


- (i) Governments, through some international body, should expediently co-ordinate legislative efforts to ensure uniformity.
- (ii) Although legislation should specifically address digital signatures, it should also recognize general forms of electronic signature.
- (iii) Governments should establish voluntary Certification Authority licensing.
- (iv) Policymakers should attempt to establish a digital signature framework similar to the US Electronic Funds Transfer Act of 1995.

With time and the prudent implementation of a legal framework, the use of digital signatures will expand, increasing efficiency, ensuring integrity, and reducing paperwork. Ultimately, they will attain their position as the backbone of electronic commerce, the future of the world economy. 

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Hong Kong

After the change of sovereignty

by Peter Willoughby



Peter Willoughby

On 1 July 1997 the People's Republic of China (PRC) resumed sovereignty over Hong Kong. From this date, Hong Kong became known as the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China.

THE BASIC LAW

The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the 'Basic

Law') was adopted by the National People's Congress of the People's Republic of China on 4 April 1990. It took effect on 1 July 1997. The Government of the HKSAR is required to administer the HKSAR in accordance with the provisions of the Basic Law. In this way, the Basic Law has become Hong Kong's constitution.

The Basic Law provides that only the National People's Congress of the People's Republic of China has power to amend the Basic Law. Further, only the Standing Committee of the National People's Congress of the People's Republic of China has power to interpret it.

Six items of PRC legislation (in addition to the Basic Law) also apply in Hong Kong. This legislation covers the PRC's national capital, calendar, national anthem, national emblem, national flag, national day, nationality law, territorial sea and diplomatic privileges and immunities.

SOCIALISM/CAPITALISM

The Basic Law embodies the principle of 'one country, two systems'. This principle has been closely linked to Deng Xiaoping, the late paramount leader of the PRC. This expression means that the socialist system and policies of the PRC will not be practised in Hong Kong. Instead the capitalist system is to continue. Under the Basic Law, Hong Kong is to 'exercise a high degree of autonomy' and, subject to certain limitations, be self-governing for a period of 50 years following the hand-over. The Basic Law also specifically provides that Hong Kong's capitalist system and way of life will remain unchanged for 50 years (i.e. until 30 June, 2047).

JOINT DECLARATION

On 19 December 1984, the PRC and British Governments signed the Joint Declaration on the Question of Hong Kong, in which the two Governments agreed that the PRC Government would resume sovereignty over Hong Kong on 1 July 1997. At the same time, the PRC Government agreed to the principle of 'one country two systems', in relation to its administration of the HKSAR for the first 50 years of its existence.

CENTRAL PEOPLE'S GOVERNMENT

Hong Kong law continues to be made and administered by the HKSAR. However, under the Basic Law, the Central People's Government (the CPG) will be responsible for the HKSAR's foreign affairs and defence. The CPG's approval is therefore required for access to Hong Kong by foreign warships and foreign state aircraft; some foreign warships have visited the HKSAR since the hand-over. PRC military forces are stationed in Hong Kong. Nevertheless, responsibility for the day-to-day maintenance of law and order in the HKSAR will continue to lie with the Hong Kong police force.

PROTECTION AFFORDED BY THE BASIC LAW

The Basic Law includes the following protections applicable following the hand-over.

- Hong Kong will continue to enact its own laws relating to taxes and tax rates and the PRC will have no right to tax Hong Kong citizens.
- The policy of no foreign exchange controls in Hong Kong will continue and the Hong Kong dollar will continue to be freely convertible.
- The ownership of enterprises and investment from outside Hong Kong will be protected by law.
- Hong Kong will continue to have an Independent Commission against Corruption accountable directly to the Chief Executive of the HKSAR.
- The free movement of goods and capital into and out of Hong Kong will continue.
- Hong Kong will continue to pursue a free trade policy.
- Hong Kong's revenues will be used exclusively for the purposes of the HKSAR and will not be handed over to the CPG.

