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HONG KONG IN 2002

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As a matter of fact, “the fifty years” is but a manner of speaking: there will be no change after fifty years. For the first fifty years, there can be no change; after that fifty years, there need be no change.

Deng Xiaoping, 3rd June 1988

It was in 1955 that my wife and I first set foot in Singapore en route from London to Hong Kong. Arriving in this friendly city on a P & O ship after a month long journey from London, we yearned to be amongst our own people again. After an absence of some six years, we re-discovered all that we had missed as overseas students. The cooked food stalls and open markets, the noisy restaurants, the men and women in their traditional garments, the hustle and bustle of the winding streets — all melted our hearts, and we felt that we had already come home. For the past twenty-five years since then, we have befriended Singapore and paid regular visits from Hong Kong, and each time we came away with gratitude and affection for the people here. By their warmth and helpfulness, by their courtesy and efficiency, the visitors are beckoned to return again and again.

It is therefore with great pride and joy that I accepted the signal honour of speaking at the prestigious Singapore Academy of Law. I have come in humility, to learn from you and to share with you some of my thoughts on the future of my beloved city: Hong Kong. With the assurance that Hong Kong’s present system will not change for 50 years from the change of sovereignty on 1st July 1997, my attitude may be summed up in a few words: “Confidence, coupled with a determination to face the challenges ahead”. But before looking ahead, it may be helpful to go back in history a little and take a cursory look at Hong Kong’s recent past.

The Japanese Occupation of Hong Kong in the Pacific War brought physical devastation on a catastrophic scale, but the social structure and the government system remained intact. Soon, we started to regroup and rebuild. In a decade we were functioning normally, though still badly in need of some of the necessities of a modern city. The Sixties saw the strengthening of our infrastructure, of the civil government, of law and order, and the improvement in people’s livelihood. From the early

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Seventies onward, our economy soared and we have not looked back since.

The reasons for our quick recovery and phenomenal growth are mainly three. First, a hardworking, adaptive and frugal people. Second, the common law and a largely clean and efficient civil service. Third, a sympathetic China who provided a steady flow of staple food, vegetables and meat at reasonable prices — and the supply of the all important water through the decades.

Now, we stand proudly with Singapore, Taiwan and South Korea as the four Small Dragons of the Region.

We have a large middle class who are well-educated, exposed to the outside world, confident and proud, know what they want and are determined to succeed. We have an economy which is the envy of the world and a government which remains clean and efficient. The Judiciary is, as always, independent and strong.

Geographically, we are so strategically placed as to be able to benefit from our neighbours. If the Pacific Rim is to be THE region of the 21st Century — and conventional wisdom is unanimous in saying that it shall be — then Hong Kong's growth is assured.

To the north we have the backing of Mainland China, in providing, amongst other things, a vast market and support in our external commercial and cultural relations — the kind of support which only a strong and confident nation can give. To the south, we look to the whole of Southeast Asia and share in their increasing prosperity. To the east, our trading partners include Japan, Taiwan, the Philippines, Australia and New Zealand. Hong Kong is right in the centre of all these countries: we must all succeed.

The benefits Hong Kong receive are however not unrepaid. They are not all one sided. We do reciprocate. As a centre of service industry (particularly in the field of communications), as a centre of the currency market and a centre of management know-how, our contributions to the region and beyond cannot be underestimated.

Recent opinion polls indicate that a great majority of the people of Hong Kong are confident of the future. Nobody doubts that Hong Kong will continue to prosper, and foreign businessmen will continue to do business with us. The Chinese leaders are at pains to assure the world that the concept of "Hong Kong people ruling Hong Kong" will be faithfully adhered to: they will not interfere with the Hong Kong Special Administrative Region's internal affairs. They know that interference will send a very negative message not only to the people of Hong Kong but to the world at large. A prosperous and stable Hong Kong can only work to China's advantage. Our city is truly a pearl, and they are not so rash as to tarnish it.

