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Structure of the Hong Kong Special Administrative Region Government

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Hong Kong 1997: Practical Aspects

*Benjamin P. Fishburne, III**

Introduction

The purpose of this Article is to discuss the practical aspects of dealing with Hong Kong in the post-1997 period. By definition, this subject is necessarily speculative. It is, first of all, a long time until 1997. In addition, life in Hong Kong will be affected in large measure by events on the world stage over which Hong Kong will have little or no control. Finally, a great deal will depend upon the implementation of the Joint Declaration and the Basic Law.

It has to be recognized that this Article could be completely, disastrously and totally wrong. The Article is, after all, trying to predict essentially unpredictable events almost a decade in the future. Having acknowledged this fact, it is the author's belief that events will turn out more or less as predicted in this Article. Part of the reason for this belief is that the Joint Declaration is an excellent framework for the events which will take place in Hong Kong in 1997. There are most assuredly going to be rough spots along the way, as concepts, such as "directly elected," become realities. There will also be serious points of contention when the draft Basic Law is publicized for the first time. Such difficulties are to be anticipated in virtually any complex situation where the parties move from the stage of agreement in principle to practical implementation. The author believes that the governments of Great Britain and the People's Republic of China and the people of Hong Kong will in the end arrive at workable, practical solutions.

It is the author's basic belief that dealing with Hong Kong after 1997 will be very much like dealing with Hong Kong today. This conclusion is in significant part based on non-political factors. It does assume a relatively stable and peaceful political sphere, but things do not have to be perfect in the political arena. A number of the factors which contribute to Hong Kong's prosperity today will continue after 1997.

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Transportation

One of the keys to Hong Kong's success which cannot be changed is its location. After 1997, Hong Kong will still have one of the busiest, strategically located and most productive harbors in the world. Hong Kong's existing infrastructure should be enough to carry it into the next century as a shipping center. Moreover, there is no reason to believe that Hong Kong will not continue to invest and improve its transportation related facilities. Thus goods from all over the world, and particularly goods destined to and from China, will continue to transit Hong Kong as is the present practice.

In addition, Hong Kong will continue to be a vital air link and a major hub of Southeast Asian air traffic. Even if Hong Kong's air terminal facilities do not improve markedly in the coming nine years, and there is reason to assume that they will improve and also to assume that a second airport may be built in the coming decade either in Hong Kong or just across the border in Guangdong Province, air services to Hong Kong are certainly not going to regress absent the most startling political reverses.

Hong Kong also has important, modern rail links between itself and southern China. Particularly with respect to the flow of goods to Hong Kong from China, these facilities are in place, are likely to improve, and should help to make dealing with Hong Kong in 1997 much like it is today.

Infrastructure

Hong Kong serves as a business and financial center in part because of its strong existing physical infrastructure. The office buildings are built and more are being built. Acceptable expatriate housing is in place. Hong Kong has a communications network that may be second to none in the world. World class hotels are available for business travellers. State of the art communications, data processing and related equipment and services from all over the world are all available in Hong Kong. This infrastructure is not going anywhere in 1997.

Services

A strong services sector exists in Hong Kong today. Lawyers, both from Hong Kong and from other jurisdictions, accountants, consultants, commercial banks, merchant banks, investment advisors, and the brokerage community are all in Hong Kong. Thus, the support services that go into making a business and financial center are all present. It is true that, if things go badly enough, some key elements of this services sector could leave Hong Kong or de-emphasize Hong Kong to Hong Kong's considerable detriment. Nevertheless, while almost anything can be disman-

tled, having these services in place in 1997, as they surely will be, will go a long way to preserving the status quo in the post-1997 era. Moreover, many of these service organizations are international firms. Thus, should China decide for some reason that it wishes to tamper with the services sector after 1997, it will find that it is dealing not only with the people of Hong Kong, and the British, but also with the Americans, the Japanese, the French, the Germans, the Dutch, the Indians, the Thais, the Swiss and a large number of other nationalities which have business presences in Hong Kong. Indeed a step which Hong Kong can take in the coming years, that will further strengthen its position, is to encourage this process of internationalization of the services sector. In addition, many members of this international services industry have strong ties to China. For example, many international companies with successful projects in China have their headquarters for these projects in Hong Kong. China is unlikely to wish to upset this group.

The People

One of Hong Kong's great attributes is its hardworking, dedicated, innovative and ambitious population. The extent to which this population will remain in Hong Kong after 1997 will be discussed below; however, to the extent that it does, these are the people who have made Hong Kong what it is today.

