

LAWASIA COUNCIL ANNUAL GENERAL MEETING 2022

COUNTRY REPORT OF THE HONG KONG BAR ASSOCIATION

1. OVERVIEW OF THE MEMBER ORGANIZATION

1.1 Basic Information:

Name	Hong Kong Bar Association (“HKBA”)
Year of establishment	1949
Nature	HKBA is the professional organization of barristers in Hong Kong and is an unincorporated association registered under the Societies Ordinance, Cap. 151.

1.2 The objects for which the HKBA was established are to consider all matters affecting the profession and the administration of justice and to take such action thereon as seems proper. Such matters include, among other things, the maintenance of the honour and independence of the Bar; the improvement of the administration of justice in Hong Kong; the prescribing of rules of professional conduct, discipline and etiquette; the furtherance of good relations and understanding within the legal profession; and the furtherance of good relations between the Bar and the lawyers of other countries.

1.3 “The objects for which the Bar Association is established are to consider all matters affecting the profession and the administration of justice and to take such action thereon as it deems proper”.

Such matters are expressly stated to include amongst others: the maintenance of the honour and independence of the Bar and the defence of the Bar in its relations with the Judiciary and the Executive; the defence, maintenance, upholding and improvement, in Hong Kong, of the independence of the Judiciary, the Rule of Law, the Basic Law, the Hong Kong Bill of Rights, the administration of justice, procedure, the arrangement of business, law reporting, and trial by jury; the establishment and maintenance of a system of prompt and efficient legal advice and aid for those persons in need thereof, irrespective of their capacity to pay; the promotion and support of law reform; the prescribing of rules of professional conduct, discipline and etiquette; the furtherance of good relations and co-operation between the two branches of the legal profession; the furtherance of good relations and understanding between the Bar and (a) the Judiciary, (b) the Law Officers of the Department of Justice, (c) the public.

1.4 Membership status of the HKBA as of 1 August 2022:

	Type of Membership	Description	No. of Members
1	Practising Member (mandatory)	All barristers wishing to practise in Hong Kong must be members of the HKBA. A practising member is entitled to vote at the general meetings.	1,622 <i>(including 103 senior counsel and 1,519 junior counsel)</i>
2	Employed Member (mandatory)	An employed barrister is one who is engaged to provide legal advice or services for employers under a	36

		contract of employment. An employed member is entitled to vote at the general meetings.	
3	Associate Member (mandatory / voluntary)	Any barrister admitted to practise in Hong Kong, not being a Member (including a Practising member or an Employed member) nor a member of the Judiciary, shall and any barrister admitted to practise only in jurisdictions other than Hong Kong may be an Associate Member. An Associate Member is not entitled to vote at general meetings.	43
4	Mess Member (voluntary)	Any barrister who is a member of the Judiciary in Hong Kong may be a Member of the Bar Mess, who shall be entitled only to attend social functions.	24
5	Academic Member (voluntary)	Any academic staff of legal education of any established universities or institutions in Hong Kong may be an Academic Member. An Academic Member may attend social functions and participate in seminars, talks and workshops organized by the HKBA.	3

6	Student Member (voluntary)	Any student studying law or law related degrees or courses may be and remain a Student Member. A Student Member enjoys the same right as an Academic Member.	8
7	Life Member	The HKBA may, in General Meeting, confer on any Member the title of Life Member and such person, whilst he is in Hong Kong, shall have all the privileges of a Member.	2
8	Honorary Life Member	The HKBA may, in General Meeting, confer on any barrister (not being a Member) or any former or present member of the Judiciary of Hong Kong the title of Honorary Life Member.	8
TOTAL :			1,746

1.5 The HKBA holds an Annual General Meeting every year to, among other things, elect the officer-bearers of the Bar Council and approve the accounts. It may also hold Extraordinary General Meetings in certain circumstances such as to confer honours on members or revise its constitution.

1.6 The HKBA is governed by an executive committee known as the Bar Council. It has the dual functions of regulating and representing its members. The Bar Council is obliged to meet regularly (usually, once every fortnight).

