



# The impact of the recent social incidents and enactment of the Hong Kong Human Rights and Democracy Act of 2019 in the United States on Hong Kong's economy

IN02/19-20

## 1. Introduction

1.1 In recent months, Hong Kong's economy has experienced a setback amid the ongoing protests<sup>1</sup> and external uncertainties. Based on the latest estimate, Gross Domestic Product ("GDP") in the third quarter of 2019 has dipped by 2.9% year-on-year in real terms. As a result of the social incidents, certain sectors such as retail, catering and tourism have been severely hit. To help the enterprises and individuals tide over the difficult time, the Government has rolled out three rounds of relief measures. In the meantime, the Hong Kong Human Rights and Democracy Act of 2019 (the "HKHD Act") has recently been passed by the United States ("US") Congress and signed into law by the US President, triggering concerns of the Legislative Council Members over its economic implications on Hong Kong.<sup>2</sup>

1.2 On 6 December 2019, the Panel on Commerce and Industry, Panel on Economic Development, Panel on Financial Affairs, and Panel on Information Technology and Broadcasting will hold a joint meeting to discuss the economic impact arising from the recent social incidents and changes to external environment, including the enactment of the HKHD Act. To facilitate Members' discussion, the Research Office has prepared this information note providing information on (a) the recent economic situation of Hong Kong and major views and concerns of stakeholders over the present business environment and the Government's relief measures; and (b) the background about the HKHD Act and its possible economic impact on Hong Kong.

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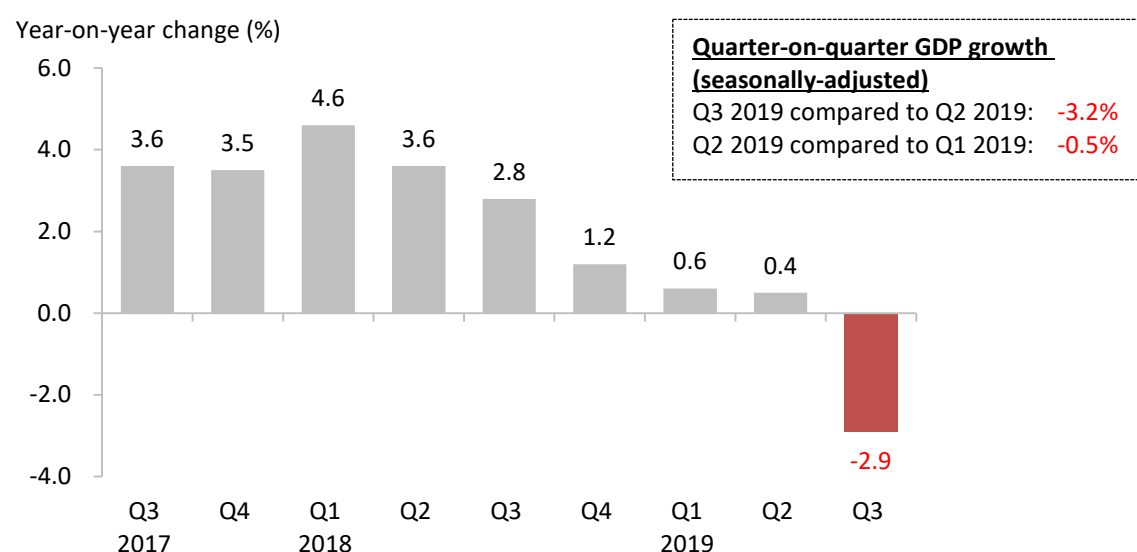
<sup>1</sup> Since June 2019, Hong Kong has seen a series of protests, as triggered by the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019. The bill was formally withdrawn by the Government on 23 October 2019.

<sup>2</sup> At the Legislative Council Meeting of 20 November 2019, a Member raised a Council question relating to the HKHD Act.

## 2. Recent economic situation of Hong Kong

2.1 Since the second half of 2018, the economy of Hong Kong has experienced a decelerating growth amid global uncertainties marked by incidents such as the China-US trade conflicts and Brexit. In recent months, the city's economic performance has deteriorated more visibly as a result of the local social incidents. According to the Government's latest estimate, GDP in the third quarter of 2019 has slid by 2.9% compared to the same quarter a year earlier (**Figure 1**), which is the largest year-on-year decline since 2009. Meanwhile, both the second and third quarters of 2019 had exhibited a consecutive quarterly contraction of 0.5% and 3.2%, indicating that Hong Kong's economy has entered a technical recession.<sup>3</sup>

