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# HONG KONG: THE SECOND HANDOVER

FONDATION POUR  
L'INNOVATION  
POLITIQUE  
*fondapol.org*

July 2020



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is a French think tank for European integration and free economy.

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# SUMMARY

The National Security Law (NSL), which came into effect on 30 June 2020, the day before the anniversary of Hong Kong's handover to China (1 July 1997), is designed to intimidate Hong Kong civil society and suppress all protests. New 'crimes' are now heavily punished. Some provisions go very far in creating legal insecurity. Directly subordinated to Beijing, new security institutions have been set up to deal with these 'crimes'.

Civil liberties are the first to suffer from this new law. Civil society in Hong Kong is balancing between obedience and protest. The business world and the financial centre are also progressively being restrained. The limited U.S. sanctions should not fundamentally disrupt Hong Kong's business community. Still, the NSL may affect the business community through its risks to data confidentiality and the exceptional powers now enjoyed by Beijing's police and security organs.

However, can we talk about the end of the 'One country, Two systems' principle? The full integration of Hong Kong into mainland China seems unlikely. Yet maintaining a large degree of autonomy for the Special Administrative Region (SAR) is now ruled out. It would appear that Beijing wants to exercise greater control both directly over Hong Kong's governance and civil society as well as indirectly over economic and financial circles. The NSL amounts to a 'second handover'.



Source : universalis.fr

# HONG KONG: THE SECOND HANDOVER

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## INTRODUCTION

The National Security Law (NSL), which came into effect on 30 June 2020, the day before the anniversary of Hong Kong's handover to China (1 July 1997), was enacted at a favourable time for China. The coming to power of Xi Jinping in Beijing in 2012 has increased pressure on the Hong Kong government to adopt the NSL and the international situation has allowed Beijing to gradually strengthen its control over Hong Kong over the past eight years without any real reaction<sup>1</sup>.

The NSL and its sixty-six Articles<sup>2</sup>, now added to the Basic Law of Hong Kong, are designed to intimidate civil society and suppress dissent. New 'crimes', in particular the promotion of Hong Kong's independence or violence against the police, which have been labelled 'terrorist' acts, are now heavily punished. Some provisions go very far in creating legal insecurity, such as calling into question the independence of the judiciary and enhancing the discretionary power of the security organs. Directly subordinated to Beijing, new security institutions responsible for dealing with these 'crimes' have been set up alongside the existing Hong Kong institutions, now under their close supervision.

1. Sebastian Veg, "Hong Kong Through Water and Fire. From the mass protests of 2019 to the national security law of 2020", thediplomat.com, 1 July 2020 (<https://thediplomat.com/2020/07/hong-kong-through-water-and-fire/>).

2. An English translation of the Law is available in the annex of this study.

Civil liberties are the first to suffer from this new law. Demonstrations and elections will now be tightly controlled. Justice in matters of national security will largely depend on the executive branch, which will choose judges and exclude foreign judges. Foreign organisations are expected to face the same difficulties as in mainland China.

Hong Kong's civil society, which will no doubt be quickly contained, is balancing between obedience and protest. Education should gradually be brought into the 'mainland' format and freedom of the press called into question.

The business world and the financial centre are also progressively being forced to fall into line. Many companies and banks have been forced to pledge allegiance to the new NSL. While limited, the Trump administration's sanctions are not expected to fundamentally disrupt Hong Kong's business community. But the NSL may nevertheless affect the business community through the risks to data confidentiality and the exceptional powers now enjoyed by Beijing's security organs in Hong Kong.

However, can we talk about the end of the 'One country, Two systems' principle? Although the full integration of Hong Kong into mainland China seems unlikely, the maintenance of a large degree of autonomy for the Special Administrative Region (SAR) is now ruled out. It would appear that Beijing wants to exert greater control both directly over Hong Kong's governance and civil society and indirectly over economic and financial circles. The NSL appears to be akin to a 'second handover'.

## I. A LAW ENACTED IN AN INTERNATIONAL CONTEXT FAVOURABLE TO CHINA

### 1. Successive Hong Kong Chief Executives have failed to adopt the NSL, enshrined in the Basic Law of the SAR

According to Article 23 of Hong Kong's Basic Law, a sort of mini-Constitution that organises the political institutions of the SAR established when the territory returned to China in 1997, "the Hong Kong Special Administrative Region (SAR) shall enact laws on its own<sup>3</sup> to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies". The fact that the HKSAR is supposed to draft and promulgate the NSL 'on its own' means that neither the Central Government nor the National People's Congress (NPC), the Chinese Parliament, is supposed to intervene in this process.

No deadline had been set in the Basic Law. On instructions from Beijing, Hong Kong's first Chief Executive, Tung Chee-hwa<sup>4</sup> attempted, in 2003, to have a national security law adopted by the legislative body, the Legislative Council of the Hong Kong Special Administrative Region (LegCo). However, he faced strong opposition from the Hong Kong society and had to abandon the project. Since then, his two successors, Donald Tsang<sup>5</sup> (2005-2012) and Leung Chun-ying<sup>6</sup> (2012-2017), have been unable to revive the bill for fear of provoking further protests.

3. This emphasis was placed here by the authors.

4. Born in 1937 in Shanghai, China, this former businessman was the first Chief Executive of the Hong Kong Special Administrative Region from 1 July 1997, when Hong Kong was returned to China by the United Kingdom. He resigned in 2005, citing health problems, but several commentators have instead alluded to his incompetence during the 1997-1998 economic crisis and the outbreak of severe acute respiratory syndrome [SARS] in 2003. Hongkongers have blamed him for being too close to the Beijing government and for his lack of charisma.

5. Born in 1944 in Hong Kong, this former official of the British colonial administration was Chief Secretary for the Hong Kong administration before becoming Chief Executive from 2005 to 2012. His tenure was marked by the adoption in 2010 of the only electoral reform negotiated between Beijing and part of the pan-democratic camp: the increase in the number of democratically elected seats in the LegCo from 30 to 40, out of a total then increased from 60 to 70 seats.

6. Born in 1954 in Hong Kong, this entrepreneur became Hong Kong's Chief Executive in 2012 with the support of Beijing, which he was blamed for. In 2014, Beijing's plan, accepted by Leung Chun-ying, to elect the chief executive by direct universal suffrage on the basis of candidates chosen by an establishment-dominated selection committee triggered the protests known as the 'umbrella movement'. During his term of office, Hong Kong's society divided considerably and the subject of Hong Kong independence became a major issue, much to Beijing's chagrin.

Since Hong Kong's handover to China, the Chief Executive has been elected for a five-year term by an electoral committee composed initially of 400 members and now of 1,200 members, representing the various sectors of Hong Kong's society and economy and elected on a corporate basis. The 38 professional colleges dominate this committee, while the 70 members of the LegCo and representatives of the district councils (elected bodies) are in the minority. The electoral committee is therefore largely pro-establishment and pro-Beijing.

The Chief Executive is a sort of Prime Minister and does not represent the main political party in the Territory. He or she is usually a former senior official (Donald Tsang, Leung Chun-ying or, today, Carrie Lam) or a business person (Tung Chee Hwa) whom the central government trusts. For example, Leung Chun-ying is suspected of being an underground member of the Chinese Communist Party, an organisation which paradoxically is not officially present in Hong Kong. The election of the Chief Executive is only moderately competitive, as any candidate from an opposition grouping, such as the Democratic Party and the Civic Party, has no chance of being chosen by the electoral committee. Though elected, the Chief Executive, however, is appointed by the central government. He or she is therefore strongly suspected of being more representative of Beijing's interests than those of the people of Hong Kong who, since 1997, have voted in a majority (between 55 and 60%) for the opposition parties. Nonetheless, as the LegCo, elected every four years, is only half-democratic (30 of the 70 seats represent largely pro-establishment professional colleges), these opposition parties hold only a minority of seats (23 since 2016), a source of permanent frustration among those in favour of extending democracy in Hong Kong.

## **2. Xi Jinping's accession to power in Beijing in 2012 has increased pressure on the Hong Kong government to adopt the NSL**

The failure of the patriotic education campaign launched by Leung Chun-ying in 2012 and then the 'umbrella movement' in 2014, caused by Beijing's refusal to introduce a democratic method of electing the head of the Hong Kong executive, have once again delayed the project of adopting the NSL. As a result, Carrie Lam, Hong Kong's Chief Executive since 2017, indicated again in the spring of 2019 that circumstances were not conducive to the adoption of such a law. However, the broad protest movement against another project launched at the same time by Carrie Lam, the law to extradite fugitives accused of crimes to the Chinese mainland, caused a major change to the situation. By convincing the Hong Kong government in mid-June 2019 to suspend this bill and then, in early September 2019, to withdraw it altogether, this protest movement deeply polarised Hong Kong's society.



Hong Kong's most determined and violent fringe has particularly worried the Chinese Communist Party which, at the 4<sup>th</sup> Plenary of its Central Committee in October 2019, decided, during its closed-door debates, to introduce the NSL at all costs.

Given the recurrent blockages that LegCo has faced in recent years (for example around the law on the national anthem, which finally came into effect on 12 June 2020), the Chinese government announced on 21 May 2020 that it would ask the NPC and in particular its Standing Committee (175 members who meet on average six times a year), to draft such a law and to add it to Annex III of the Basic Law, which contains a limited number of national laws that apply to Hong Kong. This decision was approved by the NPC on 28 May 2020. Three weeks later, on 18 June, on an exceptional basis, the Standing Committee of the NPC reconvened and indicated that it would discuss the 'PRC SAR National Security Safeguard Bill' during its newly opened session. It then published a summary of the law, but the text remained secret until it was voted on, promulgated and then added to Annex III of the Basic Law on 30 June 2020. No public consultation on the draft law took place.

### **3. The international situation has allowed Beijing to strengthen its control over Hong Kong without provoking any real retaliatory measures**

The reactions of the pan-democratic camp to Beijing's announcement of the NSL project were swift: for the pan-democratic camp, this project sounded the death knell for the principle of 'One country, Two systems' introduced by Deng Xiaoping in the early 1980s. The reactions of Western countries have also been both rapid and negative. Considering this law as a challenge to the territory's autonomy, the United States threatened to abolish, or at least to revise, the Hong Kong Policy Act adopted in 1992, which gives the SAR multiple administrative (especially with regard to visas) and commercial (the absence of customs duties, for example) advantages, and also threatened to impose unspecified sanctions against China and Hong Kong.

Although the European Union had ruled out imposing sanctions against China or Hong Kong, it had been quick to express its concern. In a letter dated 26 May 2020, the European Union's High Representative for Foreign Affairs and Security Policy, Josep Borrell, said that Beijing's increasing control over Hong Kong affected not only the EU's direct interests in Hong Kong but also the maintenance of a standards-based international order in which legal and political commitments are respected. He also called on the European Union to adopt a coherent and united China policy.

On 17 June 2020, the G7 Foreign Ministers' Meeting issued a statement that was particularly critical of the Chinese Government<sup>7</sup>, arguing that its decision was not in line with Hong Kong's Basic Law and its international commitments, in particular the 1984 Sino-British Joint Declaration, an international treaty registered at the United Nations under which the Chinese government pledged to grant a 'high degree of autonomy' to the territory. The G7 statement also found that the NSL project 'endangers the system that has allowed Hong Kong to prosper successfully to date'<sup>8</sup>.

