinds to the region. ACICA was established in 1985 as a company limited by guarantee and incorporated in Victoria by The Institute of Arbitrators, Australia. The Institute of Arbitrators has as its main objectives the education and training of arbitrators and their grading, the nomination of arbitrators to arbitrate disputes and the promotion of arbitration as a means by which

commercial disputes can be resolved. ACICA has entered into arrangements with the International Centre for Settlement of Investment Disputes in accordance with the provisions of the ICSID Convention.

ACICA has Co-operation and Trade Arbitration Agreements with 34 International Arbitral Centres around the world including those in the world's major trading nations in Asia, Europe, the Middle East and the Americas.

ACICA is a member of the Council of Asia Pacific Commercial Dispute Resolution Centres and has close relationships with the International Chamber of Commerce Court of Arbitration in Paris.

ACICA has concluded a Co-operation Agreement and is in regular communication with the Hong Kong International Arbitration Centre.

For further information on ACICA, contact:

**The Secretary General
Australian Centre for International Commercial Arbitration
Level 1, 22 William Street
Melbourne Vic 3000
Telephone: (03) 9629 6799
Facsimile: (03) 9629 5250**

The **Australian Commercial Disputes Centre (ACDC)** provides consulting, training and dispute resolution services both domestically and internationally. It concentrates on mediation, expert appraisal and determination. ACDC has entered into arrangements with the International Centre for Settlement of Investment Disputes in accordance with the provisions of the ICSID Convention.

ACDC is the London Court of International Arbitration (LCIA) Registry for the whole Asia-Pacific Region. LCIA's services are available to all involved in international commercial activity. It is open to any party to elect to have his/her dispute determined under the internationally recognised LCIA Arbitration Rules or UNCITRAL Rules.

ACDC is also a member of the Council of Asia Pacific Commercial Disputes Centres.

For further information on ACDC, contact:

**The Chief Executive Officer
Australian Commercial Disputes Centre
Level 5
50 Park Street
Sydney NSW 2000
Telephone: (02) 9267 1000
Facsimile: (02) 9267 3125**

Legal education and training

Overseas students studying law in Australia

Under-graduate

In 1993, there were 25 Hong Kong students recorded as studying law/legal studies in Australian (public & private) universities.¹⁶

Post-graduate

In 1993, there were no Hong Kong students recorded as studying law/legal studies in Australian (public & private) universities.¹⁶

Short course

Not known.

Overseas students studying in Australia

Commonwealth-funded higher education institutions

As at 30 June 1993, there were 8,361 Hong Kong students recorded as studying at Australian higher education institutions. The majority undertook business administration/economics (51.1%), followed by science (19.9%).²⁷

Short courses

Not known.

Overall

Hong Kong is Australia's largest source of full fee paying overseas students. In 1993/94 approximately 2,878 full-fee students came to Australia. Australia's education costs are seen as being highly price competitive. Australia also enjoys a very good academic reputation in Hong Kong.²⁴

Qualifications recognised

Australian University law graduates are eligible for enrolment in Hong Kong's Postgraduate Certificate in Laws Programme (PCLL).¹¹

**Australian Education Centre
representation**

**Australian Education Centre
28th Floor
The Harbour Centre
25 Harbour Road
Wan Chai
Hong Kong
Telephone: (852) 833 6362
Facsimile: (852) 832 9286
Manager: Joanna Leung**

**Dollar value of educational
services**

Information not available.

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