
Court Systems – Hong Kong vs. Singapore

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1 Background of this report

PERC undertook this report in 2014 as part of a contract to compare court system of a specific government client with those of Hong Kong and Singapore in order to:

1. Compare perceptions of legal professionals (mainly practicing lawyers and judges) in these systems about quality aspects, including independence, professional standards, different practices, efficiency, and technological sophistication;
2. Identify biases and misperceptions that might occur in the client's court system that could affect not just the quality of current practices but also the ability to initiate reforms in the future;
3. Identify areas in the client's court system where there were deficiencies that needed to be addressed;
4. Based on these observations, make some suggestions on reforms or investments that could be made to improve the quality of the system relatively quickly (within two or three years);
5. Also based on these observations, identify some important areas that might take longer than just a few years to make changes but where certain reforms might be highly desirable from the perspective of improving the judicial system's efficiency and effectiveness.

Because the analysis and information relating to the client is confidential, we have edited out all client-specific references in this report, leaving the data only for Hong Kong and Singapore. However, this is useful in its own right to compare how professionals in these systems perceive different aspects of their court systems.

The quantitative part of the survey asked respondents to score 19 different variables on a zero to 10 scale, with zero being the worst grade possible and 10 the best. The variables rated the overall court system, the quality of different types of key personnel, the timeliness and efficiency with which different process are carried out, and several other aspects of the system.

The sampling size is small – 23 persons in the case of Hong Kong and 21 in the case of Singapore, but all respondents in both jurisdictions were either lawyers, judges or held other jobs dealing with the court system. We undertook all survey work in March and April 2014. We also interviewed a number of people who provided various services such as serving papers/summons, clerical staff, and experts called on to testify before courts. In these cases, we did not ask for survey grades, since the purpose of these interviews was to obtain a better understanding of how those providing the services saw their job and the difficulties they encountered.

There are no right or wrong answers to our survey questions. The grades reflected the personal perceptions of the individual respondents as insiders in the system. Although perceptions and reality frequently differ, perceptions are nevertheless important since they can influence how receptive key participants in any given system are to reform. They can also affect the willingness of companies and other potential users of a system to invest or locate in a particular jurisdiction and how specific contracts are written and enforced.

It is also important to note that the backgrounds of the respondents in the two jurisdictions were very different, and this probably created biases that influenced the specific grades. For example, many respondents in Hong Kong were nationals of Australia, the UK and other Common Law jurisdictions. When they provided grades for Hong Kong, they were probably doing so with these foreign benchmarks in mind. The other respondents were

Hong Kong Chinese who were educated in either Hong Kong or the UK. In contrast, respondents from Singapore came from different ethnic backgrounds. In addition to ethnic Chinese, we interviewed a number of ethnic Indians, and several of both ethnic groups were actually born in Malaysia. Their education background was similar to that of respondents in Hong Kong but not identical, which means their mental benchmarks might also have been different. This could have affected their scores.

These biases need to be considered in order to interpret what the grades really mean for comparative purposes. Just because the average score for Hong Kong on any given variable might be, say, 5.4 and the average score for the same variable in Singapore might be 5.8, this does not necessarily mean that this variable is actually better in Singapore than in Hong Kong, or that the difference in the actual quality of the variable between Hong Kong and Singapore is as narrow as a 0.4 difference might seem to indicate at first glance. All these scores mean is that perceptions held by Singapore professionals toward this variable are more bullish, or less critical, than perceptions of professionals in Hong Kong.

