

## **U.S. Department of State**

### **Review of Key Developments in Hong Kong**

#### **Fact Sheet**

**Bureau of East Asian and Pacific Affairs**

**Washington, DC**

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In light of ongoing public interest in matters related to Hong Kong, the State Department prepared this review of key current developments and progress made in U.S.-Hong Kong relations.

This assessment is current as of March 2017.

#### **Key Findings**

- The United States has longstanding economic and cultural interests in Hong Kong. Cooperation between the U.S. Government and the Hong Kong Government (HKG) remains broad, effective, and mutually beneficial.
- Certain actions by the Chinese Central Government this year appeared inconsistent with China's commitment in the Basic Law to allow Hong Kong to exercise a high degree of autonomy.
- However, Hong Kong generally maintains a high degree of autonomy under the "one country, two systems" framework, more than sufficient to justify continued special treatment by the United States for bilateral agreements and programs.

#### **Progress in U.S.-Hong Kong Relations**

U.S.-Hong Kong relations are fundamentally based upon the continued maintenance of the "one country, two systems" framework, as established in the Basic Law of the Hong Kong Special Administrative Region (SAR) of the People's Republic of China (PRC), as enacted by the National People's Congress of the PRC. The United States-Hong Kong Policy Act of 1992, as amended, establishes the authority of the U.S. government to treat Hong Kong as a non-sovereign entity distinct from China for the purposes of U.S. domestic law based on the principles of the 1984 Sino-British Joint Declaration.

Hong Kong's strong traditions of rule of law, as displayed by its highly independent judiciary, low levels of corruption, and high standards for public health and safety, have continued to make Hong Kong a preferred platform for U.S. businesses, as well as an important base for U.S. investments and business activity in the Asia-Pacific region writ large. Hong Kong was ranked the world's freest economy for the twenty-third consecutive year according to the 2017 Heritage Foundation Index of Economic Freedom.

More than 1,400 U.S. firms operate in Hong Kong, drawn in part by Hong Kong's openness, transparency, and strong rule of law. Hong Kong also continues to be a valuable trading partner, with U.S.-Hong Kong two-way trade totaling \$42 billion in 2016. Last year, the United States' single largest bilateral trade surplus was with Hong Kong, at \$28 billion. Hong Kong in turn counted the United States as its second-largest trading partner after Mainland China. In 2016, Hong Kong was the United States' fifth-largest export market for beef, seventh-largest export market for agricultural goods more generally, and ninth-largest export market for manufactured goods and services.

An estimated 85,000 U.S. citizens live in Hong Kong. Nearly 1.3 million U.S. citizens visited or transited Hong Kong in 2016. On average approximately 127,000 Hong Kong residents visit the United States each year.

*Law enforcement cooperation:* The United States and Hong Kong continue to have valuable and successful law enforcement cooperation, and U.S. law enforcement agencies maintain particularly strong relations with Hong Kong Customs authorities. However, there are opportunities for improvement in bilateral cooperation. For example, Hong Kong has not yet enacted certain laws that would improve identification of high-risk travelers or enable full implementation of recommendations and standards in United Nations Security Council resolutions on counterterrorism.

The United States continues to provide proactive information regarding drug couriers and drug shipments (predominantly cocaine) entering Hong Kong, which generated multiple arrests and seizures of significant quantities of illegal narcotics by Hong Kong Customs authorities. The United States also has recently assisted in the identification of several drug trafficking organization cells operating in Hong Kong and East Asia that could impact the United States. Hong Kong remains a good partner for fugitive surrender and sharing of evidence in criminal cases.

*U.S. Navy activities:* With approval from the Central Government, Hong Kong received six port calls from nine total U.S. Navy ships between March 2016 and March 2017, and engagement between U.S. military forces and the Hong Kong Disciplined Services continues unfettered. The Central Government denied one port visit request for a group of ships comprising one aircraft carrier and four escort ships in the first half of 2016, which was the first port visit denial since 2007. However, it did not impact the approval of other port visits. The Central Government gave no official reason for the denial beyond the visit being “inconvenient.”

*Trade and finance:* Hong Kong participates separately from Mainland China in a range of multilateral organizations and agreements, including the Asia-Pacific Economic Cooperation (APEC) forum, the World Trade Organization (WTO), the Financial Action Task Force, and the Financial Stability Board, with trade and economic policy objectives that generally align with our own. Hong Kong also joined the Asia Infrastructure Investment Bank in March 2017.

The United States recognizes Hong Kong as a separate customs territory. There are more than a dozen U.S.-Hong Kong bilateral agreements currently in force. Hong Kong’s legal requirement for Central Government “sovereign assent” for certain forms of international liaison has at times hindered timely cooperation, but the issue has not arisen recently.

The United States and Hong Kong concluded one arrangement related to cooperation on financial regulations in the past year. In January 2017, the U.S. Securities and Exchange Commission and the Hong Kong Securities and Futures Commission signed a Memorandum of Understanding (MOU) regarding mutual assistance in the supervision and oversight of regulated entities that operate on a cross-border basis in the United States and Hong Kong.

