

## **Analysis Report: 10 Years After Hong Kong's Handover**

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- Self-restraints exercised by the Hong Kong SAR government and forceful interference by China have caused qualitative changes in the “high degree of autonomy” model.
- The interpretation of the Basic Law by the National People's Congress has an overriding status above the Basic Law, thus restricting Hong Kong's development.
- The economic integration of Hong Kong and China has heightened risks for Hong Kong's economy.
- Judicial independence has come under repeated attack, undermining the foundation of the rule of law.
- The spread of “self-censorship” has restricted freedom of the press and freedom of speech.
- The international community has not pulled out investment, but it is deeply concerned over the preservation of democracy and the rule of law.
- Civilian exchanges between Taiwan and Hong Kong have remained active, while official interactions need to be strengthened.
- There have been 175 controversial cases testing China's pledge to keep Hong Kong “unchanged for 50 years.”

### **Overall Review and Analysis**

This July marks the 10th anniversary of Hong Kong's handover. Between 1997 and 2003, China exercised restraint and did not openly intervene in Hong Kong's affairs, so as to maintain propagandistic effects in promoting its so-called “one country, two systems” formula in the international community. However, after 500,000 people rallied on July 1, 2003 to protest the then impending enactment of the National Security Bill on July 9, 2003, China promptly retrenched its political control over Hong Kong. Since then, intervention by Beijing in Hong Kong's affairs has become increasingly apparent. In particular, China has tightly restricted the development of Hong Kong's political system by taking advantage of the power vested in the Standing Committee of the National People's Congress (NPC) to make final interpretations and revisions of Hong Kong's Basic Law. This, along with the

Hong Kong SAR government's self-restrained exercise of autonomy, has led the people of Hong Kong to call their political system a “birdcage democracy.” However, the Hong Kong people remain firm in their demand for democracy. The roadmap and timetable for the direct elections of the Chief Executive and all the members of the Legislative Council will be future subjects of debate in Hong Kong’s political arena, as well as focal points of deep international concern. Taiwan has repeatedly declared its willingness to share its experience in democratic development with the Hong Kong people and to assist Hong Kong in advancing the democratization process.

Generally speaking, Hong Kong's economic performance is inextricably connected with economic growth in China. Some measures taken by China to boost Hong Kong's economy have been effective, but behind this bright economic picture Hong Kong must face difficult challenges, including the crisis of marginalization, risks from economic fluctuations in China, and social problems arising from economic and trade exchanges with China.

On the surface, Hong Kong appears to have not experienced any major social changes since the handover. However, the mindset of “self-censorship” on issues pertaining to China is gradually spreading throughout society. The phenomenon of media “self-censorship” is particularly a source of concern.

The Mainland Affairs Council (MAC) has conducted a long-term survey of Hong Kong's “one country, two systems” formula based on the index of China's pledge of “Hong Kong people ruling Hong Kong with a high degree of autonomy.” Based on publicly available information alone, the MAC has identified 175 controversial cases involving China's violation of the “one country, two systems” pledge. These controversial cases have been summarized and categorized into a chart (please see the MAC website) that illustrates how contradictions between the nature of China's authoritarian regime and democratic politics have not only made it difficult for China to honor its pledge of “Hong Kong people ruling Hong Kong with a high degree of autonomy,” but have also made certain rights of the Hong Kong people much more restricted than in the pre-handover period.

The following is a review and analysis of the general situation and developments in Hong Kong over the past 10 years:

**Self-restraints exercised by the Hong Kong SAR government and forceful interference by China have caused qualitative changes in the “high degree of**

**autonomy” model.**

Since the handover, Hong Kong has experienced several real estate and stock market bubbles, the Asian financial crisis, the SARS outbreak, and a 500,000-person march on July 1, 2003, protesting the drafting of a National Security Bill. These incidents have increased public dissatisfaction in Hong Kong over the governance capability of the Hong Kong SAR government. The situation did not improve until Donald Tsang Yam-Kuen replaced Tung Chee-hwa as Chief Executive. However, over the past 10 years, the Hong Kong SAR government's self-restraints and forceful interference by China have already caused qualitative changes in the significance of the pledge of “Hong Kong people ruling Hong Kong with a high degree of autonomy.”

