



# Prospects for Democracy in Hong Kong: Results of the 2012 Elections

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## Summary

Hong Kong selected a new Chief Executive and Legislative Council (Legco) in March and September of 2012, respectively. Both elections delivered surprising results for different reasons. The eventual selection of Leung Chu-ying (CY Leung) as Chief Executive came after presumed front-runner Henry Tang Ying-yen ran into a series of personal scandals. The Legco election results surprised many as several of the traditional parties fared poorly while several new parties emerged victorious.

The 2012 elections in Hong Kong are important for the city's future prospect for democratic reforms because, under the territory's Basic Law, any changes in the election process for Chief Executive and Legco must be approved by two-thirds of the Legco members and receive the consent of the Chief Executive. Under the provision of a decision by China's Standing Committee of the National People's Congress issued in December 2007, the soonest that the Chief Executive and all the Legco members can be elected by universal suffrage are the elections of 2017 and 2020, respectively. As such, the newly elected Legco and CY Leung will have the opportunity to propose and adopt election reforms that fulfill the "ultimate aim" of the election of Hong Kong's leaders by universal suffrage.

The outcome of Hong Kong's 2012 elections matters to Congress for three key reasons. First, the Hong Kong Policy Act of 1992 states that it is U.S. policy to support democracy in Hong Kong. Second, the conduct of the 2012 elections and the possibility of additional political reforms may be indicators of the Chinese government's commitment to the Basic Law and its support for the democratic reforms in areas where it exercises sovereignty. Third, some scholars speculate that Hong Kong may serve as a testing ground for possible democratic reforms in Mainland China.

Congress has appropriated funds in the past to foster the development of civil society and democratic practices in Hong Kong. The 2012 election results and the upcoming discussion of future election reforms—including the involvement of the Chinese government—are factors that Congress may consider when deciding whether to allocate more assistance for the democratic practices in Hong Kong. In addition, Congress may conduct hearings or organize other events to examine and bring attention to the prospects for democracy in Hong Kong.



## **Contents**

Introduction.....	1
The Selection of the Chief Executive .....	1
The Legislative Council Election Results.....	3
Geographical Constituencies .....	5
Super Seats .....	5
Traditional Functional Constituencies.....	6
The Coalition Splits.....	8
Implications for Democracy in Hong Kong.....	8
Gauging the Chinese Government.....	10
Implications for Congress.....	11

## **Figures**

Figure 1. Map of Geographical Constituency Elections.....	4
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## **Tables**

Table 1. Results of Hong Kong's 2012 Legislative Council Elections.....	7
---	---

## **Appendixes**

Appendix. List of Newly Elected Legco Members .....	13
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## **Contacts**

Author Contact Information.....	14
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## Introduction

The Hong Kong Special Administrative Region (Hong Kong, or HKSAR) held elections for its expanded, 70-member Legislative Council (Legco) on September 9, 2012, ending an 11-month period in which the city also elected members to its District Councils and selected Leung Chun-ying (CY Leung) as its new Chief Executive. The newly elected Legco and Chief Executive will have the opportunity to consider further political reforms that could result in the election of the Chief Executive and the Legco members by universal suffrage in 2017 and 2020, respectively.

The process of selecting the new Chief Executive and the results of the 2012 Legco elections, however, may foretell problems for Hong Kong's prospects for democracy. The selection of CY Leung as Chief Executive appeared to be engineered by the Chinese government after an alternative leading candidate lost the favor of Beijing due to a series of personal scandals. In addition, while a majority of the newly elected Legco members are generally regarded as being sympathetic to the preferences of the Chinese government, the pro-democracy members won enough seats to block future election reforms that they consider unacceptable. The 2012 election results may have raised the risk of a political stalemate for democratic reforms in Hong Kong.

The outcome of Hong Kong's 2012 elections matters to Congress for three key reasons. First, the Hong Kong Policy Act of 1992 (P.L. 102-383) states, "Support for democratization is a fundamental principle of United States foreign policy. As such, it naturally applies to United States policy toward Hong Kong. This will remain equally true after June 30, 1997" (the date of Hong Kong's reversion to China). Second, Hong Kong's Basic Law, a quasi-constitution for the city passed by China's National People's Congress in April 1990, stipulates that the "ultimate aim" is the election of the Chief Executive and "all the members of the Legislative Council" by universal suffrage. The conduct of the 2012 elections and the possibility of additional political reforms are indicators of the Chinese government's commitment to the Basic Law and its support for the democratic reforms within a territory over which it exercises sovereignty. Third, some scholars speculate that Hong Kong may serve as a testing ground for possible democratic reforms in Mainland China, either as part of an officially recognized process or as the result of a populist movement such as occurred in 1989. The notion is that tolerance or acceptance of democracy in Hong Kong may signal a willingness by China's leadership to entertain political reforms in other parts of China. Conversely, if the Chinese Communist Party (CCP) seeks to forestall further democratic reforms in Hong Kong, it may signal the CCP's opposition to changes in its political system.

