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Hong Kong's Transition: Some Noticeable Changes

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Panel 3: Doing Business In Hong Kong: The Gateway To China

Introduction

FRANKIE FOOK-LUN LEUNG*

On July 1, 1997, sovereignty over Hong Kong will be surrendered to the People's Republic of China. This change of sovereignty will likely have a major impact on the way business is conducted in Hong Kong before and after that date. This portion of the Conference identifies and discusses the principal issues which concern those planning to do business in Hong Kong.

Presently, many businesses are experiencing the effects of Hong Kong's transition to Chinese control. Below, I have related some of these experiences and discussed proposed legislation which will influence business practices prior to the change of sovereignty. Jack Chan focuses on the business issues that will arise after 1997. In particular, he discusses whether the change of sovereignty will stifle the conduct of business in Hong Kong or allow it to continue to prosper.

Hong Kong's Transition: Some Noticeable Changes

FRANKIE FOOK-LUN LEUNG

While much of my written work has addressed the subject of Hong Kong's substantive commercial laws, the focus of my discussion will not be so limited.¹ I want to discuss several issues that have generated tremendous United States interest in Hong Kong.

The first issue stems from the recent incident in Hong Kong involving seven United States law firms which pressured the Hong

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1. Leung, *The Commercial Laws of Hong Kong*, in *DIGEST OF COMMERCIAL LAWS OF THE WORLD* 1 (L. Nelson ed. 1987).

Kong government into allowing foreign firms to employ Hong Kong solicitors as members of the firm.² This issue illustrates the gradual change of Hong Kong's political structure from a British-dominated colony to a Chinese-dominated, international city. The Hong Kong Law Society, as well as the Hong Kong Bar Association, vigorously opposed what they perceived to be an ugly United States gun-boat attempt to open up the Hong Kong legal market.³

The seven United States law firms in Hong Kong, some of which are represented today at this gathering, used what were perceived by the Hong Kong legal profession as high pressure tactics against Hong Kong's government. The seven U.S. law firms threatened anti-protectionist retaliation if Hong Kong's government did not open the doors of its legal practice to foreign lawyers. I will not go into the pros and cons of the dispute because they have been documented elsewhere.⁴ It is sufficient to say that in resolving this controversy, the Hong Kong government, which is surrendering its sovereignty to the People's Republic of China on July 1, 1997, is adopting measures to free itself from British political and economic domination, in order to be compatible with China after 1997. To that extent, I think that the seven United States law firms in Hong Kong seeking an open-door policy (as well as the rest of the United States), recognize the tremendous opportunity that is being presented. They stand to benefit from Hong Kong's shift from a post-colonial British-dominated society to an international one under the sovereignty of the People's Republic of China.

The second issue which I would like to address is how United States companies are reacting to Hong Kong's impending change of sovereignty. Some Hong Kong public companies, such as Jardine and Matheson, have changed their registered offices from Hong Kong to Bermuda. Likewise, some United States companies have moved their Asian headquarters from Hong Kong to Singapore. However, Singapore serves a different geo-political market. Hong Kong serves as a gateway into the hinterland of China and also as a meeting point between China and the rest of the world, particularly Taiwan. In con-

2. Cheever, *A Battle for Legal Turf in Hong Kong*, Nat'l L.J., Jan. 9, 1989, at 22, col 1; Ip, *Legal Skills Cannot Cross National Boundaries*, Far E. Econ. Rev., Nov. 17, 1988, at 44; Nip, *Law is Just One Issue in Foreign Firms Row*, South China Morning Post (Hong Kong), May 21, 1989, at 12, col. 2; Government's Proposal on Foreign Law Firms, The Facts, January 1989, the Hong Kong Government Printer.

3. See *supra* note 2.

4. *Id.*

trast, Singapore's hinterland is the Malay peninsula, Indonesia and its islands.

By moving away from Hong Kong, each western company would have to adopt certain measures to deal with Hong Kong's change of sovereignty. Another product of the impending change in sovereignty is the increased emigration of Hong Kong residents to other countries. The impact of this emigration on Hong Kong's economy and political life remains undetermined.