The Hong Kong SAR government's self-restraint has prevented Hong Kong from insisting on a “high degree of autonomy.” Although the Basic Law grants the HKSAR government a high degree of executive power, the HKSAR government has frequently stated that “Hong Kong is not an independent political entity, and the Chinese Central Government has leading authority over Hong Kong.” Consequently, major policies must be approved by the Chinese Central Government before they can be presented for public consultation. Moreover, on such issues as epidemic outbreaks and food safety problems in China, the HKSAR government has quietly waited for and complied with the edicts issued by China, emphasizing the limits and boundaries of its authority due to the “one country, two systems” and an unwillingness to “damage China's reputation.” The HKSAR government's self-restraints on autonomy have also led to public dissatisfaction and warning that, “The effect of the HKSAR government's automatic relinquishing of a high degree of autonomy is the same as the Chinese Central Government gradually depriving Hong Kong of its high degree of autonomy.”

China's forceful interference in Hong Kong's affairs has also prevented Hong Kong from maintaining a “high degree of autonomy.” In August 2004, Chen Zuor, deputy director of the State Council’s Hong Kong and Macao Affairs Office, stated publicly that on the Hong Kong issue, “China will not give way, and the Central People's Government will not relinquish its hold, not in the past, present, or future.” Chen's remarks showed that Beijing intends to tighten its control over Hong Kong. On July 1, 2003, more than 500,000 Hong Kong people joined in a march to protest against legislation on Article 23 of the Basic Law, which made China feel shocked at

the march's scale and the public discontent it released. Since then, the Chinese government has adjusted its Hong Kong strategy and reorganized the departments and personnel responsible for Hong Kong affairs. It has used the NPC's interpretation of the Basic Law to restrict the scope and timetable of political reforms. It has also tightened its control over Hong Kong's political situation by intervening in the elections of all the members of the Legislative Council and the Chief Executive, enticing and dividing the pro-democratic forces in Hong Kong. The impact of the NPC's interpretation of the Basic Law on Hong Kong's autonomy has drawn the most attention. If the NPC Standing Committee abuses its power of final interpretation of the Basic Law, it will undermine Hong Kong's "high degree of autonomy." For example, an interpretation made by the NPC in 1999 overruled a decision of Hong Kong's Court of Final Appeal. Such use of "political" procedures to manipulate the powers of final adjudication granted to the Hong Kong courts has seriously undermined judicial autonomy in Hong Kong. In 2004, China again made an interpretation that preemptorily overruled the direct election plan under intensive discussion by the people of Hong Kong, further undermining Hong Kong's right to political self-determination. On the eve of the 10th anniversary of the handover, NPC Standing Committee Chairman Wu Bangguo even more fiercely expressed that "Hong Kong's high degree of autonomy is granted by the central government; and Hong Kong has as much autonomy as the central government allows." Such actions and words concretely demonstrate that China's pledge to allow Hong Kong to be administered with a "high degree of autonomy" is nothing more than a bounced check.

### **Economic integration of China and Hong Kong has become a trend, but certain challenges need to be faced**

Before its handover to China, Hong Kong maintained a certain level of economic development. After the 1997 handover, Hong Kong's economy went into decline due to the impact of the Asian financial crisis, a lackluster global economy, the SARS outbreak, and problems with economic transformation in Hong Kong. Deflation appeared and the confidence of the Hong Kong people over Hong Kong's economic prospects progressively wavered. At one point the unemployment rate topped eight percent. Hong Kong's economy began to show signs of recovery afterwards due to the gradually improving global economy and with the aid of several preferential measures

and assistance provided by China.