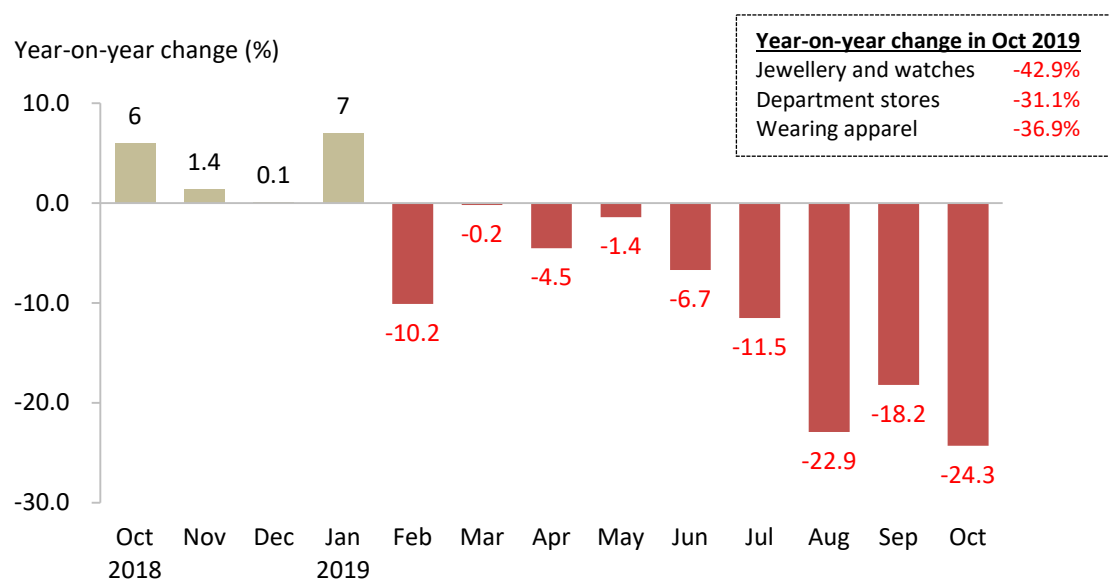
**Figure 1 – GDP growth in real terms**



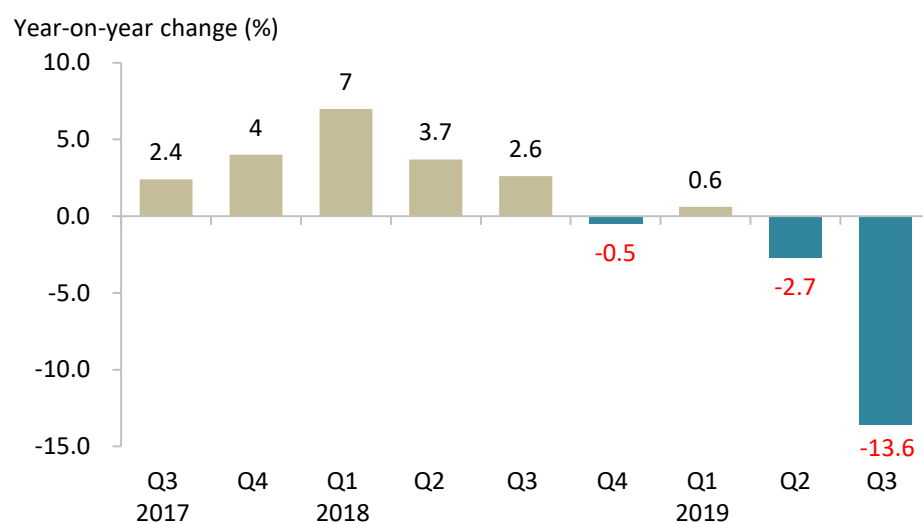
2.2 Among the various industries/sectors, **retail, catering and tourism** have been impacted the most. **Retail sales** have seen double-digit drop since July 2019 (**Figure 2a**), with those selling clothing and footwear products, department stores, as well as jewellery and watch shops plunging the hardest. For **catering business**, in the third quarter of 2019, the total restaurant receipts after adjusting for price change have fallen by 13.6% year-on-year (**Figure 2b**). The decline was the largest since the outbreak of SARS in 2003.

<sup>3</sup> See GovHK (2019e).

**Figure 2a – Retail sales growth**



**Figure 2b – Restaurant receipts (after adjusting for price change)**

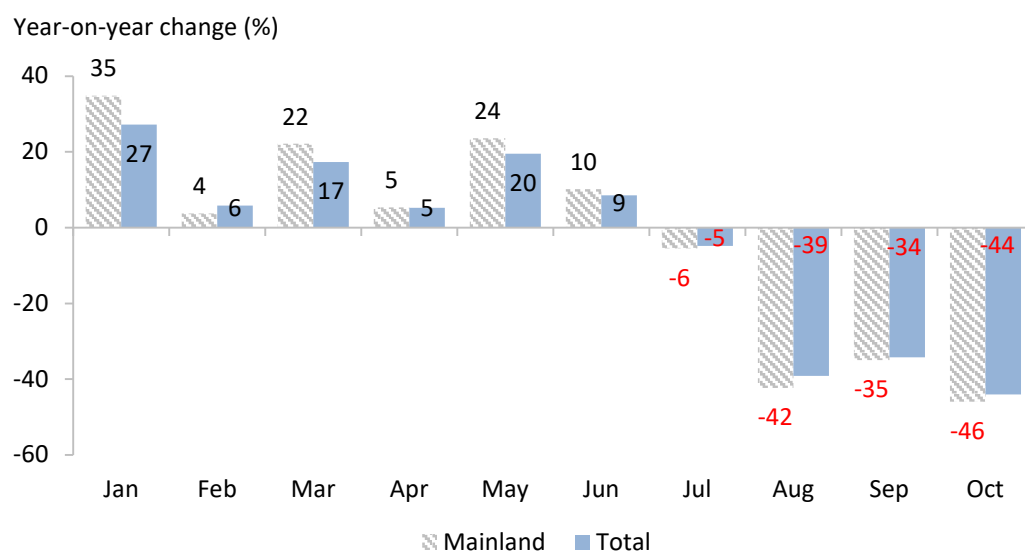


2.3 Political unrest in Hong Kong has resulted in 40 countries issuing advice on travelling to Hong Kong. Consequently, monthly **visitor arrivals** to Hong Kong have plummeted sharply year-on-year since August 2019. In particular, Mainland visitors, which accounted for a majority of total visitor arrivals<sup>4</sup>, have reduced by over 40% in October compared with the same period of last year (**Figure 3a**). Meanwhile, **hotel occupancy** rate had tumbled to 68% in October 2019, compared to 92% a year earlier (**Figure 3b**).

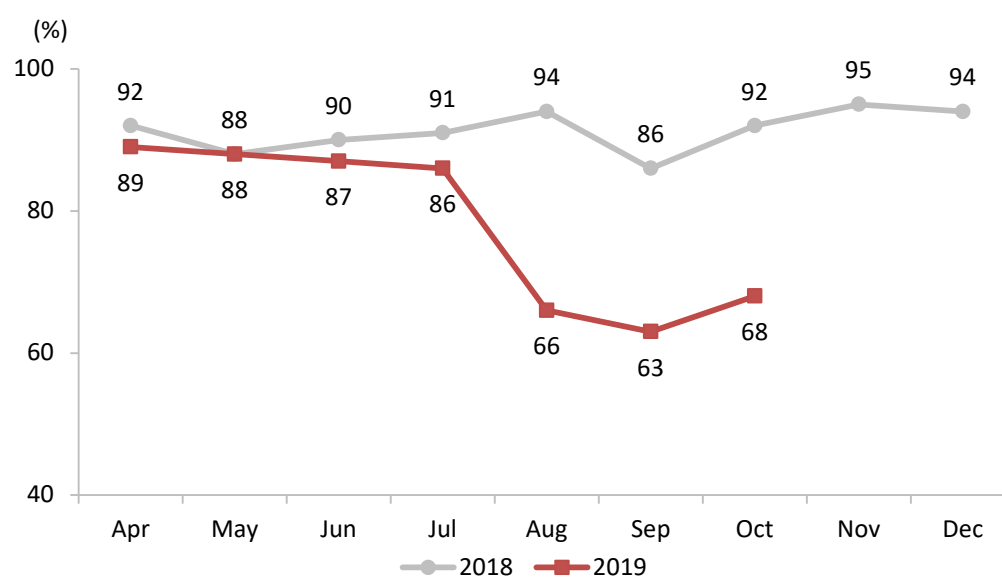
<sup>4</sup> In 2018, Mainland visitors accounted for 78.3% of total visitor arrivals.

Worse still, several **large-scale events** planned for the last quarter of 2019, including the annual Hong Kong Cyclothon, New World Harbour Race, and the Hong Kong Wine & Dine Festival, were also cancelled in light of the social incidents.