Congress may choose to assess and possibly assist the prospects for democracy in Hong Kong. In the past, funds were appropriated for the promotion of democratic practices in the city, and Congress may decide to continue to appropriate such funds. In addition, Congress may decide to hold hearings or other educational events to garner greater awareness of the democratization of Hong Kong.

## The Selection of the Chief Executive

The Basic Law established an executive-run government in Hong Kong, led by the Chief Executive, similar in structure to how the city was administered under British colonial rule. Under current Hong Kong law, the Chief Executive is selected by an Election Committee that also serves as a nominating committee for candidates for the position. As the result of election reforms



approved in 2010, the Election Committee was expanded from 800 to 1,200 members and the threshold for nomination was increased from 100 to 150 members.<sup>1</sup> Most of the Election Committee members are appointed by various organizations and associations, but current Legco members and some elected District Council members are also included.

The date for the selection of Hong Kong's fourth Chief Executive was set for March 25, 2012. Three candidates successfully submitted the required nomination papers during the last two weeks of February. Henry Tang Ying-yen—Hong Kong's Chief Secretary at the time, who had previously served as Secretary for Finance, Industry and Technology, and Commerce, and an ex-member of the pro-Beijing Liberal party—was the presumed frontrunner, having received support from 390 Election Committee members for his nomination. CY Leung, who was the Convenor of the advisory Executive Council, was the dark horse candidate who obtained the support of 305 Election Committee members for his nomination. Albert Ho Chun-yan, ex-chairman of the Democratic Party, was the pan-democrat candidate and presumed to have little chance of being selected as Chief Executive. Ho received the backing of 188 members for his nomination.

Tang's bid to become Chief Executive ran into problems well before his formal nomination, and the problems continued to dog him up to the selection day. In October 2011, he admitted to having an affair with his administrative assistant. Subsequent stories appeared alleging other past affairs, including the possibility of a "love child" studying overseas. Questions were also raised about his claim of having a master's degree in sociology from Yale University. On February 13, 2012, the Hong Kong media reported on illegal construction work on one of his houses, claiming that an unauthorized 2,200 square foot basement had been built under the existing house that included a private movie theater and a large wine cellar. Tang admitted to the existence of the illegal basement, but said that his wife was responsible for its construction.

Tang's dishonesty and his efforts to shift blame to his wife seriously eroded his image with the Hong Kong public. Public opinion surveys showed a sharp shift in support from Tang to Leung. A March survey taken after a debate among the three candidates found 44% of those surveyed supported Leung, 23% supported Ho, and 13% backed Tang. Rumors began to spread that the Chinese government, apprehensive about the appointment of another unpopular Chief Executive, was switching its support from Tang to Leung.<sup>2</sup>

The official vote among the 1,200 Election Committee members took place on March 25, 2012, as scheduled. To win, a candidate had to receive a majority of the votes. If no candidate received 600 votes or more, the candidate with the lowest number of votes would be eliminated, and another round of votes would be held. Leung won in the first round of balloting with 689 votes. Tang finished second with 285 votes and Ho was third with 76 votes.

On July 1, 2012, Leung was sworn in as Hong Kong's fourth Chief Executive. His swearing in ceremony was a source of some controversy as he took the oath of office in Mandarin Chinese, rather than the local Cantonese Chinese, and Chinese President Hu Jintao presided over the event. Leung also gave his inaugural speech in Mandarin. To some observers, his choice of Mandarin

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<sup>1</sup> For more about the Chief Executive election reforms of 2010, see CRS Report R40992, *Prospects for Democracy in Hong Kong: The 2012 Election Reforms*, by (name redacted).

<sup>2</sup> Both of Hong Kong's previous Chief Executives were unpopular by the ends of their terms in office. The first Chief Executive, Tung Chee-wah, resigned following massive public protests over his handling of a proposed sedition law. His successor, Donald Tong Yam-kuen, left office at the end of his term, mired in scandals over his personal finances and a general sense that he had been ineffective.



and the presence of President Hu signaled that Leung was more committed to serving the interests of the Chinese government than preserving the autonomy of Hong Kong.

## The Legislative Council Election Results

Under the Basic Law, the Legislative Council (Legco) has limited power. Its members can only introduce legislation that does not relate to public expenditure or the structure or operation of the Hong Kong government. Most legislation is introduced by the Chief Executive or senior government officials on behalf of the Chief Executive. Legco does have the power to block legislation and limited oversight of the Hong Kong government. Since before Hong Kong's transition to Chinese sovereignty on July 1, 1997, Legco has consisted of two types of members—one elected by geographical constituencies and another chosen by selected functional constituencies. Up until this year's Legco election, while every eligible voter could vote in one of the geographical constituencies, less than 1 of every 10 Hong Kong residents could vote in one of the functional constituencies.