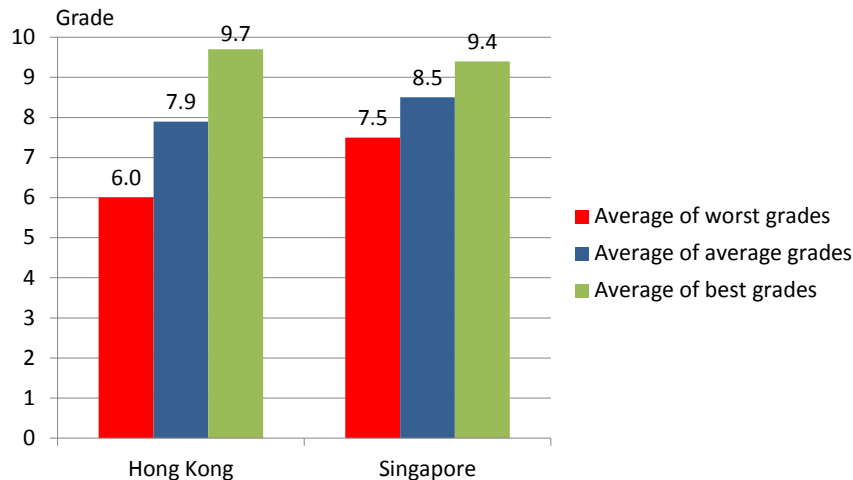
We would argue that the respondents from both jurisdictions are biased in the direction of being too positive. We say this because of the large number of 10s or perfect scores that a number of respondents from both these jurisdictions gave to some variables, particularly ones assessing judicial independence and biases, the quality of judges, lawyers and court support staff, and various measures of timeliness and efficiency. While the most negative grades given to specific variables might reflect particularly unfavorable experiences of the person giving such a response, we would argue that there is no variable that is perfect, i.e., that warrants a grade of 10. There is not a single aspect of any judicial system in the world that could not be improved upon somehow, not the quality of the judges, lawyers or support staff, nor the methods for conducting certain kinds of court processes.

Awarding a grade of 10 implies that no further improvement is possible. This reflects a bias that, on the one hand, is a positive sign of satisfaction and confidence, but, on the other hand, might also be a negative sign of being close-minded to certain deficiencies and a complacency that could ignore reforms that might actually improve the system. In other words, our survey indicates that both Singapore and Hong Kong are seen by many practitioners in those systems as having particular strong points that engender overall confidence in the systems. However, it also indicates that some respondents are blind to the possibility of improvements being possible and therefore could be an impediment to such improvements.

The specific average grades to the survey can be found in Section 3 of this report, along with the best grade received for each variable and the worst grade. We did not omit any grades from our computation of the arithmetic mean, no matter how far out of line from other scores they might have been, on the assumption that the people giving such a grade had their specific reasons. Since all surveys were conducted in the form of face-to-face interviews, we encouraged respondents to explain their rationale for providing the grades they did, and those comments shaped our own thinking in preparing this report. In many cases, those who provided more critical grades also had the most positive concrete suggestions for changes that they thought would improve the system. We were careful not to influence people in deciding on a grade. We did not tell them how other people were scoring the same variable nor did we try to get them to modify their grades by remarking that they were being either too optimistic or pessimistic. Instead, we stressed that there were no right or wrong answers and that different people had different experiences.

2 Executive Summary

Chart 1: Average of All Variables Scores



Grades range from zero to 10, with zero being the worst possible and 10 the best.

Both Hong Kong and Singapore pride themselves in having efficient, competent and honest judiciaries. They are justified in this pride, but there are subtle quality differences between the two jurisdictions that our survey, although designed with a different purpose in mind, helps to reveal.

On the one hand, the average of the best scores in the survey on Hong Kong's court system was slightly better than the average of the best scores on Singapore's system. On the other hand, the average of the worst scores was considerably worse in Hong Kong than in Singapore. This means the gap between the best and worst grades is smallest in Singapore – 1.9 points, calculated by subtracting the average worst score of 7.5 from the average best score of 9.4. This compares with a gap of 3.7 for Hong Kong.

The implication is that the views held by respondents in Singapore regarding the strengths and weaknesses of their judicial system were more closely aligned than those of respondents in Hong Kong. In other words, while there is a great deal of satisfaction of what is working well in Hong Kong – a little more than in Singapore -- there is also a higher degree of criticism about what is not working so well in this system. Averaging the scores for all responses together gives a score for Singapore that is considerably better than the score for Hong Kong.

