

# CHAPTER 5

## HONG KONG

### Key Findings

- On June 30, 2020, the Chinese government implemented a sweeping national security law for Hong Kong that brought the territory's 7.5 million residents under the full and direct authoritarian rule of the Chinese Communist Party (CCP). This action violated China's commitment to preserve the "one country, two systems" framework that would have guaranteed Hong Kong's autonomy through 2047. In passing this law, Beijing demonstrated its willingness to sacrifice economic interests, the rule of law, and basic human rights to establish political control over the territory.
- The national security law has fundamentally transformed Hong Kong's relationship with the United States and other democracies, as well as the international perception of China as a global actor. China's unapologetic violation of a binding treaty once again calls into question the credibility of its commitments to the international community. In recognition of Hong Kong's changed status, the United States has begun dismantling Hong Kong's separate treatment in U.S. law, which served as the basis of U.S.-Hong Kong relations for nearly 30 years.
- The new law's extraterritorial provisions pose a substantial risk to U.S. citizens in Hong Kong and internationally. It criminalizes any perceived criticism of the Chinese or Hong Kong governments, regardless of where the offending individual or entity resides. Under this law, the Hong Kong government has already sought the arrest of a U.S. citizen, the director of a prodemocracy group advocating for congressional action on Hong Kong. Left unchecked, the law could grant the Chinese government broad powers to censor global discourse.
- U.S. multinationals and their personnel in the territory now face a heightened degree of political and personal risk and are waiting on the law's implementation and the U.S. government's response. Companies with operations on the Mainland may replicate precautions there for operations in Hong Kong. Other companies may choose to relocate more international-facing operations elsewhere. Major U.S. technology firms face particular challenges due to their collection of sensitive user data.
- In further confirmation of the territory's changed status, the Hong Kong authorities quickly moved to erase democratic processes in Hong Kong. Facing a likely prodemocracy victory, the government postponed a pivotal Legislative Council (LegCo)

election and banned a dozen prodemocracy candidates. The de facto separation between mainland and Hong Kong security forces also vanished. Immediately after the national security law's implementation, the authorities began targeting and arresting prodemocracy supporters. Despite the danger of arrest under the law, many activists are committed to staying in the city to defend their freedoms, while others seek to move abroad.

- The national security law has significantly compromised Hong Kong's historically strong rule of law and press freedom. Under growing pressure from the CCP, the territory's judicial system has been thrown into crisis as judges are compelled to adopt mainland legal principles and CCP positions. Journalists have faced new levels of pressure to self-censor while the Hong Kong authorities have harassed prodemocracy news outlets and refused to renew press credentials. The CCP has also suppressed other aspects of Hong Kong's civil society. Illustrating this trend, the Hong Kong authorities for the first time banned the annual vigil to mark the 1989 Tiananmen Square massacre.

## Recommendations

The Commission recommends:

- Congress direct the Administration to identify and remove barriers to receiving United States visas for Hong Kong residents attempting to exit Hong Kong for fear of political persecution.
- Congress consider legislation extending political asylum to residents of Hong Kong born on or after June 30, 1997, who currently cannot apply for a second form of identification beyond a Hong Kong Special Administrative Region passport.
- Congress direct the Office of the U.S. Trade Representative to produce a report within 90 days assessing the risk of mainland China using Hong Kong to evade or circumvent Section 301 trade enforcement actions or other U.S. trade remedies.

## Introduction

On June 30, 2020, China's government passed national security legislation\* for Hong Kong without regard for the rights of the people of Hong Kong or Beijing's international treaty commitment to grant Hong Kong a "high degree of autonomy." In a bold assertion of power, the Chinese government took steps to implement the national security law immediately after passing it, quickly changing the political, economic, and security landscape for Hong Kong and its citizens. The CCP appeared to judge the benefits of implementing the law would outweigh any potential costs imposed by the international community. This move reflected the CCP's growing tolerance for risk and disregard for international condemnation of its actions.

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\*The law's full official title is Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region. This chapter uses "national security law" throughout given its common reference as such in media and government statements, but "state security law" is a more appropriate translation given that the law's intent is to maintain the CCP's control over Hong Kong.

The national security law came after years of the CCP's encroachment into the territory's affairs. Since the 1997 handover of Hong Kong from the United Kingdom (UK) to China, the CCP has tried to pressure Hong Kong to adopt Article 23 national security legislation but failed, most prominently in 2003 due to mass protests opposing the move. More recently, in 2019, a proposed bill permitting extraditions of Hong Kong citizens to the Mainland sparked a historic protest movement, forcing the Hong Kong government to withdraw the bill. With the global spread of the novel coronavirus (COVID-19), Chinese leaders seized an opportunity to silence opposition and establish control over civil society while the pandemic prevented Hong Kong residents from continuing demonstrations and distracted the international community.

In implementing the law, Beijing violated its legal obligations to Hong Kong and the international community. This act ended Beijing's "one country, two systems" policy that guaranteed Hong Kong a "high degree of autonomy" as enshrined in the 1984 Sino-British Joint Declaration and Hong Kong's mini constitution, the Basic Law. Beijing's implementation of the national security law removed any semblance of Hong Kong's historical freedom of expression and rule of law, both of which have sustained the territory's position as one of the largest global financial centers.

After the law's announcement, Hong Kong's protest movement reached a crossroads as many activists committed to stay to defend the territory's freedoms while some sought political asylum abroad. At the same time, the Hong Kong government increasingly turned into the executor of the CCP's directives. The Hong Kong authorities curtailed an anticipated prodemocracy victory in the September 2020 legislative election by banning a dozen candidates and delaying the election for a year under the guise of the pandemic. As of October 2020, the Hong Kong authorities continued to target and arrest prominent prodemocracy activists and supporters as part of a widescale crackdown on dissent.

This chapter begins by examining the CCP's decision to implement national security legislation for Hong Kong and the responses from the U.S. government and the international community. It then assesses the economic risks the law poses to Hong Kong's longstanding role as a key financial hub for Beijing and its status as a global financial center. Next, the chapter discusses how Beijing has eroded the territory's autonomy and denied Hong Kong residents their civil liberties guaranteed by the Basic Law. It concludes by considering the implications of these developments for the United States. This chapter is based on consultations with U.S. government officials and nongovernmental experts, open source research and analysis, and findings from the Commission's September 2020 hearing.

### **Beijing's Commitments under the Sino-British Joint Declaration and the Basic Law**

According to the 1984 Sino-British Joint Declaration, which dictated the terms of the 1997 handover of Hong Kong to mainland China from the UK, Hong Kong "will enjoy a high degree of autonomy, except in foreign and defense affairs" and will retain

### **Beijing's Commitments under the Sino-British Joint Declaration and the Basic Law—*Continued***

its democratic freedoms as is included in China's "one country, two systems" framework.<sup>1</sup> The Joint Declaration states that Hong Kong's autonomy and freedoms "will remain unchanged for 50 years" (from the 1997 handover to 2047).<sup>2</sup> The document is registered at the UN as a legally binding treaty. These commitments by mainland China are included in Hong Kong's Basic Law, promulgated by China's National People's Congress in 1990 and adopted following the 1997 handover.<sup>3</sup>

### **Beijing's National Security Law for Hong Kong: The End of "One Country, Two Systems"**

On June 30, 2020, the 13th National People's Congress Standing Committee in Beijing bypassed Hong Kong's LegCo to unanimously adopt a draconian national security law for Hong Kong.<sup>4</sup> As soon as Beijing announced its decision to draft the law, Hong Kong Chief Executive Carrie Lam and the Hong Kong government promoted it before seeing the full text.<sup>5</sup>

The national security law illustrates the CCP's willingness to suffer international backlash and bear potentially significant economic costs to silence dissent in the territory and establish complete control over Hong Kong. It grants widespread authority to the Hong Kong government and the CCP to arrest any Hong Kong resident or foreign national taking action they deem contrary to its policies.<sup>6</sup> The extraterritorial provision of the law authorizes the arrest and detention of anyone regardless of where they are in the world, increasing the risk of detention of any U.S. or foreign citizen who criticizes the CCP or the Hong Kong government if they transit through Hong Kong or any country with an extradition treaty with the Mainland.

Although Chinese and Hong Kong authorities insist the law will only target a small number of people in the territory committing the specific crimes outlined, the law's vague provisions create a climate of fear and intimidation that severely constrains freedom of expression.<sup>7</sup> For example, the Hong Kong government used the law to ban the popular protest slogan "liberate Hong Kong, revolution of our times" and announced implementation rules for one of the law's provisions requiring online platforms to remove offensive content or face fines and jail sentences.<sup>8</sup>

### **Key Provisions of the National Security Law**

Among its key provisions, the national security law:\*

- Prohibits vaguely defined acts of separatism, subversion, terrorism, and "collusion with foreign or overseas forces" perceived to threaten China's national security. These prohibitions make protests and interactions with foreign organizations and governments punishable by a maximum lifetime

\*For a detailed summary and analysis of the law, see Taige Hu and Haoran Zhang, "Legislation Summary: Hong Kong National Security Law," *NPC Observer*, June 30, 2020.

### **Key Provisions of the National Security Law—Continued**

jail sentence. The law’s expansive scope adds “terrorism” and “collusion” to the national security legislation requirement under Article 23 of the Basic Law.\*

- Applies punishable offenses to Hong Kong residents and foreign citizens alike, regardless of whether they are physically located in Hong Kong.
- Overrides the Basic Law where discrepancies exist and provides the National People’s Congress Standing Committee sole authority to interpret the law.<sup>9</sup>
- Establishes a new mainland security office in Hong Kong with its own law enforcement personnel who can make arrests and conduct investigations outside of the Hong Kong government’s jurisdiction.
- Grants Beijing the ability to take jurisdiction over cases to try defendants in mainland courts. In effect, this authority provides for the extradition of suspects from Hong Kong to mainland China, the centerpiece of a widely opposed 2019 bill that sparked the protest movement. In addition, trials may be held in secret.
- Allows Hong Kong’s chief executive to designate judges eligible to rule on national security cases.

The law violates both the spirit and the letter of Beijing’s commitments in the Sino-British Joint Declaration and the Basic Law. Beijing had vowed to administer only the territory’s defense and foreign affairs under its “one country, two systems” policy. Under the Joint Declaration, Beijing promised to grant Hong Kong a “high degree of autonomy,” allowing the territory to “retain its current lifestyle and legal, social, and economic systems until at least the year 2047.”<sup>10</sup> In implementing the national security law, China’s Foreign Ministry stated the Joint Declaration no longer applied, as it represented a “unilateral policy announcement by China,” rather than a “promise by China to the UK.”<sup>11</sup>

Beijing also disregarded Hong Kong’s treaty commitments to protect civil liberties under the International Covenant on Civil and Political Rights.<sup>12</sup> While the national security law states that Hong Kong “should protect” these rights, Donald Clarke, expert on Chi-

\*According to Article 23 of the Basic Law, Hong Kong must enact laws “to prohibit any act of treason, secession, sedition, subversion against [the Chinese government], or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in [the territory], and to prohibit political organizations or bodies of [Hong Kong] from establishing ties with foreign political organizations or bodies.” Hong Kong already prohibits most of the acts included in Article 23 through other national security laws, except for “secession” or “subversion,” both of which are undefined and vulnerable for exploitation. The last time the Hong Kong government attempted to pass Article 23 legislation in 2003, it initially included provisions such as search and seizure powers and banning unlawful disclosure of government information that went far beyond the letter of the law, though these provisions were later removed after a march of over 500,000 people against the law. Carole J. Petersen, “Balancing National Security and the Rule of Law: Article 23 of the Basic Law,” *Hong Kong Watch*, November 1, 2018, 7, 11–12; Basic Law of the Hong Kong Special Autonomous Region of the People’s Republic of China, Chapter II: Relationship between the Central Authorities and the Hong Kong Special Administrative Region, Article 23, April 4, 1990.

nese law at George Washington University, argued the International Covenant on Civil and Political Rights “does not pre-empt or invalidate contrary provisions in the [national security law]. The [national security law] takes precedence.”<sup>13</sup> Finally, Beijing’s unilateral imposition of the legislation contradicted Hong Kong’s Basic Law, which obligates Hong Kong to pass its own set of national security laws.<sup>14</sup> While Beijing accelerated its erosion of the “one country, two systems” framework since General Secretary of the CCP Xi Jinping took office in 2012, this legislation establishes comprehensive control over Hong Kong’s affairs.

