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International Reaction to Hong Kong's Countdown to 1997: Doors Open for Hong Kong Emigrants

SUSAN GOLDAMMER*

In 1997, the United Kingdom's ninety-nine year lease with China will expire, and sovereignty of Hong Kong and the governing of its six million people will transfer to the People's Republic of China (PRC).¹ Because Hong Kong has become a highly developed economic center, the economic and social implications of this transfer are far-reaching.² Business is the soul of Hong Kong; the colony's survival will depend on China's tolerance of a "capitalist enclave on its socialist soil."³ British and Chinese officials entered into talks relating to the transfer in 1982. These talks concluded with the Joint Declaration on the Question of Hong Kong (Joint Declaration) in 1984.⁴ The Joint Declaration states that Hong Kong will become a Special Administrative Region (SAR)⁵ of the PRC and retain a high degree of autonomy as a capitalist system for at least fifty years after 1997.⁶

The Tiananmen Square massacre on June 4, 1989, however, dissolved Hong Kong residents' confidence in the Joint Declaration, and many began to doubt whether their personal liberties and lifestyles would truly remain protected after the takeover date of July 1, 1997. In 1990, the Basic Law--the law which will govern Hong Kong for the fifty years after the takeover--was

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1. Convention Between Great Britain and China, Respecting an Extension of Hong Kong Territory, June 9, 1898, China-Gr. Brit., 186 Consol. T.S. 310-11; BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T OF STATE, PUB. NO. 8126, BACKGROUND NOTES: HONG KONG I (Sept. 1994).

2. Total trade between Hong Kong and the United States in 1994 was \$21.1 billion. Total direct U.S. investment in Hong Kong is \$10.5 billion on an historic cost basis. *Prepared Testimony of Mark C. Michelson, 1995 Vice Chairman, American Chamber of Commerce in Hong Kong Before the House Int'l Relations Comm., Subcomm. on Asia and the Pacific, Subcomm. on Int'l Economic Policy and Trade*, FED. NEWS SERV., July 27, 1995, available in LEXIS, News Library, FEDNEW File [hereinafter *Michelson Testimony*].

3. C.P. LO, HONG KONG 189 (1992).

4. A Draft Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Future of Hong Kong, Sept. 26, 1984, 23 I.L.M. 1366, 1371 [hereinafter *Joint Declaration*].

5. *Id.* According to the Joint Declaration, Hong Kong will have its own executive, legislative, and judicial powers. There will be a free flow of capital, finances will be separate from China, and Hong Kong will issue its own travel documents. KEVIN P. LANE, SOVEREIGNTY AND THE STATUS QUO 112-13 (1990). See also Anna M. Han, *Hong Kong's Basic Law: The Path to 1997, Paved with Pitfalls*, 16 HASTINGS INT'L & COMP. L. REV. 321, 322 (1993) (referring to the future arrangement as "one country, two systems").

6. Joint Declaration, *supra* note 4, Annex I.

promulgated after debate and numerous objections by the members of the drafting committee from Hong Kong.⁷ In many respects, the Basic Law is inconsistent with the Joint Declaration and the PRC constitution.⁸ Furthermore, in 1997, the Basic Law, as well as future Hong Kong legislation will be subordinate to the PRC constitution,⁹ and China will ultimately be in charge.¹⁰

As a last-chance effort to preserve democracy in Hong Kong before the transition to Chinese rule, Hong Kong citizens adopted a bill of rights in 1991, and Governor Christopher Patten has coordinated a plan to gradually increase the number of directly elected seats in the Legislative Council of Hong Kong.¹¹ However, China reacted negatively to these developments and threatened to establish a shadow government for Hong Kong until the takeover date if Governor Patten persisted.¹² Businessmen are now taking precautions by moving the legal domiciles of Hong Kong companies to different countries and stipulating the use of English law in contracts spanning the takeover date.¹³ The United States passed legislation in 1992 mandating regular reporting on the political status of Hong Kong to the State Department.¹⁴ The most positive economic boost occurred when England and China agreed in June 1995 to

7. People's Republic of China: The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, Apr. 4, 1990, 29 I.L.M. 1511 [hereinafter Basic Law]; Han, *supra* note 5, at 324-25.