Following the promulgation of the NSL, upon reading its provisions and, above all, following the first arrests by the police during the demonstrations of the 1 July 2020<sup>9</sup>, the reactions of foreign governments have been verbally more violent but so far without much consequence. Canada warned its nationals in Hong Kong about the risk of 'arbitrary detention' and extradition to mainland China, and then on 3 July suspended its extradition agreement with Hong Kong. At the United Nations, 27 countries, including France and Japan, have called on China to review the law, which 'threatens' freedoms. In London, Prime Minister Boris Johnson denounced a violation of the terms of the surrender and announced in the House of Commons in early June an extension of immigration rights for some 350,000 Hongkongers born before the handover in 1997 and holding British National Overseas (BNO) passports, which in principle do not allow them to reside in the United Kingdom. In the beginning of July, it extended this right to the children of these BNOs, making 2.9 million Hong Kong nationals potentially eligible<sup>10</sup>. On 20 July, the United Kingdom suspended 'indefinitely' its extradition treaty with Hong Kong. Beijing suggested that it would take retaliatory measures. Nonetheless, apart from refusing to recognise the validity of this travel document and preventing Hongkongers from using it to leave the territory, it is hard to see what retaliation the Chinese government could take.

The United States is the only country that has decided to take sanctions against China. As soon as the summary of the law was published at the end of May, the Trump administration announced retaliatory measures against all Hong Kong and Chinese officials involved in the application of the NSL. On 3 July 2020, the U.S. Congress unanimously passed the Hong Kong Autonomy Act, a law that puts an end to Hong Kong's preferential trade status and extends these sanctions to the financial institutions whose clients are allegedly these officials, causing uncertainty in international banking institutions based in Hong Kong.

7. See U.S. Department of States, "G7 Foreign Ministers' Statement on Hong Kong", Media Note, Office of the Spokesperson, 17 June 2020 [<https://www.diplomatie.gouv.fr/en/country-files/china/news/article/g7-foreign-ministers-statement-on-hong-kong-17-jun-2020>].

8. Ibid.

9. On that day, the police arrested 370 people, including 10 under the new law.

10. See Alasdair Sandford, "Hong Kong: Johnson and Raab promise 'new route' to UK citizenship for British nationals", *euronews.com*, 1 July 2020 [[www.euronews.com/2020/07/01/watch-live-uk-prime-minister-boris-johnson-takes-pmqqs-in-parliament](http://www.euronews.com/2020/07/01/watch-live-uk-prime-minister-boris-johnson-takes-pmqqs-in-parliament)].

On 14 July President Trump signed the Act. As a result, Hong Kong will be now treated the same as mainland China for the purpose of, among other things, export controls and tariffs. However this law offers the U.S. President some flexibility in terms of application (waivers<sup>11</sup>). At the same time, at the end of June, the U.S. State Department announced that the country would stop sales of high technology and military equipment to Hong Kong. However, in order to protect the interests of U.S. companies operating in the SAR, these sanctions are relatively limited and do not affect the application of the NSL.

Beijing's *coup de force* against Hong Kong had been brewing since the increase in protests and demonstrations. The international context at the beginning of 2020, with the withdrawal of the United States and the Covid-19 crisis, was a favourable moment, limiting the possibilities of reaction and, above all, of sanction on the part of members of the international community, who were busier dealing with their own health and economic difficulties. So much so that, in early July, the Chinese government succeeded in convincing more than 70 countries to support its NSL, forgetting for the occasion its sacrosanct commitment to non-interference in its internal affairs<sup>12</sup>.

## II. PROVISIONS DESIGNED TO INTIMIDATE CIVIL SOCIETY AND ELIMINATE ANY PROTEST MOVEMENT

The new NSL is clearly designed to intimidate Hong Kong's civil society and nip in the bud any protest movement. From the beginning of the NSL (art. 9)<sup>13</sup>, it is stated that schools, universities, public organisations, the media and the Internet will be closely supervised by the NSL. The Chief Executive is responsible to the central government in Beijing for the proper implementation of the NSL and must submit an annual report on its performance (art. 11). The NSL concludes with various provisions, including that the NSL prevails in its field over all other laws in Hong Kong (art. 62) and that the power to interpret the law rests with the NPC Standing Committee in Beijing (art. 65).

11. An administrative tool used by U.S. presidents and other federal officials to selectively enforce certain laws.

12. See "More than 70 countries voice support for China's HK national security law at UNHRC", *globaltimes.cn*, 3 July 2020 (<https://www.globaltimes.cn/content/1193422.shtml#:~:text=Representatives%20from%20more%20than%2020,to%20endorse%20the%20passage%20of>).

13. An English version of the NSL is annexed to this study.

## 1. New 'crimes' have been added to Hong Kong's Basic Law containing severe penalties

Among the four main crimes included in this bill are the 'secession' (*fenliezhuyi*, art. 20), 'subversion' (*dianfu guojia zhengquan*, art. 22), 'terrorism' (*kongpuzhuyi*, art. 24) and 'collusion with foreign or external forces that undermines national security' (*goujie waiguo huo jingwai shili weihai guojia anquan*, art. 29). The qualification of this fourth crime has been changed from 'activities of interference by foreign or external forces in the affairs of the HKSAR' (*waiguo huo waijing shili ganyu Xianggang tebie xingzhengqu shiwu de huodong*). All these crimes are punishable by very heavy sentences, both for the instigators (from a minimum of 10 years to life imprisonment) and for the participants (from 3 to 10 years in prison). The denunciation of other participants allows for a lighter prison sentence (art. 33). Foreigners who violate the law may be expelled (art. 34).

The provision prohibiting a person convicted under the NSL from being elected or holding public office (art. 35) will make it easier to dismiss opponents who generally score well in local elections, including the parliamentary elections scheduled for 6 September 2020.

However, this law goes further than that. Indeed, it applies not only to acts committed in Hong Kong or which would have consequences in Hong Kong (art. 36), but also to natural or legal persons (art. 37), i.e. companies, foundations and NGOs, or to acts committed against Hong Kong 'from outside' by 'a person who is not a permanent resident' (art. 38), which amounts to establishing extraterritoriality of the NSL.

Overall, the greatest danger of this law is both the very vague nature of the crimes against national security included in it and the extensive approach to national security adopted by the Chinese regime since Xi Jinping came to power. Indeed, the NSL does not define the very notion of national security: security of the country or the regime; security of the state or the Chinese Communist Party?

## 2. The institutions responsible for dealing with these new 'crimes' are established in parallel with existing Hong Kong institutions

The NSL establishes a new Commission for the Safeguarding of National Security (*weihu guojia anquan weiyuanhui*, art. 12), headed by the Chief Executive and accountable to the central government in Beijing. The Secretary General of this Commission is appointed by the central government.

However, the most important person in this commission is the ‘adviser’ (guwen), also chosen by Beijing (art. 15). Appointed on 3 July 2020, he is none other than Luo Huining, the director of the central government’s liaison office in Hong Kong.

A new unit under the authority of the Police Commissioner will be responsible for enforcing the NSL (*jingwuchu weihu guojia anquan bumen*, art. 16). It will cooperate with mainland China’s public security and State security organs. The latter will assist this unit in its work. Neither the size of this new unit nor the procedures organising its relationship with the public security and State security organs established in the territory of Hong Kong are known at present.

Relations between the Hong Kong police and public security on the mainland have been very close since the handover. These ties have become closer since the ‘umbrella movement’ of 2014. Since the summer of 2019, several sources have attested to the presence of elements of public security within the Hong Kong police, probably concentrated in the hierarchy. This presence should become more visible and, above all, for the first time, official. Indeed, in May 2020, it was announced that offices of mainland China’s Public Security and State Security, the administration responsible for espionage and counter-espionage, will be established in Hong Kong. While it is highly likely that, as the successor to the British-era *Special Branch*, state security officers have been operating in Hong Kong since 1997, they have not yet had any official role in Hong Kong. This is no longer the case. Articles 48 to 61 of the NSL establish in Hong Kong a Central Government Office for safeguarding national security (*weihu guojia anquan gongshu*). This office is vested with wide discretionary powers. It guides and monitors Hong Kong’s national security organs. While its officials must respect the laws of Hong Kong, they are accountable only to their superiors (art. 50). Funded by Beijing, this office cooperates closely with other central government bodies present in the SAR, including the Liaison Office, the Foreign Ministry Representation and the Hong Kong garrison of the People’s Liberation Army (PLA) (art. 52). It is responsible for closer monitoring of foreign consulates as well as NGOs and international press organs in the SAR (art. 54). It may take up ‘complex’ national security cases, particularly those involving foreign collusion. In such cases, China’s Criminal Procedure Law applies and the ‘suspect’ is transferred to the mainland to be prosecuted and tried (art. 57). The ‘suspect’ has the right to a lawyer (art. 58). The officers of this office cannot be subject to inspection by the local police and enjoy the same immunity as Chinese diplomats or PLA soldiers (art. 60). According to some sources, 300 officials are already assigned to this office.

Appointed on 3 July 2020, the heads of this office are Zheng Yanxiong (director), the former number three in Guangdong province, who made his career in propaganda organs; Li Jianzhou (deputy director), a former Hong Kong police relations officer in the central government liaison office and a public security representative; and Sun Qingye (deputy director), an official in the Ministry of State Security about whom, by definition, little is known.

Beijing is thus providing itself with the official and legal means to monitor more closely individuals and organisations that could undermine national security. As a result, Beijing's central government will have less need to rely on the Hong Kong police and can, at the same time, launch its own investigations with the help of public security or state security.

In mid-June 2020, Deng Zhonghua, one of the deputy directors of the Chinese government's Hong Kong and Macao Affairs Office (HKMAO), said that the central authorities intended to exercise the power to investigate, prosecute and then try 'a small number of serious cases' of NSL violations on the mainland 'in special circumstances'. While he assured that the majority of NSL violations would fall within the jurisdiction of Hong Kong's law enforcement and judicial authorities, his words caused great concern in the SAR, including among prominent figures known for their support for Beijing, such as Regina Ip, Hong Kong's Secretary of Security in 2003 and the main initiator of the first draft NSL drawn up that year. These statements are clearly intended to intimidate any Hong Kong or even foreign national who may commit acts that undermine the security of the People's Republic. However, Deng Zhonghua was reassuring in confirming the non-retroactive nature of the NSL. Many observers, particularly diplomats, feared that the NSL would be retroactive and thus be used to suppress past political activities deemed subversive by Chinese security.

The new law raises many questions about the limits thus imposed on the application of common law in Hong Kong for certain criminal offences and about the compatibility between common law and the socialist mainland law in place in the rest of the People's Republic of China. Any transfer of suspects to the mainland means that they can no longer rely on the legal guarantees provided by the common law. Although Deng Zhonghua and other Beijing officials sought to reassure that on the mainland the principle of the 'presumption of innocence' was also respected (this is enshrined in Article 5 of the NSL), few Hongkongers have confidence in a mainland judicial system run at every level by the Chinese Communist Party and thus by the political police.

More generally, the NSL will increase interference from the central government liaison office (art. 52). The latter already considers itself no longer concerned, officially since the beginning of 2020, by Article 22 of the Basic Law according

to which Central Government organs may not interfere in the administration of Hong Kong. In fact, for several years, especially since Xi Jinping came to power in 2012, the Liaison Office has already been the real government of Hong Kong. It regularly gives instructions to the various departments of the Hong Kong government chaired by Carrie Lam.

Since January 2020, as we have seen, the liaison office has been run by a heavyweight of the regime, Luo Huining, a member of the Central Committee of the Chinese Communist Party, and a former party secretary in Shanxi province and close to Xi Jinping. Since the beginning of February, another heavyweight and ally of Xi Jinping, Xia Baolong, has been heading the HKMAO in Beijing. At the same time, the liaison office was integrated into the HKMAO, with Luo Huining becoming (just like his colleague in Macao) its deputy director.

Amongst the most recent interventions of the Liaison Office was the April 2020 denunciation of MP Dennis Kwok, who chaired the LegCo House Committee, for blocking passage of the National Anthem Act. Shortly afterwards, Dennis Kwok was replaced almost *manu militari* at the head of this committee by a pro-establishment MP and the law was passed.