### ***Implementation of the National Security Law***

Hong Kong’s historic protest movement,\* initially sparked in June 2019 by a proposed bill that would have allowed for the extradition of any individual in the territory to the Mainland, reached a crossroads after the national security law’s introduction as fears grew that any expression of dissent would be silenced. By late September 2020, the Hong Kong police reported that since the start of the movement total arrests of protesters had risen to over 10,000, 26 of whom were arrested under the national security law, and civil liberties advocates stated that at least 1,650 of those arrested faced legal proceedings.<sup>15</sup>

#### **Prosecution of The Hong Kong 12 Demonstrates New Risks for Activists**

The case of the “Hong Kong 12,” who were forcibly prevented from leaving Hong Kong and then held without access to communications for weeks on the Mainland before facing trial, demonstrates the consequences that may now await prodemocracy activists who run afoul of the national security law. The same day Beijing approved the law in late June 2020, the People’s Liberation Army (PLA) staged an exercise in Hong Kong’s Victoria Harbor that appeared designed to strike fear in Hong Kong residents by simulating the capture of fugitives leaving Hong Kong by boat.<sup>16</sup> Subsequently, the China Coast Guard did just this in August 2020 when it captured a dozen Hong Kong residents attempting to flee to Taiwan by speedboat, all but one of whom faced charges in Hong Kong related to participation in protests.† One other was charged with foreign collusion under the new law.<sup>17</sup>

Family members of the detainees and other activists claimed that government records leaked from within the Hong Kong Police Force showed the police had dispatched a fixed-wing aircraft to assist mainland authorities in monitoring and intercepting the attempt to flee by boat.<sup>18</sup> John Lee, Hong Kong Secretary for Security, argued in an editorial that the arrests were justified be-

\*For a review of the protest movement’s origins, demonstrations, and impact on Hong Kong’s political situation, see U.S.-China Economic and Security Review Commission, Chapter 6, “Hong Kong,” in *2019 Annual Report to Congress*, November 2019.

†According to the *Wall Street Journal*, three were charged for being linked to a raid that found a gun and bullets; three were charged for possessing materials to make Molotov cocktails; two were charged with rioting; one was charged with foreign collusion; one was charged with manufacturing explosives; one was charged with arson; and one was not charged under Hong Kong law. Wenxin Fan and John Lyons, “China Snatched the ‘Hong Kong 12’ Off a Speedboat, Giving Protest Movement New Life,” *Wall Street Journal*, October 7, 2020.

### **Prosecution of The Hong Kong 12 Demonstrates New Risks for Activists—Continued**

cause the dozen activists had violated bail conditions set by the Hong Kong government.<sup>19</sup>

The subsequent transfer of the Hong Kong 12 to the mainland legal system demonstrates that even when not charged in Hong Kong, as was the case with one of the twelve, activists can now be extradited to the Mainland to face charges in its opaque and merciless judicial system. According to the Wall Street Journal, after the Coast Guard interception, the twelve activists were moved to a detention facility in Shenzhen, across the border in the Mainland.<sup>20</sup> Mainland authorities formally arrested them on September 30 after holding them for 37 days, announcing that ten of the twelve would be charged for illegally crossing the Chinese border and two would be charged for illegally organizing the trip. The charges under Chinese law indicated that Chinese authorities were preparing to keep the prisoners under detention in the Mainland for months more. A joint statement issued by the detainees' families called for their return to Hong Kong and expressed concern that they may have already been subjected to torture during their confinement.<sup>21</sup>

Many activists committed to stay in Hong Kong to defend the territory's promised autonomy and freedoms, such as former Umbrella Movement\* leader Joshua Wong and his former colleague in the Demosistō prodemocracy political party, Agnes Chow, while a number of activists chose to leave Hong Kong to focus on international advocacy efforts.† As of this writing, hundreds of activists have sought refuge abroad, mostly in Taiwan, Australia, and Canada.‡ Former elected Hong Kong legislator and Umbrella Movement student leader Nathan Law is the most prominent activist to leave Hong Kong; he is now promoting Hong Kong's prodemocracy cause in the UK.<sup>22</sup> Even before the law's passage, formal emigration requests and numbers of individuals seeking asylum abroad were on the rise. In 2019, 33,252 people applied with the Hong Kong police

\*The Umbrella Movement (also referred to as Occupy Central with Love and Peace, the Occupy movement, or the "Umbrella Revolution") advocated for true universal suffrage according to international standards in future Hong Kong elections. The largely nonviolent protests occupying some of the city's major thoroughfares lasted 79 days and concluded in December 2014, but the prodemocracy activists' proposals were rebuffed. U.S.-China Economic and Security Review Commission, *2015 Annual Report to Congress*, November 2015, 534–536; U.S.-China Economic and Security Review Commission, *2014 Annual Report to Congress*, November 2014, 523–527.

†Mr. Wong and Ms. Chow were arrested and awaiting trial as of late September 2020. Elaine Yu, "Hong Kong Police Arrest Activist for Violating 2019 Mask Ban," *New York Times*, September 24, 2020; Takeshi Kihara, "Agnes Chow Arrest Deepens Hong Kong Fears of Arbitrary Detention," *Nikkei Asia*, August 13, 2020.

‡Several weeks after Beijing implemented the law, an Australian government official said at least 137 Hong Kong residents were seeking asylum in Australia. By January 2020, at least 200 prodemocracy protesters had fled to Taiwan and at least 50 had sought asylum in Canada to escape charges that could lead to years-long jail sentences for their participation in demonstrations. Nicholas McElroy, "Alan Tudge Says Hong Kong Residents Fearful of China Are Not Guaranteed Australian Visas," *Australian Broadcasting Corporation*, July 12, 2020; *Japan Times*, "Hong Kong Protesters Seek Sanctuary Overseas as China Tightens Its Grip," June 5, 2020; Steven Chase and Robert Fife, "Hong Kong Protesters Seek Refuge in Canada," *Globe and Mail*, May 3, 2020; Nick Aspinwall, "For Hong Kong Refugees, New Life in Taiwan Means Traversing a Legal Twilight Zone," *Washington Post*, February 24, 2020.

for a document needed to emigrate and to apply for various types of visas, a 41 percent year-on-year increase.<sup>23</sup>

In some instances, Hong Kong authorities have used the new law to arrest prominent prodemocracy activists and protesters for their participation in actions that occurred prior to the law's passage, despite Chief Executive Lam's promise to the UN Human Rights Council that the law would not be retroactive.<sup>24</sup> As of August 2020, high-profile arrests included that of 72-year-old Jimmy Lai, chairman of Hong Kong media company Next Digital and the founder of the popular prodemocracy newspaper *Apple Daily*. The arrests of Mr. Lai, his two sons, and four executives at his company—and the raid of his newsroom by more than 200 police officers in August 2020—signaled the CCP's blatant disregard for press freedom and its desire to silence its loudest critics.<sup>25</sup> In the same month, Ms. Chow was arrested for allegedly colluding with foreign forces over social media. An article in the *People's Daily*, the CCP's mouthpiece, criticized her advocacy efforts that targeted a Japanese audience, suggesting these activities led to her arrest.<sup>26</sup> Hong Kong prodemocracy lawmaker James To argued the new law “fundamentally undermines the rule of law and independence of the judiciary. It brings the Mainland's authoritarian values to Hong Kong.”<sup>27</sup>

The crackdown on prominent activists in Hong Kong followed other arrests made under the new law for acts such as making online posts, holding banners, and chanting slogans. On July 1, hours after the law took effect, thousands of protesters took to the streets defying a ban on the annual prodemocracy march marking the anniversary of the 1997 handover of Hong Kong to China. The Hong Kong police reportedly arrested ten protesters aged 15 to 23 under the new law for allegedly inciting subversion—some for carrying pro-independence flags and chanting slogans promoting Hong Kong independence.\*<sup>28</sup> Those arrested for allegedly committing national security offenses had DNA samples taken, a step usually only reserved for people accused of violent crimes.<sup>29</sup> In late July 2020, Hong Kong police arrested four students aged 16 to 21 on charges of subversion and incitement of secession for allegedly posting pro-independence messages online, despite the students' move to disband their pro-independence group before the law went into effect.<sup>30</sup>

Illustrating the law's coercive extraterritorial reach and threat to U.S. citizens, less than a month after the law's implementation, Chinese state television said the Hong Kong authorities issued arrest warrants for six prominent prodemocracy activists living overseas on charges of inciting secession and collusion with foreign forces.†

\*The first person arrested under the national security law was 23-year-old Tong Ying-kit, who was accused of inciting secession and conducting terrorist activities after allegedly driving a motorcycle into police officers while carrying a protest flag. As of August 2020, the youngest person arrested under the new law was a 15-year-old girl for waiving a Hong Kong independence flag. *RTHK*, “Man, 23, Charged with Terrorism and Secession,” July 3, 2020; James Griffiths and Joshua Berlinger, “Defiance and Fear as Hong Kong Settles into New Normal after China-Backed Law Takes Hold,” *CNN*, July 2, 2020.

†These included: (1) Simon Cheng, a 29-year-old former employee of the UK consulate in Hong Kong who was detained and tortured in mainland China in August 2019 for his apparent protest activities and was granted political asylum in the UK in June 2020; (2) Nathan Law, a 27-year-old activist who left Hong Kong for the UK; (3) Ray Wong, a 26-year-old activist who became the first Hong Kong political refugee in 2019 when Germany granted him asylum; (4) Lau Hong, an 18-year-old pro-independence activist who lives in the UK; (5) Wayne Chan, a young pro-independence activist who left Hong Kong on the eve of the national security law's implementation and now lives in the UK; and (6) Samuel Chu, a 42-year-old activist and U.S. citizen who is also the



One of these activists was Samuel Chu, a U.S. citizen and managing director of Washington, DC-based advocacy group Hong Kong Democracy Council.<sup>31</sup> As Chinese law does not recognize dual citizenship, the CCP considers individuals of Chinese or Hong Kong descent to be Chinese citizens regardless of whether they have another nationality or passport.\* Already, the arrest warrants have had severe consequences. For example, Mr. Chu said, “I fear that I can no longer travel to Hong Kong, or to any countries with active extradition treaties with the Hong Kong [government] or with China without risking arrest and extradition. I cannot speak to my elderly parents in Hong Kong without opening them to investigations and invasive searches by the police.”<sup>32</sup>

Many Hong Kong residents took preemptive measures to reduce their exposure to potential charges under the law. At least six prodemocracy political parties and organizations disbanded, most prominently Demosistō, led by Mr. Wong and Mr. Law.<sup>33</sup> In addition, downloads of virtual private network software skyrocketed with leading service provider NordVPN estimating 120 times more downloads the day after Beijing signaled its plans for the new law.<sup>34</sup> Inquiries into opening foreign bank accounts also spiked.<sup>35</sup> Prodemocracy advocates scrubbed their social media accounts and posts of content that could be considered offenses.<sup>36</sup>

Other expressions of dissent were curtailed due to the growing fear of retaliation under the law. For example, prodemocracy labor unions and student groups held a vote in June 2020 to determine whether to hold strikes against the law but failed to gain enough support.<sup>37</sup> Fearing retaliation, some retail stores and other small businesses in Hong Kong that back the protest movement removed overt signs of their public support, while some replaced them with blank multicolored sticky notes and blank sheets of paper emulating the former “Lennon Walls”† supporting the movement.<sup>38</sup> In July, police declared a protest in a mall featuring blank sheets of paper illegal and arrested eight people for unlawful assembly or obstructing officers.<sup>39</sup>

In a tongue-in-cheek gesture of support for the movement, some businesses replaced now-criminalized prodemocracy signs with vintage CCP propaganda posters, knowing the police could not justify removing them. The posters’ old slogans took on a new meaning

son of Reverend Chu Yiu-ming, one of the founders of the 2016 Occupy Central protests. *Hong Kong Free Press*, “Exclusive: Wanted by Beijing, Activist In-Exile Wayne Chan Says He Won’t Stop Fighting for Hong Kong Independence,” August 3, 2020; *BBC*, “Hong Kong ‘Seeking Arrest’ of Fleeing Activists,” July 31, 2020.