Hong Kong's economic performance has long been inextricably linked to economic development trends in China. Before the 1997 handover, Hong Kong's manufacturing industry was steadily shifting to China, prompting Hong Kong's transformation to a service-based economy. Economic integration with China continued to be the key factor influencing Hong Kong's economic development after the handover. In order to stabilize the political situation and pacify public feeling in Hong Kong, China provided several preferential measures when Hong Kong faced an economic slowdown. Such measures have included signing a Closer Economic Partnership Arrangement (CEPA) with Hong Kong; allowing residents of 49 Chinese cities to make "individual visits" to Hong Kong; allowing Hong Kong banks to provide renminbi (RMB) services for individual customers; and, more recently, allowing China's financial institutions to issue RMB-denominated bonds in Hong Kong. Furthermore, economic integration between China and Hong Kong has gathered pace since Hong Kong was included in the Development Program for the Pan-Pearl River Delta Regional Cooperation originating in various southern Chinese provinces.

The general public opinion in Hong Kong is that economic integration with China is an inevitable trend, one that also has benefits for Hong Kong's economy. However, there are some opinions of doubt. Some public commenters say that the "Sinicization" of Hong Kong's economy will cause Hong Kong to lose its uniquely inherent characteristics as an international city and thereby reduce its competitiveness. Another view holds that further reliance on China's economy will devalue Hong Kong's economy and could even affect Hong Kong's room for self-government. Some scholars and experts believe, moreover, that the CEPA will not have an obvious effect, noting that zero tariffs provide limited help, that personnel in the service industry and related sectors face numerous restrictions and high investment thresholds in China, and that the benefits of "individual visits" from China will be felt only in areas with concentrations of visitors, making it difficult for the results to be enjoyed by the lower classes.

Public opinion indicates that Hong Kong still faces a number of challenges in its future economic development, including a crisis of "marginalization" by competition from Guangdong. Steadily increasing income inequality (Between 1991 and 2001, the Gini coefficient measure of income inequality trended up in Hong Kong) has also

affected social stability. Moreover, Hong Kong's long-term problem of air pollution has attracted much criticism from foreign businesspeople and endangered economic development. However, it is not easy to coordinate efforts in handling this problem since many of the pollution sources are in China. Noteworthy, a study conducted by the Hong Kong Monetary Authority indicated that if China experiences a trade war, a sharp drop in investment or financial instability, it could reduce Hong Kong's economic growth by three to six percentage points within two years. This shows that as Hong Kong strives to integrate with China, it needs to seriously face up to the issue of how to respond to the risk of economic fluctuations in China. Some public commenters analyze that Hong Kong needs to be able to effectively handle the challenges accompanying economic integration between China and Hong Kong. It will also need to maintain its free market, sound legal system and other traditional advantages to stay competitive and sustain economic growth.

**Judicial independence has come under repeated attack, undermining the foundation of the rule of law.**

An independent and impartial judicial system was once a cornerstone of economic stability and prosperity in Hong Kong. Since the handover, however, the controversial cases occurring in succession have impacted the impartiality and authority of Hong Kong's judiciary and affected public trust in the judicial system. A cause of concern is that many of these cases are related to the “China factor.” Some international observation organizations have indicated that China's political intervention has affected the spirit of the rule of law in Hong Kong, as well as the rankings of the business environment and the quality of Hong Kong's rule of law.

The China factor has affected the certainty and impartiality of Hong Kong laws in a number of cases. These include: a fraud case involving Sing Tao Daily proprietor Sally Aw Sian case, in which the public suspected that non-prosecution resulted from Aw's good relationship with high-ranking officials in China; a case involving violations of the Privacy Ordinance by the Hong Kong office of the Xinhua News Agency, in which non-prosecution was determined as well; the NPC's interpretation of the Basic Law overruling the decision of the Court of Final Appeal in relation to the right of abode of children in China born out of wedlock by Hong Kong residents; the HKSAR government police's charging Falun Gong practitioners with “obstructing the streets” for staging a sit-down protest in front of the Central Government Liaison

Office; and China's public security personnel crossing the border for law enforcement in Hong Kong. All of these cases have weakened public trust in the Hong Kong's judicial independence and placed a shadow over such independence.