**Figure 3a – Visitor arrivals in 2019**

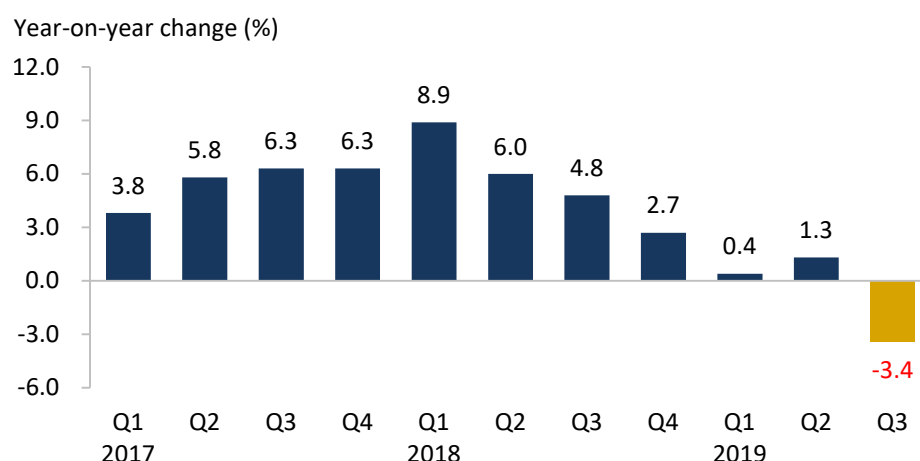


**Figure 3b – Hotel room occupancy rate in 2018 and 2019**

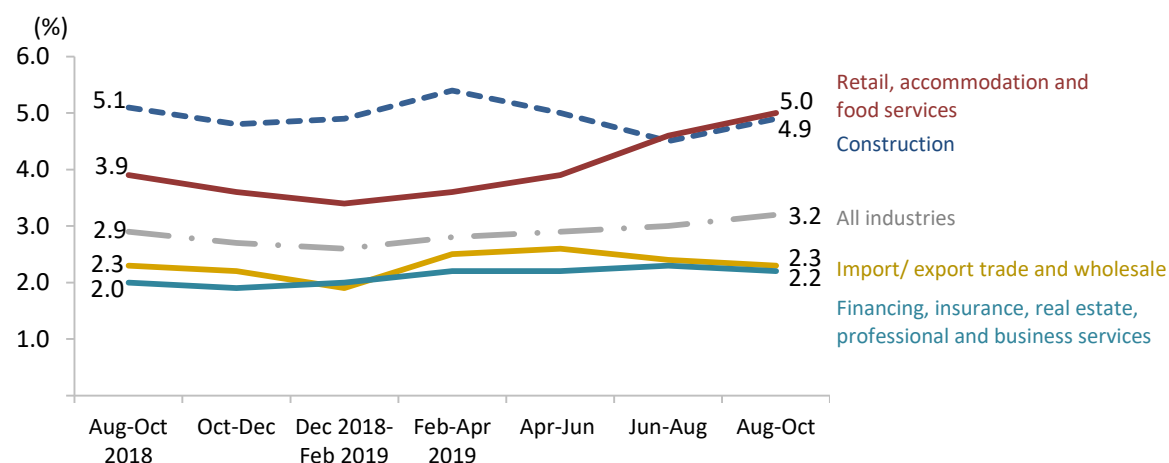


2.4 On the demand side, **private consumption expenditure** in the third quarter of 2019 has declined by 3.4% in real terms from a year earlier (**Figure 4a**), which, according to the Government, was also the first year-on-year decline in more than 10 years. As a result of the deterioration in consumption activities, **unemployment** rate of the retail and catering sectors has soared to **5%** during August-October 2019 (**Figure 4b**), while the overall average of all industries has also gone up slightly to 3.2%. For the top pillar industries of import/export trade and finance services, unemployment rates have remained largely steady. The construction sector, however, has begun to see job loss. Meanwhile, the **underemployment** rate has edged up slightly from 1.0% in the period of January-March 2019 to 1.2% during August-October 2019.

**Figure 4a – Private consumption expenditure in real terms**



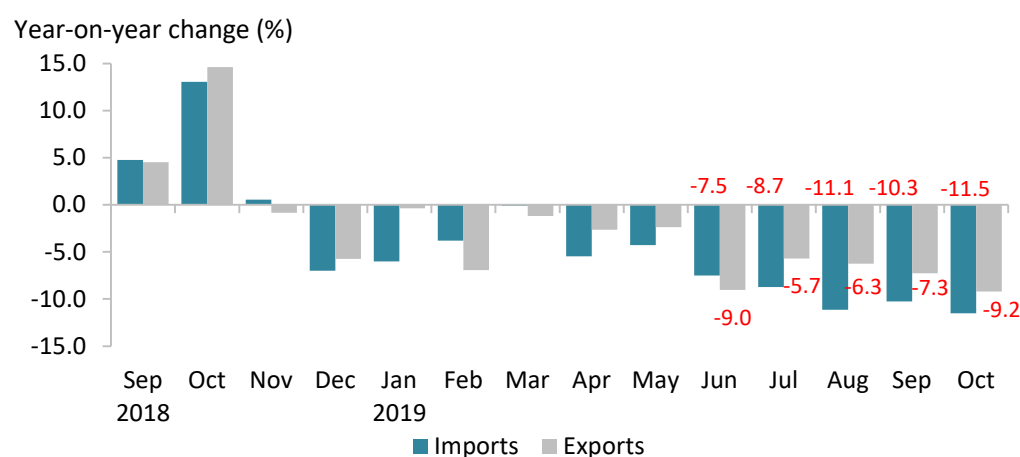
**Figure 4b – Unemployment rate by industries<sup>(1)</sup>**



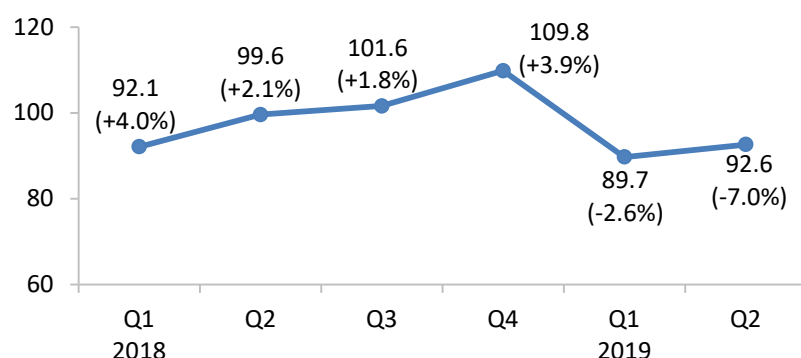
Note: (1) Figures are not seasonally adjusted.

2.5 While there are no obvious signs of rising unemployment in the import and export trade sector, amid the tensions of the trade conflicts between China and the US, monthly **merchandise trade** figures have been on persistent decline since late 2018. The declines in recent months have been more noticeable, which might partially reflect the pessimism over the short-term local economy (**Figure 5**). Also noted is the decline in the business receipts index of the **computer and information technology services**<sup>5</sup> compiled by the Census and Statistics Department, reflecting worsening business performance of the sector in 2019 (**Figure 6**).

**Figure 5 – External merchandise trade**



**Figure 6 – Business receipts index of computer and information technology services<sup>(1), (2)</sup>**



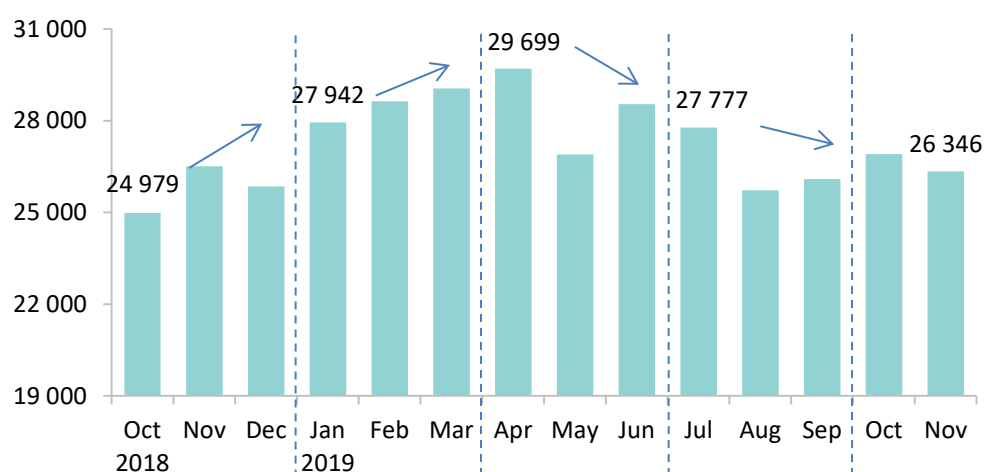
Notes: (1) Business receipts refer to service receipts, receipts from sales of goods, commissions, rental, interest and other income of an establishment.

