



THE AMERICAN CHAMBER OF COMMERCE IN HONG KONG

SUBMISSION FOR THE CHIEF EXECUTIVE'S 2012-2013 POLICY ADDRESS

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The American Chamber of Commerce in Hong Kong (AmCham) shares the Chief Executive's vision of "One Heart, One Vision" for Hong Kong and agree with his proactive and pragmatic approach to lead Hong Kong in "seeking change while preserving stability." The Chamber recognizes that wise policies and effective implementation are needed to address long-term livelihood and quality of life issues affecting the people of Hong Kong.

Asia's World City

As AmCham has emphasized over the years, it is imperative for the government and the business community to continually work constructively together to strengthen Hong Kong as Asia's world city. The strong presence of the international community and regional headquarters of global firms are key strengths that help define Hong Kong's world city status. We firmly believe that continuous constructive collaboration between the government and the international business community is essential in maintaining Hong Kong's status as a vibrant regional and international hub.

A world-class city needs a world-class vision. Hong Kong's vision must of course embrace China's 12th Five-Year Plan, more substantial implementation of CEPA, and further promotion of Hong Kong as a gateway both into and out of China. It is also essential that the government celebrate the city's growing relevance to regional and global business development, especially in Southeast and South Asia. For example, in mid-November the Chamber led a delegation of 24 senior executives from Hong Kong and the Bangladesh/India region, to meet with the key Bangladeshi government officials. The delegation represented more than two dozen brands and retailers, and more than a quarter of the country's ready-made garment export volume. This shows that in Hong Kong, as a global business hub, the spokes do not only go north. The world is at our doorstep, and our doors need to be wide open and welcoming.

To these ends, AmCham is particularly concerned about building further competitive advantages for Hong Kong in its unique interactions with Mainland China, as well as focusing on cutting-edge development of best practices in financial services, environment, education, intellectual property, and implementation of its new competition law.

Hong Kong-China Relations

AmCham's China agenda is one of its top priorities and the Chamber continues to promote Hong Kong as a gateway in and out of China. The Chamber considers the Hong Kong Chapter in China's 12th Five-Year Plan to have great merit, and uses it as a roadmap for identifying and capturing business opportunities, particularly focusing on market access for Hong Kong-based service industries and companies into the PRD.

The Chamber sees great opportunities for local and multinational companies in China's objectives to grow domestic demand and to develop its service sector. These companies can certainly provide a wealth of experience and expertise. Despite the spirit of CEPA, and a number of other cross-boundary instruments, Hong Kong-based companies still face significant barriers to market access and business development. We urge the government to continue working diligently to help reduce or remove those barriers. If more Hong Kong-based companies can expand their operations in China, it will do much to upgrade China's competitive environment, strengthen its service industries, and upgrade the overall quality of its goods and services.

AmCham continues to emphasize that Hong Kong is the ideal platform for Chinese companies to "go global." We recommend vigorous raising of Hong Kong's profile and visibility as the place for Chinese companies to locate as they invest and expand offshore. Chinese companies should look to Hong Kong in order to set up their financial, treasury, and strategy centers from which they can expand globally. The government and business sector need to work together to expand and consolidate Hong Kong's role as an international capital center for Chinese companies to plan and manage their overseas investments.

World-Class City, World-Class Vision, World-Class Execution

Hong Kong prides itself in having rule of law, low taxes, efficient transport, and other qualities conducive to stability and prosperity. Beyond that, the Chamber respectfully urges the government to express a clear long-term vision for the city – an urban plan and timetable for execution that goes beyond the next five years. We recommend attention to the following areas to be included in that vision, plan, and timetable:

a. Financial Services

The Chamber welcomes the Chief Executive's establishment of the Preparatory Task Force on the Financial Services Development Council. We consider it prudent and sensible that Hong Kong should adopt a long-term, holistic approach in mapping out development of the financial sector. We urge the government to vigorously take into consideration new global regulatory trends and to implement relevant international best practices. Specific initiatives that could ensure that Hong Kong remains an international financial center encompass equities, bonds, collective funds, ETFs (Exchange-Traded Funds), listing private equity, and hedge funds.

AmCham recognizes that Hong Kong, as China's premier offshore RMB business center, has a unique role to play in the internationalization of the currency. Hong Kong should continue to develop China-related products, such as offshore RMB, RQFII, and wealth management. AmCham agrees with the government that Hong Kong should pursue long-term development plans in greater economic cooperation with the PRD.

AmCham further urges the government to make relevant changes in its tax and fund legislation with a view to becoming a private equity hub. We are optimistic that the encouragement of fund setup in Hong Kong will create more job opportunities and increase tax revenue. The Chamber would be pleased to discuss this further with the appropriate government departments.