Hong Kong's 3.5 million eligible voters had the opportunity on Sunday, September 9, 2012, to cast two votes for the city's 70-member Legislative Council (Legco). Each voter could vote in one of the five multi-seat geographical constituencies and cast a second vote in one of the 28 traditional functional constituencies or in the newly established District Council (second) functional constituency. The 2012 Legco election marked the first time that every Hong Kong voter could vote in both a geographical and functional constituency.<sup>3</sup>

About 1.83 million eligible voters cast their ballots in the 2012 Legco election, for a turnout rate of 52.3%, compared to 45.2% for the 2008 election. Most accounts attribute the rise in voter turnout to public discontent with the Hong Kong government, in particular its decision to require Hong Kong schools to teach a "national education" curriculum created by the Chinese government. Although Chief Executive CY Leung announced his decision to make the teaching of the national education curriculum optional just prior to the Legco election, popular concern about recent changes in Hong Kong government policies and attitudes remains high.

Under the provisions of election reforms adopted in December 2010, the number of Legco seats was increased from 60 to 70, with half of the seats being elected by geographical constituencies and half by functional constituencies.<sup>4</sup> The 35 geographical constituency seats were divided among five districts, proportionate to the number of eligible voters (see **Figure 1**). The 35 functional constituencies seats were split between 30 seats allocated among the 28 "traditional" functional constituencies used in past elections and 5 new District Council (second) functional constituency seats.<sup>5</sup> Under the reforms, any Hong Kong voter who was not eligible to vote in one of the "traditional" functional constituencies could vote in the new District Council (second)

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<sup>3</sup> Governor Chris Patten implemented reforms for the 1995 Legco elections that allowed most, but not all, Hong Kong voters to vote in both a geographical and functional constituency. Following Hong Kong's reversion to Chinese sovereignty on July 1, 1997, the Legco elected in 1995 was replaced by a Provisional Legislative Council appointed by the Chinese government.

<sup>4</sup> For more about the Legco election reforms of 2010, see CRS Report R40992, *Prospects for Democracy in Hong Kong: The 2012 Election Reforms*, by (name redacted).

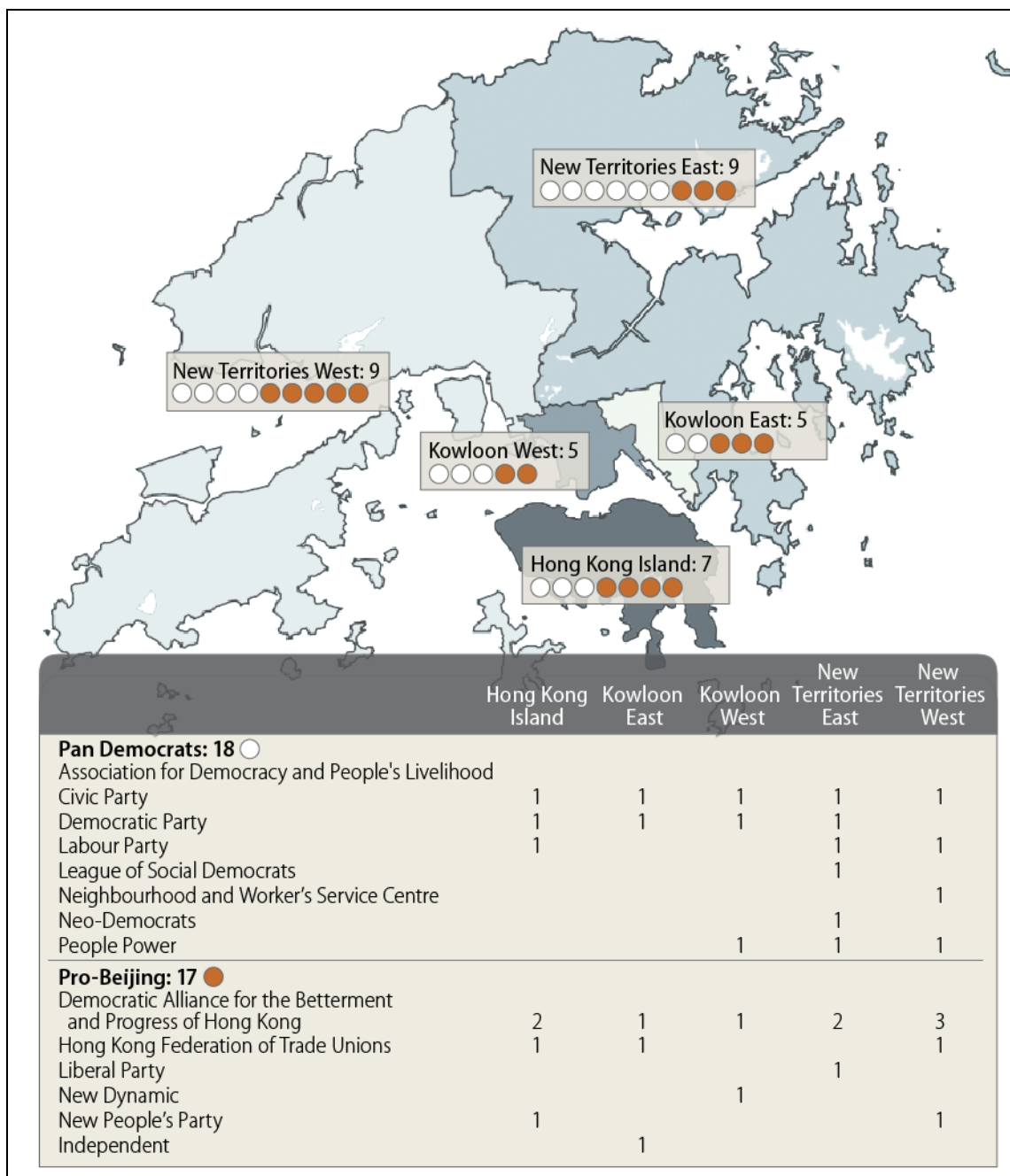
<sup>5</sup> They are referred to as District Council (second) functional constituency seats because the District Councils are one of the 28 traditional functional constituencies, which is now referred to as District Council (first) functional constituency.