(2) Figures in ( ) show year-on-year change of the index.

<sup>5</sup> Computer and information technology services involve a range of services, including selling, installation and maintenance services rendered by distributors of computer equipment as well as information technology related services and software development services, etc.

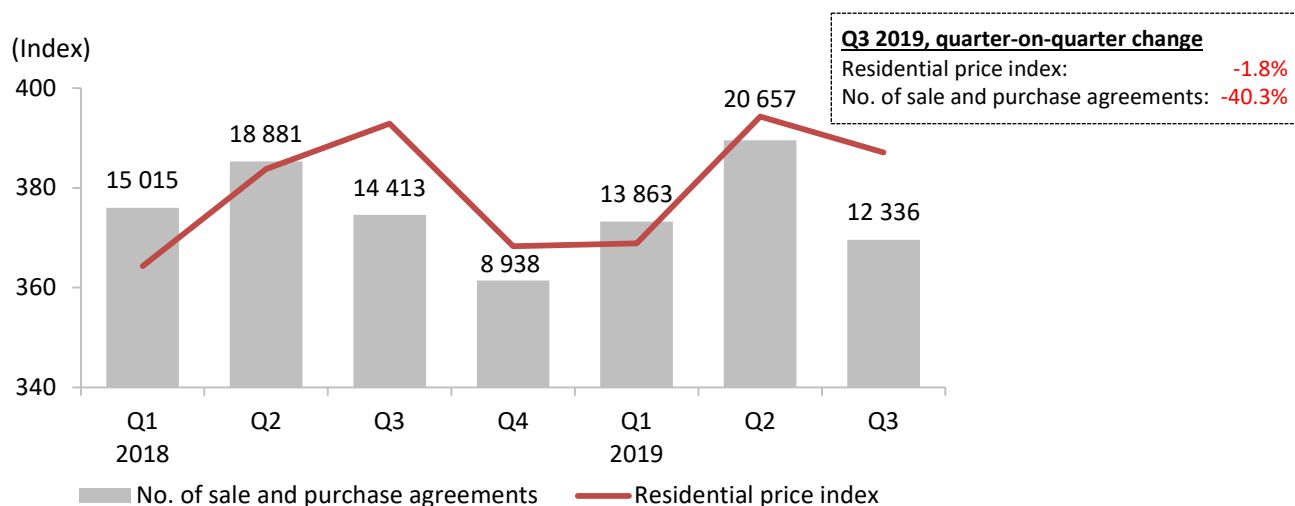
2.6 The financial services sector is on the other hand comparatively stable. According to Hong Kong Monetary Authority ("HKMA"), the **banking system** remains sound with no noticeable deposit/fund outflows. The **stock market** as measured by Hang Seng Index, which tends to be more sensitive to the global market sentiments, has not been deeply impacted by the recent social incidents. Yet the weakened performance in recent months might somewhat reflect investors' confidence in the local market development (**Figure 7a**). As to the **residential property market**, its price has remained solid. In the third quarter of 2019, price index has dipped by merely 1.8% from the second quarter (**Figure 7b**). Yet the number of sale and purchase agreements has dropped by 40% during the same period.

**Figure 7a – Hang Seng Index movement<sup>(1)</sup>**



Note: (1) Figures refer to month end closing value.

**Figure 7b – Price index and transactions of residential properties**



## Government relief measures

2.7 Since August 2019, the Government has introduced three rounds of relief measures to stabilize the economy. Many of them are targeted at small and medium enterprises ("SMEs") which account for over 98% of local enterprises and around 45% of total employment in Hong Kong. The measures are highlighted below:

- (a) Dedicated support to **government property tenants** through **rental reduction**: reduce rentals of government properties by 50% for six months including public market stalls and catering establishments, and public car parks under the Lands Department, Government Property Agency and Leisure and Cultural Services Department; and provide six-month special rental concession at 50% discount to existing start-up tenants<sup>6</sup>;
- (b) General support to **a range of industries or sectors** through **waiver of government fees and charges**: waive 12 months of government fees and charges such as new/renewal licence fees for registered commercial vehicles, restaurants, hotels, vessels, hawkers, and cargo operators;
- (c) Dedicated support to **SMEs** through loan guarantee and trade promotion: for **loan guarantee**, the Hong Kong Mortgage Corporation Limited will (i) introduce a new 90% loan guarantee product under the SME Financing Guarantee Scheme ("SFGS"); and (ii) extend the application period of the 80% loan guarantee product with enhancement measures<sup>7</sup> under SFGS to June 2022, and allow SME borrowers to apply for moratorium (12 months maximum) during which only interest payments have to be made. For **trade promotion**, the Government will (i) inject additional HK\$1 billion into the Dedicated Fund on Branding, Upgrading and Domestic Sales and double the funding ceiling per enterprise; and (ii) inject HK\$1 billion into the Export Marketing and Trade and Industrial Organization Support Fund and double

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<sup>6</sup> This covers start-up tenants in Science Park, InnoCentre and Industrial Estates.

<sup>7</sup> The enhancement measures include (a) reducing guarantee fee rates by half, (b) increasing maximum loan amount from HK\$12 million to HK\$15 million, and (c) lengthening the maximum loan guarantee period from five years to seven years.



the cumulative funding ceiling for each enterprise under the SME Export Marketing Fund;

- (d) Dedicated support to **transport and tourism trades**: measures include providing (i) **fuel subsidies** to the transport trade for six months or a one-off fuel subsidy;<sup>8</sup> (ii) **survey fee subsidies** to local commercial marine vessels; and (iii) **cash incentive** of HK\$120 to travel agents for each inbound overnight visitor and HK\$100 for each outbound traveler, subject to a quota of 500 customers and a cap of HK\$60,000 for each agent;
- (e) Support to **workers**: measures include (i) waiving the **construction** workers' registration and renewal fees for one year by the Construction Industry Council; (ii) increasing or expediting minor works projects to create more employment opportunities for the construction sector; and (iii) offering by the Employees Retraining Board specific **training programmes** with allowances capped at HK\$4,000 per month to assist **unemployed or under-employed workers** (including those on no-paid leave) suffering from the downturn to upgrade their skills;
- (f) Support to **individuals/households**: various measures include (i) providing one month of **extra allowance** to social security recipients and those under work/transport allowance schemes; (ii) paying one month's **rent** for lower income tenants in public rental housing; (iii) providing **HK\$2,500** to kindergarten, primary and secondary day-school students; and (iv) providing **electricity charge subsidy** of HK\$2,000 to households; and
- (g) **Tax reduction** for **salaries tax** and **profits tax**: raise the salaries/profits tax reduction rate from 75% proposed under the 2019-2020 Budget to 100% while retaining the maximum dollar amount at HK\$20,000.