\* Chinese agents have made extrajudicial arrests abroad in recent years, most prominently the 2015 kidnapping of Hong Kong bookseller Gui Minhai from Thailand. Mr. Gui, a dual citizen with Swedish citizenship, sold books banned in mainland China to customers there on taboo topics, such as the private lives of senior CCP officials. After spending years in Chinese detention and serving a supposedly unrelated jail sentence, Mr. Gui was temporarily free until in 2018 when Chinese authorities snatched him from a train to Beijing while he was accompanied by Swedish diplomats. In February 2020, he was sentenced to ten years in jail for “illegally providing intelligence overseas,” a likely fabricated charge. Mary Hui, “Four Years after His Disappearance, China Sentenced a Hong Kong Bookseller to 10 Years in Prison,” *Quartz*, February 24, 2020.

† Inspired by the original “John Lennon Wall” established in Prague in the 1980s upon the artist’s death, Hong Kong prodemocracy demonstrators first created their version of a Lennon Wall during the 2014 Umbrella Movement to share messages of support and encouragement for the movement. During the 2019–2020 prodemocracy movement, over 150 of these walls materialized around the territory displaying messages of support for the movement and its five demands. *Dim Sum Daily*, “Police, FEDH and Highways Department Officers Clear Lennon Wall Tunnel Opposite Tai Po Market Station,” November 22, 2019; Joyce Zhou and John Ruwitch, “Imagine All the Post-Its: Hong Kong Protesters Come Together with ‘Lennon Walls,’” *Reuters*, July 11, 2019.

with patrons, signifying opposition to the CCP's crackdown on Hong Kong's autonomy by subverting police attempts to quell public displays of solidarity.<sup>40</sup>

### ***LegCo Election Postponed, Prodemocracy Candidates Banned***

Facing the likelihood of a major prodemocracy victory in the LegCo election after the pro-Beijing camp's drubbing in the late 2019 District Council election, the CCP acted to destroy democracy in Hong Kong. Demonstrating intolerance for opposition, Hong Kong officials banned 12 prodemocracy candidates and delayed the election to provide the CCP more control over the outcome. Among the candidates barred from running in the election were Mr. Wong and four sitting lawmakers.\*<sup>41</sup> The Hong Kong government bureaucrats who enacted the bans cited the candidates' alleged activities before the national security law's implementation, such as participating in protests and making statements calling for international support to the prodemocracy movement, that supposedly indicated they did not intend to uphold the Basic Law.<sup>42</sup>

In late July 2020, just days after the ban of prodemocracy candidates, Chief Executive Lam used the pretext of the pandemic to postpone the September 2020 election to 2021. In deference to the Mainland, she also asked the Chinese government to decide how the provisional legislature would operate in the meantime. These moves were significant steps toward removing any remaining semblance of democratic institutions in Hong Kong and illustrated the CCP's unwillingness to allow even the potential for a prodemocracy majority in the LegCo.

Leading up to the election, the odds of the prodemocracy camp, who are also known as the pan-democrats, winning a majority of seats appeared favorable.<sup>43</sup> Even in the face of threats from Hong Kong officials that the primary risked violating the national security law, the 600,000-strong primary turnout (the largest since the handover) showed Hong Kong residents' desire to maintain their right to vote.<sup>44</sup> The election's postponement forced the 23 sitting pan-democrats to decide whether they would remain or boycott the extended session, a decision which could lead to internal divisions. By late September, 16 had decided to continue to serve.<sup>45</sup> Democratic Party chairman Wu Chi-wai stated remaining pan-democrats would "continue to voice out for the public [and] block the progress of draconian laws."<sup>46</sup>

### ***Beijing Moves to Extinguish Hong Kong's Prodemocracy Movement***

Chinese officials argued the national security law would help solve what they characterized as the territory's underlying political instability. In June 2020, as the law was being drafted, Zhang Xiaoming, deputy director of China's Hong Kong and Macau Affairs

\*This was not the first time candidates were banned from running in a LegCo election for their political views. In the buildup to the 2016 LegCo election, five candidates were barred from running for crossing Beijing's red line by supporting independence for Hong Kong. In addition, the Hong Kong authorities disqualified six elected prodemocracy legislators, arguing that they would not uphold the Basic Law. Notably, the Hong Kong officials who made these decisions used statements and activities before the election as justification. Austin Ramzy and Alan Wong, "Hong Kong Restricts Election Candidates, Renewing Fears of Lost Rights," *New York Times*, August 3, 2016.

Office (HKMAO), made unfounded assertions that the prodemocracy camp and “foreign forces” were attempting to turn Hong Kong into an independent or semi-independent entity.<sup>47</sup> Mr. Zhang likened the law to “anti-virus software” designed to bring stability to the city.<sup>48</sup> The HKMAO previously labeled the protest movement a “political virus” that must be purged—a highly symbolic term it used to lay the groundwork for more repression.\*<sup>49</sup>

The CCP and Hong Kong government launched a massive public relations campaign intended to compel Hong Kong residents’ adherence to the then pending law while claiming widespread support among Hong Kong residents. Instead of responding to Hong Kong residents’ demands for the protection of their freedoms over more than a year of demonstrations, Chief Executive Lam and other Hong Kong officials argued the law was necessary to resolve months of unrest.<sup>†</sup><sup>50</sup> Mainland and Hong Kong officials also asserted the legislation would fix the legal “loopholes”‡ caused by the territory’s inability to pass its own national security legislation since the 1997 handover of Hong Kong to China.<sup>51</sup> The Hong Kong government spent millions of Hong Kong dollars to promote the law on billboards, buses, and media throughout the territory, despite not seeing the text until the day it came into effect.<sup>52</sup>

### Beijing’s Rush to Act

Beijing’s growing impatience with the protest movement and the strategic opportunity presented by the COVID-19 outbreak contributed to its decision to fast-track implementation of the national security law. Factors that may have contributed to its decision included:

**Impact of the COVID-19 Outbreak:** While the CCP apparently decided to establish the national security legislation months before the COVID-19 outbreak, Beijing likely calculated it could exploit the pandemic to implement the law while the attention of Hong Kong residents and the international community was focused elsewhere. During the pandemic, the Hong Kong government instituted social distancing measures banning most large public gatherings. While these policies were ostensibly to prevent the spread of COVID-19, some observers argued the public health

\* Maya Wang, China researcher at Human Rights Watch, noted the term “political virus” bears a close resemblance to the CCP’s use of the term “ideological virus” in Xinjiang. She further noted, “There’s, disturbingly, growing parallel” between Beijing’s policies toward the two regions. Maya Wang (@wang\_maya), “While the use of the term ‘political virus’ by the Hong Kong and Macau Affairs Office bears a striking resemblance to the Party’s use of the term ‘ideological virus’ in Xinjiang and that there’s, disturbingly, growing parallel between Xinjiang & #Hong Kong,” Twitter, May 6, 2020, 2:52 a.m.

† In October 2019, the Lam Administration fulfilled one of the protest movement’s five demands: the formal withdrawal of the proposed extradition bill that initially triggered the demonstrations. The remaining demands of the protest movement are: (1) granting universal suffrage in the legislative and chief executive elections as promised under the Basic Law, Hong Kong’s constitution; (2) establishing an independent inquiry into police abuses against demonstrators; (3) providing amnesty to all arrested protesters; and (4) retracting the official characterization of the protests as “riots.” Alvin Lum, Kimmy Chung, and Jeffie Lam, “Hong Kong’s ‘Dead’ Extradition Bill Finally Buried as Government Formally Withdraws It,” *South China Morning Post*, October 23, 2019.

‡ Mainland and Hong Kong officials argued that the inability of the LegCo to pass national security laws as required in Article 23 of the Basic Law rendered the authorities “defenseless” in countering acts that threaten China’s national security. *Standard*, “Carrie Lam Says She Felt at Ease after Beijing Adopted the National Security Law,” June 3, 2020; Zhang Yangfei, “Deputies to Deliberate on Measures to Boost HK Security,” *China Daily*, May 23, 2020.

### **Beijing's Rush to Act—Continued**

emergency was being used to suppress protests.<sup>53</sup> Simon Shen, adjunct associate professor at Hong Kong University, judged that Beijing likely saw the United States and its allies struggle to deal with their respective responses to the pandemic and that they would be in a weak position to respond to China.<sup>54</sup>

**Increasing Intensity of Police-Protester Clashes:** The Hong Kong authorities' use of more extreme tactics and their inability to suppress the protest movement foreshadowed the law's introduction.<sup>55</sup> The Hong Kong police's November 2019 siege of university campuses represented one of the most violent confrontations between police and protesters since the start of the movement five months earlier. Without a warrant, police entered Hong Kong Polytechnic University and clashed with students, firing over 1,000 rounds of tear gas, rubber bullets, beanbag rounds, and stun grenades and threatening the use of live ammunition.<sup>56</sup> The operation resulted in dozens of injuries among students and police as well as 1,377 arrests, with many individuals facing "rioting"\* charges that carry a maximum ten-year jail sentence.<sup>57</sup> Hong Kong police also clashed with students and fired hundreds more tear gas canisters at the Chinese University of Hong Kong and the University of Hong Kong, and it conducted smaller-scale operations at three other college campuses in the territory.<sup>58</sup>

**Landslide Prodemocracy Victory in District Council Election:** Beijing was shocked by the prodemocracy camp's (or pan-democrats) landslide District Council election win in late November 2019 that demonstrated the protest movement's widespread popularity.<sup>59</sup> Although the council only plays an advisory role to the Hong Kong government on community matters, the election results just days after the CCP's Fourth Plenum decision to overhaul Hong Kong's national security laws probably contributed to Beijing's growing impatience with the situation in Hong Kong. With record turnout of 71.2 percent, the election resulted in the pan-democrats taking control of 17 out of 18 district councils and nearly 400 out of 452 seats across the territory.<sup>60</sup> The election represented a dramatic turnaround from just four years earlier when the pan-democrats captured only 126 seats and failed to win a majority of seats in even one of the councils.<sup>61</sup>

### ***The United States and Other Democracies Denounce National Security Law***

Following Beijing's decision in late May that it would formulate the law, U.S. Secretary of State Michael Pompeo certified to Congress that Hong Kong no longer warrants the same treatment under U.S. law as the territory enjoyed since the 1997 handover.<sup>†</sup><sup>62</sup> Shortly before

\*The "rioting" charge falls under the colonial-era Public Order Ordinance the Hong Kong authorities have used frequently during the protests. Cap. 245 Public Order Ordinance, November 17, 1967; Hong Kong Watch, "Outdated and Draconian: Hong Kong's Public Order Ordinance," July 2, 2019.

†Signed into law in November 2019, the Hong Kong Human Rights and Democracy Act requires the secretary of state to certify annually that Hong Kong was sufficiently autonomous

Beijing's law went into effect, the Trump Administration announced it would impose sanctions on current and former CCP officials who undermined Hong Kong's autonomy and announced it would end controlled defense exports to Hong Kong and suspend the preferential treatment of Hong Kong over China on dual-use technology exports.<sup>63</sup>

In response to the law's passage, the United States announced a series of policy measures with significant implications for the U.S. relationship with Hong Kong and mainland China. On July 14, 2020, President Donald Trump issued an executive order to "suspend or eliminate different and preferential treatment for Hong Kong to the extent permitted by [U.S.] law and in the national security, foreign policy, and economic interest" and directing his Administration to sanction mainland and Hong Kong officials and entities responsible for implementing the law or eroding the territory's autonomy.\*<sup>64</sup>

The specific parts of Hong Kong's special status included in the executive order covered the following: passports, export license exceptions, exports of controlled defense articles, the bilateral extradition treaty, the bilateral agreement on transferring sentenced persons, training for Hong Kong law enforcement, science and academic cooperation, and taxation on income from international shipping.† In addition, the order lifted the U.S. quota on accepting Hong Kong refugees on humanitarian grounds.<sup>65</sup> Based on the executive order, the United States imposed sanctions on 11 senior CCP and Hong Kong officials, including Chief Executive Lam, responsible for using the national security law to undermine the territory's autonomy and restrict Hong Kong residents' freedom of expression.‡ This move led the Chinese government to sanction a group of 11 members of Con-

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to justify special treatment under U.S. law. This process does not require the Administration to take any further action. Only the president has the authority to make decisions on implementing the U.S.-Hong Kong Policy Act of 1992, which outlines the key aspects of U.S. policy toward the territory. U.S.-China Economic and Security Review Commission, *Hong Kong's Special Status*, May 29, 2020, 1-3.