functional constituency. Because 3.2 million voters were eligible to vote in the new District Council (second) functional constituency, the five seats had been dubbed “super seats,” and the people elected to those seats were frequently called “super members.”

**Figure 1. Map of Geographical Constituency Elections**

by Political Party and Coalition



Source: CRS Graphics.



Political parties in Hong Kong have generally been characterized as being divided into two camps or informal coalitions. The pan-democrats, who are seen as favoring a more rapid transition to democracy and a more independent Hong Kong government, include the more moderate Association for Democracy and People's Livelihood (ADPL), Civic Party (CP), and Democratic Party (DP); the left-of-center Labour Party (LP), League of Social Democrats (LSD), and People Power (PP); and some smaller parties. The pro-Beijing camp, which generally supports a more gradual transition to democracy and closer ties between the Hong Kong and Chinese governments, includes the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), Economic Synergy (ES), the Hong Kong Federation of Trade Unions (FTU), the Liberal Party (LiP), the New People's Party (NPP), and several other parties. Hong Kong also has a number of politicians who, while not affiliated with a political party, are widely viewed as being part of one of the two camps.

## Geographical Constituencies

The geographical constituency seats are historically among the most hotly contested seats in Legco, and the 2012 election was no exception. In an effort to increase their odds of winning more than one seat in each district, several of the political parties ran more than one slate of candidates, with their more popular people heading each slate.<sup>6</sup> For example, in New Territories West, the pro-Beijing DAB ran three slates and the pan-democrat Democratic Party ran two slates.

**Figure 1** shows the final election results by political parties for the geographical constituency seats. The DAB's strategy of splitting slates was seemingly successful, as the party won 10 of the 35 geographical constituency seats. The Civic Party ran one slate in each of the five districts, and all five slates were victorious. The Democratic Party did not fare as well, with four of its eight slates winning seats, and it failed to win any of the nine seats in New Territories West.

Arguably the day's biggest surprise was the strong showing of Hong Kong's left-of-center parties. The relatively new People Power easily won three seats and nearly won a fourth seat in Kowloon East.<sup>7</sup> The Labour Party's three slates all won seats. The League of Social Democrats did not fare as well, winning one out of the four seats they contested, but its winning candidate in New Territories East, Leung Kwok Hung (commonly known as "Cheung Mo," or "Long Hair"), received more votes than any other slate in that district.

## Super Seats

The five "super seats" were the most closely watched seats in the September 9, 2012, Legco vote. With over 3 million people eligible to cast their ballots for the seats, the "super seats" were the closest Hong Kong has been to a city-wide referendum on the political parties. The complex

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<sup>6</sup> Under Hong Kong's election laws, the votes received by a slate of candidates are apportioned among the members in the order they are listed on the ballot. A candidate is allocated the number of votes necessary to win a seat, and any "excess" votes are allocated to the next candidate on the slate's list. For example, a slate that receives at least 20% of the votes in Kowloon East wins at least one seat for the first name on their list. After all the slates with at least 20% of the vote have been awarded a seat, the remaining seats are distributed to the slates based on who has the most votes remaining. By splitting slates, a party increases its chance of winning more than one seat.

<sup>7</sup> People Power was formed in 2011 when several members of the LSD left the party as a result of a dispute with the LSD leadership.



process for nominating candidates for the five seats seemed to favor the pro-Beijing parties and effectively excluded most of the pan-democrat parties. However, popular opposition to the “national education” curriculum and rising discontent with the “mainlandization” of Hong Kong were viewed as factors that favored the pan-democrat candidates.