8. *Prepared Testimony of Andrew Au, The Alliance of Hong Kong Chinese in the United States Before the Senate Foreign Relations Comm., East Asian Affairs Subcomm.*, FED. NEWS SERV., June 6, 1995, available in LEXIS, News Library, FEDNEW File; Han, *supra* note 5, at 326-27; Christopher K. Costa, Comment, *One Country-Two Foreign Policies: United States Relations with Hong Kong After July 1, 1997*, 38 VILL. L. REV. 825, 844-45 (1993).

9. The SAR will be considered an inalienable part of the PRC. Basic Law, *supra* note 7, art. 1. Freedom of speech in China may be curbed if it infringes on the interests of the state, society, or other citizens. Costa, *supra* note 8, at 843-44. Chinese citizens also have the duty to "abide by the constitution and the law, keep state secrets and protect public property" and not commit acts detrimental to the security of China. *Id.* According to the Basic Law, the Chief-Executive will essentially be appointed by the PRC and will have the power to dissolve the Legislature once during his term. Basic Law, *supra* note 7, art. 50. China will also wield a strong veto power over laws passed by the Legislative Council. *Id.* Furthermore, if a state of emergency is declared, China will have the power to enforce national laws in Hong Kong. *Id.* at art. 18.

10. GERALD SEGAL, *THE FATE OF HONG KONG* 54 (1993). School textbooks are already being revised to eliminate the word "massacre" in connection with the 1989 Tiananmen Square incident. Richard Gwyn, *Quarter-million Hong Kongers Could Come 'Home'*, THE TORONTO STAR, July 19, 1995, at A17, available in LEXIS, News Library, CURNWS File.

11. BUREAU OF PUBLIC AFFAIRS, *supra* note 1, at 3; Costa, *supra* note 8, at 847; Bryan A. Gregory, *Envisioning Futures: The Battle Over Democracy in Hong Kong*, 19 N.C. J. INT'L L. & COMM. REG. 175, 191 (1993).

12. Gregory, *supra* note 11, at 183.

13. Mike Steinberger, *Companies Ring-Fence Assets in Hong Kong Twilight Raid*, THE TIMES (London), Aug. 4, 1995, available in LEXIS, News Library, CURNWS File.

14. 22 U. S. C. § 5701 (1992).

establish a Court of Final Appeal to protect the legal rights of Hong Kong businesses and citizens.¹⁵

Although emigration from Hong Kong has steadily increased since 1984, the mixed messages residents of Hong Kong received from the PRC in 1989 and 1990 caused a flood of residents to look for a country to move to before the 1997 takeover. The United States, Canada, and Australia began to receive large numbers of requests for immigration from Hong Kong residents.¹⁶ Some Hong Kong companies even set up overseas offices to satisfy their employees' demands for foreign passports.¹⁷ Approximately one in ten Hong Kong-Chinese will have acquired foreign nationality by 1997.¹⁸ Approximately 1.04 percent of Hong Kong's workforce emigrated in 1994 alone.¹⁹

This large-scale emigration caused alarm in Hong Kong, particularly because those seeking to emigrate tended to be the most wealthy and educated elite. This exodus threatened to deplete the core of the economy and reduce Hong Kong to a state of anomie.²⁰ To prevent economic collapse, the Hong Kong government has developed a labor importation scheme to bring skilled and semi-skilled workers into the colony.²¹ To induce key citizens to remain and work in Hong Kong, Britain granted 50,000 heads of households and their families (up to 225,000 people) the right of abode in England without having to leave Hong Kong to meet residency requirements.²² Chinese officials, however, have stated that China will not recognize passports "bought" or

15. *Michelson Testimony*, *supra* note 2; Joyce Barnathan, *In Hong Kong, A Cease-Fire Between Britain and China*, BUS. WK., Aug. 7, 1995, at 45.

