THE PARALEGAL DESK

The Basic Law — rights, interpretation and judicial review

A printable reference pack for Hong Kong paralegals and legal executives.

CONTENTS

1. The Basic Law

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The Basic Law

CONSTITUTIONAL AND PUBLIC LAW

Two facts explain most of what follows. The Basic Law is a national law of the People's Republic of China enacted for Hong Kong, and it is also the constitution of the Region, superior to every ordinance the Legislative Council passes. And its Article 8 preserved the common law and the rules of equity that were in force on 1 July 1997, which is why a 2026 contract case in Hong Kong still cites a nineteenth-century English authority.

THREE MISUNDERSTANDINGS WORTH CLEARING AT THE START

"The Basic Law is only for constitutional cases." It is cited in ordinary criminal and civil files: Article 35 (the right to confidential legal advice and to judicial remedy) in legal advice cases, Article 27 in protest cases, Article 39 with the Bill of Rights in privacy and fair trial cases.

"The courts can strike down anything." The courts may hold an ordinance inconsistent with the Basic Law and to that extent invalid, but they do not review the acts of the Central Authorities, and the power of interpretation of the Basic Law is not theirs alone.

"Judicial review is an appeal." It is not. The court reviews the legality of a decision, not its merits, and the three-month period runs from the decision, not from the refusal of a reconsideration.

1 What the Basic Law is

The document in numbers

Item	Detail
Adopted	4 April 1990 by the National People's Congress; in force on 1 July 1997
Structure	A Preamble, **160 articles** in nine chapters, and three annexes
Chapter I	General principles — Article 8 (common law continues), Article 11 (no law may contravene the Basic Law)
Chapter II	Relationship between the Central Authorities and the Region — Article 18 (national laws listed in Annex III)
Chapter III	Fundamental rights and duties — Articles 24 to 42
Chapter IV	Political structure — the Chief Executive, the Executive Council, the Legislative Council, the courts, the district organisations
Chapter VIII	Interpretation (Article 158) and amendment (Article 159)
Annex I and II	Method for selecting the Chief Executive; method for forming the Legislative Council
Annex III	The national laws applied in Hong Kong — including the National Security Law of 2020

Article 11 is the hinge: no law enacted by the Region may contravene the Basic Law, and the rights and freedoms it guarantees are not to be restricted except as the Basic Law allows. That is what makes a constitutional challenge possible at all, and it is why the courts must be shown the article relied on, not merely an argument that a decision was unfair.

2 Continuity: what survived 1997

The machinery of continuity

Article	What it provides	Practical effect
Article 8	The laws previously in force — common law, rules of equity, ordinances, subordinate legislation and customary law — continue, except where they contravene the Basic Law or have been amended	Case law before 1997 remains authority; a Hong Kong court applies the common law as it stood, developed since
Article 18	National laws do not apply in Hong Kong except those listed in Annex III, which are confined to defence, foreign affairs and other matters outside the Region's autonomy	Mainland civil law does not apply to a Hong Kong contract or a Hong Kong tort
Article 19	The Region has independent judicial power, including that of final adjudication	The Court of Final Appeal is the final appellate court, subject to Article 158 references
Article 160	Laws previously in force were adopted on 1997 unless declared inconsistent with the Basic Law	Explains why a 1930s ordinance is still cited with its original section numbers
Article 5	The socialist system and policies are not practised in Hong Kong; the previous capitalist system continues for fifty years	The frame for the "one country, two systems" cases

3 Rights, and how they are argued

Chapter III guarantees the rights a litigation file actually uses: equality before the law (Article 25), permanent identity (24), freedom of speech, assembly, association and the press (27), freedom from arbitrary arrest and the presumption of innocence (28, 87), freedom of religion (32), the right to confidential legal advice and to judicial remedy (35), the right to social welfare (36), and the rights under the ICCPR and ICESCR as applied through Article 39.

The two instruments, and which one to plead

Instrument	What it is	Use it for
Basic Law, Chapter III	Constitutional rights, directly enforceable against the Region	A challenge to an ordinance or to a public decision that restricts a guaranteed right
Hong Kong Bill of Rights Ordinance (Cap 383)	The ICCPR as enacted into Hong Kong law, binding on the Government and public authorities (s 7)	Fair trial, freedom of expression, privacy, and the Article 14 ICCPR guarantees in criminal cases
Article 39	Provides that the ICCPR as applied to Hong Kong remains in force and shall not be restricted except as prescribed by law	The bridge between the Bill of Rights and the Basic Law — most challenges plead both

A rights argument has a shape. First, identify the right and the provision. Second, show that the measure interferes with it. Third, ask whether the interference is *prescribed by law* — a sufficiently precise legal basis, not an administrative practice. Fourth, ask whether it pursues a legitimate aim and is *proportionate*: suitable, necessary, and not excessive. The proportionality test is where most cases are won and lost, and it is applied with a margin of appreciation that varies with the right and the context.