The judicial systems of Hong Kong and Singapore might be similar in many ways and both have sufficiently high standards and reputations to have supported the development of major international business centers. Indeed, both governments proudly point to the standards set by their respective judicial systems, along with their freely convertible currencies, relatively low tax rates, widespread use of English, well-educated local populations and pro-business policies in general as being the key features that have attracted international companies and transformed both island economies into major business centers. However, there are also profound differences between the two cities that are reflected in our survey scores.

Hong Kong is not an independent country but a Special Administrative Region of China. Although the Basic Law calls for Hong Kong to have a separate, independent judicial system from what exists in China, one of the biggest current concerns in Hong Kong is that Mainland interference might compromise the independence and quality of Hong Kong's Common Law-based judicial system. Looking further ahead, to 2047 and beyond, it is unclear what kind of legal system Hong Kong will even have, since the guarantees under the Basic Law last only until then.

There is nothing Hong Kong can do right now to give assurances about what happens after 2047; that is up to the leaders in Beijing and so far they have been silent on the issue. However, virtually all solicitors, barristers and judges are extremely protective of Hong Kong's judicial independence and professionalism. This is reflected in the large number of perfect 10 scores we received from respondents in Hong Kong assessing the independence of the courts. It is also another reason why so many other variables were graded extremely favorably. Respondents were not simply comparing Hong Kong to their experience in other Common Law jurisdictions. They were also trying to send out a message that the high standards of these variables have not been compromised by China's interference – at least not yet.

In contrast to Hong Kong, Singapore is an independent country and its judicial system does not face any threat comparable to what Hong Kong faces from China. Instead, Singapore views its main threat as being competition from other countries – from neighbors that develop infrastructure that can divert business away from the island, from other financial centers that are trying to attract the same foreign banks and multinationals, and from other locations that offer comparable logistical and professional support. Because of this fear, Singapore benchmarks itself against the best practices in the world, not just against its neighbors. This benchmarking means Singapore lives with a large degree of insecurity as a matter of choice, and it uses this insecurity as a motivation to embrace change and turn it into a competitive advantage by being more willing to embrace new technologies and processes.

This is why, we would argue, Singapore's judicial system is starting to pull ahead of Hong Kong's judicial system in several critical ways. Whereas Hong Kong's judiciary is basically defensive in nature due to its desire to show its quality is not being compromised by Hong Kong's special association with China, Singapore's judiciary is more offensive in nature, pushing ahead with reforms like applying the latest computer and Internet technology to improve the efficiency of its judicial system without compromising the quality of judicial decisions. Singapore has also recently set up the Singapore International Commercial Court (SICC). Singapore believes it has to change if it wants to stay ahead of its competitors, and it is viewing its judicial system not just as an institution that is vital to supporting the Republic's current and future economic pillars but also as a service industry in its own right that can generate valuable income for Singapore.

This helps to explain why Singapore's average best grades, although good, are not as high as Hong Kong's. Singapore's lower average grade for best scores in our survey reflects the insecurities that are driving change – there is always a way to do something better, and the government actively encourages the search for such improvements. In contrast, Hong Kong's grade reflects its conviction that the current judicial system is not only good by international standards but also is not compromising its standards at all, despite doubts that it would be able to do so with China looking over its shoulder.

The average of the worst grades also deserves comment. In some ways, this is a more accurate reflection of the differences between the two jurisdictions than is the average of the best grades. The main reason Hong Kong's average worst scores were lower than Singapore's was because respondents in Hong Kong are well aware that Singapore is ahead of Hong Kong in the application of new technology and that this adversely affects other

scores, especially ones relating to the timeliness and efficiency of various processes regarding the management of cases, as well as numerous transparency issues.