*Export controls:* The United States cooperates closely with Hong Kong on strategic trade control and counter-proliferation initiatives. The Hong Kong government is obligated to implement United Nations sanctions measures adopted by the Central Government, and it acts to detain and investigate suspect controlled shipments. The U.S. Department of Commerce has raised concerns about diversion, and the U.S. and Hong Kong governments have taken steps together to tighten licensing requirements. As part of a longstanding annual dialogue on strategic trade controls, the United States and Hong Kong continue to hold joint seminars for industry groups, publish due diligence guidance to raise industry awareness about the risks inherent in transshipments, and cooperate on ongoing enforcement investigations. Additionally, the U.S. and Hong Kong governments hold annual counterproliferation meetings, most recently in December 2016, which focus on counterproliferation efforts and cooperation, proliferation finance, best practices in licensing and enforcement, and discussions of regional proliferation threats.

*Cultural, Scientific and Academic Exchanges:* The United States enjoys excellent academic, cultural, educational, and scientific exchanges with the people and government of Hong Kong. U.S. and Hong Kong educational institutions hold extensive regular exchanges, including short-term visits by U.S. faculty,

summer programs for students, and multi-year exchanges of faculty and staff. Hong Kong ranks 21<sup>st</sup> (and 4<sup>th</sup> on a per capita basis) as a source of foreign students in the United States. Hong Kong also hosts more than 1,500 American students each year, including 48 American undergraduate students in the most recent year under the Department of State's Gilman Scholarship program.

Eighteen Hong Kong residents were selected as Fulbright students and scholars in fiscal years 2016 and 2017 combined, and Hong Kong hosted 24 U.S. Fulbright students and scholars and three Fulbright specialists over the same period. In fiscal years 2016 and 2017 combined, some 22 Hong Kong residents were selected to participate in the State Department's International Visitor Leadership Program. One Hong Kong scholar was selected to participate in the Study of U.S. Institutes (SUSI) for Scholars in 2016.

### **Other Matters Affecting U.S. Interests in Hong Kong**

Hong Kong's highly developed rule of law, independent judiciary, and respect for individual rights are fundamental to its way of life, as well as its economic prosperity, and are made possible by Hong Kong's high degree of autonomy. Several high profile court cases over the past year, including the conviction of a former Chief Executive on corruption-related charges, demonstrated that Hong Kong's judiciary remains highly independent and professional.

The Central Government publicly and frequently reiterated its commitment to the "one country, two systems" framework over the past year, and it has continued to adopt positive measures to support Hong Kong's economic growth in ways that are consistent with that framework, such as the December 2016 opening of the Hong Kong-Shenzhen Stock Connect trading link.

However, certain other actions by the Central Government appear to be inconsistent with its stated commitments to Hong Kong's high degree of autonomy. On November 7, 2016, the Standing Committee of the National People's Congress (NPCSC) issued an interpretation of Basic Law Article 104, which requires all Hong Kong government officials, when assuming office, to swear to uphold the Basic Law and swear allegiance to the "Hong Kong Special Administrative Region of the People's Republic of China." The NPCSC had full legal authority to issue its interpretation, but it did so while the Court of First Instance was still considering HKG judicial review petitions filed against two legislators-elect, on the grounds that the pair had incorrectly taken their oaths of office. On November 9, 2016, a judge ruled in favor of the HKG to disqualify the legislators-elect, noting that he would have reached the same decision even if the NPCSC had not issued its interpretation two days prior. In Hong Kong, prominent legal scholars, the Bar Association, and the Law Society all characterized the interpretation as unnecessary and voiced concern that the preemptive issuance of the interpretation might cause reputational harm to Hong Kong's court system. The NPCSC interpretation was only the fifth such action since the Hong Kong SAR's inception in 1997, but the first such interpretation issued while a relevant case was pending before the Hong Kong courts.

The two legislators-elect in question, Yau Wai-ching and Sixtus Leung of the Youngspiration political party, unsuccessfully appealed their disqualification in the High Court; the Court of Final Appeals is scheduled to hear their second appeal in August 2017. In December 2016, the HKG filed judicial review petitions against four additional pro-democracy legislators, alleging that the ways in which they took their respective oaths of office were illegal under the NPCSC Basic Law interpretation and demanding that the four be disqualified from serving the remainder of their four-year legislative terms. The Court of First Instance heard the cases in March 2017, but a verdict has not yet been released.