\*The executive order did not call for a wholesale suspension of all aspects of special treatment defined in the Hong Kong Policy Act. It left in place agreements on mutual legal assistance, civil aviation, and some financial services regulation. Various agencies with jurisdiction over aspects of this special treatment have also maintained some continuity in their implementation of the order. For instance, U.S. Customs and Border Protection (CBP) ordered a change in country of origin labels for Hong Kong goods but did not change the tariff rates and duties previously applied to Hong Kong, meaning U.S. imports from Hong Kong are not subject to the Section 301 tariffs currently applied to U.S. imports from China. On August 11, CBP issued a Federal Register Notice mandating that products imported from Hong Kong must be prominently labeled to show "China" as the country of origin, drawing the ire of trade officials in Hong Kong. On August 21, CBP postponed the effective date to November 9, 2020, granting companies additional transition time to comply with the labelling change. U.S. Customs and Border Protection, *Frequently Asked Questions—Guidance on Marking of Goods of Hong Kong—Executive Order 13936*; Alexandra Baj et al., "Assessing the Impacts of Executive Order 13936 on Hong Kong's Status, One Month Later," *Stepio*, August 25, 2020; U.S. Customs and Border Protection, "CSMS #43729326 - Guidance: Additional 45-day Compliance Period for Executive Order 13936—Hong Kong Normalization," *Cargo Messaging Systems Service*, August 21, 2020; Eric Lam, "Hong Kong Denounces U.S. 'Made in China' Label Demand to WTO," *Bloomberg*, October 14, 2020.

†Concerning science and academic cooperation, the executive order (1) suspended cooperation between the U.S. Geological Survey and the Institute of Space and Earth Information Science at the Chinese University of Hong Kong on earth science cooperation and (2) eliminated the Fulbright program in China and Hong Kong. White House, *The President's Executive Order on Hong Kong Normalization*, July 14, 2020.

‡In addition to Chief Executive Lam, those sanctioned include: Xia Baolong, director of the Hong Kong and Macau Affairs Office; Zhang Xiaoming, deputy director of the Hong Kong and Macau Affairs Office; Luo Huining, director of the Hong Kong Liaison Office; the current and former commissioners of the Hong Kong police; Hong Kong Secretary for Security John Lee; Hong Kong Secretary for Justice Teresa Cheng; Hong Kong Secretary for Constitutional and Mainland Security Affairs Erick Tseng; and the director and secretary general of the Office for Safeguarding National Security in Hong Kong, the new Mainland-led office with arrest and investigation powers under the national security law. U.S. Department of the Treasury, *Treasury Sanctions Individuals for Undermining Hong Kong's Autonomy*, August 7, 2020.

gress and heads of U.S.-based nongovernmental organizations that promote democracy and human rights internationally.\*<sup>66</sup>

Pursuant to the Hong Kong Autonomy Act, on October 14, the U.S. Department of State released a report identifying persons involved in the erosion of the obligations of China under the Joint Declaration or the Basic Law, which comprised the same group of officials previously sanctioned with the exception of former Hong Kong Police Force Commissioner Stephen Lo.<sup>67</sup> The publication of the report also triggered a maximum 60-day countdown to the release of a further report identifying foreign financial institutions that knowingly conduct significant transactions with any of those ten officials.<sup>68</sup>

Before the law's implementation, the G7 foreign ministers issued a joint statement calling China's move "not in conformity" with the Basic Law and its international commitments under the legally binding Sino-British Joint Declaration.<sup>69</sup> The statement also noted the decision "risk[ed] seriously undermining the one country, two systems principle... [jeopardizing] the system which has allowed Hong Kong to flourish and made it a success over many years."<sup>70</sup> Over 900 current and former parliamentarians from Australia, the United Kingdom, Canada, the European Parliament, Germany, Japan, the United States, and other countries† as well as from Hong Kong and Taiwan signed a statement denouncing Beijing's decision, calling it a "flagrant breach" of the Joint Declaration.<sup>71</sup> Taiwan President Tsai Ing-wen was the first foreign leader to announce policies designed to help Hong Kong asylum seekers, announcing in June 2020 that Taiwan would establish a dedicated office to assist Hong Kong residents fleeing the city.<sup>72</sup>

After Beijing implemented the law, several countries adopted policies to accommodate refugees forced to leave Hong Kong due to the new law. The UK announced visa policies to allow nearly three million Hong Kong residents to live and work in the UK.‡ In addition, Canada revoked its special treatment of Hong Kong over China in sensitive dual-use and military exports and suspended its extradition treaty with the territory.<sup>73</sup> Meanwhile, Australia decided to extend visas for Hong Kong residents to five years with a path to permanent residency and suspended its extradition treaty with Hong Kong.§<sup>74</sup>

It is not clear that all Hong Kong residents who might prefer to emigrate will be able to, due to cumbersome and potentially politicized

\*Sanctioned members of Congress include Senators Tom Cotton, Ted Cruz, Josh Hawley, Marco Rubio, and Patrick Toomey, and Representative Chris Smith. Sanctioned organization heads include Michael Abramowitz, President of Freedom House; Carl Gershman, President of the National Endowment for Democracy; Derek Mitchell, President of the National Democratic Institute; Kenneth Roth, Executive Director of Human Rights Watch; and Daniel Twining, President of the International Republican Institute. *Associated Press*, "China Sanctions 11 US Politicians, Heads of Organizations," August 10, 2020.

†These included Albania, Austria, Belgium, the Czech Republic, Denmark, France, the Gambia, Ireland, Italy, Kosovo, Lithuania, the Netherlands, New Zealand, Nigeria, Norway, Poland, Slovakia, Sweden, Uganda, Ukraine, Malaysia, Myanmar, the Philippines, and South Korea. Hong Kong Watch, "[Updated] Patten-Led Group of 904 International Parliamentarians Decry 'Flagrant Breach of the Sino-British Joint Declaration,'" July 2, 2020.

‡This policy will apply to Hong Kong residents who currently hold a British National (Overseas) passport or who are eligible to apply for one: those born before the handover of Hong Kong to China in July 1997. It will allow for visa-free travel to the UK for a renewable period of five years, and eligibility to apply for citizenship after an additional 12-month period. Government of the United Kingdom, *UK to Extend Residence Rights for British Nationals (Overseas) Citizens in Hong Kong*, July 1, 2020; Government of the United Kingdom, *PM Boris Johnson Article on Hong Kong*, 3 June 2020, June 3, 2020.

§Germany and the UK also suspended their extradition treaties with Hong Kong. Kate Day, "Germany Suspends Extradition Agreement with Hong Kong," *Politico*, July 31, 2020.

emigration procedures required for residents of Hong Kong to exit the territory combined with threats and coercion from the Chinese government. Convictions under the national security law would affect Hong Kong residents' ability to secure police certificates, a document required to obtain an entry visa for many countries, opening the door to political persecution. Chinese ambassador to the UK Liu Xiaoming also warned in July that the Chinese government would not recognize British National (Overseas) passports as valid travel documents for Hong Kong residents.\* In February, about 350,000 Hong Kong residents held these passports, while another 2.6 million were eligible.<sup>75</sup> In addition to bureaucratic and legal barriers, Chinese authorities have demonstrated a willingness to forcibly prevent emigration, such as when the China Coast Guard captured fleeing residents in September.<sup>76</sup>

### **Hong Kong's Future as a Global Financial Hub at Risk**

The Chinese government's decision to introduce national security legislation represented a deliberate choice to assert authoritarian control over Hong Kong, accepting any potential risk to the territory's status as one of the top global financial hubs. Hong Kong provides the Mainland with access to international capital and advanced technology exports. Neither advantage is currently directly replaceable. The Chinese government's gamble risks Hong Kong's reputation for strong, independent institutions and rule of law, the foundation of the territory's financial preeminence and export control cooperation with the United States. The law and the subsequent fallout present significant political and personal risks to U.S. companies with investments, operations, and personnel in Hong Kong. Its implementation may lead Hong Kong-based multinational enterprises to shift from serving international clients toward more Mainland-focused operations, moving internationally connected operations and information technology out of the territory.

### ***Hong Kong's Financial Success Rests on the Strength of Its Institutions***

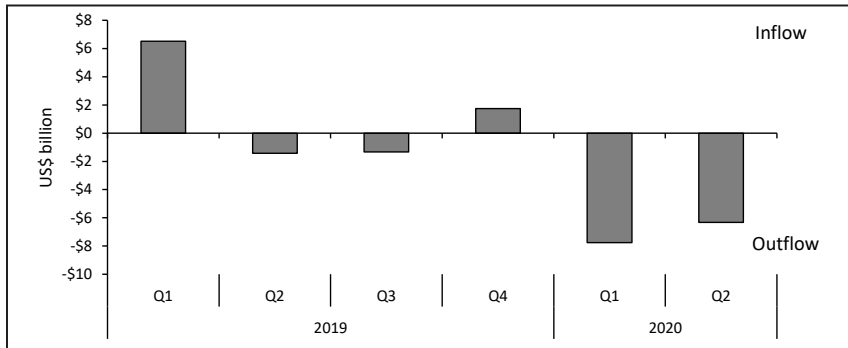
Hong Kong's continuing status as a global financial center rests on institutional guarantees necessary for conducting financial research, operations, and transactions. Analysts have unrestricted access to information and may make negative assessments without fear of reprisal, investors trust that their legal rights will be protected by rule of law and defended by local courts, and capital moves freely. The national security law has voided these guarantees. Andrew Collier, managing director at Oriental Capital Research, said foreign banks that already tread cautiously on negative reporting will become even more reluctant to publish financial analyses or other materials "that reflect badly on Chinese or Hong Kong issues."<sup>77</sup> Nor is the potential range of action on national security concerns limited to restricting freedom of information. Victor Shih, longtime observer of China's political economy, cautioned that the national security law may enable Beijing to intervene in Hong Kong's banking system by weighing in on court decisions, freezing bank accounts, and seizing assets.<sup>78</sup> In mid-April 2020, Fitch

\*As of late September 2020, the Chinese government had not made a formal policy announcement to this effect. Patrick Wintour, "Hong Kong: China Says It Will Not Recognise UK Overseas Passports," *Guardian*, July 30, 2020.

Ratings downgraded Hong Kong’s credit rating from “AA” to “AA-,”\* reflecting in part Hong Kong’s “gradual integration into China’s national governance system” necessitating ratings’ “closer alignment” as investors see risks in Hong Kong converge with those in the Mainland.<sup>79</sup>

The heightened uncertainty created by the national security law risks shaking investor confidence needed to sustain foreign portfolio flows into the future. Logan Wright, director at Rhodium Group, noted that as foreign direct investment (FDI) flows into mainland China are unlikely to accelerate significantly; only portfolio flows represent a potential growing source of foreign capital.<sup>80</sup> Investors’ willingness to move capital through Hong Kong and into the Mainland depends on their confidence in the strength of Hong Kong’s institutional frameworks. Even before the law was announced, portfolio inflows to Hong Kong had slowed, likely driven by a variety of factors including the spread of COVID-19 and foreign investors’ “flight to safety” into cash (see Figure 1).† According to the Hong Kong Census and Statistics Department, foreign portfolio investment had flowed into Hong Kong nearly every quarter between mid-2016 and early 2019.‡

**Figure 1: Foreign Portfolio Flows into and out of Hong Kong, Q1 2019–Q2 2020**



*Note:* Positive values show a capital inflow into Hong Kong. Negative values show a capital outflow out of Hong Kong. A (positive) foreign capital inflow occurs as foreign entities purchase assets in Hong Kong and pay Hong Kong entities for those assets. A (negative) foreign capital outflow occurs as foreign entities sell their Hong Kong assets and repatriate their payment from the sale. Note these amounts only show portfolio investment, not FDI.