In addition, the Foreign Account Tax Compliance Act ("FATCA"), an enacted US law, imposes very challenging new compliance obligations on financial institutions worldwide, including Hong Kong, which could have an adverse impact on the financial services industry if not handled properly. A growing number of governments are choosing to enter into a so-called "inter-governmental agreement" (IGA) with the US in order to obtain certain advantages with respect to FATCA compliance. AmCham recommends that the Hong Kong government very seriously analyze the possibility of entering into a FATCA IGA with the United States. The Chamber has strong expertise in this area and is willing to work with government on this complex topic.

b. Environment

Hong Kong as a first-rate city needs first-rate air quality. AmCham urges the government to demonstrate even greater environmental leadership by providing supportive policies and imposing reasonable, clear, and forceful regulations to induce businesses and community leaders to adopt greener environmental practices via a “carrot and stick” approach. This means introducing incentives to “do well by being greener” but at the same time enacting clear environmental regulations that level the playing field. More specifically, AmCham recommends:

- Setting and facilitating higher environmental standards of diesel goods vehicles and buses: While the government should continue to offer incentives to spur adoption of cleaner emission vehicles (the “carrot”), it must also impose regulations along a clear timeline for compliance (the “stick”), in line with international practices. For example, all vehicles must be Euro IV compliant in certain defined road corridors by 20XX or be faced with pollution penalties. This is London practice. For upgrading buses, AmCham advocates supportive policy in adopting zero-emission technologies. Rather than having the government subsidizing for the entire sum in adopting clean or zero emission technologies, it should rather be focusing on bridging the funding gap between available diesel technology and the clean/zero emission technology, in line with international practices (e.g., London, Singapore).
- Improving traffic management and restructuring bus routes: The government must significantly step up its efforts on solving the worsening congestion problem in “demand-side management.” Referring to the transport practices of many developed countries, Hong Kong should (1) adopt better traffic management practices (e.g., more technology-enabled diversion of traffic); (2) manage the use of private cars (e.g., congestion charging); and (3) further encourage the use of public transport (railways and buses via priority schemes). In addition, the current duplicated and underutilized bus network should be significantly revamped for greater environmental performance, to be measured by “carbon produced per passenger-km.” Restructuring the bus network is a win-win effort that could significantly improve roadside air quality, lower transport costs, and raise bus speeds/network connectivity and therefore should be much more aggressively pursued. While the lack of district council willingness to accept bus route reorganization changes is often cited as the barrier, the government has been seen as half-hearted in these efforts and has not acted as the final decision-maker in spite of clear evidence supporting change.
- Enabling sea-trade logistics sector to adopt international emission standards: There have been industry-led efforts to mitigate the impact of air pollution caused by the sea-trade logistics sector, namely the voluntary adoption of the Fair Winds Charter in switching to low sulfur fuels. While AmCham welcomes the government’s announcement earlier this year on its reduction in port dues for those carriers which voluntarily switch to low sulfur fuels, this is again a “carrot-only” approach which does not drive real behavior change; the remaining costs are forcing many in the industry who have been volunteering under the Fair Winds Charter to re-evaluate the case for continuing this practice. AmCham recommends a full carrot and stick approach by (1) covering even more of the current cost recovery gap through incentives; and (2) working together with the Guangdong government to establish and enforce emissions regulations in line with the Fair Winds Charter by a defined date.

Finally, regarding the recently updated AQOs (Air Quality Objectives), AmCham is disappointed that the government, despite its claims to be “Asia’s world city,” has chosen to adopt the easier to meet “Interim” targets rather than the more progressive “Final” targets. We are given to understand by the EPD (Environment Protection Department) that the Interim targets are adopted upon careful consideration of the government in balancing the achievable against the ideal. However, AmCham believes that the new

AQO targets are far too achievable and not ambitious enough (i.e., the targets could be met without significantly changing the “status quo”). We believe that Interim targets are not suitable for a world-class city like Hong Kong, since Interim targets were established by WHO (World Health Organization) to help developing nations/cities move towards an achievable standard while balancing economic development to raise standards of living. While we recognize that currently no country in the world is able to meet the full WHO guidelines, the objective of setting ambitious targets is to make progressive change. Hong Kong needs to aspire to higher standards and set a more positive, determined tone for progress in this area.

c. Education

Hong Kong needs world-class talents. With a rich history and experience base as China’s international gateway, Hong Kong has a credible opportunity to position itself as a key source of internationally capable talent for a global China. By 2015, China’s available workforce will plateau and start to shrink, but the demand for skilled, service sector workers will continue to rise.

