

## CHAPTER 5

# HONG KONG

### Abstract

In 2022, Hong Kong became increasingly isolated and further subordinated under Beijing's control. Security authorities continued their assault on Hong Kong's freedoms while the economy suffered from restrictions guided by Chinese government direction. Stronger mainland influence over Hong Kong is driving key changes to all aspects of life in the territory and more emigration. Hong Kong remains an important offshore financial and business center for the Mainland due to the territory's unique connections to the global financial system. The territorial government is moving to a legal system that increasingly mimics that of the Mainland, threatening prospects for journalists and civil society as well as U.S. and other foreign businesses and expatriates in the territory.

### Key Findings

- With Beijing's handpicked chief executive now at the helm, China firmly controls all branches of Hong Kong's government, ushering in a new era of total control by mainland authorities. Beijing has now successfully inserted loyalists into every branch of Hong Kong's government. By overhauling the election process, it created a rubber-stamp parliament full of so-called patriots, and it has also leveraged the new chief executive's authority to appoint judges.
- Hong Kong is actively working to implement "local" national security rules to reinforce the National Security Law passed in Beijing's legislature in 2020. These new local laws are slated for introduction by the end of 2022 and are expected to feature a comprehensive definition of national security in line with that of the Mainland.
- Freedoms of speech, expression, assembly, association, and religion in Hong Kong—once among the most progressive in the region—have all but vanished as the territory now ranks near the bottom of global freedom indices. Prominent religious figures, such as Hong Kong's senior-most cleric, Cardinal Joseph Zen Ze-kium, have been targeted and arrested; the education system has also come under intense scrutiny as Beijing seeks to shed Hong Kong's British legacy by rewriting textbooks and curricula to revise history and solidify a more unified national identity with the Mainland.

- Recent data suggest Hong Kong's increased departures of expatriates and locals will intensify as the territory introduces new laws to curb public criticism of the Beijing-aligned government and has imposed strict Zero-COVID controls for most of 2022. Brain drain and potential loss of talent could be an added damper to Hong Kong's economic outlook. More foreign companies may find Hong Kong less welcoming as they contend with challenges retaining staff, accessing real-time information, and navigating a higher degree of political suppression and control.
- Hong Kong's leadership, in concert with the Beijing government, is actively crafting policies to increase not only legal, political, and economic subordination of Hong Kong but also cultural and demographic transformation.
- Hong Kong has regressed from its history as a regional hub, shifting to serving primarily as a gateway to mainland China. Some U.S. companies are reorganizing operations in the Indo-Pacific to shift away from Hong Kong due to extensive restrictions and difficulties associated with doing business in the territory. U.S. companies are poised to take regional operations and headquarters out of Hong Kong gradually and in greater numbers.
- Hong Kong remains an important part of the Chinese government's growth agenda due to its centrality in renminbi (RMB) transactions as well as its role in supporting expansion of China's financial services. The Chinese Communist Party's (CCP) plans to rely on Hong Kong's stock exchange as an alternative to U.S. exchanges has been delayed in 2022, but Chinese companies and banks are set to dominate Hong Kong's business environment as U.S. and other foreign firms depart.

## **Recommendations**

The Commission recommends:

- Congress should direct the Administration to extend the deferral of enforced departure of qualifying Hong Kong citizens in the United States, which would otherwise end on February 2023. The U.S. Departments of State and Homeland Security shall submit a plan to Congress within 180 days addressing the long-term status and treatment of Hong Kong citizens in the United States.
- Congress consider legislation requiring U.S. entities with data operations in Hong Kong to submit an annual report on any requests or attempts to access such data from the Hong Kong government or Chinese authorities. This report will also detail the nature of any request or attempt to access, and the U.S. entity's compliance.
- Congress direct the Secretary of State to include a detailed list of all websites blocked in Hong Kong pursuant to its requirements under the annual report required under the Hong Kong Policy Act to cover limitations to freedom of information.

- Congress, pursuant to the Hong Kong Human Rights and Democracy Act, amend the International Organization Immunities Act to remove Hong Kong Economic and Trade Offices as a covered organization, thereby eliminating diplomatic privileges enjoyed by such offices and their employees in the United States. This amendment could be reversed under one of the following conditions:
  - The People’s Republic of China negotiates an agreement with the United States to have Hong Kong Economic and Trade Offices considered an official part of the People’s Republic of China’s mission to the United States, and subject to the same requirements.
  - China alters its treatment of Hong Kong to allow for sufficient autonomy and abides by One Country, Two Systems as enumerated by the Hong Kong Policy Act.

## Introduction

Beijing’s manipulation of elections for Hong Kong’s chief executive and Legislative Council (LegCo) members has locked in Hong Kong’s future and fully subordinated it to the CCP’s interests. Chief Executive John Lee Ka-chiu, endorsed by General Secretary of the CCP Xi Jinping as a “firm patriot,” faced no opposition in his election, and all candidates for LegCo positions were preapproved loyalists to Beijing. The CCP completed its transformation of Hong Kong’s formerly competitive elections into a political anointment and a Mainland-style rubber-stamp parliament. The Lee Administration is expected to introduce a legislative package to complement the National Security Law, which the National People’s Congress in Beijing passed without review or comment from Hong Kong’s then semiautonomous LegCo. Foreign nationals are expected to be prosecutable under the forthcoming legislation, which will reportedly seek to address “fake news” and espionage-related threats to national security.\* Equally concerning is the chief executive’s unilateral authority to appoint judges to the judiciary. This mandate leaves the door open for Beijing to fully control the court system.

Hong Kong’s economic downturn has dulled the appeal of a territory once regarded as a hub for international business and culture. Hong Kongers and expatriates have continued to leave at high rates between 2021 to 2022 to escape the territory’s new policies. Extensive restrictions on movement in response to the novel coronavirus (COVID-19) have accelerated plans for many foreign firms to relocate or reduce Hong Kong operations. Foreign firms remaining in Hong Kong increasingly regard the territory solely as a gateway to China rather than its previous role as an autonomous regional center, as the reliability of Hong Kong’s courts and media are threatened by the territory’s transformation into a police state.

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\*Academics and scholars around the world agree it is difficult to define fake news. In the view of many Hong Kong government officials, spreading fake news would likely constitute “publish[ing] any malicious information to incite hatred or violence,” as Hong Kong barrister Priscilla Leung stated. Carrie Lam similarly described fake news as an “increasingly worrying trend of spreading inaccurate information, misinformation, hatred and lies on the social media.” Lilian Cheng, “Who Defines ‘Fake News’ in Hong Kong, and Is a Law Needed? Calls for Legislation Spark Fears of Curbs on Media, Critics,” *South China Morning Post*, April 24, 2021; *Reuters*, “Hong Kong Leader Flags ‘Fake News’ Laws as Worries over Media Freedom Grow,” May 3, 2021.

This section begins by examining changes to Hong Kong's leadership under the direction of the CCP. It then outlines how Beijing's so-called "patriots" governing Hong Kong and the Chinese central government are moving in lockstep and provides an overview of Hong Kong's forthcoming additional national security measures.\* The chapter continues by illustrating the Hong Kong government's use of such measures to imprison political opposition and persecute civil society organizations, including journalists, organized labor, student unions, and religious figures. This chapter also examines Hong Kong's close alignment with Beijing's policies to combat COVID-19 and the subsequent economic consequences of these responses, including Hong Kong's future as it transitions into a predominantly Chinese financial hub. It then evaluates challenges to U.S. business interests in Hong Kong and assesses the depth of mainland influence and integration in the territory. Finally, it considers the implications for the United States as these changes make Hong Kong look more and more like a Shenzhen or Shanghai with increased security risks. This chapter is based on consultations with nongovernmental experts and U.S. government officials as well as open source research and analysis.

## **Hong Kong's Security Apparatus Reinforced by New Personnel and Policies**

Hong Kong's leadership changed hands as Beijing's handpicked loyalist, ex-security chief John Lee, was installed on July 1, 2022.<sup>1</sup> The new Administration retained national security hardliners and veteran officials with strong ties to the Mainland, underscoring the Chinese government's desire to squelch dissent. This came as Hong Kong emerged from a tumultuous five-year period marred by political crises and civil unrest under the watch of outgoing Chief Executive Carrie Lam much to Beijing's disapproval.<sup>2</sup> With its approved leaders firmly installed in Hong Kong's government, Beijing now has more channels to enact policies and practices that circumscribe any remaining autonomy, align Hong Kong with Beijing's core interests, and further the mission to establish a singular national identity with mainland China.

On May 8, 2022, Hong Kong selected a chief executive, the highest office of the Hong Kong Special Administrative Region (HKSAR). Lee, a Beijing loyalist and the only candidate for Hong Kong's top post, became the territory's sixth chief executive.<sup>3</sup> In his campaign, Lee stated that he was committed to resolving Hong Kong's "deep-rooted issues" from a "results-oriented approach," signaling tighter security controls.<sup>4</sup> The former security chief has a long reputation as a hard-liner, first in the police force and then as the secretary for security of Hong Kong.<sup>5</sup> He was the key figure in proposing the highly controversial extradition bill that plunged the territory into a politi-

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\*The Chinese and Hong Kong governments frequently use the term "patriot" to refer to citizens and public servants who demonstrate loyalty to Beijing. Hong Kong's secretary for constitutional and mainland affairs, Erick Tsang, elaborated on the term when commenting on the introduction of controversial legislation in February 2021 designed to "ensure patriots govern Hong Kong." He asserted, "If you claim to be patriotic and you don't respect, or you try to sabotage, the basic characteristics of our system—a system led by the [People's Republic of China]—that would not be acceptable. You can't say: I'm patriotic but I don't respect that it's the Chinese Communist Party which leads the country." Helen Davidson, "Hong Kong Plans to Make Politicians Swear Oath of Loyalty to Beijing," *Guardian*, February 23, 2021.

cal crisis in 2019.\*<sup>6</sup> Lee led the brutal crackdown on prodemocracy protesters, which resulted in the arrest of over 180 individuals.<sup>7</sup> Additionally, he oversaw the implementation of Beijing's National Security Law, which forced the closure of four independent news outlets—*Stand News*, *Apple Daily*, *FactWire*, and *Citizen News*—all of which had a large readership (see “Status of Political Prisoners” below).†<sup>8</sup>

Despite Lee's tenure as Hong Kong's security secretary, many experts were quick to point out his lack of experience in other areas of public governance and business and that he was, as one analyst put it, “by and large untested and unknown.”<sup>9</sup> Others argued that his narrow experience could be beneficial and give him a degree of flexibility.<sup>10</sup> While Lee was unopposed in his bid for the job, a handful of other likely contenders emerged in the months preceding the elections, including Paul Chan, Hong Kong's financial secretary under the Lam Administration, and Leung Chun-ying (known as CY Leung), the former chief executive prior to Carrie Lam.‡<sup>11</sup> Despite rumors surrounding their potential candidacies, neither Chan nor Leung ever announced a bid to run. According to Ivan Choy, a senior lecturer at the Chinese University of Hong Kong's Department

\*In February 2019, the Hong Kong government proposed the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 in response to the 2018 murder of Poon Hiu-wing by her boyfriend Chan Tong-kai in Taiwan. Both were Hong Kong citizens, but the territory's government did not have a mechanism for transferring fugitives between Taiwan, mainland China, and Macau. In June 2019, protests erupted across Hong Kong in response to the proposed legislation fueled by fears that China would be able to use it to transfer political dissidents in Hong Kong to the Mainland. Domestic and foreign critics also expressed concerns that the law could potentially erode the territory's legal system and adversely affect the global financial hub's business climate. As violent clashes between police and demonstrators persisted, the protest movement had five demands: removal of the bill, independent inquiry into police brutality, cessations of the government designation of the protests as “riots,” release of arrested protesters, and universal suffrage. After nearly 32 weeks of civil unrest, Hong Kong's government formally withdrew the bill on October 13, 2019. Protests continued until early 2020 for the other four demands, finally ending with restrictions related to the outbreak of COVID-19. Michael F. Martin, “Hong Kong's Proposed Extradition Law Amendments,” *Congressional Research Service*, October 23, 2019; *Reuters*, “Timeline: Key Dates for Hong Kong Extradition Bill and Protests,” June 30, 2019; Business and Human Rights Resource Center, “Hong Kong: Business Actions and Statements over Controversial Extradition Bill,” July 28, 2019; Alvin Lum, Kimmy Chung, and Jeffie Lam, “Hong Kong's ‘Dead’ Extradition Bill Finally Buried as Government Formally Withdraws It,” *South China Morning Post*, October 23, 2019.

†As Hong Kong's secretary for security under then Chief Executive Lam, Lee oversaw police crackdowns that at times involved violence and questionable tactics against the largely peaceful mass protests over the controversial extradition law that was pending in 2019. Lee was harshly criticized domestically and internationally for his use of force to quell dissent, such as firing rubber bullets, water cannons, and tear gas at protesters and jailing thousands for alleged violations under the National Security Law. Amid the backdrop of increasing government suppression of independent journalism and news outlets under the law, the Hong Kong police force raided *Stand News* on December 29, 2021, freezing the company's assets and arresting seven senior staff, including: (1) Chung Pui-ken, former chief editor; (2) Patrick Lam, acting chief editor; (3) Denise Ho, a former board member and democracy icon; and current board members (4) Margaret Ng; (5) Christine Fang; and (6) Chow Tat-chi (the seventh arrested staff member's identity has not yet been released). In a similar fashion to *Apple Daily's* closure several months prior in June, *Stand News* dissolved with immediate effect following the raid. The week following the raid, *Citizen News*, a smaller but prominent online publication that reported on legal and political issues, announced it would cease operations, citing unclear “legal boundaries” and concerns for the safety of its employees. *BBC*, “John Lee: Who Is Hong Kong's New Hardline Pro-Beijing Leader?” July 1, 2022; *Hong Kong Free Press*, “Stand News Closes, Content Deleted Following Arrests and Police Raid; Chief Sec. Slams ‘Evil Elements,’” December 29, 2021; *Independent Media*, “Citizen News Announced that Operations Will Be Suspended in the Future: In the Eye of the Wind, You Must Ensure the Safety of the People on Board,” January 2, 2022. Translation.

‡Leung Chun-ying served as the third chief executive of Hong Kong between 2012 and 2017. The former chief executive has praised Hong Kong's improved “patriots only” electoral system and has lauded the “one country, two systems” principle for bringing Hong Kong more autonomy following its handover. Charles Mok, “China's Choice for Hong Kong's Chief Executive Reveals Its Own Insecurity,” *Diplomat*, April 9, 2022; *Xinhua*, “Former HKSAR Chief Executive Hails ‘One Country, Two Systems’ as Viable, Vibrant,” June 23, 2022.

of Government and Public Administration, Beijing's overwhelming support of Lee's candidacy illustrates the CCP's strong desire to prioritize loyalty and fealty and enforce its will on Hong Kong.<sup>12</sup>

*Beijing's Five Demands for Its New Administration in Hong Kong*

In five key directives issued by the Chinese central government's local administrative office on June 19, the incoming Lee Administration was charged with:

1. *Correctly implement[ing] one country, two systems*;<sup>\*</sup>
2. *Address[ing] issues of immediate concern for Hong Kong residents, such as housing*;
3. *Promot[ing] social development*;
4. *Integrat[ing] Hong Kong with the nation's development*; and
5. *Consolidat[ing] and improv[ing] Hong Kong's international competitiveness*.<sup>13</sup>

Beijing's goals also signal the central government's intent to take a more hands-on role in Hong Kong's governance than it did under the Lam Administration.<sup>14</sup> For instance, Bloomberg reported that Beijing did not hand down any type of public instructions to then Chief Executive Lam when she assumed office in 2017 (see "Signs of Stronger Synchronization between the HKSAR and Chinese Central Governments" below).<sup>15</sup>

***Rollout of "Local" National Security Laws in 2022***

Hong Kong is set to roll out localized security legislation to address a range of activities, specifically targeting what authorities consider sedition, foreign espionage, and "fake news." While delivering the announcement in December 2021, then Chief Executive Lam touted that the new local legislation would fulfill the Hong Kong government's obligations under article 23 of the Basic Law—the territory's mini constitution that came into effect in 1997 following the handover from British colonial rule—which requires Hong Kong to enact its own national security laws.<sup>†</sup><sup>16</sup> This extension of National Security Law provisions is rumored to more explicitly cover foreign nationals, such as journalists; international media outlets; and other perceived threats to Beijing's control.<sup>17</sup> As of October 2022, the exact details of the legislative package remain undisclosed, but analysts anticipate more restrictive measures based on reports from Hong Kong officials.<sup>18</sup>

*Foreign Organizations under Threat of Sedition Charges*

Legislation pursuant to article 23 will likely strengthen Beijing's oversight of foreign nongovernmental organizations (NGOs) in Hong Kong and purport to extend jurisdiction to those based outside of

<sup>\*</sup>Senior defense analyst Derek Grossman with RAND Corporation aptly describes Beijing's interpretation of the "one country, two systems" principle: "Through 'one country, two systems,' Beijing grants semiautonomous status to formerly colonized territories in exchange for recognition of the existence of only "one China." Derek Grossman, "Where Does China's 'One Country, Two Systems' Stand in 2020?" *RAND Corporation*, February 13, 2020.

<sup>†</sup>Article 23 of the Basic Law stipulates that legislation stemming from the law must be designed "to prohibit any act of treason, secession, sedition, subversion against the central government, or theft of state secrets, as well as to ban foreign political organizations or bodies from conducting political activities in the territory and local political organizations or bodies from establishing ties with foreign political organizations or bodies." The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China art. 23, §1 (H.K.).