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<sup>8</sup> This includes taxi and minibus drivers, public transport operators and owners of commercial vehicles.

### 3. Views and concerns expressed by stakeholders

3.1 The three rounds of relief measures announced in the past few months cost over **HK\$21 billion**. While the measures are generally welcomed by the affected sectors and trades, they are considered to be **short-term** and of **limited effect** in reviving the business activities if the social incidents continue. Based on the current situation, the Government estimates that Hong Kong will experience **negative GDP growth** of **-1.3%** in 2019, down from the revised forecast of 0%-1% made in August 2019 and the original forecast of 2%-3%. The ensuing paragraphs summarize the major views and concerns expressed by different stakeholders over the current state of economy and the series of relief measures.

#### Erosion of Hong Kong's business competitiveness

3.2 Although the financial market remains relatively stable, recently, a global investment bank has reportedly estimated that up to US\$4 billion (HK\$31.3 billion) capital might have **flowed** from Hong Kong to **Singapore**, which saw a jump in foreign currency deposits in July and August.<sup>9</sup> While HKMA states there is no obvious outflow of capital from the city<sup>10</sup>, some have expressed grave concerns about Hong Kong's **long-term business competitiveness**. In particular, in view of the present situation, multinational firms may give less consideration to Hong Kong when establishing their business or investing in Asia. Months of social incidents, which are linked by some people to the ongoing China-US trade talk<sup>11</sup>, have led to increases in perceived risk of investment. In September 2019, a global credit rating agency **downgraded** Hong Kong's long-term **foreign-currency issuer default rating**. The action was followed by another leading credit rating agency changing the city's **credit outlook** from stable to negative, considering the rising risks to the city's institutional strength and its attractiveness as a financial hub amid the social incidents.<sup>12</sup>

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<sup>9</sup> See South China Morning Post (2019a).

<sup>10</sup> See The Standard (2019).

<sup>11</sup> There are views that the recent protests in Hong Kong have been taken by the US as a bargaining chip in the trade negotiation with China. See 《【彭斯演講】美媒解讀 5 大啟示 香港示威正式扯上中美貿易戰談判》，《香港經濟日報》(2019).

<sup>12</sup> See RTHK (2019b).

3.3 According to the survey of the **American Chamber of Commerce in Hong Kong ("AmCham")** published in October 2019, 61% of its member companies' business had been affected to a great or medium extent in recent months, while a quarter of them have been considering scaling back or moving away from Hong Kong, with Singapore being the top destination for back-up plan. However, 76% do not think their companies are considering moving capital, assets or business operations from Hong Kong.<sup>13</sup> Despite this, there remain worries over the erosion of Hong Kong's competitiveness as a **headquarters economy** and **financial hub** in the long run. Unstable business environment may also hinder Hong Kong's development of the **innovation and technology industry**. According to a media report, there are no notable increases in early termination of leases by startups at the Science Park; however, the recent events may cause some overseas technology companies to **reconsider** their development plan in Hong Kong.<sup>14</sup>

#### Calls for widening support to the affected businesses and workers

3.4 As regards the waiver/reduction of government rentals and fees, there are views that the Government should ensure that the relief measures will not only benefit large business operators but also **small tenants**. Other than government properties, it is suggested that the Government should also push for **rental reduction by commercial landlords** such as the Link Asset Management Limited, so that more SMEs can benefit from it. Besides, there are suggestions of **extending the range** of fee and rental waiver/reduction, for instance, to the securities firms' licensing fee levied by the Securities and Futures Commission, and car parks rentals under the Hong Kong Housing Authority.

3.5 In view of ongoing public events, there are also voices that the Government should support the affected businesses with **insurance coverage** and **subsidies** for repairing damaged properties.<sup>15</sup> Moreover, some workers, especially those in tourism-related sectors, have been on prolonged no-paid leave due to the deteriorated business environment. A recent survey by the Hotels, Food and Beverage Employees Association reportedly revealed that about 77% of hotel workers had been asked to take no-paid leave of up to

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<sup>13</sup> See The American Chamber of Commerce in Hong Kong (2019c).

<sup>14</sup> See 《科技園：外企重新考慮來港》，《星島日報》(2019).

<sup>15</sup> See RTHK (2019a).

three days, while 46% expected their employers to lay off workers.<sup>16</sup> While the Employees Retraining Board is providing specific training programmes with allowances to the affected people, there are views that the Government should set up an **emergency fund** to prepare for possible **layoff waves** in the near future.<sup>17</sup>

### Inadequate relief from tax reduction

3.6 On the tax relief front, the Government has adjusted the tax reduction rate from 75% to 100% while retaining the cap at HK\$20,000. While 1.33 million taxpayers will have all taxes waived under the arrangement, some criticize that capping the maximum amount at HK\$20,000 will not help much in reducing the burden of the taxpaying individuals and corporations. Some have called on the Government to exempt or hold over the **provisional tax** to provide a greater relief to the taxpayers.<sup>18</sup> The Government has indicated that under the current arrangement, taxpayers who expect a drop in income may apply for holding over the whole or part of the provisional tax under the Inland Revenue Ordinance. However, some view that instead of following the usual procedure to submit application, there should be a one-off universal arrangement to allow exemption or holding over of provisional tax for all taxpayers.

### Ensuring effectiveness of loan guarantee for SMEs

3.7 For the loan/financing guarantee for SMEs, industry organizations such as the **Federation of Hong Kong Industries** and the **Hong Kong General Chamber of Commerce** welcome the measures and consider that the new 90% loan guarantee could help SMEs relieve the short-term financial burden. Nevertheless, there is a concern that the lending rates offered may remain costly to SMEs. As such, it is suggested that the Government should consider raising the loan guarantee further to **100%**<sup>19</sup>, similar to the arrangement in 2003 when Hong Kong experienced acute economic downturn. Moreover, there are worries that as the year end approaches, SMEs will likely face greater funding difficulties and the risk of business closures may increase. Therefore,

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<sup>16</sup> See South China Morning Post (2019d).

<sup>17</sup> See 《工聯會不滿政府未對旅遊業界提具體支援》，《信報》(2019).

<sup>18</sup> See 《多名建制派議員倡政府應緩繳暫繳稅一年》，《香港電台網站》(2019).