But I have perhaps painted too rosy a picture. Are there no worries? Of course there are. For Hong Kong, the concerns are related more to a very crowded, busy and still growing city than to the change of sovereignty. The gap between the rich and the poor is widening. One tenth of the population are poor and require help. Living accommodation and office space are so costly that social disorder may eventually take place if rising prices are not curbed. Though still a safe city compared with London or New York, law and order causes some anxiety. Our investment in hi-tech development may be lagging behind that in the three other Small Dragons.

China too is not without her problems, again unrelated to 1997, but may nevertheless affect Hong Kong. The concept of the rule of law is yet to take firm root. Environmental destruction on a large scale shows no sign of abating. The weakening of moral standards, particularly among the young, can no longer be neglected. The growth of population, though firmly controlled in the urban areas, threatens to neutralise China's economic development.

A degree of corruption and nepotism may seep across the border into Hong Kong, at first surreptitiously but later more boldly. Environmental destruction may cause air and water pollution which respects no boundaries. The new immigrants from the Mainland, the number of which is bound to increase, may bring problems affecting law and order. In a small area with some 6.3 million inhabitants, Hong Kong simply cannot afford to accept large numbers of immigrants from China. But as the pressure of population growth is more keenly felt in China, more and more people, particularly from Guangdong province, will be clamouring for entry, resulting in excessive demands on our public housing, hospitals, schools, and various welfare agencies.

Yet another sector of our community are afraid that democracy and human rights will suffer substantially after 1997. They believe that Beijing will not permit true democracy, and human rights will be emasculated. Opinion polls also indicate that apart from these two items people are at least equally concerned about their livelihood. The list comprises such issues as housing, education, unemployment, environment, the widening gap between the rich and the poor, and other matters more directly concerned with the ordinary man's daily life and his family.

In response to those two questions of democracy and human rights, I should make the brief observation here that universal suffrage is clearly provided in Hong Kong's constitution — the Basic Law (Article 68) — as our ultimate aim. Human rights are protected by international covenants through our Bill of Rights Ordinance, 1991. I shall return to these two subjects later.

Now a few words about our legal system. I should begin by enumerating what are the changes which will be made.

First, the head of the Judiciary can no longer be an expatriate. He must be a Chinese citizen and a permanent resident in Hong Kong with no right of abode in any foreign country (Article 90).

Second, our final appeals will no longer be heard by the Judicial Committee of the Privy Council but by Hong Kong's new Court of Final Appeal, with judges chosen by ourselves: Hong Kong Court of Final Appeal Ordinance (Cap. 484, 1997).

Third, the bulk of the Basic Law will receive its most authoritative interpretation in our Court of Final Appeal, not in Beijing, save in two areas, viz, (i) Those provisions which are the responsibility of the Central People's Government, such as national defence and foreign relations, and (ii) those provisions concerning the relationship between the Central Authorities and the Hong Kong Special Administrative Region. The Standing Committee of the National People's Congress reserves to itself the power of interpretation of those provisions in the Basic law which deal with these two areas (see Article 158). The rest of the Article goes on to say —

“...and if such interpretation will affect the judgments on the cases, the courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal of the Region. When the Standing Committee makes an interpretation of the provisions concerned, the courts of the Region, in applying those provisions, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected.

The Standing Committee of the National People's Congress shall consult its Committee for the Basic Law of the Hong Kong Special Administrative Region before giving an interpretation of this Law.”

For the sake of completeness, I ought to explain what the Committee for the Basic Law of the Hong Kong Special Administrative Region is. By the Appendix attached to the Basic Law, the Committee is to be a working committee under the Standing Committee of the National People's Congress. The Committee's function is, inter alia, to study questions arising from the implementation, of four articles in the Basic law, i.e., Articles 17, 18, 158 and 159 in which the Standing Committee has a special interest under that Law. The Committee of the Basic Law will then submit its views to the Standing Committee.