Hong Kong's borders.\* Human rights and democratic advocacy groups based outside of Hong Kong are particular targets of Hong Kong authorities, as in the case of London-based advocacy organization Hong Kong Watch.<sup>19</sup> Along with monitoring the status of human rights, freedoms, and rule of law in the territory, Hong Kong Watch publishes research reports and runs advocacy campaigns that include promoting protections for Hong Kong political asylees and imposing sanctions on the Hong Kong national security apparatus.<sup>20</sup> In March 2022, the Hong Kong police told Hong Kong Watch founder Benedict Rogers in a letter that the advocacy group's website content and publications endangered national security, and they later accused the group of violating the National Security Law.<sup>21</sup> The organization was ordered to disband and remove its website or face massive fines and the imprisonment of Mr. Rogers, who resides in the United Kingdom.<sup>22</sup> In a statement of refusal, Mr. Rogers underscored that such accusations and threats "exemplif[y] why Hong Kong's National Security Law is so dangerous."<sup>23</sup>

Under increased pressure and uncertainty with the evolving national security environment, Hong Kong's Foreign Correspondents' Club (FCC) announced on April 23 that it would cancel its annual Human Rights Press Awards, citing legal concerns.<sup>24</sup> The decision to cancel the awards was made after now defunct online outlet *Stand News*, slated to win nine titles at this year's event, was forced to lay off all staff and shut down following a police raid. In explaining the cancelation of the awards, FCC president Keith Richburg stressed that Hong Kong's journalists have been operating under "new 'red lines' on what is permissible" and that the FCC did not wish to violate the law unintentionally given the new and uncertain security environment in Hong Kong.<sup>†</sup><sup>25</sup> The FCC's announcement came a week after Hong Kong's national security police arrested Allan Au Ka-lun, a veteran journalist and former columnist for outlets including *Stand News* and *Ming Pao*, who was accused of "conspiring to print and reproduce seditious materials."<sup>26</sup> Mr. Au was subsequently sentenced with a fine of \$637 (Hong Kong dollars [HKD] 5,000)‡ and two years in prison.<sup>27</sup>

### *Foreign Espionage Law*

Another law under discussion for the article 23 legislative package would likely extend the power of Hong Kong security

\*On April 28, 2016, the National People's Congress Standing Committee adopted the Law of the People's Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China, which requires foreign NGOs to register with the Ministry of Public Security or its provincial counterparts before opening an office in mainland China. Foreign NGO operations in China were severely affected by the law due to its extensive and deeply invasive regulatory framework as well as the damage it caused to relationships with Chinese activist groups and their foreign counterparts on a wide range of issues, particularly those focused on human rights and legal reform. National People's Congress Standing Committee, *Law of the People's Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China*, April 28, 2016; Thomas Kellogg and Alison Sile Chen, "Is Hong Kong About to Get Its Own Foreign NGO Law in the Name of 'National Security'?" *China NGO Project*, June 13, 2020.

†On May 2, 2022, the Walter Cronkite School of Journalism and Mass Communication at Arizona State University announced that it would take over the administration of the Human Rights Press Awards starting in 2023. Walter Cronkite School of Journalism and Mass Communication, "Cronkite School to Administer Human Rights Press Awards Starting in 2023," *Arizona State University*, May 2, 2022.

‡This section uses the following exchange rate from June 30, 2022 throughout: 1 U.S. dollar = 7.85 HKD.

authorities to conduct intensified surveillance measures against any local or foreign entities that are suspected of espionage activities.<sup>28</sup> While ostensibly justified to counter espionage and theft of state secrets, in practice the law will likely limit freedom of information and make internet access less secure and more tightly monitored in a manner similar to the Mainland.<sup>29</sup> Hong Kong Secretary for Security Chris Tang Ping-keung claimed the territory's current security laws were drafted in the "old, peaceful days, when not much was happening" and lack specific measures for addressing alleged threats from foreign governments, whom he accused of using Hong Kong as a "base to harm China through their agents in the city."<sup>30</sup> During an address to the LegCo on January 26, 2022, Secretary Tang announced a collaboration with Hong Kong's Department of Justice to restore the colonial-era Official Secrets Ordinance to the territory's legislature by the end of 2022 in order to adapt to current times and be better positioned to combat espionage.<sup>31</sup> While the text of the law itself is pending, the expressed intent of government officials behind the law targets not only Hong Kong citizens but also NGOs, expatriates, and other foreign nationals in the territory.

### *Law on Disinformation*

Hong Kong authorities are currently exploring legislation to counter disinformation, which they have not defined but which could broadly affect journalists, government critics, and foreigners in Hong Kong. Officials have made several allusions to the need for a Hong Kong law addressing disinformation, but they have not disclosed a timeline or details, raising concerns over transparency and public consultation. Such measures would likely require online platforms to assume responsibility for their content, and violations would be met with criminal penalties.<sup>32</sup> One expert at the NATO Association of Canada's Center for Disinformation Studies, Julian Snelling, forecasts that the law "would inherently criminalize free speech" and grant Hong Kong authorities "unfettered power to censor dissent."<sup>33</sup> According to Ronson Chan Ron-sing, chairman of the Hong Kong Journalists' Association, the draft legislation appears to target a much broader range of media outlets than simply mainstream media.<sup>34</sup> In his view, the law "may also be targeting online news site[s], or even Telegram group chats or online discussion forums."<sup>35</sup> Hong Kong and foreign journalists have expressed widespread concern that they, as primary targets under the law, risk severe penalties if accused and convicted in the National Security Court.<sup>36</sup> Mr. Chan himself was arrested on September 7, released on bail, and ultimately charged two weeks later for allegedly "fail[ing]

\*The Official Secrets Ordinance was introduced in 1997 to replace the colonial-era Official Secrets Act. The ordinance consists of three categories of offenses: "spying and espionage, unlawful disclosure of intelligence by members of the relevant services, and unauthorized disclosure of information by a public servant or government contractor." Hillary Leung, "Hong Kong to 'Enhance' Spy Law to Prevent Acts of Espionage and Theft of State Secrets," *Security Chief Says*, *Hong Kong Free Press*, January 26, 2022.

† Hong Kong prosecutors tried a similar case in February 2020 when police arrested a part-time shopping mall security guard for allegedly spreading false information about multiple employees throughout the mall falling ill and taking sick leave. His case became the first known prosecution of crimes categorized as "transmission of false message[s] by telecommunication." Kris Cheng, "Hong Kong Police Arrest Mall Security Guard for Allegedly Spreading Virus Rumors," *Hong Kong Free Press*, February 5, 2020.



to comply with police” in a highly politicized circumstance.\* Secretary Tang has repeatedly alleged that journalists and foreign agents are spreading misinformation to criticize the government’s imposition of national security.<sup>37</sup>

### ***New Cybercrime Law under Consultation***

A proposed cybercrime law at the early stages of its development raises concerns for journalists, researchers, programmers, and tech companies operating in Hong Kong. In July 2022, Hong Kong’s Law Reform Commission (LRC)† Cybercrime Subcommittee published a consultation paper with research and proposals for preliminary legislation on “cyber-dependent” crimes designed to address Hong Kong’s dated legal framework for prosecuting cybercrime.<sup>38</sup> The paper contemplates definitions and legislative recommendations around five cyber-dependent crimes that “can only be committed through the use of information and communications technology devices, where such devices are the tool and target of such crimes.”<sup>39</sup> These crimes include: (1) illegal access to programs or data, (2) illegal interception of computer data, (3) illegal interference of computer data, (4) illegal interference of a computer system, and (5) making available or possessing a device or data for committing a crime. The consultation paper also considers potential criteria for the Hong Kong court to assume jurisdiction and sentencing proposals for legislation. The LRC proposals are likely to form the basis for a draft law itself. The LRC subcommittee, in forming its proposals, referred to several definitions and applications of cybercrime law in eight other jurisdictions, including the United States and mainland China.‡<sup>40</sup> The LRC also referenced the 2004 Budapest Convention on Cybercrime, a comprehensive multilateral treaty on cybercrime developed by the Council on Europe, as well as the UN ad hoc committee established by Russia’s controversial UN resolution to develop an updated con-

\*On September 7, 2022, Ronson Chan was arrested while reporting on a meeting about the livelihood of local residents in Mong Kok. According to a statement by the Hong Kong Journalists’ Association, “Chan was asked to show his ID card and was ready to cooperate with the officers, but he was interrupted when one of them began shouting and demanded immediate compliance from him. Chan then exercised his right in accordance with the Police General Orders by asking the officer to identify himself, but the officer responded by warning Chan that he would face arrest.” In spite of Chan’s purported willingness to cooperate, he was arrested, taken to the Mong Kok Police Station, and subjected to physical and verbal abuse. He was released on a \$64 (HKD 500) cash bail over 11 hours later; however, he was charged with “obstructing a police officer” on September 19, which is punishable by up to two years in prison if convicted. The charges came ten days before Chan was scheduled to leave Hong Kong for a six-month Oxford University fellowship program sponsored by the Reuters Institute. Chan’s case was heard at the West Kowloon Magistrates’ Court on September 22, and he was permitted to post bail and leave Hong Kong for his fellowship program on condition that he inform police about his contact information in the UK. (For more on police retaliation against voices critical of the regime, see “Status of Political Prisoners” below). Hong Kong Journalists Association, “Hong Kong Journalists Association Expresses Deep Regret over the Arrest of HKJA Chairman Chan Ron Sing,” September 8, 2022; Amelia Loi, “Hong Kong Police Arrest Head of Local Journalists’ Union on Public Order Charges,” *Radio Free Asia*, September 9, 2022; Cheryl Tung, “Hong Kong police charge outspoken head of journalists’ union with ‘obstruction,’” *Radio Free Asia*, September 19, 2022; “Hong Kong Journalist Charged Days before Leaving for Oxford Fellowship,” *Guardian*, September 20, 2022; Associated Press, “Hong Kong Journalist Granted Bail, Trip for Fellowship,” *VOA News*, September 22, 2022.

†Established in 1980, the Law Reform Commission is composed of academics, lawyers, and non-lawyers and is chaired by the secretary for justice. Along with the secretary for justice, the Commission’s ex officio members include the chief justice and the law draftsman. The chief executive appoints the remaining ten members, one of whom is generally a judge on the Court of Final Appeal. Law Reform Commission of Hong Kong, “Commission Members & Staff,” July 20, 2022.

‡Other jurisdictions include Australia, Canada, England and Wales, New Zealand, and Singapore.

vention on cybercrime.\*<sup>41</sup> (For more on cyber norms, see Chapter 3, Section 2, “China’s Cyber Capabilities: Warfare, Espionage, and Implications for the United States.”)

Despite this survey of international practices, the LRC’s proposals hew more closely to practices in the Mainland and, if enacted, could increase digital repression and censorship. The potential law could have a broad scope in focusing on cyber-dependent offenses and could also assert the right of extraterritorial jurisdiction, extending a practice already observed in the implementation of the National Security Law. Charles Mok, former prodemocracy member of the LegCo and a visiting scholar at the Stanford University Cyber Policy Center, noted that potential new rules could “weaken the tech sector and make Hong Kong’s internet less secure.”<sup>42</sup> The consultation also recommends that unauthorized access should be criminalized without requiring prosecutors to demonstrate criminal intent, which Mr. Mok notes “may result in higher uncertainty and risk for programmers or companies uncertain of how to comply.”<sup>43</sup> A future cybercrime law that does not require the prosecution to show proof of intent before pressing charges of unauthorized access also could leave journalists, whistleblowers, and cybersecurity professionals vulnerable to arbitrary punishment. The LRC subcommittee proposes that one could be accused of a crime regardless of whether the device or data could be used to commit a cyber-dependent offense.<sup>44</sup> The consultation’s recommended sentencing for most offenses is a maximum of 14 years of imprisonment, but violators could face life imprisonment in some cases of vaguely defined physical harm.<sup>45</sup>

### ***Signs of Stronger Synchronization between the HKSAR and Chinese Central Government***

John Lee’s ascendance to chief executive portends stronger policy coordination and governance between his Administration and authorities in Beijing. On his first day in office, Lee visited the heads of Beijing’s Liaison Office along with heads of the offices for National Security, the Ministry of Foreign Affairs, and the People’s Liberation Army (PLA) Garrison in Hong Kong.<sup>46</sup> General Secretary Xi extolled Chief Executive Lee as a “firm patriot” and conveyed the central government’s full endorsement of his leadership.<sup>47</sup> In his July 1 speech delivered for the 25th anniversary of the handover

\*Human rights groups contend that vague language in Russia’s resolution, Countering the Use of Information and Communications Technologies for Criminal Purposes, could enable criminalizing any online behavior authoritarian regimes dislike, including ordinary exercise of free speech. The resolution was adopted in December 2019, and the ad hoc group held its first meeting in February–March 2022 following a May 2021 agreement among UN members to negotiate on details of the proposed new convention. During the May 2021 meeting, many member states—including the United States, the UK, Brazil, and various members of the EU—had considerable reservations about the text. The UK proposed an amendment for the inclusion of other nongovernmental stakeholders in shaping the text, and Brazil proposed another advocating for a two-thirds majority approval for any substantive decision of the ad hoc committee. China opposed both amendments, though both were ultimately accepted. The Law Reform Commission Cybercrime Subcommittee noted that the ad hoc group’s “categorization and terminology [regarding cybercrime] may conceivably become authoritative in time.” Law Reform Commission of Hong Kong, *Consultation Paper on Cyber-Dependent Crimes and Jurisdictional Issues Published (July 2022)*, July 20, 2022, 15; Association for Progressive Communications, “Open Letter to UN General Assembly: Proposed International Convention on Cybercrime Poses a Threat to Human Rights Online,” December 17, 2021; UN Office on Drugs and Crime, “Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes”; United Nations, “General Assembly Adopts Resolution Outlining Terms for Negotiating Cybercrime Treaty amid Concerns over ‘Rushed’ Vote at Expense of Further Consultations,” May 26, 2021.

of Hong Kong, Xi declared that Hong Kong was transitioning “from chaos to governance” and placed great emphasis on how the territory would “share together with fellow compatriots of the motherland the glory of greater rejuvenation of the Chinese nation.”<sup>48</sup> Xi’s remarks signal the CCP’s faith in Chief Executive Lee’s ability to fully (and to some degree, forcefully) comply with Beijing’s goals under the “one country, two systems” framework and bring Hong Kong closer to the Mainland through Chinese-style rule by law.<sup>\*49</sup>

### **Chief Executive Lee’s Executive Council: Key Leaders in Beijing’s Crackdown**

On June 19, Chief Executive Lee revealed the 21 members of his Executive Council (ExCo), the advisory body of top-tier team government officials and the “organ for assisting the Chief Executive in policy-making.”<sup>50</sup> Including Chief Executive Lee, four senior officials in the Beijing-approved cabinet are currently under U.S. sanctions for their role in curbing Hong Kong’s freedoms under the National Security Law.<sup>†51</sup> Many members of Chief Executive Lee’s cabinet also formerly served as security or disciplinary service officials.<sup>52</sup> As political commentator Sonny Lo explains, “Overall, the security personnel play a crucial role in this cabinet which is unprecedented in Hong Kong’s political history.... It shows the priority assigned by the central government to national security in Hong Kong.”<sup>53</sup> China’s State Council unanimously approved Chief Executive Lee’s cabinet selections on June 19, with Xi swearing the new Administration into office on July 1.<sup>54</sup>

As expected, the newly appointed officials are some of the staunchest national security hardliners, and many have strong connections to the Mainland, signaling tighter coordination with Beijing in the near future. Notable individuals include:

- **Eric Chan Kwok-ki, Chief Secretary:** Then Chief Executive Lam’s head of office and immigration chief between 2011 and 2016, Mr. Chan would frequently accompany Lam to meetings with CCP officials in Beijing. Due to his experience liaising with Beijing as chief secretary and similarly throughout his 35-year tenure in Hong Kong’s Immigration Department, Mr. Chan is widely considered “a trusted intermediary to Beijing” among observers.<sup>55</sup> Analysts point out the former immigration chief and top aide’s close relationships with mainland officials as key assets to the Lee Administration’s ambitions to bring Hong Kong more solidly into Beijing’s orbit.<sup>56</sup>

\*The Chinese term *fazhi* (法治) can be translated into English as “rule of law,” a political philosophy that lifts law above politics and controls the unlimited exercise of power by a supreme lawmaking authority of the land. Experts have debated, however, whether Chinese leaders intended for *fazhi* to mean “rule by law,” which suggests the governing authority is itself above the law and can create and implement laws at will, though it interferes with the people’s freedom. Linda Chelan Li et al., “The ‘Rule of Law’ Policy in Guangdong: Continuity or Departure? Meaning, Significance and Processes,” *China Quarterly* (March 2000): 199–220.

†These include: (1) John Lee, Chief Executive; (2) Chris Tang, Secretary for Security; (3) Eric Tsang, Mainland Affairs Minister; and (4) Eric Chan, newly appointed Chief Secretary for Administration.

### Chief Executive Lee's Executive Council: Key Leaders in Beijing's Crackdown—*Continued*

- **Paul Lam Ting-kwok, Secretary for Justice:** The former head of Hong Kong's Bar Association and a “veteran commercial barrister,” Mr. Lam was a member of the Independent Police Complaints Council and a watchdog for the police force, and he played an active role in cracking down on the 2019 prodemocracy protests.<sup>57</sup> He has also served as a deputy judge of the High Court of Hong Kong since 2015.<sup>58</sup> Experts predict he will continue to prosecute opposition activists and protesters with the same intensity as his predecessor, Teresa Cheng, who was sanctioned in August 2020 for her role in the 2019 crackdown.<sup>59</sup>

#### Nonofficial Members

The ExCo also features 16 nonofficial members, who toe the party line just as fervently. Notable examples include:\*

- **Regina Ip Lau Suk-ye (Convenor):** A veteran Hong Kong lawmaker, Ms. Ip was appointed as the convenor of Chief Executive Lee's de facto cabinet.<sup>60</sup> At 71, Ms. Ip's appointment makes her the first-ever woman convenor of Hong Kong's ExCo.<sup>61</sup> From 1998 to 2003, she served as Hong Kong's secretary for security before stepping down after 500,000 protesters took to the streets in opposition to a then proposed Hong Kong national security bill introduced under article 23 of the Basic Law.<sup>62</sup> She was recently quoted in an interview with the *Guardian* as saying that former opposition members of parliament “have themselves to blame,” and she feels authorities in Beijing were too lenient over the years in allowing them to cause havoc.”<sup>63</sup>
- **Arthur Li Kwok-cheung:** A doctor and “confrontational” politician, Dr. Li is known for his dictatorial and ruthless leadership style, which earned him the moniker “King Arthur” and “the Tsar.”<sup>64</sup> Among other things, while he was chairman of the University of Hong Kong's governing council, Dr. Li was responsible for overseeing the removal of the Pillar of Shame—a monument commemorating those who died in the Tiananmen Square massacre on June 4, 1989—as part of a wider effort to erase memory of the tragedy throughout Hong Kong.<sup>†</sup><sup>65</sup> He was also cited as calling the statue a “lie”

\*A nonofficial member of Hong Kong's ExCo or LegCo does not hold government office but is appointed to advise and assist the chief executive or president of the LegCo, respectively. Both designations hold full membership in their respective councils. Steve Tsang, *A Documentary History of Hong Kong Government and Politics*, University of Hong Kong: Libraries, Hong Kong University Press, 1995.

