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The Protection of property rights in Hong Kong China and Switzerland

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http://www.info.gov.hk/basic_law/fulltext/Basic_Law.pdf

Index of Abbreviation

Art.	Article
BGE	Decisions of the Swiss Federal Court (Bundesgerichtsentscheide)
NPC	National People's Congress
Sec.	Section
SAR	Special Administrative Region
TRIPS	Trade-Related Aspects of Intellectual Property Rights
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Introduction

The topic protection of the property rights belongs to the group of economic rights, which already implies its great importance not just legally, but also for the economy of a country. Property rights are essential for investments and affect economic performance¹. The security of ownership is also crucial for many other fields: for instance land tenure security not just stimulates the development of land, but it's also fundamental for the market of land².

The idea of private property has a special meaning in a “communist” country as the People’s Republic of China³. During the reign of Mao property rights were defined by State and collective public ownership. Wang Chenguang describes the situation in China after the Culture Revolution as a “turmoil of lawlessness generated by the ultra-leftist thoughts and especially by the Cultural Revolution”⁵. Due to the economic reform in Post-Mao China, the legal system including property rights were rebuilt and modernized. A modern social market economy such as China is very much dependent on property rights and their security⁶.

In July 1997, as a result of long negotiations between the British and Chinese authorities, Hong Kong was transferred from British to Chinese sovereignty⁷. This was the result of long negotiations between the British and Chinese authorities. Hong Kong became a Special Administrative Region (SAR) and in this way part of China. As a Special Administrative Region Hong Kong was able to keep its capitalistic economy under the policy “one country two systems”⁸. According to the British-Sino Declaration Hong Kong could maintain a high degree of autonomy including the existing legal system⁹. The result was two entirely different legal systems.

The Heritage Foundation Report describes the property rights situation in Switzerland as one of the safest of the world. The level of protection is very high due

¹ CARRUTHERS/ARIOVICH, 23.

² PALOMAR, 7.

³ Hereinafter China.

⁵ WANG, 1.

⁶ PALOMAR, 7.

⁷ TSANG, 226.

⁸ „One country two systems “is the famous doctrine of Deng Xiaoping. It allows the coexistence of two different economic systems in one country.

⁹ SPENCE, 828-829.

to the independent judiciary and the fair and efficient judicial system¹⁰. The property rights are guaranteed by the Swiss Constitution.

The diversity of these three “countries” makes this topic extremely interesting. On one hand we have the “communist” China and its SAR Hong Kong and on the other hand Switzerland. How do these countries ensure the security of property rights? Since the protection of property rights isn’t naturally given, it depends on legal systems, policy makers, social institutions and a system, which applies law fairly to all¹¹.

After the introduction I’m going to disclose five important dimensions of property rights. Secondly, I will concentrate on the importance of property rights and their protection. The central aim of this assignment is to present the constitutional legal basis of property rights for each country, which enables me to finalize the paper with a comparison.

An important aspect of property rights is also intellectual property rights, which is, especially concerning China, a very current issue.

I. Definition of property rights

As a starting point I want to explain the five dimensions of property rights. With regards to property rights it’s important to define what can be owned; respectively what is the *object of property*. In early times objects of property were physical items or tangible commodities as such as land¹². Today ownership also includes intangible assets or intellectual property such as copyright, bonds and patents. Formal law and culture of a nation decide which items can be owned and which cannot¹³.

The second dimension is about who can own things. The *subjects of property* can not only be natural persons, but also juristic persons such as enterprises, organizations or nations. Some legal systems also recognize collectives or households as property

¹⁰ Index of Economic Freedom 2007:

<http://www.heritage.org/research/features/index/downloads/Index2007.pdf> (Status as of 9th September).

¹¹ ROSS, 61.

¹² CARRUTHERS/ARIOVICH, 25.

¹³ CARRUTHERS/ARIOVICH, 26.

owners. Foreigners often don't enjoy the same property rights as citizens. However no society provides a full ownership to all natural persons¹⁴.