Singapore knows that its experiment with new technology, after initial teething problems, has been a resounding success – so much so that the different constituents of the system are working together to introduce the next generation, or phase 2, of the technology push. In contrast, Hong Kong is still in the process of introducing phase 1 of using computers and the Internet to streamline certain processes and reduce the amount of paperwork involved with court work. Because the individual lawyers and judges are aware of what the system could be doing instead of what it actually is in terms of employing the latest technology, there is a level of frustration that is absent in Singapore.

In summary, there are two main reasons why Singapore's court system scores better overall than Hong Kong. First, it is more advanced in using the Internet and computerization, which has given Singapore an efficiency edge over Hong Kong. Second, Singapore's court system is not as vulnerable to outside influence as is Hong Kong's system. Singapore's court system is not vulnerable to interference from China or any other outside power the way Hong Kong's court system is.

The sections that follow look at the individual variables that respondents were asked to score quantitatively on a zero to 10 scale. In all our interviews, we also took notes when people provided insights into why they graded certain variables the way they did. In other words, we tried to understand the reasoning behind their subjective scores in the hopes of finding some patterns that might suggest ways where the system could be improved.

3 Survey Results -- Average, Best and Worst Grades, Ranging from 0 to 10

	Hong Kong			Singapore		
	<i>Average of 23 responses</i>	<i>Worst Grade</i>	<i>Best Grade</i>	<i>Average of 21 responses</i>	<i>Worst Grade</i>	<i>Best Grade</i>
Biased	8.5	7.0	10.0	9.2	8.0	10.0
Independence of the courts	9.2	8.0	10.0	9.4	8.0	10.0
Quality						
Judges	8.3	6.5	9.5	8.9	8.5	9.5
Lawyers	7.3	6.0	9.0	7.2	6.5	8.0
Clerks and other support staff	7.7	5.0	10.0	6.8	6.0	8.0
Timeliness/efficiency						
Serving papers to a person	8.8	8.0	9.0	8.8	8.0	10.0
Getting a case to court	8.3	7.0	10.0	8.8	8.0	10.0
Time spent on written submissions	7.2	5.0	8.0	9.4	9.0	10.0
Time between hearing and judgment	6.8	4.0	9.0	8.8	8.0	9.0
Between judgment and carrying out the verdict	8.6	6.0	10.0	8.6	6.0	10.0
Vulnerability of the system to delaying tactics	7.2	4.0	10.0	9.0	8.0	10.0
Sophistication/modernity						
Technology	7.7	7.0	10.0	9.8	9.0	10.0
Processes	7.5	5.0	10.0	9.4	8.0	10.0
Access	8.7	8.0	10.0	6.6	6.0	8.0
Financial costs of using system	5.4	1.0	9.0	5.8	3.0	8.0
Transparency	8.8	7.0	10.0	8.6	8.0	10.0
Consistency of judgments and penalties	7.5	5.0	10.0	9.0	9.0	9.0
System for using experts	8.2	7.0	10.0	9.2	9.0	10.0
System for identifying and attaching liens against assets	8.6	8.0	10.0	8.5	6.0	10.0
AVERAGE	7.9	6.0	9.7	8.5	7.5	9.4

4 Comments and clarifications relating to specific grades

4.1 Systemic biases, independence and quality of professionals

The feeling among professionals in both Hong Kong and Singapore is strong that neither system is biased and both are fierce in defending their independence. Although critics of the Singapore government sometimes argue that the court system is vulnerable to political interference, or at least a pro-government bias, when it comes to political cases, this is not a view shared by professionals working within the system. There is a bit less certainty that this is the case in Hong Kong, but even the more negative view is still a relatively positive score.

Participants in both systems are conscious of the possibility of such interference. However, those with the power to interfere have, in practice, respected the need for judicial independence and make a conscious effort to keep their distance from the workings of the court, while lawyers and judges have done their jobs without reference to what the powers-that-be might like to see happen.