- The right of private ownership of property will continue to be protected.
- Documents, contracts and rights and obligations valid under present Hong Kong law will continue to be valid after the hand-over.
- The laws currently in force in Hong Kong will, to a large extent, continue to apply after the hand-over. PRC laws generally will not be implemented in the HKSAR.
- International conventions will continue to apply to the HKSAR.
- Hong Kong residents will have freedom of speech, the press and publication; freedom of association, of assembly, of procession and of demonstration; the right to join trade unions and to strike. Since the hand-over there have been many demonstrations outside the Legislative Council building by groups pressing for rights and claims of various kinds. These have been noisy but peaceful without interference by the Hong Kong police or Peoples' Liberation Army.
- Hong Kong residents will have the freedom to enter and leave Hong Kong, to travel and to emigrate to other countries.
- Hong Kong residents and non-residents alike will have the same rights and freedoms in Hong Kong.

HONG KONG LAWS

Under the Basic Law, only those Hong Kong laws that are consistent with the Basic Law continue to apply after the hand-over. The Standing Committee of the National People's Congress decided before the hand-over that certain of Hong Kong's current laws should be repealed or amended because they are inconsistent with the Basic Law. The laws that have been amended, generally speaking, relate to the rights and freedoms of individuals rather than the business environment. One of the changes involves the repeal of the provisions of the Hong Kong Bill of Rights Ordinance, which provide for the repeal of ordinances and parts of ordinances, which are inconsistent with the Bill of Rights Ordinance. These provisions have caused a great deal of confusion and the change is not an unreasonable one.

The HKSAR is also expected to pass a number of new laws including laws on treason and subversion affecting the CPG. At the time of writing, the scope and nature of these laws have yet to be finalised. However, it is likely that they will be the subject of lively debate in Hong Kong. Although it is too early to determine to what extent the laws will impinge on perceived fundamental rights and freedoms of the people of Hong Kong, the authority to make such laws is clearly set out in the Basic Law.

QUESTIONS & ANSWERS

Tax

Will Hong Kong residents have to pay PRC taxes after the hand-over?

The Basic Law states that the CPG will not impose taxes in the HKSAR.

Will Hong Kong taxes remain low?

The HKSAR is to continue to have a taxation system independent of that in the PRC. The Basic Law provides that the HKSAR is to enact Tax Laws taking the low tax policy previously pursued in Hong Kong as reference.

Will the HKSAR Government adopt an enforcement policy similar to that adopted by the previous Government?

The taxation legislation in Hong Kong has, for some time, contained a large number of specific anti-avoidance provisions and two general anti-avoidance provisions. These provisions have been used relatively benignly to date. It is possible (and according to some commentators likely) that the revenue authorities will adopt a tougher enforcement policy after the hand-over. This is probably, however, no more than a reflection of the intention of governments worldwide to stamp out extreme forms of tax avoidance. The main Hong Kong general anti-avoidance provision is based on the Australian and New Zealand anti-avoidance legislation and decisions of the Australian courts are, in this context, regarded as strong persuasive authority.

Double taxation treaties

Will double taxation treaties entered into by the PRC before the hand-over apply to Hong Kong after the hand-over?

The PRC has concluded approximately 45 double taxation treaties. Of these, only one, the treaty between Sweden and the PRC, specifically excludes Hong Kong following the hand-over in 1997. The other treaties remain silent on this point. Whether or not the other treaties will apply to Hong Kong after the hand-over may depend in part, therefore, on the general terms and definitions contained in each particular treaty. Questions of interpretation aside, the better view in relation to this issue is thought to be that as a consequence of the extensive degree of autonomy granted to the HKSAR Government under the Basic Law, Hong Kong will continue to be excluded from the benefit of the PRC's double taxation treaties with other countries despite the fact that Hong Kong will become part of the PRC. Furthermore, the Chinese State Administration of Taxation has taken the position, in accordance with the Basic Law, that Hong Kong as a Special Administrative Region, will continue as a separate entity for taxation purposes and that consequently the PRC's double taxation treaties will not generally apply to Hong Kong after 1997.

Will double taxation treaties entered into by the PRC after the hand-over apply to Hong Kong?