The Committee shall have twelve members, six from the mainland and six from Hong Kong, including persons from the legal profession, appointed by the Standing Committee for a term of office of five years. Hong Kong members shall be Chinese citizens who are permanent residents of Hong Kong with no right of abode in any foreign country

and shall be nominated jointly by the Chief Executive, President of the Legislative Council and the Chief Justice of the Court of Final Appeal for appointment by the Standing Committee.

Apart from these three items mentioned above, our legal system continues as before. The lawyer trained and qualified in England will therefore feel perfectly at home in our post-1997 courts. Even the wigs and gowns will remain — at least for the time being!

So the message we would like to send abroad is simply: business as usual!

As to the application of Chinese laws to Hong Kong, by Annex III of the Basic Law, there are only eight areas, namely, the laws which concern (i) the National Anthem and National Flag of China, (ii) the National Day of China, (iii) the Capital of China, (iv) the National Emblem, (v) the Territorial Sea, (vi) Nationality, (vii) Diplomatic Privileges and Immunities, and (viii) the garrison stationed in Hong Kong.

Now I must go straight to the Basic Law and examine with you those provisions which deal with the legal system.

The Basic Law was adopted on 4th April 1990 by the Seventh People's Congress of China at its Third Session. It follows the spirit of the Sino-British Joint Declaration on the Question of Hong Kong, 1984, the relevant passage of which reads —

“The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law.”

and —

“The laws currently in force in Hong Kong will remain basically unchanged.”

In Chapter 1 of the Basic Law, Article 8 stipulates that the law previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained. In addition to the Chinese language, English may also be used as an official language by the executive authorities, legislature and judiciary (Article 9). The judicial system shall be based on the provisions of the Basic Law: Article 11. Hong Kong shall be vested with independent judicial power, including that of final adjudication (Article 19). But Hong Kong courts shall have no jurisdiction over acts of state such as defence and foreign affairs (*vide* Article 19).

The usual individual rights are protected by clear provisions (e.g. Articles 25 to 39).

In a special section, Section 4, on the Judiciary, Articles 80 to 96 set out in some detail the kind of Judiciary we shall have. Firstly, the judicial system previously practised in Hong Kong shall be maintained except that final appeals will be heard by the Court of Final Appeal established in Hong Kong.

The Court of Final Appeal shall be presided over by the Chief Justice, three resident judges and one visiting judge chosen as the need arises from a panel of judges from common law jurisdictions and retired senior judges of Hong Kong.

Precedents of other common law jurisdictions may be referred to (Article 84).

Our courts shall be independent and free from any interference, and our judges shall be immune from legal action in the performance of their judicial functions (Article 85). Trial by jury is retained (Article 86).

The rights previously enjoyed by parties in criminal and civil proceedings shall be maintained. Further, anyone who is lawfully arrested shall have the right to a fair trial by the courts without delay and shall be presumed innocent until convicted by the courts (Article 87).

Judges, whose tenure of office is well-protected, shall be appointed by the Chief Executive on the recommendation of an independent commission composed of two senior Hong Kong judges, the Secretary of Justice, a representative of the Bar Association, a representative of the Law Society and three eminent laymen (Article 88). Judges are chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions (Article 92). At the moment, each level of the higher courts in Hong Kong consists of about 50 per cent local and 50 per cent overseas judges. In the Magistrates' Courts about 65 per cent are locals. The aim is to recruit more locals at an orderly pace, but we shall never lose sight of quality and standards. The goal shall always be justice, in whatever language it is rendered.

Before I leave the judges, I should say a few words about judicial independence as we apply the notion in Hong Kong. The topic is covered by Article 85 of the Basic Law, but requires elaboration.