The only exception to this clear separation between judicial independence and political power occurs in Singapore, which paradoxically has the best overall score for judicial independence. The harsh penalties and high conviction rates of opposition politicians and political activists sued by leading PAP politicians – usually on grounds of “slander” -- have contributed to an impression inside and outside Singapore that courts have been used as a weapon by PAP to penalize and keep opposition parties weak.

Survey respondents considered the quality of judges to be one of the most positive features of their judicial systems. As in every profession, some individual judges are stronger than others, but respondents in both Hong Kong and Singapore felt that the quality of judges presiding over the highest courts was consistently superb. Quality varied more with new judges in the lowest courts, but as the judges rose through the system, the weaker judges apparently were either weeded out or were able to overcome their perceived shortfalls.

Timeliness and efficiency are high priorities of both the Singapore and Hong Kong court systems. They do not want court time wasted on disputes that could be settled more easily out of court, and they want all cases to proceed from beginning to end without unnecessary delays or diversions. This relates directly to the variables dealing with how efficiently various court processes and steps of a case are performed.

Although judges have an image that needs to be protected and nurtured, this does not mean it should be assumed they know everything or do not need continuous education. In both Hong Kong and Singapore, the annual reports of the court systems and official websites publicize which special courses, topic-specific conferences and lectures individual judges have attended during the year. They range far beyond courses that relate directly to new techniques and concepts to emerging problems like Internet crime and new trends in money laundering.

The quality of lawyers is more mixed than the quality of judges and the average score is lower. This was the case in both Hong Kong and Singapore. The score differences between Hong Kong and Singapore are really too small to be significant. However, we suspect that the reason Hong Kong gets a slightly higher grade is that the body of barristers and solicitors with the right of appearance in local

courts is larger and there are more nationals from other Common Law jurisdictions included in this group. This makes the competition more intense and creates the sense that Hong Kong's system is more open than that of Singapore. In addition, when there are really big cases involving companies or individuals with lots of money, it is more common in Hong Kong than in Singapore to import Queen's Counsels from England to argue cases in court. In this sense, the best that Hong Kong has to offer is the best that the UK has to offer. However, at the other end of the spectrum, the quality of lawyers in both Hong Kong and Singapore still leaves a lot to be desired, or, as one respondent phrased it: "there are extremes of both competence and ethics."

At the time this report was written, Hong Kong had more than 5,800 practicing solicitors and another 1,100 practicing barristers, including at least 83 Senior Counsels. Singaporean law and procedure closely resembles Hong Kong's system. There is, however, no distinction between a barrister-at-law and a solicitor for purposes of pleading before the courts. Singapore had roughly 4,500 lawyers, more than half of whom have more than 12 years' experience.

Both Hong Kong and Singapore are large enough to enable lawyers to specialize in a particular field, for example, admiralty law, insolvency, commercial fraud, intellectual property, real estate and conveyancing, and family law, as well as, of course, criminal law.

4.2 Timeliness and efficiency

In Hong Kong and Singapore, scores for serving papers were uniformly very favorable and the spread between the best and the worst scores was a mere two points. In both jurisdictions, if those wanting to serve papers know where the people live or are located, the systems are efficient. Also in both cases, there can be problems when the person being served lives in another country.

In both Hong Kong and Singapore, in years past there were long delays that prompted the heads of the courts to look for ways to speed up the process. Both have followed the models of the UK and Australia and adopted "case management systems." These systems have two main goals: (1) to speed up the process of getting a case to court by keeping both sides in any dispute to a tight, carefully monitored schedule and (2) to encourage more cases to be settled before they get to trial, so the number of cases that actually go to trial can be reduced. Case management is followed in both criminal and civil cases. In commercial disputes, by encouraging both sides of a case to settle their dispute before it gets to court has the added advantage of increasing the possibility that the two sides will salvage enough of a relationship so they can continue to do business together in the future, whereas most cases that go to court, the fight can frequently get so acrimonious that the two sides never want to do business together again.