†The Pillar of Shame was first erected in Hong Kong's Victoria Park in 1997 to commemorate the eighth anniversary of the 1989 Tiananmen Square protests. The sculptor, Danish artist Jens Galschiøt, stated that the Pillar of Shame “marks grave abuses against humanity” and serves as a symbol to “remind people of a shameful event which must never recur.” Given its symbolism, the sculpture remained a polarizing image over the years and was the site of scuffles between local students and police shortly after it was erected in Victoria Park. Hong Kong University's student unions held a referendum in 1998 to keep the statue housed at the university, where it remained until its dismantlement in the dead of night on December 22, 2021. The removal of the sculpture signals the dramatic series of political changes in Hong Kong and illustrates the extensive efforts of local authorities to curb freedom of expression.

### Chief Executive Lee's Executive Council: Key Leaders in Beijing's Crackdown—*Continued*

and a “sham,” denying it was created to commemorate the 1989 massacre.<sup>66</sup>

- **Martin Liao:** Mr. Liao is a barrister and LegCo member who serves as one of Hong Kong's delegates to China's National People's Congress. Quoted by Reuters as calling Hongkongers “politically immature,” Mr. Liao was an avid supporter of Beijing's overhaul of Hong Kong's electoral system in March 2021. By imposing restrictions on candidates the CCP deems disloyal, the revamped system ultimately eliminated prodemocracy opposition from parliamentary elections.<sup>67</sup>

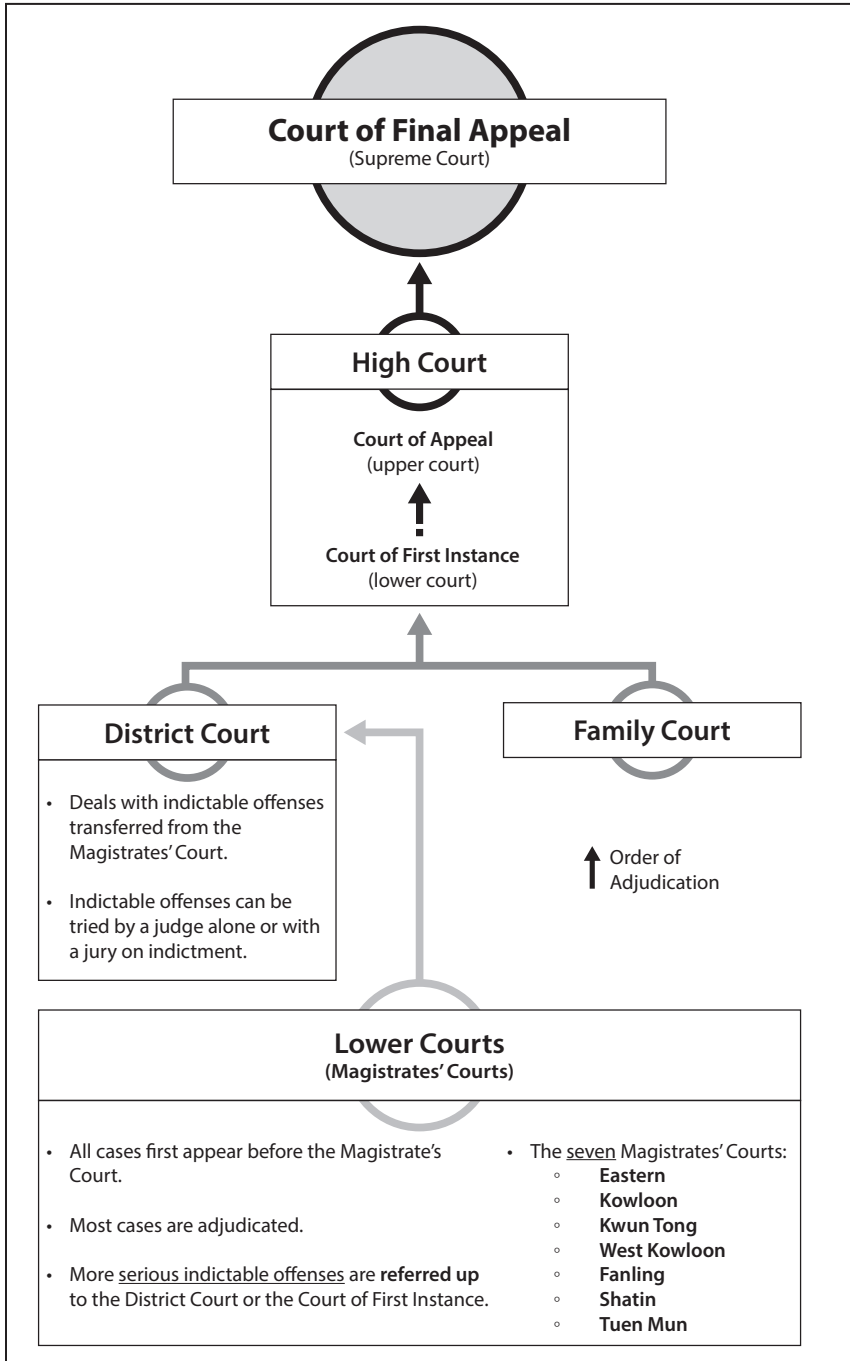
### *Remaining Judicial Independence and Rule of Law Hang in the Balance*

Hong Kong's once highly respected judiciary continues to crumble as more foreign judges resign from serving on the territory's top judicial body, the Court of Final Appeal. The current Court of Appeal consists of 18 members: the Honorable Chief Justice Andrew Cheung Kui-nung, three permanent judges, and 14 non-permanent judges, ten of whom hail from other common law jurisdictions (see Figure 1).<sup>68</sup> On March 30, then British Foreign Secretary Liz Truss announced the recall of two of the court's senior British judges with immediate effect, stating that the situation in Hong Kong had “reached a tipping point where it [was] no longer tenable for British judges to sit on Hong Kong's leading court.”<sup>69</sup> She cited further concerns that their continued presence would “risk legitimizing oppression.”<sup>70</sup> One of the departing judges, UK Supreme Court President Lord Robert Reed, stated in his resignation that the National Security Law generated an environment where judges of the Supreme Court could no longer “continue to sit in Hong Kong without appearing to endorse an administration which has departed from values of political freedom, and freedom of expression, to which the Justices of the Supreme Court are deeply committed.”<sup>71</sup>

Kris Cheng, “The Pillar of Shame: The History of Hong Kong's Harrowing Tribute to the Tiananmen Massacre Victims,” *Hong Kong Free Press*, May 5, 2018; Shibani Mahtani, “Hong Kong's ‘Pillar of Shame’ Sculpture for Tiananmen Victims Faces Removal,” *Washington Post*, October 13, 2021; Galleri Galschiøt, “Pillar of Shame,” July 19, 2022; Shibani Mahtani, David Crawshaw, and Theodora Yu, “Hong Kong Tears Down ‘Pillar of Shame’ Sculpture Honoring Tiananmen Victims,” *Washington Post*, December 22, 2021.

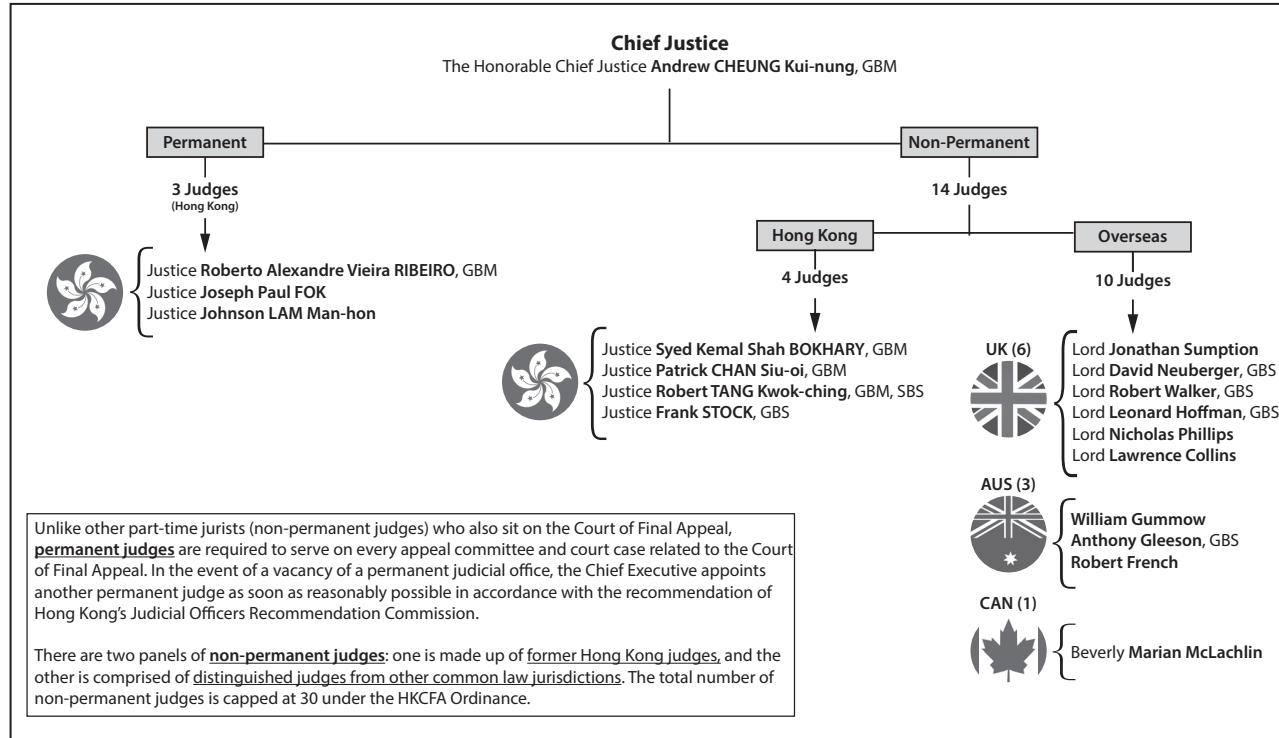
\*These foreign judges include: six British justices (Lord Hoffmann, Lord Neuberger of Abbotsbury, Lord Walker of Gestingthorpe, Lord Collins of Mapesbury, Lord Phillips of Worth Matravers, Lord Sumption); three Australian justices (Justice Murray Gleeson, Justice William Gummow, Justice Robert French); and one Canadian, Madam Justice Beverley McLachlin.

**Figure 1: Organizational Structure of Hong Kong's Judiciary**



Source: The Hong Kong Court of Final Appeal.

**Figure 2: Organization of the Hong Kong Court of Final Appeal**



Source: The Hong Kong Court of Final Appeal.

Note: There are presently 18 justices serving on the Cheung Court: the Chief Justice, three permanent judges, and 14 non-permanent judges (ten of whom come from other common law jurisdictions).

Pro-Beijing legal officials in Hong Kong condemned the move as political interference and prioritizing politics over the law, stating that the departure of these two judges would “not in any way affect [Hong Kong’s] judicial independence.”<sup>72</sup> On March 30, Hong Kong authorities issued a statement alleging that the resignations showed “clear evidence of external political pressure on judges of an otherwise independent judiciary,” adding that such actions would “not be tolerated and will not happen in Hong Kong.”<sup>73</sup> Then Chief Executive Lam also slammed the UK government’s decision to recall the judges, stating that Hong Kong must “vehemently refute any unfounded allegations” that the resignations were associated with the expansion of the National Security Law.<sup>74</sup> The Hong Kong government’s response to the departing judges reveals its heightened sensitivity to any cracks in the veneer of its judicial independence.

### **Potential Shifts in Arbitration Trends**

Hong Kong has long been viewed as a top commercial arbitration seat, often competing directly with Singapore to attract the global companies and professional services that accompany this designation. With the impact of the national security apparatus growing wider, some companies have been looking to Singapore as an alternative seat of arbitration. A 2021 Queen Mary University of London survey reported that of the more than 90 seats for international arbitration worldwide, Hong Kong ranked third around the globe for most preferred arbitration seat, while Singapore ranked first in a tie with London.<sup>75</sup> In 2021, the Hong Kong International Arbitration Center handled 277 arbitration cases across 41 jurisdictions, while the Singapore International Arbitration Center saw 469 case filings from 64 jurisdictions.<sup>76</sup> Hong Kong continues to be a popular destination for disputes related to mainland China, which has been motivated by Hong Kong’s historically strong rule of law, though that rule of law is less certain given recent systemic changes to Hong Kong’s laws, legislature, and courts.<sup>77</sup>

Trends in the future of arbitration are slow to emerge and difficult to predict, as knowledge of arbitration agreements or changes to relevant contracts are not made public. Hong Kong in particular may continue to have a direct appeal due to its relationship with the mainland Chinese arbitration system. Since 2000, both governments have observed the Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the HKSAR. Under the arrangement, mainland and Hong Kong courts agreed to recognize and enforce arbitral awards made in the other’s jurisdiction. The arbitration claimant may turn to the other court if the arbitration respondent is registered or retains property in its jurisdiction.<sup>78</sup> In May 2021, Hong Kong and mainland China began implementing clarifying changes to the arrangement to allow parties to pursue enforcement in both a mainland and territorial court at the same time, limited to the award amount.<sup>79</sup> Hong Kong courts are still demonstrating some decision-making capacity that is independent of mainland Chinese courts. For example, in February 2022 a Hong Kong court



### Potential Shifts in Arbitration Trends—*Continued*

refused to enforce a mainland Chinese arbitration award, reasoning that the arbitration agreement was not valid under Hong Kong's law, the arbitration itself was not noticed properly, and any enforcement of the arbitral award "would be contrary to the policy of Hong Kong."\*<sup>80</sup>

Balancing political sensitivities with commercial interests will be increasingly difficult for firms, particularly those that provide professional services. More legal professionals, particularly those that might serve nonbusiness clients, are also departing Hong Kong in the face of an eroding rule of law.<sup>81</sup> Even foreign law firms primarily covering business and commercial clients have found the compromise between political pressures increasingly difficult, as the example of global law firm Mayer Brown demonstrates. In October 2021, the firm became a subject of controversy after it represented the University of Hong Kong in its bid to remove the Pillar of Shame, a famed sculpture commemorating the 1989 Tiananmen Massacre.<sup>82</sup> Mayer Brown later declared it would no longer represent the university on the case following calls from democracy activists, but it immediately faced criticism from the Chinese and Hong Kong governments, with former Chief Executive CY Leung calling for a "China-wide boycott" of the firm.<sup>83</sup> In November 2021, the Chicago-founded firm nonetheless expanded its Hong Kong operations to capitalize on growth of the investing environment.<sup>84</sup>

The influx of mainland law firms as well as demand for mainland expertise is also narrowing the space for foreign law firms and legal professionals as Hong Kong shifts more toward a focus on the Mainland.<sup>85</sup> As some lawyers have left in uncertainty over the National Security Law or the knowledge that they will struggle to continue their practice, some firms are also building out their brand and focusing on hiring professionals trained in China. Norton Rose Fulbright, a British-American firm, is focused on this kind of "localization" and coordination between its Hong Kong and Shanghai branches.<sup>86</sup> U.S. law firms have either been reorienting their Asia practice toward Southeast Asia or reducing their physical presence in the region as a whole. Texas-founded Baker Botts closed its Hong Kong office at the end of 2021 and will continue to serve Asian clients without a physical presence in the region.<sup>87</sup>

### Fusing So-Called Patriotism with Education

Chinese policy has targeted Hong Kong's education system as part of Beijing's ambitious plan to discipline "rebellious youth" in the wake of the intense demonstrations in 2019. Inculcating the

\*The case centered around a Hong Kong timber company that allegedly failed to deliver the sale of marble to a mainland company. A mainland arbitration proceeding ordered the Hong Kong company to pay an amount less than a third of the total debt owed. The mainland company then petitioned to recover the remainder of the debt owed with the Hong Kong court, but the court found both that the original arbitration proceedings were not a full trial of merits and that the original contract had several inadequacies. Glenn Haley and Horace Pang, "Recent Case Where a Hong Kong Court Set Aside an Arbitral Award—Guangdong Shunde Zhanwei Trading Company Ltd. (廣東順德展燁商貿有限公司) v Sun Fung Timber Company Limited [2021] HKCF1 2407," *Bryan, Cave, Leighton, and Paisner*, February 15, 2022. Translation.

CCP's distorted views of history and truth under the guise of patriotism and national pride through a combination of educational reforms and scare tactics (e.g., firing "bad apple" educators without merit) is a keystone of the Hong Kong government's long-term approach to curbing opposition.\*<sup>88</sup> Educators from all levels continue to resign, citing concerns regarding self-censorship and the constant threat of incarceration created by a lack of clear guidelines on what ideas or teaching materials may violate the National Security Law. Librarians have removed books of prodemocracy figures from circulation, while recent changes to the national curriculum take a more revisionist approach to rewrite fact and history in a way that inculcates China's distorted views on national development, patriotism, and good citizenship under the National Security Law.<sup>89</sup> The requirement for government employees, including teachers, to swear allegiance to Hong Kong and the People's Republic of China has also reportedly extended to foreign teachers of English at some local schools, who face dismissal if they refuse to comply.†<sup>90</sup>

### ***China Attempts to Rewrite Hong Kong's History***

Among the most striking developments to the territorial curriculum is the local government's plan to introduce middle school textbooks that erase Hong Kong's former status as a British colony. On June 6, Hong Kong's Education Bureau unveiled the first batch of textbooks for the CCP-backed curriculum on citizenship to be implemented in September 2022.<sup>91</sup> At least four versions of the new textbooks reportedly state: "While Hong Kong was occupied by the British following the Opium War, it remained Chinese territory."<sup>92</sup> The books are part of Hong Kong's new "Citizenship and Social Development" course, which replaced a liberal studies program that was meant to teach critical thinking but which pro-Beijing authorities heavily condemned for allegedly radicalizing youth and inciting protests against the government in 2019.<sup>93</sup>

### ***Teaching "Citizen Values" to Foster a Collective Chinese Identity***

The newly approved syllabus divides the citizenship curriculum into three sections: Hong Kong under "One Country, Two Systems"; China since Reform and Opening Up; and the Interconnected Contemporary World.<sup>94</sup> An additional component of the curriculum will also require students to participate in a study tour to the Chinese Mainland.<sup>95</sup> Key learning points relate to the history of Hong Kong's return to China, the legal basis of the "one country, two systems" constitutional principle and the Basic Law, and the importance of safeguarding national security.<sup>96</sup> The Chinese nationalist tabloid

\*At a press conference in October 2020, then Chief Executive Lam vowed to "weed out the bad apples" from the teaching profession after the first (of many) teachers was terminated and struck off the territory's professional register for allegedly "promoting Hong Kong independence" in a classroom. Chan Ho-him and Chris Lau, "Hong Kong Leader Carrie Lam Pledges to Remove 'Bad Apples' from Profession after Teacher Struck Off for 'Promoting Independence,'" *South China Morning Post*, October 6, 2020.