1.7 The Bar Council consists of the Chairman, the Vice-Chairman (not more than 2), an Honorary Secretary, and a Deputy, 11 Elected members and, at most, 9 Co-opted members representing different sections in the Bar. The current members of the Bar Council are:

Chairman	Victor Dawes, S.C.
Vice-Chairmen	José-Antonio Maurellet, S.C.
	Derek C.L. Chan, S.C.
Honorary Secretary and Treasurer	Johnny K.C. Ma
Deputy Honorary Secretary	Eugene W.T. Yim
Council Members	Stewart K.M. Wong, S.C.
	Anson M.K. Wong, S.C.
	Maggie P.K. Wong, S.C.
	Jonathan T.Y. Chang, S.C.
	Norman Hui
	Pauline P.L. Leung
	Philips B.F. Wong
	Lee Shu Wun
	Martin W.H. Wong
	Robin N. Egerton
	Bosco Y.K. Cheng
	Issac C.K. Chan
	Jeffrey C.K. Tam
	Lester H.L. Lee

	Kim M. Rooney
	Rachael S.Y. Siu
	Alexander K.M. Tang
	Azan Aziz Marwah
	Lorraine H.M. Tsang
	Geoffrey K.W. Yeung.

1.8 To assist in its functions, the Bar Council has established a total of 41 Committees and Standing Committees. They include, for example, the Overseas Admission Committee, the Constitutional Affairs & Human Rights Committee, the Discipline Committee, the Legal Education Committee, the Equality and Diversity Committee and the International Practice Committee.

1.9 The HKBA is served by a secretariat headed by the Administrator, who is presently Ms Dora Chan.

1.10 Contact information of the HKBA:

Address	LG2, High Court, 38 Queensway, Hong Kong
Tel no.	(852) 2869 0210
Fax no.	(852) 2869 0189
E-mail	info@hkba.org
Website	www.hkba.org

2. ATTORNEY SYSTEM

(a) Legal status of barristers in Hong Kong

2.1 The legal profession in Hong Kong consists of solicitors, barristers, foreign lawyers, solicitor advocates and notaries public, all of whom are regulated by the Legal Practitioners Ordinance (the "LPO"). Lawyers who work in the Department of Justice and certain Government departments (known generally as Legal Officers) are regulated by the Legal Officers Ordinance.

2.2 Barristers are legal practitioners who offer themselves as experts in advocacy and generally specialise in litigation matters. Barristers have the right of audience in all Courts in Hong Kong save and except the Labour Tribunal and the Small Claims Tribunal where no legal representation is permitted. Apart from solicitor advocates who have acquired higher rights of audience, only barristers have the right of audience in Hong Kong's High Court (including the Court of First Instance and the Court of Appeal) and the Court of Final Appeal.

2.3 Access to barristers by the general public is normally through solicitors. This means that a lay client may not instruct a barrister directly. The distancing of the barrister from the lay client helps to maintain the barrister's impartiality and the qualities of his/her advice. Changes have been made in recent years so that, in some instances, barristers may also be instructed by other professionals such as accountants.

2.4 A barrister must practise in professional chambers. It is common for barristers to share chambers (i.e. the same office). However, partnerships are not permitted. Hence, although two or more practising barristers may share chambers and professional expenses, they must not agree to share professional receipts or assume responsibility for the professional work of each other.

2.5 The Chief Justice may, after consultation with the Chairman of the Bar and the President of the Law Society, appoint as Senior Counsel a barrister who has practiced for not less than 10 years and has, in the opinion of the Chief Justice, sufficient ability and standing as a barrister, and sufficient knowledge of the law, to be accorded with such status. This is, in effect, a modified continuation of the practice of appointing "Queen's Counsel" in the period prior to 1 July 1997 when Hong Kong was under British administration. The change in title reflects the fact that the Queen no longer has a constitutional function in Hong Kong is a part of the P.R.C..

(b) Qualification systems for barristers

2.6 Any person who satisfies the requirements set out in Barristers (Qualification for Admission and Pupillage) Rules of the LPO may be admitted as a barrister. A person may become qualified to practise as a barrister in Hong Kong by way of (a) general admission or (b) ad hoc admission.