Whether double taxation treaties entered into by the PRC after the hand-over will apply to Hong Kong will probably be decided on a treaty-by-treaty basis, depending on the specific provisions of each treaty. Where the treaty does not specifically include Hong Kong, for the reasons given above, the treaty would not be expected to extend to Hong Kong. Under the Basic Law, Hong Kong will be able to maintain and develop taxation relations and sign and carry out taxation agreements with other countries and regions, as well as with international organisations, after the hand-over. Thus, Hong Kong will be able to enter into taxation treaties in its own right and independently from the PRC.

Entry visas to Hong Kong

Has the Hong Kong Immigration Department policy in relation to foreigners changed after the hand-over?

Under the Basic Law, the HKSAR Government has the power to apply immigration controls on entry into, stays in and departure from Hong Kong by foreign persons. The Hong Kong Immigration Department has however indicated that its visa policies have not changed since 30 June 1997 except in relation to British citizens (as to which see below).

Will visas issued before the hand-over remain valid after the hand-over?

The Immigration Department has announced that foreigners who have been issued with Hong Kong visas before 1 July 1997 entitling them to stay in Hong Kong after the hand-over will be allowed to stay in accordance with the conditions of their existing visas. Special provision has been made for British citizens, though any permit granted to them before 1 April 1997 will remain valid until its specified expiry date. All foreigners, including British citizens, who have resided in Hong Kong for a continuous period of seven years and who have taken Hong Kong as their permanent place of residence may apply to become permanent residents of the HKSAR.

Will tourists keep coming to Hong Kong after the hand-over?

There is no reason why tourists should not continue to visit Hong Kong after the hand-over. The Immigration Department has made it clear that visitors will continue to be welcome in Hong Kong. However, there has been a fall in the number of tourists visiting Hong Kong since 30 June 1997. This is thought to be partly based on a lack of understanding of the post hand-over situation and partly because Hong Kong has become an expensive place to visit, particularly for visitors from Asian countries whose currencies have depreciated against the Hong Kong dollar. Steps are being taken to reverse the fall in tourism.

Will British citizens still get special treatment after the hand-over?

The previous arrangements whereby British citizens were not required to obtain visas to enter Hong Kong as visitors or for employment, investment, study or otherwise to settle here, have been abolished as a consequence of the hand-over: British citizens will be able to visit Hong Kong visa-free for up to six months but, like other foreign citizens, if they want to take up employment, establish or join in a business or study or settle in Hong Kong, they will have to obtain an appropriate visa before arrival.

Will PRC nationals need Hong Kong visas after the hand-over?

The Basic Law provides that people from other parts of the PRC must apply for approval for entry into the HKSAR. The Immigration Department has proposed that the number of PRC nationals permitted into Hong Kong for the purpose of permanent residence should be limited to 150 each day.

Will the Hong Kong border with the PRC move to the Shenzhen Special Economic Zone border?

Although officials in Shenzhen have stated that they would like to see Hong Kong and Shenzhen merge into one city by having the Hong Kong border moved to where the border between the Special Economic Zone and the rest of the PRC is now, we understand that this idea does not have much support in Beijing.



Will any trade restrictions be imposed?

The HKSAR is obliged under the Basic Law to pursue a policy of free trade and to safeguard the free movement of goods, intangible assets and capital. Hong Kong is also to remain a free port. The HKSAR is to be a separate customs territory and may participate in relevant international organisations and international trade agreements.

Will Hong Kong still have its own quota system and certificates of origin?

Hong Kong will be able to continue to enjoy, exclusively, export quotas and tariff preferences that it obtains or obtained before the hand-over (assuming of course that those countries to which Hong Kong products are exported treat Hong Kong as separate from the PRC). To this end, the HKSAR will also be able to issue certificates of origin.

Land

Will private ownership of land in the HKSAR continue be permitted?

After the hand-over, all land within the HKSAR belongs ultimately to the PRC Government. This is consistent with the existing Government lease system, whereby the so-called 'owners' of property in Hong Kong in fact only own a leasehold interest, with the reversion vesting in the British Crown. There is, therefore, technically no real estate in Hong Kong. The Basic Law provides that the HKSAR is to protect the right of ownership of property in accordance with the law.