Usufructuary rights define how property can be used. The right to use is rarely unlimited¹⁵. *The right to use* plays an important role in countries, whose legal system recognizes collective or State ownership. Via usufructuary rights such as leasehold individuals or groups are enabled to use and benefit of somebody else's property.

Security of property rights is neither naturally given nor self-enforcing. Hence the *enforcement of property rights* is indeed crucial. Enforcement of property rights depends on government, its legal system, politics and its legal institutions¹⁶. Besides this domestic level of enforcement, international treaties, agreements and institutions influence the protection of property rights¹⁷. International treaties provided by the WIPO or WTO are especially important concerning intellectual property rights

Property can be transferred from one owner to another one. These *transfers of property rights* not only occur through a market exchange (buying, selling etc.), but also shift through inheritance, dowries, marriage settlements¹⁸.

II. Protection of property rights

The security of lawfully acquired property is a main element of economic freedom and civil society. Property protection is, along with rule of law, independent judiciary and an impartial court system, one of the main components for a consistent legal system with economic freedom. Gwartney and Lawson identify the protection of property rights as the most important function of a government¹⁹.

Property rights are of fundamental importance for economy, politics, law and state²⁰. They affect personal welfare and economic development and help to prevent coercion²¹. It has been proven that economies of countries that protect ownership grow faster than countries that do not provide protection of property rights. The

¹⁴ CARRUTHERS/ARIOVICH, 26.

¹⁵ CARRUTHERS/ARIOVICH, 27.

¹⁶ ROSS, 61.

¹⁷ CARRUTHERS/ARIOVICH, 29-30.

¹⁸ CARRUTHERS/ARIOVICH, 31.

¹⁹ GWARTNEY/LAWSON/CLARK, 577.

²⁰ CARRUTHERS/ARIOVICH, 23.

²¹ ROSS, 61.

character of a political regime affects the economic growth process indirectly via its legal performance of property rights²².

Business affairs strongly rely on contracts. If their enforcement is not guaranteed and moreover productive efforts are not protected, engagement in productive activity will not continue²³. The same for individuals: if the fruits of their labour aren't protected, why should they continue working?

III. Intellectual Property rights

Intellectual property rights protect both commercial and artistic creations of the human mind. They include inventions, trademarks, designs, images, sculptures, paintings and much more. Intellectual property rights provide a legal basis for creators in order to protect their interests.

Intellectual property can be split into two subgroups: On one hand the Industrial property (patents, trademarks, industrial designs) and on the other hand the Copyright (literary and artistic works)²⁴. The latter protects the rights of literary or artistic creators and thus encourages and rewards creative work. Industrial property rights stimulate fair competition and offer customers a wide field of various goods and services, which helps to protect the customer. Further they enhance innovations, development and transfer of technologies and financially compensate research and development activities²⁵.

International Organizations such as the WTO and WIPO and their treaties play an important role for the protection of property rights. Hong Kong and Switzerland entered into the World Trade Organization (WTO) in 1995 and China in 2001. The Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement conducted by the WTO. It sets minimum standards for the protection of property rights that each government has to provide to WTO members. Besides the TRIPS agreement many other treaties exist²⁶.

²² LEBLANG, 5.

²³ GWARTNEY/LAWSON/CLARK, 577.

²⁴ WIPO: <http://www.wipo.int/about-ip/en/> (Status as of 8th September).

²⁵ WTO: http://www.wto.org/english/tratop_e/trips_e/intell_e.htm (Status as of 8th September).

²⁶ WTO: http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm (Status as of 8th September).

IV. Situation in Switzerland

1. The Swiss Federal Constitution

The guarantee of ownership²⁷ of the Swiss Federal Constitution has three important characteristic elements: The institutional guarantee (Institutionsgarantie), the guarantee of existence (Bestandesgarantie) and the guarantee of property value (Wertgarantie). The institutional guarantee protects property rights in their function as fundamental rights. The function of the guarantee of existence assures ownership against national interference. The guarantee of property value ensures that dispossession has to be fully compensated.

