

Legal dispute between Hong Kong and Beijing worries investors

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An ongoing controversy in Hong Kong courts over the "right of abode" of mainland children born to Hong Kong residents has been fuelling uncertainty within international and émigré Chinese business circles about the viability of the island as the base for corporate operations in China.

This week the issue returned to news headlines with a March 29 court ruling in Hong Kong ordering the deportation of 17 Chinese because they did not have the required immigration paperwork.

Hong Kong authorities are now preparing to deport up to 1,200 people, many of them children and infants, back to China. Tens of thousands of children still on the Chinese mainland will be affected by the court decision.

The court ruling flows from a complicated January 29 judgement by Hong Kong's Court of Final Appeals, the territory's highest judicial body, and an unprecedented "clarification" issued by the court after protests from both the Beijing and Hong Kong governments.

In its judgement, the Court of Final Appeals ruled in favour of four mainland children of Hong Kong residents who had been fighting deportation proceedings since coming to the island and applying for residency in July 1997.

The authorities said their entry into Hong Kong had not taken place according to the requirements of a mainland Chinese law enacted on July 10, 1997-- *the Immigration (Amendment) No. 3 Ordinance* --just nine days after the unification of Hong Kong with China.

The *No. 3 Ordinance* and associated notices had been used to restrict the mainland children of Hong Kong residents entering and residing on the island. The law stipulated that a correctly issued one-way permit from the central government's Bureau of Exit-Entry Administration was necessary to enter Hong Kong for the purposes of settlement.

These permits were rationed out at a maximum rate of

150 per day. At the time of the judgement over 66,000 mainland persons under 20 years old with the "right of abode" under Hong Kong's Basic Law, were still waiting to be issued the necessary paperwork to enter Hong Kong. There were potentially tens of thousands more who had not applied.

The court ruled that the Chinese ordinance was unconstitutional as it restricted rights granted under Hong Kong's Basic Law--the underlying legal framework for unification. It rejected the argument of government lawyers that as the ordinance derived its authority from the National Peoples Congress (NPC), China's highest legislative body, no Hong Kong court had the power to overrule it.

Having asserted its constitutional position, however, the court went on to sanction an immigration system with virtually identical practical results--the exclusion of large numbers of mainland Chinese with a parent in Hong Kong.

The Final Appeals judgement was opposed in Beijing, not because of any implications for immigration into Hong Kong, but because it asserted the right of Hong Kong courts to overrule legislation of the National Peoples Congress.

Four leading Chinese constitutional experts who had participated in drawing up the Basic Law denounced the ruling as "an attempt to turn Hong Kong into an independent political entity". Zhao Qizheng, the spokesman for the Chinese government's State Council, stated on February 8: "The court decision is a mistake and against the Basic Law...The court decision should be changed."

Hong Kong Chief Executive Tung Chee-hwa also called for a change of the court's judgement. Hong Kong delegates to the March 6 National Peoples Congress threatened to raise the matter and have the body rule that Hong Kong courts have no jurisdiction over legislative

acts of the central government.

On February 26, under intense political pressure, the court "clarified" its judgement in a conciliatory five paragraph statement which stated: "The court cannot question the authority of the National Peoples Congress...to do any act which is in accordance with the Basic Law".

The legal conflict between Beijing and Hong Kong has raised more fundamental issues. Before the Chinese takeover, many foreign investors insisted that the contracts they entered into on mainland China specify that disputes be arbitrated by Hong Kong law and in Hong Kong courts.

Hong Kong's attractiveness as the financial centre for business activity in China rested not only on its proximity, but also on the fact that as a British colony it had in place long-established company and commercial law. The capitalist investor, who put his money into China, expected to be able to get it out again.

Since the takeover, doubts as to the status of Hong Kong law under Chinese control have resulted in a nervousness among investors, which has only been heightened by the controversy over the "right of abode".

Martin Lee Chu-ming, a barrister and the chairman of the Democratic Party in Hong Kong, warned that if a court ruling was altered to suit Beijing "overseas investors will lose confidence in the courts and they may stay away". He described the apologetic "clarification" by Hong Kong's highest court as "shocking".

The American Chamber of Commerce, credit agency Standard & Poors, the British and US governments and leading world financial media outlets issued statements of concern.

Investors had already begun to look to Singapore as a possible alternative to Hong Kong. Singapore has responded to the opportunities, especially following the fall of the Singapore dollar, by offering ever-more attractive incentives to banks and corporations to relocate there. This prompted high level denunciations from Hong Kong that Singapore was stealing business and was nothing more than an "offshore betting centre".

One of the chief concerns of big business is in the field of contract and bankruptcy law, especially under conditions of an economic downturn in China. Potentially billions of dollars hinge on the question of whether the law of China or Hong Kong will prevail.

After last year's liquidation of the Guangdong International Trust and Investment Corporation (Gitic) with over \$US2 billion in liabilities, mostly to Hong-

Kong based banks, financial circles were stunned by an official announcement that China's bankruptcy laws make no provision for giving priority to repaying foreign creditors.

Investors are now worried that the same will happen with the shaky Guangzhou International Trust and Investment Corporation (Gzitic) and its Hong Kong-based investment arm, Guangzhou Finance. The firm holds liabilities to foreign banks and creditors exceeding \$1 billion, with a further \$1.71 billion in domestic liabilities owed to mainland banks and creditors.

Despite high-level assurances by the Guangzhou municipal government and the Peoples Bank of China, as well as official requests not to move against Gzitic, a number of foreign investors have lodged a court action in Hong Kong, due to be heard on April 14, to recover an overdue \$30 million syndicated loan.

For two decades Hong Kong has served as the base for the émigré Chinese bourgeoisie on the island itself, in Taiwan, and throughout the Asian diaspora, to seek to recover the wealth, power and influence they lost on the mainland in 1949.

Some \$82 billion is turned over each day in Hong Kong's foreign exchange and derivatives market. Much of the capital flowing in and out of Hong Kong is bound up with business activities on mainland China. Hong Kong is the largest source of foreign direct investment into China with over 80,000 Hong Kong-related companies active in the southern coast province of Guangdong alone.

Hong Kong-based banks are by far the largest providers of credit to China, making tens of billions in syndicated loans available to mainland companies, generally through subsidiaries and branches of mainland banks and finance houses that have been registered in Hong Kong in order to avoid central government regulations and duties.

With such huge investments at stake, the conflicts between the Hong Kong capitalist class and the emerging bourgeoisie in Beijing are certain to intensify. The legal dispute over the "right of abode" is simply the first round of what is likely to become a protracted and bitter struggle.



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