



Six-monthly Report on Hong Kong July-December 2002

*Presented to Parliament
By the Secretary of State for Foreign and Commonwealth Affairs
By Command of Her Majesty
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FOREWORD

This is the twelfth in a series of six-monthly reports to Parliament on the implementation of the Sino-British Joint Declaration on the Question of Hong Kong. It covers the period from 1 July to 31 December 2002.

During this period I made my first visit to Hong Kong as Foreign Secretary. I had talks with Chief Executive Mr C H Tung and met members of the Legislative Council. At a press conference before leaving Hong Kong I stressed Britain's continuing commitment to, and close interest in, Hong Kong. I also underlined my firm belief that Hong Kong's strengths are based on the rule of law, good governance, quality public services and, not least, the skills and enterprise of its people. These strengths will be vital to Hong Kong's future success.

The Hong Kong Special Administrative Region (SAR) Government's obligation, under Article 23 of the Basic Law, to enact national security legislation is the main subject of this report. This is the most sensitive piece of legislation since the handover. It covers issues which go to the heart of the "One Country, Two Systems" principle. The huge number of responses to the SAR Government's Consultation Document, which outlined its proposals for legislation, is testimony to the strength of feeling that this issue has engendered in Hong Kong.

We made clear in November our views on the outline proposals. The texts of our statements are included in this report. I and other members of the Government have discussed the issue of Article 23 with the SAR Government and, in general terms, with the Government in Beijing.

At the time of writing the SAR Government has just published its draft legislation. It has included in the draft legislation several changes to its initial proposals, in response to concerns expressed during the consultation period. We welcome this demonstration of the SAR Government's willingness to take account of views expressed. We will study the draft legislation closely. The SAR Government has given repeated assurances that the final legislation will be compatible with the basic rights and freedoms laid down in the Joint Declaration and guaranteed by the Basic Law. It is vital for the future prosperity of Hong Kong that its people and the international community perceive this to be the case when legislation is finally passed. We shall continue to watch this crucial issue very carefully.



JACK STRAW
Secretary of State
for Foreign and Commonwealth Affairs

SIX-MONTHLY REPORT ON THE IMPLEMENTATION OF THE JOINT DECLARATION ON HONG KONG

INTRODUCTION

1. This series of reports reflects the British Government's continuing interest in developments in Hong Kong and our commitment to the faithful implementation of the Sino-British Joint Declaration on Hong Kong. This promised a high degree of autonomy for the Hong Kong Special Administrative Region (SAR) except in foreign and defence affairs, and guaranteed the continuation of Hong Kong's social and economic systems, lifestyles, rights and freedoms. These continuing reports assess the success of those arrangements.

“ONE COUNTRY, TWO SYSTEMS”

2. The Hong Kong SAR celebrated its fifth anniversary on 1 July. On the same day, Mr C H Tung was sworn in for his second five-year term as Chief Executive. His new team of Principal Officials and Executive Council members was also sworn in, although some did not assume office until later. Chinese President Jiang Zemin and Vice-Premier Qian Qichen attended the event. In his speech President Jiang set out “a few hopes” for Hong Kong. The first was that the people of Hong Kong should enhance their sense of country and of the nation, make conscious efforts to safeguard the security and unification of the motherland and endeavour to defend its overall interests. The second was that the executive, legislature and judiciary of Hong Kong should constantly improve their job performance and do a better job in serving Hong Kong; that the executive-led structure should be strengthened; and that civil servants at all levels, especially ranking officials, should conscientiously submit to and support the leadership of the Chief Executive. The third was that the SAR Government and Hong Kong people should strengthen their confidence and work persistently towards a new economic landscape in Hong Kong. President Jiang pledged the Central Government's support and help for Hong Kong in its economic recovery and development.

3. The Chief Executive's speech focussed almost exclusively on the economic downturn and the need to restore people's faith in the future. He outlined how his new “accountability system for principal officials” would help to achieve this through a clearer delineation of power and responsibility, wider consultation with the public and an improved relationship between the executive and the legislature. He also stressed the importance of strengthening cooperation with the mainland and the need to formulate clear population and education policies in order to tackle unemployment.

4. In November Chinese Premier Zhu Rongji visited Hong Kong to deliver the keynote address at the opening of the World Congress of Accountants. During his visit Premier Zhu made several public statements emphasising the Central People's Government's (CPG's) continued support for Hong Kong. Premier Zhu said that he was confident that Hong Kong would overcome its current economic difficulties and that it would continue to play a “unique, irreplaceable role in China's modernisation”. He also said that, under the leadership of Hu Jintao (who in October succeeded Jiang Zemin as General Secretary of the Chinese Communist Party), the CPG would “as always” offer its “all-out support” to the SAR administration.

5. On 16 September Jiang Enzhu was replaced as Director of the Central Government Liaison Office (CGLO) in Hong Kong by his deputy Gao Siren.