Will the HKSAR recognise land leases?

The Joint Declaration provides that Crown or Government leases that expire before 30 June 1997, without a right of renewal can be extended for 50 years up to 30 June 2047 without payment of any extra premium, but upon payment of a new Crown rent. This extension has been granted under Hong Kong law existing before the hand-over. The Basic Law states that leases of land in the HKSAR extending beyond the hand-over will be recognised.

Business agreements

Will contractual rights entered into before 1 July 1997 be recognised?

On the basis that the existing laws will remain in effect, and having regard to the general provisions and statements in the Basic Law in relation to the HKSAR's economic status, it is clear that contractual rights, in particular contractual rights expressed to be governed by Hong Kong law (or HKSAR law), will be recognised in the HKSAR.

Are contracts entered into before 1 July 1997 still valid?

Pre-July 1997 contracts, which purport to continue beyond the hand-over remain valid, provided that they do not contravene the Basic Law.

Government contracts

Are contracts with the Hong Kong Government still effective after 30 June 1997?

Some commentators have pointed out that the Basic Law does not expressly confirm that the obligations of the Hong Kong Government pass to the Government of the HKSAR on 1 July 1997. It seems that this is a problem in theory only and does not pose any practical difficulties. Accordingly, business people in Hong Kong are conducting themselves as if the Government of the HKSAR has accepted the obligations of the previous Hong Kong Government in their entirety. In some cases, however, parties have requested specific confirmation from the PRC

authorities directly or through the Joint Liaison Group (which was set up by the PRC and British Governments to address matters relating to the hand-over).

Language in the HKSAR

What will the official languages be?

According to the Basic Law, English may be used as an official language by the executive authorities, by the legislature and by the judiciary of the HKSAR, in addition to Chinese. Under the official Languages Ordinance (in operation since 1974), English and Chinese are declared to be the official languages of Hong Kong for the purposes of communication between the Government and the public. English will, on this basis, continue to be an official language after the hand-over. A large number of schools have been authorised to continue to use English as the language of instruction.

Will people still be able to use Cantonese and complex Chinese characters?

Mandarin is being promoted by the Beijing government as the Chinese national language. The Chinese population in Hong Kong, however, normally uses Cantonese, the regional dialect of Guangdong province. The PRC government seems happy for people to continue to use Cantonese for the time being, in much the same way as local people in Shanghai use Shanghainese, rather than Mandarin, with each other.

However, the Hong Kong SAR Government is encouraging people in Hong Kong to learn Mandarin and to this end, starting in the 1998–99 school year, Mandarin will be taught to students in Government schools all the way through school. (Currently, students in Hong Kong Government schools only learn Mandarin from the third year of elementary school until the third year of secondary school.) Since the demand for Mandarin as well as English language skills is likely to increase, enhanced proficiency in both these languages is desirable.

As far as the written language is concerned, the PRC Government seems anxious that simplified characters should replace complex characters in Hong Kong as soon as possible. It is expected, therefore, that there will be a gradual move in this direction, in particular in relation to the use by the HKSAR Government of Chinese.

Will Hong Kong ordinances still be in English?

For many years the laws of Hong Kong have been required to be printed, enacted and amended in both English and Chinese. This requirement continues to apply after the hand-over because it is not in breach of the Basic Law.

What happens when the English and Chinese texts conflict?

Where the English and Chinese texts conflict in criminal cases it has been held that the most favourable interpretation to the accused will be followed. Where, in civil cases, the Chinese text is a translation of an ordinance originally drafted in English, any conflict will be resolved by referring to the meaning intended by the original English text.

Will Chinese be used more in the courts?