From October-December 2015, five men working in Hong Kong's publishing industry disappeared from Hong Kong, Thailand, and Mainland China in what appears to be the most serious breach of the "one country, two systems" policy since 1997. The British Foreign Secretary noted that the disappearances constituted a "serious breach" of the 1984 Sino-British Joint Declaration. In July 2016, Causeway Bay Books manager Lam Wing-kee alleged that he was detained by Mainland authorities in Mainland China for delivering books illegally to the Mainland. Lam also discussed the alleged abduction from Hong Kong

of his colleague Lee Bo, a dual citizen of Hong Kong and the United Kingdom. Although Lee later denied he was abducted from Hong Kong, Lam's statements confirmed for many observers that the Central Government had bypassed Hong Kong law enforcement agencies to pursue an individual inside Hong Kong for political reasons in contravention of the Basic Law. The Hong Kong government said it would engage Central Government authorities to improve the notification mechanism governing cross-border cases.

In January 2017, Mainland billionaire Xiao Jianhua departed Hong Kong for Mainland China under mysterious circumstances. Hong Kong authorities confirmed that they received a request for assistance from Xiao's family to locate Xiao, and then later reported that the family withdrew the request. Some facts of Xiao's case are still unknown, but the case has raised concerns among observers due to some possible parallels to the booksellers' cases.

The Hong Kong judiciary also continues to adjudicate cases related to the 2014 "Occupy Central" protests. Recent sentences fell within the judiciary's sentencing guidelines:

- In May 2016, the District Court found pro-democracy activist Ken Tsang guilty of resisting arrest and assaulting a police officer, and sentenced him to five weeks imprisonment, which he began serving in March 2017.
- In July 2016, a Hong Kong court convicted three "Occupy Central" student leaders of illegal assembly, with the sentences ranging from 80 hours of community service to three weeks in prison.
- In February 2017, the District Court convicted seven police officers of assaulting Ken Tsang during his arrest, with each receiving two-year jail sentences.

In late March 2017, the police arrested and formally charged nine other "Occupy Central" activists with offenses that include creating a public nuisance, inciting a public nuisance, and inciting others to incite a public nuisance. Two currently seated Legislative Council members are among the accused. On the same day, the police also forcibly retired and arrested a former police superintendent for violent actions taken during Occupy-related protests in 2014.

Hong Kong courts also continue to review cases related to the February 2016 Lunar New Year riots in the Mong Kok neighborhood, during which more than 120 people, including 90 police officers, suffered injuries. Police arrested more than 60 people and charged over 30 people with rioting. In December 2016, two men were found guilty of assaulting police and received three-month prison sentences. Other cases related to the riots await hearings, including the cases against activists Ray Wong and Edward Leung, co-conveners of the localist group Hong Kong Indigenous.

*Development of Hong Kong democratic institutions:* In September 2016, Hong Kong residents elected representatives to the 70-member Legislative Council, whose members serve a four-year term. A record 2.2 million Hong Kong residents voted, or over 58 percent of eligible voters, and the election was conducted in a manner consistent with the Basic Law. Pro-establishment candidates won 40 of 70 Legislative Council seats, while pan-democratic candidates won 30, a three-seat increase over the 27 seats the opposition camp held from 2012 to 2016. The structure of Hong Kong's Legislative Council elections favors the maintenance of an establishment majority through a complex mix of "functional" constituencies representing certain sectors by trade or by profession, along with more standard "geographic" constituencies elected by popular vote.

The government's Electoral Affairs Committee received approximately 1,200 petitions about election misconduct following the conclusion of the Legislative Council elections. The highest profile petitions sought judicial review of the disqualification, prior to the election, of two pro-independence candidates. The disqualified candidates contend that a new, hastily inserted requirement in the registration process, which required prospective candidates to sign a Confirmation Form that included a pledge that Hong Kong is an inalienable part of the People's Republic of China, was not instituted in accordance with Hong Kong law. The petitioners also argued that they were illegally disqualified from standing for election

despite signing the form and fulfilling all other candidate requirements. These cases are still pending in the courts.

In December 2016, roughly 106,000 Hong Kong residents across a variety of sectors elected the approximately 1,200 members of the Chief Executive Election Committee. These committee members represented industrial, commercial, financial, professional, labor, social service, religious, grassroots, and political sectors. Many sub-sectors chose their committee members through elections within their respective professional memberships, although some other members were elected unopposed, especially from the industrial, commercial, and financial sectors.

In March 2017, the Chief Executive Election Committee members, via secret ballot, chose former Chief Secretary for Administration Carrie Lam to serve as Hong Kong's next leader, starting July 1. Lam earned 777 votes, former Financial Secretary John Tsang earned 365 votes, and retired judge Woo Kwok-hing earned 21 votes. Tsang had topped public popularity polls in the lead-up to the election, but the Central Government tapped Lam as its favored candidate. The disparity between public popularity and popularity within the Election Committee elicited public dissatisfaction about the Chief Executive election system, prescribed by the Basic Law and Annex I thereto, under which few Hong Kong residents are able to directly participate in choosing their top leader. The outcome also focused public attention on the Central Government's various efforts to influence the voting outcome, and led to increased public concern about the Central Government's degree of commitment to Hong Kong's autonomy.