### 3. A local police force with expanded powers

Under the NSL, the Hong Kong police established in early July 2020 ‘a department for safeguarding national security with law enforcement capacity’ (art. 16). The Department has extensive investigative powers (art. 17). Its powers allow it to inspect, inter alia, the homes, vehicles and electronic devices of natural or legal persons, without always having the authorisation of a judge. The police may also freeze the bank accounts of any suspect, intercept his or her communications, prohibit him or her from leaving the country or compel him or her to delete electronic messages, threatening the penalty of either a fine or imprisonment. The police also now have the power to request information from any foreign organisation, even if it is located outside Chinese territory (art. 43). On 7 July, the regulations implementing article 43 came into force, specifying the circumstances in which the police may act without a warrant issued by a judge. These circumstances are both vague and broad – the needs of the investigation – in direct violation of international standards and any idea of the rule of law<sup>14</sup>. This aspect of the NSL is also in clear contradiction with the spirit of the common law, which is in place in Hong Kong.

14. See “Implementation Rules for Article 43 of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administration Region”, 6 July 2020 [<https://www.info.gov.hk/gia/general/202007/06/P2020070600784.htm>].

### III. CIVIL LIBERTIES ARE THE FIRST TO SUFFER FROM THIS NEW LAW

#### 1. Demonstrations, public expression of opinion and elections now closely monitored

The NSL applies not only to acts of secession, subversion, sedition, treason or collusion with the outside world, but also to public words that may encourage such acts. As a result, the definition of crimes included in the NSL is particularly broad and vague. For example, statements supporting Hong Kong's independence or denouncing the political system of the People's Republic of China may be subject to criminal prosecution.

In addition, any statement that is likely to promote 'hatred' of the central or SAR government 'by unlawful means' is now 'criminalised' (art. 29). Thus, the NSL introduces the offence of opinion for the first time in Hong Kong.

Contrary to what might have been feared, the NSL was declared non-retroactive. Nevertheless, the Hong Kong and mainland police authorities will closely monitor any person or organisation that, prior to the enactment of the NSL, committed an act or made statements that now fall under the law. The NSL increases the penalties already provided for by law (minimum 10 years' imprisonment, or even life imprisonment, instead of 10 years for 'rioters', as provided for in the Macao NSL in force since 2009).

In principle not under threat, the right to demonstrate risks in reality being gradually called into question. The demonstrations on 1 July, the first day of the NSL's entry into force, were a perfect illustration of this development. Prohibited for reasons of both health and public order, they brought together only a few thousand participants, who were quickly chased by the police and unable to form a real procession. The large number of arrests (370) and the first cases of arrests for violation of the NSL (ten) are now likely to dissuade many young protesters from demonstrating, unless such a parade is expressly authorised by the police, which will probably be increasingly rare.

Consequently, the threats of a Leung Chun-ying who announced as early as May 2020 that the candle vigil commemorating the Tiananmen massacre on 4 June would probably not take place in the future, as has been the case every year in Victoria Park since 1990, must probably be taken seriously.

Among the organisations, 'localist' political parties, i.e. those that support a kind of self-determination for Hong Kong, and religious organisations that are illegal on the mainland, such as Falun Gong, will probably be banned.



The Demosistō party, the pro-democracy party founded by Joshua Wong, Agnes Chow and Nathan Law in 2016, took the lead: it disbanded itself on 30 June and Nathan Law left Hong Kong, taking refuge in London. The press organs most critical of the Chinese Communist Party, such as the Apple Daily News (*Pingguo ribao*), are also under threat. Its editor Jimmy Lai has been under constant surveillance since at least the start of July and could soon be prosecuted.

On 17 June 2020, 86 Hong Kong and international organisations (NGOs, religious institutions, cultural institutions and human rights organisations) wrote to Li Zhanshu, the Chairman of the NPC, to express their concern about the NSL and the future of their activities in Hong Kong<sup>15</sup>.

For the time being, no Hong Kong, mainland, Taiwanese or foreign industrial and commercial enterprises are directly covered by the NSL. However, if such a company were to finance political parties or political figures deemed by Beijing to be pro-independence or subversive, either to display such ideas or to allow its employees to do so, it could be prosecuted for violation of the NSL. The restrictive measures taken against any e-mail messaging deemed to be in breach of the NSL will certainly increase the concern of foreign companies.

As soon as the NSL came into effect, the police's rapid ban of the Lennon Walls, these walls covered with post-its expressing a particular political demand and often installed in cafés or restaurants known as 'yellow', i.e. favourable to the protest movement, surprised many Hongkongers. Indeed, these messages are far from all promoting Hong Kong's independence. Most of them call on the government to meet the demands of the anti-extradition movement, in particular the establishment of an independent inquiry into police violence and a genuine democratisation of the SAR's political institutions. This new limit on freedom of expression is clearly a further challenge to the autonomy of the territory.

The NSL will also make it easier for the administration to disqualify democratic or localist candidates in the legislative elections scheduled for 6 September 2020<sup>16</sup>. Potential localist candidates such as Joshua Wong are particularly targeted, but there is concern that any pan-democratic candidate who has criticised the NSL may be disqualified by the official in charge of registering nominations. The registration officer has a quasi-discretionary power in this regard, which he has already used in previous elections, including in 2016, to disqualify candidates deemed to be pro-independence or in favour of Hong Kong's self-determination, such as Alice Lai or Edward Leung.

15. "Open letter from 86 groups: China – scrap national security law to save Hong Kong freedoms", hongkongfp.com, 17 June 2020 (<https://hongkongfp.com/2020/06/17/open-letter-from-86-groups-china-scrap-national-security-law-to-save-hong-kong-freedoms/>).

16. "Beijing Expected to Use New Law to Stifle HK Politicians", asiasentinel.com, 10 June 2020 (<https://www.asiasentinel.com/p/beijing-expected-to-use-new-law-to>)

Some statements by Hong Kong officials go in this direction, asking each candidate to pledge allegiance to the Basic Law, in particular Annex III, already expressing *ex ante* doubts about the sincerity of the support of pan-democratic candidates for the NSL and leaving the official in charge of registering candidacies to be the sole judge in this matter<sup>17</sup>. While some disqualified candidates in the 2018 legislative by-election, such as Agnes Chow, subsequently won their cases in court (on procedural grounds), the judge did not invalidate the administrative decision taken against her on its merits.

The objective of both Beijing and the pro-establishment camp in Hong Kong is to avoid at all costs allowing pan-democratic parties to take control of the majority of LegCo seats. Although this goal remains difficult to achieve for the opposition due to the flawed nature of the parliamentary elections, the unexpected victory of the pan-democratic camp in the November 2019 district council election – the only truly democratic election – has fuelled the concerns in the Chinese Communist Party.

More broadly, the NSL risks calling into question the application in Hong Kong of the UN Covenant on Civil and Political Rights, a Covenant which is included in both the Basic Law of Hong Kong and the NSL (art. 4). Indeed, as a national law, the NSL takes precedence over the Bill of Rights Ordinance (1991), the local law of Hong Kong which enshrines the rights contained in the UN Covenant. It should be noted that the People's Republic of China has signed (1998) but not ratified this covenant.

## 2. A justice system more advantageous for the executive branch

The NSL calls into question the independence of the judiciary and goes directly against the principle of checks and balances. Indeed, until now, all judges were appointed by the Chief Executive on the proposal of the Judicial Officers Recommendation Commission, whose advice was generally followed. However, judges responsible for national security cases are now selected and appointed by the Chief Executive (art. 44). The latter may consult the commission responsible for safeguarding national security or the President of the Court of Final Appeal (Chief Justice) before making his or her decision, but he or she is not obliged to do so. On 3<sup>rd</sup> July 2020, Carrie Lam thus appointed six judges, but only the name of the principal among them was made public.

Moreover, national security cases cannot be tried by foreign judges, who regularly sat in Hong Kong's various courts, but by courts established especially for that purpose. The 'double allegiance' of foreign judges has become

17. Ibid.

suspect in the eyes of Beijing<sup>18</sup>, since they come from the United Kingdom or Commonwealth countries such as Australia or Canada. This development is likely to be of concern to the business community, particularly in the area of intellectual property protection or in the event of a conflict with a large Chinese state group.

The introduction of the NSL will also contribute to weakening the role of the Independent Commission Against Corruption. Already disputed for several years, in particular for refusing to investigate the revenues, considered illegal by some, received by former chief executive Leung Chun-ying, this commission will no doubt have to be kept out of all corruption cases involving national security. Such cases are likely to be handled by the central government's national security office in close coordination with the Chinese Communist Party's discipline inspection bodies if they involve a mainland company.

### **3. Foreign organisations should face the same difficulties as in mainland China**

From now on, the NSL will also make it easier to suppress or dismantle foreign organisations, particularly NGOs. For example, American foundations such as the National Endowment for Democracy or the National Democratic Institute, wrongly accused by Beijing of being dependent on the CIA, will probably be banned and the funding they provide for studies or projects, including academic ones, will probably also be banned. Similarly, human rights NGOs, such as Amnesty International, are likely to find it difficult to maintain their offices in Hong Kong. Some of them, such as Human Rights Watch, are thinking of moving to Taiwan.

While they face many restrictions on the mainland, it remains to be seen whether German political foundations, such as the Konrad Adenauer Stiftung or the Friedrich Ebert Stiftung, will be able to continue their activities in Hong Kong as before.

18. Kimmy Chung and Gary Cheung, "Judges with 'dual allegiance' because of foreign nationality should not handle national security cases, Beijing says", *scmp.com*, 24 June 2020 (<https://www.scmp.com/news/hong-kong/politics/article/3090400/hong-kong-national-security-law-citys-leader-must-have>).

## IV. A CIVIL SOCIETY QUICKLY BROUGHT UNDER CONTROL

### 1. Between obedience and protest

It is unclear how Hong Kong civil society will react to the introduction of the NSL. Although the protest movement that emerged in 2019 has lost its momentum partly because of the Covid-19 health crisis, a resurgence of protest and even further outbreaks of violence cannot be ruled out.

In a case of extreme violence, intervention by the PLA or the People's Armed Police (PAP), some of whose detachments have already set up in the PLA barracks in the SAR, is possible. A new and as of yet unofficial position of a PAP contingent in Hong Kong is primarily a deterrent. Though, unlike the PLA, whose role in the territory is primarily symbolic, the PAP could be called upon to support the Hong Kong police and its 31,000 personnel if the latter are unable to cope with the situation. Officially 5,000 officers and soldiers strong, the PLA garrison in Hong Kong has no more than 2,000 people in the territory of the SAR. However, the size of the PAP is unknown. Moreover, already openly pre-positioned in 2019, the PAP stationed in Shenzhen could also intervene in the event of a crisis.

Under such circumstances, the credibility of Hong Kong's financial centre could be seriously damaged, at least for a while. This will depend on the level of violence used by the PAP and the local opposition to its intervention. If the PAP helps to restore order and reassure the business community, the negative impact of its intervention will remain temporary. If, on the contrary, the business community sees this as a threat to the credibility of the financial centre, the Hong Kong government will have to quickly take control of the situation on its own.

This scenario remains extreme and unlikely as long as the Hong Kong police are able to manage demonstrations, ban them or channel them to prevent them from turning violent. While a resurgence of protest and activism among students and some sectors of Hong Kong youth cannot be ruled out, the rest of society, while concerned, is looking for a return to normalcy and is showing some resignation.

Under these circumstances, Hong Kong's economic life should not be significantly disrupted. As the territory lifts the restrictions imposed by the Covid-19 pandemic, consumption will resume. The gradual resumption of travel to other countries (e.g. Thailand) or regions (e.g. Macao or Guangdong) declared safe from a health point of view will also contribute to a resumption of consumption.

Moreover, on the rise since the promulgation of the NSL, Hong Kong's stock market is increasingly dominated by the major mainland Chinese groups (nearly 80% of market capitalisation in 2020). The gradual decoupling of the Chinese economy from the U.S. economy could encourage the Hong Kong Stock Exchange to become even more 'Chinese'.