†Several requirements were gradually rolled out following the passage of the National Security Law in 2020, including that government employees take an oath or declare allegiance to Hong Kong and be accountable to it and that they "be responsible to the government of Hong Kong." Observers have expressed concerns over the requirement for foreigners to make promissory oaths of allegiance, with some noting that such a requirement holds "potential for conflicting legal and moral obligations to arise." Philip Dykes, "Making Foreigners Pledge Allegiance to Hong Kong May Be Problematic, but Probably Won't Cost Their Citizenship," *Hong Kong Free Press*, June 19, 2022.

*Global Times* lauded the forthcoming curriculum, proclaiming that teachers would no longer be able to “convey poisonous political views detrimental to national security in teaching” under the newly formulated textbooks and detailed syllabus.<sup>97</sup>

Further shifts in Hong Kong’s education system also include de-prioritizing the use of Cantonese in schools and promoting the use of Mandarin. A June 2021 report from China’s Ministry of Education recommended that Hong Kong’s government “clarify within the law” the status of Mandarin and simplified Chinese script.<sup>98</sup> The report also recommended that Mandarin education be integrated into the Hong Kong testing system at all levels.<sup>99</sup> Former Hong Kong Public Opinion Research Institute (PORI) Deputy Director and Chief Executive Officer Chung Kim-Wah questioned whether the Ministry of Education’s report was a sign that traditional characters might eventually lose their legal status, a particularly significant prospect given that all of Hong Kong’s laws are currently written in traditional characters.<sup>100</sup> Hong Kong’s Secretary for Education, Christine Choi Yuk-lin, has publicly advocated for more Mandarin education in schools and called the inability to speak the language a disadvantage.<sup>101</sup> Hong Kong’s primary and secondary schools already have Mandarin options for Chinese instruction, but Mandarin is not a required component for university-level education.<sup>102</sup> Campaigns to impose or require more Mandarin in Hong Kong have met resistance in the past, given that the majority of the territory’s population speaks Cantonese as their native tongue.<sup>103</sup> According to Hong Kong’s 2021 population census, 88.2 percent of the population spoke Cantonese at home and 93.7 percent of people were able to speak Cantonese.<sup>104</sup> Only 2.3 percent of the territory spoke Mandarin at home.<sup>105</sup> Ability to speak Mandarin in Hong Kong has grown gradually over the last ten years, with 54.2 percent of Hong Kongers able to speak Mandarin in 2021, a 7.4 percent increase since 2011.<sup>106</sup> This trend is clearly driven by increased migration and some conviction that professionals will need both languages to operate across borders.

### ***More Educators Exit as Strain of Uncertainty Takes Its Toll***

Faced with growing pressure to self-censor political opinions both inside and outside the classroom, many educators in Hong Kong are leaving the profession.<sup>107</sup> The Hong Kong Association of the Heads of Secondary Schools raised alarms in July 2021 and again in May 2022 when it published survey results revealing that teacher departures for 2020–2021 were double the number from the previous year.\*<sup>108</sup> Teacher departures had been at a stable rate as far back as the 2017–2018 academic year.<sup>109</sup> The association described the massive departure of teachers as a “ferocious tide,” and unlike in the past, this exodus could compromise Hong Kong’s education system.†<sup>110</sup> The Hong Kong Education Bureau has denied these con-

\*The average school lost 7.1 teachers in 2020–2021 compared to 3.9 in 2019–2020 and 4.2 in 2018–2019, respectively. Ezra Cheung, “‘Ferocious Tide’ of Educators Leaving Hong Kong, Association of Secondary School Heads Warns,” *South China Morning Post*, May 30, 2022.

†The Hong Kong Association of the Heads of Secondary Schools pointed to several signs that educators were signaling a determination to leave Hong Kong for good, including the fact that teachers were “taking their whole family with them” and also closing their retirement accounts. One headmaster told Reuters that the territory’s education environment and atmosphere “have changed quite drastically in the past two years,” adding that he “expects the ‘big burden’ of emi-

cerns and offered assurance that the National Security Law has not impacted the territory's education sector or the quality of teaching.<sup>111</sup> The bureau has also claimed that “teachers might have quit the profession to pursue other jobs or studies, or for other personal reasons.”<sup>112</sup> A reported 4,050 teachers (roughly 7.6 percent of the educator workforce) left Hong Kong's local school system during the 2021–2022 academic year, with many expressing that they felt “disillusioned and threatened” under the territory's increasingly authoritarian turn.<sup>113</sup> The number of departures, according to data cited in the *South China Morning Post*, amounts to a 70 percent increase over the previous academic year.<sup>114</sup> One teacher, who emigrated to Britain in January 2021, captured this sentiment in an interview with Reuters: “I do not want to teach my students values I do not believe in,” she said, “I do not want to be in danger.”<sup>115</sup> In the words of another teacher lamenting censorship policing in the classroom, “This kind of Cultural Revolution-like snitching culture is toxic, and deters us teachers from talking to our students heart-to-heart.... All this dodging and hiding is but for a slight likelihood of survival.”<sup>116</sup>

As schools struggle to cope with disappearing educational capacity under the shadow of the National Security Law, educators have found it increasingly difficult to implement Beijing's sweeping changes to the curriculum, with many citing “unclear” guidelines.<sup>117</sup> Although Hong Kong's Education Bureau released guidelines to incorporate national security education in at least 15 subjects, a survey cited in the *Washington Post* reveals that roughly “80 percent of schools found [the guidelines] ‘hard to implement’ with ‘a lack of understanding’ of the matter.”<sup>118</sup> Adding to the challenges, Hong Kong authorities have refused to make the guidelines public (which includes a list of banned books and other library material) out of national security considerations.<sup>119</sup> For instance, the Hong Kong government asserts that making the list of banned books public “may lead to wide circulation of such library materials with malicious intent by other parties or organizations, and is thus unfavorable to safeguarding of national security.”<sup>120</sup> Consequently, many of Hong Kong's libraries and bookstores are self-censoring by removing additional books out of an overabundance of caution.<sup>121</sup>

### Status of Political Prisoners

The number of political arrests and convictions in Hong Kong has continued to rise at an exponential rate. In the past three years alone, Hong Kong has arrested over 10,000 people for allegedly participating in protests, criticizing the government, and advocating for democracy. A May 2022 report released by the Hong Kong Democracy Council, a Washington-based advocacy group, revealed that these arrests include 1,014 political prisoners, of whom approximately 12 percent were sentenced on National Security Law or sedition-related charges.<sup>122</sup> According to Kong Tsung-gan, an activist and author of several books on what he describes as the “Hong Kong freedom struggle,” political prisoners in Hong Kong are defined as “those imprisoned for their involvement in the massive protests of 2019–2020,

gration to last another two or three years.” Ezra Cheung, “‘Ferocious Tide’ of Educators Leaving Hong Kong, Association of Secondary School Heads Warns,” *South China Morning Post*, May 30, 2022; Sara Cheng, “Hong Kong Teachers Exit under Shadow of Security Law, Schools Scramble to Fill Gaps,” *Reuters*, September 16, 2021.

opposition political figures, and those charged under the so-called national security law imposed by the Communist Party in June 2020.”\*<sup>123</sup> Mr. Kong further explains that the number of political prisoners in Hong Kong also “include[s] both those convicted and sentenced and those on remand awaiting completion of trial.”<sup>124</sup>

According to Brian Leung, executive director of the Hong Kong Democracy Council, Hong Kong’s political prisoner population is one of the fastest growing in the world, rivaling Belarus, Burma (Myanmar), and Cuba.<sup>125</sup> The current total of political prisoners marks a “grim milestone,” according to the Hong Kong Democracy Council. In comparison to June 2019 data, which recorded only 26 political prisoners, the sharp increase raises concerns about the extent to which Hong Kong authorities will prosecute opposition. Among Hong Kong’s political prisoners are civil society leaders, journalists, and former opposition members. Eric Yan-Ho Lai, Hong Kong law fellow at Georgetown Center for Asian Law, adds that individuals involved in “almost all non-violent pro-democracy activities in Hong Kong” are at risk for harsher prosecutions under the national security regime.<sup>126</sup>

### ***Prosecution of Prominent Critics Sends a Stark Warning from Regime***

Recent and ongoing prosecutions of high-profile opposition figures demonstrate the Hong Kong government’s desire to send a clear message to stymie any form of potential dissent. For instance, some political prisoners face continued legal challenges behind bars. In one such case, a Hong Kong judge issued a warrant for national security police to search the phones of prodemocracy media tycoon Jimmy Lai Chee-ying, who was most recently sentenced to 14 months in December 2021 for “incitement to host an unauthorized assembly” in 2020. An open critic of the Chinese regime, Mr. Lai was initially arrested on August 10, 2020, shortly after the imposition of the National Security Law; however, he posted bail on August 12, 2020. His bail was later revoked on December 3, 2020, and he has remained in prison since. The principal magistrate who issued the warrant, Peter Law, stated that there was reasonable suspicion that Mr. Lai’s phones contained “evidence of an offense endangering national security.”<sup>127</sup> Mr. Lai’s legal team filed a petition to halt the execution of the warrant, which is still pending.

Another high-profile case in 2022 was that of former Hong Kong law professor and activist Benny Tai, who was sentenced on May 24 to ten months in prison on four counts of alleged illegal election spending.<sup>128</sup> Mr. Tai was accused of spending \$32,241 (HKD

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\*In its May 2022 report, the Hong Kong Democracy Council provides a more detailed definition, stating that a political prisoner is anyone who is incarcerated, whether they are remanded, placed in juvenile detention, or otherwise committed, for: (1) “speech or action related to their expression of political belief or opinion, including taking part in demonstrations, uttering political slogans, publishing articles and videos, and using social media”; (2) “being a member of the organized political opposition, including pro-democracy political parties, protest groups and other non-governmental organizations espousing explicitly pro-democracy views”; (3) “on explicitly political charges such as those under the ‘national security law’ (secession, subversion, collusion with foreign forces, and terrorism) as well as sedition”; and (3) “engaging in activities protected as basic human rights under international law and regarded as lawful in democratic, rights-respecting societies but perceived as a political threat by the regime, such as publishing a newspaper or running a non-governmental organization.” Hong Kong Democracy Council, “Hong Kong Reaches a Grim Milestone: 1,000 Political Prisoners,” May 2022, 9–10.

253,000) on newspaper advertisements that endorsed candidates for a legislative election in 2016; prosecutors alleged the ads violated election laws, as Mr. Tai was not an electoral candidate, and that the endorsements could improperly influence the election by intentionally increasing the number of prodemocracy legislators.<sup>129</sup>

### ***National Security Cases Tried under New Proceedings***

National security defendants are tried under new criminal procedures that stray from Hong Kong's common law tradition. Prior to the enactment of the National Security Law, cases of civil disobedience were traditionally referred to the magistrate's court, the lowest rung of Hong Kong's criminal justice system, where magistrates are restricted to imposing sentences of no more than two years. Under the new law, however, such cases are now regularly sent up to the district court or High Court, which can impose terms of as long as seven years and life imprisonment, respectively. William Nee, research and advocacy coordinator of Chinese Human Rights Defenders, explained in an interview with Al Jazeera that defendants who are tried under the National Security Law are heard before a panel of three judges selected as a jury by Hong Kong's chief executive.<sup>130</sup> Al Jazeera further reports that "unlike other criminal cases... [these] defendants are almost exclusively denied bail while legal proceedings continue—often for months."<sup>131</sup>

### ***Disproportionate Sentences for Minor Offenses***

Under the national security regime, common charges protesters face are for rioting and participation in illegal assemblies, whereas the more serious charges of incitement and organizing unlawful assemblies are handed down to those accused of leading any form of what Hong Kong authorities deem civil unrest.<sup>132</sup> More concerning under the current legal environment, however, is that sentences have been harsher irrespective of age and past criminal record. Steven Vines, a longtime Hong Kong journalist now residing in the UK, stated in an interview with Al Jazeera that "people with no criminal convictions whatsoever are being given custodial sentences for things like unlawful assembly, which in the past would've incurred a fine, nothing more. People who are being convicted of more serious offenses are getting sentences which are akin to armed robbers with a criminal record."<sup>133</sup>

### ***Convictions Not Limited to the National Security Law***

While many defendants have been prosecuted under National Security Law-specific charges, which target crimes of subversion, sedition, terrorism, and "collusion with foreign forces," some are being sentenced under recently revived colonial-era ordinances for "seditious" or "secessionist" speech. In one such case, Tam Tak-chi, a prodemocracy activist and former vice chairperson of Hong Kong's People Power democratic political party, was convicted in March 2022 under the colonial-era anti-sedition law by one of the national security judges handpicked by Beijing.<sup>134</sup> The first defendant to stand trial for alleged sedition charges since Hong Kong's handover from Britain to China in 1997, Mr. Tam was found guilty of 11 such charges: seven counts of uttering seditious words and one count

each of inciting others to knowingly take part in an unauthorized assembly, disorderly conduct, holding or convening an unauthorized assembly, and refusing or willfully neglecting to obey an order given by an authorized officer.\*<sup>135</sup>

In his verdict, Judge Stanley Chan Kwong-chi sentenced Mr. Tam to 40 months of prison and a fine of \$638 (HKD 5,000), accusing Tam of “bringing the government, police, and people friendly to Beijing into disrepute” during the 2019–2020 protests as part of a “selfish scheme to further his political career.”<sup>136</sup> Maya Wang, a senior China researcher at Human Rights Watch, stated that Mr. Tam’s case “exemplifies the dizzying speed at which Hong Kong’s freedoms are being eroded,” adding that Hong Kong, “once known as Asia’s protest capital... is now sentencing people to years in prison simply for shouting slogans.”<sup>137</sup> Similarly, on August 9 Hong Kong police arrested two Facebook page administrators whom authorities accused of “repeatedly posting seditious posts with the intent to arouse or deepen hatred and hostility among residents of different classes in Hong Kong on the social media page.”<sup>138</sup>

## Government Imposes Patriotism before Faith

Religious leaders in Hong Kong are increasingly directed toward a CCP-preferred model of leadership that prioritizes patriotism over faith.<sup>139</sup> Reverend Peter Koon, an Anglican priest in Hong Kong’s pro-Beijing legislature, argued for more government oversight of churches in Hong Kong.<sup>140</sup> According to the nationalist newspaper *Ta Kung Pao*, Reverend Koon emphasized extending a Chinese Temple Ordinance (which governs Buddhist and Taoist monasteries) to churches to increase supervision of church activities and recommended designating an appointed official to oversee all religious activity in the territory.† Religious organizations have already endured greater suspicion as the government has targeted charities and nonprofits that may be opposed to the National Security Law, launching investigations and in some cases removing their tax-exempt status.<sup>141</sup> Religious organizations have also looked to legally and financially separate different parts of their operations—such as schools or local company registrations—from the headquarters. These moves may help reduce risks if the government were to introduce prohibitions on religious organizations or freeze assets.<sup>142</sup>

Ties to opposition and prodemocracy movements in Hong Kong have placed many Christian religious groups under intense gov-

\*Several differences exist between the Sedition Law, which was last amended in the 1970s when Hong Kong was still under British colonial rule, and the Beijing-imposed National Security Law of 2020. Falling under the Crimes Ordinance, the Sedition Law criminalizes incitement to violence, disaffection, and other offenses against the government, whereas the National Security Law addresses subversion, succession, conspiring with foreign forces, and acts of terrorism (which *Hong Kong Free Press* explains can be “broadly defined to include disruption to transport and other infrastructure”). Candice Chau, “Hong Kong Democrat and DJ Tam Tak-chi Jailed for 40 Months over 11 Charges, Including ‘Uttering Seditious Words,’” *Hong Kong Free Press*, April 20, 2022.