*Source:* Hong Kong Census and Statistics Department, Balance of Payments Branch, *Table 043*, accessed in September 2020.

\*As Fitch Ratings explains, investors use credit ratings to gauge the likelihood they will be paid according to the terms agreed upon when entities, including sovereign nations, issue debt. These ratings represent investor risk in a ranked order system of letters, with lower risk “investment grade” ratings ranging from “AAA” to “BBB.” China’s sovereign debt is currently rated as “A+.” Fitch Ratings, “Fitch Downgrades Hong Kong to ‘AA-’ from ‘AA’; Outlook Stable,” April 20, 2020; Peter Patrino, “Rating Definitions,” *Fitch Ratings*, March 26, 2020.

†The Hong Kong Census and Statistics Department noted that in the first quarter, foreign portfolio outflows were due to “decreased holdings of [Hong Kong] equity and investment fund shares and [Hong Kong banking] debt securities,” and in the second quarter foreign portfolio outflows were due to “decreased holdings of [Hong Kong] long-term debt securities... partly offset by the increased holdings of [Hong Kong] equity and investment fund shares of other sectors.” Hong Kong Census and Statistics Department, *Balance of Payments, Balance of Payments, International Investment Position, and External Debt Statistics of Hong Kong, Second Quarter 2020*, September 22, 2020; Hong Kong Census and Statistics Department, *Balance of Payments, Balance of Payments, International Investment Position, and External Debt Statistics of Hong Kong, First Quarter 2020*, June 22, 2020.

‡Only the fourth quarter of 2016 and the fourth quarter of 2018 had seen outflows of foreign portfolio investment prior to 2020. Hong Kong Census and Statistics Department, *Balance of Payments Branch, Table 043*, accessed in September 2020.



### ***Hong Kong as a Financing Hub for Mainland Firms***

Hong Kong's financial markets have served as a conduit connecting the Mainland to international capital markets. In the wake of the national security law, however, Hong Kong's business makeup and clientele may shift from its previous international orientation toward mainland-centered operations. China's reliance on Hong Kong's intermediation could grow as the Chinese government moves to open the country's financial market, raising foreign capital to address longstanding but increasingly imminent economic challenges (e.g., a looming debt burden, an aging population, undercapitalized banks, and nonperforming assets). (For more on Chinese financial markets, see Chapter 2, Section 2, "Vulnerabilities in China's Financial System and Risks for the United States.")

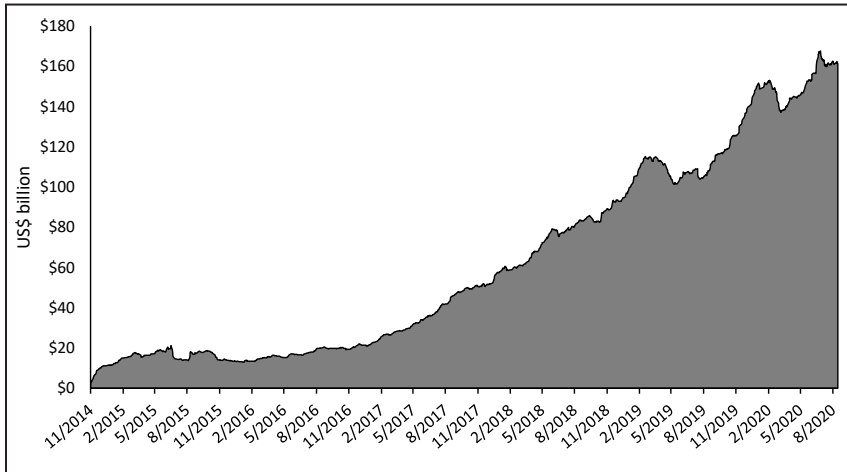
Unlike mainland China, Hong Kong allows for the free flow of capital, making it an ideal location for this opening to occur. The Hong Kong-based Stock and Bond Connect platforms, as well as listings on the Hong Kong Stock Exchange, support foreign portfolio investment in Chinese financial markets. These traits made the territory ideal for global financial institutions. As the details of the national security law became clearer, Alicia Garcia-Herrero, chief Asia Pacific economist at investment bank Natixis S.A., stated that Hong Kong may evolve into "a Chinese offshore center... [not] a global financial center" as financial service clientele in Hong Kong "turn increasingly China-centric and away from a regional bias."<sup>81</sup> Several anonymous U.S. multinational companies surveyed by the American Chamber of Commerce (AmCham) in Hong Kong in early July concurred with this projection, stating "international firms will slowly leave the city for other [Asian] headquarter cities."\*

In equity fundraising, Hong Kong serves as a platform for the Shanghai and Shenzhen Stock Connect programs begun in 2014 and 2016, respectively, which allow foreign investors holding accounts in Hong Kong to trade stocks directly in Shanghai and Shenzhen. Nicholas Borst, vice president at Seafarer Capital, referred to the Stock Connect as the "most important reform affecting China's stock markets."<sup>82</sup> In 2017, the Bond Connect program permitted foreign investors to trade sovereign, local government, policy bank, and corporate bonds in China through Hong Kong.<sup>83</sup> Net foreign inflows through the Stock Connect rose to \$143 billion (about renminbi [RMB] 1 trillion) by the end of 2019 (see Figure 2).<sup>84</sup> The International Monetary Fund reported that in the first half of 2019, mainland Chinese firms accounted for 77 percent of equity raised in Hong Kong exchanges.<sup>85</sup> Mainland firms also issued 56 percent of their U.S. dollar-denominated bonds in Hong Kong.<sup>86</sup>

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\*This survey received 183 responses and was conducted between July 6 and July 9, 2020. AmCham Hong Kong, "AmCham Temperature Survey Findings National Security Law," July 2020, 4-6.

**Figure 2: Stock Connect Accumulated Net Inflows, November 2014–August 2020**

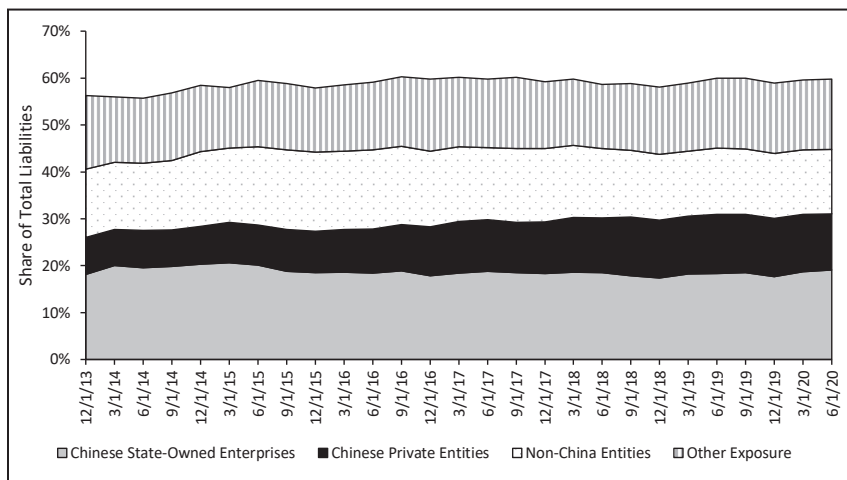


*Source:* Nicholas Borst, “The China Investment Dilemma: Risks for U.S. Investors during a Turbulent Time,” *Seafarer*, April 2020, 7. Series converted to U.S. dollars and extended to August 2020.

Apart from the Connect platforms, mainland Chinese companies can also access international capital by listing on Hong Kong Stock Exchange. At the end of 2019, 1,241 mainland firms had listed on Hong Kong exchanges, about half of all listed companies.<sup>87</sup> Hong Kong listings add about \$2.9 trillion in additional market capitalization to Chinese companies.<sup>88</sup> Firms, including NetEase and JD.com, continued to list in Hong Kong as of June 2020.<sup>89</sup> Some firms with secondary listings in Hong Kong are heavily weighted in major emerging market indices (e.g., Alibaba and China Mobile, both listed in Hong Kong and New York).

Beyond portfolio investment, global banks in Hong Kong dedicate a substantial share of their lending to investing in activities in the Mainland. As of June 2020, around 60 percent of lending from banks in Hong Kong was put toward mainland Chinese business activity.<sup>90</sup> About 19 percent was channeled to Chinese state-owned enterprises, which the Hong Kong Monetary Authority defined as central or local government-owned entities, their subsidiaries, and their majority-owned joint ventures (see Figure 3).<sup>91</sup>

**Figure 3: Hong Kong Banks' Exposure to Nonbank Chinese Entities, by Borrower Type, Q4 2013–Q2 2020**



Source: Hong Kong Monetary Authority, *Monthly Statistical Bulletin* (August 2020), Series 3.4.1 “Loans and Advances by Type—Authorized Institutions,” Series 3.13.3 “Mainland-Related Lending by Type of Borrowers,” Series 3.13.4 “Other Mainland-Related Non-Bank Exposures.”

Finally, Hong Kong remains the largest offshore clearing center and trading location for RMB. According to the SWIFT global payments processing service, in October 2020 about 74.7 percent of offshore RMB-denominated payments were cleared in Hong Kong.<sup>92</sup> Hong Kong also accounted for the highest share of offshore RMB trading in 2019 at 41 percent, nearly double that of the UK (22 percent), which ranked second.<sup>93</sup>

### ***U.S. Advanced Technologies Exports to Hong Kong, Restricted in China***

U.S. export control laws require exporters of sensitive U.S. technologies to obtain a license from the U.S. Department of Commerce Bureau of Industry and Security before shipment. Under the U.S.-Hong Kong Policy Act of 1992, Hong Kong’s status as a separate customs territory allowed it differentiated treatment under U.S. export control laws, less restrictive relative to mainland China. On July 14, President Trump issued the Executive Order on Hong Kong Normalization that, among other changes to Hong Kong’s status, suspended differential treatment for exports to Hong Kong under U.S. export control laws.\*

In 2018, 1.2 percent of exports to Hong Kong were subject to Bureau of Industry and Security license requirements, compared with 3 percent of exports to mainland China.† According to Nigel Inkster,<sup>94</sup> former assistant chief and director of operations and intelli-

\*The executive order also suspended differential treatment of Hong Kong in the Committee on Foreign Investment in the United States’ annual report to Congress under Section 721(m) of the Defense Production Act of 1950, CFIUS’ statutory authority. Cleary Gottlieb, “Executive Order Eliminates Differential Treatment for Hong Kong,” July 21, 2020, 7; White House, *The President’s Executive Order on Hong Kong Normalization*, July 14, 2020.

†Worldwide, 1.6 percent of U.S. exports were subject to Bureau of Industry and Security license requirements in 2018. Data for 2018 represents the most recent data available. U.S. Department

gence for the UK Secret Intelligence Service, thousands of mainland Chinese companies maintain a presence in Hong Kong to access U.S.-controlled technologies.<sup>95</sup> A change in the export control regime may curtail this access.

### ***U.S. and International Businesses Grapple with Rising Political Risk***

In the face of rising political risks, U.S. and other multinational businesses acknowledged Beijing's increased control over the territory as a new status quo. On July 2, as the national security law text was released, AmCham Hong Kong reaffirmed its commitment to the territory as a center for international business, stated the business community required time to review the law's details, and expressed hope that the law would not "impact [Hong Kong's] dynamism and benefits."<sup>96</sup> After pressure from Hong Kong and mainland officials, multinational banks HSBC\* and Standard Chartered publicly supported Beijing's national security law in June 2020.<sup>97</sup> In November 2019, citing banking regulations, HSBC reportedly closed a corporate account of the nonprofit Spark Alliance, which had helped fund protest-related activities.<sup>98</sup> In July 2020, Reuters reported Credit Suisse, HSBC, Julius Baer, and UBS, among others, were broadening reviews to screen clients for political and government ties.<sup>99</sup> This process to flag "politically exposed" people—a designation that could hinder or prevent access to banking services—identified two groups of clients: (1) those perceived as violating the national security law and subject to penalties by the Hong Kong government and (2) Hong Kong and mainland Chinese officials who could be subject to U.S. sanctions.<sup>100</sup>

Despite the passage of the national security law, U.S. businesses and financial services providers may still see opportunities in Hong Kong, particularly on the strength of its deep capital markets and financial links to the Mainland.<sup>101</sup> Hong Kong continues to place at or near the top of global economic freedom indices. For example, it was the highest-ranked jurisdiction in the Fraser Institute report on economic freedom,<sup>†</sup> while the Heritage Foundation placed it second in its Index of Economic Freedom<sup>‡</sup> and the World Bank placed it third in its Ease of Doing Business ranking.<sup>§</sup> In discussing Hong Kong's continued financial stability following the law's announcement, Christopher Wiegand, Royal Bridge Capital Co-Founder, said, "Until you see some signs that contract law is actually being chal-

of Commerce Bureau of Industry and Security, *U.S. Trade with China*, 2018; U.S. Department of Commerce Bureau of Industry and Security, *U.S. Trade with Hong Kong*, 2018.