The third issue concerns the significant number of legislative changes needed to reflect and accommodate Hong Kong's switch of sovereignty in 1997.⁵ These legislative changes will be required even during the interim period. For example, a final court of appeal will be established in Hong Kong, as provided in Articles 81 and 82 of the second draft of the basic law, which is presently being discussed but has not yet been implemented.⁶ As a result, the customary practice of Hong Kong's cases going to the Privy Council in London for final appeal will no longer continue.⁷ The target date for establishing the Hong Kong final court of appeal is 1992. The guarantee and preservation of judicial independence, something not easily appreciated by lawyers trained in the People's Republic of China, is, in my opinion, another source of skepticism for Hong Kong residents and foreigners alike. All tribunals, whether judicial or arbitral, will be impartial because disputes of any nature can be litigated by disinterested and competent personnel. These independent tribunals will face important issues concerning litigants' rights and the executive's abuse of power.

There will be other major changes in Hong Kong legislation. Previously, Hong Kong depended heavily on a multitude of legislation emanating from the United Kingdom. For example, Hong Kong still does not have its own patent registration system. An inventor in Hong Kong must go to London to get a patent and then register it under the United Kingdom Patent Registration Ordinance of Hong

5. Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Future of Hong Kong, Sept. 26, 1984, Great Britain-China, 1984 Gr. Brit. T.S. No. 20 (Cmd. 9352), reprinted in 23 I.L.M. 1366 (1984). See also *Hong Kong: Transfer of Sovereignty*, 20 CASE W. RES. J. INT'L L. (1988).

6. *The Basic Law and the Political Future of Hong Kong*, China News Analysis, Sept. 15, 1988; see also THE DRAFT BASIC LAW OF HONG KONG: ANALYSIS AND DOCUMENTS 5 (H. Chin ed. 1988). For a thorough discussion of the Hong Kong Basic Law see *Symposium on the Hong Kong Basic Law*, 2 J. CHINESE L. (1988).

7. For an overview of the present Hong Kong legal system, see WESLEY-SMITH, AN INTRODUCTION TO THE HONG KONG LEGAL SYSTEM (1987).

Kong. At this time, Hong Kong plans to develop its own patent registration system; it will not adopt the one used by the People's Republic of China. Similarly, new copyright laws will be enacted in Hong Kong. A change in Hong Kong's ship registry system is now being developed to avoid the cumbersome British registration system. The vessels registered under the British system are required to fly the Union Jack and captains and senior officers must be British subjects.

In short, Hong Kong is evolving rapidly into a "highly autonomous entity," and in the future will possess unprecedented jurisdiction. For example, Hong Kong will have the power to enter into international agreements without being a sovereign state, such as becoming a member of the General Agreement on Tariffs and Trade and the Asian Development Bank.⁸ To conclude, it is unknown how these changes will be successfully implemented in Hong Kong after 1997, but the business world awaits the new developments with excitement.

Hong Kong's Role After 1997

JACK CHAN*

I was born in Hong Kong and, except for a year of study in England, lived there until December of 1988 when I left to come to the United States. Although I was very glad to have the opportunity to come to this great nation, I also enjoyed my life in Hong Kong. It is a fascinating city, full of excitement and action. Hong Kong has so much to offer and everybody there seems to enjoy life to the fullest extent. Hong Kong residents work from sunrise to sunset. Life in Hong Kong is truly a 24-hour business. I believe the people of Hong Kong make Hong Kong what it is today. Our forefathers did a good job in the past and we are determined to make Hong Kong a better place for the future.

Although the title of this panel is "Doing Business in Hong Kong," I am not going to talk exclusively about what a marvelous place Hong Kong is for business. I expect everybody in the business world is fully aware of this. Rather, I would like to discuss Hong Kong's future with regard to the change of sovereignty in 1997.

8. See generally J. JACKSON, *WORLD TRADE AND THE LAW OF GATT* (1969); K. KOCK, *INTERNATIONAL TRADE POLICY IN THE GATT - 1947-1967* (1969).

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