An accessible, effective education system is fundamental to Hong Kong’s future. AmCham urges Hong Kong to build a more structured, transparent approach to support long-term planning and access to quality education. We believe the shortage of international school spaces is symptomatic of the lack of a holistic planning model that considers the movement of international and Mainland families to Hong Kong, and also reflects concerns about the quality of education provided at many local schools, especially in the level of English language and science instruction. These are critical matters, for they have an impact on Hong Kong’s competitiveness in attracting foreign talents who contribute to the international capabilities of Hong Kong’s workforce, and may also prevent generations of Hong Kong students from realizing their potential. International companies want to hire locally, but the products of local schools need to measure up to global standards.

In addition, the government needs to plan for 21st century needs not only in university curricula, but also in post-secondary vocational schools. Despite the upgrading and growth of educational institutions in China, available talents cannot meet demand. Hong Kong can be a beneficiary of the growing demand for internationally capable talent in China’s new service sector if it can provide a properly educated workforce. Education beyond high school is highly valued if it provides the skills employers need and the credentials they recognize. Other developed markets are actively taking steps to understand workforce needs, economic development trends, and to align post-secondary education offerings to meet these needs. Such a process would greatly benefit Hong Kong as it would enable us to more strategically target and attract educational institutions in key demand sectors – for instance, RicheMont or Dior’s Retail Academy, Les Roches International School of Hotel Management, Le Cordon Bleu College of Culina.

d. Intellectual Property

Hong Kong has traditionally embraced policies that foster the development of local creative and innovation industries. To ensure that Hong Kong remains competitive as a knowledge economy and is able to attract and retain Chinese and foreign investments, the government must provide an ever more robust intellectual property rights protection regime that is in keeping with international best standards. Specifically, online piracy presents a serious and immediate threat to all copyright-based industries, and Hong Kong’s copyright legislation lags behind many jurisdictions in respect of its ability to address challenges arising from the digital environment. AmCham urges the government to take forward the review of the Copyright (Amendment) Bill 2011 to address these issues and challenges without delay.

As the government appreciates, an important component of any legislative effort is public support. AmCham also urges the government to embark upon a proactive and comprehensive outreach program to promote respect of intellectual property rights by consumers and businesses, and work to correct any

associated misconceptions. The government should also consider ways, including education, to encourage corporate governance and compliance with intellectual property laws and regulations.

e. Competition Law

The adoption in June 2012 of the Competition Ordinance, Hong Kong's first ever cross-sector competition law regime, is a milestone for Hong Kong, which AmCham welcomes and supports for several reasons. First, it is hoped that competition legislation can serve as a useful tool for the government to promote economic efficiency and competition in order to reduce costs to businesses operating in Hong Kong and improve consumer welfare. This is an opportunity to make Hong Kong a more competitive environment. Second, the adoption of the Competition Ordinance brings Hong Kong in line with international standards, putting an end to questions as to why Hong Kong was one of the last developed economies without a competition law regime. This situation was all the more striking as China adopted its own competition law regime over four years ago. In sum, the adoption of the Competition Ordinance is a demonstration of the strength of the rule of law in Hong Kong.

However, the adoption of the Competition Ordinance comes with its share of challenges. Uncertainty is the greatest of all. The general perception is that in spite of the improvements to the Bill in the few weeks preceding the vote, the Ordinance still contains terms, concepts, and processes that require clarification. An unpredictable legal environment drives the cost of doing business up, and often paralyzes decision-making. AmCham urges the government to clarify and communicate the Ordinance's implementation and impending entry into force, to move swiftly on the establishment of the Competition Commission, and to quickly issue guidelines for public consultation. The government should also consider means to demonstrate the relevance of this new legislation to consumers and the people of Hong Kong generally. This objective should inform the Commission's enforcement agenda at the beginning. Finally, AmCham has shared with the government its concerns about the vast exemption granted to statutory bodies. This exception is unnecessary, disproportionate, suggests that the law is discriminatory. It ultimately undermines competition.

AmCham looks forward to further opportunities to cooperate with the government in the build-up of a suitable competition regulatory regime for Hong Kong.

Conclusion

To conclude, it is Hong Kong's top priority to provide a healthy and stable business environment. To this end, it must maintain its international characteristics and independence; honor one country, two systems; and uphold the rule of law. AmCham cannot emphasize enough the importance of Hong Kong to be unified in turbulent times such as the present. We will continue to work with the government bureaus, departments, and agencies, the Legislative Council, relevant business and trade organizations, and the Hong Kong community towards achieving the common interests of Hong Kong.

AmCham is the largest international chamber in Hong Kong, and represents a broad and diverse membership. It has more than 1,800 members, covers over 40 nationalities, and includes large multinationals as well as small- and medium-sized enterprises. AmCham is one of the most dynamic and influential international business organizations in the Asia-Pacific region. The Chamber's mission is to enhance Hong Kong's stature as an international business center fostering commerce among the Mainland China, Hong Kong, and the United States.