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DIRECTORATE OF INTELLIGENCE

16 September 1985

Hong Kong Land Policy Under the Sino-British Joint Declaration

Summary

Authority over land policy and lease revenues during the transition period was hotly debated during the Sino-British negotiations over Hong Kong's future last year. In the end the British agreed to set up a joint commission to oversee land policy and accepted certain guidelines. As a result the Hong Kong Government will continue to handle the day-to-day administration of land matters but will operate under new restrictions. It will not be allowed, for example, to auction more than 50 hectares of land a year, and it must turn over half of the sales revenues to a special fund set aside for the use of a post-1997 government. Only the joint commission can waive the 50-hectares limit and allocate money from the special fund for use on development projects between now and 1997. The Chinese, we believe, will use the commission to learn how to administer the present leasing system in order to facilitate a smooth transition to Chinese control. The British remain concerned, however, that the Chinese will try to influence the Hong Kong government's decisions on leasing land.

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This memorandum was prepared by [Redacted] Office of East Asian Analysis. Information available as of 16 September 1985 was used in its preparation. Comments and queries are welcome and may be directed to the Chief, Foreign Affairs, China Division, OEA, [Redacted]

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The Land Issue

The land issue was the catalyst in 1982 for the Sino-British negotiations over the future of Hong Kong. Worried about their investments, the Hong Kong business community pressed the Thatcher government to seek guarantees to protect their interests beyond the 1997 termination of the New Territories lease.* Some companies were particularly worried that China would not honor the terms of the existing leases and would demand an exorbitant cash premium to renew them after 1997. Residents of the New Territories also wanted assurances that their post-1997 property rights would be respected, and developers hoped to secure lease rights beyond 1997 before committing themselves to new projects. [REDACTED]

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The Chinese were concerned about maintaining business confidence, but they were also determined to gain a say over land policy and the use of revenues from land sales during the transition period. In particular, Beijing feared the British-run administration in the colony would sell off the best land and pocket the proceeds before Hong Kong reverted to Chinese sovereignty. [REDACTED]

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Not surprisingly, the land issue was one of the most contentious during the long negotiations. After much debate the British conceded and agreed to establish a Joint Land Commission, composed of three British and three Chinese officials.** They also agreed--at Chinese insistence--to place a limit on the amount of new land that can be leased each year--50 hectares--and on how to allocate the proceeds. The commission is not empowered to decide individual cases, but will have discretionary power to suspend the new-50 hectare limit and to allocate some land revenue for current development projects. [REDACTED]

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Since it was established last spring the commission has met three times, mainly to work out procedures and discuss lease documentation. Land auctions had been suspended since the Sino-British Joint Declaration went into effect pending the outcome of these discussions, but at the last session on 15-16 August the commission agreed to hold its first auction under the new guidelines on 24 September. [REDACTED]

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* The British never seriously considered trying to maintain Hong Kong Island and the Kowloon Peninsula as a separate colony. [REDACTED]

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** The British team consists of John Todd, Hong Kong's Director of Lands, Noel Gleeson, the Registrar-General, and John Chan, Deputy Secretary of General Duties. Although the Chinese members may not have extensive knowledge of Hong Kong's land policies, they do hold important political positions. Sun Yanheng is a deputy departmental director in the Hong Kong and Macao Affairs Office of the State Council. Li Weiting is the director of the research department of the Xinhua News Agency in Hong Kong and Zhong Ruiming is a senior researcher in Xinhua. Xinhua is China's unofficial political representative in Hong Kong. [REDACTED]

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Past Practice

All land in Hong Kong is owned by the Crown, and is leased in one of two ways: by public auction, or by private treaty. When land is put up at auction the lessor generally pays a substantial premium, or lump sum similar to actually purchasing the land. He then pays only a nominal rent. The government regulates such sales to ensure a stable market. When demand was high in 1980-82, for example, the government put more land up for auction. These sales have been an important source of funds for the Hong Kong Government, averaging around 10 percent of total revenue, and up to 30 percent during the 1980-82 property boom. [REDACTED]

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Occasionally the government will designate a piece of land for a specific purpose and lease it by private treaty rather than public auction. The government grants private treaties for such things as public housing, utilities, and schools. It also uses this device to allow certain industries it favors to obtain land at a discount. [REDACTED]

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The Hong Kong Government originally granted leases for three different lengths of time: 75, 99, and 999 years. Leases have now been standardized in the ceded parts of Hong Kong (i.e. Hong Kong Island, and Kowloon peninsula south of Boundary Street) to a term of 75 years with an option to renew for an additional 75 years. Leases in the rest of Hong Kong (i.e. the New Territories, and Kowloon north of Boundary Street) are good only until 30 June 1997. [REDACTED]

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Renewable leases--which applied only to land ceded to Britain by treaty--can be extended automatically without the payment of a further premium and on the same terms as before. In the past businesses with nonrenewable leases had to negotiate a new lease and pay a further premium based on the new value of the property. Because land values have gone up enormously over the years, the Hong Kong Government adopted a policy in 1973 of charging 3 percent of the rateable value of the land as annual rent in lieu of a cash premium in order to make it possible for many firms to re-purchase their leases. [REDACTED]

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Transition Period

Under the Sino-British Joint Declaration the Hong Kong Government will continue to issue new leases until 30 June 1997. These leases may run until 2047, and land will continue to be leased under the existing system of public auctions and private treaties. The restriction of 50 hectares on land sales should have little impact on land values as the Hong Kong Government has rarely sold more than that amount anyway. During the height of the property boom in 1981 it leased only 60 hectares of new land. [REDACTED]

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The Joint Declaration places leases in two categories: those which end after 30 June 1997, and those which end before 30 June 1997 (all leases in the New Territories). Leases which extend beyond 30 June 1997 will continue to be recognized. Leases which expire before 1997 may be extended without a new premium until 2047. In both cases the government will charge a rent of 3 percent of the current rateable value on all

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property except for village land held by "indigenous" villagers. They will pay only a nominal rent. This system is similar to the Hong Kong Government's current policy with one major difference. Instead of the rent being based on land values at the time of the renewal, it will fluctuate annually as the rateable value changes. This agreement has allayed business community fears that China would demand a cash premium payment, based on the current market value of the piece of land, to renew a lease. [redacted]

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Another key difference is how the revenue from the land auctions will be used. The apportionment of revenues was probably one of the stickiest points to resolve during the negotiations. The British had wanted to continue to place all revenue in the Capital Works Reserve Fund where they could use the money to finance long-term public-works projects throughout the territory. The Chinese insisted that since the leases on the land auctioned would extend past 1997, the post-1997 Special Administrative Region Government should receive a share of the proceeds. The two sides finally agreed to split the revenue evenly between the present and future Hong Kong Governments. [redacted]

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Chinese Aims

We expect the Chinese will use the Commission to learn as much as they can about the land administration system in Hong Kong in order to facilitate a smooth transition to Chinese control. Beijing will be monitoring land sales closely as part of its concern over the economic climate of Hong Kong, and should conditions permit, they may try to influence directly the allocation of land. The British, however, remain concerned that Beijing will at some point encourage Hong Kong residents to use the commission as an alternative adjudication center when dissatisfied with Hong Kong Government land decisions. So far the Chinese have not interceded on behalf of any group or individual in Hong Kong. [redacted]

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