†Dating back to 1928, the Chinese Temple Ordinance mandates a heavy burden of inspection, audit, registration, and other state-imposed controls over Buddhist and Taoist monasteries. *Chinese Temples Ordinance* (Chapter 153); *Ta Kung Pao*, “Keeping Pace with the Times: Reverend Peter Koon Supports Reform: The ‘Chinese Temples Ordinance’ Is Not Equal,” January 27, 2022. Translation.

ernment scrutiny, making religious leaders susceptible to either extensive self-censorship or arrest.\*<sup>143</sup> In early 2022, *Ta Kung Pao* accused religious leaders, teachers, and schools of inciting rioting and participation in the 2019 demonstrations against the extradition law.<sup>144</sup> In March 2022, the Vatican's unofficial representative in Hong Kong, Monsignor Javier Herrera-Corona, reportedly delivered a stark warning to the territory's 50 Catholic religious orders before he closed his six-year posting, saying that "the freedoms they enjoyed for decades were over" and that they should "be prepared."<sup>145</sup> As political topics and social issues have become more sensitive, pastors have chosen to stop addressing any such subjects in sermons, and churches are coming up with new processes to screen for outspoken or potentially problematic pastors.<sup>146</sup>

### ***Prominent Cleric's Arrest Signals Intensified Efforts to Stifle Opposition***

In May 2022, Hong Kong's national security police arrested 90-year-old Cardinal Joseph Zen Ze-kui and four others on charges of "collusion with foreign forces"; they were later released on bail.<sup>147</sup> They were arrested due to their roles as trustees of the 612 Humanitarian Relief Fund, which provided legal, medical, psychological, and emergency financial support to prodemocracy protesters and jailed activists during the 2019 antigovernment demonstrations.†<sup>148</sup> A former bishop of Hong Kong and one of the most senior Catholic clerics in Asia, Cardinal Zen has been outspoken on issues relating to human rights, political freedom, and religious liberty. His staunch support of Hong Kong's prodemocracy movement and open criticism of the CCP for allegedly persecuting religious communities in China has drawn the ire of both pro-Beijing figures in Hong Kong and the Chinese government.<sup>149</sup>

In response to public criticism over the arrest, Chief Executive Lee, who claims to be Catholic himself, dismissed the idea that religious freedom in Hong Kong is threatened. He emphasized that anyone of any background who "has breached the law" must answer "in accordance with the law."<sup>150</sup> Cardinal Charles Maung Bo, a Burmese Catholic prelate and president of the Federation of Asian Bishops Conference, rebutted the argument in a statement published on his online advocacy forum Global Prayer for China, stating, "In any system where the rule of law exists, providing assistance to help people facing prosecution meet their legal fees is a proper and accepted right.... How can it be a crime to help accused persons have legal defense and representation?"<sup>151</sup>

With the arrest of Cardinal Zen and other trustees of the 612 Humanitarian Relief Fund, Beijing further demonstrates its repressive strategy to squelch any form of dissent by eliminating the freedom

\*Of Hong Kong citizens, 6.7 percent identify as Protestant, while 5.3 percent identify as Roman Catholic. CIA World Factbook, *Hong Kong—Religions*, 2022.

†The other arrests included: (1) Margaret Ng, senior barrister; (2) Denise Ho, activist and pop singer; (3) Cyd Ho, former lawmaker; and (4) Hui Po-keung, former academic. In August 2021, the 612 Fund announced its closure following a request by the national security police to provide operational records, including the names of donors and beneficiaries. 612fund.hk, "612 Humanitarian Relief Fund," accessed June 22, 2022; *Catholic News Agency*, "Former Hong Kong Bishop Cardinal Zen Arrested," May 11, 2022.



of association once protected under the Basic Law.\*<sup>152</sup> In his online statement condemning Zen's arrest, Cardinal Bo expressed despair over the impending elimination of religious freedom and deteriorating human rights situation in Hong Kong, saying, "Hong Kong used to be one of Asia's freest and most open cities. Today, it has been transformed into a police state. Freedom of expression, freedom of the press, freedom of assembly and association, and academic freedom have all been dismantled."<sup>153</sup>

Cardinal Zen's arrest also signals Hong Kong authorities' continued abuse of the law as a means to justify their alleged national security needs. As evidence of this trend, Gina Goh, regional manager for Southeast Asia at Washington-based NGO International Christian Concern, points to the increasing number of freedom fighters being arrested and imprisoned on fabricated charges.<sup>154</sup> She states, "If a 90-year-old revered cardinal could not even be spared [prosecution], it indicates the legal system will continue to be abused by the HKSAR government to nab anyone in Hong Kong they find to be a threat to the city."<sup>155</sup>

### ***Guilty by Association: Former Trade Union Leaders Targeted***

Other civil society leaders continue to be intimidated and harassed over their past affiliations, lending credence to the notion that the Hong Kong government is trying to discourage seeds of dissent through sustained pressure on influential opposition figures. For instance, Hong Kong's national security police investigated four former officials of the Hong Kong Confederation of Trade Unions, a now-defunct prodemocracy trade union.†<sup>156</sup>

### *UN Report on International Covenant on Civil and Political Rights*

Combined with the Hong Kong Bill of Rights Ordinance, article 39 of the Basic Law makes Hong Kong a party to the International Covenant on Civil and Political Rights (ICCPR), a major human rights treaty adopted by the UN in 1966 that protects civil and political rights.‡ The Human Rights Committee,§ which monitors the implementation of the treaty, expressed concern in July 2022 over the growing number of National Security Law and sedition-related actions against civil society groups.<sup>157</sup> The report details 24 alleged abuses and includes a section on the

\*Article 27 of Hong Kong's Basic Law states: "Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike." The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. Hong Kong: Joint Pub. (H.K.), 1991.

†These include: (1) Joe Wong Nai-yuen, former Hong Kong Confederation of Trade chair; (2) Leo Tang Kin-wah, former vice-chair; (3) Chung Chung-fai, ex-treasurer; and (4) Lee Cheuk-yan, former general secretary who is currently serving time in prison. Peter Lee, "Hong Kong National Security Police Quiz Ex-Leaders of Disbanded Pro-Democracy Union—Reports," *Hong Kong Free Press*, March 31, 2022.

‡Enacted in 1991, the Hong Kong Bill of Rights Ordinance enshrines the International Covenant on Civil and Political Rights into Hong Kong law; additionally, it served as the basis for Hong Kong's constitutional rights and freedoms prior to the handover in 1997. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. Hong Kong: Joint Pub. (H.K.), 1991.

§The Human Rights Committee, often referred to as the CCPR (Committee on Civil and Political Rights) to avoid confusion with the UN Human Rights Council (HRC), is an independent body of experts established by the International Covenant on Civil and Political Rights (ICCPR) to monitor the treaty's implementation. The Human Rights Council is composed of states and was established by a resolution of the UN General Assembly and the UN Charter with the mandate to discuss global human rights concerns at all levels.

restrictions on freedom of association imposed by the Hong Kong government, including:

- “the excessive number of civil society organizations, including trade unions and student unions, which have relocated or ceased to operate since the enactment of the National Security Law and invocation of sedition legislation in 2020”<sup>158</sup> and
- “the filing of criminal charges against the leadership of trade unions and their increased vulnerability due to their relations with international trade-union organizations.”<sup>159</sup>

The UN Human Rights Committee also criticized Hong Kong’s vagueness in defining what constitutes “normal” activities for civil society organizations under the National Security Law.<sup>160</sup> A further concern expressed by the committee was that such vagueness could allow Hong Kong authorities to prosecute civil society representatives who participated in the UN’s investigations for conspiring with foreign countries “or external elements to endanger national security” as per the National Security Law (see “International Responses to the Continued Repression in Hong Kong” for more actions by global organizations).<sup>161</sup>

### **Disappearing Space for Freedom of Expression**

As Beijing’s crackdown on opposition intensifies, few spaces remain for Hong Kong citizens to openly express dissent. Anonymized surveys, such as those conducted by polling organizations like PORI, present one of the few remaining channels for freedom of expression. Chinese and Hong Kong authorities, however, continue to condemn published findings, with many researchers coming under increasing threat of reprisal from the national security regime. Some small-scale forms of expression have taken place, albeit rare in occurrence. In one such instance, three prodemocracy protesters tried to “keep dissent alive,” holding a banner calling for universal suffrage outside the polling site on the day of the chief executive general elections.<sup>162</sup> Although police did not make arrests around this incident, they brought serious charges against others in the spring of 2022 for other minor infractions and assembly deemed more sensitive. For instance, police arrested six individuals conducting a Tiananmen vigil on June 4, 2022; all six potentially face the maximum penalty of five years’ imprisonment.<sup>163</sup>

The death of Her Majesty Queen Elizabeth II of England in September 2022 also evoked nostalgia among many Hongkongers for the freedoms they once widely enjoyed when the territory was a British colony. The queen’s memorial in front of the British consulate provided a place for Hong Kongers to pay their respects, and in some cases, it also served as a quiet opportunity to publicly express small signs of quiet protest against the current regime. One mourner told the *New York Times*, “When mourning the queen, we are mourning the lost Hong Kong.”<sup>164</sup> Some mourners reportedly wore yellow masks and black t-shirts, the colors respectively associated with the 2014 Umbrella Movement and 2019 prodemocracy demonstrations.<sup>165</sup> A 43-year-old man was arrested on September 19 near the British consulate while playing the harmonica at a vigil honoring the late monarch of the former colony.<sup>166</sup> The man, whom police

arrested on suspicion of “committing an act with seditious intent,” played songs including the British national anthem “God Save the Queen” and “Glory to Hong Kong,” the anthem of the Hong Kong protests in 2019.\*

### **Increased Pressure on Research Forces Poll Chief to Flee Hong Kong**

With Beijing’s increasingly aggressive efforts to control the narrative surrounding Hong Kong, leading researchers have joined educators, journalists, and other at-risk individuals in fleeing the territory. In April 2022, a senior member of Hong Kong’s leading independent polling firm fled to the UK amid mounting pressure from the territorial government. PORI Deputy Director Chung announced in a Facebook post on April 24 that he would live abroad for “a period of time,” calling Hong Kong a place where one may “no longer live normally and without intimidation.”<sup>167</sup>

In recent months, state media outlets have increasingly attacked research institutions such as PORI over aspects of their research that are political in nature. In one instance, PORI came under heavy fire from the state-run *People’s Daily* newspaper for its “anti-China” opinion surveys on Hong Kong’s 2021 legislative elections.<sup>168</sup> In a December editorial, the *People’s Daily* accused PORI of manipulating survey samples and imposing arbitrary statistical standards, claiming the results were intended to “smear the new electoral system,” “undermine the LegCo’s selection authority and credibility,” and “use so-called ‘public opinion’ to hijack society.”<sup>169</sup> Dr. Chung’s departure to the UK underscores a larger trend of researchers and scholars who have left Hong Kong due to political pressures and threats to their institutions under the National Security Law.

### **United States Continues to Oppose Repression in Hong Kong**

Since 2020 across both the Trump and Biden Administrations, the United States has penalized government and private entities and individuals responsible for undermining Hong Kong’s autonomy. These actions are consistent with the 2020 implementation of the Hong Kong Autonomy Act and Executive Order (EO) 13936, which prompt the president to declare a national emergency with respect to Hong Kong.<sup>170</sup> Under EO 13936 and the International Emer-

\*“Glory to Hong Kong,” which is sometimes known as the “unofficial” anthem of Hong Kong, has been characterized by police and the pro-Beijing regime as an antigovernment song. The lyrics of the song include the line “Liberate Hong Kong, revolution of our times,” which became a popular slogan of the protesters throughout the 2019–2020 prodemocracy movement and was declared illegal under the 2020 National Security Law. A Twitter post of the incident shows several dozen gathered mourners “enthusiastically singing along to the lyrics” when “Glory to Hong Kong” was being played. A subsequent video tweeted from the same user showed “an audience-led encore continu[e] briefly,” with the crowd waving their lit up mobile phones in the darkness as they continued to sing after the playing concluded. “Mobile light vigils” were another common form of solidarity among prodemocracy protesters throughout the course of the demonstrations. *ABC News Australia*, “Hong Kong Man Arrested after Paying Tribute to Queen Elizabeth outside British Consulate,” September 20, 2022; Razvan (@RazvanHK), “A harmonica player plays a familiar tune, with the crowd enthusiastically singing along to the lyrics,” Twitter, September 19, 2022, 8:22 a.m.; Razvan (@RazvanHK), “An audience-led encore continued briefly,” Twitter, September 19, 2022, 8:35 a.m.; *Guardian*, “‘Glory to Hong Kong’: Pro-Democracy Anthem Embraced by Protesters,” September 12, 2019.

agency Economic Powers Act in 2020, then President Donald Trump identified China's actions to undermine Hong Kong's autonomy as "an unusual and extraordinary threat ... to the national security, foreign policy, and economy of the United States."<sup>171</sup> U.S. President Joe Biden has renewed this declaration twice, currently extending it to July 2023.<sup>172</sup> Several agencies are responsible for a range of mostly punitive actions comprising the U.S. government's response to the situation in Hong Kong:

### ***U.S. Department of Commerce***

- As of December 2020, the Department of Commerce's Bureau of Industry and Security treats Hong Kong as part of mainland China under the Export Administration Regulations. In practice, this means that for export control purposes, the U.S. government classifies all exports, reexports, and in-country transfers to Hong Kong the same as the rest of China.<sup>173</sup> The rule change imposes greater restrictions on exports to Hong Kong than before and effectively removed all export control privileges, following on from a July 2020 elimination of licensing exceptions specific to the SAR.<sup>174</sup>

### ***U.S. Department of Homeland Security***

- In August 2020, U.S. Customs and Border Protection required that products shipped from Hong Kong be labeled with a "Made in China" designation.<sup>175</sup> In October 2020, the Hong Kong government brought a case to the WTO to oppose the U.S. government's "Made in China" labeling requirement, and a final report by the dispute settlement panel is expected in late 2022.\*<sup>176</sup>
- Through February 2023, the United States will defer the enforced departure of Hong Kong citizens currently in the United States, which may number approximately 30,000, according to Samuel Chu, founder and president of The Campaign for Hong Kong, a nonprofit advocacy organization.<sup>†</sup><sup>177</sup> The August 2021 memorandum introducing this measure was the first U.S. action granting extended stays to Hong Kong residents in light of the National Security Law.

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

- In its March 2022 annual report pursuant to the United States-Hong Kong Policy Act of 1992, the Department of State sustained its determination that Hong Kong was no longer sufficiently autonomous to warrant special treatment.<sup>178</sup>

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\*The WTO formed a panel in April 2021 and initially expected to issue a report in Q2 2022 but was delayed due to the "complexity of the issues presented in the dispute." Brazil, Canada, China, the EU, India, Japan, Korea, Norway, the Russian Federation, Singapore, Switzerland, Turkey, and Ukraine have reserved third-party rights in the case, meaning they have some substantial interest in the proceedings and have the right to comment on arguments of the complainant and respondent. World Trade Organization, *DS597 United States—Origin Marking Requirement*, April 29, 2021; World Trade Organization, *DS597 United States—Origin Market Requirement*, WT/DS597/8, June 23, 2022.

<sup>†</sup>Information concerning how many of these 30,000 Hong Kong residents will actually benefit from deferred enforced departure is not publicly available.

- In July 2022, the Department of State also changed its Hong Kong Travel Advisory to “Level 4: Do Not Travel,” citing the potential for “arbitrary enforcement of local laws.”<sup>179</sup>

### ***U.S. Department of the Treasury***

- The Treasury’s Office of Foreign Assets Control has maintained sanctions on 42 persons via its Specially Designated Nationals and Blocked Persons List in accordance with EO 13936.<sup>180</sup> The United States sanctioned now Chief Executive Lee in its first set of Hong Kong-related sanctions in 2020 (see “How Are U.S. Sanctions Affecting John Lee?” later in this section).<sup>181</sup>
- In its 2020 *Annual Report for the Committee on Foreign Investment in the United States (CFIUS)*, the Treasury clarified that in accordance with EO 13696, all CFIUS transactions originating from Hong Kong after July 14, 2020, would be grouped with those originating from mainland China.<sup>182</sup>
- Under the Hong Kong Autonomy Act of 2020, the Treasury is required to submit a report identifying any foreign financial firms that transacted with foreign persons materially contributing to the erosion of Hong Kong’s autonomy. As of February 2022, the Treasury has not identified any institution that “knowingly conducted a significant transaction” with any of the foreign persons identified through EO 13936.<sup>183</sup>

### ***Joint Efforts***

- In July 2021, the Departments of State, Treasury, Commerce, and Homeland Security issued a joint business advisory, *Risks and Considerations for Businesses Operating in Hong Kong*. The advisory highlighted risks of the National Security Law, data privacy, transparency and access to information, and exposure to conflicting sanctions regimes between the United States and China.<sup>184</sup>

#### **How Are U.S. Sanctions Affecting John Lee?**

Listed as a Specially Designated National by the Treasury in 2020, John Lee was already subject to U.S. sanctions at the start of his chief executive campaign. These sanctions affect any U.S. assets Lee might have previously held, and they restrict any of Lee’s transactions outside of the United States. This restriction on transactions outside of U.S. borders has likely had a significant impact on Lee. Non-U.S. entities or persons outside of U.S. borders can face secondary sanctions, such as for financial transactions that rely on the U.S. financial system. In practice, this meant campaign donations for the former security tsar were made out entirely in cash. In complying with sanctions, U.S. tech companies Alphabet (parent of Google and YouTube) and Meta (parent of Facebook and Instagram) could not offer Lee social media services. This resulted in a reduced online presence for him in the latter half of April shortly after he launched his campaign for chief executive. Video streaming service YouTube suspended Lee’s campaign channel, while Facebook and Instagram blocked

### **How Are U.S. Sanctions Affecting John Lee?—Continued**

his campaign's payment services on April 20.<sup>185</sup> It is possible that John Lee's use of other digital services, such as cloud computing and data storage, as well as email and other content hosting could be captured by sanctions if these services are conducted through an online payment system or unwittingly provided by a U.S. technology company.

