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Proposed 2017 Chief Executive Election Reforms in Hong Kong

On April 22, 2015, Chief Secretary (CS) Carrie Lam Cheng Yuet-ngor presented to Hong Kong's Legislative Council (Legco) and the Hong Kong people the main components of proposed legislation to alter the manner by which the city's Chief Executive (CE) is to be selected in 2017. The proposed election reforms may represent a significant step in the democratization of the city's political system or a setback for the hope of many residents of Hong Kong for the election of a CE by genuine universal suffrage.

CS Lam's announcement reflects Step 3 in a six-step process prescribed by China's central government to amend the provisions in Hong Kong's main constitutional document, the Basic Law, governing the CE's selection (see text box, "Amending the Basic Law"). Step 1 was completed on July 15, 2014, when CE Leung Chun-ying (C.Y. Leung) submitted a report to China's National People's Congress Standing Committee (NPCSC) on the need for election reform. Step 2 was completed on August 31, 2014, when the NPCSC released its decision in response to the CE's report.

Amending the Basic Law

In 2004, the NPCSC released a decision establishing a six-step process to amend the Basic Law's provisions for selecting the Chief Executive. Those steps are:

Step 1—Chief Executive submits report to the NPCSC "as regards to whether there is a need to make an amendment."

Step 2—The NPCSC determines if there is a need to amend Annex I of the Basic Law.

Step 3—The Chief Executive submits legislation to amend Annex I of the Basic Law to the Legislative Council for consideration.

Step 4—The Legislative Council approves the legislation (with possible amendments) by a two-thirds majority of its members.

Step 5—The Chief Executive consents to the approved legislation and submits to the NPCSC for approval.

Step 6—The NPCSC approves the legislation.

The NPCSC's decision approved the selection of the next CE by universal suffrage contingent upon the establishment of a Nominating Committee "in accordance with the number of members, composition and formation method of" the 1,200 member Election Committee that currently selects the Chief Executive. The NPCSC decision also stipulated that the Nominating Committee nominate only two or three candidates, and that each candidate receive the support of a majority of the Nominating Committee members. As explained below, many in Hong Kong objected to this decision arguing that the Nominating Committee so constructed potentially would screen out pro-democracy candidates. The Hong Kong government will formally introduce the proposed legislation to Legco on

June 17 in hopes that Legco may vote on the bill before its 2015 summer recess.

Main Recommendations of the Proposal

Although CS Lam's announcement contained few surprises, it reflected a fairly conservative approach to election reforms, largely transferring many of the elements of the current Election Committee (EC) over to the formation of the Nominating Committee (NC). Among the main recommendations of the Hong Kong Government's proposal are that:

- A 1,200-member Nominating Committee be formed consisting of the same 4 sectors and 38 subsectors that constitute the current Election Committee, and NC members serve a five-year term;
- The allocation of NC seats among the subsectors, the manner of selecting the members of each subsector, and the electorate of each subsector shall remain largely unchanged (except for technical adjustments);
- The NC shall approve two or three nominees in two stages. In the first stage, each NC member may recommend one person for consideration. To be eligible for NC consideration, a person must receive 120 recommendations. Each person will be allowed to receive no more than 240 recommendations. In the second stage, each NC member shall vote by secret ballot for at least two candidates and the two or three candidates who receive the most votes and at least 601 votes shall be the official nominees presented for a vote by all eligible Hong Kong voters.
- The popular vote will be held using the "first-past-the-post" system, in which the nominee with the most votes is declared the winner. To win, a nominee will not have to receive a majority of the popular vote.

Uncertain Prospects in Legco

To be approved, the legislation must receive the support of two-thirds of Legco, or 47 of its 70 members. Under the terms of a NPCSC 2004 decision interpreting the Basic Law, Legco members will not be allowed to propose any amendments to the CE election reform bill introduced by the Hong Kong government.

Following CS Lam's presentation to Legco, many of the 27 Legco members who constituted a coalition commonly referred to as the "pan-democrats" publicly reiterated their commitment to vote against any proposal that complied with the NPCSC's August 2014 decision. All but one of the remaining 43 Legco members, commonly known as "pro-establishment" because they generally support the Hong Kong government's proposals to Legco, announced they would vote in favor of the proposal.