As for the Hong Kong tycoons, their role appears limited in this evolution. They were not consulted during the drafting of the NSL and it is clear that they no longer occupy the dominant position that they enjoyed at the time of the handover. Li Ka-shing<sup>19</sup>, the head of Cheung Kong Holding and the wealthiest man in Hong Kong, has long been diversifying the location of his assets and investments. Not all have followed his example, but his decisions remain a source of inspiration and influence for many economic and financial players in Hong Kong. Hong Kong's economic and financial empires are not in danger of being dismantled, but they will continue to lose relative power. Some of them will be marginalised or forced to merge with the new mainland Chinese public or private groups.

## 2. Education is gradually moving towards a 'mainland' format

Restrictions on political freedom in schools are also to be feared. Already, since 12 June 2020, all schools in Hong Kong have been required to fly the flag of the People's Republic of China and to teach their pupils the Communist National Anthem<sup>20</sup>, which they will have to learn and sing regularly. However, according to Education Secretary Kevin Yeung, the singing of the protest movement *Glory to Hong Kong* will be banned, while the cantopop song *Love the Basic Law* will be allowed<sup>21</sup>. Double standards.

These new prohibitions will be difficult to enforce at first. Indeed, on 18 June a number of high-school students<sup>22</sup> already defied the government, singing *Glory to Hong Kong* and shouting 'Hong Kong independence is the only way out' in their school. However, announced on 6 July, the withdrawal from public libraries and then from schools of pro-independence or even pro-democracy books, such as that of Civic Party deputy Tanya Chan, had the effect of a cold shower.

19. Born in 1928 in mainland China, this billionaire businessman made his fortune particularly in real estate.

20. "EDB provides schools with guidelines on display of national flag and regional flag, and playing and singing of national anthem", info.gov.hk, 18 June 2020 (<https://www.info.gov.hk/gia/general/202006/18/P2020061800527.htm#:~:text=The%20EDB%20also%20strongly%20advises,the%20national%20flag%20and%20the>).

21. See "Glory to Hong Kong song not allowed at school", news.rthk.hk, 11 June 2020 (<https://news.rthk.hk/rthk/en/component/k2/1531437-20200611.htm>).

22. Chan Ho-him and Victor Ting, "Hong Kong protests: Ying Wa College pupils defiant after principal vows disciplinary action and Education Bureau 'highly concerned' over campus rally", scmp.com, 19 June 2020 (<https://www.scmp.com/news/hong-kong/education/article/3089698/hong-kong-protests-elite-school-take-action-and-education>).

This withdrawal prejudices a desire for repression not only of the movement: it also includes all ideas in favour of the extension of democracy to Hong Kong or simply criticism of the Chinese Communist Party.

The subjects taught in schools, the content of the questions asked in history examinations and other so-called 'liberal' subjects should also be subject to closer control. These subjects and the teachers who teach them are increasingly being criticised by the establishment, including by Carrie Lam herself, as being responsible for recent protest movements and the lack of 'patriotic feelings' among Hong Kong students<sup>23</sup>.

In early June 2020, the presidents of Hong Kong's eight universities were asked to vote in favour of the NSL. While all the councils of the eight universities supported the new law, only five of the eight presidents agreed to do so. This declaration of allegiance, demanded by the Chinese Communist Party, is called *biaotai* in the jargon of the People's Republic.

For the time being, while the autonomy of universities is increasingly questionable, academic freedom still seems to be preserved. However, the NSL specifically targets universities, which, like schools, will have to teach the contents of this law as well as introduce patriotic education courses. Such measures are likely to be met with resistance from students. Nevertheless, the risks involved are likely to convince most of them to accept or pretend to succumb to the circumstances. The teaching staff, especially those of foreign origin, are very concerned about possible limits to the content of teaching, especially in social science subjects. In fact, the rise in ranking and prestige of mainland Chinese universities, despite the fact that they are subject to censorship, could lead the central government to gradually extend the political restrictions imposed on Hong Kong universities. The social sciences will suffer, but not the hard sciences, which are the only ones of real interest to the Chinese Communist Party.

In fact, there are already a number of research topics that Hong Kong academics avoid, such as the Uighur question in Xinjiang, the political problems of Tibet or even the activities of dissident movements in China. True, research continues to be funded and managed by bodies in which foreign academics sit, such as the Research Grant Council. Currently, this *modus operandi* is not under threat.

23. Kelly Ho, "Students cannot be 'poisoned' with 'false, biased' information says Hong Kong's Carrie Lam, vowing action", hongkongfp.com, 11 May 2020 (<https://hongkongfp.com/2020/05/11/students-cannot-be-poisoned-with-false-biased-information-says-hong-kongs-carrie-lam-vowing-action/>).

However, the maintenance of academic freedom, i.e. the possibility to teach and work on all subjects without political restrictions, is no longer guaranteed<sup>24</sup>. The level of freedom will depend on the balance of power that academics can establish and maintain with both Hong Kong and Beijing authorities.

### 3. Freedom of the press called into question

Freedom of the press, which has already been undermined for several years, will gradually come under greater threat. Radio Television Hong Kong (RTHK), for example, is expected to see its autonomy reduced. RTHK has already been called to order in March 2020 for broadcasting a sarcastic program about the Hong Kong<sup>25</sup> police or asking questions about Taiwan that were deemed politically inappropriate, including about its exclusion from the World Health Organization. In early July, some Hong Kong officials close to Beijing warned the foreign media to avoid supporting the independence movement or publishing 'fake news' under threat of expulsion<sup>26</sup>.

Reporters Without Borders voiced concern on 18 June about the freedom of the press violations that the new NSL could impose<sup>27</sup>. According to a survey, 98% of Hong Kong journalists oppose the NSL<sup>28</sup>. They particularly fear that they will be accused of disseminating 'state secrets' or of complicity in 'terrorist' activities, secession or subversion if they are too favourable or sympathetic to the protest movements. The international media are also targeted, especially since Carrie Lam accused foreign media outlets of supporting the protesters and thus interfering in Hong Kong's internal affairs in January 2020<sup>29</sup>. From eighteenth place in 2002, Hong Kong fell to eightieth place in the world in 2020 in terms of press freedom, according to the RSF Press Freedom Index<sup>30</sup>.

24. "Hong Kong must now rely on its own efforts to protect academic freedom", hongkongfp.com, 2 June 2020 (<https://hongkongfp.com/2020/06/02/hong-kong-must-now-rely-on-its-own-efforts-to-protect-academic-freedom/>).

25. Tom Grundy, "Hong Kong public broadcaster suspends satirical show hours after gov't demands apology for 'insulting' police", hongkongfp.com, 19 May 2020 (<https://hongkongfp.com/2020/05/19/hong-kong-public-broadcaster-axes-satirical-show-hours-after-govt-demands-apology-for-insulting-police/>).

26. See Primrose Riordan and Nicolle Liu, "Foreign journalists warned on HK independence reporting", *Financial Times*, 7 July 2020.

27. "Hong Kong: how the national security law could be used against journalists", rsf.org, 19 June 2020 (<https://rsf.org/en/news/hong-kong-how-national-security-law-could-be-used-against-journalists-0>).

28. "Hong Kong: Journalists overwhelmingly oppose China's National Security Law", ifj.org, 19 June 2020 (<https://www.ifj.org/media-centre/news/detail/category/press-releases/article/hong-kong-journalists-overwhelmingly-oppose-chinas-national-security-law.html#:~:text=19%20June%202020-,Hong%20Kong%3A%20Journalists%20overwhelmingly%20oppose%20China's%20National%20Security%20Law,plan%20to%20enact%20the%20law>).

29. Matt Clinch, "Carrie Lam suggests foreign influence in Hong Kong protests: 'Perhaps there is something at work'", cnbc.com, 21 February 2020 ([www.cnbc.com/2020/01/21/carrie-lam-suggests-foreign-influence-in-hong-kong-protests.html](http://www.cnbc.com/2020/01/21/carrie-lam-suggests-foreign-influence-in-hong-kong-protests.html)).

30. See <https://rsf.org/en/ranking/2020>.

## V. THE BUSINESS COMMUNITY AND THE FINANCIAL CENTRE PROGRESSIVELY RESTRAINED

### 1. Many companies and banks forced to pledge allegiance to the NSL

As a prelude to the demands for a declaration of allegiance, already during the 2019 protest movement, Hong Kong's Cathay Pacific airline was forced by Beijing to sanction its employees who had shown themselves to be in favour of this movement. At the time, 30% of Cathay Pacific's shares were owned by Air China, the official Chinese airline. Yet Beijing's threat to suspend flights to the mainland forced Cathay Pacific, which is still mainly owned (45% of the shares) by the Anglo-Hongkongese Swire group, to give in. At the beginning of June 2020, in order to avoid the bankruptcy of the group, the Hong Kong government recapitalised Cathay Pacific to the tune of 39 billion Hong Kong dollars (\$5 billion in U.S. dollars), reducing the shares of Swire, Air China and Qatar Airways to 42%, 28% and 9.4% respectively. As a result, the Hong Kong government, which wishes to remain a long-term shareholder of Cathay Pacific, was entitled to appoint two observers to the group's board of directors. In the future, it will be even more difficult for Cathay Pacific's employees to express any critical political views in public.

In May 2020, the Hong Kong and Shanghai Banking Corporation (HSBC) and Standard Charter Bank had to publicly demonstrate their support (*biaotai*) for the NSL, although the content of this law was not yet known at that time and both banks are headquartered in London. The two banks do indeed play an official role in Hong Kong: together with the Bank of China, they are among the three banks issuing Hong Kong dollars. They find themselves in a delicate situation, with the British government and some of their shareholders asking them to respect their corporate social responsibilities under British law and, above all, to assume their political responsibilities in terms of human rights and democracy. One way out of the impasse could be to consider a demerger of the two banks, with the Hong Kong side freeing itself from any such obligations to the outside world and vice versa.

In addition to Chinese state-owned enterprises or organisations, and according to information gathered locally, other companies or financial institutions have also been quietly approached for allegiance to the NSL. However, this declaration of allegiance was in most cases not made public, as companies sought to protect themselves from possible reprisals by activists of the protest movement and Beijing wished to maintain the attractiveness of Hong Kong's financial centre.



This promise of confidentiality has not convinced all companies. For example, a Hong Kong owner of buildings and commercial premises refused to sign such a declaration for fear of seeing his stores devastated by the protesters. It is still unclear whether this demand for allegiance has spread to all foreign groups operating in Hong Kong, for example in the luxury goods or retail industries. It is likely that only large companies have been or will be approached by the Chinese Communist Party or its representatives.

Many representatives of the Hong Kong business community or even foreign businesspeople based in the SAR are hoping for a return to calm and therefore support the NSL. Foreign companies or financial institutions have had to ‘discipline’ or separate from their employees who used their official affiliation to express opinions critical of the People’s Republic of China. In 2019, BNP Paribas, which has been present in Hong Kong since 1860, had to apologise and declare that it had taken internal action after one of its Hong Kong employees made fun on social networks of a group of individuals singing the Chinese national anthem in Hong Kong.

The business community has become accustomed to Hong Kong’s gradual loss of autonomy, as long as this does not affect their daily activities. Moreover, it has been the main victims of the protests of 2019 or even 2014. However, while Beijing believes that it has put the business community on its side, in reality many of the business people are more worried than they say in public about the consequences of the NSL. It is particularly the case of the foreign companies, but not only.

## **2. Sanctions by the Trump administration should not disrupt Hong Kong’s business community**

Brandies as a threat, the sanctions of the Trump administration have not yet been fully implemented and their consequences are thus far limited. However, they are unlikely to fundamentally affect the interests of Hong Kong’s 13,000 companies and some 85,000 U.S. citizens. The American Chamber of Commerce in Hong Kong has already, on several occasions, expressed concern both about the impact of the NSL and about the nature of the sanctions that the Trump administration might take.

U.S. sanctions are likely to remain targeted and to avoid introducing extreme, ‘nuclear’ measures such as a ban on U.S. dollar transactions or the introduction of restrictions on capital transfers to (or from) the U.S.