\*Although HSBC has taken steps to express public support for the national security law, according to media reports it has been penalized by Beijing nevertheless. In October 2020, HSBC was left off the list of banks arranging China's dollar-denominated sovereign bond offering for the first time since 2017. *Bloomberg*, "HSBC Is Left Off First China Dollar Bond Deal Since 2017," October 13, 2020.

†The 2020 Fraser Institute ranking is based on 2018 data. In its explanation, the Fraser Institute noted that "it will be surprising if the apparent increase in the insecurity of property rights and the weakening of the rule of law caused by the interventions of the Chinese government in 2019 and 2020 do not result in lower scores... for Hong Kong in future reports." James Gwartney et al., "Economic Freedom of the World Annual Report 2020," *Fraser Institute*, 2020, 7–8.

‡The Heritage Foundation's 2020 assessment appeared to rely on data from 2019. Heritage Foundation, "2020 Index of Economic Freedom: Hong Kong," 2020; Heritage Foundation, "Hong Kong," 2020.

§The World Bank Doing Business report for Hong Kong stated the most recent round of data collection "was completed in May 2019." World Bank, "Doing Business 2020: Economy Profile: Hong Kong SAR, China," 2020.

lenged in Hong Kong,” there may continue to be “a sense of complacency.”\*

As U.S. companies with operations in Hong Kong have been reluctant to state any plans publicly, U.S. business sentiment has primarily been communicated through industry polls. In July and August, AmCham Hong Kong conducted two surveys gauging its members’ views of the national security law and the U.S. response, including the removal of Hong Kong’s special status in U.S. law and potential financial sanctions.† When asked how the company had been impacted by the law and a potential U.S. response, over half of survey respondents reported they were “in ‘wait and see’ mode.”<sup>102</sup> The surveys also cited a number of anonymous comments reflecting some companies’ views that Hong Kong retains its economic importance. For example, one respondent said, “Nowhere else in Asia can replace [Hong Kong] with its [U.S. dollar] liquidity, capital markets, talent, etc.”<sup>103</sup> Another anonymous respondent said, “Hong Kong is still well above Singapore, Bangkok, Tokyo, Seoul, Taipei, or certainly anywhere else on the Mainland for ease of doing business.”<sup>104</sup> Still other businesses stated the national security law’s passage would restore calm to the city after months of social unrest.<sup>105</sup>

The business community’s public acceptance of the national security legislation was accompanied by private expressions of dismay. City University of Hong Kong law professor Wang Jiangyu said businesses were “scared, including the biggest financial institutions.”<sup>106</sup> An early July survey of AmCham Hong Kong members found that 76 percent of respondents were somewhat or extremely concerned about the national security law.‡ Anonymous comments from respondents highlighted fear of the law’s ambiguity, wide scope, extraterritoriality, “extensive and arbitrary powers,” and potential loss of protection from Hong Kong’s courts.<sup>107</sup> Several respondents commented that the law “accelerates the shift of Hong Kong from an international business center into a Mainland-focused business center.”<sup>108</sup> This shift has been underway for some time: as the number of U.S. regional headquarters and regional offices began to decline after 2012, mainland Chinese companies’ regional headquarters and regional offices roughly doubled from 258 in 2012 to 519 in 2019 (see Figure 4).<sup>109</sup>

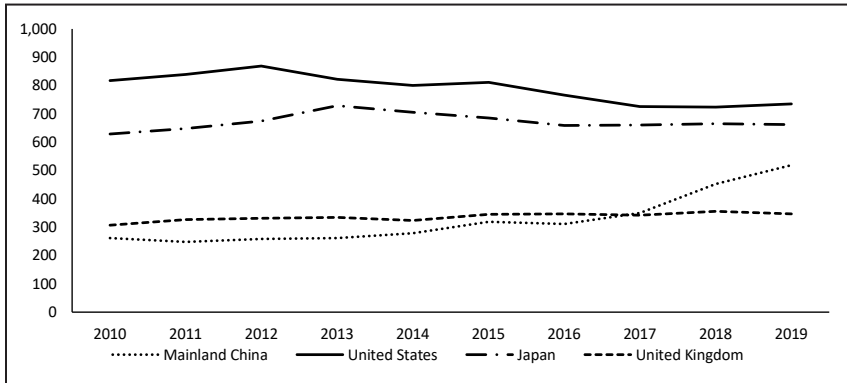
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\* Mr. Wiegand made these remarks before the text of the national security law was released. Christopher Wiegand, *Odd Lots*, “Why Investors Keep Losing Money Betting Against the Hong Kong Dollar Peg,” *Bloomberg*, Podcast, August 3, 2020.

† AmCham Hong Kong surveyed its members on the national security law between July 6 and July 9, and on the combined effect of the national security law and potential U.S. sanctions between August 7 and August 11. A total of 183 members (15 percent of its membership) responded to its survey in July, and 154 of its members (13 percent) responded to its survey in August. American Chamber of Commerce in Hong Kong, “OFAC’s Sanction on Hong Kong and National Security Law,” August 2020, 1; American Chamber of Commerce in Hong Kong, “AmCham Temperature Survey Findings: National Security Law,” July 2020, 1.

‡ This survey received 183 respondents and was conducted between July 6 and July 9, 2020. AmCham Hong Kong, “AmCham Temperature Survey Findings National Security Law,” July 2020, 4–6.

**Figure 4: Multinational Regional Headquarters and Regional Offices in Hong Kong, 2010–2019**



Source: Various.<sup>110</sup>

Since the national security law was implemented, multinational companies began taking steps to mitigate new risks. U.S. technology giants Google, Amazon Web Services, Microsoft, Facebook, and Twitter have refused to allow Hong Kong securities regulators access to customer financial records and other data, which an anonymous commentator termed “politically impossible.”<sup>111</sup> Business consulting firm Teneo advised in a report that “whatever precautions businesses take in mainland China—for example, ensuring that laptops and mobile devices do not contain sensitive, unencrypted data of interest to Chinese authorities—should now be extended to Hong Kong.”<sup>112</sup> Preliminary reports noted more businesses began removing servers from Hong Kong in June.<sup>113</sup>

Companies might also mitigate risk by restructuring or relocating some operations or choose to pull out altogether. Political consultancy Eurasia Group Director Todd Mariano said that though “the drip-by-drip process of companies leaving had already begun,” the national security law “[threw] fuel on that fire.”<sup>114</sup> According to an August 2020 AmCham Hong Kong survey of 154 member firms in the territory, about 36 percent said they would consider moving capital, assets, or business operations out of Hong Kong in the future due to the law and the subsequent threat of U.S. sanctions.<sup>115</sup> This decision-making extended to international employees’ families, which could also harm business operations. As early as March, AmCham Hong Kong President Tara Joseph noted international families residing in Hong Kong had begun drawing up contingency plans for leaving the territory as living in Hong Kong became a “riskier undertaking.”<sup>116</sup>

### ***Beijing’s Long-Term Plans to Absorb Hong Kong and Replicate Its Benefits Fall Flat***

China’s leaders consider unrest in Hong Kong a matter of internal security. They believe this unrest stems primarily from socioeconomic and livelihood matters which can be resolved by offering Hong Kong residents more economic opportunities. As noted by Yun Sun, senior fellow at the Stimson Center, as early as October 2019 the

CCP Fourth Plenum communiqué demonstrated the Chinese government had made the decision to “promote comprehensive control” of Hong Kong, though the form of this control was not specified.<sup>117</sup> According to Ms. Sun, in the economic sphere, asserting control over Hong Kong meant perfecting “the absorption and integration of Hong Kong and Macau into the national economy,” allowing mainland China to “tie Hong Kong more closely into [China’s] orbit.”<sup>118</sup> By this time, long-term plans to absorb Hong Kong by incorporating it into the Greater Bay Area and replicating its financial functions elsewhere in the Mainland were already underway.

Hong Kong’s incorporation into the Greater Bay Area is a roadmap for its integration into the mainland economy. Released in February 2019, the plan aims to streamline regulation and allow the free flow of people, goods, and services across Hong Kong, Macau, and nine cities in Guangdong Province.<sup>119</sup> The plan takes advantage of Hong Kong’s financial position to support Guangdong Province’s development while also reorienting the city toward the Mainland.

The State Council’s moves to improve the position of Shenzhen relative to Hong Kong represent high-level efforts to absorb Hong Kong into the Mainland’s economic framework. In July 2020, Shenzhen authorities issued plans to bolster the city’s position in fintech and sustainable finance, mirroring a raft of reforms that had been rolled out in August 2019.<sup>120</sup> Willy Lam, professor at the Chinese University of Hong Kong, had summarized the Chinese government’s message to Hong Kong: “If [Hong Kong doesn’t] toe Beijing’s line, then Beijing will give preferential policies to Shenzhen instead of Hong Kong, and Hong Kong’s status as an international business center might someday be replaced by Shenzhen.”<sup>121</sup>

Beijing’s plans to integrate Hong Kong do not preclude utilizing the city’s financial advantages, however. The Chinese and Hong Kong governments have made assurances that Hong Kong will continue to hold its position as a financial hub following the national security law’s implementation.<sup>122</sup> In addition, between May and June 2020, Chinese financial regulators announced plans for a Wealth Management Connect scheme, a raft of 26 measures to support cross-border lending, overseas investment by local private equity firms, and permission for financial institutions and insurers to provide cross-border services and bond issuance.\*

While this integration is ongoing, Chinese government authorities simultaneously seek to replicate Hong Kong’s unique financial functions in mainland cities like Shanghai in the long term. Thus far, however, mainland Chinese cities have encountered significant hurdles in competing directly with Hong Kong’s financial primacy. The Shanghai-London Connect platform, which bypasses Hong Kong, was first announced in 2015 but only came into use in June 2019, when state-owned brokerage Huatai Securities raised \$1.54 billion

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\* Financial regulatory agencies involved include the People’s Bank of China—China’s central bank—as well as the China Banking and Insurance Regulatory Commission, the China Securities Regulatory Commission, and the State Administration of Foreign Exchange. Wei Yiyang and Denise Jia, “China to Link Wealth Management Markets in Greater Bay Area,” *Caixin*, June 30, 2020; *China Banking News*, “Beijing Unveils Bold Plans for Financial Integration of Guangdong, Hong Kong and Macau ‘Greater Bay Area,’” May 15, 2020.

by listing depository receipts\* on the London Stock Exchange.<sup>123</sup> Observers note this platform has yet to fulfill its promise.† A March 2019 survey conducted by AmCham Shanghai concluded, “Few respondents indicated confidence that Shanghai will become a significant global financial center anytime soon” due to capital controls, arbitrary government intervention in the market, insufficient internationalization of the RMB, RMB inconvertibility, and the lack of the rule of law.‡ Wang Jiangyu, professor at City University of Hong Kong, noted, “The biggest challenge for Shanghai will be the rule of law and independent judiciary,” an insurmountable challenge as long as those in the CCP, government, and other positions of power remain above the law in China.<sup>124</sup>

### **Erasing the Political Lines between Beijing and the Hong Kong Government**

While Beijing’s introduction of national security legislation marked a new low in Hong Kong’s autonomy and freedoms, it comes at the end of steps taken by Hong Kong and the mainland authorities to cement control. The two increasingly coordinated action, particularly through Beijing adding mainland security forces that could supplement the Hong Kong police, the Hong Kong authorities using legal tools to punish the prodemocracy movement, and both sides denying Hong Kong’s long-held civil liberties.