Traditionally only English was permitted in judicial proceedings in Hong Kong. For some years now, however, Cantonese has been used in the Magistrates Courts. It is expected that the use of Cantonese in the courts will become more common with the passage of time. However, it will probably be many years before Cantonese is used in the higher courts in civil

cases because of the common law system's reliance on case law from English speaking countries. Lawyers working in the higher courts tend to prefer the use of English for this reason. It is not expected that it will be necessary for cases to be heard in Mandarin for several years, if ever, for the reasons mentioned earlier in relation to the use of Mandarin in Hong Kong.

Will contracts have to be in Chinese after the hand-over?

Contracts do not have to be in Chinese after 30 June 1997 and may still be in English. A contract not in English or Chinese is valid after the hand-over but requires translation for enforcement by the HKSAR courts.

Choice of law/forum

Should domestic contracts be governed by Hong Kong law after 30 June 1997?

The Basic Law provides that Hong Kong law continues to apply after the hand-over and, therefore, there is no reason why parties to any contract which would naturally fall under the laws of Hong Kong should not adopt the laws of the HKSAR as the governing law of the contract, thereby avoiding the effort and expense of having to enforce the contract under a foreign law.

Should contracts with PRC parties be governed by Hong Kong law after 30 June 1997?

The Hong Kong SAR and the PRC have separate and effectively independent legal systems after the hand-over. It is generally accepted in international legal circles that the Hong Kong legal system is more predictable and familiar to foreign companies than that of the PRC. Accordingly, where appropriate, it is likely that foreign companies will continue to be advised to choose Hong Kong law in preference to PRC law as the law governing their commercial agreements.

Should contracts with foreign parties be governed by Hong Kong law after the hand-over?

As far as Hong Kong law itself is concerned, the situation after the hand-over is the same as it was before 1 July 1997. Accordingly, where a person is proposing to enter into a contract with a foreign party, it is necessary to consider the specific situation to decide which law to choose as the governing law. Some of the common considerations taken into account in making such a determination include familiarity of the parties with the Hong Kong or foreign legal system and the local language, convenience of application of that law in the preferred forum and the place of performance of the contract.

Should the forum for disputes be Hong Kong?

As mentioned above, this decision depends on the particular facts of the situation and this approach has not been affected by the hand-over. Usually, the most important consideration is the location of the assets against which a claimant would want to enforce any unsatisfied judgment provided that location has a sufficient connection with the parties or the transaction to satisfy the local courts or arbitration body.

Court of Final Appeal

Will Appeals still lie to the Privy Council?

The Basic Law provides for the establishment of the Court of Final Appeal of the HKSAR (the CFA). This court has, after its establishment on 1 July 1997, taken over the role previously performed by the Privy Council in London.

Where will the judges of the CFA come from?

It is provided by the Court of Final Appeal Ordinance that the

judges constituting the Court will be the Chief Justice and the permanent judges. To be eligible for appointment as either the Chief Justice or a permanent judge, a person must already be a senior judge in Hong Kong or a barrister or solicitor who has practised in Hong Kong for at least 10 years. The ordinance also provides that appeals will be heard by the Chief Justice, three permanent judges and one non-permanent judge or one judge from another common law jurisdiction.

Since the hand-over the Hon Chief Justice Andrew Li has been appointed together with three highly respected judges from the pre-hand-over Court of Appeal. The Hon Chief Justice is widely respected both in the HKSAR and around the world as a man of exceptional ability. His appointment has been widely welcomed. Most of the panel of 30 visiting judges has also been appointed. These include a number of retired senior Hong Kong judges, such as Sir Alan Huggins, formerly President of the Hong Kong Court of Appeal, Mr Justice Kutlu Fuad, formerly a Justice of Appeal of the Hong Kong Court of Appeal, and several highly respected judges from common law jurisdictions, such as Lord Hoffmann and Lord Nichols from the UK and Lord Cooke from New Zealand who is currently sitting in the House of Lords in the UK. Appointments made since the hand-over to the Hong Kong Court of First Instance and the Court of Appeal show that quality of the HKSAR's Judiciary is excellent and that the concern shown before the hand-over as to the future quality of the judiciary was groundless. The concern that China has to practise the rule of law in the HKSAR is apparent from the decision to allow distinguished foreign judges to sit in the Court of Final Appeal.