The pan-democrats object to the NPCSC's August 2014 decision and the proposal outlined in CS Lam's presentation to Legco because they view the Nominating Committee as a means of screening out pro-democracy candidates. Some pan-democrat Legco members interviewed by CRS calculate that their candidates can receive at most 250 votes from the current Election Committee. With the proposed Nominating Committee composed and operating largely in the same way as the Election Committee, the pan-democrats consider it is highly unlikely that a candidate backed by the pan-democrats would be nominated.

About 50 Legco members met with senior Chinese officials in Shenzhen on May 31 to discuss the proposed election reforms. Following the meeting, NPCSC Basic Law Committee Chairman Li Fei reportedly indicated that the NPCSC would not modify its August 2014 decision.

If the 27 pan-democrats remain firm in their commitment to vote against the CE election reform proposal, the bill will fail to receive the necessary two-thirds vote, and the current method of selecting the CE will remain in place. However, some of the pan-democrats hope that the NPCSC may reconsider its August 2014 decision when it meets this summer, if the current proposal is defeated in Legco. To date, the NPCSC has given no indication that it is willing to reexamine its August 2014 decision.

China's "Promise" of Universal Suffrage in Hong Kong

In 1990, China's National People's Congress (NPC) passed the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Basic Law), setting up the governance system for the city after its transfer from British to Chinese sovereignty on July 1, 1997. Articles 45 and 68 of the Basic Law state that "the ultimate aim" is for the election of the Chief Executive and all the members of Legco by universal suffrage, respectively. For nearly two decades, various political groups have been pushing for the Chinese central government to fulfill what they regard as the "promise" of the Basic Law for universal suffrage in Hong Kong.

In December 2007, during a time of political protests in favor of the CE's selection by universal suffrage, the NPCSC released a decision indicating that universal suffrage could not be used to select the CE in 2012, but may be allowed in 2017. The decision also stated that the Legco may be elected by universal suffrage only after the CE was selected by universal suffrage. To many observers, the NPCSC's 2007 decision set a timeline for the adoption of universal suffrage in Hong Kong.

Public discussion about the prospects for universal suffrage in the 2017 CE elections began in 2013 and the Hong Kong government formally announced the first round of public consultation on the issue on December 4, 2013. During the spring of 2014, there was extensive debate over alternative models for selecting the CE by universal suffrage in 2017.

Pro-Democracy Protests in Hong Kong

The release of the NPCSC's August 2014 decision and its restrictions on the nomination process touched off large-scale protests in Hong Kong that became known as "the Umbrella Movement." For 79 days in 2014, protesters occupied the streets near Hong Kong's main government office buildings and elsewhere in the city in a call for "genuine universal suffrage" in the selection of the city's next Chief Executive. After the Hong Kong police forcibly broke up the protests, new groups organized new protests, continuing the call for "genuine universal suffrage."

Meanwhile, public opinion polls present a mixed picture of attitudes toward the election reforms. A joint poll by several Hong Kong university research centers from late May 2015 found that a slight plurality (45.9% vs. 35.2%) indicated they thought that Legco should support election reform that complies with the NPCSC's August 2014 decision.

Implications for Congress

The U.S.-Hong Kong Policy Act of 1992 (P.L. 102-383) states that it is in U.S. interests to support the democratization of Hong Kong. It also continues Hong Kong's separate treatment from China under existing bilateral agreements unless the President determines and certifies to Congress that Hong Kong is no longer sufficiently autonomous to warrant such treatment. Following the release of the CE election reform proposal, a spokesperson for the U.S. Consulate in Hong Kong was quoted as saying, "[W]e believe that the legitimacy of the CE will be greatly enhanced if the Chief Executive is selected through universal suffrage and Hong Kong's residents have a meaningful choice of candidates."

The Hong Kong Human Rights and Democracy Act (H.R. 1159) would amend the U.S.-Hong Kong Policy Act to require the Secretary of State certify to Congress "whether Hong Kong is sufficiently autonomous to justify separate treatment different from that accorded the People's Republic of China in any new laws, agreements, treaties, or arrangements entered into between the United States and Hong Kong."

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