16. Australia alone received 14,000 applications in 1991 and 1992, the years following the Tiananmen Square incident. Eric Ellis, *Hong Kong: The Exodus to Oz Gathers Pace*, AUSTL. FIN. REV., Mar. 28, 1995, available in LEXIS, News Library, CURNWS File. Singapore was flooded with applications as were Tonga, Mauritius, Jamaica, and Belize. KEVIN RAFFERTY, CITY ON THE ROCKS 474 (1990). Of all the major democracies, only Britain did not attract a rush of would-be immigrants from Hong Kong. *Id.*

17. Others agreed to grant bonuses or increases in pay in exchange for promises from employees to remain in Hong Kong past the Chinese take-over. SEGAL, *supra* note 10, at 61.

18. Andy Ho, S. CHINA MORNING POST, Mar. 9, 1995, at 19, available in LEXIS, News Library, CURNWS File.

19. Jane Moir, *Continuing Exodus of Staff Hits Education*, S. CHINA MORNING POST, July 13, 1995, at 8, available in LEXIS, News Library, CURNWS File.

20. Wong Siu-lun, *Emigration and Stability in Hong Kong*, 32 ASIAN SURV. 918, 919 (1992); LO, *supra* note 3, at 193. For example, at least one half of doctors and 80% of accountants surveyed intend to leave Hong Kong before 1997. SEGAL, *supra* note 10, at 65. Furthermore, doctors are charging higher patient fees to increase their savings for future resettlement. *Id.*

21. The unemployment rates in Hong Kong were 2% throughout 1992 and 1993. BUREAU OF INT'L LABOR AFF., U.S. DEPARTMENT OF LABOR, FOREIGN LABOR TRENDS: HONG KONG 3 (1992-1993).

22. British Nationality (Hong Kong) Act, 31 HALSBURY'S STATUTES OF ENGLAND AND WALES 209 (4th ed. 1994); SEGAL, *supra* note 10, at 67. Both Hong Kong and U.K. politicians have criticized the British government for not making passports readily available to all Hong Kong citizens. RAFFERTY, *supra* note 16, at 483-88.

obtained in ways other than living in a foreign country. Therefore, holders of these British passports will be considered Chinese nationals in any case, but the rights they will hold are uncertain.²³

For many countries of the world, the mass exodus from Hong Kong is a welcome opportunity. Many countries are purposely courting immigrants from Hong Kong with hopes of improving their own economies and attracting skilled citizens. Other countries plan to capitalize on Hong Kong's uncertain future and perhaps reinvent themselves as replacements to the island's economic prestige. The Federal Territory of Labuan, Malaysia is currently updating regulations, improving infrastructures, and launching tourist development projects with hopes of becoming a greater financial center in light of Hong Kong's uncertain future.²⁴ Jersey, the largest of the Channel Islands, has gone to great lengths to attract customers and market the island's infrastructure. Full tax exemption for non-residents has made the island a welcome place for investment and a haven to protect wealth from the 1997 change in sovereignty.²⁵ Singapore is currently advertising to convince young, upwardly mobile, educated Chinese families to emigrate. Unlike other countries, a resident with an immigrant visa to Singapore need not actually migrate for five years.²⁶

“[O]ne of Hong Kong's strongest exports now is investment and wealth.”²⁷ Many countries have been willing to exchange residence permits or full citizenship for an investment in the country or a transfer of funds to the country. For example, an immigrant can “purchase” a residence permit to live in Seychelles for 10,000 rupees (\$2,000) or to secure permanent residency by

23. Catherine Ng, S. CHINA MORNING POST, Apr. 22, 1995, at 2, available in LEXIS, News Library, CURNWS File. The combined reading of Articles 3 and 9 of the Chinese Nationality Law leads to this conclusion. Frankie F.L. Leung, *In Hong Kong's Nationality Law, Confusion Currently Reigns*, L.A. DAILY J., Jan. 17, 1995, at 7.

24. See Mustapha Kamil, *Malaysia: Turning Labuan Into Top IOFC Within Reach*, REUTER TEXTLINE, Apr. 20, 1995, available in LEXIS, News Library, WIRES File; see also *Malaysian Financial Reforms Aim to Create Trading Center*, NIKKEI WKLY, June 26, 1995, at 28, available in LEXIS, News Library, CURNWS File.