4 The structure of government

Who does what, under which chapter

Body	Constitutional basis	What it does
Chief Executive	Articles 43 to 58	Heads the Region, implements the Basic Law and the laws, nominates principal officials, may grant pardons
Executive Council	Articles 54 to 56	Advises the Chief Executive on important policy decisions
Legislative Council	Articles 66 to 79	Enacts, amends and repeals laws; approves budgets and taxation; may impeach the Chief Executive
Courts	Articles 80 to 96	Exercise judicial power independently; the Court of Final Appeal has final adjudication
District organisations	Article 97	District councils and other bodies, with no governmental power
Independent Commission Against Corruption and the Ombudsman	Articles 57 and 59	Operate independently and are accountable to the Chief Executive

5 Interpretation: Article 158

Article 158 divides the power of interpretation. The Standing Committee of the National People's Congress holds it. The courts of the Region are authorised to interpret the provisions within the limits of the Region's autonomy in adjudicating cases. For provisions concerning Central Authorities' responsibilities or the relationship between the Central Authorities and the Region, a court must, before a final judgment that is not appealable, seek an interpretation through the Court of Final Appeal.

The interpretations, and what each decided

Year	Subject	Why it matters to a file
1999	Right of abode (Articles 22 and 24)	Who qualifies as a permanent resident, and the requirement that a person from the Mainland must obtain approval before entering
2004	Method for selecting the Chief Executive and forming the Legislative Council (Annexes I and II)	The procedure for electoral reform, and the role of the Chief Executive's report
2005	Term of office of a new Chief Executive (Article 46)	The remainder of the predecessor's term, not a fresh five years
2011	State immunity (Article 13)	The Region applies the principle of absolute state immunity, which changed the common law position
2016	Oath-taking (Article 104)	The form of the oath and the consequences of failing to take it properly
2020	National security (Article 14 of the National Security Law)	The meaning of "national security" and the jurisdiction of the National Security Committee
2022	Overseas counsel in national security cases	Whether counsel without a Hong Kong practising certificate may act, and the certificate requirement

An interpretation is not an amendment and does not operate as a new law: it states what the provision has always meant, and it applies to cases already running. That is why a judgment can be affected by an interpretation given after it, and why the date of the interpretation goes into the chronology of any case that might be affected.

6 Amendment, national laws and national security

The three ways the legal landscape changes

Route	How it works	Latest example on the desk
Amendment — Article 159	Proposed by the Standing Committee, the State Council or the Region; adopted by the National People's Congress by a two-thirds majority; no amendment may contravene the basic policies on "one country, two systems"	Rare, and none of the ordinary files on this desk turns on one
Annex III national laws — Article 18	A national law may be listed in Annex III and applied in the Region by promulgation; the list is confined to defence, foreign affairs and matters outside the Region's autonomy	The National Security Law 2020, promulgated and applied in Hong Kong on 30 June 2020
Local legislation — Article 23	The Region enacts its own laws to prohibit treason, secession, sedition, subversion and the theft of state secrets, and to prohibit foreign political organisations from conducting political activities in the Region	The Safeguarding National Security Ordinance, enacted in March 2024

For a paralegal the practical point is provenance. An ordinance is cited by its chapter number and section; a national law applied under Article 18 is cited as such, and its interpretation may follow the national framework rather than the common law method. A file that mixes the two without saying which is which is a file that will be corrected at the hearing.

7 Judicial review: the procedure that enforces all of this

Judicial review is how a constitutional or public law argument gets into court. It is governed by Order 53 of the Rules of the High Court, and it has its own vocabulary: leave, the Form 86 notice, the affirmation, the substantive hearing, and the remedies of certiorari, prohibition, mandamus, declaration and injunction.

- **Identify a public law decision** An enactment, or a decision, action or failure to act in the exercise of a public function. A private contract dispute is not judicial review, however unfair the outcome.
- **Check the time** Promptly, and in any event within **3 months** from the date the grounds first arose. The court may extend, but only for very good reasons, and the application to extend must itself be verified by affirmation.
- **Exhaust the alternatives** A statutory appeal, an internal review, or a complaint to the Ombudsman may be the proper route. The court has a discretion to refuse relief where an adequate alternative exists.
- **Identify the grounds** Illegality, irrationality, procedural impropriety, and proportionality where a right is engaged. Legitimate expectation and bias are pleaded as their own grounds.
- **Lodge Form 86** The notice of application for leave, with the relief sought, the grounds, the supporting facts, and the affirmation. Served on the respondent and on any interested party.
- **Obtain leave** The first stage is the application for leave, decided on the papers or at a short hearing. Without leave there is no review.
- **Substantive hearing** If leave is granted, the application is heard, usually on the affidavit evidence, and the court grants or refuses the remedy.
- **Remedies and costs** Certiorari to quash, mandamus to compel, prohibition to restrain, a declaration, or an injunction. Costs follow the event, and a public body's costs can be substantial.