ARTICLE 23 OF THE BASIC LAW

6. On 24 September the SAR Government released a Consultation Document outlining its proposals for legislation to meet its obligations under Article 23 of the Basic Law. Article 23 stipulates:

“The Hong Kong Special Administrative Region (HKSAR) shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People’s Government (CPG) or theft of state secrets, to prohibit foreign political organisations or bodies from conducting political activities in the Region, and to prohibit political organisations or bodies of the Region from establishing ties with foreign political organisations or bodies”.

7. The 62-page Consultation Document set out the background to Article 23; the SAR Government’s guiding principles; current legislation covering crimes against national security; and a detailed explanation of the measures proposed by the SAR Government, rather than draft legislation. The Consultation Document said that Article 23 should be implemented through making use of existing legislation as far as possible. Additionally, the SAR Government considered there was a need to:

- (a) meet fully the requirements of the Basic Law including Article 27 (which guarantees certain fundamental rights and freedoms of Hong Kong residents) and Article 39 (which stipulates *inter alia*, that the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) shall remain in force in Hong Kong);
- (b) protect sovereignty, territorial integrity, unity and national security; and
- (c) ensure that all Article 23 legislation was clearly and tightly defined.

8. The Consultation Document acknowledged that some Article 23 offences were already dealt with under existing legislation, for example, treason, sedition, official secrets and the activities of, and ties with, foreign political organisations. However, amendments were proposed to modernise these offences, and new offences of secession and subversion were outlined. The Consultation Document said that the SAR Government had conducted a considerable amount of research into national security legislation in other countries, and many of the proposals were based on laws in other common law jurisdictions. The public was given three months to comment on the proposals. In a move which aroused some controversy in Hong Kong because of the Basic Law’s statement that this legislation was for the Hong Kong SAR to enact “on its own”, the SAR Government also confirmed that it had discussed its proposals with the CPG before they were issued. Secretary for Justice Elsie Leung explained that the SAR Government had consulted Beijing only on major principles, not the detail; that since Hong Kong was not a sovereign region, the SAR Government was not qualified to understand what threats to national security might arise; and that it needed to avoid a situation where legislation was viewed by Beijing as incompatible with Article 23.

9. The initial reaction to the Consultation Document was that it was more liberal than some had feared. The public welcomed the fact that the SAR Government was carrying out a thorough and open consultation process. The SAR Government worked hard to inform the community about the proposals and to encourage debate, distributing over 70,000 copies of the Consultation Document and over one million copies of leaflets on the legislative proposals. Officials from the Security Bureau and the Department of Justice attended more than 250 seminars, public hearings, and media interviews. A series of meetings with representatives from a wide range of sectors and professional groups were also held. However, once people had had time to digest the proposals, serious concerns started to emerge. An intense debate on the proposals dominated the political agenda for the rest of the year. By the end of the consultation period the SAR Government had received over 90,000 submissions from organisations and individuals in Hong Kong and over 3,000 from abroad. More than 330,000 petition signatures were also presented to the Government. Submissions were received from a wide range of organisations; commercial, social and religious as well as legal and political: a sign of the seriousness with which the whole community was taking this issue.

10. The main general concerns expressed about the proposals were whether the legislation would—as promised by the SAR Government—be compatible with the basic rights and freedoms laid down in the Basic Law; that certain key words and concepts were not defined tightly enough; and that the proposals in certain areas went beyond what was required under Article 23. Many expressed the view that the proposals were too vague to allow proper consideration and called for a “White Bill” (a draft bill for public consultation prior to a bill being tabled in the Legislative Council) to allow for discussion on the detailed legislative proposals.

11. There were also many specific concerns. Many commentators were particularly troubled by the proposal to ban organisations affiliated with Mainland organisations which had been proscribed on the Mainland on national security grounds. Despite the explanation in the Consultation Document that the Secretary for Security would have the discretion not to follow suit, many were concerned that this would allow direct mainland interference in the Hong Kong judicial system. The Bar Association, for example, described the proposal as “a very dangerous hole drilled in the wall that separates the two systems”.

12. Academics and the media were particularly concerned about the proposed new offences of “possession of a seditious publication” and making an “unauthorised and damaging disclosure of information obtained (directly or indirectly) by unauthorised access to it”. They feared that these proposals would lead to the traditionally lively Hong Kong media practising increased self-censorship, for fear of breaking poorly-defined laws and would impact on academic research. The SAR Government said that it would look again at these offences.

13. Concerns were also expressed about the extra-territorial effect of some of the measures. The proposals suggested that all HKSAR permanent residents could be guilty of Article 23 offences (including treason) regardless of their nationality, place of abode, or where the offence was committed. The SAR Government said that it would look again at these provisions.

14. Towards the end of the consultation period, the debate focused increasingly on the issue of whether or not the SAR Government should issue a White Bill. Calls for such a bill (or at least for some form of public consultation on the draft legislation) came from many diverse quarters in Hong Kong including chambers of commerce and the banking sector. Newspaper opinion polls suggested that 70% of Hong Kong people supported the publishing of a White Bill but the SAR Government stated that this was unnecessary.