It should also be noted that the United States enjoys a trade surplus with Hong Kong (\$33 billion in 2019) and would therefore be the first victim of such restrictions.

Among the individuals likely to be targeted by U.S. sanctions are Hong Kong Security Secretary John Lee Ka-chiu, Justice Secretary Teresa Cheng Yeuk-wah, Police Chief Chris Tang Ping-keung and officials of the new National Security Bureau. Their possible assets in the United States will be frozen and they will be prohibited from travelling to the United States. It is also possible that certain Chinese groups based in Hong Kong (or on the mainland) may be subject to sanctions or restrictions, for example in terms of transferring funds from the United States.

According to the Hong Kong Autonomy Act, Chinese banks or companies that already have 'significant transactions' with persons or entities responsible for infringements of Hong Kong autonomy (police, Chinese Communist Party officials) could be targeted. The Bank of China, the Chinese Construction Bank, the Industrial and Commercial Bank of China and the China CITIC Bank are probably already on the list. Nonetheless, it remains difficult for the time being to determine which groups will actually be sanctioned.

The high-tech sector will be directly affected by U.S. sanctions. In the future, any transfer of advanced or dual technologies to Hong Kong will be subject to the same restrictions as transfers to mainland China, despite the long-standing cooperation between the FBI and Hong Kong Customs, which in principle prevents any leakage of such technologies to the mainland. Since the adoption and enactment of the Hong Kong Human Rights and Democracy Act in November 2019, controls on the transfer of such technologies have already been tightened. With the introduction of the NSL, these controls have been tightened. These restrictions could impact on many Chinese companies, not just Huawei or ZTE, which are already the target of the Trump administration. They could also affect Hong Kong university research centres, such as those of the Hong Kong University of Science and Technology, which often work closely with research centres on the mainland.

### **3. The NSL can directly affect the business community through data privacy risks**

The borderline between national security and other aspects of the Hong Kong legal system is potentially problematic. This issue particularly affects the confidentiality of data of foreign or even Hong Kong companies and businesses' cybersecurity. To what extent this confidentiality could be called into question in the context of investigations conducted by the Hong Kong police or mainland China's public and state security on behalf of the NSL remains to be determined. And will the Hong Kong authorities be able to continue to ensure the security – and freedom in principle guaranteed – of Internet communications?

Although access to Google, Facebook and Twitter is still allowed in Hong Kong, these risks now exist and could also undermine intellectual property protection, particularly if a company is under investigation for NSL infringement.

This is why, in the name of freedom of information and privacy, platforms such as Facebook WhatsApp, Twitter and Telegram announced on 6 July 2020 that they would temporarily suspend their cooperation with the Hong Kong police if the police asked them for information about their customers. Yet the question begs how long these companies will be able to maintain such a position. Eventually, they will have to either succumb to the demands or abandon Hong Kong<sup>31</sup>. The TikTok application, which belongs to the Chinese group ByteDance, has already drawn the consequences from the new situation: it has left Hong Kong but at the same time Douyin, which depends on the same group and concentrates its activities in China, has moved there. Thus ByteDance quickly adapted to the ‘mainlandisation’ of the territory.

Similarly, the independence of judicial decisions that have a security dimension is in serious danger of being called into question. Foreign judges will not be able to sit in the jurisdictions that will be put in place to enforce the NSL. These ‘special’ courts will be composed only of judges appointed by the executive branch, not judges and jurors, as is the common law tradition. While most civil and commercial disputes will continue to be adjudicated by independent tribunals that offer far greater legal certainty than in mainland China, any disputes that have a security dimension could be subject to much more secretive, random and questionable adjudication.

In addition, ‘serious’ national security cases will be tried in mainland China. Such cases are bound to remain exceptional and will rarely affect the activities of companies based in Hong Kong.

However, such a scenario cannot be completely ruled out. For example, a foreign company that has obtained data or information considered legal in Hong Kong but secret or ‘internal’ (*neibu*) on the mainland could find itself in such a situation, with its managers being forced to be transferred to the mainland for trial.

Such consequences of the introduction of the NSL could prompt a number of foreign (and even Hong Kong) companies to leave Hong Kong and relocate to Singapore or elsewhere in East Asia. Recently, Japan has positioned itself to welcome such companies<sup>32</sup>.

31. “Security law – Facebook, Google and Twitter suspending user info requests from Hong Kong gov’t”, hongkongfp.com, 6 July 2020 [<https://hongkongfp.com/2020/07/06/just-in-security-law-facebook-whatsapp-suspending-user-info-requests-from-hong-kong-govt/>].

32. See Peter Landers and Chieko Tsuneoka, “Japan Woos Hong Kong Business as Abe Cools to China”, wsj.com, 18 June 2020 [[www.wsj.com/articles/japan-woos-hong-kong-business-as-abe-cools-to-china-11592479725](https://www.wsj.com/articles/japan-woos-hong-kong-business-as-abe-cools-to-china-11592479725)]

## VI. THE END OF THE 'ONE COUNTRY, TWO SYSTEMS' PRINCIPLE?

Now that the NSL has been enacted and put into effect, three scenarios are emerging for Hong Kong: a rapid and full integration with mainland China, the maintenance of broad autonomy for Hong Kong, or a greater control by Beijing directly over Hong Kong's governance and civil society and indirectly over its economic and financial spheres. The third scenario is the most likely, but the first two are worth mentioning.

### 1. A rapid and full integration with mainland China is unlikely

The end of the 'One country, Two systems' formula is unlikely. Beijing still needs Hong Kong, its financial centre as well as the facilities it offers, particularly in terms of fundraising and free flow of capital. Beijing also wants to reassure Hong Kong's population and business community in keeping there a distinct economic and legal system as well as a hard border with the mainland.

Moreover, any full integration of Hong Kong into the socialist system of mainland China, led at every level by the Chinese Communist Party, would cause such a shock in the territory that it would be a new source of economic and social instability in addition to those already existing (refusal of any full democratisation of institutions, increased surveillance of the political opposition, patriotic education, etc.).

The formula 'One country, Two systems' was originally intended to be maintained in order to coax Taiwan into reunification with the People's Republic of China. Today, however, even for the leaders of the Chinese Communist Party, the success of this formula is no longer intended to seduce Taiwan, which is too hostile to any form of political rapprochement with the mainland. On the contrary, it is the NSL which could, in the event of an invasion of Taiwan, serve as a model for bringing the Taiwanese into line<sup>33</sup>. In any case, already promised by several Chinese officials, the perpetuation of this formula in Hong Kong, including beyond 2047, is primarily intended to maintain the credibility of the financial centre and the long-term social stability of the territory.

33. John Pomfret, "The Hongkong security law could be China's blueprint to deal with the 'Taiwan problem'", [washingtonpost.com](https://www.washingtonpost.com/gdpr-consent/?next_url=https%3a%2f%2fwww.washingtonpost.com%2fopinions%2f2020%2f07%2f06%2fhong-kong-security-law-could-be-chinas-blueprint-deal-with-taiwan-problem%2f), 6 July 2020  
[[https://www.washingtonpost.com/gdpr-consent/?next\\_url=https%3a%2f%2fwww.washingtonpost.com%2fopinions%2f2020%2f07%2f06%2fhong-kong-security-law-could-be-chinas-blueprint-deal-with-taiwan-problem%2f](https://www.washingtonpost.com/gdpr-consent/?next_url=https%3a%2f%2fwww.washingtonpost.com%2fopinions%2f2020%2f07%2f06%2fhong-kong-security-law-could-be-chinas-blueprint-deal-with-taiwan-problem%2f)].

## 2. Maintaining a high degree of autonomy for Hong Kong is now excluded

This scenario is also unlikely. Central government interference, which has increased since 2012, and the coming to power of Xi Jinping will multiply with the introduction of the NSL.

The Chinese Communist Party's fear is that Hong Kong will become a base for subversion that could destabilise the political regime on the mainland. That is why the central government wants to control Hong Kong in order to better curb any forces hostile to the Chinese Communist Party. Although promised in 1997, any maintenance of a high degree of autonomy in Hong Kong is therefore now impossible.

## 3. A greater hold of Beijing – both directly on governance and civil society in Hong Kong and indirectly on the economic and financial circles

With the introduction of the NSL, there is a shift to another, much more restrictive interpretation of the 'One country, Two systems' formula. In a way, as some Chinese public intellectuals, such as Zheng Yongnian<sup>34</sup>, have called for, the central government is now organising a 'second handover' (*di'er huigui*), the first one, in 1997, having remained, in their view, incomplete and, above all, unsatisfactory.

Beijing will exercise greater control over Hong Kong's governance through the liaison office and the public security and state security organs located in the SAR.

It is now a question of making Hongkongers full-fledged Chinese citizens with all the political responsibilities and constraints that this implies: patriotic education, support, respect or at least public non-contestation of the 'unitary' political system in place on the mainland – i.e. the dictatorship of the Chinese Communist Party – and distancing oneself from 'foreign forces' that undermine national security and the stability of the Communist regime.

This does not mean that all existing civil liberties in Hong Kong will be jeopardised. The SAR will probably remain somewhat freer than mainland China. Nevertheless, in the future, the Chinese Communist Party will in the first instance monitor relations between Hong Kong's society and the outside world, in particular with the United States, European countries, Japan and Taiwan, much more closely.

34. A Chinese political scientist and political commentator, Zheng Yongnian has studied and written on many aspects of contemporary China and Chinese politics. Since 2008, he has been Professor and Director of the East Asian Institute at the National University of Singapore. While he often advocates reforms of the Chinese system, since the beginning of the 21st century he has become a chronicler of the rise of the 'Chinese model' on the international scene. His analyses of Chinese politics are regularly picked up by the Beijing press.

More generally, the central government will seek to integrate Hong Kong much more, not only economically into the Greater Bay Area (the Pearl River estuary region) but also politically into the People's Republic of China. We will thus see a 'Putinisation' or 'Singaporisation' of political life in Hong Kong in the sense that, as in Putin's Russia and Lee Kuan Yew's and Lee Hsien Loong's Singapore, it will become increasingly difficult not only for the localists but also for the whole pan-democratic camp to participate freely and fairly in political life. Already biased, the political system risks becoming even more favourable to the pro-establishment camp, at the risk of marginalising any genuine political opposition, particularly through the intimidating use of the NSL. Today hybrid, Hong Kong political system is set to become more authoritarian. Any democratisation of institutions is therefore ruled out, except for the unconvincing democratisation of the CE election procedure proposed by Beijing in 2014.

However, this 'Putinisation' or 'Singaporisation' is likely to be met with a great deal of resistance. Growing tensions and, to put it more bluntly, the new 'Cold War' between the United States and China are bound to weigh heavily on Hong Kong and intensify the confrontation between pro-Beijing forces and the pro-democracy camp. The Chinese government will try to increase its ideological influence on Hong Kong's society, but this endeavour is likely to face strong opposition from a large part of Hong Kong's society, which is deeply suspicious of the Chinese Communist Party, having been a frequent victim of it in the past.

Academic freedom is in danger of gradually eroding, yet rather slowly. Furthermore, universities are likely to remain an enduring hotbed of protest. Some of the most virulent protesters will leave Hong Kong (if they can afford to), but most will stay and continue to exert various forms of pressure on the government in an attempt to limit the effects of the NSL.

At the end of 2019, more than half of the SAR's inhabitants (55%) felt exclusively as Hongkongers (and more than 80% of those aged under 30); many less felt Chinese (11%) or even Hongkongers and Chinese (32%). It is unlikely that the introduction of the NSL will change their minds; quite the contrary.

Beijing's stronger grip and the U.S.' sanctions are likely to convince a number of companies to leave Hong Kong and set up in Singapore or elsewhere. However, if their main market is China, the marginal advantage of being in Hong Kong will remain decisive. For these reasons, companies such as Axa, BNP Paribas, Estée Lauder, JP Morgan, Prudential or Fedex have no reason to leave Hong Kong. For example, the private health or personal insurance market is developing at a fast pace in mainland China, so this is not the time for transnational insurance companies to leave.