As per a separate source familiar with Lee's campaign, Alphabet's decision to terminate the campaign's YouTube channel raised concerns among business and political donors who worried about possible legal consequences from contributing to the campaign of an individual under U.S. sanctions.<sup>186</sup> In an effort to alleviate donor concerns, John Lee's campaign reportedly made the decision to comply with U.S. sanctions by receiving donations from various locally registered organizations and business chambers, according to a source within Lee's circle cited in the *South China Morning Post*.<sup>187</sup> Altogether, John Lee's campaign reportedly received almost \$1.4 million (HKD 11.3 million) in donations during his election bid, much of it from prominent business associations, including the Chinese General Chamber of Commerce, the Friends of Hong Kong Association, the Hong Kong Chinese People's Political Consultative Conference (Provincial) Members Association, the Federation of Hong Kong Guangdong Community Organizations, and the Hong Kong Federation of Fujian Associations.<sup>188</sup>

### ***International Responses to the Continued Repression in Hong Kong***

In 2022, some governments have condemned the CCP's interference in Hong Kong's politics, and they maintain some restrictions on cooperation with Hong Kong introduced between 2020 and 2021. Governments such as Japan and the UK have made statements denouncing the Hong Kong government's attacks on free press and its manipulation of both the LegCo and chief executive elections. In May 2022, G7 leaders representing the United States, Canada, the EU, France, Germany, Italy, and Japan collectively expressed serious concerns over the chief executive election process and Hong Kong's "continued assault on political pluralism and fundamental freedoms."<sup>189</sup> The leaders' statement also "call[ed] on China to act in accordance with the Sino-British Joint Declaration and its other legal obligations."<sup>190</sup> Besides the United States, no other government has moved to place individual sanctions on Hong Kong's leadership. Hong Kong activists and British lawmakers in Parliament pushed the Johnson government to follow U.S. individual sanctions, particularly in light of extensive coordinated sanctions on Russia and the UK's role as treaty holder in the Sino-British Joint Declaration.<sup>191</sup>

### ***Hong Kong's Oppression Reflected in Global Fora***

As the global community works to understand the true scope of Hong Kong's declining freedoms, data published by international watch groups paint an increasingly bleak picture as the territory con-

tinues to fall in various freedom rankings. The New Zealand-based nonprofit Human Rights Measurement Initiative (HRMI), for example, published an annual study in June 2022 that revealed Hong Kong's freedom ranking placed it below Venezuela and just ahead of Saudi Arabia and China, which are both at the bottom of the list.<sup>192</sup> Hong Kong's Empowerment Score (which HRMI's methodology defines as "freedom of speech, assembly and association, and democratic rights") was a mere 2.5 out of 10, which, according to HRMI, "suggests that many people are not enjoying their civil liberties and political freedoms."<sup>193</sup> As HRMI spokesperson Anne-Marie Brook explains, "Watching events in Hong Kong over the past couple of years has been quite harrowing, and so I doubt that Hong Kong's scores will come as a surprise to any Hong Kong watchers."<sup>194</sup> As of 2021, the Heritage Foundation dropped Hong Kong from its Global Economic Freedom Index, counting the territory as part of China to reflect its loss of autonomy.<sup>195</sup> In its 2022 report, the Heritage Foundation ranked China as the 158th-freest economy.<sup>196</sup>

## **Beijing's Economic Influence in Hong Kong Increasing**

Hong Kong's government is pursuing close policy alignment with the Mainland across a number of areas, with increasing effects on economic policy. The tight grip on Hong Kong's security has been accompanied by rigid measures to combat COVID-19, further isolating Hong Kong from the international community. While the territory remains an important hub for regional finance, foreign companies are beginning to reconsider the role of Hong Kong in their global and regional operations.

## **Hong Kong's Economic Prospects Dim with Extended Restrictions and Uncertainty**

The Hong Kong government's Zero-COVID measures have depressed economic growth and exacerbated unemployment. Maintaining China's Zero-COVID policy has been important for the Hong Kong government to demonstrate its alignment with Beijing's policies. The Chinese government views Hong Kong's mimicry as a priority to demonstrate control over the territory and to ensure the safety of the Hong Kong-Mainland border.<sup>197</sup> In the first half of 2022, Hong Kong faced its fifth COVID-19 outbreak, spurring extensive lockdowns and social distancing restrictions that shut down businesses.<sup>198</sup> As Hong Kong faced the Omicron variant in January, the government imposed a quarantine period of as long as 21 days and strict social distancing measures that severely curbed consumption by keeping residents at home, imposing strict business hours, and curtailing many services.<sup>199</sup> Hong Kong's death rate soared in March 2022, surpassing 25 per 100,000 residents in the second week alone during the peak of the outbreak.<sup>200</sup> Among developed nations, Hong Kong reportedly had the highest prevalence of COVID-19 deaths per capita, with health officials attributing the high mortality rate to low vaccination coverage among the elderly

\*According to HRMI's database, Hong Kong's Empowerment Score dropped from 4.4 in 2019 to 3.1 in 2020. HRMI Rights Tracker, "Country Profiles | Human Rights in Hong Kong, 2022," June 2022.

population of the territory.<sup>201</sup> Retail sales, a proxy for consumer demand, dropped in volume by 16.8 percent in March 2022 compared to the prior year.<sup>202</sup>

Confidence in the business environment has been inconsistent quarter to quarter as COVID-19 restrictions have created volatility. In H1 2022, real gross domestic product (GDP) in Hong Kong shrank 2.6 percent year-on-year, from \$178.4 billion (HKD 1.4 trillion) to \$165.7 billion (HKD 1.3 trillion) when adjusted for inflation.<sup>203</sup> As of August 2022, the territorial government estimates that 2022 GDP growth will be between 0.5 percent or a contraction of 0.5 percent, lowered from the initial goal of between 2 percent to 3.5 percent growth.<sup>204</sup> Other financial analysts published similar predictions of negative growth. In August 2022, U.S. credit agency Fitch Ratings estimated a 0.5 percent contraction of the territory's economy in 2022.<sup>205</sup> A government survey of Hong Kong businesses found that 17 percent of the transportation, storage, and courier services sector respondents described their Q2 2022 profit situation as poor.<sup>206</sup> Companies in this sector listed the top challenge as "uncertain economic outlook caused by change in the external economic environment."<sup>207</sup> Similarly, the retail industry listed the economic outlook as their top challenge, and 20 percent of respondents in the sector described Q2 2022 profits as being poor.<sup>208</sup>

### **Mistrust in Government Drives Vaccine Hesitancy and Deaths**

Hong Kong's vaccination rate was suboptimal over the course of the past year despite vaccines being readily available to the population since February 2021.<sup>209</sup> One study published in April 2022 confirmed that "risks from vaccination and vaccine efficacy were positive correlates of vaccine hesitancy [in Hong Kong]."<sup>\*210</sup> Research on the correlation between public trust with vaccine hesitancy published in the *Hong Kong Medical Journal* explains: "Confidence is influenced by the trust in vaccines (necessity, effectiveness, and safety), the health system in which a vaccine is delivered, and the policymakers with decision-making power for resource allocation."<sup>†211</sup> Many of the territory's vulnerable elderly population reportedly believed vaccines were ineffective and linked to serious health risks, and only 15 percent of this high-risk population in care centers was fully vaccinated at the height of the Omicron variant in early March 2022.<sup>212</sup> In July 2022 that the vaccination rate for those aged 80 and over was 69 percent.<sup>213</sup>

Hong Kong's vaccine program suffered a major setback early in its rollout as many senior residents were reportedly misled by misinformation spread online and in local media concerning

\*There is no single cause for vaccination hesitancy, which is affected by many factors such as the perceived benefits, the barriers to vaccination, and sociodemographic factors. Numerous studies show, however, that fake news and misunderstanding spread rapidly online via social media can also cause hesitancy. Melinda Mills et al., "Covid-19 Vaccine Deployment: Behavior, Ethics, Misinformation and Policy Strategies," *Royal Society and British Academy*, October 21, 2020; Bobby Duffy et al., "Coronavirus: Vaccine Misinformation and the Role of Social Media," *Policy Institute*, December 14, 2020.

†In a January 2021 survey conducted by the University of Hong Kong, fewer than 30 percent of those surveyed found China's Sinovac vaccine acceptable, a sign that Hong Kong people are less trusting of Chinese vaccines than Western vaccines. *Reuters*, "Polls Shows Hong Kong Residents' Distrust of Chinese Vaccines," January 28, 2021.



### **Mistrust in Government Drives Vaccine Hesitancy and Deaths—*Continued***

alleged adverse side effects from the vaccine.<sup>214</sup> For instance, government data show that 10,300 appointments for the Sinovac vaccine were canceled on March 3, 2021, the day after news broke that a man reportedly died after taking the Sinovac shot.\* Terry Lum, a professor of social work at the University of Hong Kong, blamed the government for not quickly correcting misconceptions about vaccine efficacy and side effects, saying, “When... misinformation is circulating and no one comes out to clarify the information, and we have such low cases, the people wonder, ‘Why would I take the risk?’”<sup>215</sup>

Concerns about the potential risks of vaccination were likely also exacerbated to some degree by the government’s cautious approach to the initial vaccine rollout. In March 2021, the government issued guidance that the Sinovac vaccine should not be administered to individuals with uncontrolled severe chronic illnesses.<sup>216</sup> Authorities also urged residents who had concerns about the vaccine’s side effects to seek a medical consultation prior to getting vaccinated.<sup>217</sup> Health systems experts argue that this guidance perpetuated the mistaken belief that vaccines were dangerous for older people or those with chronic illnesses and that an individual needed a clean bill of health to get vaccinated.<sup>218</sup> Karen Grépin, associate professor at the University of Hong Kong’s School of Public Health, explained the misperception: “You’ve basically created this idea that, if there’s something wrong with you, then you should not get vaccinated.”<sup>219</sup>

### ***Departure of Professionals and Workers Weighs on Future of Labor Force***

Between the territory’s strict approach to COVID-19 and the chilling effect of the security apparatus, Hong Kong has become a less desirable destination for working and studying.<sup>220</sup> In 2021 alone, Hong Kong saw the departure of 90,000 residents and is likely to see more by the end of 2022.<sup>221</sup> Mid-year 2022, Hong Kong recorded a 1.6 percent contraction of the population year-on-year, with the outflow of approximately 113,200 people.<sup>222</sup> According to a March public opinion survey conducted by PORI, almost a quarter of the territory’s residents—including both locals and expatriates—have plans to leave.<sup>224</sup> The survey results meant that a potential 1.87 million people could leave Hong Kong permanently.<sup>225</sup> According to PORI Deputy Director Chung, “The most important factor is politics, more so than the pandemic.”<sup>226</sup> The survey also reported nearly one-third of those planning to emigrate cited “diminishing personal freedoms in recent years” as the motivating driver, with 16 percent citing “fears for their family’s future.”<sup>227</sup> Additionally, Dr. Chung points out, “more than half of respondents said they had ‘no confi-

\*On February 28, 2021, a chronically ill man who had received the Sinovac vaccination died. *Hong Kong Free Press*, “Covid-19: Authorities Investigate Death of Patient Two Days after He Received Sinovac Vaccine,” March 3, 2021; Timothy McLaughlin, “The Place with Surprisingly High Vaccine Hesitancy,” *Atlantic*, March 31, 2021.

dence' in Hong Kong's political environment or in their future level of personal freedom."<sup>228</sup>

The territory's quality of life is threatened by the departure of many Hong Kong residents and migrant workers, many of whom have been disproportionately impacted by the lockdowns. Migrant workers, largely originating from the Philippines and other South-east Asian countries, constitute the backbone of the territory's domestic workforce and make up 10 percent of the entire labor force.<sup>229</sup> In the face of travel restrictions, longstanding wage discrimination, and low support from the government, the costs to remain in Hong Kong have grown untenable for many migrant workers and are leading to a labor shortage in an essential industry.<sup>230</sup> At the other end of the income spectrum, foreign firms find it increasingly difficult to attract overseas candidates for executive positions and foreign professional talent in key sectors such as finance and business services.<sup>231</sup> Stuart Bailer, chairman of the Hong Kong Exhibition & Convention Industry Association, said, "Hong Kong, once one of the most sought-after postings for executives, has become a hardship posting due to the lack of international connectivity."<sup>232</sup> At the same time, as of 2022 Hong Kong was the most expensive place for expatriate employees to live and work.<sup>233</sup> Travel and freedom of speech restrictions in the education system also make Hong Kong universities far less attractive for foreign students and teachers.<sup>234</sup> In the finance industry, hiring has become so difficult that employees are getting wage increases of 25 to 35 percent to start new positions.<sup>235</sup>

The business community in Hong Kong has spoken out strongly against the government's COVID-19 strategy. Pro-Beijing businessman and Hong Kong government adviser Allan Zeman wrote in March 2022 to then Chief Executive Lam that Hong Kong's reputation had been damaged by inconsistencies in and challenges to the government's approach to combating the virus.<sup>236</sup> Recent business surveys echoed Mr. Zeman's views. In a survey of 262 corporate representatives and individual members, the American Chamber of Commerce in Hong Kong (AmCham HK) reported that 59 percent of respondents found the Hong Kong government's approach in addressing COVID-19 issues dismissive or unconcerned.<sup>237</sup> The European Chamber of Commerce in Hong Kong surveyed 260 representatives across 15 national chambers of commerce in the territory. Its survey found that since 2020, 51 percent of respondents had seen high or unusually high turnover in employees.<sup>238</sup> Furthermore, AmCham HK found that 33 percent of respondents were "somewhat or more likely to leave" as a result of COVID-19 restrictions, while 49 percent of the European Chamber of Commerce in Hong Kong respondents plan to undertake full or partial relocation.<sup>239</sup>

Beijing is clearly aware of the cost of the COVID-19 approach in Hong Kong and concerned for the future of its territory, making mild attempts to reassure the business community without reversing course on its restrictive strategy. In June 2022, Bloomberg reported that the Liaison Office, the Mainland's primary office in Hong Kong, had sent invitations to various chambers of commerce in the territory soliciting views on current challenges to operating in China and Hong Kong.<sup>240</sup> In July 2022, Ministry of Foreign Affairs for the HKSAR Commissioner Liu Guangyuan also gave an exten-

sive speech to over 100 foreign diplomats and business representatives in the territory, urging them to present Hong Kong “in a more objective way.”<sup>241</sup> Chief Executive Lee previously committed in late June to a review and potential revision of the quarantine policies, noting that it could be done only “without bringing extra risk to the Mainland.”<sup>242</sup> In July 2022, the quarantine was adjusted to allow for a shorter period in quarantine hotels followed by isolation at home and Chief Executive Lee ended the controversial flight ban that severely disrupted travel into and out of Hong Kong.<sup>243</sup> In September 2022, the territorial government removed the extensive hotel quarantine requirement to open up travel to Hong Kong at the end of that month.<sup>244</sup> In October 2022, the Hong Kong Tourism Board announced that the government would give away 500,000 pre-purchased tickets worth approximately \$253 million (HKD 2 billion) in 2023 to travel in and out of Hong Kong once all COVID-related restrictions have been lifted.<sup>245</sup>

### *Emigration Destinations for Hong Kongers*

Until recently, Taiwan was one of the most popular destinations for Hong Kong residents. According to Taiwan’s National Immigration Agency, some 11,173 residency permits were issued to Hong Kong citizens in 2021, a 3.3 percent increase over the previous year and the highest number recorded in official data dating back to 1991.<sup>246</sup> In May 2022, however, Taipei announced it would indefinitely postpone a scheme that would have eased the process for professionals from Hong Kong and Macau to become permanent residents or citizens, citing concerns over possible infiltration of Chinese agents.<sup>247</sup>

In light of the recent setbacks, many Hong Kongers in Taiwan are expected to emigrate to the UK, which continues to receive the highest number of applicants and arrivals from Hong Kong.<sup>248</sup> On February 24, 2022, the UK expanded eligibility for Hong Kong citizens under its British National (Overseas) visa program to allow those aged 18 to 24 to apply independently from their parents.\*<sup>249</sup> Similar “lifeboat” schemes have also recently been introduced in Australia and Canada. Australia continues to offer permanent residency to students and highly skilled Hong Kongers with a history of three years’ residence in designated regions of Australia as well as to any Hong Kongers who have continually resided in Australia for four years.<sup>251</sup> According to the most recently published data in June 2021, Hong Kongers were the eighth-largest source of Australian migrants in the 2020–2021 period with 4,312 visas issued, over three times the number of Australian visas issued to Hong Kongers the prior year.<sup>252</sup> Canada’s permanent residency program for Hong Kongers is similar and in 2021 allowed for 2,295 Hong Kongers to become permanent residents, more than double the amount the prior year.<sup>253</sup> Based on inflows from the first two months of 2022, estimates indicate the number of Hong Kong permanent residents in Canada by the end of 2022 will reach 3,330 people.<sup>254</sup>

\*Current estimates indicate that the British National (Overseas) scheme is open to some 5.4 million of Hong Kong’s 7.5 million citizens. The revisions grant successful applicants and their families rights to live, work, and study in the UK for five years, after which they may apply for citizenship. Tommy Walker, “Britain to Allow More Hong Kongers to Settle under Lifeboat Plan,” *VOA News*, February 25, 2022.

