

MEMORANDUM TO ALL DEPARTMENT AND AGENCY  
EXECUTIVE SECRETARIES

Subject: LEGAL STATUS OF HONG KONG UPON REVERSION TO THE  
PEOPLE'S REPUBLIC OF CHINA

SUMMARY

This notice is intended to provide general guidance and background to affected government agencies and departments concerning the transfer of sovereignty over Hong Kong and its impact upon U.S. law, policy, and treaty relations.

On July 1, 1997, Hong Kong will cease to be a Crown Colony of the United Kingdom and will become a Special Administrative Region of the People's Republic of China. Nonetheless, under existing U.S. law and policy, Hong Kong should continue to be treated in the same manner as in the past for most purposes. The multilateral treaty regime applicable to Hong Kong will also be generally the same, but there will be some significant changes in the area of bilateral agreements.

Background

The reversion of Hong Kong to China was agreed to by the United Kingdom and the People's Republic of China in a Sino-British Joint Declaration on the Question of Hong Kong signed on December 19, 1984. The Joint Declaration contains the basic principles for the establishment of the Hong Kong Special Administrative Region (HKSAR). This declaration is further implemented by the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, adopted in 1990 by the PRC.

The central feature of the future arrangements set forth in the Joint Declaration and Basic Law is that Hong Kong will be under the authority of the PRC for purposes of defense and foreign relations, but will continue to enjoy "a high degree of autonomy" with respect to internal administration, including an independent executive, legislature, and judiciary and general autonomy in matters such as economic, trade, financial, shipping, and aviation affairs. In general, the Joint Declaration provides that the current social and economic systems in Hong Kong, along with the current life-style and rights and freedoms, should remain unchanged for fifty years. This approach is referred to by the PRC as a policy of "one country, two systems."

Application of U.S. Regulations and Laws

In 1992 Congress enacted the US - Hong Kong Policy Act, 22 U.S.C. §5701 et seq. ("the HKPA"), which provides legislative authority to treat post-reversion Hong Kong as being a separate and distinct legal entity from the PRC in those areas in which Hong Kong will continue to exercise a "high degree of autonomy."

The HKPA expresses United States policy to further Hong Kong's autonomy by playing an active role in supporting Hong Kong's prosperity and status as an international financial center and by maintaining and expanding bilateral relations and agreements with Hong Kong in areas such as trade, investment, finance, aviation, shipping, communications, and tourism.

In addition, the HKPA provides in (§201(a), 22 U.S.C. §5721(a)) that

the laws of the United States shall continue to apply with respect to Hong Kong, on and after July 1, 1997, in the same manner as the laws of the United States were applied with respect to Hong Kong before such date unless otherwise expressly provided by law or by Executive order under section 202.

Under §202 (22 U.S.C. §5722), the President may make a determination

that Hong Kong is not sufficiently autonomous to justify treatment under a particular law of the United States, or any provision thereof, different from that accorded the People's Republic of China. . . [and] may issue an Executive order suspending the application of section 201(a) to such law or provision of law.

Thus, after July 1, existing U.S. statutes and regulations affecting Hong Kong will remain applicable as if there were no reversion to the PRC. If, on or after July 1, 1997, it emerges that Hong Kong is not sufficiently autonomous to justify treatment separate from the PRC under U.S. law, the President may issue an order suspending the application of relevant statutes or parts of statutes to Hong Kong.

The application of these provisions in particular cases may be complicated. Agencies should not change their treatment of Hong Kong simply because it has become part of China rather than the United Kingdom. The treatment of Hong Kong may, however, change where other relevant factual or legal circumstances change, just as might happen under current conditions. Agencies or Departments planning to change the treatment of Hong Kong after July 1 should consult with the Assistant Legal Adviser for East Asian and Pacific Affairs, Office of the Legal Adviser of the Department of State, (202) 647-3044.

### Application of Multilateral and Bilateral Treaties

The HKPA also "approves the continuation in force" of treaties and international agreements applicable to Hong Kong unless or until terminated in accordance with law. §201(b), 22 U.S.C. §5721(b). Based on this authority, principles of international law, and relevant agreements between the UK, PRC, Hong Kong, and United States, as appropriate, most multilateral agreements will continue to apply to Hong Kong but the situation with regard to bilateral agreements is more complicated.