In the field of luxury goods, the Hong Kong marketplace will continue to offer the advantage of better reliability and quality of the origin of the products sold. Once Hong Kong's stability is restored and the Covid-19 crisis is over, mainland tourists will return to the territory, although the range of destinations available to them is now much wider than before. As a result, although the number of mainland tourists is unlikely to reach the figures of past years (65 million in 2018), they will continue to dominate the mass of visitors from outside Hong Kong.

However, political and social developments in Hong Kong have already led several companies to delay, suspend or even cancel their decision to set up or invest in the territory. For example, a number of British and American hedge funds are considering leaving Hong Kong to relocate elsewhere in the region.

Conversely, Chinese companies that have been excluded from the New York Stock Exchange or that are facing difficulties on the New York Stock Exchange may decide to raise more funds on the Hong Kong Stock Exchange. For example, in June 2020, the Chinese online gaming company NetEase raised \$2.6 billion U.S. dollars (on the secondary market) on the Hong Kong Stock Exchange; similarly, e-commerce giant JD.com raised \$3.9 billion U.S. dollars on the Hong Kong Stock Exchange. Other Chinese companies have announced plans to leave the United States for Hong Kong, including the search engine Baidu.

Hong Kong, as a result, could suffer from the gradual decoupling of the Chinese and U.S. economies. This decoupling will affect Hong Kong's stock market activity, which is already largely controlled by Chinese companies. Nevertheless, this decoupling will remain partial. Most foreign companies and financial institutions will prefer to adopt a form of political *omertà* (or even political allegiance) as long as they can make money in Hong Kong.

Beijing's objective is to persuade businesses and financial companies that Hong Kong will remain economically attractive. Most foreign companies and banks will accept this progressive 'Putinisation' or 'Singaporisation' of Hong Kong's political life.

Looking ahead, Hong Kong's economy will continue to play an important yet diminishing role in several sectors, particularly in finance and the stock market, services and air transport. Traditional port activity will continue to decline in importance in favour of the mainland ports of Guangdong or the Shanghai region.

## CONCLUSION

The establishment of the NSL in Hong Kong is intended to suppress the independence movement, restore Beijing's order in the territory and bridge, as far as possible, the widening gap between the societies of mainland China and the SAR, which Beijing considers worrisome.

The primary purpose of this law is to intimidate and warn. Its deterrent effect should not be underestimated. It is likely to reassure the business community, but can be worrisome to society, especially the liberal fringe. Only a gradual and smooth introduction of this law will reassure the Hong Kong people. Too brutal an application risks frightening not only society but also foreign companies, the expatriate community and even the Hong Kong business community. Transnational corporations would then be tempted to seek alternative locations in East Asia.

The Beijing regime is betting that the Chinese, Hong Kong and foreign business communities will be behind it. If the majority of society resigns and gets used to this new situation, the Chinese Communist Party will have won the day and Hong Kong will be able to continue to play an economic and financial role within the People's Republic. However, this is not a foregone conclusion. If the central government plans not only to eliminate localist forces but also to delegitimise the pan-democratic opposition and marginalise it, it risks encountering powerful and lasting resistance from Hong Kong's civil society, its political parties, NGOs, religious organisations and some of its elites (lawyers, journalists, teachers, academics, artists, etc.). It is to be hoped that it will not make this mistake, but the measures already announced since the entry into effect of the NSL tend towards a brutal change of the institutional, legal and political regime established twenty-three years ago.

In any case, the Hong Kong we have known since 1997 is disappearing to make way for a SAR under much closer supervision from the Chinese Communist Party for as long as that party continues to rule the country. However, in the longer term, if the democratic resistance of Hongkongers manages to survive, the trends could be reversed. Why not make the wager that Hong Kong, like at the end of the Manchu era, will play a leading role in the modernisation of the Chinese political system and towards a democratisation that Sun Yat-sen was already calling for from Hong Kong at the beginning of the 20<sup>th</sup> century?



## ANNEX

### The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region

#### Chapter I. General Principles

#### Chapter II. The Duties and the Government Bodies of the Hong Kong Special Administrative Region for Safeguarding National Security

##### *Part 1 – Duties*

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##### *Part 1 – Secession*

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#### Chapter VI. Supplementary Provisions

## CHAPTER I GENERAL PRINCIPLES

**Article 1.** This Law is enacted, in accordance with the Constitution of the People's Republic of China, the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, and the Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for Safeguarding National Security in the Hong Kong Special Administrative Region, for the purpose of:

- ensuring the resolute, full and faithful implementation of the policy of One Country, Two Systems under which the people of Hong Kong administer Hong Kong with a high degree of autonomy;
- safeguarding national security;
- preventing, suppressing and imposing punishment for the offences of secession, subversion, organisation and perpetration of terrorist activities, and collusion with a foreign country or with external elements to endanger national security in relation to the Hong Kong Special Administrative Region;
- maintaining prosperity and stability of the Hong Kong Special Administrative Region; and
- protecting the lawful rights and interests of the residents of the Hong Kong Special Administrative Region.

**Article 2.** The provisions in Articles 1 and 12 of the Basic Law of the Hong Kong Special Administrative Region on the legal status of the Hong Kong Special Administrative Region are the fundamental provisions in the Basic Law. No institution, organisation or individual in the Region shall contravene these provisions in exercising their rights and freedoms.

**Article 3.** The Central People's Government has an overarching responsibility for national security affairs relating to the Hong Kong Special Administrative Region.

It is the duty of the Hong Kong Special Administrative Region under the Constitution to safeguard national security and the Region shall perform the duty accordingly.

The executive authorities, legislature and judiciary of the Region shall effectively prevent, suppress and impose punishment for any act or activity endangering national security in accordance with this Law and other relevant laws.

**Article 4.** Human rights shall be respected and protected in safeguarding national security in the Hong Kong Special Administrative Region. The rights and freedoms, including the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, which the residents of the Region enjoy under the Basic Law of the Hong Kong Special Administrative Region and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong, shall be protected in accordance with the law.

**Article 5.** The principle of the rule of law shall be adhered to in preventing, suppressing, and imposing punishment for offences endangering national security. A person who commits an act which constitutes an offence under the law shall be convicted and punished in accordance with the law. No one shall be convicted and punished for an act which does not constitute an offence under the law.

A person is presumed innocent until convicted by a judicial body. The right to defend himself or herself and other rights in judicial proceedings that a criminal suspect, defendant, and other parties in judicial proceedings are entitled to under the law shall be protected. No one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in judicial proceedings.

**Article 6.** It is the common responsibility of all the people of China, including the people of Hong Kong, to safeguard the sovereignty, unification and territorial integrity of the People's Republic of China.

Any institution, organisation or individual in the Hong Kong Special Administrative Region shall abide by this Law and the laws of the Region in relation to the safeguarding of national security, and shall not engage in any act or activity which endangers national security.

A resident of the Region who stands for election or assumes public office shall confirm in writing or take an oath to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China in accordance with the law.

CHAPTER II  
THE DUTIES AND THE GOVERNMENT BODIES  
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION  
FOR SAFEGUARDING NATIONAL SECURITY

**Part 1 – Duties**

**Article 7.** The Hong Kong Special Administrative Region shall complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law of the Hong Kong Special Administrative Region and shall refine relevant laws.

**Article 8.** In order to safeguard national security effectively, the law enforcement and judicial authorities of the Hong Kong Special Administrative Region shall fully enforce this Law and the laws in force in the Region concerning the prevention of, suppression of, and imposition of punishment for acts and activities endangering national security.

**Article 9.** The Hong Kong Special Administrative Region shall strengthen its work on safeguarding national security and prevention of terrorist activities. The Government of the Hong Kong Special Administrative Region shall take necessary measures to strengthen public communication, guidance, supervision and regulation over matters concerning national security, including those relating to schools, universities, social organisations, the media, and the internet.

**Article 10.** The Hong Kong Special Administrative Region shall promote national security education in schools and universities and through social organisations, the media, the internet and other means to raise the awareness of Hong Kong residents of national security and of the obligation to abide by the law.

**Article 11.** The Chief Executive of the Hong Kong Special Administrative Region shall be accountable to the Central People's Government for affairs relating to safeguarding national security in the Hong Kong Special Administrative Region and shall submit an annual report on the performance of duties of the Region in safeguarding national security. The Chief Executive shall, at the request of the Central People's Government, submit in a timely manner a report on specific matters relating to safeguarding national security.

## Part 2 – Government Bodies

**Article 12.** The Hong Kong Special Administrative Region shall establish the Committee for Safeguarding National Security. The Committee shall be responsible for affairs relating to and assume primary responsibility for safeguarding national security in the Region. It shall be under the supervision of and accountable to the Central People's Government.

**Article 13.** The Chief Executive shall be the chairperson of the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region. The other members of the Committee shall be the Chief Secretary for Administration, the Financial Secretary, the Secretary for Justice, the Secretary for Security, the Commissioner of Police, the head of the department for safeguarding national security of the Hong Kong Police Force established under Article 16 of this Law, the Director of Immigration, the Commissioner of Customs and Excise, and the Director of the Chief Executive's Office. A secretariat headed by a Secretary-General shall be established under the Committee. The Secretary-General shall be appointed by the Central People's Government upon nomination by the Chief Executive.

**Article 14.** The duties and functions of the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region shall be:

- (1) analysing and assessing developments in relation to safeguarding national security in the Hong Kong Special Administrative Region, making work plans, and formulating policies for safeguarding national security in the Region;
- (2) advancing the development of the legal system and enforcement mechanisms of the Region for safeguarding national security; and
- (3) coordinating major work and significant operations for safeguarding national security in the Region.

No institution, organisation or individual in the Region shall interfere with the work of the Committee. Information relating to the work of the Committee shall not be subject to disclosure. Decisions made by the Committee shall not be amenable to judicial review.

**Article 15.** The Committee for Safeguarding National Security of the Hong Kong Special Administrative Region shall have a National Security Adviser, who shall be designated by the Central People's Government and provide advice on matters relating to the duties and functions of the Committee. The National Security Adviser shall sit in on meetings of the Committee.

**Article 16.** The Police Force of the Hong Kong Special Administrative Region shall establish a department for safeguarding national security with law enforcement capacity.

The head of the department for safeguarding national security of the Hong Kong Police Force shall be appointed by the Chief Executive. The Chief Executive shall seek in writing the opinion of the Office established under Article 48 of this Law before making the appointment. When assuming office, the head of the department for safeguarding national security of the Hong Kong Police Force shall swear to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China, and swear to abide by the law and to observe the obligation of secrecy.

The department for safeguarding national security of the Hong Kong Police Force may recruit qualified professionals and technical personnel from outside the Hong Kong Special Administrative Region to provide assistance in the performance of duties for safeguarding national security.

**Article 17.** The duties and functions of the department for safeguarding national security of the Hong Kong Police Force shall be:

- (1) collecting and analysing intelligence and information concerning national security;
- (2) planning, coordinating and enforcing measures and operations for safeguarding national security;
- (3) investigating offences endangering national security;
- (4) conducting counter-interference investigation and national security review;
- (5) carrying out tasks of safeguarding national security assigned by the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region; and
- (6) performing other duties and functions necessary for the enforcement of this Law.

**Article 18.** The Department of Justice of the Hong Kong Special Administrative Region shall establish a specialised prosecution division responsible for the prosecution of offences endangering national security and other related legal work. The prosecutors of this division shall be appointed by the Secretary for Justice after obtaining the consent of the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region.

The head of the specialised prosecution division of the Department of Justice shall be appointed by the Chief Executive, who shall seek in writing the opinion of the Office established under Article 48 of this Law before making the appointment. When assuming office, the head of the specialised prosecution division shall swear to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China, and swear to abide by the law and to observe the obligation of secrecy.