15. Public opposition to the proposals peaked on 15 December when several thousand people marched from Victoria Park to the Central Government Offices to express their discontent at the proposals and the Government’s handling of the issue. Organisers claimed that over 60,000 people participated. Although the police suggested that the number was considerably smaller, it was, in any event, one of the largest demonstrations since the handover. On 22 December the Hong Kong Coalition for National Security Legislation staged a demonstration in favour of Article 23 legislation. Organisers claimed that about 40,000 people attended, but police again said the figure was much lower. Some of the organisations that participated in this demonstration in favour of the legislation had, nevertheless, expressed concerns about some of the detailed proposals.

16. At the end of the consultation period, Secretary for Security Regina Ip said that the Government would collate and analyse the submissions received on the proposals; would study carefully all the views expressed; and would consider how best the Government could improve on their proposals and allay as far as possible the worries raised by different sectors.

HMG Statement

17. The United Kingdom was the first country to publish detailed comments on the proposals. On 18 November Foreign Office Minister Bill Rammell said:

“This will be the most sensitive piece of legislation for Hong Kong since the handover and we therefore welcome the wide consultation process currently being undertaken by the Hong Kong SAR Government. It is important that public opinion in Hong Kong is taken fully into account by the SAR Government when drawing up the legislation. As a co-signatory to the Sino-British Joint Declaration on Hong Kong we have a responsibility to ensure that the rights and freedoms enshrined in the Joint Declaration are maintained. Any new legislation must be compatible with these rights and freedoms and with maintaining Hong Kong’s autonomy.

We are following closely the lively debate in Hong Kong on this issue and have noted some of the main concerns about the proposals in a statement made today by the British Consulate-General in Hong Kong.”

18. The text of the Consulate-General’s statement is as follows:

“We are closely following the debate on the SAR Government’s proposals for legislation to fulfil their obligations under Article 23 of the Basic Law. As a co-signatory to the Sino-British Joint Declaration on Hong Kong we have a responsibility to ensure that the rights and freedoms enshrined in the Joint Declaration are maintained.

We have studied the Consultation Document carefully. This is the most sensitive piece of legislation for Hong Kong since the handover and the Consultation Document sets out the issues in a comprehensive manner.

We welcome the fact that the SAR Government is conducting a consultation exercise. We note that many commentators and Legislative Council members have called for a “White Bill” to set out the detailed legislative proposals before the draft legislation is introduced into the Legislative Council. This is clearly a matter for the SAR Government but we hope that they will allow for some form of public consultation on the detailed legislation. A further crucial question is how the legislation, when passed, will be applied. This is something that we will follow closely.

We welcome the SAR Government’s statement in the Consultation Document that it would, as a “guiding principle”, need to meet fully the requirements of the Basic Law including Article 27 which guarantees certain fundamental rights and freedoms of Hong Kong residents (including freedom of speech), and Article 39 which stipulates, *inter alia*, that the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as applied to Hong Kong, shall remain in force and shall be implemented through the laws of the HKSAR. Without seeing the precise wording of the proposed legislation, it is not possible to determine whether there is any conflict with the principles of the ICCPR and ICESCR.

We have noted the concerns that have emerged in Hong Kong during the consultation process about the proposals to ban organisations affiliated with Mainland organisations which have been proscribed in the Mainland on national security grounds, although we note that the Secretary for Security would have discretion not to follow suit. It is important that the integrity and independence of Hong Kong’s legal system, key factors in Hong Kong’s success, are not compromised by the proposed legislation. We trust that the SAR Government will look very carefully at this particular issue when drafting legislation.

We have also noted the concerns raised about provisions relating to the media, including those about seditious publications. The free press is one of the Hong Kong's distinctive strengths. Freedom of expression is provided for in the Joint Declaration. Any action which diminished press freedom or freedom of expression would not be in the best long-term interests of Hong Kong.

There have also been concerns expressed about other aspects of the proposals, including the extra-territorial effect of certain measures; the extension of police powers; definitions of key words and phrases and the breadth of some of the proposed offences. We trust that the SAR Government will also look closely at these, and other, concerns. We welcome indications that the SAR Government is willing in principle to be flexible on at least some of the areas of concern.

We believe that Hong Kong's main strengths include its adherence to the rule of law and its respect for human rights and fundamental freedoms—including the freedoms of association and expression. The Joint Declaration provides that the SAR Government shall protect these rights and freedoms. It is up to the SAR Government to ensure that any new legislation is compatible with them. Any legislation which undermined these principles would be seriously damaging to the SAR.

We shall continue to follow the debate closely”.

19. The British Government raised and discussed Article 23 with Hong Kong interlocutors on numerous occasions during the period of this report. The Foreign Secretary discussed the issue in general terms with Chinese Vice-Premier Qian Qichen and Chief Executive C H Tung during his visit to the region in July, before the SAR Government published its proposals. The Attorney General raised the issue when he was in Hong Kong in early September, and the Lord Chancellor discussed the SAR Government's proposals with members of the Government, legislators and members of the legal profession during his visit in October. On 19 November the Foreign Secretary and Mr Rammell met Martin Lee, then Chairman of the Democratic Party, when he visited the UK to talk to interested parties about the Article 23 proposals. Later that month Mr Rammell met Financial Secretary Antony Leung during the latter's visit to the UK: Article 23 was again discussed. There have also been several Parliamentary Questions in both Houses of Parliament, and Mr Rammell participated in an adjournment debate on Article 23 in the House of Commons on 26 November—the first Parliamentary debate on Hong Kong since the handover.