(i) General admission

2.7 A person is qualified for general admission as a barrister if he:

- (a) has obtained a Postgraduate Certificate in Laws from the University of Hong Kong, the City University of Hong Kong or the Chinese University of Hong Kong;
- (b) has been admitted as a solicitor in Hong Kong for at least 3 years immediately or in any case not more than 12 months before application for admission, and was during that period in practice as a solicitor in Hong Kong or employed by the Government as legal officer;
- (c) is an overseas lawyer and:
 - (i) holds a valid certificate of admission as legal practitioner in the jurisdiction of admission;
 - (ii) has practiced for at least 3 years in that jurisdiction;
 - (iii) is a person of good standing in that jurisdiction; and
 - (iv) has passed the Barristers Qualification Examination (which is administered by the Bar Council, held at least once a year and consists of 5 examination papers covering various subjects of Hong Kong laws).

2.8 A barrister must first serve as a pupil barrister for a period of not less than a year (which may be reduced to not less than 3 months in exceptional circumstances to be approved by the Court). Pupillage must be undertaken in the chambers of a practising barrister of not less than 5 years' experience or the Department of Justice. A barrister seeking admission must have completed not less than 6 months of pupillage (which may be reduced to not less than 3 months in exceptional circumstances). Admission is referred to as being "called to the Bar".

- (ii) Ad hoc admission

2.9 Notwithstanding that a person does not satisfy all the requirements for general admission, where the Court considers that he is a fit and proper person to be a barrister and is satisfied that he has a qualification acquired outside Hong Kong to engage in work that would, if undertaken in Hong Kong, be similar to that undertaken by a barrister in the course of ordinary practice as a barrister in the High Court or Court of Final Appeal, and substantial experience in advocacy in a court, the Court may admit such person as a barrister for the purpose of any particular case or cases and may impose restrictions and condition on him as it may see fit.

2.10 While an application for ad hoc admission will be determined by the Court, the HKBA will be heard in such an application. The HKBA will decide whether to consent to such an application or to oppose it in accordance with the recommendations of the Overseas Admission Committee. The main consideration is whether it is in the public interest to consent to the application. In practice, most successful applicants for ad hoc admission are Queen's Counsel in England and Wales. Although applications for Australia have also been made and were successful.

(c) Regulation on legal services (as barristers) provided by non lawyers

2.11 Any person who, not being a qualified barrister, either directly or indirectly, practises or acts as a barrister is guilty of a criminal offence.

(d) Regulation on foreign registered attorneys to practise as barristers

2.12 As mentioned above, a foreign registered attorney may become qualified to practise as a barrister in Hong Kong under rules for general admission or by way of ad hoc admission for a particular case.

3. REGULAR ACTIVITIES CONDUCTED BY THE ORGANIZATION

3.1 The HKBA's regular activities are conducted by members of the HKBA (not limited to members of the Bar Council) and hired staff of the Bar Secretariat. These activities consist of, among other things, the following.

(a) Disciplinary Matters

3.2 Barristers must comply with the Code of Conduct of the Bar of the Hong Kong Special Administrative Region. The Code is aimed at promoting and maintaining the high standards of the profession. Any complaint of misconduct against a barrister will first be considered by the Discipline Committee of the Bar Council. The Bar Council, upon the recommendation of the Discipline Committee, may refer the complaint to the Barristers Disciplinary Tribunal which is an independent statutory body consisting of a Senior Counsel, a barrister and a lay person chosen from a panel appointed by the Chief Justice. The disciplinary powers of the Tribunal include suspending the barrister from practice for a specific period or striking off the barrister's name from the roll of barristers.

(b) Advanced Legal Education

3.3 The Bar Council institutes and organizes for pupil barristers a programme of compulsory legal education known as the Advanced Legal Education

Programme (“ALE”). A pupil must attend such ALE courses as may be required by the Bar Council and obtain a sufficient number of ALE points.

3.4 There is at present no compulsory legal education for other practising barristers, although the HKBA organizes seminars on various legal subjects from time to time. However the Bar Council has resolved to introduce a system of compulsory continuing professional development as soon as possible. It is expected that this will come into operation in January 2023.