### ***Personnel Appointments Reflect Beijing’s Hardening Stance***

Key personnel appointments to China’s leading Hong Kong policy bodies previewed Beijing’s push to implement the national security law in Hong Kong and reflected its shift to a more uncompromising approach to governing the territory. General Secretary Xi’s dissatisfaction with the officials who oversaw failed efforts to turn Hong Kong public sentiment against the protest movement was also evident in these moves. In early 2020, General Secretary Xi appointed trusted officials Xia Baolong and Luo Huining, both of whom have experience leading crackdowns against religious and ethnic minority groups elsewhere in China, to head China’s leading offices coordinating Hong Kong policy.<sup>125</sup> Before the law’s announcement, these officials made repeated statements warning against “external forces” infiltrating Hong Kong and the need to strengthen the territory’s national security apparatus.<sup>126</sup>

General Secretary Xi’s close ally Mr. Xia, selected to lead the HK-MAO in February 2020, most recently served in China’s Zhejiang Province where he oversaw a crackdown on the local Christian community and implemented stricter social controls.<sup>127</sup> He concurrently held the position of secretary-general in the top CCP advisory body, the Chinese People’s Political Consultative Conference, before

\*Depository receipts represent shares in foreign companies that have been deposited with a bank, which can then issue depository receipts like shares of a stock. They allow investors to invest in foreign companies and enable foreign companies to raise capital abroad. U.S. Securities and Exchange Commission Office of Investor Education and Advocacy, “Investor Bulletin: American Depository Receipts,” August 2012.

†The Shanghai-London Connect platform was temporarily suspended after political tensions in late 2019, and the platform saw no activity for a year after Huatai’s use, finally reviving in June 2020. Julia Fioretti, “Shanghai-London Stock Link Could Finally Revive After Year Halt,” *Bloomberg*, June 3, 2020.

‡This report surveyed 26 executives in financial services and affiliated sectors. American Chamber of Commerce in Shanghai, “Shanghai 2020: A Financial Vision Unfulfilled,” March 2019, 6.



stepping down in May 2020, becoming the highest-ranking official to head the HKMAO in a decade.<sup>128</sup> Mr. Luo, whom Beijing tapped in January to lead the Hong Kong Liaison Office, spent tours in western China suppressing Tibetan Buddhist communities and in Shaanxi Province rooting out corrupt officials with ties to General Secretary Xi's political opponents.<sup>129</sup>

In tandem with these appointments, Beijing made key organizational changes to Hong Kong policy bodies likely designed to centralize decision-making and help implement the national security law. General Secretary Xi upgraded China's coordinating group on Hong Kong and Macau Affairs to a central leading small group, making Mr. Xia and Minister of Public Security Zhao Kezhi deputy directors under Vice Premier Han Zheng.<sup>130</sup> This move appeared to indicate Beijing's intent to closely coordinate mainland security bodies' operations in Hong Kong. Mr. Xia's appointment to the HKMAO helped General Secretary Xi streamline control over Hong Kong policy, according to Willy Lam. "Since Xia reports directly to [General Secretary] Xi, the means and mechanisms that Beijing will adopt to materialize 'comprehensive rule' in [Hong Kong] could become swifter and more efficacious than before," Dr. Lam assessed.<sup>131</sup>

### ***Heightened Presence of Mainland and Hong Kong Security Forces***

From August to December 2019, Beijing increased the size of its security forces in Hong Kong to intimidate demonstrators and unsuccessfully deter large-scale protests. According to four foreign diplomats in the territory, up to 4,000 People's Armed Police personnel were reportedly deployed to Hong Kong in late 2019 and joined Hong Kong police in an observational role on the front lines of the demonstrations.<sup>132</sup> Taking these new security personnel together with the doubling of the PLA's presence in Hong Kong in 2019 to an estimated 10,000–12,000, the current total marks the largest-ever mainland security force stationed in the territory.<sup>133</sup> China's Ministry of National Defense denied that People's Armed Police troops were stationed in Hong Kong or that mainland law enforcement agencies were observing the protests or visiting the territory.<sup>134</sup> In July 2020, the Office for Safeguarding National Security, the new security agency established by the national security law, occupied a large hotel as its new headquarters. The new agency is reportedly staffed by mainland security officials, including those from the Ministries of State and Public Security, and is tasked with overseeing the Hong Kong government's national security and intelligence work.<sup>135</sup>

The PLA's presence in Hong Kong has also become increasingly visible. Before a mass protest on New Year's Day 2020, the PLA Hong Kong Garrison conducted its quarterly joint exercise in Hong Kong's Victoria Harbor, seen as an attempt at deterring protest participation.<sup>136</sup> The drill was larger and longer than previous exercises and simulated real combat scenarios involving around 1,000 army, navy, and air force personnel as well as ships, helicopters, infantry, and special forces.<sup>137</sup> This followed an incident in November 2019 when PLA soldiers left their barracks without notifying the Hong Kong authorities—for the first time since the start of the

protest movement and second time since the handover—to clear protester-built roadblocks outside Hong Kong Baptist University.\*<sup>138</sup> Prodemocracy lawmakers argued this PLA action violated the Basic Law and Garrison Law, which forbid PLA interference in Hong Kong affairs and require it to give advance notice to the Hong Kong government.<sup>139</sup>

The Hong Kong authorities adopted mainland-style policing techniques through its harder-line approach against the protest movement. In late 2019, Chris Tang, who was appointed as the new Hong Kong chief of police and approved by Beijing, reinforced Beijing's talking points and refused to accept an independent investigation into police abuses.<sup>140</sup> In an interview before being sworn in, Mr. Tang called protester actions “very close to terrorism.”<sup>141</sup> Police actions under Mr. Tang's leadership have continued to flout international norms on policing and the force's own guidelines.<sup>142</sup>

Chief Executive Lam's so-called “independent” investigation into police abuses, responding to one of the protest movement's core demands, resulted in a May 2020 report that cleared the police of any wrongdoing.<sup>143</sup> The prodemocracy camp widely dismissed the report as political propaganda and criticized the body's lack of independence and enforcement power.<sup>144</sup> Just a month after joining the study in November 2019, international observers appointed to the body (a major part of Chief Executive Lam's insistence that the commission was impartial) left, citing its shortfalls in “powers, capacity, and independent investigative capability.”<sup>145</sup>

### ***Hong Kong Government's “Rule by Law”***

Since Beijing imposed the national security law, Hong Kong's judicial system, which rests upon the British common law system, has been thrown into a state of crisis. The Hong Kong authorities increasingly are adopting the Mainland's approach of “rule by law”—using legal means to target political opponents. Mainland officials have insisted that judges must toe the CCP's line and apply mainland Chinese legal traditions when ruling on national security cases.<sup>146</sup> Foreign judges from common law countries† serving on the Hong Kong Court of Final Appeal—the territory's highest appellate court—form an important part of the territory's legal tradition that is now at risk.<sup>147</sup> In July, Robert Reed, the president of the UK Supreme Court, who also serves on the Court of Final Appeal, said that the ability of UK judges to serve on the Court of Final Appeal would “depend on whether such service remains compatible with judicial independence and the rule of law” and noted the court would

\* Since the 1997 handover of Hong Kong to China, PLA soldiers in Hong Kong have left their barracks without a request from the Hong Kong government on only one other occasion. In October 2018, PLA garrison troops cleaned up a trail in a remote area of the territory after Typhoon Mangkhut. Su Xinqi and Alvin Lum, “400 Uniformed PLA Soldiers Help with Country Park Clean-Up after Typhoon Mangkhut, in First for Hong Kong,” *South China Morning Post*, October 14, 2018; Lily Kuo, “Hong Kong: Protesters Wary over Elite Troops Clearing Roadblocks,” *Guardian*, November 18, 2019.

† Current nonpermanent judges for the Court of Final Appeal include those from the UK, Australia, and Canada. As many as a third of the world's legal systems use either the common law or an element of the common law. Hong Kong Court of Final Appeal, *The Judges*, July 20, 2020; Kwai Hang Ng and Brynna Jacobson, “How Global Is the Common Law? A Comparative Study of Asian Common Law Systems—Hong Kong, Malaysia, and Singapore,” *Asian Journal of Comparative Law* 12:2 (December 2017): 209–232.

“continue to assess the position in Hong Kong as it develops, in discussion with the UK government.”<sup>148</sup>

In a sign acknowledging growing tensions between the prosecution and the Hong Kong government, in late July 2020 Hong Kong’s top prosecutor resigned over being sidelined from national security cases.<sup>149</sup> In September, an Australian judge resigned from the Court of Final Appeal for reasons “related to the content of the national security laws.”<sup>150</sup> In October, the Hong Kong government ultimately announced the appointment of a Scottish judge to the Court of Final Appeal, effectively replacing the Australian judge and restoring the number of foreign judges from 13 to 14.<sup>151</sup> The Hong Kong judiciary confirmed on October 13 that a permanent magistrate with the West Kowloon court would be reassigned to other work following accusations in Chinese state media that his rulings on protest-related cases were sympathetic to the prodemocracy movement.<sup>152</sup>

Even before the new law, the Hong Kong authorities took to using broad, poorly defined laws to target prodemocracy supporters. While Hong Kong’s courts have historically remained impartial, the Lam Administration—under Beijing’s active encouragement—is using legal tactics to apply growing pressure on Hong Kong judges to fall in line with its policies and punish prodemocracy activists.<sup>153</sup> This pressure has been evident in recent cases that drew public commentary from Chinese media and pro-Beijing lawmakers criticizing court rulings not in Beijing’s favor and appointments of judges not conforming to the CCP’s agenda.<sup>154</sup>

Beyond the growing pressures on Hong Kong’s judicial branch, the Hong Kong government’s rule by law approach resulted in a number of blows to the territory’s traditional common law system:

**China’s Liaison Office Claims Ability to Interfere in Hong Kong’s Affairs:** In April 2020, China’s Liaison Office in Hong Kong made a rare public statement accusing prodemocracy legislator Dennis Kwok of violating his oath of office by filibustering proceedings of a key LegCo House Committee (which determines when bills can proceed to a final vote).<sup>\*155</sup> Responding to the prodemocracy camp’s criticism that its interference violated the Basic Law, the Liaison Office claimed it had authority to “supervise” Hong Kong and could be exempted from legal provisions intended to bar its interference. The Liaison Office argued that it did not qualify as a department of the central government, therefore exempting it from the Basic Law.<sup>156</sup> This move was significant because it set precedent for the Liaison Office to openly exert pressure on LegCo and the judiciary to act according to the CCP’s wishes.

**Pro-Beijing Lawmakers Pass Legislation Restricting Freedom of Expression:** On June 4—the anniversary of the Tiananmen Square massacre—at the behest of Beijing pro-Beijing lawmakers in LegCo passed controversial legislation banning disrespect to China’s national anthem. Following Beijing’s passage of its own national anthem law, in 2017 China’s National People’s Congress Standing

\*Mr. Kwok took charge of the committee in October 2019 after pro-Beijing legislator Starry Lee stepped down to seek reelection as committee chair. Without an elected chair, most bills were unable to proceed to a vote. Alvin Lum, “More Arguments as Hong Kong’s Gridlocked House Committee Meets for 16th Time and Again Is Unable to Elect Chair,” *South China Morning Post*, April 24, 2020.