Form 86 — notice of application for leave to apply for judicial review	Specimen · example only
Heading	In the High Court of the HKSAR, Court of First Instance, HCAL 1234/2027 — between CHENG Wai Ming (applicant) and the Commissioner of Police (respondent)
Relief sought	(1) Certiorari to quash the decision of 12 March 2027 refusing the applicant's application for a public meeting permit; (2) a declaration that the refusal was unlawful; (3) costs
The decision	Letter dated 12 March 2027, communicated to the applicant's solicitors on 13 March 2027 — the date the grounds arose, and the date the three months run from
Grounds	(1) Illegality: the Commissioner applied a blanket policy rather than considering the application on its merits. (2) Procedural impropriety: the applicant was not given the gist of the adverse material or an opportunity to answer it. (3) Proportionality: the restriction on the right of assembly under Article 27 of the Basic Law and Article 17 of the Bill of Rights went beyond what the legitimate aim required
The facts relied on	A summary of the application, the refusal, the requests for reasons, and the responses — each cross-referenced to a paragraph of the affirmation
Time	The application is made promptly, within three months; if any part is said to be out of time, the application to extend and its grounds are included and verified
Affirmation in support	Filed with the notice, exhibiting the application, the refusal letter, the correspondence, and any policy document relied on
Service	On the Commissioner, and on the Secretary for Justice, with the notice and the affirmation; proof of service filed before the hearing
Fee	The ordinary fee for sealing the originating process — **HK$1,045** in the Court of First Instance; there is no separate fee for the leave stage in most cases, and the counter will confirm the current figure

Three months from the decision, and "promptly" is a separate test · the relief must be named, not described · a proportionality ground needs the right identified by article, or it is just a complaint about the merits

Affirmation in support — the public law evidence	Specimen · example only
Deponent	CHENG Wai Ming, of Flat 12B, 88 Nathan Road, Kowloon, the applicant
Paragraph 1 — who I am	I am the applicant and the chairman of the North Point Residents' Association, an unincorporated association with about 300 members
Paragraph 2 — the application	On 20 February 2027 I applied for a permit to hold a static gathering of up to 200 people at Quarry Bay Park on 4 April 2027. A copy of the application is at "CWM-1"
Paragraph 3 — the refusal	By a letter dated 12 March 2027 the Commissioner refused the application, stating only that the event "might cause obstruction". The letter is at "CWM-2". No reasons were given beyond that sentence
Paragraph 4 — requests for reasons	My solicitors wrote on 15 and 22 March 2027 asking for the material relied on and the policy applied. The replies, at "CWM-3" and "CWM-4", repeated the same sentence and disclosed nothing
Paragraph 5 — the policy	I am informed by my solicitors, and believe, that the respondent has a standing practice of refusing all applications for gatherings in excess of 100 persons in that district. I exhibit a press statement of 8 January 2027 at "CWM-5"
Paragraph 6 — effect on the applicant	The gathering was to mark the association's twentieth anniversary; it was cancelled on 26 March 2027, and 200 members who had arranged to attend were told it would not take place
Paragraph 7 — promptness	This application is made on 5 June 2027, within three months of 13 March 2027. I explain the interval: the correspondence at CWM-3 and CWM-4, and the time taken to obtain counsel's advice
Paragraph 8 — relief	I ask for certiorari, a declaration, and costs. I have been advised that the respondent's decision was unlawful and that no alternative remedy exists

Every paragraph that asserts a fact should point at an exhibit · explain the delay, do not hope nobody asks · "I am informed and believe" is for the policy, not for the facts the applicant saw himself

8 Fees, costs and timing

What a constitutional or public law application costs

Item	Amount or time	Notes
Sealing the originating process (Form 86)	**HK$1,045**	The High Court fee; there is no legal aid application fee, but legal aid is means-tested
Time to apply	**3 months**, and promptly	From the date the grounds first arose; extension only for very good reasons, and verified by affirmation
Leave stage	Usually weeks, on the papers	If leave is refused, the application ends there; the refusal is itself appealable
Substantive hearing	Months	Evidence is on affidavit; cross-examination is rare
Certificate for counsel	Legal aid only	In legal aid cases, senior counsel may require a certificate under the legal aid regulations
Costs	Follow the event	A public body's costs order against an individual applicant is the real risk, and it is why advice is taken before Form 86 is lodged