### **“Self-censorship” has restricted freedom of the press and freedom of speech**

On the surface, it appears that social development in Hong Kong has not been affected since the handover. “The horse racing and dancing continue as before,” the travel industry has continued to thrive, the media has been able to report and comment on the Chinese and HKSAR governments, the people have been able to assemble and march in protest of the Chinese and HKSAR governments, and Falun Gong has been able to engage in limited activities. However, beneath the surface, substantive effects have been occurring. For example, a mindset of “self-censorship” in many sectors on China-related issues has seriously eroded a cornerstone of Hong Kong's “high degree of autonomy.”

Since the handover, China has not outwardly implemented a media censorship system in Hong Kong. However, it has used a variety of methods to influence the content of media reporting, such as purchasing shares of Hong Kong media through China-financed organizations, setting up titular owners, dismissing a host of a current affairs program, prohibiting Chinese enterprises from placing advertisements in media channels critical of China, and prohibiting media critical of China from covering news events in China. In early 2007, the Hong Kong Journalists Association (HKJA) conducted a public opinion survey on Hong Kong's news industry. It found that 58.5 percent of the respondents believed that news self-censorship has become more serious since the handover, especially when the media handles negative news about China. This has been all the more apparent when news reports involved political dissidents, Falun Gong activities, or political news on Taiwan, Xinjiang and Tibet. The HKJA worried that by a method of “slowly boiling the frog,” Beijing and the HKSAR government would ultimately suffocate freedom of the press and freedom of speech in Hong Kong.

Moreover, while it is still possible to assemble and march in protests critical of the HKSAR government or China, such activities often encounter obstruction. For example, “self-censoring” insurers have been unwilling to provide coverage for pro-democracy activities, making venue applications difficult. Alternatively, the authorities may permit an activity and then delay issuing permits for street fundraising

and promotion of the event so that early operations cannot proceed on schedule. Therefore, Hong Kong's freedom of assembly and marching has been eroded through a variety of administrative means and technical interference.

**The international community has not pulled out investment, but it is deeply concerned over democratic development and judicial independence**

Foreign representative institutions in Hong Kong at present include 57 consulates-general, 56 consulates and five officially recognized bodies. Hong Kong was in the 11th place according to the World Economic Forum's 2006 ranking of competitive economies; ranked second in the World Competitiveness Yearbook 2006 of the International Institute for Management Development (IMD) in Lausanne, Switzerland; and remained at the top of the Heritage Foundation's 2007 Index of Economic Freedom for the 13th consecutive year.

The international community, however, has still been concerned about the detrimental impacts of China's interventions in Hong Kong affairs on the “one country, two systems” model. The international community was especially concerned about the impairment of judicial independence due to the NPC’s interpretation of the Basic Law, the obstruction to democratic development arising from failure to implement direct elections, and media self-censorship. Both the U.S. State Department's Country Reports on Human Rights Practices and Report on Hong Kong criticized that the NPC’s interpretation of the Basic Law had undermined Hong Kong's autonomy. They questioned whether China has the sincerity in keeping its promise to maintain Hong Kong's rule of law and autonomy. Reports on Hong Kong published by the UK and the European Union, and a report by the United Nations Human Rights Committee, have all expressed similar concerns.