2. Private property

Property rights are granted by Article 26 of the Swiss Federal Constitution. This Article contains two clauses: The first clause ensures the right to own property and the second clause defines further, that dispossession and property restrictions, which correspond to compulsory purchase, have to be fully compensated. Furthermore property rights are among the fundamental rights, whose essence is inviolable²⁸.

The institutional guarantee protects private property as inviolable and a fundamental institution of the Swiss Law. The lawmakers have to preserve the essential, from property rights resulting, to rights of disposal (Verfügungsrechte) and rights of use (Nutzungsrechte)²⁹. Any norms which abolish private property as a fundamental institution of the Swiss legal system, offend the institutional guarantee and contravene the Federal Constitution³⁰.

²⁷ Art. 26 of the Swiss Federal Constitution of 18 April 1999 (Status as of 1st January 2008).

²⁸ Art. 36 sec. 4 of the Swiss Federal Constitution of 18 April 1999 (Status as of 1st January 2008).

²⁹ BGE 103 Ia 418.

³⁰ HÄFELIN/HALLER, 175.

3. Item of property

The ownership guarantee protects moveable and immovable items of the property law (Sachenrecht). Besides that, it also enfolds all assets resulting from property rights (Vermögensrechte) of the private law and all vested rights of the public law³¹. According to jurisdiction of the Swiss Federal Court the term property not only includes immoveable objects and chattels, but also refers to limited collateral rights (beschränkte dingliche Rechte), compulsory rights (obligatorische Rechte), intellectual property rights, vested rights of citizens and rights against seizure³².

4. National Interference

The guarantee of existence protects the ownership guarantee against national restrictions. Hence the function of the guarantee of existence is the defence of concrete individual property rights against State intervention³³. Private property and other forms of property rights are generally secured from State intervention. Such interventions are only possible if a sufficient legal basis exists and if the restrictions are justified by a public interest. A further condition is the principle of proportionality. Any restrictions on fundamental rights such as the ownership guarantee must be proportionate³⁴.

Lawful restrictions of property can be distinguished between material dispossessions (Materielle Enteignung) and formal dispossessions (Formelle Enteignung). The latter is a legal act of the State, which is followed by a transfer of ownership rights³⁵. By contrast, in the case of a material dispossession no transfer of rights occurs. Regardless, a restriction of property still exists, which has the same effects on the owner as in case of formal dispossession³⁶.

Following I'm going to analyze these conditions for national restrictions more precisely.

³¹ VALLENDER, 333.

³² BGE 120 Ia 120.

³³ HÄFELIN/HALLER, 176.

³⁴ Art. 36 sec. 1-3 of the Swiss Federal Constitution of 18 April 1999 (Status as of 1st January 2008).

³⁵ BGE 116 Ib 11: 15-16.

³⁶ HÄFELIN/HALLER, 179.

4.1. Sufficient legal basis

Interferences in private property require a legal basis³⁷. Depending on the interference, the conditions for the legal basis change. Where an interference harms property rights to a great extent, a distinct, clear legal basis is necessary, which the Federal Court must examine without constraint of its cognition³⁸. Such a grave interference is for instance an enforced appropriation³⁹.

If the degree of the intervention is not high, the claims for the legal basis are less strict. For the Federal Court it's sufficient to check whether or not the decision of the Cantonal Court is arbitrary⁴⁰.

4.2. Public interest

National restrictions on private property are only allowed in case of a public interest or protection of fundamental rights of other parties⁴¹. According to the Federal Court, every public interest, which does not offend the Swiss Constitutional Law, generally justifies interference against of the ownership guarantee. But such an interest must not have a fiscal nature⁴². Important public interests are constitutionally enshrined and are for example concerns of the spatial planning or water pollution control⁴³.