25. *Many Turn to Jersey for Security*, S. CHINA MORNING POST, Apr. 16, 1995, at 3, available in LEXIS, News Library, CURNWS File.

26. Tom Grimmer, *Rivalry Between Singapore and Hong Kong Is Heating Up: Courting Immigrants as 1997 Approaches*, FIN. POST, June 28, 1995, at 13, available in LEXIS, News Library, CURNWS File; Linda Yeung, *Hong Kongers Are Being Wooed by the Lion City*, S. CHINA MORNING POST, June 25, 1995, at 12, available in LEXIS, News Library, CURNWS File.

27. Brad Lee, *Alberta Pitch to Investors Upstaged by Magnate*, CALGARY HERALD, June 13, 1995, at D2, available in LEXIS, News Library, CURNWS File (quoting Murray Smith, Alberta Canada's Economic Development Minister).

transferring 100,000 rupees (\$20,000) to a local bank account.²⁸ The Seychelles government hopes to increase foreign exchange, particularly at a time when tourism is falling.²⁹ Taiwan has relaxed its immigration regulations to attract Hong Kong residents, reducing the required remittance or savings in Taiwan to \$192,000.³⁰ Taiwan leaders want business expertise to transform the country into a "regional operations center," a hub for business and trade in Asia.³¹ Although the investment requirements are still much higher than those found in many other countries, the Taiwan government hopes that Chinese investors will be lured by the added advantage of living in an area with a common language.³² In January, the Fiji government proposed admitting 7,000 Chinese family "units" of four people each based on a \$30,000 non-refundable government application fee, and a \$100,000 deposit as an investment in a Fiji bank.³³ The government hopes to provide jobs for the country's unemployed by attracting new industry or entrepreneurs.³⁴ In order to apply for full UK citizenship, investors with one million pounds of disposable income can invest 750,000 pounds in a British company or invest in government bonds, share capital, or loan capital.³⁵

New Zealand's straightforward immigration requirements have attracted a number of Hong Kong-Chinese and have benefitted the country's real estate

28. *The Seychelles: Hong Kong Outflow*, INDIAN OCEAN NEWSL., May 27, 1995, available in LEXIS, News Library, CURNWS File.

29. *Id.*

30. *Taiwan Welcomes Hong Kong Immigrants*, UPI, Mar. 30, 1995, available in LEXIS, World Library, UPI File.

31. *Id.*

32. However, the language barrier may not be a problem for immigrants to Canada, Australia, and the United States, where large Chinese communities have eased the need for immigrants to learn a new language. Charlotte Parsons & Quinton Chan, S. CHINA MORNING POST, June 3, 1995, available in LEXIS, News Library, CURNWS File.

33. *Fiji Government Approves Plan to Admit Up To 28,000 Hong Kong Chinese Immigrants*, BBC SUMMARY OF WORLD BROADCASTS, Jan. 25, 1995, available in LEXIS, News Library, CURNWS File; *South Sea Invasion?*, S. CHINA MORNING POST, Mar. 5, 1995, at 18, available in LEXIS, News Library, CURNWS File.

34. *Fiji Government Approves Plan to Admit Up To 28,000 Hong Kong Chinese Immigrants*, *supra* note 33. The government says the program will attract \$ 2.5 billion in investment and create 80,000 jobs. Kalinga Seneviratne, *Fiji: Opening Doors to Chinese Business Migrants*, INTER PRESS SERV., Jan. 21, 1995, available in LEXIS, World Library, CURNWS File. However, the proposal has sparked heated public debate in this ethnically-divided country. *Id.*