Regulation

Another of Hong Kong's great strengths is the combination of the government's laissez-faire attitude toward business and the fact that almost all of Hong Kong business is concentrated in the private sector. These two factors will make it more difficult for a new sovereign to affect business. First, the philosophy of the Hong Kong government in regulating business has been to provide the minimum supervision and restriction consistent with responsible action. For its part, the private sector has been most vocal in resisting attempts at further government control. Accordingly, a new sovereign will find few mechanisms existing by which it can interfere with day-to-day business operations. Thus, although there is no reason to assume that it will want to, China would initially have to formulate and pass through the Hong Kong legislature a whole series of laws and regulations concerning business if it were to wish to take Hong Kong business more firmly in hand after 1997. In the author's view, this is unlikely to take place given the vocal and effective opposition which the Hong Kong business community can generate even for benign legislation. In addition, one of the great criticisms of the Chinese business system is its excessive bureaucracy. Even the Chinese themselves recognize this fact. Their system, however, starts from the proposition that busi-

ness is government planned, government owned and government controlled. Exactly the opposite exists in Hong Kong. It will, therefore, be difficult for China to impose its approach on Hong Kong's private sector. A system of private business does not become government controlled without the most significant upheavals.

Economic Cooperation

Even though it has become almost a cliché, it is necessary to point out that China has a great deal to lose and nothing to gain by attempting to interfere with Hong Kong's independent business system and economy. Indeed, at the present time, China has expanded to a considerable extent the number of Chinese government controlled organizations which are doing business in Hong Kong. These organizations appear to have come to Hong Kong to participate in its economic prosperity and to learn new ways of doing business. Several Chinese organizations, most notably the Bank of China, China International Trust & Investment Corporation and China Resources Corporation are all major players on the Hong Kong scene and have contributed significantly to Hong Kong's prosperity. Conversely, these powerful Chinese organizations have major investments in Hong Kong and have, therefore, much to lose by any major attempt at regulating or interfering with business in Hong Kong.

Similarly, the last few years have seen a remarkable increase in the utilization of China's low cost manufacturing force by Hong Kong enterprises. The establishment by China in late 1980 of Special Economic Zones, which are located in close proximity to Hong Kong, is one reason for this increased economic cooperation between Hong Kong and China. Another reason is purely economic; as the Hong Kong work force has become more highly paid, Hong Kong has lost some of its ability to be a low cost manufacturer. The use of Chinese labor has been an obvious solution. In the last few years, the number of new operations that involve high cost or high technology components produced in Hong Kong and then assembled in China has been quite startling. More and more businesses operating in Hong Kong, including the Hong Kong operations of multinational corporations, have a Guangdong Province or Special Economic Zone element. All of this activity has created a certain community interest between Hong Kong and, at least, southern China, which should serve as a stabilizing element in the post-1997 era.

Government Efficiency

There are, however, several notes of caution. First, one of the keys to Hong Kong's success has been the efficiency and integrity of the Hong Kong government. Even governments which do not attempt to regulate business excessively must register corporations, collect taxes, issue

licenses, grant visas, regulate securities trading and the like. In Hong Kong, as elsewhere, the British have been efficient and honest administrators. Although the Joint Declaration takes into account the possibility that, after 1997, the Hong Kong government can continue to utilize the services of its expatriate bureaucrats, there is certainly a significant risk that the average British civil servant may not wish to make his or her services available to a different sovereign.

In addition, the Hong Kong government for some years has been embarked upon a process of "localization" in the civil service. It is certainly sensible for any government to seek to develop qualified civil servants from among local inhabitants. This localization program has had some successes, and a number of senior Hong Kong officials, including its new Chief Justice, are all of Chinese origin. On the other hand, expatriate civil servants feel somewhat disadvantaged by this program. First, they feel that, no matter how long they have actually been in Hong Kong, and some expatriate civil servants have been in Hong Kong for fifteen and twenty years, their positions are only temporary. Moreover, expatriates feel that they will eventually lose out to a qualified but less experienced local resident. Thus, the localization policy of the Hong Kong government may in itself result in some loss of governmental efficiency and inability to retain valued expatriate staff. If you add to this problem the change in sovereignty, the situation is likely to get worse rather than better.

Although China is noted for many positive accomplishments, administrative efficiency is generally not high on the list. Thus, one area worthy of close observation will be the efficiency with which the Hong Kong government operates after 1997. As noted above, the ability of the Hong Kong government, no matter who is the sovereign, to have direct impact on business in Hong Kong is somewhat limited. In addition, localization is a sound policy. It is generally accepted that a fully qualified local administrator is certainly the equal of and is probably better than his expatriate peer. Thus, over the long term, the bureaucratic aspects of the change in sovereignty should work themselves out.

Emigration

The other problem upon which to focus in the approaching years and after 1997 is the question of emigration by Hong Kong residents. The people of Hong Kong are one of its greatest strengths. If they "vote with their feet" now as well as after 1997, Hong Kong will have a serious problem. Hong Kong's "brain drain" is perhaps the most frequent current topic in conversation among businessmen. People are leaving Hong Kong or making arrangements to leave Hong Kong in record numbers. Worse, the people with the means to leave Hong Kong come from the

top and the middle of the business community. A likely candidate for emigration is the middle manager, the stock broker, the accountant, the lawyer, the executive secretary, or the banker with client responsibilities. These are the people that make the businesses operate; they are also the most likely to have a good command of English.

There is no question that it makes sense for Hong Kong's middle class to have what amounts to a political insurance policy. No matter how confident they are about China's behavior after 1997, most feel that it is only prudent and responsible for them to obtain a foreign passport giving them the right to live elsewhere, most frequently Canada, Australia or the United States, if things do not go as they wish after 1997. It is often a question of hoping for the best and preparing for the worst.