4.3. Principle of proportionality

As mentioned above, national restrictions have to be proportional⁴⁴. This means that national restrictions can not go further than demanded by the public interest. The purpose of the intervention and its effect must be in a proportional relation.

³⁷ Art. 36 sec. 1 of the Swiss Federal Constitution of 18 April 1999 (Status as of 1st January 2008).

³⁸ BGE 115 Ia 333: 336.

³⁹ BGE 109 Ia 188:190.

⁴⁰ HÄFELIN/HALLER, 177.

⁴¹ Art. 36 sec. 2 of the Swiss Federal Constitution of 18 April 1999 (Status as of 1st January 2008).

⁴² BGE 102 Ia 104: 114.

⁴³ HÄFELIN/HALLER, 177.

⁴⁴ Art. 36 sec. 3 of the Swiss Federal Constitution of 18 April 1999 (Status as of 1st January 2008).

5. Compensation

According to the Federal Constitution any national interference such as property restrictions, which correspond to dispossession, entitle the owner to full compensation⁴⁵. In the case of a legally allowed restriction on ownership (legal basis, public interest, proportionality), the guarantee of property value ensures full compensation. Both, formal and material dispossessions have to be compensated in full⁴⁶. In only one situation the dispossessor doesn't need to pay compensation. This happens if the extent of the restriction is very low, and therefore no material dispossession exists⁴⁷.

6. Legal entity

The legal entities of the property guarantee are Swiss citizens and foreigners. In addition the properties of juristic persons are also protected by the property guarantee⁴⁸.

V. Situation in the People's Republic of China

1. The Constitution of the People's Republic of China

The Chinese Constitution⁴⁹ contains rules about State ownership, collective ownership and private property. Epstein writes that in socialist countries such as China the Constitution can be regarded as a first "revolutionary document"⁵⁰. The sixth Article about socialist public ownership of the Chinese Constitution clarifies this point of view:

⁴⁵ Art. 26 sec. 2 of the Swiss Federal Constitution of 18 April 1999 (Status as of 1st January 2008).

⁴⁶ VALLENDER, 345-346.

⁴⁷ HÄFELIN/HALLER, 179.

⁴⁸ HÄFELIN/HALLER, 180.

⁴⁹ The Constitution of the People's Republic of China: Adopted at the 5th National People's Congress on December 4 1982. Further amendments in 1988, 1993, 1999 and 2004.

⁵⁰ EPSTEIN, 182.

“The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people. The system of socialist public ownership supersedes the system of exploitation of man by man; it applies the principle of “from each according to his ability, to each according to his work.””

2. Private property

The Chinese Constitution protects the lawful private property of citizens and declares its inviolability⁵². This Article has been added to the General Principles of the Constitution in March 2004. The same constitutional amendment also included the right of citizens to own and inherit private property. Before March 2004 the Article was different and didn't declare the inviolability of private property. According to the former Article the State protected the citizens' right “to own lawfully earned income, savings, houses and other lawfully property” and to inherit private property⁵³. The 2004 constitutional amendment of private property puts private assets of individuals on a par with public-sector property⁵⁴.

According to Article 33 “all citizens of the People's Republic of China are equal before the law”. This equality before the law is a basic principle of the socialist legal system. Equality is a fundamental right of all citizens. It entitles Chinese citizens to political, economic and social rights as provided for by the law⁵⁵. Economic and social rights include the right to own property⁵⁶.

3. Land ownership

With regards to land tenure, Chinese law distinguishes between state-owned land and collective-owned land. “Mineral resources, waters, forests, mountains, grassland, unreclaimed land, beaches, and other natural resources” are generally owned by the

⁵² Art. 13 of the Constitution of the People's Republic of China adopted on March 14, 2004.

⁵³ Art. 13 of the Constitution of the People's Republic of China adopted on December 4, 1982.

⁵⁴ People's Daily online:

http://english.people.com.cn/data/China_in_brief/Political_System_State_Structure/The%20Constitution%20and%20Legal%20System.html (Status as of 5th September).