Once the plaintiffs have served notice on the defendants in any case, there is a period of time during which their lawyers prepare such matters as how the defendant will plead, expert selection, and witness lists. In Hong Kong, the courts give the lawyers several months for this and then call for a case management conference (CMC) to be held. The person from the court presiding over this meeting is called, in Hong Kong, a "master". He or she is not a judge and might not even be a lawyer, but someone who has judicial training and knows the administrative and procedural requirements of a lawsuit or case. At the first CMC meeting, the lawyers present their documents and requirements to the master, who might then require some more documents. Lawyers are generally expected to have prepared their cases by the time of the first CMC, but if the master requires some more documents, there is normally another

2-3 month wait for another CMC. In most cases, one CMC is all that is needed. Sometimes there are two. Very, very rarely there are three. Time lines are set and properly controlled.

Masters are supposed to be fairly rigid in making sure lawyers stick to timetables and do not employ delaying tactics. If they sense the lawyers are employing delaying tactics, the masters can penalize them, including by publicizing their misbehavior. Indeed, most solicitors and barristers say they do not want masters who operate too “loosely” but expect masters to see that the expectations of the CMCs are rigorously applied. Once the master is satisfied that the pre-trial work is done, a “hearing” or trial date is set – usually a number of months later in the case of Hong Kong. Six months later would be quite common. A judge is not normally assigned to a particular case and given the file to review much more than a week before a trial starts.

Singapore follows the same system as Hong Kong in terms of using CMCs for pre-trial preparation. Instead of “masters,” CMCs in Singapore are normally managed by the office of the registrar, but their function is the same, namely to see that deadlines for pre-trial work are set and properly controlled. Singapore also has more of this pre-trial work carried out on-line than is the case in Hong Kong. This is one reason why Singapore’s system is considered to be superior to Hong Kong’s, which is now trying to adopt the same on-line practices. For example, Singapore has an on-line litigation filing system, which should improve efficiency further. However, both jurisdictions use the pre-trial periods and the “masters” or “registrars” to emphasize alternative mediation.

In Singapore’s lower subordinate courts, it is rare for a case to get to trial. That is also becoming the norm in Hong Kong. As part of their case management, Singapore appoints a mediation judge (who cannot serve as the trial judge if the case does come to trial), one of whose functions is to encourage both sides to settle their dispute through mediation. In cases where the verdict and penalties are not in doubt, the lawyers are also encouraged not to waste the court’s time and to hold down legal costs by encouraging pre-trial settlements. Both sides in any dispute are given a clear financial incentive to settle disputes before they go to trial – for example by being told that penalties will be one third more if the case goes to court. Because of this emphasis, the use of trials is decreasing, especially for routine cases.

Singapore has a distinct lead over Hong Kong in moving to on-line processes in order to reduce paper work. Respondents in Singapore were very happy with their system – which is reflected by the narrow range and high scores for this variable (all were between 9 and 10). In contrast, Hong Kong’s scores were lower than those of Singapore; the gap between the best and worst scores was larger (grades ranged from a low of 5 to a high of 8). In their direct comments, Hong Kong respondents noted that they felt Singapore was well ahead of Hong Kong in the use of technology and that Hong Kong needs to move in this direction, which is apparently happening.

Technology is just one difference. No matter whether the submissions are delivered on paper or electronically, Singapore also has tougher requirements than Hong Kong on the quality of the submissions. For example, in Singapore’s High Court, there is even a page-limit on submissions. In Singapore’s lower courts, there is more variation, with judges and registrars controlling the pace of the case. Some are more demanding than others. Bad submissions are publicly vented. Written submissions are handled at pretrial conference, where directions are given.

In Singapore, it normally takes four to six months from the start of a trial until the actual judgment. This is a length of time that respondents to our survey normally rated as being good to

excellent. Hong Kong respondents were more pessimistic, particularly when it comes to complicated cases. Hong Kong respondents said there are too many differences to talk of a “typical” or normal time for a case to be heard and judgment to be made. Their overall satisfaction level was less than in Singapore, with Hong Kong respondents generally saying it took “too long.”