35. Richard McComb, *Hong Kong Tycoons Move In*, BIRMINGHAM POST (U. K.), Feb. 6, 1995, available in LEXIS, World Library, CURNWS File. Unfortunately, fewer than 5 applications have been received under the investor provision and no one has yet qualified for citizenship. Jason Burke & David Leppard, *British Drive to Lure Millionaire Foreigners Flops*, SUNDAY TIMES (London), Feb. 5, 1995, available in LEXIS, World Library, CURNWS File. Apparently, the "snobbish" culture, restrictive taxes, and the "wet and depressing" climate, have encouraged millionaires to look elsewhere. *Id.*

market.³⁶ Permanent residency is available for those “of proven ability who wish to invest money and establish businesses in New Zealand.”³⁷ Because a real estate purchase not intended for personal use is considered an investment, the New Zealand real estate business has been particularly active in selling multiple residences—one for personal use and one for “investment—to Hong Kong-Chinese.”³⁸

Private companies are also hoping to cash in on the uncertainty created by Hong Kong’s transfer. The Australian airline, Qantas, attracted thirty percent of the experienced staff of Cathay Pacific in Hong Kong by offering only half of their salaries, but including Australian passports.³⁹ A Dutch bank, Rabobank, is offering a range of offshore banking services for Hong Kong residents who wish to safeguard their wealth before the transition and change their residence to another country without transferring assets.⁴⁰

Canadian businesses have also implemented programs to attract Hong Kong immigrants. Royal Bank of Canada’s immigration fund offers only small monetary returns, but provides a convenient means for Hong Kong residents to receive a Canadian passport if they invest for five years.⁴¹ The Canadian Imperial Bank of Commerce has moved its Asian banking center closer to Calgary’s Chinatown to catch the business of the next wave of immigrants expected in 1997.⁴² British Columbia Telephone Company is targeting its marketing to Chinese-Canadian immigrants, who place more than one-third of all overseas calls from Canada.⁴³ Newspapers and radio programs in Chinese have been established to aid new immigrants who are not fluent in

36. The Hong Kong community in New Zealand now numbers around 60,000, and approximately half of all immigrants to New Zealand each year are Asian. *Increase in Asian Migrants*, S. CHINA MORNING POST, at 23, Feb. 6, 1995, available in LEXIS, World Library, CURNWS File.

37. *Id.*

38. Richard Warren, *Immigrants Eye Auckland*, S. CHINA MORNING POST, Nov. 23, 1994, at 17, available in LEXIS, News Library, CURNWS File.

39. SEGAL, *supra* note 10, at 149.

40. The banking giant has opened an office in Guernsey so that its customers can take advantage of the tax benefits there while retaining the security of an established bank. *Increasing Demand for Rabobank Trusts*, S. CHINA MORNING POST, Apr. 16, 1995, at 3, available in LEXIS, News Library, CURNWS File. These trusts would allow Hong Kong clients to change domicile easily, without having to move their assets. *Id.*

41. Frederick Balfour, *In Asia, Rivalries on Rise; Hot Competition Among Bankers in Hong Kong*, INT’L HERALD TRIB., May 18, 1995, available in LEXIS, News Library, CURNWS File.

42. *CIBC Ready for Influx of Chinese in 1997*, CALGARY HERALD, Nov. 11, 1994, available in LEXIS, News Library, CURNWS File.

43. Susan Noakes, *Niche Marketing Targets Chinese Consumers*, FIN. POST, Nov. 18, 1994, at C17, available in LEXIS, News Library, CURNWS File.

English.⁴⁴ There is even an Internet file, "misc.immigration.canada," to aid would-be immigrants in navigating the requirements to enter Canada.⁴⁵

Australia has benefitted from a wave of immigration from Hong Kong. Since 1987, roughly one percent of Hong Kong's population has emigrated to Australia, bringing a growing community of young, skilled, and professional people.⁴⁶ Hong Kong residents apparently are attracted to Australia's policy of strengthening ties with its Asian neighbors and straightforward immigration policies.⁴⁷ In 1992, Hong Kong surpassed Britain as the largest source of immigrants to Australia.⁴⁸ Australia increased its intake of Chinese immigrants in 1995 to 8,200, but tightened controls to ensure that immigrants were serious about investing and working in Australia, and not merely gaining residency as an assurance against 1997.⁴⁹