Under the terms of a controversial compromise on election reforms reached in 2010, only elected members of Hong Kong’s 18 District Councils (see text box, **Hong Kong’s District Councils**) could be candidates for the five “super seats.” To be nominated as a candidate (or a slate of candidates), the elected district council member(s) had to receive the support of at least 15 District Council members. Each District Council member could only support the nomination of one candidate or slate of candidates. On November 6, 2011, Hong Kong voted for the 412 elected District Council members, and four parties won at least 15 seats—the pan-democrat Association for Democracy and People’s Livelihood (15 seats) and the Democratic Party (47), plus the pro-Beijing Civil Force (15) and the DAB (136). The HKFTU (11), the Liberal Party (9), the Neo Democrats (8), and the Civic Party (7) fell short, but might have obtained help from their coalition partners. The Labour Party and LSD were excluded from the race as neither had an elected District Council member, and People Power had one.

### **Hong Kong’s District Councils**

Hong Kong’s 18 District Councils were established to provide local advice and counsel to the Hong Kong government, plus to promote and administer cultural, recreational, and other community activities in the districts. The number of seats on each District Council varies from 13 to 43, with a total of 507 District Council members. Of that amount, 412 are directly elected by the residents of the district, 68 are appointed by the Chief Executive, and 27 are ex-officio members consisting of the chairs of the rural committees in the New Territories. The elected District Council members serve a four-year term.

The most recent District Council election was held on November 6, 2011. DAB candidates won 136 seats, the Democratic Party won 47 seats, pro-Beijing Civil Force and pan-democrat ADPL each won 15 seats, and the HKFTU won 11 seats. LSD had 27 candidates in the elections, but none won. People Power fielded 62 candidates, and won 1 seat.

Seven candidates or slates of candidates ran for the five “super seats”—a full slate of five candidates from the DAB, a joint DAB/Civic Force candidate, two partial slates from the Democratic Party, a partial slate from the ADPL, a partial slate from the HKFTU, and one independent candidate. The Civic Party, Liberal Party, and Neo Democrats did not field a candidate for the “super seats.” All three pan-democrat slates won one seat; the other two seats went to the full DAB slate and the partial HKFTU slate (see **Table 1**).

## **Traditional Functional Constituencies**

The 28 traditional functional constituencies are a legacy of British rule that was carried through Hong Kong’s transition to Chinese sovereignty. The functional constituencies are a mixture of economic and social groups considered important to Hong Kong. In the past, the creation of the functional constituencies was widely seen as a way of ensuring a majority of Legco members would support the policies of the British Governor of Hong Kong. Today, the functional constituencies are generally seen as a way to provide support for the Chief Executive.

Other important characteristics of the functional constituencies are their limited number of eligible voters and, in some cases, the nature of the eligible voters. Eligible voters for a particular functional constituency may be people, companies, organizations, or a combination of all three. The number of eligible voters in each constituency varies from a low of 132 for the Finance seat to a high of nearly 90,000 for the Education seat.



**Table 1. Results of Hong Kong's 2012 Legislative Council Elections**

by Type of Seat and Political Parties

Political Party	Geographical Constituencies (35)					Functional Constituencies (35)		Total (70)
	Hong Kong Island (7)	Kowloon East (5)	Kowloon West (5)	New Territories East (9)	New Territories West (9)	Super Members (5)	Traditional (30)	
Pan Democrats (27)								
Association for Democracy and People's Livelihood (ADPL)						1		1
Civic Party (CP)	1	1	1	1	1		1	6
Democratic Party (DP)	1	1	1	1		2		6
Labour Party (LP)	1			1	1		1	4
League of Social Democrats (LSD)				1				1
Neighbourhood and Worker's Service Centre (NWSC)					1			1
Neo-Democrats (NDP)				1				1
People Power (PP)			1	1	1			3
Professional Teachers Union (PTU)							1	1
Independents							3	3
Pro-Beijing (43)								
Democratic Alliance for the Betterment and Progress of Hong Kong (DAB)	2	1	1	2	3	1	3	13
Economic Synergy (ES)							3	3
Federation of Hong Kong and Kowloon Labour Unions (FLU)							3	1
Hong Kong Federation of Trade Unions (HKFTU)	1	1			1	1	2	6
Liberal Party (LiP)				1			4	5
New Century Forum (NCF)							1	1
New Dynamic (ND)			1					1
New People's Party (NPP)	1				1			2
Independents (I)		1						11

Source: <http://www.elections.gov.hk/legco2012/eng/index.html>; CRS analysis.



Out of the 30 traditional functional constituency seats up for election, 16 had one candidate who, under Hong Kong law, was declared the winner with no vote being held. Nine of the seats had two candidates. Financial Services had the most candidates—a total of five.

Pro-Beijing parties and independents won 24 of the 30 traditional functional constituency seats, including three parties that had not won seats in the geographical constituencies (see **Table 1**). Economic Synergy, a pro-business party that split from the Liberal Party, won three seats. The Federation of Hong Kong and Kowloon Labour Unions (FLU), a left-of-center, pro-Beijing party, also won three seats. Finally, the New Century Forum, a party of professionals primarily concerned about the economic prospects of Hong Kong's middle class, won one seat. The six pan-democrat seats went to the Civic Party, the Labour Party, the Hong Kong Professional Teachers' Union, and three independent candidates.