20. Other countries including the US, Australia and Canada later issued their own statements about the SAR Government's proposals, as did the European Union. All expressed sentiments similar to our own. A resolution calling on the SAR Government to preserve the rights and freedoms of the people of Hong Kong was passed on 19 December following a debate in the European Parliament.

21. We shall continue to follow this issue closely. The way it is handled, and the legislation itself, will be seen by many as a litmus test for the “One Country, Two Systems” principle. Some commentators have suggested that greater democracy in Hong Kong would provide a healthy check and balance on the Government's use of national security legislation. In this respect, we have regularly made clear our hope that Hong Kong will make early progress towards the Basic Law's ultimate aim of universal suffrage, at a pace in line with the wishes of Hong Kong people.

BASIC RIGHTS AND FREEDOMS

Public Order Incidents

22. We noted in the previous report that there had been a number of controversial public order incidents in Hong Kong during that period, the after-effects of some of which carried over into this period. In particular, two important public order trials came to a conclusion.

23. On 15 August, verdicts were handed down to 16 Falun Gong supporters who were charged with public order offences committed outside the Central Government Liaison Office in March. All 16 were found guilty as charged: all with obstruction, some with obstructing the police and three with assault. Although the maximum penalties for the latter two offences are custodial sentences, the defendants were ordered to pay fines, the largest of which was HK\$3,800 (£310). The defendants refused to pay the fines, risking being in contempt of court. Finally an anonymous donor paid the fines on their behalf. They are now awaiting a hearing on their appeal.

24. During the trial the defence asked the magistrate to discharge himself on grounds of bias and argued that persecution of the Falun Gong movement on the Mainland had been extended to Hong Kong. During his summing up, the presiding magistrate confirmed that while any unreasonable attempt to interfere, restrict or limit people's freedoms to exercise their human rights would have "very, very grave consequences", these rights were not absolute. He continued that while it was clear that the defendants had done no more than exercise their legal rights in demonstrating, he had to consider whether they had done this in a reasonable manner. He said that he would be ignoring his common sense and daily experience if he ruled that the conduct of the demonstrators definitely amounted to obstruction. But he was clear that there was proof of "potential obstruction" and that the demonstrators had had "absolutely no regard for other members of the public". Furthermore, he said, the police had never asked the defendants not to demonstrate. Instead they had asked them on numerous occasions to continue their demonstrations at No 162 (rather than at No 160 which is the front gate of the Liaison Office) which was still fully visible from the Liaison Office. The magistrate added that the police had also issued repeated warnings over a four hour period that they would have to take further action if the demonstrators failed to comply with their instructions.

25. The Secretary for Justice said that the defendants had not been prosecuted or convicted because they were Falun Gong members but because they had committed public order offences. She also said that the decision to arrest had had nothing to do with the location of the demonstration.

26. Another important trial came to a conclusion on 25 November. We noted in the previous report that three activists had been charged in May under the Public Order Ordinance, the first charges under this Ordinance since the handover. Leung Kwok-heung (also known as Long Hair) was found guilty of organising an unauthorised assembly and Fung Ka-keung and Lo Wai-ming of assisting him. All three were bound over for three months with a HK\$500 bond (the maximum possible sentence was five years in prison). Chief Magistrate Patrick Li, who heard the case, said that he had meted out a light sentence to the defendants because the incident had not involved any violence and the procession had been peaceful. The Chief Magistrate queried whether a case of a "political nature" such as this should have been handled by the court. However, Secretary for Justice Elsie Leung defended the decision to prosecute, saying that the main issue was whether a crime had been committed.

27. Pro-democracy legislators and human rights NGOs reacted angrily to the convictions. Some noted that since the handover there had been over 300 such unauthorised demonstrations but never before had anyone been prosecuted. They alleged that this was selective prosecution. Some commentators related the incident to the current debate on Article 23 of the Basic Law. Bar Association Chairman Alan Leong warned that if legislation under Article 23 were as unclear as the Public Order Ordinance, then new national security laws would also become a tool for law-enforcers to suppress dissidents.

28. We followed these cases very closely and understand the sensitivities involved in maintaining public order. However, in doing so it is crucial that the SAR Government continues to uphold Hong Kong's longstanding adherence to the rule of law, and maintains its respect for the freedoms of assembly and speech if Hong Kong is to retain its image as a free and open society. Equality before the law is an essential tenet of the rule of law.