### *Vague Restrictions on Freedom of Movement for Some*

While freedom of movement is unrestricted for most Hong Kongers, some residents, particularly those formerly associated with the pro-democracy movement in any way, risk arrest if they attempt to exit the territory. Risk still remains from Hong Kong's 2021 Immigration Law, which could bar the entry of foreigners while also increasing the potential for exit bans of territorial residents. According to the *South China Morning Post*, Hong Kong's national security police have a secret watch list of residents under investigation "to be intercepted and arrested if they attempt to flee the city."<sup>255</sup> The number of targets on the list is not publicly known, and those placed on the list have no way of knowing if they are included, a detail that has sparked widespread concerns among citizens. The existence of the list came to light after senior editorial writer Fung Wai-kong of the now defunct *Apple Daily* tabloid was intercepted and arrested at the Hong Kong International Airport in June 2021 as he attempted to board a flight to the UK.<sup>256</sup>

### ***U.S.-Hong Kong Bilateral Economic Relations***

Within the Greater Bay Area, Beijing envisions Hong Kong as both a finance and a logistics hub, building on its long history as a key port and its proximity to Southeast Asia. The United States is Hong Kong's second-largest goods export market after mainland China, while the United States is Hong Kong's sixth-largest import source for goods.<sup>257</sup> Hong Kong is an important hub for U.S.-China trade, responsible for routing 4.9 percent of the Mainland's exports to the United States and 7.6 percent of U.S. imports to China.<sup>258</sup> In the first eight months of 2022, Hong Kong exported \$3.3 billion in goods to the United States, while U.S. exports to Hong Kong in the same period totaled \$17.5 billion.<sup>259</sup> The value of total trade between Hong Kong and the United States has decreased by 6 percent from January to August 2022 compared to the same period the preceding year, reflecting the decline in Hong Kong's volume of total goods exports by 20.5 percent and total goods imports by 22.1 percent.<sup>260</sup>

### **U.S. Business Adaptation in Hong Kong**

Increasing uncertainty, a harsh Zero-COVID response, and the overall economic slowdown in Hong Kong have made the territory a more difficult environment for U.S. businesses and expatriate employees in 2022. The most recent available data from 2021 indicate that 28 U.S. firms in Hong Kong relocated or closed their regional headquarters—in total a 10 percent drop, the largest decline in U.S. regional headquarters located in Hong Kong since the 1997 handover.<sup>261</sup> The territory is seeing a gradual shift away from hosting regional headquarters of international companies as Chinese firms make up a larger proportion of all firms based outside the territory. The year 2021 saw more mainland Chinese offices in all three office categories (regional headquarters, regional offices, and local offices), with a 6 percent increase in regional headquarters.\*<sup>262</sup> In 2021,

\*Each type of office (local, regional, and regional headquarters) has a parent company located outside of Hong Kong. A local office handles business only in Hong Kong. A regional office may have coordinating functions in the region, while regional headquarters have managerial control

mainland Chinese firms accounted for 28.4 percent of all local offices in Hong Kong, while U.S. firms accounted for 11.8 percent.<sup>263</sup>

Behavior of firms has varied widely, sometimes by sector but often with inconsistencies in the calculation of political risk and economic opportunity even within the same sector. Many financial firms continue to see post-recovery benefits from maintaining or expanding presence in Hong Kong, particularly as China's financial sector opens up. Many retail firms interested in capturing more mainland Chinese consumers have shifted their presence to cities like Shanghai, a movement that has accelerated even with numerous lockdowns on China's east coast.<sup>264</sup> In 2022, JPMorgan has been slowly relocating senior staff from Hong Kong to Shanghai, though some have already left for Singapore. The bank nonetheless views Hong Kong as its regional headquarters.<sup>265</sup> As more and more banks look to expand their capacity in Southeast Asia, Singapore has attracted expansion of more firms like Bank of America and Goldman Sachs.<sup>266</sup> Prudential PLC, a UK-based insurance and asset management firm, committed to placing its new CEO in Asia but initially did not commit to doing so in Hong Kong, another sign that confidence in the territory's connectivity with the rest of the world is flagging.<sup>267</sup> A 2022 survey by the Hong Kong Investment Funds Association documented that over a third of global fund management companies have relocated regional and global offices from Hong Kong, noting difficulties in maintaining operations due to Zero-COVID.<sup>268</sup> According to the survey, 20 percent of investment management firms offered special allowances to attract hires in Hong Kong, considering it a hardship post.<sup>269</sup> At the same time, approximately 13 percent of global investment firms surveyed reported reducing staff size in Hong Kong.<sup>270</sup>

### ***Hong Kong Competes with Other Regional Business Centers***

An intensifying sense of political risk in Hong Kong has had some immediate effect on staffing in 2022 and may have some long-term effects on the provision of contracts and other legal services in Hong Kong. Defenders of the Beijing and Hong Kong government's approach have insisted that the security apparatus should not affect the openness of the business environment, but increased central government influence over the territory raises the possibility that more state direction could be imminent. Businesses are increasingly questioning not only the viability of operating in Hong Kong under prolonged Zero-COVID approaches but also what impact the National Security Law might have on rule of law for commercial cases.<sup>271</sup>

The longer-term prospect of a gradual bias in favor of Chinese companies in the territory's systems is another growing concern among foreign companies. Singapore stands to be the primary beneficiary of Hong Kong's losses in personnel and companies, particularly for regional headquarters that have greater connectivity to the Asia Pacific or Southeast Asia.<sup>272</sup> Cathay Pacific, Hong Kong's premier airline, is an example of how Hong Kong's Zero-COVID measures have given Singapore an edge. In October 2020, Cathay Pacific let

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over other offices or operations in the region. Hong Kong Census and Statistics Department, *Report on 2021 Annual Survey of Companies in Hong Kong with Parent Companies Located Outside Hong Kong*, October 28, 2021, 5.

go of 5,900 employees, and at the beginning of 2022 it had reduced the number of flight destinations from 108 to 29.<sup>273</sup> According to Cathay Pacific's interim financial statement, the airline's revenue for the first half of 2022 was \$2.4 billion (HKD 18.6 billion), 65 percent lower than its revenue of \$6.8 billion (HKD 53.5 billion) over the same period in 2019.<sup>274</sup> The cuts to Hong Kong's travel services have likely set the territory back as a travel hub for years to come as regulations to open up and restaff for any increase in flights have been slow. As of January 2022, Singapore serviced twice the number of flights as Hong Kong since the pandemic.<sup>275</sup> In October 2022, UK-based Virgin Atlantic Airlines announced that it would close its offices in Hong Kong and no longer service flights into and out of the territory.<sup>276</sup> Meanwhile, Seoul, South Korea, has become the alternative for foreign journalists and media organizations, largely on account of easily available, well-developed digital infrastructure, lower real estate costs, and relatively stronger protections for free press compared to other business hubs like Singapore and Tokyo, Japan.\*<sup>277</sup> Taipei, Taiwan, has also emerged as an alternative for journalists unable to operate in mainland China and Hong Kong.<sup>278</sup>

### **Media and Information Censorship Adds to Business Uncertainty**

Forced closure of more media outlets, government vilification of overseas news publications, and increased potential for self-censorship within Hong Kong paint a troubling picture of the territory's future information environment. The persecution and charges against public polling figures raises concerns over the future of public surveys and the integrity of real-time reporting going forward. These attacks on media pose additional challenges to international businesses in Hong Kong that have long prized access to real-time, uncensored information, including faithful economic reporting. After the noted closure of prodemocracy paper *Apple Daily*, three other independent outlets—*Stand News*, *FactWire*, and *Citizen News*—closed between December 2021 and June 2022.<sup>279</sup> The Hong Kong government has sent threatening letters to the *Economist* and the *Wall Street Journal* to denounce the characterization of Hong Kong's thinning civil society.<sup>280</sup> In his letter to the *Wall Street Journal*, Secretary for Constitutional and Mainland Affairs Erick Tsang insinuated that the original *Journal* article from December 2021 was “inciting another person not to vote, or to cast an invalid vote” and could count as an offense under Hong Kong's Election Ordinance.<sup>281</sup> Over the course of 2021, the Hong Kong government sent 20 letters to seven different U.S. news organizations located in the United States to refute characterizations of the territory's waning freedoms and restrictive policies.<sup>282</sup>

Internet freedoms also hang in the balance as the government prepares new security measures. Hong Kong's Domain Name Registration Company has said it will reject new applications for.hk websites that could incite crime, infringe on privacy, or spread misinformation.<sup>283</sup> According to survey results from AmCham HK,

\*According to the Press Freedom Index published by Reporters Without Borders, South Korea ranks 43rd, while Japan ranks 71st and Singapore ranks 139th. Reporters Without Borders, “Index,” 2022.

businesses are aware and conscious of the possibility that a more active regime of internet censorship may be in store for Hong Kong. Among AmCham HK survey respondents, 42 percent did not have confidence that the territory would continue to have free access to the internet and information platforms between 2022 and 2025.<sup>284</sup> Of the respondents, 83 percent answered that it was “very important” to maintain such access.<sup>285</sup> Hong Kong’s Companies Registry has also grown less accessible given changes to publicly available information, continuing to raise concerns about transparency in corporate governance.<sup>286</sup> Recent changes to Hong Kong’s privacy rules continue to provide traditionally robust protection of personal data, but the introduction of new domestic security laws, such as the proposed bill on disinformation and even perhaps pending cybersecurity legislation, could continue to narrow the space for internet freedom. Implementation of 2021 amendments to Hong Kong’s Personal Data Protection Ordinance that targeted doxing have been shown to unfairly target government critics.<sup>287</sup> Between October 2021 and May 2022, implementation of the revised ordinance resulted in six arrests, one criminal case, and the removal of nearly 90 percent of the approximately 3,900 social media messages or posts flagged for doxing.<sup>288</sup> Hong Kong’s Privacy Commissioner said these removals took place across 14 different social media platforms, but he did not name them. The Hong Kong government has publicly contemplated blocking messaging app Telegram, which enables some encrypted messaging and grew in popularity during the 2019 prodemocracy protests.<sup>289</sup> Rather than employing a “Great Firewall” mechanism to block the app, Hong Kong government officials have indicated they would request app stores such as those of Apple and Google to remove the app’s availability for Hong Kong users.<sup>290</sup>

### **Hong Kong’s Role in China’s Growth**

Hong Kong is increasingly positioned as an exclusively Chinese financial hub rather than an international one, serving as a gateway into China for investment as well as an attractive destination for Chinese companies and professionals. The importance of its financial system is evidenced by the fact that Hong Kong’s banking-asset-to-GDP ratio was 921 percent in 2021.<sup>291</sup> The financial interdependence of the Mainland and its territory are running steadily deeper, with 29 percent of Hong Kong’s banking assets exposed to mainland China at the end of 2021, compared to 13 percent in early 2013.<sup>292</sup> The territory also remains a hub for logistics and international trade, a fact that Chinese and Hong Kong officials have repeatedly highlighted with the Regional Comprehensive Economic Partnership coming into effect.<sup>293</sup>

Chinese policymakers have been clear about Hong Kong’s role in overall national development and its advantages. In General Secretary Xi’s July 1 speech on the 25th anniversary of the handover in Hong Kong, he said that “the central government supports Hong Kong’s long-term maintenance of its unique position and advantages: to strengthen its international finance, shipping, and trading center status; to protect its free and open business environment, maintain its common law system, and expand easy, convenient international connections.”<sup>294</sup> Accordingly, Chinese policymakers en-

vision Hong Kong leading in information technology and regional intellectual property while serving as a hub for China's artistic and cultural outreach to the world and a center for international cargo, logistics, and passenger travel.\*<sup>295</sup> Nicholas Aguzin, chief executive of the Hong Kong Stock Exchange, echoed these objectives while at Davos for the World Economic Forum in May 2022. Mr. Aguzin said, "The core objective of everything [the Hong Kong Stock Exchange is] trying to do is to make sure that we continue connecting China and the world."<sup>296</sup>

### ***Currency Clearing and Settlement***

Hong Kong is key to China's economy, as it affords access to international financial markets and provides mainland institutions with a number of preferential arrangements. These arrangements allow the Chinese government to retain restrictive domestic policies and capital controls while using Hong Kong as its so-called offshore financial center. The Hong Kong government has maintained the HKD's peg to the U.S. dollar since 1983, another feature of the territory's financial system that enables its central role in RMB payments and foreign exchange.<sup>297</sup> The U.S. dollar peg helps to ensure financial stability while also maintaining easy convertibility of the HKD.<sup>298</sup>

Due to its role in facilitating so many transactions in RMB, Beijing relies on Hong Kong for easy access to the international financial system. Hong Kong remains the world's largest offshore RMB center with a pool of \$119.4 billion (RMB 800 billion).<sup>†</sup><sup>299</sup> The territory is a hub for trade settlement in RMB, processing \$940 billion (RMB 6.3 trillion)<sup>‡</sup> in 2020, an 18 percent increase from the previous year and more than triple the amount in 2011.<sup>300</sup> For the Chinese government, Hong Kong is crucial to increasing internationalization of the RMB given the territory's centrality to currency clearing and international payments. Hong Kong is the center of RMB SWIFT payments, accounting for over 70 percent of global payments in RMB in 2020.<sup>301</sup> Because of Hong Kong's historic legal and financial advantages, many foreign banks prefer to settle payments with Hong Kong-based banking partners and pay a fee for these banks to forward their transfers to mainland accounts rather than make the transfers directly.<sup>302</sup> While the Chinese government has been

\*In her 2021 Policy Address, then Chief Executive Lam noted the importance of Hong Kong as an international aviation hub, underscoring the expansion of the Hong Kong International Airport. The Hong Kong government is also invested in creating an aviation industrial cluster with other cities in the Greater Bay Area to attract talent and focus on "aircraft maintenance engineering, manufacturing and distribution of aircraft parts and components, and research on aircraft engineering." In 2019, Hong Kong was rated the world's tenth-most-connected airport in the world and second in the region. Despite the COVID-19 pandemic, Hong Kong was still the busiest cargo airport in the world in 2021. Rebecca Jeffrey, "Hong Kong International Airport Returns to the Cargo Top Spot in 2021," *AirCargo News*, March 13, 2022; Carrie Lam, *The Chief Executive's 2021 Policy Address*, December 2021, 36–37; *Businesswire*, "Singapore Changi and Hong Kong International Lead Asia Pacific Region in International Connectivity," September 2019.

†Until 2009, China's government did not allow RMB settlement internationally. To facilitate the RMB's internationalization, in 2009 it launched the offshore RMB. Unlike the onshore RMB, the offshore RMB is in principle freely traded on global markets, and its value is allowed to fluctuate. In practice, China's government hopes to keep the offshore RMB exchange rate close to that of the onshore RMB, as a sharp divergence would indicate that the government had manipulated the onshore RMB exchange rate. Muneeb Jan, "The Rise of the Renminbi: Hong Kong's Role as an Offshore RMB Hub," *China Guys*, April 29, 2021.

‡Unless noted otherwise, this section uses the following exchange rate from June 30, 2022 throughout: 1 U.S. dollar = 6.70 RMB.



steadily introducing policies to strengthen its own domestic financial system out of cities like Shanghai, Hong Kong retains inherent convenience and value with its preexisting banking infrastructure and open financial system. Even with some liberalization of China's domestic financial markets, a large-scale shift in assets from Hong Kong remains unlikely.

Furthering internationalization of the RMB has been a growing priority for the Chinese government, especially as the United States and other governments are frequently considering more financial sanctions to guard against global threats. Beijing has been particularly concerned about vulnerability of the RMB since extensive sanctions effectively shut Russian financial institutions out of the international financial system. Shortly after Xi's visit to Hong Kong, the central and territorial governments announced a plan to launch an interest rate "Swap Connect" to be ready by early 2023. Both governments see the Swap Connect as a means of facilitating greater use of the RMB.<sup>303</sup> The People's Bank of China also announced a permanent swap agreement with Hong Kong for the first time, expanding by 60 percent from \$74.6 billion (RMB 500 billion) to \$119.4 billion (RMB 800 billion).<sup>304</sup> (For more on the Swap Connect, see Table 1.)

### ***Dependence on Mainland Professionals***

Along with the territory's increasingly Chinese portfolio, Hong Kong's economy is growing more reliant on Chinese companies and mainland Chinese professionals. The territorial government is counting on mainland workers and firms to fill the gap following the departure of 90,000 residents in 2021 alone.<sup>305</sup> Mainland employees, who speak fluent Mandarin, are particularly prized in the workforce as companies in Hong Kong focus their operations more exclusively on accessing mainland China. Experts anticipate that while English will remain important in Hong Kong, use of Mandarin will become increasingly common and perhaps more important for the territory's future in driving forward regional integration plans with the Mainland.<sup>306</sup> As Chinese companies make up a larger portion of all foreign offices in Hong Kong, the prevalence of Mandarin and importance of understanding Chinese policies and business management are likely to increase. Financial firms in particular are starting to favor those fluent in Mandarin who can serve clients from both the Mainland and Hong Kong.<sup>307</sup> For the accounting field, more mainland professionals may also be in demand beginning in 2023 as U.S.-certified professional accountants may no longer be admitted to practice in Hong Kong. In May 2022, Hong Kong and the United States were unable to agree on qualifications for public accountants, ending a mutual recognition agreement that will expire at the end of 2022.<sup>308</sup> Accountants with U.S. certificates at the start of 2023 will need to pass Hong Kong's qualification tests to practice in the territory, a requirement that is likely to create more vacancies.\*<sup>309</sup>

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\* China retains a mutual recognition agreement with Hong Kong under the Closer Economic Partnership Agreement that allows mainland China-certified accountants to practice in Hong Kong as long as they have one year of audit experience in the territory. This requirement for local experience is similar to Hong Kong's other mutual recognition agreements on accounting certi-

## ***Building Out the Greater Bay Area***

Plans for advancing Hong Kong's transportation networks and development projects will help the flow of mainland Chinese into Hong Kong and deepen integration in the Greater Bay Area, a megaregional development plan linking Hong Kong, Macau, and nine other cities in southern China.\* In early 2022, MTR Corps announced the initiation of seven projects to expand railway connectivity between central and remote areas of Hong Kong.<sup>310</sup> MTR Corps is the dominant railway company operating Hong Kong's public transportation system and is majority-owned by the Hong Kong government. Its lines already connect Hong Kong to Shenzhen, and the proposals are part of a broader strategy to build a "second metropolis" in Hong Kong's hinterland and allow for more housing construction.<sup>311</sup> Hong Kong's housing shortage has been a persistent obstacle in the territory's growth.<sup>312</sup> Under Lam's Administration, construction was complete on 96,500 homes and she committed to plans for a total of 480,000 units over the next ten years.<sup>313</sup> These construction plans are poised to be prime projects for mainland developers, and the proposed transportation networks are an attractive feature for professionals in the Mainland.

Along with transportation and construction, the mainland provincial governments across the Greater Bay Area are working to align various new policies and funding mechanisms with Hong Kong. Some foreign businesses remain circumspect about the development of the Greater Bay Area, unsure of how quickly the concept can become reality. At the same time, companies have clearly been encouraged by other policy measures prioritizing the development of information technology, digital infrastructure, and green technology. The Hong Kong government is focused on a digital economy strategy, consistent with Beijing's innovation goals under the 14th Five-Year Plan.<sup>314</sup> In 2022, Hong Kong joined the list of top ten global locations for data centers.<sup>315</sup> After the National Security Law's imposition in July 2020, initial fears over changes to data privacy led multiple companies to pledge moving data centers out of Hong Kong.<sup>316</sup> Data centers are a key component in boosting digital services like e-government, cloud computing, and fintech. Foreign firms see potential benefits to these policies despite potential new laws that may restrict data, as Hong Kong's government is clearly invested in upgrading digital infrastructure and attracting local talent.<sup>317</sup> With greater demand for network connectivity during the COVID-19 pandemic, the territorial government has many former industrial spaces available for redevelopment into data centers.<sup>318</sup> Increased restrictions on data in mainland China may also be fueling increased interest in relocating "offshore" data centers to Hong

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fication and the previous U.S.-Hong Kong agreement. Hong Kong Institute for Certified Public Accountants, "Non-Renewal of MRA with US IQAB," June 2022; Hong Kong Institute for Certified Public Accountants, "Body: Chinese Institute of Certified Public Accountants (CICPA)," August 30, 2019.

\*The Chinese government introduced the Greater Bay Area initiative through its 13th Five-Year Plan in 2015 and announced formal policies to support the initiative in 2017 along with a development plan in 2019. The Greater Bay Area is one of five Chinese megaregional development plans. Ling Xin, "What's Bigger than a Megacity? China's Planned City Clusters," *Technology Review*, April 28, 2021; Hong Kong's Constitutional and Mainland Affairs Bureau, *Overview*, 2020; *Xinhua*, "Xinhua Insight: Greater Bay Area Highlight in China's Economy," March 26, 2017.