## **The Coalition Splits**

A tally of the election results reveals that the pro-Beijing coalition will hold 43 seats in the newly elected Legco, led by the DAB with 13 seats (see **Table 1**). The pan-democrat coalition will have 27 members in the new Legco, with the Civic Party and the Democratic Party with six Legco members. However, both groups will face challenges in keeping their loose coalitions together.

Among the pro-Beijing coalition, the “newer” parties such as the New Century Forum, New Dynamic, and the New People's Party have expressed views that differ from the DAB and HKFTU, particularly on matters affecting Hong Kong's middle and working class population. In addition, issues pertaining to workers' rights in Hong Kong may result in disagreement within the pro-Beijing coalition. The most likely source of friction within the pan-democrats will be between the more moderate Civic Party and Democratic Party and the left-of-center LSD and People Power parties. Both LSD and People Power campaigned on their disagreement with the decision of the Civic Party and the Democratic Party to accept the election reform compromise in 2010.

## **Implications for Democracy in Hong Kong**

Articles 45 and 68 of the Basic Law state that the “ultimate aim” is for the Chief Executive and all the members of the Legislative Council to be elected by “universal suffrage.” Annex I of the Basic Law describes the method by which the Chief Executive is to be selected. Annex II describes the method for selecting the members of the Legislative Council. Both annexes discuss the process whereby the method of selection can be modified after 2007. The election reforms of 2010 were conducted following the procedures stipulated in the annexes, as well as conditions set in a decision of the Standing Committee of China's National People's Congress (NPCSC) on December 29, 2007. The NPCSC's decision effectively set the year 2017 as the earliest date for the direct election of the Chief Executive and the year 2020 as the earliest date for the direct election of all Legco members.<sup>8</sup> The new Chief Executive and Legco will have the opportunity to fulfill the ultimate aim stated in the Basic Law and approve legislation to elect the next Chief Executive and the 2020 Legco by universal suffrage.

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<sup>8</sup> For more about the 2007 NPCSC decision, see CRS Report RS22787, *Prospects for Democracy in Hong Kong: China's December 2007 Decision*, by (name redacted).



The amended Basic Law stipulates slightly different conditions for altering the selection process for the Chief Executive and for Legco. For the Chief Executive, Paragraph 7 of Annex I states:

If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress *for approval* (emphasis added).

For the Legislative Council, Section III of Annex II states:

With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress *for the record* (emphasis added).

According to the NPCSC's decision, amending the election process involves a six-step process. First, the Chief Executive "shall make a report" to the NPCSC on the need for amendment of Hong Kong's election process. Second, the NPCSC will make a determination on the issue of the need for amendment, but not on specific changes. Third, the Hong Kong government shall introduce a bill of amendments to the Legco. Fourth, Legco must pass the bill of amendments by at least a two-thirds majority. Fifth, the Chief Executive must approve the bill passed by Legco. Sixth, the bill shall be reported to the NPCSC for its approval when amending the election of the Chief Executive, and "for the record," when amending the election of Legco. While the first two steps are not explicitly stated in the Basic Law, it is generally expected that Leung will abide by the six-step process described in the NPCSC decision.

The 2012 Legco election results are particularly relevant to the fourth step in this process. Because the pan-democrats won 27 seats, the coalition can block any proposal to amend the election process if the coalition members remain relatively unified. However, it is unlikely that the pan-democrats can attract the support of the necessary 20 members of the pro-Beijing coalition to approve election reforms drafted by or acceptable to the pan-democrats. If Leung and Legco are unable to negotiate a compromise acceptable to most of the members of both coalitions, they could miss the opportunity to achieve universal suffrage in the 2017 and 2020 elections.

Two pivotal issues will determine if such a compromise can be reached. The first issue is the nomination process for candidates for Chief Executive. The second is the future status of functional constituencies.

At present, a candidate for Chief Executive must receive the support of at least 150 of the 1,200 members of the Election Committee to be considered a valid candidate. Election Committee members can only support the nomination of one candidate. This caps the potential number of candidates at eight people. Article 45 states the nomination be done by "a broadly representative nominating committee in accordance with democratic procedures." It is generally presumed that the current Election Committee or some variation of it will be converted into a nomination committee in any Hong Kong government proposal to implement the election of the Chief Executive by universal suffrage. One key issue will be the process for selecting the members of the nomination committee, as some observers are skeptical that the Chinese government will



allow the creation of an independent and representative nomination committee. Another key issue will be the nomination threshold. The pan-democrats generally prefer a lower threshold to allow more candidates; the pro-Beijing group are thought to prefer a higher threshold to avoid the nomination of candidates considered unacceptable to the Chinese government.