What sort of cases will the Court of Final Appeal decide?

The CFA is the court of final adjudication in the HKSAR. The court will have civil and criminal jurisdiction. Its jurisdiction does not, however, extend to acts of state such as defence and foreign affairs.

Who will have the right to Appeal to the Court of Final Appeal?

Appeals lie to the CFA in its civil jurisdiction:

- as of right from a final judgment of the Court of Appeal on a point of law where the matter in dispute concerns an amount equal to or greater than HK\$1,000,000, or a claim involving property or a civil right valued at or greater than HK\$1,000,000; and
- at the discretion of the Court of Appeal or the CFA if the question involved is one which, by reason of its great general or public importance, or otherwise, should be submitted to the CFA for decision.

Appeals lie to the CFA in its criminal jurisdiction at the discretion of the CFA from any decision of the Court of Appeal and from certain decisions of the High Court, which are not verdicts or jury findings.

What has happened to Privy Council appeals pending at the time of the hand-over?

There are transitional provisions whereby cases outstanding as at 30 June 1997 have been transferred from the Privy Council to the CFA.

Enforcement of judgments

If a judgment is obtained in Hong Kong before the hand-over is it enforceable in Hong Kong after the hand-over?

Judgments handed down by the Hong Kong courts before 1 July 1997 enforceable in the HKSAR after the hand-over in accordance with the provisions of the Basic Law.

Are foreign judgments enforceable in Hong Kong?

The legislation concerning the reciprocal enforcement of foreign judgments needs to be amended as a consequence of the change of sovereignty. Before the hand-over only judgments from courts in some common law jurisdictions and some European countries were enforceable on a reciprocal basis in Hong Kong. The expectation is that there will be reciprocity of enforcement in more countries after the hand-over than was previously the case, but as yet the details have not been finalised. In practical terms, however, this may not make much difference because foreign judgments can in any case be sued on in Hong Kong and a summary judgment can usually be obtained where the foreign judgment was properly obtained in the first place.

Arbitration and litigation

What are the advantages of arbitration in Hong Kong after the hand-over?

The advantages of arbitration over litigation in Hong Kong after the hand-over are effectively the same as they were previously. In particular, it is easier in certain cases involving foreign parties to enforce a Hong Kong arbitral award than it is a Hong Kong court judgment. This is because Hong Kong does not have civil judgment bilateral enforcement treaties with many non-commonwealth, non-European countries including Japan, the PRC and the USA. Arbitral awards issued in Hong Kong are, however, enforced in most major nations under the terms of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and this remains the case after 30 June 1997 because the PRC is also a signatory to the convention. However, the situation in relation to the enforcement of Hong Kong awards in the PRC after the hand-over still needs to be clarified.

What are the advantages of litigation in Hong Kong after the hand-over?

Again, generally speaking, after the hand-over the advantages of litigation over arbitration in relation to the resolution of commercial disputes are the same as before the hand-over. One of the major advantages of litigation over arbitration is that the courts have power to dispense a variety of remedies, including orders for specific performance and injunctions.

Chief Executive

What is the role of the Chief Executive of the HKSAR?

The Chief Executive of the HKSAR is, according to the Basic Law, the head of the HKSAR. He/she will be accountable to the CPG and the HKSAR. The first Chief Executive of the HKSAR is Mr Tung Chee-hwa, a shipping magnate who came originally from Shanghai. He has lived and worked in Hong Kong for over thirty years.

Who is eligible to be the Chief Executive?

The Basic Law sets out the requirements for becoming Chief Executive. The person must be a Chinese citizen over 40 years of age and a permanent resident of Hong Kong. In addition, the Chief Executive must have no right of abode in any foreign country and must have been ordinarily resident in Hong Kong continuously for at least 20 years.

What is the length of the Chief Executive's term of office?

The term of office of a Chief Executive is five years and he is only entitled to serve for two consecutive terms.

How is the Chief Executive chosen?