Interestingly, respondents in both Hong Kong and Singapore noted that there is a trend toward the use of arbitration in commercial cases, but that this frequently was more expensive and took longer than when courts were used for such cases.

Time between judgment and carrying out the verdict is not really an issue in either jurisdiction when it comes to criminal cases. All have similar appeal processes and verdicts are immediate following the final appeal. When it comes to civil cases, Hong Kong and Singapore scored the same grade for this variable, but in their comments respondents in Hong Kong were more positive. They said most verdicts are carried out within days, although it can vary. Overall, they think the system copes well. Respondents in Singapore also noted the time varies from case to case, but they focused more on the difficulties with enforcement, particularly when the assets are liquid and located abroad in countries like Indonesia.

The important point to note is that in both Hong Kong and Singapore it is not up to the court but to the plaintiffs (assuming they win the case) to track down assets that might be hidden. The courts will give them the authority they need to do this investigation locally, but this can still require quite an expense and manpower, which the plaintiffs have to incur and provide. In really big cases, this is worthwhile. However, in smaller cases, plaintiffs sometime need to weigh whether the costs involved with tracking down and recovering assets are really worth it.

Every judicial system in the world is vulnerable to delaying tactics, and there are lawyers and clients in every system who try to use delays not only to their advantage but also to the point where justice can be avoided altogether. However, some jurisdictions are more prone to the problem than others, and some take a much more serious approach to reducing the problem. Singapore and Hong Kong are two systems that try to fight the problem. This has nothing to do with the nature of the legal system. India is an example of a Common Law system where delaying tactics are a huge problem. However, both Singapore and Hong Kong are striving to be centers for international business and services, and they know that multinationals and banks place a great deal of importance not just on the integrity of the local judicial system but also on its efficiency.

4.3 Quality of technology

Singapore is at least a generation ahead of Hong Kong in terms of introducing new technology and the gap is widening, since Singapore has already learned from its teething problems with the introduction of the first generation of technology and is therefore in a better position to introduce the next generation faster and with fewer glitches. For example, Singapore has already introduced electronic filing of documents, while Hong Kong is in the process of doing so. Hong Kong also does not yet have instantaneous transcription, whereas Singapore does.

Singapore has found that the introduction of new technology, especially electronic filing, has improved efficiency of the courts and made things much more convenient for lawyers, judges, experts, support staff and others. The new systems have especially helped lawyers from small firms, who can now file from anywhere – even their homes. Modern technology also gives even the smallest firms access to

on-line legal research that previously only the biggest firms could afford. Big firms are in favor of the new technology too since it reduces their overheads, enables higher-cost staff to be more productive, and thereby creates extra time that can be used to generate more business. In short, this change will address many of the problems identified in earlier sections involved with dealing with a case from initial filing to the actual judgment. Lawyers will be able to know the results of a hearing without going to court. Both lawyers and judges will be able to reference at the push of a button all past judgments in the system. The system can also be used to make it easier to pay fees and to reduce costs by reducing the number of steps and therefore fees that need to be paid. Certain clerical positions can be eliminated entirely, which will reduce costs and the risk of frustrating bureaucratic delays and encounters.

4.4 Access

The most important factor influencing access to the court system in both jurisdictions is costs. However, this is such an important factor that we treat it separately in the next section of this report. Still, it has influenced scores here. The reason Hong Kong scores as well as it does for “access” is because it has a well-developed system for offering government-supported legal aid to those who require financial help. This system is not perfect, but it means that everyone has access to the system.