29. At the flag raising ceremony on Chinese National Day on 1 October, a Home Affairs Bureau official decided not to allow activist Lui Yuk-lin (also known as “Female Long Hair”) to enter the area where the ceremony was taking place and she was taken to the official protest area. A police spokesperson said that Lui had been removed because she had a record of taking part in protests. Lui insisted that she had just been attending the flag-raising as an ordinary citizen. Secretary for Home Affairs Patrick Ho said he would study the incident to see if his staff had behaved improperly. On 11 December the Government wrote an apology to Lui after an investigation by the Ombudsman found it was wrong to have prevented her from attending the flag-raising ceremony. The Ombudsman’s office found that the official who barred Ms Lui from the ceremony was prejudiced against her, but it did not find evidence of a government blacklist of activists.

30. Also on 1 October a group of protesters marched to the flag-raising ceremony carrying banners reading “Bury The Frightening Law” (a reference to Article 23 of the Basic Law) and “End One-Party Rule”. The police asked them to move to the official protest area, but the demonstrators refused. A minor scuffle broke out, during which the Chinese flag was set alight. Director of the Central Government Liaison Office Gao Siren said that the police should prosecute and said that burning the Chinese flag was “intolerable”. His comments drew criticism from human rights groups and pro-democracy legislators who said that Gao was exerting political pressure on the SAR Government. However, Secretary for Security Regina Ip said that the Government would act according to the law, regardless of the attitude of mainland officials. No-one has yet been prosecuted for this incident.

Other Rights and Freedoms Issues

31. In mid-August, Hong Kong’s publicly funded media organisation, RTHK, announced that Taiwan’s Vice-President Annette Lu would take part in a phone interview on an entertainment radio programme. Later RTHK announced that the interview would not take place because they had been unable to contact Lu. In response to questions from the media Gao Siren, Director of the Central Government Liaison Office, said that Hong Kong-Taiwan relations must be dealt with according to Vice Premier Qian Qichen’s seven principles and that expressions of Taiwanese independence were clearly unacceptable. Some newspapers reported that Secretary for Commerce, Industry and Technology Henry Tang had contacted RTHK to “learn more” about the programme arrangements. They claimed that this was an attempt to curb RTHK’s editorial independence and that Tang should be held accountable for his actions. The Director of Broadcasting later admitted that RTHK was in a difficult position. As a government department, RTHK needed to observe official guidelines, but as a media organisation RTHK’s orientation was the same as other media in Hong Kong.

32. In August the Leisure and Cultural Services Department banned a catalogue featuring the work of Zhang Cuiying, a Falun Gong artist, who was staging an exhibition at the City Hall, which contained information about her experiences as a Falun Gong member. When questioned about this matter in LegCo in October Secretary for Home Affairs Patrick Ho said that the artwork had deviated from the theme of the exhibition. Zhang was also refused entry to Hong Kong to take part in the exhibition.

33. Hong Kong’s international status and economic strength are intrinsically linked with the SAR Government’s commitment to free flow of information and free movement of people. It is vitally important that these principles are not undermined if Hong Kong is to continue to enjoy success.

34. Previous reports have noted that the UN Committee on the Elimination of Racial Discrimination (UNCERD) had recommended that the SAR Government adopt appropriate legislation on racial discrimination. Dr Ion Diaconu, Head of UNCERD and Patrick Thornberry, UN rapporteur, visited Hong Kong in early November for talks with SAR Government officials on race relations, including the protection of

ethnic minorities' rights to education and employment. We regularly raise the lack of racial discrimination legislation as an issue with the SAR Government and hope that it will follow the UN Committee's recommendation.

35. Philippine Secretary of Labour and Employment Patricia Sto Tomas visited Hong Kong on 19 December to deliver a message to the Chief Executive from President Gloria Macapagal-Arroyo, protesting about the proposals mooted by the leader of the Liberal Party for a HK\$500 a month tax on foreign domestic helpers. She claimed that it would be discriminatory and run counter to equal opportunity clauses in Hong Kong law. Indonesian special adviser to the Minister of Manpower and Transmigration, Edison Situmorang also delivered a message to the Chief Executive from the Indonesian Labour Minister about this issue.

CONSTITUTIONAL DEVELOPMENT

36. As noted earlier, several commentators in Hong Kong have linked their concerns about the Article 23 proposals with the lack of full democracy in Hong Kong. The Chief Executive said in the Legislative Council in October that the Secretary for Constitutional Affairs was conducting a study on political reform and would let LegCo members know his findings in the not too distant future. Senior UK visitors to Hong Kong have continued to take the opportunity to remind the SAR Government of our hope that Hong Kong will make early progress towards the Basic Law's ultimate aims of the election of the Chief Executive and all members of the Legislative Council by universal suffrage. In the adjournment debate in the House of Commons on 26 November, Mr Rammell said that until the ultimate aim of democracy had been brought forward, it was crucial that the SAR Government should go the extra mile and ensure that rights and freedoms were not eroded in Hong Kong.

HONG KONG SAR GOVERNMENT

37. In our last report we covered the run-up to the introduction of the new accountability system in some detail. As noted then, the Principal Officials (or "Secretaries") are directly responsible to the Chief Executive and have total responsibility for their portfolios.