**Article 19.** The Financial Secretary of the Hong Kong Special Administrative Region shall, upon approval of the Chief Executive, appropriate from the general revenue a special fund to meet the expenditure for safeguarding national security and approve the establishment of relevant posts, which are not subject to any restrictions in the relevant provisions of the laws in force in the Region. The Financial Secretary shall submit an annual report on the control and management of the fund for this purpose to the Legislative Council of the Hong Kong Special Administrative Region.

## CHAPTER III OFFENCES AND PENALTIES

### Part 1 – Secession

**Article 20.** A person who organises, plans, commits or participates in any of the following acts, whether or not by force or threat of force, with a view to committing secession or undermining national unification shall be guilty of an offence:

- (1) separating the Hong Kong Special Administrative Region or any other part of the People's Republic of China from the People's Republic of China;
- (2) altering by unlawful means the legal status of the Hong Kong Special Administrative Region or of any other part of the People's Republic of China; or
- (3) surrendering the Hong Kong Special Administrative Region or any other part of the People's Republic of China to a foreign country.

A person who is a principal offender or a person who commits an offence of a grave nature shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years; a person who actively participates in the offence shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years; and other participants shall be sentenced to fixed-term imprisonment of not more than three years, short-term detention or restriction.

**Article 21.** A person who incites, assists in, abets or provides pecuniary or other financial assistance or property for the commission by other persons of the offence under Article 20 of this Law shall be guilty of an offence. If the circumstances of the offence committed by a person are of a serious nature, the person shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years; if the circumstances of the offence committed by a person are of a minor nature, the person shall be sentenced to fixed-term imprisonment of not more than five years, short-term detention or restriction.



## Part 2 – Subversion

**Article 22.** A person who organises, plans, commits or participates in any of the following acts by force or threat of force or other unlawful means with a view to subverting the State power shall be guilty of an offence:

- (1) overthrowing or undermining the basic system of the People's Republic of China established by the Constitution of the People's Republic of China;
- (2) overthrowing the body of central power of the People's Republic of China or the body of power of the Hong Kong Special Administrative Region;
- (3) seriously interfering in, disrupting, or undermining the performance of duties and functions in accordance with the law by the body of central power of the People's Republic of China or the body of power of the Hong Kong Special Administrative Region; or
- (4) attacking or damaging the premises and facilities used by the body of power of the Hong Kong Special Administrative Region to perform its duties and functions, rendering it incapable of performing its normal duties and functions.

A person who is a principal offender or a person who commits an offence of a grave nature shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years; a person who actively participates in the offence shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years; and other participants shall be sentenced to fixed-term imprisonment of not more than three years, short-term detention or restriction.

**Article 23.** A person who incites, assists in, abets or provides pecuniary or other financial assistance or property for the commission by other persons of the offence under Article 22 of this Law shall be guilty of an offence. If the circumstances of the offence committed by a person are of a serious nature, the person shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years; if the circumstances of the offence committed by a person are of a minor nature, the person shall be sentenced to fixed-term imprisonment of not more than five years, short-term detention or restriction.

### Part 3 – Terrorist Activities

**Article 24.** A person who organises, plans, commits, participates in or threatens to commit any of the following terrorist activities causing or intended to cause grave harm to the society with a view to coercing the Central People's Government, the Government of the Hong Kong Special Administrative Region or an international organisation or intimidating the public in order to pursue political agenda shall be guilty of an offence:

- (1) serious violence against a person or persons;
- (2) explosion, arson, or dissemination of poisonous or radioactive substances, pathogens of infectious diseases or other substances;
- (3) sabotage of means of transport, transport facilities, electric power or gas facilities, or other combustible or explosible facilities;
- (4) serious interruption or sabotage of electronic control systems for providing and managing public services such as water, electric power, gas, transport, telecommunications and the internet; or
- (5) other dangerous activities which seriously jeopardise public health, safety or security.

A person who commits the offence causing serious bodily injury, death or significant loss of public or private property shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years; in other circumstances, a person who commits the offence shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years.

**Article 25.** A person who organises or takes charge of a terrorist organisation shall be guilty of an offence and shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years, and shall be subject to confiscation of property; a person who actively participates in a terrorist organisation shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years and shall be imposed with a criminal fine; and other participants shall be sentenced to fixed-term imprisonment of not more than three years, short-term detention or restriction, and shall be liable to a criminal fine.

For the purpose of this Law, a terrorist organisation means an organisation which commits or intends to commit the offence under Article 24 of this Law or participates or assists in the commission of the offence.

**Article 26.** A person who provides support, assistance or facility such as training, weapons, information, funds, supplies, labour, transport, technologies or venues to a terrorist organisation or a terrorist, or for the commission of a terrorist activity; or manufactures or illegally possesses substances such as explosive, poisonous or radioactive substances and pathogens of infectious diseases or uses other means to prepare for the commission of a terrorist activity, shall be guilty of an offence. If the circumstances of the offence committed by a person are of a serious nature, the person shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years, and shall be imposed with a criminal fine or subject to confiscation of property; in other circumstances, a person shall be sentenced to fixed-term imprisonment of not more than five years, short-term detention or restriction, and shall be imposed with a criminal fine.

If the act referred to in the preceding paragraph also constitutes other offences, the person who commits the act shall be convicted and sentenced for the offence that carries a more severe penalty.

**Article 27.** A person who advocates terrorism or incites the commission of a terrorist activity shall be guilty of an offence. If the circumstances of the offence committed by a person are of a serious nature, the person shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years, and shall be imposed with a criminal fine or subject to confiscation of property; in other circumstances, a person shall be sentenced to fixed-term imprisonment of not more than five years, short-term detention or restriction, and shall be imposed with a criminal fine.

**Article 28.** The provisions of this Part shall not affect the prosecution of terrorist offences committed in other forms or the imposition of other measures such as freezing of property in accordance with the laws of the Hong Kong Special Administrative Region.

## Part 4 – Collusion with a Foreign Country or with External Elements to Endanger National Security

**Article 29.** A person who steals, spies, obtains with payment, or unlawfully provides State secrets or intelligence concerning national security for a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China shall be guilty of an offence; a person who requests a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, or conspires with a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, or directly or indirectly receives instructions, control, funding or other kinds of support from a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, to commit any of the following acts shall be guilty of an offence:

- (1) waging a war against the People's Republic of China, or using or threatening to use force to seriously undermine the sovereignty, unification and territorial integrity of the People's Republic of China;
- (2) seriously disrupting the formulation and implementation of laws or policies by the Government of the Hong Kong Special Administrative Region or by the Central People's Government, which is likely to cause serious consequences;
- (3) rigging or undermining an election in the Hong Kong Special Administrative Region, which is likely to cause serious consequences;
- (4) imposing sanctions or blockade, or engaging in other hostile activities against the Hong Kong Special Administrative Region or the People's Republic of China; or
- (5) provoking by unlawful means hatred among Hong Kong residents towards the Central People's Government or the Government of the Region, which is likely to cause serious consequences.

A person who commits the offence shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years; a person who commits an offence of a grave nature shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years.

The institution, organisation and individual outside the mainland, Hong Kong, and Macao of the People's Republic of China referred to in the first paragraph of this Article shall be convicted and punished for the same offence.

**Article 30.** A person who conspires with or directly or indirectly receives instructions, control, funding or other kinds of support from a foreign country or an institution, organisation, or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China to commit the offences under Article 20 or 22 of this Law shall be liable to a more severe penalty in accordance with the provisions therein respectively.

## Part 5 – Other Provisions on Penalty

**Article 31.** An incorporated or unincorporated body such as a company or an organisation which commits an offence under this Law shall be imposed with a criminal fine.

The operation of an incorporated or unincorporated body such as a company or an organisation shall be suspended or its licence or business permit shall be revoked if the body has been punished for committing an offence under this Law.

**Article 32.** Proceeds obtained from the commission of an offence under this Law including financial aid, gains and rewards, and funds and tools used or intended to be used in the commission of the offence shall be seized and confiscated.

**Article 33.** A lighter penalty may be imposed, or the penalty may be reduced or, in the case of a minor offence, exempted, if an offender, criminal suspect, or defendant:

- (1) in the process of committing an offence, voluntarily discontinues the commission of the offence or voluntarily and effectively forestalls its consequences;
- (2) voluntarily surrenders himself or herself and gives a truthful account of the offence; or
- (3) reports on the offence committed by other person, which is verified to be true, or provides material information which assists in solving other criminal case.

Sub-paragraph (2) of the preceding paragraph shall apply to a criminal suspect or defendant who is subjected to mandatory measures and provides a truthful account of other offences committed by him or her under this Law which are unknown to the law enforcement or judicial authorities.

**Article 34.** A person who is not a permanent resident of the Hong Kong Special Administrative Region may be subject to deportation as the sole or an additional punishment if he or she commits an offence under this Law.

A person who is not a permanent resident of the Region may be subject to deportation if he or she contravenes the provisions of this Law but is not prosecuted for any reason.

**Article 35.** A person who is convicted of an offence endangering national security by a court shall be disqualified from standing as a candidate in the elections of the Legislative Council and district councils of the Hong Kong Special Administrative Region, holding any public office in the Region, or serving as a member of the Election Committee for electing the Chief Executive. If a person so convicted is a member of the Legislative Council, a government official, a public servant, a member of the Executive Council, a judge or a judicial officer, or a member of the district councils, who has taken an oath or made a declaration to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China, he or she shall be removed from his or her office upon conviction, and shall be disqualified from standing for the aforementioned elections or from holding any of the aforementioned posts.

The disqualification and removal from offices referred to in the preceding paragraph shall be announced by the authorities responsible for organising and managing the relevant elections or for the appointment and removal of holders of public office.

## Part 6 – Scope of Application

**Article 36.** This Law shall apply to offences under this Law which are committed in the Hong Kong Special Administrative Region by any person. An offence shall be deemed to have been committed in the Region if an act constituting the offence or the consequence of the offence occurs in the Region. This Law shall also apply to offences under this Law committed on board a vessel or aircraft registered in the Region.

**Article 37.** This Law shall apply to a person who is a permanent resident of the Hong Kong Special Administrative Region or an incorporated or unincorporated body such as a company or an organisation which is set up in the Region if the person or the body commits an offence under this Law outside the Region.

**Article 38.** This Law shall apply to offences under this Law committed against the Hong Kong Special Administrative Region from outside the Region by a person who is not a permanent resident of the Region.

**Article 39.** This Law shall apply to acts committed after its entry into force for the purpose of conviction and imposition of punishment.

## CHAPTER IV JURISDICTION, APPLICABLE LAW AND PROCEDURE

**Article 40.** The Hong Kong Special Administrative Region shall have jurisdiction over cases concerning offences under this Law, except under the circumstances specified in Article 55 of this Law.

**Article 41.** This Law and the laws of the Hong Kong Special Administrative Region shall apply to procedural matters, including those related to criminal investigation, prosecution, trial, and execution of penalty, in respect of cases concerning offence endangering national security over which the Region exercises jurisdiction.

No prosecution shall be instituted in respect of an offence endangering national security without the written consent of the Secretary for Justice. This provision shall not prejudice the arrest and detention of a person who is suspected of having committed the offence or the application for bail by the person in accordance with the law.

Cases concerning offence endangering national security within the jurisdiction of the Hong Kong Special Administrative Region shall be tried on indictment. The trial shall be conducted in an open court. When circumstances arise such as the trial involving State secrets or public order, all or part of the trial shall be closed to the media and the public but the judgment shall be delivered in an open court.

**Article 42.** When applying the laws in force in the Hong Kong Special Administrative Region concerning matters such as the detention and time limit for trial, the law enforcement and judicial authorities of the Region shall ensure that cases concerning offence endangering national security are handled in a fair and timely manner so as to effectively prevent, suppress and impose punishment for such offence.