In our view, in order to perform their duties independently, not only must the judge's tenure of office be secure, his remuneration and status, and the safety of his person and that of his family must be protected also. It is only then that he can perform his duties without fear or favour. No person or persons may seek to influence him in his work. Not only is an individual (however exalted, well-connected or powerful) prohibited from doing so, but no part of government, group, society or corporation,

whether political or business, may do so either. The executive branch of the government must exercise restraint and refrain from influencing a judge. They should positively and publicly demonstrate their whole-hearted support of judicial independence, by protecting and respecting the judge and his office, by faithfully executing his orders and by offering such assistance as might be required in the judge's performance of his judicial duties.

Not only must judges be independent. There should also be an independent legal profession. They are not government employees but are the legal representatives of their lay clients.

We still retain two branches of the legal profession. The question of a fused profession has been mooted for many years, but no firm decision has been reached. For the time being, the barrister or solicitor carries on his practice much as his brother in England does. And we still have young men and women who go to England to study law and get themselves qualified there. Lawyers from England will continue to come and work in Hong Kong.

The universities in Hong Kong teach law in a way that is comparable to the methodology used in English law faculties, though increasingly a greater interest is taken in the use of legal language in Chinese, and moots are sometimes conducted in the Chinese language. The medium of teaching is English. English textbooks and English case law are widely used. The essence of the common law will continue to be adopted.

I firmly believe that with our ethos and tradition, our free press and our independent legal profession, the rule of law can and will be maintained after the change of sovereignty of Hong Kong.

Also the community as a whole, and the business community in particular, are very vocal in their demand that our present legal system should continue. If it is interfered with, the whole fabric of the business community will suffer. The Chinese leaders fully understand this, and will, I am sure, do nothing to undermine our legal system.

As we move on towards 2047 — 50 years from 1997 — I am sure we shall be less and less dependent on the English language, or English teachers, lawyers, precedents and textbooks. But hopefully, the essence and spirit of the common law will remain, and so long as we are still a common law jurisdiction, we shall never isolate ourselves from other common law countries. The common law as practised in Hong Kong is a living law, and is nurtured and enriched by the developments from outside Hong Kong. We shall be the better for it if we continued to refer to the laws of England, Canada, Singapore, Australasia, the U.S.A., the Republic of Eire and other common law jurisdictions.

So much for the legal system. What about human rights? By Article 39 of the Basic Law, the provisions of the International Covenant on Civil

and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of Hong Kong. Also, the rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the stipulations in the preceding sentences. It can thus be seen that human rights occupy a very special status in the laws of Hong Kong and cannot lightly be interfered with. The protection given to the people of Hong Kong is thus clearly and comprehensively guaranteed.

What I have said thus far will, I hope, provide a sound basis for optimism, certainly over the next several years to a decade. Putting it simplistically, Hong Kong just carries on as before. All the factors which have shaped Hong Kong shall remain. The legal system is intact. Business practices continue as before. The government structure remains largely unchanged. Freedoms and individual rights receive the same guarantee. Mainland China has an interest in keeping this city stable and prosperous. There is every advantage for Mainland China to preserve Hong Kong as it is, even if one is to assume that the leaders in Beijing are motivated by selfishness alone. From the point of international prestige, too, the leaders cannot afford to let Hong Kong fail.

Having said this, I do not forget that China herself is changing, and changing fast and for the better. The China of 1997 is far stronger and richer than the China of 1987. Similarly, the China of 1987 was far stronger and richer than the China of 1977. It seems logical that in the year of 2007, China will surely take her place amongst the strongest nations in the world, and Hong Kong cannot fail to benefit from being part of a powerful motherland.

China's economy will see unprecedented growth. Their legal systems will have improved enormously. The people will live better. The whole country will be even more open. The people will be better educated and informed. Technologically, the country will be more advanced.

How these developments will affect Hong Kong is difficult to predict. Simple logic will however indicate a Hong Kong full of promises and opportunities.

Finally, I would like to revert to the preamble of the Basic Law, where it states —

“Under the principle of ‘one country, two systems’, the socialist system and policies will not be practised in Hong Kong.”

Herein lies the key policy of China towards Hong Kong. On this, we have a sound foundation to build our future.