38. The first test of the Secretaries' accountability system came just a few weeks after the Principal Officials were sworn in on 1 July, with the unfolding of what became known as the "Penny Stocks" saga. This began with the release of a consultation paper proposing new listing and delisting criteria designed to eliminate stocks valued below HK\$0.5, thereby reducing risks to investors. Following the release of the consultation paper, investors rushed to sell off such stocks. This wiped HK\$10 billion off the local stock market. Controversial elements of the consultation paper were subsequently withdrawn and Financial Secretary Antony Leung set up an independent panel to review the circumstances behind the release of the paper. In the weeks before the review was completed, there were calls for both the Financial Secretary and Secretary for Financial Services and the Treasury Frederick Ma to resign, given their responsibility as "accountable officials". When the review was released in September, the Secretary for Financial Services and the Treasury made a public apology for his role in the affair.

39. Since the introduction of the accountability system, there has been much debate about the role and future of the civil service, and the relationship between civil servants and the government. Controversy arose when, in the light of concerns over the growing fiscal deficit, the SAR Government legislated to cut civil servants' salaries in July 2002. Some queried whether this was compatible with Article 100 of the Basic Law, which provides for public servants to continue their service with pay and conditions no less favourable than before the handover. Others were not clear why the Government felt it necessary to pass legislation to effect the pay cuts. Despite large-scale demonstrations involving an estimated 25,000 civil servants the Pay Adjustment Bill was passed by the Legislature with a majority of 32 to 26. Pay cuts between 1.58% and 4.42% were

subsequently introduced in October 2002. The Government is conducting a review to compare civil servants' salaries with those in the private sector. This is due to be completed in September 2003.

LEGAL SYSTEM

40. We have stated in previous reports that we attach the greatest importance to the principles of independent judicial power and final adjudication, which are integral to Hong Kong's high degree of autonomy, as guaranteed by the Joint Declaration. Two incidents arose in the reporting period that gave rise to concern in this respect.

41. In the case of Lau Fong (a judicial review application of a decision by the Director of Immigration to refuse her entry) three judges of the Court of Appeal allowed Ms Lau's application and quashed the Director's orders. The Court heard that Ms Lau's solicitors had earlier invited a settlement based on a Court of Final Appeal precedent set in July in its ruling on freedom of movement (Article 31 of the Basic Law). However, a lawyer representing the SAR Government replied to Ms Lau's lawyers, saying: "This letter should not be taken as conceding expressly or impliedly that the Court of Final Appeal has correctly decided the scope and effect of Article 31." Mr Justice Woo Kwok-hing said in his judgement that "it lies ill in the mouth of anyone in the legal field in Hong Kong to state openly that he does not accept the decision as a final decision on the subject". And Mr Justice Anthony Rogers' judgement said: "Such an approach to a decision of the Court of Final Appeal scarcely exhibits the respect which should be accorded to a determination of that court consistent with a proper understanding of the rule of law." Newspapers reported that the Secretary for Justice apologised to the Chief Justice for the lawyer's remarks.

42. During the recent debate over the issue of whether the SAR Government should issue a "White Bill" on draft Article 23 legislation (see above), National People's Congress (NPC) delegate Raymond Wu Wai-yung claimed that issuing a White Bill would be unconstitutional because it implied that legislation might not, in the end, go ahead, whereas Hong Kong was committed to enact Article 23. He warned that should such a bill be published he would consider seeking a judicial review. Failing that, he would consider taking the matter to the National People's Congress to seek an interpretation of the Basic Law.

43. The Joint Declaration and the Basic Law both state that "the power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal of the (Hong Kong Special Administrative) Region". This is one of the cornerstones of the "One Country, Two Systems" principle. We have the utmost respect for the Hong Kong judiciary, and the Lord Chancellor continues to send three judges from the House of Lords to sit on Hong Kong's Court of Final Appeal. We would be concerned if there was a perception in Hong Kong that the power of final adjudication lay anywhere other than with the Court of Final Appeal.

TERRORISM

44. We noted in the previous report that the SAR Government had introduced legislation into the LegCo to meet its international obligations under UNSCR 1373. This legislation was passed on 12 July following a number of amendments to address human rights concerns. Critics were concerned that the SAR Government had rushed this legislation through. The Government denied this but Secretary for Security Regina Ip agreed that the legislation should be reviewed during the next legislative session.

45. On 23 September, Hong Kong's Commissioner for Customs and Excise signed a Declaration of Principles (DoP) with the Commissioner of the US Customs and Excise under the US Container Security Initiative (CSI). Under the DoP, Hong Kong and US Customs will exchange information and work together to facilitate the identification and screening of high-risk containers. The two customs authorities will also consult closely on the implementation of a CSI pilot scheme in Hong Kong which would allow US Customs officers to be stationed in Hong Kong to assist in checking the content of freight containers before the ships leave port.