⁵⁵ ZHU, 65.

⁵⁶ ZHU, 67-68.

State except “forests, mountains, grassland, unreclaimed land, and beaches that are owned by collectives in accordance with the law⁵⁷. The State owns land and natural resources on behalf of the whole people. In addition the State owns the land in urban areas while the collectives hold the rural and suburban lands⁵⁸. This is a very characteristic attribute of socialist China and the Chinese socialist market economy⁵⁹. The Chinese Constitution prohibits individuals or organizations from buying or selling land. Any activities such as the transfer of land by unlawful means are forbidden⁶⁰. Thus only the State or agricultural collectives can be land owners⁶¹. But the Chinese Constitution contains rules about the use of land. Article 10 clause 4, which was amended in 1988, ensures the right to the use of land in accordance with the law. This enables the State to transfer the right to use land to individuals and other entities. Clause 5 declares further, that those who use the land “must make rational use of the land”.

As a result of the constitutional amendment in 1988, the Chinese State Administration Law adapted the system of transferable granted land use rights⁶².

4. National interference

By using clause 3 of article 13 the State can in accordance with the law “appropriate or requisition private property” for its use. Such an interference of the State must be based on a public interest. National restrictions on collective-owned land work on the same principle. The Chinese State is enabled in case of a public interest and in accordance with the law to expropriate or requisition land from collective owners to its use⁶³.

⁵⁷ Art. 9 of the Constitution of the People’s Republic of China adopted on March 14, 2004.

⁵⁸ PALOMAR, 13.

⁵⁹ VON SENGER, 262.

⁶⁰ Art.10 sec.4 of the Constitution of the People’s Republic of China adopted on March 14, 2004.

⁶¹ PALOMAR, 9.

⁶² PALOMAR,10.

⁶³ Art. 10 sec. 3 of the Constitution of the People’s Republic of China adopted on March 14, 2004.

5. Compensation

Private property restrictions must be based on a public interest and must be compensated⁶⁴. The right to compensation is also ensured by Article 41 of the Chinese Constitution. This Article grants citizens “who have suffered losses as a result of infringement of their civic rights”⁶⁵ a right to compensation. Further the State also has to compensate for requisitions of land⁶⁶.

Additionally to this the National People's Congress (NPC) enacted in May 1994 another law in order to secure the legal rights of citizens. This important State Compensation Law requires compensation for government’s wrongdoings⁶⁷.

6. Legal entity

Any citizen can acquire private property aside from real estate. According to the Chinese Constitution only the State and collectives are entitled to own land. Article 32 of the Chinese Constitution protects “lawful rights and interests of foreigners within Chinese territory”.

VI. Situation in Hong Kong

1. The Basic Law of Hong Kong Special Administrative Region

The Basic Law of Hong Kong SAR of the People’s Republic of China⁶⁸ is a constitutional document in accordance with the Chinese Constitution. It was enacted in July 1997⁶⁹. The Basic Law contains the very famous principle “One Country, Two Systems”⁷⁰, which underlines the high degree of autonomy of Hong Kong as a Special Administrative Region.

⁶⁴ Art. 13 sec. 3 of the Constitution of the People’s Republic of China adopted on March 14, 2004.

⁶⁵ Art. 41 sec. 3 of the Constitution of the People’s Republic of China adopted on March 14, 2004.

⁶⁶ Art. 10 sec. 3 of the Constitution of the People’s Republic of China adopted on March 14, 2004.

⁶⁷ ZHU, 67.

⁶⁸ Basic Law of Hong Kong SAR of the People’s Republic of China: Adopted at the 7th National People's Congress on April 4, 1990.

⁶⁹ Department of Justice: The Government of HKSAR: <http://www.doj.gov.hk/eng/legal/index.htm> (Status as of 7th September).

⁷⁰ Preamble of the Basic Law of Hong Kong SAR adopted on April 4, 1990.