Canada has become the most common destination for Hong Kong immigrants. Its liberal immigration laws are designed to attract professional and skilled workers because so much of the country's skilled labor moves to the United States.⁵⁰ Chinese immigrants currently make up approximately twenty percent of Vancouver's population.⁵¹ Canada has recently decreased the number of immigrants admitted into the country and has made it tougher for immigrants already in the country to bring their families over to Canada. The country, however, will continue to give preference to skilled workers and

44. Monique Beaudin, *A New Gazette Ready to Roll off the Presses*, THE GAZETTE (Montreal), July 27, 1995, at E1, available in LEXIS, News Library, CURNWS File; *In Tune with the Immigrants*, S. CHINA MORNING POST, July 23, 1995, at 2, available in LEXIS, News Library, CURNWS File.

45. Nicholas Ionides, *Would-be Migrants Head for Cyberspace*, S. CHINA MORNING POST, Nov. 7, 1994, available in LEXIS, News Library, CURNWS File.

46. Tim Colebatch, *Australia: Hong Kong Migrants--Young, Skilled and Professional*, THE AGE (Melbourne), May 29, 1995, available in LEXIS, World Library, CURNWS File.

47. *Australia Reports Surge in Immigrants from Hong Kong*, AGENCE FRANCE PRESSE, May 28, 1995, available in LEXIS, News Library, WIRES File. Australia's liberal immigration scheme, like Canada's, focusses on the benefits of immigration. SEGAL, *supra* note 10, at 147-48. However, since 1993, Australia has attempted to cut immigration by admitting immigrants based on skills, competence in English, and close relations to early immigrants. *Id.* at 148.

48. SEGAL, *supra* note 10, at 147-48.

49. *Australia to Woo Hong Kong Business Emigrants*, REUTERS WORLD SERV., Apr. 12, 1995, available in LEXIS, News Library, WIRES File. Mark Riley, *Australia: Migration Up by 10,000 Next Year*, SYDNEY MORNING HERALD, May 10, 1994, available in LEXIS, World Library, CURNWS File.

50. SEGAL, *supra* note 10, at 131-32.

51. An immigration counselor at the Canadian High Commission in Hong Kong in 1987 said, "Canada is in the immigration business. These are the kind of people we want. They bring family values, a devotion to law and order, and especially a drive towards competitiveness and achievement which we seem to breed out of our own young people." *Id.* at 134-35.

entrepreneurs.⁵² Investor immigrants must now contribute \$350,000 to the economy, though at one time \$150,000 would have gained admittance.⁵³

The new emphasis on business immigrants clearly favors many Hong Kong residents who are often highly educated professionals, but makes it more difficult for those immigrants to reunite with their families.⁵⁴ Canada's new laws have thwarted many Hong Kong residents' plans. Often the family is sent to Canada while the husband, a "spaceman," returns to Hong Kong to earn money, hoping to escape to Canada a short time before it turns over to the Chinese.⁵⁵

Despite these incentives and an initial flood of emigrants out of Hong Kong, many former residents are returning to Hong Kong and emigration has decreased slightly.⁵⁶ This "reverse brain-drain" reflects a conflict between political freedom and personal economics. Although other countries offer political security, jobs in Hong Kong offer more prestige, higher salaries, and lower taxes. Hong Kong is one of the best places in the world to make money.⁵⁷ An estimated thirty percent of those who have emigrated from Hong Kong in the past five or six years have now returned to Hong Kong.⁵⁸ Many Hong Kong residents have secured foreign passports, but have returned to

52. Cynthia Osterman, *Asians Blast Canada Immigration Crackdown*, REUTERS N. AM. WIRE, Nov. 2, 1994, available in LEXIS, News Library, WIRES File. Twenty-one percent of all immigration applications to Canada are from Hong Kong applicants. Alison Nadel, *Canadian Leader Eases Immigration Fears*, S. CHINA MORNING POST, Nov. 6, 1994, at 2, available in LEXIS, News Library, CURNWS File.

53. Barbara Yaffe, *Boomtown: B.C. Might Welcome a Respite from Rapid Growth*, THE GAZETTE (Montreal), July 13, 1995, at B3, available in LEXIS, News Library, CURNWS File.