46. In September, two Pakistani citizens and one US citizen were arrested in Hong Kong for attempting to trade heroin and cannabis for four Stinger surface-to-air missiles. The men had allegedly told undercover US Federal Bureau of Investigation agents that they were intending to re-sell the Stinger missiles to Al Qaeda. They were arrested by Hong Kong police working with the FBI and since then have been in custody in Hong Kong. The FBI sought extradition of the three suspects to the US.

ECONOMY

47. Hong Kong's economy improved in the second half of 2002, due to a strong rebound in exports and continued growth in tourism. GDP for the third quarter grew by 3.3% year on year and the SAR Government revised up its annual growth forecast from 1% to 2% for 2002 as a whole. Unemployment receded from a high of 7.8% earlier in the year to 7.2% at the end of the year. Consumer confidence nonetheless remained weak and deflation persisted. Prices in Hong Kong have now been falling for more than four years.

48. The budget deficit grew in the second half of 2002 and stood at HK\$77.3 billion (£6 billion) for the first nine months of the financial year. In December the Financial Secretary confirmed that the fiscal deficit would exceed 5% of GDP for the second consecutive year. He asked policy secretaries to cut spending by 4.8% over the next three financial years. The Financial Secretary is focusing on raising revenue and cutting expenditure. But both he and the Chief Executive have confirmed that a sales tax will not be introduced in 2003–04.

49. Rising concerns about the fiscal position contributed to speculation about the sustainability of the currency board arrangement linking the Hong Kong dollar with the US dollar over the period of this report. In September, Bank of China International published a report arguing that the linked exchange rate had delayed the economic restructuring process in Hong Kong. Later the same month, news emerged that legislators were planning a review of the linked exchange rate system but this plan has now been dropped. In October, Standard & Poor's downgraded their outlook on Hong Kong's local currency rating from stable to negative to reflect "persistent fiscal pressures brought about by the ongoing economic changes in Hong Kong". Nevertheless the currency peg has not come under any serious threat. The SAR Government continues to assert that it has no plans to alter the linked exchange rate system and has pledged to balance its budget by 2006–07.

50. Property prices continued to fall in the second half of 2002. The SAR Government estimates that values have fallen by 65% since their peak in 1997. Following the Chief Executive's announcement in September that measures would be introduced to help "stabilise the market" and "even push it up a little", Secretary for Housing, Planning and Lands Michael Suen unveiled a nine-point property plan to the Legislative Council in November. He said that the plan was designed to restore public confidence in the property market and "pump-prime the deflation-battered economy". The new measures and proposals include a suspension on sales of Government land until 2004 (after which, land will only be available by direct application), the indefinite suspension of the Home Ownership Scheme, the removal of the 70% home ownership target, and the withdrawal of the Tenants Purchase Scheme (under which public tenants were encouraged to purchase their own homes).

Economic Integration with the Mainland

51. There were further developments in this period concerning closer economic integration with the mainland. The Chief Executive visited Guangzhou and Shenzhen at the beginning of December to discuss Pearl River Delta integration, including the possible construction of a 29 kilometre bridge linking Hong Kong with Macao and Zhuhai. Later the same month, during his annual visit to Beijing, the Chief Executive announced that a deadline of the end of June had been set to finalise discussions on the Closer Economic Partnership Arrangement (CEPA). And on 23 December, during a

separate trip to Beijing, the Chief Secretary confirmed that agreement had also been reached to allow 24 hour border crossings for passengers travelling between Lok Ma Chau and Huanggang from the Chinese New Year.

52. In our previous report we noted concerns that the planned co-location of customs facilities might affect Hong Kong's status as a separate customs entity. In November a British Government team of export control experts visited Hong Kong as part of a regular exchange of visits, and was generally reassured that what was proposed would not compromise the rigorous enforcement of customs controls between Hong Kong and the mainland.

INTERNATIONAL INTEREST IN HONG KONG

53. In August the European Commission (EC) published its 2001 annual report on Hong Kong. The report concluded that, in broad terms, Hong Kong continued to maintain its unique and separate identity within China. But it stressed that safeguarding Hong Kong's values and autonomy required the full and unequivocal commitment and vigilance of both the Mainland and the Hong Kong authorities. The report confirmed that the European Union would continue to watch developments closely, "particularly the possible introduction of anti-cult legislation and its effect on freedom of expression in Hong Kong". The EC also stressed the need to develop democracy and to "continue to protect and uphold not just the concept of one country, but the equally important commitment to two systems".

54. On 27 November the European Commission signed its first ever bilateral, third country Readmission Agreement with the Hong Kong SAR Government. Mr Antonio Vitorino, European Commissioner for Justice and Home Affairs, heralded the move as an important milestone in the development of an EU Common Policy on combatting illegal immigration. The Agreement is intended to enable rapid and effective identification and return of persons illegally entering or residing in the respective territories.

55. In October the US and Hong Kong signed a Memorandum of Understanding (MOU) to supplement the air services agreement drawn up between them in April 1997. This MOU allowed for the expansion of fifth freedom and code-sharing rights. We continue to pursue with the Hong Kong authorities an improved bilateral air services regime.