There is a great deal of disagreement in the local community and in the press as to whether these Hong Kong people seeking the right to live elsewhere really intend to remain in Hong Kong. A number of people argue that, once Hong Kong people have established their right to live elsewhere and satisfy the necessary residence requirements, they will return to Hong Kong with the intention of staying. Others argue that, when one packs up and moves his family, to Canada for example, enrolls his children in school and establishes his family, normal human nature will make it very difficult to uproot the family and return to Hong Kong or, worse, to leave the family overseas with the breadwinner conducting his business in Hong Kong as he did in the past.

There is no question that there will be people who decide to leave Hong Kong. It must be borne in mind that a considerable portion of Hong Kong's population came to Hong Kong to escape communism after 1949. The changes in China between 1949 and the present may not be enough to dissuade some people from leaving, although the changes in China between the launching of its "open door policy" in 1978 and today have been truly remarkable in the positive sense. Hong Kong can survive a reasonable amount of emigration. It is said that Hong Kong people always viewed Hong Kong as a stopping off place and there have always been departures and returns. On the other hand, westerners must also bear in mind the strong ties that Chinese people have to their families and to their country. Thus, both with respect to Hong Kong and to China, people that leave often come back.

Nevertheless, there is considerable risk with respect to emigration. Businesses are going to have to cope with some loss of staff. Recruiting, training, use of third country nationals, use of additional expatriates and recruiting and training of promising candidates from China, all can play a role in filling the gaps in Hong Kong. It is the author's view that Hong Kong will be able to cope with the departures. It is also the author's view that responsible behavior by China with respect to Hong Kong, behavior that is clearly in China's self-interest, will demonstrate to the

Hong Kong population that it has nothing to fear. Post-1997 events, more than anything else, will control the loss of talented Hong Kong people and retrieve some who have left.

Economic Interference

An additional area of potential difficulty is what the Chinese call "the red-eye disease." One of the problems with the "one country, two systems" approach is that the participants in one of the systems will be significantly better off in material terms than those operating under the other system. It would be a denial of human nature to suggest that this does not pose a potential for difficulty. These difficulties could move from the individual to the organizational level. Chinese businesses in large numbers may push for a part of Hong Kong's success, or at least push to take part in Hong Kong's economy. Many of these organizations will not be China's experienced, elite economic entities. Rather, they will be "ordinary" Chinese entities. Some may be inexperienced and greedy. The Chinese are tough negotiators. These new organizations may demand special, concessionary terms from Hong Kong businessmen arguing that "China is still a poor developing country." These organizations could also use their connections within the Chinese bureaucracy to be "placed" in valuable relationships in Hong Kong. Activities of this type on a large scale will not have immediate negative impact. Nevertheless, over time the impact will be devastating. Hong Kong's success is attributable to subjecting ventures to the trials of the market place. Hong Kong may be economic Darwinism in its highest form. Tampering with this approach will gradually squeeze the soul from Hong Kong's vibrant business community. It is very much in the interest of the Chinese not to let this happen. Nevertheless, among the problems which could occur, this economic encroachment is the most insidious and potentially the most damaging.

Conclusion

In conclusion, it should be stated again that some of the ingredients of Hong Kong's success are virtually immune from political interference. Hong Kong's location and its considerable infrastructure fall into this category. In addition, Hong Kong's legal structure does not lend itself very well to governmental interference with business. While the structure, as any legal structure, can be changed, this change will come only with great difficulty, given the likely resistance of Hong Kong's post-1997 legislature and the business community to tampering with Hong Kong's recipe for success. In addition, Hong Kong has become a very international city, with businesses from a number of countries having material financial stakes in Hong Kong's future. These countries, to va-

rying degrees, will all seek to preserve Hong Kong. At the present time, Chinese institutions also appear to have an economic stake in Hong Kong's future prosperity. Some of these organizations are quite powerful and successful and are likely to make themselves heard at the top levels of the Chinese government. The significant and growing number of joint Hong Kong-Chinese business operations will also be a force for stability. While there is some concern about the departure of large numbers of Hong Kong's best educated and most talented people, these departures have to date been at reasonable levels, and there is considerable hope in the Hong Kong community that not all these departures are permanent. In addition, there are means available to businesses of coping with staff shortages. One of these means which should not be overlooked is the vast human resources available for training just across Hong Kong's border in China. Finally, it is in China's self-interest to keep Hong Kong viable and prosperous. China has and should continue to receive major economic benefit from Hong Kong. China has and will learn from Hong Kong by participating in Hong Kong's economic developments. For pure economic reasons, therefore, China should seek to prevent such abuses as economic encroachment by Chinese organizations. Moreover, on the political side, it is well-known that China will use its success with the one country, two systems approach as an inducement to Taiwan for eventual reunification.

Taking all of these factors into account, and recognizing both the difficulties and the necessary degree of speculation, it appears to the author that dealing with Hong Kong in the post-1997 period may be very much like it is today.