The U.S. once used the analogy of the “miner’s canary” to describe Hong Kong as a testbed for democracy in China, indicating that successful political reform in Hong Kong would benefit democratic development in other areas of China. Conversely, if Beijing arbitrarily suppresses democratic development in Hong Kong, there would be instability in China. The U.S. even clearly indicated that a regression in the democratic development of Hong Kong would affect the development of the China-U.S. relations. Moreover, several U.S. congressmen have openly said that their impression of Hong Kong is that the high degree of autonomy promised by the “one



country, two systems” model is diminishing. They warned that if Hong Kong becomes no different from any other cities in China, then the United States will abolish the preferential licensing treatment given to Hong Kong under the United States-Hong Kong Policy Act of 1992, which applies different licensing policies and standards to Hong Kong and China because of Hong Kong’s ability to maintain an effective export control system.

### **Frequent interaction between China and Hong Kong have created new social problems**

Since the handover, there has been increased exchange of personnel, economic and trade cooperation, as well as connection of infrastructures between China and Hong Kong. As noted by Kang Xiaoguang, researcher of the Center for China Studies under the Chinese Academy of Sciences, Beijing has repeatedly instituted measures to boost Hong Kong's economy, incurring the envy of China's local governments. However, even though the Chinese Central Government is willing to assist, Hong Kong leaders should be politically wise enough not to demand too much from Beijing. Yet in addition to the many of the above-mentioned measures offered by China to boost Hong Kong's economy and promote integration of the Chinese and Hong Kong economies, Beijing has actively arranged for public officials, civic organization elites, and faculty and students at various school levels to participate in tour activities. The tours are aimed at letting participants experience national conditions in China so as to accelerate Hong Kong's integration with China. Nevertheless, such integration has also brought new social problems for Hong Kong.

There have been growing concerns about public security problems arising from individual visits. China first began allowing individual visits to Hong Kong in 2003, and today nearly 300 million residents in 49 Chinese cities can travel independently to Hong Kong. According to data publicly announced by the HKSAR government, a total of 17.2 million mainlanders have made individual visits to Hong Kong, generating HK\$22.7 billion in revenue for Hong Kong between 2004 and 2006.

However, individual visits have also brought new public security problems for Hong Kong. For example, Chinese travelers to Hong Kong have overstayed their visas and engaged in theft, burglary, begging, and prostitution. Pregnant women have also gone to Hong Kong to give birth, occupying medical resources there.

The problem of integrating Hong Kong residents and new coming Chinese

immigrants is also worthy of attention. The present quota for Chinese immigrants intending to move to Hong Kong is 150 persons a day. According to statistics compiled by Professor Nelson Chow of the Department of Social Work and Social Administration at the University of Hong Kong, 860,000 Chinese residents visited Hong Kong with single-entry travel permits between 1985 and 2005. However, there are still large disparities between China and Hong Kong in terms of their educational significance, concepts of the rule of law, political consciousness, and concepts of life. The arrival of new immigrants has caused impacts on the original social system in Hong Kong. Moreover, the enormous number of Chinese immigrants has grown continuously, thus increasing the burden on Hong Kong's social welfare system as well as creating feelings of animosity between the people of Hong Kong and the new Chinese immigrants.

**Civilian exchanges between Taiwan and Hong Kong have remained active, while official interactions need to be strengthened.**

Since Hong Kong's handover, Taiwan has designated Hong Kong as a “special area” separate from the Mainland Area so as to maintain the original mode of direct exchanges between the peoples of Taiwan and Hong Kong, as well as to further comprehensively promote the development of relations between Taiwan and Hong Kong. Civilian exchanges between Taiwan and Hong Kong have remained active since the handover. Hong Kong is also an important intermediary of cross-strait trade and economic as well as personnel exchanges. However, official relations need to be strengthened.

Trade between Taiwan and Hong Kong increased from approximately US\$30.7 billion in 1997 to US\$39.17 billion in 2006, making them each other's fourth-largest trade partner. During the same period, cross-strait trade via Hong Kong increased from US\$11.4 billion in 1997 to over US\$21.62 billion in 2006. Hong Kong's function as a financial intermediary cannot be overlooked. Many Taiwanese businesspeople in China use Hong Kong's banking system to allocate capital funds. As of 2006, there were 15 Taiwanese-invested banks in Hong Kong, and nearly 50 Taiwanese enterprises were listed on the Hong Kong stock market. Providing services and support for Taiwanese-invested enterprises in Hong Kong has become a new task for the government.