54. *Id.*

55. Jeff Heinrich, *Would-be Hong Kong Immigrants Upset at Family-Class Changes*, THE GAZETTE (Montreal), Nov. 3, 1994, at A13, available in LEXIS, News Library, CURNWS File. The day before the new changes were announced, the Canadian consulate was flooded with immigration applications—prompted by fears that Canada would begin demanding fluency in English or French, or would restrict investor immigrants. Carol Goar, *Hong Kong Ties to Stay: PM Canada Won't Turn Its Back After 1997, Chretien Promises*, THE TORONTO STAR, Nov. 13, 1994 at A10, available in LEXIS, News Library, CURNWS File.

56. Emigration from Hong Kong fell from a peak of 62,000 in 1990 to 54,000 in 1993. BUREAU OF PUBLIC AFFAIRS, *supra* note 1, at 4. Louise do Rosario, *Hong Kong: Home Sweet Home*, FAR E. ECON. REV., Mar. 31, 1994, at 28, available in LEXIS, World Library, CURNWS File. In 1993, 23,000 emigrants were employed in professional, technical, and managerial positions in Hong Kong. BUREAU OF PUBLIC AFFAIRS, *supra* note 1, at 2.

57. LO, *supra* note 3, at 195; Moira Farrow, *Canada Too Laid Back, Returning Hong Kong Residents Say*, THE VANCOUVER SUN, Jan. 5, 1995, at A5, available in LEXIS, News Library, CURNWS File; *Most Emigrants Will Return, Say Business Leaders*, S. CHINA MORNING POST, Oct. 11, 1994, at 6, available in LEXIS, News Library, CURNWS File. Hong Kong has a flat rate income tax of 15% and Hong Kong employers routinely give employees year-end bonuses ranging from 1 to 6 months of their salary, which more than offset the taxes. Wyng Chow, *Overseas Chinese Returning to Hong Kong*, THE GAZETTE (Montreal), Mar. 17, 1995, at C9, available in LEXIS, News Library, CURNWS File.

58. Chow, *supra* note 57. According to the 1992 General Household Survey, approximately 43,000 people returned from overseas between 1982 and 1991, and an estimated 8,000 returned in 1992. Ho, *supra* note 18.

work in Hong Kong until the takeover.⁵⁹ An estimated three of every five citizens now emigrating from Hong Kong will return to Hong Kong.⁶⁰

Nevertheless, Hong Kong continues to suffer from a net outflow of manpower, and officials still fear that the draw of political stability will cause many to emigrate again once 1997 draws nearer.⁶¹ Hong Kong government officials are preparing for a sharp rise in the number of people seeking to leave Hong Kong by the end of 1995.⁶² Some anticipate a large number of applications will be submitted immediately before the handover date, in effect hedging a bet on the performance of the new government.⁶³ Hong Kong businesses have prepared themselves for the mass exodus by adopting more automation, training younger staff members, and hiring more expatriates. However, many believe there is no way to prepare for the departure of the younger, better educated professionals.⁶⁴

Those who leave Hong Kong to obtain a foreign passport and then returning run the risk of losing the benefits accompanying Hong Kong citizenship. Chinese officials have decided that senior government positions in Hong Kong cannot be held by persons who possess a right of abode elsewhere.⁶⁵ Hong Kong residents with foreign passports also will be excluded from running in elections.⁶⁶ Even more problematic, China has not yet defined a "Chinese National" in the Chinese Nationality Law.⁶⁷ Article 9 of the Chinese Nationality Law states that any Chinese national naturalized in a different country automatically loses Chinese citizenship.⁶⁸ However, to

59. *Most Emigrants Will Return, Say Business Leaders*, *supra* note 57; Chang Shu-Ming, *Some Who Fled Hong Kong Return for Higher Income, Careers*, REUTERS N. AM. Wire, June 29, 1995, available in LEXIS, News Library, WIRES File.

60. Ho, *supra* note 18.

61. In 1994 the number of emigrants from Hong Kong totalled 61,600. Ellis, *supra* note 16; *Hong Kong Still Suffering Brain Drain*, REUTERS N. AM. Wire, July 12, 1995, available in LEXIS, News Library, WIRES File; *Teachers Flee, HK "Brain Drain" Worsens*, UPI, July 12, 1995, available in LEXIS, News Library, UPI File.