Mr Tung was chosen, in accordance with the Joint Declaration, by a selection committee consisting of 400 representatives of various professional groups in Hong Kong and appointed by the CPG. The Basic Law, however, states that the ultimate aim is the selection of the Chief Executive by universal suffrage. It is generally thought that the choice of Mr Tung was a very good one. He has some direct experience of government in Hong Kong having been a member of the Executive Council during the pre hand-over government headed by Governor Christopher Patten.

What are the responsibilities of the Chief Executive?

The powers and functions of the Chief Executive are set out in the Basic Law. The Chief Executive's powers include:

- deciding on Government policy;
- nominating certain principal officials for appointment by the CPG and recommending their removal; appointing and removing judges; and
- pardoning persons convicted of criminal offences or reducing the penalties applied to them.

How has the administration been affected by the hand-over?

Most of the members of the top echelon of the previous administration have continued in the same or in very similar positions under the HKSAR administration. The effect of the hand-over on the administration has not been significant; indeed, it has worked very well.

What is the relationship between the Chief Executive and the Legislative Council?

The Chief Executive has a veto power in respect of legislation and budgets which has been approved by the Legislative Council. If legislation or budgets cannot be agreed between the Chief Executive and the Legislative Council, the Chief Executive has power to dissolve the Legislative Council. However, if the newly convened Legislative Council insists on the adoption of legislation, which the Chief Executive has previously refused to approve, the Chief Executive must resign. The Chief Executive can only exercise his power to dissolve the Legislative Council once in each term of office.

What is the Executive Council?

The Chief Executive is to have an executive council to assist him in policy-making. Executive councillors are to be appointed and removed by the Chief Executive. Like the Chief Executive, executive councillors must be Chinese citizens who are permanent residents of Hong Kong with no right of abode in any foreign country. Unlike the Chief Executive, however, there are no age restrictions and although they must be resident in Hong Kong. There is no requirement for a minimum period of residence. Other than in an emergency, the Chief Executive is obliged to consult the Executive Council in respect of important policy decisions including the dissolution of the Legislative Council.

Trademarks

How have Hong Kong trademark registrations been affected by the hand-over?

Hong Kong has had an independent trademark registration

system for many years, which did not need to be changed to comply with the requirements of the Basic Law.

Patents

What has happened to patent law after the hand-over?

Under the previous law, UK and European patents designating the UK could be re-registered in Hong Kong at any time within five years of their grant. The Hong Kong patent then remained in force for as long as its counterpart was in force. Hong Kong did not operate an independent patent registration system and re-registration was not possible from anywhere else.



The previous law has changed following the hand-over. Under the new legislation, Hong Kong and the PRC remain separate jurisdictions. Accordingly, after the hand-over, PRC patents do not automatically cover Hong Kong. However, under the new legislation, re-registration in Hong Kong of PRC patents as well as European (including the UK) patents is allowed. Re-registration is not possible from anywhere else.

What does the new registration system involve?

The registration procedure has changed under the new legislation although it remains a system of re-registration. An applicant has to record in Hong Kong the existence of the basic PRC or European application and the intention that after its grant it will be reregistered in Hong Kong. This needs to be done within six months of the publication of the basic application. Once the patent has been granted, the patent then has to be re-registered in Hong Kong within six months. The main difference under the new system is that the Hong Kong patent is not tied to the 'parent' patent but is largely independent. Renewal fees will be payable in Hong Kong.

How are existing Hong Kong patent rights and pending applications affected by the new legislation?

Provision is made in the new legislation for a transitional period to ensure that existing Hong Kong patents may continue in force and also to deal with existing pending applications and recently granted patents. The transitional period is likely to result in a large number of applications because patents granted within the preceding five years would need to be re-registered within the transitional period.

Links with the past

What has happened to street names and other symbols of British colonial rule after the hand-over?

In connection with the hand-over, the following decisions were made before 1 July 1997 but have only been implemented in some cases.