Official forms

The documents in a judicial review, and what each costs

Document	Source of the form	Fee
Form 86 — notice of application for leave to apply for judicial review	Order 53, rules of the High Court; the form is prescribed and must be used	**HK$1,045** to seal the originating process
Affirmation in support	No prescribed form; sworn under Order 41, exhibiting every document relied on	No fee beyond the swearing
Affirmation in opposition	No prescribed form; filed by the respondent and any interested party	No fee
Skeleton argument	No prescribed form; the practice direction governs length and timing	No fee
Hearing bundle	Indexed and paginated to the practice direction, with the notice, the affirmations and the decision under challenge	Copying only
Notice of appeal	Order 59 — filed at the Court of Appeal Registry after leave or as of right	Per the Court of Appeal scale
Legal aid application	Legal Aid Department's own form, with the statement of means	No application fee; means-tested

How long it takes

The realistic timetable of a public law challenge

Stage	Typical time	What is happening
Decision and instructions	Days	Obtain the decision, the reasons and the file; diarise the three-month date the day the decision arrives
Pre-action correspondence	2 to 6 weeks	Request reasons and the material relied on. Time spent here still counts against the three months
Form 86 lodged	—	The application for leave, with the affirmation and the exhibits
Leave decided	Weeks to a few months	On the papers, or at a short hearing; leave refused ends the application
Substantive hearing	3 to 12 months after leave	Evidence on affidavit; cross-examination is rare; the court reviews legality, not merits
Judgment and remedies	Weeks to months	Certiorari, mandamus, prohibition, declaration or injunction, with costs
Appeal	A further year or more	To the Court of Appeal, and then only with leave to the Court of Final Appeal

The three months is the only figure in this table that is fixed by law. Everything else depends on the court's list, and a case that is ready in six weeks can still wait a year for a hearing — which is why the remedy sought at the leave stage matters as much as the grounds.

9 What goes wrong

- **The three months run from the wrong date.** From the decision, not from the refusal to reconsider it and not from the reply to a complaint.
- **An appeal is dressed as a review.** The court will not substitute its view of the merits; a decision that was lawful but unkind is not a ground.
- **No article is cited.** A rights argument that does not name the Basic Law article or the Bill of Rights provision is a general unfairness argument, and it usually fails.
- **The alternative remedy is ignored.** A statutory appeal that was not used is the first thing a respondent raises.
- **Proportionality is asserted, not argued.** The court expects the legitimate aim, the suitability of the measure, the availability of a less restrictive alternative, and the balance.
- **The affirmation argues the case.** It should state facts and exhibit documents; the argument belongs in the skeleton, and an affirmation full of submissions invites a direction to re-do it.
- **Service is late or incomplete.** The respondent and the Secretary for Justice must be served, and proof of service filed before the hearing.
- **An interpretation is discovered after the judgment.** Because an interpretation states what the provision always meant, the date of any relevant interpretation belongs in the chronology from the first day of the file.

10 Checklist

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- Decision identified, with its date, its maker and the public function exercised
- Three-month date calculated and diarised; promptness addressed in the affirmation
- Alternative remedies identified and either used or explained
- Grounds stated as illegality, irrationality, procedural impropriety or proportionality, with the article
- Form 86 completed with the relief named, not described
- Affirmation exhibits every document relied on and cross-references each paragraph
- Respondent and Secretary for Justice served; proof of service on file
- Any relevant NPCSC interpretation identified and dated in the chronology
- Costs risk explained to the client in writing before filing
- Legal aid or counsel's advice obtained before the leave stage

11 Sources

- Basic Law of the Hong Kong Special Administrative Region: Articles 5, 8, 11, 18, 19, 23, 24 to 42, 43 to 58, 66 to 79, 80 to 96, 97, 104, 158, 159 and 160; Annexes I, II and III.
- Hong Kong Bill of Rights Ordinance (Cap 383), ss 3, 6 and 7, and Part II (the Bill of Rights).
- Rules of the High Court (Cap 4A), Order 53 (applications for judicial review) and the accompanying practice direction; Form 86.
- Judiciary, Resource Centre for Unrepresented Litigants, guidance on applications for judicial review — the three-month period, leave, and the remedies.
- National Security Law (2020), applied in Hong Kong through Annex III; Safeguarding National Security Ordinance (2024).
- Interpretations of the Basic Law by the Standing Committee of the National People's Congress: 1999, 2004, 2005, 2011, 2016, 2020 and 2022.
- Constitutional and Policy Research Centre (Basic Law Institute), *Some Facts about the Basic Law*; Legislative Council Secretariat information notes on Article 158.