<sup>19</sup> It was raised at the meeting of the Financial Affairs Panel held on 4 November 2019.

some have called for the Government to **simplify the procedures** required to secure government funds.<sup>20</sup>

### Worries over continued decline in tourism and transport businesses

3.8 The present situation of the **tourism sector** is worrying. Inbound visitor arrivals have kept plunging even though concerted efforts had been made by the sector to attract visitors. As such, the effect of the cash incentive is considered to be very limited, especially in attracting visitors using air transport. Besides, it is concerned that bigger tour agencies may not benefit much due to the quota of 500 customers per travel agent.<sup>21</sup>

3.9 Over the past few months, Mainland visitor arrivals have seen a dramatic drop. To tide over the sector's hard time, there are suggestions that the Government should provide **further reliefs** such as reducing air passenger departure tax and airport construction fee to boost the travel demand, and reduce the trade's rental burden by giving them rental allowance.<sup>22</sup> Some others have suggested that the Government should introduce "**spending vouchers**" for using at shops and attractions, and **sponsor local residents** to take part in local tours in order to stimulate local spending.<sup>23</sup>

3.10 As for the **transport trade**, taxi, minibus and franchised bus operators generally welcome the fuel subsidies, saying that the measure would help relieve a bit their operating cost burden amid reducing passenger journeys.<sup>24</sup> Nevertheless, there are calls for providing stronger support to the trade, such as allocating special quotas for taxis using the Hong Kong-Zhuhai-Macao Bridge to gain more business from long-distance journeys, and extending the Government's Public Transport Fare Concession Scheme for the elderly and disabled to red minibuses.<sup>25</sup>

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<sup>20</sup> See South China Morning Post (2019e).

<sup>21</sup> See South China Morning Post (2019c).

<sup>22</sup> See 《香港旅遊促進會：港府資助旅行社措施成效受限》，《香港 01》(2019).

<sup>23</sup> See 《工會倡香港人遊香港 鼓勵市民消費助業界渡難關》，《香港電台網站》(2019) and 《姚思榮稱支援旅遊業措施治標不治本 陳振英倡推消費券》，《香港電台網站》(2019).

<sup>24</sup> See South China Morning Post (2019b).

<sup>25</sup> See 《每更僅補貼 20 蚊 的士業呻杯水車薪》，《東方日報》(2019).

## 4. The Hong Kong Human Rights and Democracy Act of 2019

4.1 On 13 June 2019, the HKHD Bill was introduced to the US House of Representatives ("the House") by Rep. Christopher Smith and the Senate by Sen. Marco Rubio<sup>26</sup> amid public opposition against the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters (Amendment) Bill in Hong Kong.<sup>27</sup> The HKHD Bill sought to amend the United States – Hong Kong Policy Act (the "Policy Act")<sup>28</sup>. On 15 October 2019, the House passed an amended version of the original bill, following scrutiny of the bill at the committees on foreign affairs, judiciary and financial services respectively.<sup>29</sup> On the same day, the House also passed another bill and resolution relating to Hong Kong, namely Placing Restrictions on Teargas Exports and Crowd Control Technology to Hong Kong Act (also known as the PROTECT Hong Kong Act)<sup>30</sup>, and Stand with Hong Kong Resolution<sup>31</sup>.

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<sup>26</sup> Smith and Rubio, both Republicans, are a commissioner and co-chair of the Congressional-Executive Commission on China respectively. The Commission organized a hearing on 17 September 2019 on the protests in Hong Kong which was attended by interested parties from the US and Hong Kong.

<sup>27</sup> Two identical Hong Kong Human Rights and Democracy Bills had also been introduced to the House and the Senate separately on 13 November 2014. After that, similar bills were also introduced to the House and the Senate in 2015-2016 and 2017-2018. None of these bills proceed further after introduction.

<sup>28</sup> The Policy Act was enacted in 1992, around two years after the promulgation of the Basic Law in April 1990 by the National People's Congress.

<sup>29</sup> From time to time, the US Congress had dealt with bills similar to the HKHD Act for its intended policy objectives. For example, in December 2018, both the House and Senate passed and agreed to a unified version of the Nicaragua Human Rights and Anticorruption Act of 2018 which was signed by the President within 10 days. Another example was the Venezuela Human Rights and Democracy Act in May 2014, which however was just passed by the House. More recently, the Burma Human Rights and Freedom Act of 2019 was introduced to the Senate but it has not passed through the Senate so far.

<sup>30</sup> The Act, introduced by Rep. James McGovern on 10 September 2019, directs the US President to prohibit the issuance of licences to export certain defence items and services to various forces in Hong Kong, including the Hong Kong Police Force, the Hong Kong Correctional Services Department, and the Hong Kong Government Flying Service. The defence items/services include those on the US Munitions List and some crime control and detection technology and software. The amended version of the bill was passed by the House on 15 October 2019.

<sup>31</sup> The Resolution was introduced by Rep. Brad Sherman to the House on 30 August 2019. It is about "*recognizing Hong Kong's bilateral relationship with the United States, condemning the interference of the People's Republic of China in Hong Kong's affairs, and supporting the people of Hong Kong's right to protest*". A resolution does not have legal binding effect and does not require the US President to sign.

4.2 Afterwards, on 19 November 2019, the Senate passed unanimously its amended version of the HKHD Bill, following the scrutiny of the Senate Committee on Foreign Relations and upon initiation by two senators<sup>32</sup> to quicken the approval process at the Senate in view of the escalating protests in Hong Kong.<sup>33</sup> On the same day, the Senate also passed another bill relating to Hong Kong, namely "A bill to prohibit the commercial export of covered munitions items to the Hong Kong Police Force" ("munitions items export bill").<sup>34</sup>

4.3 Promptly, the next day on 20 November 2019, the House passed the Senate version of the HKHD Act by an overwhelming majority of votes. In other words, the Senate version is the version adopted by the Congress without further amendments. On the same day, the House also passed the munitions items export bill. Both legislation have become law after the US President signed them on 27 November 2019.

4.4 The enactment of the HKHD Act has aroused economic concerns in Hong Kong. The ensuing paragraphs outline the scope of the HKHD Act. Since it is related to the amendment of the Policy Act, the background information of the Policy Act is given in the **Box** on the next page.

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<sup>32</sup> They are Sen. Marco Rubio, sponsor of the bill, and Sen. Jim Risch, Chairman of the Senate Foreign Relations Committee.

<sup>33</sup> See United States Senate Committee on Foreign Relations (2019).

<sup>34</sup> The bill was introduced by Sen. Jeff Merkley on 24 October 2019, prohibiting the commercial export of covered munitions items to the Hong Kong Police Force. Its scope is similar to that of the PROTECT Hong Kong Act passed by the House.



## Box – Background information about the Policy Act

- The **Policy Act** was introduced to the US Congress in 1991 and enacted in 1992. According to the US government, the Policy Act establishes the policy of the US government to treat Hong Kong as a non-sovereign entity distinct from China for the purposes of US domestic law, based on the principles of the 1984 Sino-British Joint Declaration.
- The Policy Act covers the US's **five major policies** towards Hong Kong, namely (a) bilateral ties between the US and Hong Kong in terms of, for example, trade and tourism; (b) participation in multilateral organizations, rights under international agreements, and trade status; (c) commerce between the US and Hong Kong; (d) transportation; and (e) cultural and education exchanges.
- On the aspect of **commerce**, the Act provides that, among others, the US should (a) *"continue to treat Hong Kong as a separate territory in economic and trade matters such as import quotas and certificate of origin"*; (b) *"continue to negotiate directly with Hong Kong to conclude bilateral economic agreements"*; (c) *"treat Hong Kong as a territory which is fully autonomous from the People's Republic of China with respect to economic and trade matters"*; (d) *"continue to grant the products of Hong Kong non-discriminatory treatment"*; and (e) *"continue to support access by Hong Kong to sensitive technologies controlled under the Coordinating Committee for Multilateral Export Controls<sup>(1)</sup> for so long as the U.S. is satisfied that such technologies are protected from improper use or export"*.
- However, the Policy Act provides that *"whenever the President determines that Hong Kong is not sufficiently autonomous to justify treatment under a particular law of the United States, or any provision thereof, different from that accorded the Mainland China"*, the US President may issue an **executive order suspending** the continued application of relevant law and provisions to Hong Kong. In making such determination, the President should consider the terms, obligations, and expectations expressed in the Joint Declaration with respect to Hong Kong. The US President shall consult the Congress when carrying out his aforementioned duties. So far no such executive order has been issued.
- The Policy Act also provides for a **reporting requirement** to report on the conditions in Hong Kong of interest to the US. The reports should be prepared by the Secretary of State and submitted to the appropriate congressional committees such as the Committee on Foreign Affairs of the House and the Committee on Foreign Relations of the Senate. Since 1992, the Department of State has published 19 reports with the latest one issued in March 2019. Annual reports up to 2024 have also been scheduled under the Policy Act.