Other features that make Hong Kong’s courts especially accessible are its special courts that service various needs to ensure small cases not only do not clog up the normal court system but also are dealt with efficiently and at a very low cost without sacrificing the quality of decisions. Such courts include the labor tribunal to deal with labor disputes and the small claims courts to deal with commercial disputes below a certain dollar value. In these special courts, neither the plaintiffs nor the defendants are allowed to use lawyers. They must represent themselves in front of a judge or a specially appointed mediator who deals specifically with such cases and makes a quick judgment based on the facts. The total court cost to the plaintiffs and the defendants is normally less than a meal in an inexpensive restaurant.

Singapore has these same special courts. However, respondents to our survey were more critical than those in Hong Kong mainly because Singapore does not have a government-financed legal aid system. Its system for extending legal aid is driven strictly by volunteer work provided by private sector lawyers. They are coordinated by the Legal Aid Bureau, which again is private not public. These lawyers are normally high quality and even the largest law firms in Singapore set aside time for “pro bono” or free legal work, while foreign law firms that lack the right of local appearance frequently offer the time of their lawyers to do support work. However, there are not enough lawyers willing to do free work relative to the demand, and this has caused access problems. The Singapore Legal Aid Bureau currently handles only about 400 cases a year. There are currently 12,000 people representing themselves in court. Of these the Legal Aid Bureau estimates that half probably do not need any lawyer, but half could have benefitted from some form of legal advice, which means there is a big gap between supply and demand. It also means that too many people are representing themselves in court. Their lack of knowledge about court procedures causes problems and delays that are a burden to the entire system.

4.5 Financial costs of using the system

This is one score in our survey where the perspective of respondents might well differ from reality, reflecting a bias on the part of respondents. Participants in neither system want to be seen as “expensive.” They also do know they are not cheap. Not a single respondent in either system gave a

grade of 10 for this variable, while there were several in each jurisdiction who scored the cost variable more harshly than any other variable in the survey. It is therefore understandable that both perspectives are near a middle score of five, rather than closer to a zero or a 10. Moreover, actual costs of hiring a lawyer, seeking legal advice and being represented in court are probably similar in the two jurisdictions.

However, the reason we think Hong Kong deserves to be graded slightly better than Singapore for this variable is that the exchange rate of the Singapore dollar has appreciated much more over the past decade than has the Hong Kong dollar, which is tied to the US dollar. From the perspective of Singaporeans using the system (including legal practitioners), they do not notice the difference, since their fees and points of reference are in local currency. However, from the perspective of foreign individuals and companies, costs in Singapore have risen faster than in Hong Kong in terms of the currencies of their home countries. Since both Singapore and Hong Kong are competing as international business and service centers, this increase in relative costs is noticeable from the perspective of foreign clients and foreign law firms with offices in both jurisdictions.

4.6 Transparency, consistency

Both Hong Kong and Singapore emphasize the importance of making the court system transparent. This is reflected in the quality of the Internet websites of each jurisdiction. They try to communicate information in more languages. They also make public details like naming individual judges, communicating news about new laws, publicizing major cases, and giving financial information and key performance indicators.

However, scores for Hong Kong for both transparency and consistency were more critical than were scores for Singapore. This was particularly true when it came to the grade assessing consistency of judgements and penalties. This could have been due to several high profile cases in which prominent people accused of different offenses were given what many in the public perceived to be especially lenient treatment. This did not happen often, but people still remember specific examples like the 1998 Sally Aw case. On the other hand, more recent examples like the conviction and jailing of one of the owners of Sun Hung Kai on grounds of corruption show special treatment is certainly not a given.

4.7 The system for identifying and attaching liens against assets

In Hong Kong and Singapore, it is the responsibility of the plaintiff who has won a case to follow through with identifying and attaching liens against assets, while in the case of bankruptcy it is up to the court-appointed liquidator. The job of identifying and attaching liens against assets is relatively easy if the assets are in Hong Kong and Singapore, but the job can be much more difficult if they are located in foreign jurisdictions like China and Indonesia. Respondents in both Hong Kong and Singapore rated their systems a nine-plus if the assets are in their domestic jurisdictions but only a five if they are in foreign jurisdictions.

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