Committee changed the Basic Law requiring Hong Kong to pass its own local version, though the legislative process had been delayed due to the protest movement.<sup>157</sup> The new law imposes a maximum three-year jail sentence for affronting the anthem, frequently booed as a form of protest during public events. The imposition of the law came after the pro-Beijing camp violated legislative rules to take away control of the LegCo House Committee from Mr. Kwok.<sup>158</sup>

**Use of Colonial-Era Laws to Make Arrests:** The Hong Kong government conducted a series of high-profile arrests of democracy activists in February, April, and June 2020 under the colonial-era 1967 Public Order Ordinance, a law banning “illegal assembly” and “rioting” that until 2016 was used to prosecute cases of extreme violence.\* One of those arrested for alleged involvement in banned protests in 2019 was 81-year-old Martin Lee, founder of Hong Kong’s Democratic Party and the long-time leader of the prodemocracy movement in the territory. Many observers viewed Mr. Lee’s arrest as symbolic of the Hong Kong government’s shift in using law to target political opponents.<sup>159</sup>

In October 2019, another colonial-era law, the Emergency Regulations Ordinance, was used to implement a ban on face masks in public assemblies.<sup>160</sup> Chief Executive Lam said this ordinance and the antimask ban were necessary to end escalating violence, while critics asserted the move represented Lam’s first step toward authoritarianism.<sup>161</sup> Under the antimask ban, Hong Kong police arrested 682 people until a court declared the ban unconstitutional in December 2019.<sup>162</sup> In September 2020, Mr. Wong was arrested during his appearance at a regular police check-in, on charges he had violated the mask ban and attended an unauthorized gathering in October 2019.<sup>163</sup> Mr. Wong claimed that in bringing overlapping charges in this way, the government was trying to “confine all activists within Hong Kong’s borders.”<sup>164</sup> No trials have been held for those charged as of this writing, though in October a prosecutor moved the case of Tong Ying-kit, who was the first to be arrested under the new law and who is accused of driving a motorcycle into a group of police on July 1, to the High Court instead of the lower court, meaning there will be no sentence cap if he is convicted.<sup>165</sup>

### ***Denial of Civil Liberties***

In June 2020, the Hong Kong authorities banned the annual vigil in memory of the Tiananmen Square massacre, though more than 10,000 Hong Kong residents defied the ban at risk of arrest. By comparison, roughly 180,000 Hong Kong residents participated in 2019, the last year the vigil was permitted.<sup>166</sup> As many Hong Kong residents view the vigil as symbolic of the territory’s autonomy, the ban represented a significant blow to freedom of assembly.

Together with the vigil’s cancellation, the Hong Kong government was responsible for the most severe erosion of civil liberties in the territory since the 1997 handover:

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\*Under Hong Kong’s Public Order Ordinance, all protests in Hong Kong require a letter of no objection from the Commissioner of Police. If the organizer of the protest receives an objection letter, they are able to submit an appeal letter to the Appeal Board on Public Meetings and Processions. Cap. 245 Public Order Ordinance, November 17, 1967.

**Academic Freedom:** The Hong Kong government acted in line with CCP guidance by escalating its suppression of anti-Beijing ideas and protest activities among young people, the traditional center of political activism in the territory. In May 2020 a Hong Kong test administrator for a high school history exam removed a question about whether Japan did more good than harm to China from 1900 to 1945. The move, which was the first of its kind, followed arguments from the Hong Kong government and mainland China that the question was unpatriotic.<sup>167</sup> To clamp down on further protests, in June 2020 Hong Kong Secretary for Education Kevin Yeung sent a letter to the principals of all primary and secondary schools in Hong Kong directing them to punish students and teachers for participating in protest activities.<sup>168</sup> According to Hong Kong scholars network Progressive Scholars Group's *2019 Academic Freedom Report*, the CCP also continued to tighten its control over Hong Kong academic institutions through its use of influence-building methods such as appointing pro-China elites onto university councils and censoring research that shows the CCP in a negative light.<sup>169</sup>

Since the national security law's implementation, the CCP and Hong Kong authorities have been actively degrading academic freedom in the territory in an attempt to undermine support for the prodemocracy movement and any future opposition. In late July 2020, Hong Kong University legal scholar and prodemocracy activist Benny Tai was fired by the pro-CCP university council for his activism, representing a significant blow to academic freedom. Mainland officials had long condemned Professor Tai's activities and viewed him as a threat dating back to his organization of the 2016 Occupy Central prodemocracy protests.<sup>170</sup> Professor Tai said his firing "[marked] the end of academic freedom in Hong Kong," stating that "[i]f there is still any doubt of the advancement of one country, one system in the territory, my case should be able to remove it."<sup>171</sup>

Other teachers have been fired and reprimanded for their support of the prodemocracy movement. The growing pressure upon educators, combined with the Education Bureau's guidance to remove any teaching materials that could promote activities that "endanger national security," has led many to self-censor their teaching, such as by only using government-issued materials.<sup>172</sup> Shortly after the national security law went into effect, Secretary Yeung said no school activities should be held allowing students to express their political views and banned the popular protest song "Glory to Hong Kong" in schools.<sup>173</sup>

**Freedom of Assembly:** Since late March 2020, Chief Executive Lam has instituted bans on public gatherings to contain the spread of COVID-19 restricting the ability of Hong Kong residents to protest.<sup>174</sup> This policy, which has limited gatherings to no more than 50 people when new COVID-19 cases were at their lowest level and to as few as two during the most severe outbreak, resulted in denials from the Hong Kong police for every request to hold a major protest, even those promising to abide by social distancing restrictions.<sup>175</sup> Evidence suggests Hong Kong law enforcement used these measures to selectively target protestors. During a number of demonstrations, participants were fined for violating social distancing rules even when adhering to the regulations. Conversely, Hong

Kong law enforcement reportedly did not fine pro-Beijing groups that violated the policy when forming counterprotests.<sup>176</sup>

**Freedom of the Press:** For journalists in the territory, the CCP and Hong Kong authorities' actions created a more repressive environment that increasingly emulated reporting conditions in mainland China. During protests, documented cases showed police utilizing multiple methods to prevent press reporting on protests, including physical engagement (e.g., shooting with pepper spray, pushing), obstruction (e.g., stopping and searching, damaging equipment), and arrest of media personnel.<sup>177</sup> In March 2020, Beijing expelled all New York Times, Wall Street Journal, and Washington Post journalists from the Mainland, also barring them from working in Hong Kong.<sup>178</sup> In May 2020, after the Hong Kong authorities criticized a popular Radio Television Hong Kong (RTHK) satirical show for mocking the police, RTHK suspended the show while the Hong Kong government formed an oversight committee to review the public broadcaster's operations, a move seen by many observers as an attempt to control RTHK.<sup>179</sup> Restricted press freedom and growing violence against journalists—even before the law's implementation—prompted the World Press Freedom Index to downgrade Hong Kong's ranking from 73rd place to 80th place of 180 countries and territories.<sup>180</sup> This marks Hong Kong's lowest position since the index's creation in 2002, when it placed 18th.<sup>181</sup>

After Beijing implemented the national security law, the deterioration of Hong Kong's media freedom accelerated. The first arrests of media personnel under the law, prodemocracy media mogul Jimmy Lai and those affiliated with his media company Next Digital, showed the extent of the CCP's repression of media freedom.<sup>182</sup> Just days after the law's implementation, Hong Kong businessman and CCP advisor Charles Ho warned foreign journalists in Hong Kong that being seen to promote pro-independence sentiment would cross a red line and result in expulsion.<sup>183</sup> In July 2020, New York Times journalist Chris Buckley was denied a visa renewal and had to surrender his press credentials, the second such prominent foreign journalist barred from Hong Kong in recent years.<sup>184</sup> The newspaper also decided to relocate its digital news operations—representing about one-third of its Hong Kong-based staff—to South Korea due to growing uncertainty about how the national security law would impact its operations.<sup>185</sup> In addition, the Hong Kong government ordered public libraries to remove from circulation some prodemocracy figures' books that were deemed in violation of the law, including those by Mr. Wong and prodemocracy lawmaker Tanya Chan.<sup>186</sup>

### **Implications for the United States**

The Chinese government's swift and comprehensive implementation of its national security law for Hong Kong brought the territory's 7.5 million residents under full and direct authoritarian rule within hours. This move fit into a growing pattern of Chinese leaders exploiting opportunities, such as those presented by the COVID-19 pandemic, to advance its interests without regard for consequence or international opposition. The law fundamentally altered the character of Hong Kong and its relations with the United States by removing the distinct freedoms and legal protections the territory had

previously enjoyed. Even more than transforming Hong Kong into “just another Chinese city,” the move has led governance in the territory to more closely resemble that of Xinjiang and Tibet, regions where residents are subjected to particularly intrusive surveillance and human rights abuses. Compounding these abuses, Hong Kong residents may not even be able to flee for safer havens due to legal barriers and threats of force.

Developments in Hong Kong prove that the international community must now reckon with a Chinese government that is increasingly indifferent to its reputation abroad. When asked his view on a potential U.S. response to the new law, HKMAO Deputy Director Zhang declared, “The era when the Chinese cared what others thought and looked up to others is in the past, never to return.”<sup>187</sup> Taiwan viewed the new measures in Hong Kong with alarm, as China has long proposed the same, now defunct “one country, two systems” model for a future unification arrangement with the democratic, self-governing island. The case of Hong Kong demonstrates plainly to Taiwan that the CCP will not hesitate to forcibly impose its authoritarian rule on them, too, even in the face of widespread popular opposition.<sup>188</sup>

The changed status of Hong Kong demonstrates that the CCP will adopt forceful measures to squash any dissent despite intense pressure from the international community. Left unchecked, the national security law could grant China’s government broad powers to censor global discourse. The law’s extraterritorial provision extends Beijing’s reach internationally and puts in jeopardy any individual deemed by Beijing or the Hong Kong authorities to have violated the law’s vague statutes. Its reference to offenses committed outside Hong Kong implies that Beijing has asserted jurisdiction to arrest anyone in the world for opposing the CCP.<sup>189</sup> The July 2020 warrant issued by the Hong Kong police for the arrest of activists abroad—including a U.S. citizen—confirms the law’s intent to silence dissent internationally. In this environment, the United States and other democracies began to issue travel warnings to Hong Kong.<sup>190</sup>

Beijing’s imposition of the national security law has shattered the foundation for special treatment the United States has afforded Hong Kong for nearly 30 years. Outlined in the 1992 U.S.-Hong Kong Policy Act, U.S. policy toward Hong Kong had been predicated on the territory’s continued autonomy from mainland China, including the rule of law and protected civil liberties. Secretary Pompeo, in announcing pending U.S. actions responding to the law on the eve of its passage, said, “Given Beijing now treats Hong Kong as ‘one country, one system,’ so must we.”<sup>191</sup>

The United States has maintained deep, longstanding economic and social ties to Hong Kong. More than 1,300 U.S. companies have offices in Hong Kong, including 278 regional headquarters and “nearly every major U.S. financial firm,” according to the State Department.\* U.S. cumulative outbound FDI in Hong Kong stood at approximately \$81.9 billion at the end of 2019.<sup>192</sup> Beyond the commercial considerations, approximately 85,000 U.S. citizens are Hong

\*This figure from 2019 represents the latest available data. U.S. Department of State, *2019 Hong Kong Policy Act Report*, March 21, 2019; Hong Kong Census and Statistics Department, “Companies in Hong Kong with Parents Companies Located Outside HK,” October 21, 2019.

Kong residents.\* In 2018, 1.3 million U.S. visitors traveled to Hong Kong, while an estimated 127,000 Hong Kong residents came to the United States.<sup>193</sup> The swift imposition of the national security law may have fundamentally destroyed the cosmopolitan vibrancy, dynamism, and openness that characterized the city and made these longstanding ties possible. Port calls in Hong Kong by U.S. Navy ships, which had been subject to increased restrictions even before the passage of the national security law, could now instead occur in nearby countries with stronger rule of law and friendlier relations with the United States.<sup>194</sup>

As China seeks international support for its suppression of human rights in Hong Kong, its actions have provided an opportunity for the United States to bolster policy coordination with democracies from Europe to Oceania.<sup>195</sup> Australia, Canada, Taiwan, and the UK have joined the United States in voicing support for Hong Kong, adopting measures to accept political asylum seekers from the territory. Taiwan's leaders and citizens have also hardened their rejection of the "one country, two systems" formula.<sup>196</sup> Conversely, 54 countries issued a statement at the UN Human Rights Council in support of China's national security law.†

The events of the past year in Hong Kong demonstrate to the international community the empty value of China's promises. In responding with repression to Hong Kong residents' calls to uphold the territory's autonomy, Beijing failed a major litmus test for its role as a responsible global actor.

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\*This figure from 2019 represents the latest available data. U.S. Department of State, *2019 Hong Kong Policy Act Report*, March 21, 2019.

†At the same UN Human Rights Council meeting, a group of 27 democratic countries issued a joint statement in opposition to the national security law. Dave Lawler, "The 53 Countries Supporting China's Crackdown on Hong Kong," *Axios*, July 3, 2020.



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