2. Private Property

The first Chapter of the Basic Law of Hong Kong SAR outlines the General Principles. Article 6 of the General Principles protects the rights of private property according to the law. It ensures the use, disposal and inheritance of private property. Rabushka describes the content of this Article as “perhaps the most fundamental individual economic right of all”⁷¹.

The fundamental rights and duties of all residents are written in the third Chapter of the Basic Law. In addition to fundamental rights such as personal liberty and equality before law, the third Chapter contains a provision about the inviolability of “resident’s home and other premises”⁷². The Article further defines that “Arbitrary or unlawful search of, or intrusion into, a resident's home or other premises shall be prohibited”⁷³.

3. Land ownership

According to the Basic Law the State is the owner of land and natural resources of Hong Kong⁷⁴. It rests with the government of Hong Kong to decide about the management, use and development of the land and the natural resources. The government is responsible “for their lease or grant to individuals, legal persons or organizations for use or development”⁷⁵.

This land policy enables the government to lease the land and to raise revenue. All derived revenues are exclusively at the State’s disposal⁷⁶. This governmental control over ownership of land can be regarded as an exception to Hong Kong’s laissez-faire economy⁷⁷. Huang argues that the colonial government has already “used” this land management in order to enhance earnings. Through this policy the public authorities

⁷¹ RABUSHKA, 644.

⁷² Art. 29 of the Basic Law of Hong Kong SAR adopted on April 4, 1990.

⁷³ Art. 29 of the Basic Law of Hong Kong SAR adopted on April 4, 1990.

⁷⁴ Art. 7 of the Basic Law of Hong Kong SAR adopted on April 4, 1990.

⁷⁵ Art. 7 of the Basic Law of Hong Kong SAR adopted on April 4, 1990.

⁷⁶ Art. 7 of the Basic Law of Hong Kong SAR adopted on April 4, 1990.

⁷⁷ HUANG, 100.

are not just able to control rents, but also to offer public housing to half of Hong Kong's residents. Additionally, due to public ownership the tax revenue compared to other East Asian countries as a ratio of Gross National Product is very low⁷⁸.

4. Deprivation of Property and Compensation

If a "Lawful deprivation of their property" occurs, the owner is entitled to a right to compensation⁷⁹. The Basic Law also provides more modalities concerning compensation. Lawful takeovers require compensation at market prices. The payment shall be in a convertible form and be paid without delay⁸⁰.

5. Legal entity

Article 105 of the Basic Law recognises natural and legal persons and organizations as the legal entity of property rights. Both have, in accordance with the law, the right to profit from use, disposal, acquisition and inheritance of their property. Section 3 of the same Article declares the "ownership of enterprises and investments from outside the Region" as protected. Religious organizations as legal entities are explicitly named⁸¹. As already defined, land and natural resources is State property⁸².

VII. Comparison

China explicitly protects lawful private property of citizens. By contrast, the Swiss Federal Constitution not just guarantees the right to own property, but it is, according to the institutional guarantee, a fundamental institution of the Swiss legal system. Hong Kong's Basic Law provides protection to private ownership. Important is

⁷⁸ HUANG, 100.

⁷⁹ Art. 105 of the Basic Law of Hong Kong SAR adopted on April 4, 1990.

⁸⁰ Art. 105 sec.1-2 of the Basic Law of Hong Kong SAR adopted on April 4, 1990.

⁸¹ Art. 141 sec. 2 of the Basic Law of Hong Kong SAR adopted on April 4, 1990.

⁸² Art. 7 of the Basic Law of Hong Kong SAR adopted on April 4, 1990.

furthermore, that the Basic law constitutes that “laws previously in force (...) shall be maintained”⁸³. This article refers to the law in force before 1997 under British sovereignty. The previous law had arisen from the Common Law, which was particularly concerned with the protection of property rights⁸⁴. These provisions are crucial for the retention of Hong Kong’s market economy and to maintain its capitalist system. On the other hand, the Chinese constitutional property rights represent the socialist economic system of China. This is very obvious in Article 6 of the Chinese Constitution: “The basis of the socialist economy system of the People’s Republic of China is socialist public ownership, (...) namely, ownership of the whole people and the collective ownership by the working people”⁸⁵. The system of ownership reflects the choice of the economic system.