Note: (1) The Coordinating Committee for Multilateral Export Controls was an informal multilateral organization through which the US and its allies attempted to coordinate the national controls they applied over the export of strategic materials and technology to the Communist world. It was dissolved in 1994 and replaced by another regime known as Wassenaar Arrangement.



4.5 The HKHD Act passed by the US Congress will add new provisions to the Policy Act as follows:

- (a) **Annual certification regarding the autonomy of Hong Kong:** the Secretary of State shall **at least annually** issue to the **Congress** a certification to indicate whether Hong Kong continues to **warrant treatment** under US law in the same manner as the US laws were applied to Hong Kong before 1 July 1997, taking into consideration the terms, obligations and expectations expressed in the Sino-British Joint Declaration. The certification shall address 15 areas, ranging from commercial agreements, law enforcement cooperation, to judicial independence, with the inclusion of "an assessment of the degree of any erosions to Hong Kong autonomy" in each of those areas; and
- (b) **Treatment of Hong Kong applications for visas to study or work in the US:** the provision stipulates that US visas applicants residing Hong Kong in 2014 or later may not be denied primarily on the basis of the applicant's subjection to politically-motivated arrest, detention, or other adverse government action. The Secretary of State shall instruct the US Consulate in Hong Kong to maintain an active list of individuals who are known to have been formally charged, detained, or convicted by the Hong Kong Government, the Central Government or their intermediaries "based on politically-motivated considerations" related to their exercise of rights enumerated in the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights;

4.6 In addition, the HKHD Act also imposes requirements on reporting and sanctions as follows:

- (a) ***"Annual report on violations of United States export control laws and United Nations sanctions occurring in Hong Kong"***: the Secretary of Commerce shall submit to the appropriate congressional committees not later than 180 days and thereafter annually until seven years after the enactment of the HKHD Act a report with an assessment of the nature and extent of violations of **US export control and sanctions laws** occurring in Hong Kong.

The assessment includes identifying (i) any items re-exported from Hong Kong in violation of the above laws; (ii) the countries and persons to which such items were re-exported; and (iii) how the items were used. It should also cover if **sensitive dual-use items** subject to the export control laws of the US are being transshipped through Hong Kong and used to develop systems of mass surveillance and predictive policing or the social credit system of the Mainland of China. The Act has a specific provision requiring an assessment on imports from Hong Kong to the Mainland of China in violation of the US export control laws, including "*whether as part of the Greater Bay Area plan, through the assignment by Beijing of Hong Kong as a national technology and innovation center, or through other programs that may exploit Hong Kong as a conduit for controlled sensitive technology*". The Act also requires an assessment of whether the Hong Kong Government has adequately enforced sanction imposed by the United Nations;

- (b) "***Protecting United States citizens and others from rendition to [China]***": the Act requires that, not later than 30 days after the US President determines that legislation proposed or enacted by the Hong Kong Government would put US citizens at risks for rendition to China or other countries that lack protections for the rights of defendants, the US President shall submit to the appropriate Congressional committees a report that (i) contains a strategy for protecting the US citizens and businesses in Hong Kong; (ii) assesses the potential risk of the legislation to US citizens in Hong Kong; and (iii) determines whether the Hong Kong Government is legally competent to administer the US–Hong Kong Agreement for the Surrender of Fugitive Offenders or other law enforcement agreements between Hong Kong and the US;
- (c) "***Sanctions relating to undermining fundamental freedoms and autonomy in Hong Kong***": the US President shall impose **asset blocking** and **restrictions on visa, admission or parole** as sanctions on "foreign persons" identified for knowingly responsible for (i) "*the extrajudicial rendition, arbitrary detention, torture, or forced confession of any person in Hong Kong*"; and (ii) "*other gross violations of internationally recognized human*

*rights in Hong Kong*".<sup>35</sup> Among other requirements, the US President shall transmit the report of identifying such persons not later than 180 days of the HKHD Act enactment (and at least annually thereafter); and

- (d) Apart from the above, the HKHD Act also contains a section requiring the US departments to consider adjustments to the current US export control with respect to Hong Kong to "*prevent the **supply of crowd control and surveillance equipment** that could be used inappropriately in Hong Kong*"; and there is also a provision related to granting US visa to journalists from China affiliated with state-controlled media organizations.<sup>36</sup>

4.7 Following the US President signing the HKHD Act into the law, the Ministry of Foreign Affairs of the Central Government issued a statement firmly opposing the "hegemonic acts" of the US, saying the signing was a severe interference in China's internal affairs. It warned of taking countermeasures against the US should the US side insist its wrong approach.<sup>37</sup> In the earlier responses to the passage of the HKHD by the US Congress, the Ministry had also said that the US moves would not only harm China's interests but also China-US relations and the US interests, and that China would take "strong countermeasures" to defend its interests in sovereignty, security and development.<sup>38</sup>

4.8 The Hong Kong Government strongly opposed against the enactment of the HKHD Act as well as the munitions items export act. It said the provisions of the HKHD Act on export control and enforcement of United Nations sanctions were irrelevant to Hong Kong's human rights and democracy, and the enactment would not help de-escalate the tensions in Hong Kong. It also reiterated that both acts were "unnecessary and unwarranted", and that they clearly intervened in Hong Kong's internal affairs. Indeed, the recent developments have led to the beliefs that the US is trying to

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<sup>35</sup> The asset blocking refers to blocking or prohibiting all transactions in property and interests in property of the identified foreign persons. The power of asset blocking is based on the International Emergency Economic Powers Act.

<sup>36</sup> See CONGRESS.GOV (2019e).

<sup>37</sup> The Central Government has announced to suspend reviewing requests of US military vessels and aircraft to visit Hong Kong and to impose sanctions on non-government organizations that played an egregious role in the Hong Kong amendment bill disturbance.