62. Ellis, *supra* note 16.

63. *Id.*

64. do Rosario, *supra* note 56, at 29.

65. Basic Law, *supra* note 7, arts. 61, 101; SEGAL, *supra* note 10, at 69; Leung, *supra* note 23. The head police officer in Hong Kong must be of Chinese descent with no overseas passport or right of abode. Kevin Sinclair, S. CHINA MORNING POST, Mar. 13, 1995, at 19, available in LEXIS, News Library, CURNWS File.

66. Basic Law, *supra* note 7, art. 67; Leung, *supra* note 23. This requirement probably will exclude many of the most qualified people on the island. Margaret Ng, S. CHINA MORNING POST, Feb. 28, 1995, at 19, available in LEXIS, News Library, CURNWS File.

67. Under Annex III of the Basic Law, the Chinese Nationality Law will have direct application in 1997. Leung, *supra* note 23.

68. Ho, *supra* note 18; Robert MacPherson, *China Holds Olive Branch to Hong Kong Emigrants*, AGENCE FRANCE PRESSE, May 18, 1995, available in LEXIS, News Library, WIRES File.

become a Chinese national, one need not be a permanent resident of the SAR even though the Nationality Law of the PRC will be applied to the SAR region in 1997.⁶⁹

Mr. Lu Ping, Beijing's top official for Hong Kong affairs, has stated that Hong Kong nationals living abroad will be welcomed back and will retain their permanent residency rights *as long as they return before June 30, 1997*. Those returning after that date will have to live in Hong Kong continuously for seven years to become permanent residents again.⁷⁰ However, this statement has recently been contradicted and criticized as unenforceable.⁷¹ Officials now say that overseas migrants need not rush back to Hong Kong before 1997 and may travel freely in and out of Hong Kong as long as they prove Hong Kong is their permanent residence.⁷² However, there is some indication that only ethnic Chinese will be issued passports, leaving others without a right of abode anywhere.⁷³ Furthermore, this controversy may not be settled until after the 1997 takeover date because Chinese officials may not issue official SAR passports until that time.⁷⁴

A clear message from the Chinese indicating how they will govern and guarantee personal liberties would end the exodus and guarantee that Hong Kong will remain the business empire it has been. However, the Chinese government is not known for creating clear, equally enforced public policy. For years Hong Kong residents have reaped the benefits of a capitalist government in close contact with growing Chinese business. The world will soon discover whether the Chinese government is able to manage economic progress without altering its management style, or whether the exodus will continue.

69. Basic Law, *supra* note 7, Annex III; Ho, *supra* note 18.

70. Basic Law, *supra* note 7, art. 24; Lu Ping on HK Residents' Right of Abode, XINHUA NEWS AGENCY, May 18, 1995, available in LEXIS, News Library, WIRES File; No Kwai-Yan, S. CHINA MORNING POST, May 19, 1995, at 1, available in LEXIS, News Library, CURNWS File.

71. Chris Yeung, *Returnees' Cut-off Date Fears*, S. CHINA MORNING POST, July 12, 1995, at 2, available in LEXIS, News Library, CURNWS File.

72. Returning migrants might have to declare that they will not leave Hong Kong for 12 months. No Kwai-Yan, *Migrant Return Rules*, S. CHINA MORNING POST, Aug. 22, 1995, at 4, available in LEXIS, News Library, CURNWS File.

73. *Talks On with China Over Right of Abode: Hong Kong Chief Secretary*, AGENCE FRANCE PRESSE, July 7, 1995, available in LEXIS, News Library, WIRES File.

74. Chinese officials claim that the authority to issue passports will not vest until July 1, 1997; regardless, the Chinese government will not have access to the personal information needed to issue passports until that time. Tsang Yok-sing, *Putting Passport Procedure in Order*, S. CHINA MORNING POST, June 20, 1995, at 20, available in LEXIS, News Library, CURNWS File.