- New stamps and coins no longer bear the head of the British monarch or any of the monarchy's symbols. Instead, the HKSAR has a new 'Regional Emblem' incorporating a Bauhinia flower with star-tipped stamens.
- Hong Kong has a new flag, ('the Regional Flag of the Hong Kong Special Administrative Region'), the centre point of which is the same Bauhinia flower.
- Statues of deceased members of the British royal family are to be removed but this has not yet been done.
- There is to be no comprehensive renaming of streets although over time certain major thoroughfares may be referred to by their Chinese names only.
- The royal coat of arms has been removed from Government supplies and has been replaced with the new symbol of the HKSAR, the Bauhinia flower.

Are there to be any additional public holidays in Hong Kong after the hand-over?

From 1998, the number of public holidays in Hong Kong will be 17, the same as before the hand-over. There have been 20 public holidays in Hong Kong during 1997, including the HKSAR establishment day (1 July 1997) and the following day.

On which side of the road do cars drive after the hand-over?

Cars continue to drive on the left-hand side of the road in Hong Kong after the hand-over, although cars drive on the right-hand side in the PRC.

Consulates

How has the hand-over affected the position of consulates in Hong Kong?

As Hong Kong is not the capital of a sovereign state, there are no embassies or high commissions, only consulates. In the same way, after the hand-over, the HKSAR is not a state capital. Accordingly, the position of consulates existing on 1 July 1997 has not been affected. The British consulate was, however, established in the HKSAR after the hand-over. Xinhua (the New China News Agency) may in time cease its unofficial function as the PRC consulate in the HKSAR.

Currency

Has the yuan become legal tender in the HKSAR after the hand-over?

Under the Basic Law, the Hong Kong dollar continues to be the legal tender in Hong Kong.

Will the Hong Kong dollar remain linked to the US dollar?

Since October 1983, the Hong Kong dollar has been linked to the US dollar at a rate of HK\$7.80 to US\$1.00 using a currency board system under which 105% of Hong Kong currency has to be backed by a holding of US dollars.


Under the Basic Law, the Government of the HKSAR has autonomy in deciding monetary and fiscal policies. In addition, the Basic Law states that the Exchange Fund of the HKSAR is to be managed and controlled by the HKSAR Government primarily for regulating the exchange value of the Hong Kong dollar. The Financial Secretary and the Hong Kong Monetary Authority have regularly confirmed their support for the continuation of the link and the Deputy Governor of the People's Bank of China and the Chairman of the Bank of China have both demonstrated their support for the continuation of the link. Accordingly, it is extremely unlikely that the dollar will be released from the link in the foreseeable future. Eventually it seems likely that it will be linked to the yuan.

During the Asian currency crisis of October/November 1997 the Financial Secretary and Hong Kong Monetary Authority repeatedly stressed that the link would not be broken, unlike a peg which is a very different concept. Those who speculated against the Hong Kong dollar misunderstood the operation of the link, the currency board system and the very great strength of both the exchange fund and Hong Kong's reserves. As a consequence many speculators suffered heavy losses and Hong Kong's reserves were increased at their expense.

The future

What is likely to happen in the foreseeable future?

Hong Kong has retained a large degree of independence after the hand-over and it already seems likely that Hong Kong will continue without significant interference from the PRC. Hong Kong provides 60% of the PRC's foreign investment and 30% of its foreign exchange and because of this, there is confidence that everyday business will continue to prosper in the years ahead. For companies involved in regional and China servicing, manufacturing and trading, the outlook is very good.

There is also a view that now that Hong Kong has become part of the PRC, the HKSAR will become an even more attractive location from which to base PRC businesses. It is also thought that Hong Kong will become a more attractive base for PRC enterprises, which may provide further business opportunities in Hong Kong itself. Given Hong Kong's international importance, its location as the gateway to the PRC, the ongoing reforms in the PRC towards a market-driven economy and the industrial transformation of the PRC's coastal provinces, Hong Kong's future as a trading bridge between the southern part of the PRC, the region, and the rest of the world and as a major regional service centre is guaranteed. 

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The paper was originally written by Jane McBride, a partner in Deacons Graham & James. It has been revised and updated by Peter Willoughby for the International Wealth Transfer Techniques Seminar 1998.