BILATERAL RELATIONS

56. Relations between the UK and Hong Kong continued to develop. This period saw several high-level visits. From the UK, Stephen Timms, Department of Trade and Industry Minister for E-commerce and Competitiveness visited Hong Kong in early July. Later that month saw the first visit to Hong Kong by the Foreign Secretary since taking office, during which he called on the Chief Executive and met members of the Legislative Council. In September, the Attorney General, Lord Goldsmith, visited Hong Kong and there was a brief stopover by FCO Minister Denis MacShane. The Lord Chancellor visited in October, followed by a brief visit by Tessa Jowell, Secretary of State for Culture, Media and Sport in November. Their Royal Highnesses the Earl and Countess of Wessex paid a working visit to Hong Kong in late November/early December. Parliamentary interest was demonstrated by visits from members of the Hong Kong Committee of the All Party China Parliamentary Group, leader of the Liberal Democrats Charles Kennedy and Shadow Foreign Secretary Michael Ancram.

57. In the other direction, Chief Secretary Donald Tsang visited the UK in July and called on the Foreign Secretary. In November, Financial Secretary Antony Leung visited the UK. His programme included a call on the Chancellor of the Exchequer. Patrick Ho, Secretary for Home Affairs, visited the UK in December.

Education

58. During the period of the report 53 Hong Kong students arrived in the UK to undertake periods of study funded by the FCO's Chevening Scholarships programme. This is the largest ever annual total of Hong Kong Chevening scholars, due in part to the generous donation from Dr Li Ka-shing referred to in the last report. The UK remains a destination of choice for many Hong Kong students wishing to study overseas. The range of subjects studied by the scholars continues to expand, showing growing awareness of Britain's expertise in a variety of areas, such as Art and Design, Photojournalism, and Environmental Science.

59. The British Council continued to build mutually beneficial relationships with large numbers of well-educated young members of the Hong Kong community. Over 32,000 young learners of English enrolled for British Council classes in this period. Seventy per cent of these students were aged under 30. Interest in school and university education in the UK continues to grow strongly: a UK Education exhibition in August had 14,000 visitors. The British Council has initiated a popular programme of lectures and workshops for parents and teachers of young learners, following withdrawal of library lending services. More than 7,000 people participated in a one-month festival that aimed to make Shakespeare more accessible to young people in Hong Kong.

60. Four hundred law students and qualified lawyers, including the Secretary of Justice, participated in the summer Law Month. In November, 200 policy makers and business leaders and 250 creative professionals took part in a British Council collaborative programme with the Institute of Contemporary Arts examining the creative economy in London and Hong Kong.

Trade

61. The UK and Hong Kong remain major trading partners. Exports from the UK to Hong Kong for January to October 2002 were £2.0 billion, down 10.3% over the same period of 2001 while imports from Hong Kong were £4.8 billion, down 4.7% over January to October 2001. During the period of this report 10 UK trade missions, involving over 150 companies, visited Hong Kong. There were also four British groups at international trade fairs in Hong Kong.

62. INTEGER Hong Kong, the UK/Hong Kong green and intelligent building pavilion which has been located on the Tamar site since November 2001, closed in December 2002. The project has been an excellent example of UK/Hong Kong private/public sector co-operation. It has been particularly successful in stimulating research projects on intelligent and green aspects of urban development, and engaging the awareness of younger sectors of Hong Kong society in these issues: over 27,500 schoolchildren, students and teachers visited the Pavilion.

Anson Chan

63. In November it was announced that Anson Chan, the former Chief Secretary for Administration, had been appointed by Her Majesty the Queen to be an honorary Dame Grand Cross of the Most Distinguished Order of St Michael and St George in recognition of her service to the Hong Kong Government before the handover. British Consul-General Sir James Hodge presented the award to Mrs Chan in a special ceremony in Hong Kong in December.

BRITISH NATIONALS (OVERSEAS)

64. The British Government remains fully committed to providing the highest standard of consular and passport services to the 3.44 million holders of the British National (Overseas) (BN(O)) passport. We continue to offer the same level of consular service to BN(O) passport holders in third countries as we do to other British nationals and regularly remind all our overseas missions of their obligations towards BN(O)s. The Passport Section of the British Consulate-General in Hong Kong remains the largest passport issuing operation outside the UK.

65. As at 31 December, the number of countries granting visa free access to BN(O) passport holders had increased to 99. We continue to work to ensure the widest possible travel convenience for BN(O) passport holders.

CONCLUSION

66. We continue to assess that, generally, “One Country, Two Systems” is working well in practice. The reaction to the SAR Government’s proposals for Article 23 legislation shows that the people of Hong Kong and international opinion have strong concerns about matters which might impact upon this system. We will continue to follow developments concerning Article 23 closely: this issue will have a major influence on how people perceive “One Country, Two Systems” to be working.



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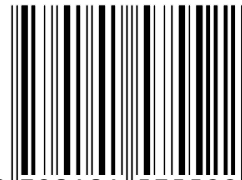
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