



美國商會

James E. Thompson
Chairman

June 18, 2003

The Hon Kenneth TING Woo-shou, JP
1/F, 22 Kai Cheung Road,
Kowloon Bay, Kowloon

Dear Mr. Ting:

National Security (Legislative Provisions) Bill

The American Chamber of Commerce is an organization with over 2200 members who have been doing business in Hong Kong for many years. Our members value the opportunity to do business in Hong Kong and take seriously our responsibilities to enhance its business environment and to contribute to Hong Kong's international stature. It is in this spirit that we offer our views on the proposed National Security (Legislative Provisions) Bill (the "Blue Bill").

Our Chamber has followed the development of the Blue Bill closely. On December 6, 2002, we commented on the Government's proposals for Article 23 legislation. Many suggestions made to the Government during the consultation period were incorporated in the Blue Bill, including many of the recommendations that our Chamber made. (The full text of our December 6 submission is available at www.amcham.org.hk.)

We also appreciate that the Government has continued to take into consideration the views of the community on this important piece of legislation and that further changes were proposed to the Blue Bill on June 3, 2003.

Despite these developments, the Blue Bill still contains provisions of concern to us because it needlessly jeopardizes key distinctive features which make Hong Kong a choice location for doing business in Asia:

- a transparent legal system and independent judiciary;
- the unchallengeable free flow of information and expression of ideas, and
- the ease with which international trade and financial transfers are done.

Preserving these features is crucial to Hong Kong's future economic growth. Anything that weakens Hong Kong's rule of law or its open business climate ultimately makes Hong Kong less competitive.

Provisions in the Blue Bill threaten these important features of Hong Kong's business environment.

- Overly broad prohibitions as found in the crimes of treason and subversion. The crime of subversion includes the vague prohibition not to “intimidate the Central People’s Government” and the loose phrases “by using force” and “serious criminal means.” It also includes a prohibition against “seriously endangering the stability of the PRC.” The crime of treason also uses the vague concept “intimidate the Central People’s Government.” These overly broad phrases, inviting or allowing arbitrary application, should be eliminated. A transparent, reliable legal system requires greater precision in the definition of its crimes.
- Expanded offences for the disclosure of unauthorized information, without the addition of normal defences. The Official Secrets Ordinance was enacted on 27 June 1997 after agreement had been reached with the Chinese side of the Joint Liaison Group so that only minimal changes would be needed to comply with the requirements of Article 23 of the Basic Law. Instead, the Blue Bill expands the scope of protected areas, but does not include the defences normally available in a legally developed economy. It should be an acceptable defence to an accusation of unauthorized disclosure that the information is already in the public domain or that the disclosure is in the public interest.
- Handling seditious publications. We appreciate that the mere possession of a seditious publication has been eliminated from the crime of sedition in the Blue Bill. However, the offence of handling of seditious publications, which in many ways is similar to mere possession, remains. There is no need to create a specific crime focussed on publishers, printers, sellers or distributors, when the general terms of the offence of sedition will apply to any one who incites others to commit the offence of treason, subversion or secession. The addition of a special offence of “handling seditious publications” will have a negative impact on the publishing and printing industries in Hong Kong, to our overall detriment.
- Investigative powers. The Blue Bill would allow high-ranking police officers to issue emergency search warrants, rather than solely by a judge. Search warrants should be issued only when the government has satisfied a high level of need in an independent process. The proposed provisions do not include adequate safeguards against abuse and clearly weaken the legal and judicial system in Hong Kong
- Proscription of Organizations. We note that the Blue Bill proposes that the Secretary of Security may proscribe any local organization which is subordinate to a mainland organization that has been proscribed by Central Government Authorities and where such proscription is reasonably believed to be necessary in the interests of national security. A document issued by the Central People’s Government stating that the mainland organization has been proscribed on the grounds of national security will be conclusive and may be received in evidence in any legal proceedings without further proof. Further, the rules of appeal in such cases are proposed to be formulated by the Secretary of Security. We believe that these provisions limit the effective functioning of Hong Kong’s judiciary as it exists today and do not uphold the principle of “One Country Two Systems.”

We are concerned that provisions of the proposed Bill such as those cited above will have an impact not only the business environment directly, but also on the ability of our academics, researchers, medical professionals and journalists to function effectively. The Bill has the potential to limit information, original thinking, fresh ideas, quick responses and ultimately the quality of the workforce needed in a services economy. Freedom of thought, expression, research and publication is the bedrock of a free and thriving economy.

Hong Kong has always been a special place to our members. What makes it particularly special since 1997 is the promise of “One Country, Two Systems,” with the direct message that Hong Kong can continue to work with its legal and social systems unaffected by the change of sovereignty. We wish to see that the fundamental integrity of Hong Kong’s legal and judicial system remains strong.

We urge you to delay the adoption of the Bill, to study further the impact that the Bill will have on Hong Kong’s economy and to change the provisions of the Bill we have identified above.

Sincerely

A handwritten signature in cursive script, reading "James P. Thompson". The signature is written in dark ink on a white background.