The Taiwanese government has invited people from all sectors of society in

Hong Kong to visit Taiwan and observe local elections to enable the Hong Kong people to better understand and witness first-hand Taiwan's experiences in freedom, democratization, and globalization, including Taiwan's diverse social and democratic development and open, progressive economy. Therefore, in recent years the government has continued to relax regulations on visits from Hong Kong to Taiwan. For example, visitors from Hong Kong can now apply for a Taiwan visa online; the entry/exit permit application fee for Hong Kong's associations visiting Taiwan during the National Day celebration has been waived; and the children of Hong Kong residents working in Taiwan can study at schools for foreign nationals in Taiwan. In addition, the government has publicly welcomed China-financed media in Hong Kong to station reporters in Taiwan. It also has enhanced care and services for Hong Kong students studying in Taiwan and instituted measures to attract Hong Kong and Macao students to study in Taiwan. All of these measures have forged closer civilian exchanges between Taiwan and Hong Kong. Over the past 10 years, the number of Taiwanese residents visiting Hong Kong has increased from over 1.896 million to more than 2.955 million in 2006, while the number of Hong Kong residents visiting Taiwan has increased from over 177,000 to more than 333,000 in 2006. Taiwan has also succeeded in establishing a counter at the Hong Kong International Airport to further facilitate services for cross-strait travelers.

In comparison to the active civilian exchanges, progress in official exchanges between Taiwan and Hong Kong has been more difficult to achieve. The HKSAR government originally designated a "Special Advisor to the Chief Executive," a civilian position outside the governmental system, as a communication channel with Taiwan's representative office in Hong Kong. Since 2002, Hong Kong has transferred the task of communication with the Hong Kong Affairs Bureau of the MAC to a governmental agency called the Constitutional Affairs Bureau. However, basically there are no regular official exchanges between Taiwan and Hong Kong. The HKSAR government currently has misgivings about its officials visiting Taiwan. It also often makes it difficult for Taiwanese officials at the vice-minister level or above to apply for a visa, requiring Taiwanese officials to meet unreasonable conditions for a visa, delaying visa issue to just before the trip departure, or demanding that the visa be obtained at the Hong Kong International Airport. Such actions not only harm the dignity of Taiwan, but also hinder travel by Taiwanese officials. When National Taiwan University student Lee Chien-cheng was detained by the Hong Kong police in

2005 for participating in demonstrations during the 6th WTO Ministerial Conference held in Hong Kong, MAC Vice Chairman Michael Y. L. You prepared to visit Lee in Hong Kong. However, he still had not received a Hong Kong visa by the time Lee had returned to Taiwan. Furthermore, the HKSAR government also delays or makes unreasonable demands during the processing of working visa applications of employees of the Taiwan representative office in Hong Kong.

Despite this, the Taiwanese government has maintained a spirit of goodwill and service. It has actively provided assistance whenever Hong Kong visitors in Taiwan experience sudden incidents, in the cases of the China Airlines air crash near Penghu in 2002, the suspected SARS infection of a Hong Kong tour group visiting Taiwan in 2003, a bus accident in Jioufen in 2004, and a train accident on Alishan in 2007. However, if the HKSAR government had established representative offices in Taiwan, the overall relief process would have been faster during these emergency incidents. Consequently, the Taiwanese government has urged several times that the HKSAR government should promptly establish offices in Taiwan to provide better and more timely services to the people of Taiwan and Hong Kong.

Mr. Donald Tsang was reelected as the third-term Chief Executive of Hong Kong this March. The Taiwanese government hopes that as Mr. Tsang no longer faces reelection pressure, he will pragmatically promote exchanges between Taiwan and Hong Kong to advance the development of peaceful and stable cross-strait relations.