Multilateral Agreements Now Applicable to Hong Kong. The UK and PRC have agreed generally in the Joint Declaration that multilateral agreements which are currently applicable to Hong Kong should continue to apply. There will be few if any exceptions. Thus, the presumption is that any given multilateral agreement will continue to apply to Hong Kong, including some treaties to which the PRC itself is not a party. To confirm the exact status of each agreement, the People's Republic of China is providing formal notice to the various treaty depositaries. Because the UK and the PRC may have different reservations, declarations, and understandings with respect to each agreement, the PRC notes will specify which, if any, reservations, declarations, or understandings will apply to Hong Kong. In addition, where the agency calls for a central administering authority, the PRC may separately indicate what agency would be the "central authority" for Hong Kong.

New Multilateral Agreements. The PRC is a party to a few multilateral agreements that the UK did not extend to Hong Kong, so it is possible that some additional agreements will apply to Hong Kong in the future that have not previously applied. We understand that the PRC intends to consult with the HKSAR government after July 1 before deciding on the applicability of any such agreements so that notification regarding their applicability can be expected only in the future.

The Office of Treaty Affairs of the Office of the Legal Adviser will be taking note of the notifications which are received. This information will be circulated periodically and will be included in the publication Treaties In Force beginning with the 1998 edition. If necessary, the applicability of a multilateral treaty to Hong Kong in a particular case may be confirmed with the Office of Treaty Affairs of the Department of State at 202-647-2044.

Bilateral Agreements with the U.K. With respect to bilateral agreements, the UK, Hong Kong, and the PRC all agree that existing agreements between the U.S. and UK will cease to apply to Hong Kong as of July 1. This is consistent with the principle of international law which provides that, when a part of a territory (e.g., Hong Kong) becomes part of another country (e.g., China), agreements of the former sovereign cease to apply and instead the applicable agreements are those in force for the new sovereign. (This is sometimes called the "Moving Treaty Frontier Rule.") The United States will regard these agreements as terminating by application of law (insofar as they concern Hong Kong) as of midnight June 30.

Given the unique circumstances of Hong Kong, however, there will be exceptions to the Moving Treaty Frontier rule with respect to certain agreements between the US and Hong Kong and also agreements between the US and the PRC.

Bilateral Agreements with Hong Kong. Current agreements directly between the United States and Hong Kong -- that is, where the United States and Hong Kong are the named parties and not the United Kingdom -- will continue in force. This includes:

#### POSTAL MATTERS

International express mail agreement, with detailed regulations. Signed at Hong Kong and Washington January 2 and February 6, 1979; entered into force March 15, 1979; effective February 1, 1979. TIAS 9398.

#### TAXATION

Agreement for the reciprocal exemption with respect to taxes on income from the international operation of ships. Exchange of notes at Hong Kong August 1, 1989; entered into force August 1, 1989. TIAS 11892.

#### AVIATION

Agreement between the Government of Hong Kong and the Government of the United States of America concerning air services. Signed at Hong Kong April 7, 1997; entered into force April 7, 1997.

There has also been agreement in principle to negotiate a new agreement relating to the reciprocal granting of authorizations to permit licensed amateur radio operators of either country to operate their stations in the other country, to replace the US - UK agreement.

In addition, we are seeking Senate advice and consent for three new agreements between the United States and Hong Kong:

EXTRADITION

Agreement between the Government of the United States of America and the Government of Hong Kong for the surrender of fugitive offenders. Signed at Hong Kong December 20, 1996.

LEGAL ASSISTANCE

Agreement between the Government of the United States of America and the Government of Hong Kong on mutual legal assistance. Signed at Hong Kong April 15, 1997.

PRISONER TRANSFER

Prisoner transfer agreement between the Government of the United States of America and the Government of Hong Kong. Signed at Hong Kong April 15, 1997.

Bilateral Agreements with PRC. The applicability of bilateral agreements between the US and the PRC has been discussed with both PRC and Hong Kong officials, but has not been finally agreed, pending further consultations between the PRC and HKSAR. In general, however, it is not likely that any US - PRC agreement which addresses a subject-matter within the Hong Kong government's sphere of autonomy will be applied to Hong Kong. Rather, in such areas it will generally be more appropriate to negotiate new agreements directly with Hong Kong which can be adapted to and take account of the different system and conditions. An exception could be where the US, Hong Kong, and PRC agree that it is feasible and desirable to include Hong Kong within a US - PRC treaty regime, e.g., because the terms of the US - PRC agreement do not require any changes to apply to Hong Kong.

For Further Information Contact:

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