<sup>38</sup> See Ministry of Foreign Affairs (2019a), (2019b) and (2019c).

link the ongoing China-US trade negotiation with Hong Kong's human rights and social incidents.<sup>39</sup>

## 5. Responses and major economic concerns over the HKHD Act

5.1 In response to the recent development of the HKHD Act, the Hong Kong Government reiterated that Hong Kong as a "**separate customs territory**" was based on the Basic Law and all along Hong Kong has complied with different kinds of import or export control and enforcement in accordance with Hong Kong laws and international agreements.<sup>40</sup> Any unilateral changes in the US trade policy towards Hong Kong will not only hurt the relations of the two sides but also the US's own interests. The Secretary of Commerce and Economic Development has also pointed out that it would be an unnecessary and futile attempt for any single country to threaten Hong Kong's trade status as Hong Kong's external trade relationship was **multilateral in nature** rather than dominated by a single place.<sup>41</sup>

5.2 Indeed, since the enactment of the Policy Act in 1992, the US Department of State has published 19 reports on the developments of Hong Kong. The US President may issue an executive order to suspend the application of the US laws with respect to Hong Kong upon appropriate consultation with the Congress. So far no such executive order has been issued. With the enactment of the HKHD Act, the Secretary of State shall submit annually a certification in conjunction with the report required under the Policy Act to the Congress regarding whether Hong Kong continues to warrant existing treatment under US laws. While the potential economic consequences as a result of the HKHD Act appear not widely discussed and remains not crystal clear, there are grave concerns that if Hong Kong's special treatment or status, in particular its independent trade status with the US, is abolished or weakened, it would not just hurt **Hong Kong's economic ties** with the US, but also **discourage foreign investment** in Hong Kong.<sup>42</sup>

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<sup>39</sup> See South China Morning Post (2019f) and The White House (2019a).

<sup>40</sup> See GovHK (2019b).

<sup>41</sup> See 《商務及經濟發展局局長談〈施政報告〉及美國的〈香港人權與民主法案〉》，《香港政府新聞公報》(2019).

<sup>42</sup> See 《美倘撤獨立關稅地位間接影響大於貿易》，《明報》(2019) and Fortune (2019).

5.3 At present, the economic ties between Hong Kong and the US are strong. Many US financial firms had a presence in Hong Kong managing assets worth hundreds of billion US dollars. Besides, there are 278 US companies setting up regional headquarters in Hong Kong. The US also has the largest number of regional offices in Hong Kong at 457. In terms of merchandise trade, Hong Kong's domestic export to the US is however small.<sup>43</sup> The **Hong Kong Trade Development Council** reportedly considered that the direct and immediate trade impacts arising from the HKHD Act would be **limited**, given that Hong Kong's domestic export to the US account for less than 10% of all exports to the US (i.e. over 90% are re-exports which are not subject to same tariff treatment as domestic exports), and that Hong Kong's domestic export destinations are diverse.<sup>44</sup> In contrast, the US enjoys the largest trade in goods surplus with Hong Kong, at US\$33.8 billion (HK\$264 billion) in 2018.

5.4 Having said that, there is still **uncertainty** arising from the annual certification requirement under the HKHD Act as to whether Hong Kong can continue to be treated as a special customs area, including the ability to import sensitive strategic technologies from the US. The uncertainty may create anxiety or cause loss of confidence among the businesses and deter their investment in Hong Kong, as expressed by some stakeholders such as the **Hong Kong General Chamber of Commerce**.<sup>45</sup> Moreover, the **Asia Global Institute of The University of Hong Kong** has pinpointed that abolishing the trade status might adversely affect the ability of local universities to cooperate with American institutions in research and development, particularly in **science and technology**.<sup>46</sup> All these may adversely affect Hong Kong's innovation and technology development, particularly in the Greater Bay Area, and threaten Hong Kong's status as premier international city and its ability in retaining/attracting talents. These indirect impacts may warrant attention.

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<sup>43</sup> Based on the figures of the Hong Kong's Trade and Industry Department, Hong Kong's domestic exports to the US was HK\$3.64 billion in 2018, which constituted 7.9% of Hong Kong's total domestic exports, while re-export to the US amounted to HK\$353 billion, which accounted for 8.6% of all Hong Kong's re-exports. From the US perspective, according to the U.S. Department of Commerce, Hong Kong accounted for 0.3% of the total US imports of goods while 2.3% of the US exports of goods were shipped to Hong Kong in 2018. See Bureau of Industry and Security, U.S. Department of Commerce (2019b) and Trade and Industry Department (2019).

<sup>44</sup> See 《美倘撤獨立關稅地位間接影響大於貿易》，《明報》(2019).

<sup>45</sup> Ibid and 《〈人權法案〉總商會：香港成中美貿易戰棋子令人遺憾 廠商會：或破壞國際經貿秩序》，《星島日報》(2019).

<sup>46</sup> See Asian Global Institute (2019).

5.5 Recently, **AmCham** in Hong Kong has also voiced out its reservations over some provisions of the HKHD Act, citing that the HKHD Act could have "unintended, counter-productive consequences, including on American business and its ability to continue exercising a strong positive influence in favour of Hong Kong's traditional core values."<sup>47</sup> Particularly, on the part of export controls and sanctions, there is a concern that imposing **specific export reporting requirement** would reduce the attractiveness of Hong Kong for international and American business, and reduce the effective enforcement mechanism of export control between Hong Kong and the US. Under the current US policy, Hong Kong administers its own import and export systems and receives favourable treatment with regard to US export licensing and regulations. In most cases, a licence issued for an export to Hong Kong is valid only for export to Hong Kong.<sup>48</sup> Certain items subject to the Export Administration Regulations that do not require an individual validated licence for export from the US to Hong Kong require a licence for re-export from Hong Kong to the Mainland of China. According to AmCham, the **cooperation** between the US and Hong Kong authorities to enforce US export control laws has been effective so far.<sup>49</sup>

5.6 Apart from export control, **economic sanctions** and **visa bans** are considered by AmCham "a more controversial tool of US foreign policy", and their use with respect to Hong Kong could harm Hong Kong's reputation as an international financial centre with rule of law and a place where American businesses can openly compete on a level playing field. Some people have also expressed similar worries that the tools of asset blocking and tightened US visa restrictions would not only pose threats to individuals but also enterprises and businesses in Hong Kong.<sup>50</sup> In response to the recent developments, the **Chinese Manufacturers' Association of Hong Kong** reportedly said that the business activities and cooperation between Hong Kong and the US might inevitably be affected, and it also worried that the HKHD Act might adversely

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<sup>47</sup> See American Chamber of Commerce (2019a) and (2019b).

<sup>48</sup> See Bureau of Industry and Security, U.S. Department of Commerce (2019a).

<sup>49</sup> In 2018, the US Bureau of Industry and Security approved 164 such export and re-export applications for "tangible items, software and technology" to Hong Kong valued at US\$203 million (HK\$1,591 million), which accounted for about 0.3% of total values of all approved applications worldwide. See Bureau of Industry and Security, U.S. Department of Commerce (2019b).

<sup>50</sup> See 《〈香港人權與民主法案〉哪條最刺痛中港當局？答案可能是……》，《香港經濟日報》(2019).

affect the ongoing China-US trade negotiations which would be highly unfavourable to the manufacturing sector.<sup>51</sup>

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<sup>51</sup> See 《美促申報政治背景 港商憂〈人權法案〉》，《頭條日報》(2019) and 《〈人權法案〉總商會：香港成中美貿易戰棋子令人遺憾 廠商會：或破壞國際經貿秩序》，《星島日報》(2019).

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