No bail shall be granted to a criminal suspect or defendant unless the judge has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security.

**Article 43.** When handling cases concerning offence endangering national security, the department for safeguarding national security of the Police Force of the Hong Kong Special Administrative Region may take measures that law enforcement authorities, including the Hong Kong Police Force, are allowed to apply under the laws in force in the Hong Kong Special Administrative Region in investigating serious crimes, and may also take the following measures:

- (1) search of premises, vehicles, vessels, aircraft and other relevant places and electronic devices that may contain evidence of an offence;
- (2) ordering any person suspected of having committed an offence endangering national security to surrender travel documents, or prohibiting the person concerned from leaving the Region;
- (3) freezing of, applying for restraint order, charging order and confiscation order in respect of, and forfeiture of property used or intended to be used for the commission of the offence, proceeds of crime, or other property relating to the commission of the offence;
- (4) requiring a person who published information or the relevant service provider to delete the information or provide assistance;
- (5) requiring a political organisation of a foreign country or outside the mainland, Hong Kong, and Macao of the People's Republic of China, or an agent of authorities or a political organisation of a foreign country or outside the mainland, Hong Kong, and Macao of the People's Republic of China, to provide information;
- (6) upon approval of the Chief Executive, carrying out interception of communications and conducting covert surveillance on a person who is suspected, on reasonable grounds, of having involved in the commission of an offence endangering national security; and
- (7) requiring a person, who is suspected, on reasonable grounds, of having in possession information or material relevant to investigation, to answer questions and furnish such information or produce such material.

The Committee for Safeguarding National Security of the Hong Kong Special Administrative Region shall be responsible for supervising the implementation of the measures stipulated in the first paragraph of this Article by law enforcement authorities including the department for safeguarding national security of the Hong Kong Police Force.

The Chief Executive shall be authorised, in conjunction with the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region, to make relevant implementation rules for the purpose of applying the measures under the first paragraph of this Article.

**Article 44.** The Chief Executive shall designate a number of judges from the magistrates, the judges of the District Court, the judges of the Court of First Instance and the Court of Appeal of the High Court, and the judges of the Court of Final Appeal, and may also designate a number of judges from deputy judges or recorders, to handle cases concerning offence endangering national security. Before making such designation, the Chief Executive may consult the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region and the Chief Justice of the Court of Final Appeal.



The term of office of the aforementioned designated judges shall be one year. A person shall not be designated as a judge to adjudicate a case concerning offence endangering national security if he or she has made any statement or behaved in any manner endangering national security. A designated judge shall be removed from the designation list if he or she makes any statement or behaves in any manner endangering national security during the term of office. The proceedings in relation to the prosecution for offences endangering national security in the magistrates' courts, the District Court, the High Court and the Court of Final Appeal shall be handled by the designated judges in the respective courts.

**Article 45.** Unless otherwise provided by this Law, magistrates' courts, the District Court, the High Court and the Court of Final Appeal shall handle proceedings in relation to the prosecution for offences endangering national security in accordance with the laws of the Hong Kong Special Administrative Region.

**Article 46.** In criminal proceedings in the Court of First Instance of the High Court concerning offences endangering national security, the Secretary for Justice may issue a certificate directing that the case shall be tried without a jury on the grounds of, among others, the protection of State secrets, involvement of foreign factors in the case, and the protection of personal safety of jurors and their family members. Where the Secretary for Justice has issued the certificate, the case shall be tried in the Court of First Instance without a jury by a panel of three judges.

Where the Secretary for Justice has issued the certificate, the reference to "a jury" or "a verdict of the jury" in any provision of the laws of the Hong Kong Special Administrative Region applicable to the related proceedings shall be construed as referring to the judges or the functions of the judge as a judge of fact.

**Article 47.** The courts of the Hong Kong Special Administrative Region shall obtain a certificate from the Chief Executive to certify whether an act involves national security or whether the relevant evidence involves State secrets when such questions arise in the adjudication of a case. The certificate shall be binding on the courts.

CHAPTER VV  
OFFICE FOR SAFEGUARDING NATIONAL SECURITY  
OF THE CENTRAL PEOPLE'S GOVERNMENT  
IN THE HONG KONG SPECIAL ADMINISTRATIVE REGION

**Article 48.** The Central People's Government shall establish in the Hong Kong Special Administrative Region an office for safeguarding national security. The Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region shall perform its mandate for safeguarding national security and exercise relevant powers in accordance with the law.

The staff of the Office shall be jointly dispatched by relevant national security authorities under the Central People's Government.

**Article 49.** The Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region shall perform the following mandate:

- (1) analysing and assessing developments in relation to safeguarding national security in the Hong Kong Special Administrative Region, and providing opinions and making proposals on major strategies and important policies for safeguarding national security;
- (2) overseeing, guiding, coordinating with, and providing support to the Region in the performance of its duties for safeguarding national security;
- (3) collecting and analysing intelligence and information concerning national security; and
- (4) handling cases concerning offence endangering national security in accordance with the law.

**Article 50.** The Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region shall perform its mandate in strict compliance with the law and be subject to supervision in accordance with the law. It shall not infringe upon the lawful rights and interests of any individual or organisation.

The staff of the Office shall abide by the laws of the Hong Kong Special Administrative Region as well as national laws.

The staff of the Office shall be subject to the supervision of the national supervisory authorities in accordance with the law.

**Article 51.** The Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region shall be funded by the Central People's Government.

**Article 52.** The Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region shall strengthen working relations and cooperation with the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region, the Office of the Commissioner of the Ministry of Foreign Affairs in the Hong Kong Special Administrative Region, and the Hong Kong Garrison of the Chinese People's Liberation Army.

**Article 53.** The Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region shall establish a mechanism of coordination with the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region to oversee and provide guidance on the work of the Hong Kong Special Administrative Region for safeguarding national security.

The working departments of the Office shall establish mechanisms for collaboration with the relevant authorities of the Region responsible for safeguarding national security to enhance information sharing and operations coordination.

**Article 54.** The Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region and the Office of the Commissioner of the Ministry of Foreign Affairs in the Hong Kong Special Administrative Region shall, together with the Government of the Hong Kong Special Administrative Region, take necessary measures to strengthen the management of and services for organs of foreign countries and international organisations in the Region, as well as non-governmental organisations and news agencies of foreign countries and from outside the mainland, Hong Kong, and Macao of the People's Republic of China in the Region.

**Article 55.** The Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region shall, upon approval by the Central People's Government of a request made by the Government of the Hong Kong Special Administrative Region or by the Office itself, exercise jurisdiction over a case concerning offence endangering national security under this Law, if:

- (1) the case is complex due to the involvement of a foreign country or external elements, thus making it difficult for the Region to exercise jurisdiction over the case;
- (2) a serious situation occurs where the Government of the Region is unable to effectively enforce this Law; or
- (3) a major and imminent threat to national security has occurred.

**Article 56.** In exercising jurisdiction over a case concerning offence endangering national security pursuant to Article 55 of this Law, the Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region shall initiate investigation into the case, the Supreme People's Procuratorate shall designate a prosecuting body to prosecute it, and the Supreme People's Court shall designate a court to adjudicate it.

**Article 57.** The Criminal Procedure Law of the People's Republic of China and other related national laws shall apply to procedural matters, including those related to criminal investigation, examination and prosecution, trial, and execution of penalty, in respect of cases over which jurisdiction is exercised pursuant to Article 55 of this Law.

When exercising jurisdiction over cases pursuant to Article 55 of this Law, the law enforcement and judicial authorities referred to in Article 56 of this Law shall exercise powers in accordance with the law. The legal documents issued by these authorities on their decisions to take mandatory and investigation measures and on their judicial decisions shall have legal force in the Hong Kong Special Administrative Region. The institutions, organisations and individuals concerned must comply with measures taken by the Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region in accordance with the law.

**Article 58.** In a case over which jurisdiction is exercised pursuant to Article 55 of this Law, a criminal suspect shall have the right to retain a lawyer to represent him or her from the day he or she first receives inquiry made by the Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region or from the day a mandatory measure is taken against him or her. A defence lawyer may provide legal assistance to a criminal suspect or defendant in accordance with the law.

A criminal suspect or defendant who is arrested in accordance with the law shall be entitled to a fair trial before a judicial body without undue delay.

**Article 59.** In a case over which jurisdiction is exercised pursuant to Article 55 of this Law, any person who has information pertaining to an offence endangering national security under this Law is obliged to testify truthfully.

**Article 60.** The acts performed in the course of duty by the Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region and its staff in accordance with this Law shall not be subject to the jurisdiction of the Hong Kong Special Administrative Region.

In the course of performing duty, a holder of an identification document or a document of certification issued by the Office and the articles including vehicles used by the holder shall not be subject to inspection, search or detention by law enforcement officers of the Region.

The Office and its staff shall enjoy other rights and immunities provided by laws of the Region.

**Article 61.** The relevant departments of the Government of the Hong Kong Special Administrative Region shall provide necessary facilitation and support to the Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region in performing its mandate in accordance with this Law, and shall stop any act obstructing the performance of such mandate and hold those who commit such act liable in accordance with the law.

## CHAPTER VI SUPPLEMENTARY PROVISIONS

**Article 62.** This Law shall prevail where provisions of the local laws of the Hong Kong Special Administrative Region are inconsistent with this Law.

**Article 63.** The law enforcement and judicial authorities and their staff who handle cases concerning offence endangering national security under this Law, or the law enforcement and judicial authorities of the Hong Kong Special Administrative Region and their staff who handle other cases concerning offence endangering national security, shall keep confidential State secrets, trade secrets or personal information which they come to know in the process of handling such cases.

A lawyer who serves as defence counsel or legal representative shall keep confidential State secrets, trade secrets or personal information which he or she comes to know in the practice of law.

The relevant institutions, organisations and individuals who assist with the handling of a case shall keep confidential any information pertaining to the case.

**Article 64.** In the application of this Law in the Hong Kong Special Administrative Region, the terms “fixed-term imprisonment”, “life imprisonment”, “confiscation of property” and “criminal fine” in this Law respectively mean “imprisonment”, “imprisonment for life”, “confiscation of proceeds of crime” and “fine”; “short-term detention” shall be construed, with reference to the relevant laws of the Region, as “imprisonment”, “detention in a detention centre” or “detention in a training centre”; “restriction” shall be construed, with reference to the relevant laws of the Region, as “community service” or “detention in a reformatory school”; and “revoke licence or business permit” means “revoke registration or exemption from registration, or revoke licence” as provided for in the relevant laws of the Region.

**Article 65.** The power of interpretation of this Law shall be vested in the Standing Committee of the National People’s Congress.

**Article 66.** This Law shall come into force on the date of its promulgation.









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# HONG KONG: THE SECOND HANDOVER

*By Jean-Pierre CABESTAN and Laurence DAZIANO*

The National Security Law (NSL), which came into effect on 30<sup>th</sup> June 2020, the day before the anniversary of Hong Kong's handover to China (1<sup>st</sup> July 1997), is designed to intimidate Hong Kong civil society and suppress all protests. New 'crimes' are now heavily punished. Some provisions go very far in creating legal insecurity. Directly subordinated to Beijing, new security institutions have been set up to deal with these 'crimes'.

Civil liberties are the first to suffer from this new law. Civil society in Hong Kong is balancing between obedience and protest. The business world and the financial centre are also progressively being restrained. The limited U.S. sanctions should not fundamentally disrupt Hong Kong's business community. Still, the NSL may affect the business community through its risks to data confidentiality and the exceptional powers now enjoyed by Beijing's police and security organs.

However, can we talk about the end of the 'One country, Two systems' principle? The full integration of Hong Kong into mainland China seems unlikely. Yet maintaining a large degree of autonomy for the Special Administrative Region (SAR) is now ruled out. It would appear that Beijing wants to exercise greater control both directly over Hong Kong's governance and civil society as well as indirectly over economic and financial circles. The NSL amounts to a 'second handover'

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