Owners of Chinese land are either the State or collectives. Land ownership can not be transferred, only the right to use may be transferred. This transfer never affects the land ownership. Land property of the State is a permanent exclusive right⁸⁶. Moreover the law requires that the leaseholder must rationally use the land. The situation in Switzerland is very different. Real estate ownership can be acquired as any other item. The ownership guarantee protects land as immovable property amongst other things. Hong Kong’s land is, like in China, owned by the state. The government sells the land on leasehold in order to gain revenue. This is in fact an exception to the laissez-faire policy of Hong Kong.

In all three legal systems property interferences occur, although the conditions for State restrictions vary. The Swiss Federal Constitution has very strict provisions for such restrictions: Any restrictions need a legal basis, require a public interest and must be proportionate. The Chinese Constitution also requires a legal basis for property requisition in accordance with the law. The Basic Law of Hong Kong alludes to lawful deprivation of property. All Constitutions require compensation for such interferences. Hong Kong’s Basic law provides the most precise provision by demanding compensation which corresponds to the real value of the property. According to the guarantee of property value, the Swiss government has to pay the full compensation. The Chinese Constitution does not define the amount of the compensation.

⁸³ Art. 8 of the Basic Law of Hong Kong SAR adopted on April 4, 1990.

⁸⁴ RABUSHKA, 645.

⁸⁵ Art. 6 of the Constitution of the People’s Republic of China adopted on March 14, 2004.

⁸⁶ LEUNG, 545.

The Index of Economic Freedom⁸⁷ scientifically compares 10 specific freedoms of 162 countries. One of the 10 freedoms examined are property rights: Hong Kong's and Switzerland's property protection is according to this Index very high, while China's property rights are very weak⁸⁸. The report criticizes China's judicial system and the enforcement of law. It often happens that officials ignore decisions of the court with impunity⁸⁹. Hong Kong's legal system is regarded as very transparent and the Basic Law provides strong support to private property⁹⁰. Concerning Switzerland, the report explicitly names the independent judiciary and the security of contracts as reasons for the strong support of property rights.⁹¹

It's quite obvious that the legal framework in China, Hong Kong and Switzerland are different. Their Constitutions derive from different traditions, ideologies and demands. The Swiss Constitution outlines "liberty, democracy, independence"⁹². The Chinese Constitution emphasizes the idea of socialism with Chinese characteristics while Hong Kong's Basic Law highlights the capitalist economy.

Zürich 14. September 2008:

Hiermit erkläre ich, dass ich die vorliegende schriftliche Arbeit selbständig und nur unter Zuhilfenahme der in den Verzeichnissen oder in den Anmerkungen genannten Quellen angefertigt habe. Ich versichere zudem, diese Arbeit nicht bereits anderweitig als Leistungsnachweis verwendet zu haben. Eine Überprüfung der Arbeit auf Plagiate unter Einsatz entsprechender Software darf vorgenommen werden.

⁸⁷ Index of Economic Freedom: <http://www.heritage.org/research/features/index/index.cfm> (Status as of 4th September).

⁸⁸ Index of Economic Freedom: <http://www.heritage.org/research/features/index/countries.cfm> (Status as of 4th September).

⁸⁹ Index of Economic Freedom: <http://www.heritage.org/research/features/index/country.cfm?id=China> (Status as of 4th September).

⁹⁰ Index of Economic Freedom: <http://www.heritage.org/research/features/index/country.cfm?id=HongKong> (Status as of 4th September)

⁹¹ Index of Economic Freedom: <http://www.heritage.org/research/features/index/country.cfm?id=Switzerland> (Status as of 4th September)

⁹² Preamble of the Swiss Federal Constitution of 18 April 1999 (Status as of 1st January 2008).