The existence of the functional constituencies is a controversial component of Hong Kong's governance structure. To some politicians and analysts, the functional constituencies are inherently non-democratic entities, and therefore must be eliminated in order to fulfill the "ultimate aim" stated in Article 68 of the Basic Law. To others, the functional constituencies can be consistent with the "ultimate aim" if every eligible voter can cast a ballot for one of the functional constituency members. Another controversial aspect of the functional constituencies is the existence of company and organizational votes. To some observers, universal suffrage implies that only people can vote, not companies or organizations. To others, because the Basic Law does not specifically state that only people can vote, company and organizational votes are not inconsistent with the ultimate aim of universal suffrage. The status of functional constituencies in any reform proposal is important also because at least 12 functional constituency members will have to vote in favor of the election reforms. Some analysts question the likelihood of 12 functional constituency members voting to eliminate their own Legco seats.

## **Gauging the Chinese Government**

The possibility of future election reforms in Hong Kong provides the opportunity to assess the Chinese government's commitment to its promise to allow the democratization of Hong Kong, as well as the potential for democratic reforms in China. As noted above, the Chinese government has a role in the approval of Hong Kong's election reforms at two points in the six-step process. In addition, some observers have suggested that the Chinese government may use Hong Kong as a testing ground for possible democratic reforms in the Mainland and to demonstrate the feasibility of the "one country, two systems" policy to Taiwan.

The Chinese government plays a direct role in the approval process for Hong Kong's election reforms at two points in the process. First, the NPCSC decides, in response to a report from the Chief Executive, if the "actual situation" in Hong Kong supports amending the election process. This role is based on the NPCSC's decision of 2007 interpreting Article 45 of the Basic Law. Second, after the election reforms have been approved by two-thirds of the Legco members and the Chief Executive, the NPCSC has to approve any changes in the process of selecting the Chief Executive and record any changes in the process of electing the Legco members. The response of the NPCSC to proposed election reforms in Hong Kong is one indicator of the Chinese government's attitude toward Hong Kong's democratization and democracy in general.

In addition, the Chinese government may decide to weigh in on any election reform discussion in Hong Kong, as it did in 2007 when the NPCSC issued its decision. In that year, Legco and the Hong Kong public in general were engaged in a spirited debate over the possibility and desirability of the adoption of universal suffrage for the election of the Chief Executive in 2012. The pan-democrats were pushing for such a reform; the pro-Beijing parties generally opposed the idea. Also, many of the pan-democrats wanted to eliminate the functional constituencies, while pro-Beijing parties favored the retention of functional constituencies. The issuance of the NPCSC's decision on December 29, 2007, effectively ended the discussion, as it stated that the adoption of universal suffrage for the election of the Chief Executive could occur no sooner than 2017 and for the Legco members no sooner than 2020. The decision also stipulated that for the



2012 Legco elections the size of Legco could be increased to 70 members, to be evenly divided between geographical and functional constituencies. Depending on how any future discussion of election reforms unfolds in Hong Kong, the NPCSC may choose to intervene again, thereby signaling the Chinese government's thinking about democracy.

The concept of "one country, two systems" was originally intended as a model for the reunification of China and Taiwan, but it has been put into practice in Hong Kong. China's promise to afford Hong Kong a high degree of autonomy and preserve the city's "capitalist system and way of life" for at least 50 years is stated in Article 5 of the Basic Law. Some scholars have suggested that the Chinese government will continue to use its treatment of Hong Kong as a demonstration to Taiwan that reunification poses no threat to Taiwan's autonomy and way of life. To this end, these scholars think the Chinese government will accept the democratization of Hong Kong as part of the process of promoting reunification with Taiwan. Other scholars are skeptical that the Chinese government will risk the emergence of a more democratic government in Hong Kong, as the nature of that government could foment popular pressure for political reforms on the Mainland.

Some analysts, however, have suggested that Hong Kong may be used by the Chinese government to test an approach to implementing democratic reforms throughout China in a manner that can preserve the central role of the Chinese Communist Party (CCP). According to this hypothesis, the CCP may attempt to control the nomination process for candidates for Chief Executive in Hong Kong while allowing the election of the Chief Executive by universal suffrage. In effect, the nomination process will winnow out any candidates unacceptable to the CCP while the election by universal suffrage will give the appearance of democracy. Similarly, the preservation of selected functional constituencies and the control of the eligibility criteria for each functional constituency may insure that the CCP can indirectly prevent undesirable legislation from being approved by Legco.

## **Implications for Congress**

The Hong Kong Policy Act of 1992 states that it is U.S. policy to support democracy in Hong Kong. To this end, Congress has appropriated funds over the years to support the development of civil society and democratic practices in Hong Kong. In addition, the United States has commented on past intervention by the Chinese government in Hong Kong's governance. In 2007, a spokesperson of the U.S. consulate in Hong Kong expressed disappointment in the NPCSC's decision, and the hope that future election reforms would be possible.

Some non-governmental organizations in Hong Kong have expressed to CRS their reservations about accepting U.S. funding for civil society development, as it may stigmatize the organization in the eyes of Chinese government and draw unwanted attention from both the Chinese and Hong Kong governments. These organizations suggest that U.S. assistance be carefully designed to avoid the appearance of interfering in the internal politics of Hong Kong.

