

Judicial Independence

Originated from the classical concept of “separation of powers” in political philosophy, the concept of “judicial independence” means **the courts shall independently exercise judicial power with judges adjudicating cases independently, free from any interference from government, legislature, public opinion or any other factors**. The principle of judicial independence is exemplified in the judicial oath taken by judges, by which they commit to justly perform their responsibilities in accordance with the law to maintain the rule of law without fear or favour, self-interest or deceit.

While judicial independence assumes various forms in different countries, the heart of judicial independence is always **the independence of judicial operations from administration and legislation**. This creates checks and balance, ensuring that the judiciary is not affected by any other factors, including government and legislature.

In addition to the independence of institutional roles and powers, judicial independence also includes the individual independence of judges. As judges' decisions are not affected by any persons or any political, administrative or legislative bodies, they will not second-guess themselves for fear of delivering judgments disagreeable to the government. Therefore, the appointment and removal of judges constitute a rather special process. In Hong Kong, judges have the security of tenure until they retire. Furthermore, as prescribed in the Basic Law, judges are immune from legal action against their judicial functions. Based on the Guide to Judicial Conduct in Hong Kong, judges should refrain from membership in or association with political organisations or activities.



In Hong Kong, judicial independence is not merely a time-honoured concept under the common law system. It is also a specific requirement for the judicial system in Hong Kong as prescribed by the Basic Law. Arguably, the independence of Hong Kong's judicial system is well protected and developed.

Firstly, the independence of its judicial system is prescribed in [Article 19 of the Basic Law](#), which states that [the HKSAR shall be vested with independent judicial power and final adjudication](#). The recognition of Hong Kong's judicial independence on a constitutional level, and the granting of final adjudication help Hong Kong maintain its judicial independence.

Secondly, in respect of the independence of judges, [Article 85 of the Basic Law](#) stipulates that [the courts of the HKSAR shall exercise judicial power independently, free from any interference](#). It stipulates that [members of the judiciary shall be immune from legal action in the performance of their judicial functions, thereby providing institutional guarantee for the independence of judges in performing their judicial functions](#). The appointment and removal of judges are also free from the interference of administrative factors. Under the Basic Law, judges are appointed by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission, which is a statutory body comprising judges, legal professionals and eminent persons. Judges in Hong Kong enjoy the security of tenure and may only be removed by the Chief Executive for inability to discharge a judge's duties, or for misbehaviour. Through these institutional arrangements, the individual independence of judges can by and large be guaranteed.