Kong. As Chinese digital companies go global, Hong Kong has become an attractive springboard for companies reaching out to nearby markets like Southeast Asia.<sup>319</sup>

Hong Kong is fast emerging as a center for green finance, but it is also a valuable partner for carbon trading with its neighboring cities in the Greater Bay Area. The provincial government of Guangdong, the mainland province directly adjacent to Hong Kong, also announced it was looking into launching a study on a carbon trading scheme for the Greater Bay Area to further integration.<sup>320</sup> In March 2022, the Hong Kong Exchanges and Clearing Limited signed a memorandum of understanding with the China Emissions Exchange to cooperate on climate change mitigation and “sustainability through carbon finance.”<sup>321</sup> In 2019, Guangdong Province’s capital city and central manufacturing hub Guangzhou produced around 26 percent of the Greater Bay Area’s carbon emissions compared with Hong Kong’s 11 percent share.<sup>322</sup> According to the latest available data, Hong Kong’s total greenhouse gas emissions in 2020 were 33.8 million tons, shrinking 16 percent from the prior year.<sup>323</sup>

#### *Cross-Border Fintech Collaboration*

Hong Kong’s pull in the Asian financial system has made it a great platform for Chinese fintech companies to jumpstart business through both listing in Hong Kong and reaching other markets in the region. Along with being an early adopter of various electronic payments systems, Hong Kong’s electronic payments market is particularly competitive and prized due to high usage of remittance services by Southeast Asian residents of Hong Kong.<sup>324</sup> Mainland Chinese services such as WeChat Pay and Alipay have become dominant market players among Chinese and Hong Kong consumers, and they also use Hong Kong to reach Southeast Asia.<sup>325</sup> In June 2021, the Hong Kong Monetary Authority announced its “Fintech 2025” initiative, which aims to completely digitize the financial sector by 2025 and increase on-line supervision of financial systems.<sup>326</sup> The effort will also support “future proofing” Hong Kong’s rollout of Central Bank Digital Currencies.<sup>327</sup> In October 2021, the People’s Bank of China and the Hong Kong Monetary Authority agreed to create a platform that would make fintech accessible cross-border from Hong Kong to the other Greater Bay Area cities.<sup>328</sup>

#### ***Enhanced Financial Integration Exposes Hong Kong to China’s Economic Risk***

Outside of Greater Bay Area initiatives, in 2022 Hong Kong saw increased financial connectivity with the Mainland in an effort to strengthen investment flows into China and target emerging sectors. Even with the rollout of new mechanisms, overall economic uncertainty from the Mainland to the bay has dimmed Hong Kong’s growth in 2022.

#### *Connecting the Stock Exchanges*

Despite flagging economic growth, new offerings for cross-border asset management that became available in late 2021 have now shown considerable success in 2022. The Greater Bay Area Wealth

Management Connect launched in October 2021 to make 100 funds in Hong Kong available to mainland investors through participating banks. As of March 2022, the number of participating Hong Kong banks had increased from 19 to 24, 27 mainland banks had joined, and the number of funds had increased to 125.<sup>329</sup> According to the Hong Kong Securities and Futures Commission, 16,726 investors from Hong Kong and 9,110 investors from the Mainland had invested \$130 million (RMB 829 million) in the Connect at the end of the first quarter of 2022.<sup>330</sup> Other Connect schemes are poised for strong growth in 2022 based on the prior year's expansion (see Table 1).

**Table 1: Hong Kong's Financial Connect Schemes**

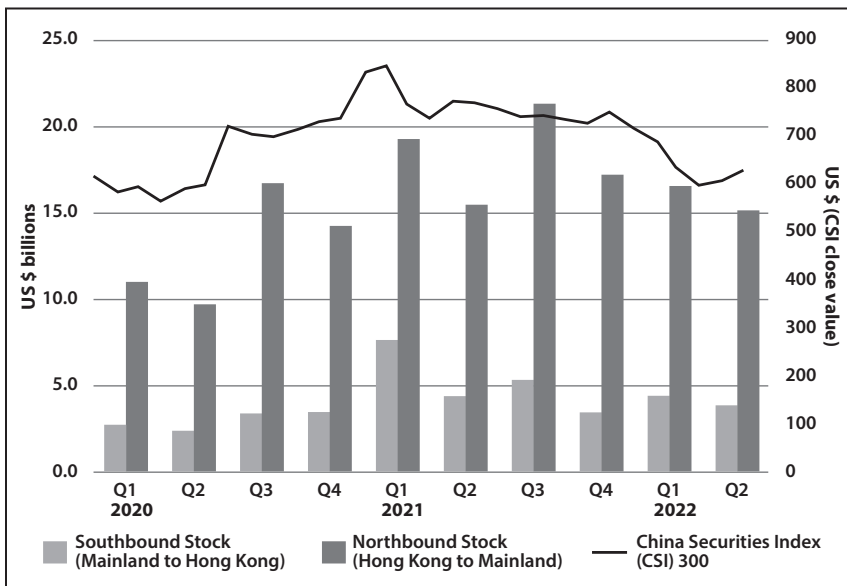
<b>Name</b>	<b>Description</b>	<b>Launch Year</b>
<b>Shanghai-Hong Kong Stock Connect</b>	The northbound daily quota is \$7.8 billion (RMB 52 billion) and the southbound daily quota is \$6.3 billion (RMB 42 billion). In 1H 2022, the value of average daily turnover for the northbound leg was \$15.2 billion (RMB 101.8 billion) while southbound it was \$4.4 billion (RMB 29.5 billion).	2014
<b>Shenzhen-Hong Kong Stock Connect</b>	Quotas are identical to the Shanghai-Hong Kong Stock Connect. In 1H 2022, the value of average daily turnover for the northbound leg was \$17.3 billion (RMB 115.2 billion), while southbound it was \$4.2 billion (RMB 28.1 billion).	2016
<b>Bond Connect</b>	While the northbound connect has no quota, the southbound connect has an annual quota of \$74.6 (RMB 500 billion). <sup>331</sup>	2017 (Northbound), 2021 (Southbound)
<b>Greater Bay Area Wealth Management Connect</b>	Annual quotas of \$22.4 billion (RMB 150 billion) both northbound and southbound.	2021
<b>Greater Bay Area Insurance Connect</b>	The scheme will primarily open up insurance products from Hong Kong and Macau to the more than 80 million people in the Greater Bay Area.	Expected 2022
<b>Exchange-Traded Funds (ETF) Connect</b>	Daily quota operates according to thresholds under the Stock Connect.	2022
<b>Swap Connect</b>	Allows Hong Kong and international investors to participate in the interbank interest rate swap market in the Mainland, with no changes to prior trading and settlement processes for currency swaps.	Expected 2023

*Source:* Various.<sup>332</sup>

The Stock Connect refers broadly to links between Hong Kong and the mainland stock markets of Shanghai and Shenzhen. The first link was launched in November 2014. Each of Hong Kong's links with these cities has southbound (Mainland to Hong Kong) and northbound (Hong Kong to Mainland) trading, allowing

mainland investors to invest in Hong Kong and vice versa.<sup>333</sup> From 2020 to 2021, the Stock Connect's southbound trading volume increased by 41 percent, while northbound trading volume increased by 23 percent (Figure 3).<sup>334</sup> The Bond Connect also continued to grow in the first eight months of 2022 as trading volume rose to \$117 billion (RMB 783 billion).<sup>335</sup> In June 2022, China's Ministry of Finance released record-setting numbers of sovereign RMB-denominated bonds, auctioning off \$1.1 billion in central government bonds with maturities of two, three, and five years.<sup>336</sup> This was the largest central government bond sale since 2016.<sup>337</sup> The Insurance Connect is also set to expand in 2022 as China began a pilot in January to allow the direct settlement of health claims for patients at Shenzhen public hospitals insured by Hong Kong and Macau providers.<sup>338</sup> Hong Kong insurers hope the pilot program will help to boost insurance policy numbers, as mainland customers only purchased \$60 million (HKD 470 million) in plans for the first nine months of 2021, a 93 percent decline from 2020 year-to-date.<sup>339</sup>

**Figure 3: Average Daily Turnover for Stock Connect and Monthly Close Value of China Securities Index (CSI) 300, Q1 2020–Q2 2022**



Source: Hong Kong Exchanges and Clearing, “2022 Q2 Results Announcement Presentation,” August 17, 2022, 25; Seeking Alpha.

Note: The CSI 300 is a capitalization-weighted index that reflects the top 300 stocks traded on the stock exchanges of Shanghai and Shenzhen. For more background on the Stock Connect, see Chapter 3, Section 4, “China and Hong Kong,” in *2017 Annual Report to Congress*, November 2017, 437–438.

In May 2022, the China Securities Regulatory Commission and Hong Kong's Securities and Futures Commission (SFC) agreed to include exchange-traded funds (ETFs) under the Stock Connect, launched in July 2022.<sup>340</sup> Dubbed the “ETF Connect,” this newest channel is distinct from the Greater Bay Area Wealth Manage-

ment Connect, which offers closed-loop products such as bonds and mutual funds. The agreement has been touted confidently by both governments as a milestone in connecting China to global financial markets.<sup>341</sup> This expansion of the Stock Connect will allow foreign investors to buy select Chinese ETFs under specific thresholds.\*<sup>342</sup> Some of the initial investment limitations may not provide a significant amount of access to new products for either Hong Kong or Chinese investors. The SFC's chief executive said the initial rollout of the program would be a "pilot," likely to be followed by more open eligibility requirements later on.<sup>343</sup>

### *Environmental, Social, and Governance Funds*

Environmental, social, and governance (ESG) funds have been a popular channel for investment between Hong Kong and the Mainland, particularly as China emphasizes new approaches to clean technology and green investment. (For more on China's energy strategy, see Chapter 2, Section 3, "China's Energy Plans and Practices.") As of March 2022, the SFC authorized 121 ESG funds with a total of \$142.7 billion in assets under management.<sup>344</sup> In June 2021, the SFC released clarifying guidance to avoid "greenwashing" ESG funds, though the guidance contains no mention of standards or disclosures around corporate governance or other social issues that might fall under an ESG designation.<sup>345</sup> Human rights and democracy activists have criticized the growth of these ESG schemes, noting the lack of standard definitions for ESG components. In particular, critics note that investors have focused solely on the environmental aspect to the exclusion of social and corporate governance issues. This allows them to capitalize on green technology and ignore when the underlying assets may be related to human rights abuses or corruption.<sup>346</sup> Dutch investment firm Van Lanschot Kempen NV created a screening tool that takes human rights, corruption, and freedom of speech into account and ultimately blacklisted numerous mainland Chinese assets.<sup>347</sup>

### *Hong Kong's Stock Exchange Falls from the Top*

The Hong Kong Stock Exchange is increasingly dominated by mainland companies and financial firms, with Chinese firms making up nearly 80 percent of Hong Kong's stock market.<sup>348</sup> The development of the Shanghai Stock Exchange's Sci-Tech Innovation Board (STAR Market) and relatively high valuation of Chinese companies on mainland exchanges has pushed the Hong Kong Stock Exchange down to the third largest by market capitalization among Chinese exchanges.<sup>349</sup> The territory's exchange nonetheless has a unique role to fulfill as new rules emerge for "overseas" listings of Chinese companies and greater scrutiny is applied to Chinese companies seeking capital abroad. With the territory considered an "offshore" market, mainland Chinese companies hoping to list in Hong Kong may be subject to the same rules but encounter an easier regulatory path less beset by the CCP's national security concerns.<sup>350</sup>

\*Funds must have underlying assets of at least 90 percent equities and meet thresholds of average daily asset value over the prior six months to be eligible. Chief China Economist's Office, "The Inclusion of ETFs in Stock Connect – Implications And Opportunities," *Hong Kong Exchange and Clearing*, July 13, 2022, 15.

Following anticipation that more Chinese companies would pursue initial public offerings (IPOs) in Hong Kong rather than listing farther afield, the Hong Kong Stock Exchange has struggled to mirror its performance in the first half of 2021. Shrinking valuation of IPOs has affected exchanges around the world, but activity on Hong Kong's Stock Exchange has trailed behind exchanges in Shanghai and Shenzhen. In the first half of 2022, funds raised on the Hong Kong Stock Exchange fell by approximately 90 percent year-on-year, the most remarkable decline since the global financial crisis.<sup>351</sup> While global IPOs were also meager over the same period, total funding only declined by 58 percent year-on-year.<sup>352</sup> Implementation of the Holding Foreign Companies Accountable Act in the United States has both disincentivized Chinese companies to list in the United States and fed anticipation that Chinese companies will look to Hong Kong as an alternative. At the same time, the Hong Kong Stock Exchange has suffered, dropping to 19 IPOs in the first half of 2022 versus 98 for the year in 2021 and over 100 every year between 2013 and 2020.<sup>353</sup> Chinese regulatory pressure on its domestic tech companies, which have generally made up a large portion of Hong Kong's IPOs, contributed to the slump. In the first half of 2022, only two IPOs were in the technology sector.\*<sup>354</sup> Chinese regulators have attempted to inject confidence and signal greater stability and predictability in tech regulation and enforcement, but China's domestic tech companies are still cautious about new listings.<sup>355</sup>

Hong Kong is still poised to take on new Chinese listings despite decreased activity in 2022. In December 2021, the Hong Kong Stock Exchange released new rules to make it easier to convert secondary listings into primary ones or to dual list in Hong Kong and another exchange.†<sup>356</sup> The Hong Kong Stock Exchange considers companies with secondary listings principally subject to rules and authorities of wherever the company is primarily listed.<sup>357</sup> The new rules allow a broader set of companies—particularly those listed with variable interest entity structures—to apply for dual listing in Hong Kong.<sup>358</sup> These companies must demonstrate regulatory compliance on another qualifying exchange for at least two full financial years and fall under the category of innovative company, such as an internet or high-tech firm.<sup>359</sup> This move builds on earlier changes to Hong Kong Stock Exchange rules in 2018, which opened listings to more companies and had a specific focus on welcoming more biotechnology firms.<sup>360</sup> In the summer of 2022, anticipation of U.S. regulatory action motivated some Chinese companies listed on both U.S. and Hong Kong exchanges to change their primary listing from the United States to Hong Kong or dual-list in both markets.<sup>361</sup> Dual-listing would allow a company listed on a U.S. exchange to delist in the United States without privatizing.<sup>362</sup> As of September 2022, 29 Chinese companies were listed on both exchanges, 16 of which

\*There were four additional direct listings—a listing in which the issuer does not sell new shares—by companies in the sector during the first half of 2022, but the total value of all new listings for the sector comprised a much smaller proportion of funding raised compared to the first half of 2021. Deloitte, “2022 1H Review & Outlook for Mainland & HK IPO Markets” (中国内地及香港IPO市场2022年上半年回顾及前景展望), June 22, 2022, 39–40. Translation.

†Dual listing is advantageous for firms to attract a wider pool of capital, but it can also be onerous as a company will need to meet requirements of both exchanges to list and incur additional costs for any new listing.

were still “secondary” in Hong Kong.<sup>363</sup> *Bloomberg* also reported that the Hong Kong Stock Exchange was considering changes to further open up listings and would seek to propose rule changes in late 2022.<sup>364</sup>

## Implications for the United States

Appointment of a new, Beijing-approved LegCo and chief executive cements the direction of Hong Kong’s future as entirely subsidiary to Beijing’s interests. Beijing’s control over the executive and legislative branches also increases the potential for political interference within Hong Kong’s judiciary. Inherent politicization of these bodies and the clear direction from Beijing on how to conduct security affairs threatens Hong Kong’s rule of law, as Beijing can effectively shape courts and choose judges. An expansive definition of security and growing paranoia around foreign threats has created an increasingly expansive security apparatus that will continue to restrict freedoms of speech, assembly, press, and religion.

U.S. companies cannot count on a clear separation between matters of security and commerce or ensure protection against discriminatory treatment or disproportionate punishments. Hong Kong’s adoption of mainland Chinese policies, along with the gradual reshaping of its commercial environment to accommodate Chinese companies, establishes a concerning trend for foreign companies conducting business in Hong Kong. The 1,267 U.S. companies remaining in Hong Kong may face a business environment that is set to grow more preferential toward Chinese companies. Forthcoming legislative changes in Hong Kong are anticipated to make it harder for some U.S. companies, NGOs, and employees to remain in the territory. Widespread attacks on the press and independent research jeopardize continued access to real-time, uncensored information as outlets are either shut down or choose to self-censor in the face of potential criminal charges.

The Hong Kong government’s attacks on and coercion of the media have focused on coverage of political issues such as the territory’s elections and application of the National Security Law, though it remains possible that this pressure could extend to outlets focused on economic information. With multiple news outlets forcibly shuttered and their assets seized, along with seemingly arbitrary censorship of books and films, foreign companies and investors will be disincentivized from participating in Hong Kong’s media environment, automatically leaving the sector to be managed by pro-Beijing interests. The Hong Kong government’s letters to the editor demonstrate greater willingness to bully news outlets around the world. These combined factors lead to extensive self-censorship that is not easily separated from the kind of economic data censorship exhibited by the Mainland.

Foreign companies may be willing to endure adverse conditions in Hong Kong to gain access to the Chinese market, but a presence in Hong Kong has now become far more vulnerable to policies set by Beijing. Although U.S. companies and investors have long prized Hong Kong’s common law system, free press and information, and talented pool of professionals, these elements are no longer guaranteed in a post-National Security Law Hong Kong. Contracts



formed under Hong Kong's legal system may become less reliable, as the territory's court system is now politicized and new rules can be introduced swiftly and without regard for public consultation. New laws to be introduced under the Lee Administration may make foreign companies and individuals in Hong Kong more susceptible to punishment and suspicion. Foreign companies operating in Hong Kong are likely to struggle with hiring or even seconding foreign staff to the territory due to the increasingly repressive security and COVID-19 measures.

Rather than live up to its commitments under the Sino-British Joint Declaration, China's government has destroyed "one country, two systems." Hong Kong's complete subordination under Beijing demonstrates the destruction of this framework to a single system that serves only the CCP's interests. Today's Hong Kong also demonstrates the CCP's vision for Taiwan, which would include not only deference to mainland authorities and Beijing's rule by law but also an eventual cultural and linguistic conversion. If the international community believed in 1997 that Hong Kong would change China, that dream has been thoroughly dashed.

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