

**Paper for the Administration of Justice  
and Legal Services Panel**

**Information Paper on the Current Criminal  
Jurisdiction of HKSAR and Mainland Courts**

This paper sets out the current criminal jurisdiction of the courts in the Hong Kong Special Administrative Region (HKSAR) and the Mainland.

**Criminal Jurisdiction of Courts in HKSAR**

2. Criminal jurisdiction is exercised by magistrates, the District Court, Court of First Instance, Court of Appeal and the Final Court of Appeal in Hong Kong.
3. Magistrates deal with minor crimes (summary offences and indictable offences on a summary basis) and also conduct committal proceedings in respect of some indictable offences.
4. The criminal jurisdiction of the District Court covers charges relating to indictable offences transferred by magistrates. A District Judge may not sentence a convicted offender to a term of imprisonment longer than 7 years. The Court is also not competent to try certain serious offences, e.g. murder, genocide or seditious libel.
5. The Court of First Instance has unlimited criminal jurisdiction. It tries serious offences not triable by, and also reviews decisions of, the lower courts.
6. The Court of Appeal exercises appellate jurisdiction. hearing appeals in both civil and criminal matters from the District Court and the Court of First Instance.

7. A right of final appeal in criminal matter lies to the Court of Final Appeal from any final decision of the Court of Appeal and of the Court of First Instance from which no appeal lies to the Court of Appeal.

8. According to the common law rules on jurisdiction, an offence is triable in local courts if it is committed in Hong Kong. It is immaterial whether an accused person is or is not a resident of the HKSAR.

9. Generally, common law regards an offence as committed in the place where the last act or event necessary for its completion took place. However, for crimes where a result or outcome is sought (e.g. obtaining property by deception contrary to section 17 of the Theft Ordinance), the offence is regarded as committed only where the property is obtained. The territorial rules are however relaxed in the case of international fraud by the Criminal Jurisdiction Ordinance (Cap. 461) to facilitate prosecution.

10. Under the doctrine of *autrefois convict* or *autrefois acquit*, a person who has been tried and convicted or acquitted by a court of competent jurisdiction in a place outside Hong Kong may not be tried again in respect of the same offence.

11. These principles on territorial jurisdiction are consistent with specific provisions in Articles 14, 19, 22 and 42 of the Basic Law (copy attached).

### **Criminal Jurisdiction of Courts in China**

12. The court system of the People's Republic of China ("PRC") is governed by the Organic Law of the People's Courts of the PRC.

13. According to Article 2 of the Law, the judicial authority of the PRC shall be exercised by -

- (a) local people's courts at various levels (i.e. basic people's courts, intermediate people's courts and higher people's courts);
- (b) special people's courts such as military courts; and
- (c) the Supreme People's Court.

14. Article 3 of the Law empowers the people's courts to try both criminal and civil cases, including the punishment of offenders.

15. Article 5 provides that in judicial proceedings in the people's courts, the law shall be applied equally to all citizens, regardless of ethnic status, race, sex, occupation, family background, religious belief, education, property status or length of residence. No privilege whatsoever shall be allowed.

16. Article 21 provides that except for cases otherwise provided for by laws or decrees, a basic people's court shall adjudicate criminal and civil cases of first instance. If a basic people's court considers that a criminal or civil case it is handling is of major importance and requires trial by a people's court at a higher level, it may request that the case be transferred to that court for trial.

17. Article 25 provides that the intermediate people's courts shall handle -

- (a) cases of first instance assigned by laws and decrees to their jurisdiction;
- (b) cases of first instance transferred from the basic people's courts;
- (c) cases of appeal and of protests lodged against judgments and orders of the basic people's courts; and
- (d) cases of protests lodged by the people's procuratorates in accordance with the procedures of judicial supervision.

If an intermediate people's court considers that a criminal or civil case it is handling is of major importance and requires trial by the people's court at a higher level, it may request that the case be transferred to that court for trial.

18. Article 28 provides that the higher people's courts shall handle -

- (a) cases of first instance assigned by laws and decrees to their jurisdiction;
- (b) cases of first instance transferred from people's courts at lower levels;
- (c) cases of appeals and of protests lodged against judgments and orders of people's courts at lower levels; and
- (d) cases of protests lodged by people's procuratorates in accordance with the procedures of judicial supervision.

19. Article 29 provides that the organisation, functions and powers of the special people's courts shall be prescribed separately by the Standing Committee of the National People's Congress.

20. Article 32 provides that the Supreme People's Court shall handle -

- (a) cases of first instance cases which are assigned by laws and decrees to its jurisdiction or which it deems it should try;
- (b) cases of appeals and of protests lodged against judgments and orders of higher people's courts and special people's courts; and
- (c) cases of protests lodged by the Supreme People's Procuratorate in accordance with the procedures of judicial supervision.

21. In practice, basic people's courts are normally the courts of first instance for the trial of all criminal cases. Intermediate courts have original jurisdiction, however, over trials for crimes for which capital or life imprisonment may be imposed, crimes committed by an alien and crimes by a citizen against an alien. A higher court is the court of first instance to try major criminal cases affecting an entire province, and autonomous region or a city directly under central government control. For crimes that affect the entire nation, the Supreme People's Court is to serve as the trial court of first instance. In principle, venue is located at the place where the crime was committed. It can be, however, the place of the accused's residence, if trial there is found to be more appropriate.

22. The criminal jurisdiction of the PRC is set out under the Criminal Law of the PRC.

23. Article 3 provides that only acts prescribed by law as criminal acts shall be punishable as crime according to law.

24. Article 6 provides that the Law is applicable to anyone who commits a crime within the territory of the PRC, unless the case is covered by special legal provisions. The Law is also applicable to anyone who commits a crime on board a ship or airplane of the PRC. If the criminal act or its consequence takes place within the territory of the PRC, the crime shall be deemed to have been committed within the territory of the PRC.

25. Article 7 provides that the Law is also applicable to any citizen of the PRC who commits outside the territory of the PRC a crime prescribed under the Law. However, a crime for which the Law prescribes a maximum

punishment of fixed-term imprisonment of not more than 3 years may not be dealt with. The Law is applicable to state personnel and military personnel of the PRC who commits crimes prescribed under the Law.

26. Article 8 provides that the Law may be applicable to any foreigner who commits a crime outside the territory of the PRC against the state of the PRC or against its citizens, if for that crime the Law prescribes a minimum punishment of fixed term imprisonment of not less than 3 years; however, this does not apply to a crime that is not punishable according to the law of the place where it was committed.

27. Article 10 further provides that if any person commits a crime outside the territory of the PRC for which according to the Law he would bear responsibility, he may still be dealt with according to the Law, even if he has already been tried in a foreign country. However, if he has already received criminal punishment in the foreign country, he may be exempted from punishment or given a mitigated punishment.

28. A copy of extracts from “中華人民共和國人民法院組織法” and “中華人民共和國刑法” is attached.

### **Principles to Apply in Cases of Concurrent Jurisdiction**

29. Unless there is any formal agreement on rendition which provides otherwise, either the Mainland or the HKSAR would each be competent respectively to try and punish any persons who are present within its jurisdiction and have committed crimes under their respective criminal law.

30. In this connection, Article 95 of the Basic Law provides that the HKSAR may, through consultations and in accordance with law, maintain juridical relations with the judicial organs of other parts of the country, and they may render assistance to each other.

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