(c) Funds and scholarships

3.5 The HKBA administers a number of funds and scholarships to give financial assistance to new or prospective entrants to the Bar. Such financial assistance may be provided by reference to the merits and/or financial means of the applicants.

(d) Bar Free Legal Services Scheme

3.6 The HKBA runs the Bar Free Legal Services Scheme, which provides free legal advice and representation in cases where legal aid is not available or where the applicant is unable to afford legal assistance and the case is thought to be an appropriate one where assistance should be given. Its day-to-day administration and initial processing of applications is operated by a co-ordinator assisted by supporting staff. Barristers who have volunteered to help in the scheme are placed on a panel.

(e) Visits and talks

3.7 The HKBA receives and meet delegations and representatives from Mainland China and overseas jurisdictions. These delegations and representatives include government officials, judges, fellow members of the legal profession and law students.

3.8 The HKBA also organizes Court visits and school visits for students in Hong Kong.

(f) Overseas visits and conferences

3.9 The HKBA sends representatives to international bodies and legal conferences around the world. The Covid-19 pandemic has curtailed overseas visits and attendance in nearly all scheduled conferences. The HKBA has participated in some conferences that have offered online participation.

4. DEVELOPMENTS IN 2022

4.1 Legal practice in Hong Kong have continued to be affected by COVID-19. Whilst remote hearing technologies are gradually being put into place, the closure of Court for a short period in the first quarter of 2022 has no doubt affected the practice of our members. Apart from advocating the use of technology in our courts, the HKBA has also rolled-out short term and interest free loans to assist our junior members.

4.2 In addition to legal practice, the HKBA has continue to speak out on issues regarding rule of law and administration of justice in Hong Kong.

4.2.1 Meetings have been held with the last and the current Secretary for Justice (appointed on 1 July 2022) to ensure the views of the HKBA are heard. We will ensure we have constructive dialogues with our justice minister over rule of law and other issues affecting our profession.

4.2.2 Commenting on legislations and law reform matters.

4.2.3 Reaching out to the public to explain rule of law issues. HKBA's views are widely reported with prominent coverage in the media throughout 2022.

4.3 On 22 October 2020, the State Council General Office of the People's Republic of China released the details regarding the pilot scheme that allows Hong Kong legal practitioners who pass the special qualifying examination to deal with civil and commercial legal matters (including litigation and non-litigation matters) in the nine mainland cities of the Greater Bay Area ("GBA"). A number of Hong Kong barristers have duly passed the exam and the HKBA have amended our Code of Conduct to allow some of our members to practice in the GBA whilst maintaining the independence of our members practising in Hong Kong.

Hong Kong Bar Association

Dated: 13 October 2022



JURISDICTIONAL REPORT: LAWASIA COUNCIL MEETING

FRIDAY 18 NOVEMBER 2022

Please complete and submit to the LAWASIA Secretariat by Friday 21 October 2022 via email: lawasia@lawasia.asn.au

LAWASIA Member Organisation – Annual Jurisdictional Report 2022

1. Please provide a brief summary (up to 100 words per item) of up to five (5) key events and activities undertaken by your organisation in the past 12 months.

Name / Date of Activity	Details of activity
October 2022	Attending opening of the legal year in London, meeting members of other legal associations and member of the legal community
November 2022	Attending Law Asia Conference in Sydney, meeting with members of other law societies and associations

2. Please provide details of pending issues faced by your organisation that you wish to share with LAWASIA and other member organisations.

1.	Maintenance of rule of law and the independence of the judiciary
2.	
3.	

3. Please list any items requiring assistance/support from LAWASIA and other member organisations (e.g. statements/ research/pro bono/joint events/joint projects etc.).

1.	We would like to work on issues pertaining to rule of law, judicial independence and education about the same to the general public.
2.	
3.	

4. Please list any events and/or initiatives that you would like to invite LAWASIA's participation in over the next 12 months (e.g. opportunities for attendance, speakers, sponsorship etc.).

Date	Name of Event/Activity	How can LAWASIA assist?