Also, the treatment of the democratization of Hong Kong may serve as an indicator of the Chinese government's general attitude toward human rights and civil liberties, particularly as a new generation of leaders takes office in Beijing in late 2012 and early 2013. Facilitation of democratic reforms in Hong Kong may signal that China's new leadership is more open to democratic governance and greater respect for human rights. Conversely, thwarting popular



election reforms in Hong Kong may signal that the Chinese government is unwilling to accept the democratization of Hong Kong—or China—for the foreseeable future.

Congress has appropriated funds in the past to foster the development of civil society and democratic practices in Hong Kong. The 2012 Hong Kong election results and the upcoming discussion of future election reforms—including the involvement of the Chinese government—are factors that Congress may consider when deciding whether to allocate more assistance for the democratic practices in Hong Kong. In addition, Congress may conduct hearings or organize other events to examine and bring attention to the prospects for democracy in Hong Kong.



## Appendix. List of Newly Elected Legco Members

Below is a list of the names of the 70 Legco members and their party affiliations by type of seat in order of number of votes received (where applicable).

### Geographical Constituencies:

*Hong Kong Island:* Chan Ka-lok (CP), Sin Chung-kai (DP), Christopher Chung Shu-kun (DAB), Cyd Ho Sau-lan (LP), Regina Ip Lau Suk-yea (NPP), Jasper Tsang Yok-sing (DAB), Wong Kwok-hing (HKFTU)

*Kowloon East:* Chan Kam-lam (DAB), Wu Chi-wai (DP), Alan Leong Kah-kit (CP), Wong Kwok-kin (HKFTU), Paul Tse Wai-chun (Independent)

*Kowloon West:* Ann Chiang Lai-wan (DAB), Raymong Wong Yuk-man (PP), Helen Wong Pik-wan (DP), Leung Mei-fan (ND), Claudia Man-ching (CP)

*New Territories East:* Leung Kwok-hung (LSD), Emily Lau Wai-hing (DP), Elizabeth Quat (DAB), Raymond Chan Chi-chuen (PP), Chan Hak-kan (DAB), Cheung Chiu-hung (LP), Gary Fan Kwok-wai (NDP), James Tien Pei-whun (LiP), Ronny Tong Ka-wah (CP)

*New Territories West:* Kwok Ka-ki (CP), Albert Chan Wai-yip (PP), Leung Yiu-chung (NWSC), Tam Yiu-chung (DAB), Lee Cheuk-yan (LP), Chan Han-pan (DAB), Michael Tien Puk-sun (NPP), Alice Mak Mei-kuen (HKFTU), Leung Che-cheung (DAB)

### Functional Constituencies:

*District Council [Second]/(Super Seats):* James To Kun-sen (DP), Starry Lee Wai-king (DAB), Chan Yuen-han (HKFTU), Albert Ho Chun-yan (DP), Frederick Fung Kin-kee (ADPL)

*Heung Yee Kuk:*<sup>9</sup> Lau Wong-fat (ES); *Agriculture and Fisheries:* Steven Ho Chu-yin (DAB); *Insurance:* Chan Kin-por (Independent); *Transport:* Frankie Yick Chi-ming (LiP); *Education:* Ip Kin-yuen (PTU); *Legal:* Kwok Wing-hang (CP); *Accountancy:* Kenneth Leung Kai-cheong (Independent); *Medical:* Leung Ka-lau (Independent); *Engineering:* Lo Wai-kwok (Independent); *Architectural, Surveying and Planning:* Ton Tse Wai-chuen (Independent); *Labour:* Kwok Wai-keung (HKFTU), Tang ka-piu (HKFTU), Poo Siu-ping (FLU); *Social Welfare:* Cheung Kwok-che (LP); *Real Estate and Construction:* Abraham Shek Lai-him (Independent); *Tourism:* Yiu Si-wing (Independent); *Commercial [First]:* Jeffrey Lam Kin-fung (ES); *Commercial [Second]:* Martin Liao Cheung-kong (Independent); *Industrial [First]:* Andrew Leung Kwan-yuen (ES); *Industrial [Second]:* Lam Tai-fai; *Finance:* Ng Leung-sing (Independent); *Financial Services:* Christopher Cheung Wah-fung (Independent); *Sports, Performing Arts, Culture and Publication:* Ma Fung-kwok (NCF); *Import and Export:* Wong Ting-kwong (DAB); *Textiles and Garment:* Chung Kwok-pan (LiP); *Wholesale and Retail:* Vincent Fang Kang (LiP); *Information Technology:* Charles Peter Mok (Independent); *Catering:* Tommy Cheung Yu-yan (LiP); *District Council [First]:* Ip Kowk-him (DAB)

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<sup>9</sup> Heung Yee Kuk is a statutory advisor body to the Hong Kong government consisting of representatives of 27 rural committees in the New Territories established to represent the interests of Hong Kong's indigenous residents.



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