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Hong Kong's Legislative Council (Legco)

The United States-Hong Kong Policy Act of 1992 (22 U.S.C. 5701, P.L. 102-383) states, “Support for democratization is a fundamental principle of United States foreign policy.” The development of Hong Kong’s Legislative Council, or Legco, has been a fundamental part of Hong Kong’s complex and incomplete process of democratization, and as such has become a key concern of some U.S. policymakers.

As currently constituted, some of Legco’s members are elected via a democratic process, and others are selected by a restricted mandate (see “Brief History of Legco” below). Under the 1990 Chinese law establishing the governance system for the Hong Kong Special Administrative Region (HKSAR) of the People’s Republic of China (PRC), or “Basic Law,” “the ultimate aim” is the election of “all the members of the Legislative Council” (as well as the Chief Executive) by universal suffrage. As a result, Legco plays a critical role in both an assessment of democratization in Hong Kong, as well as progress toward democratization.

On June 30, 2020, China’s National People’s Congress Standing Committee (NPCSC) promulgated a national security law (NSL) for Hong Kong that broadly and vaguely defines the crimes of secession, subversion, terrorist activities, and collusion with a foreign entity. The NSL also bans anyone convicted of a NSL crime from becoming a Legco member for the rest of their lives.

Partially in response to the promulgation of the NSL, on July 14, 2020, President Trump signed the Hong Kong Autonomy Act (P.L. 116-149) which among other things, authorizes the imposition of sanctions on “foreign persons” responsible for the PRC government’s failure to abide by its commitments under the Basic Law, including the implicit transition to democracy. On the same day, President Trump issued Executive Order 13936, which permits the sanctioning of “any foreign person” responsible for “actions or policies that undermine democratic processes or institutions in Hong Kong,” or “responsible for or involved in developing, adopting, or implementing” the NSL.

On July 31, HKSAR Chief Executive Carrie Lam Cheng Yuet-ngor announced that Legco elections scheduled for September 6, 2020, would be postponed one year to September 5, 2021, citing the public health risk of holding the elections during the Coronavirus Disease 2019 (COVID-19) pandemic. The postponement has raised several questions about the legality of her action, and the establishment of a legislative body to serve during the intervening year.

The Basic Law and Legco

The Basic Law established an executive-led government headed by a Chief Executive under which Legco members

have limited authority to introduce legislation. The Basic Law also stipulates that any proposal to amend the Basic Law—including amendments that would change Hong Kong’s election system—must be approved by at least two-thirds of all Legco members, as well as the Chief Executive, two-thirds of the HKSAR’s 36 deputies in China’s National People’s Congress, and the NPCSC.

Brief History of Legco

Legco has a history going back over 170 years marked by some progress—and some setbacks—in democratization. The first Legco met in 1844, when the city was a British colony. All Legco members were appointed by Hong Kong’s Governor until 1985, when 24 of the 57 members were selected by limited suffrage. In 1995, the last Legco under British rule consisted of 30 members selected by 29 “functional constituencies” representing social and economic sectors, 20 members elected by universal suffrage in 20 geographical constituencies, and 10 members selected by an Election Committee. Every registered voter could vote in one geographical and one functional constituency.

The PRC government objected to the manner by which the 1995 Legco was selected, and appointed a 60-member Provisional Legco on December 21, 1996, which assumed office on July 1, 1997, the day on which the United Kingdom transferred sovereignty over Hong Kong to China. On May 24, 1998, the first Legco under Chinese sovereignty was chosen, consisting of 20 members elected by universal suffrage, 30 selected by limited suffrage through 28 functional constituencies, and 10 appointed by the generally pro-PRC Election Committee, which selects Hong Kong’s Chief Executive.

Legco now has 70 members, with 35 elected by universal suffrage in 5 geographical constituencies, 30 chosen through limited suffrage in 28 functional constituencies, and 5 District Council (Second) members elected by voters ineligible to vote in the functional constituencies, the so-called “super seats.” The division of Legco members into geographical and functional constituencies gives certain groups disproportional representation in Legco. For instance, in the 2016 election, the financial sector seat was chosen by 125 financial institutions, while the five District Council (Second) seats were elected by nearly 3.5 million people.

Political Parties and Coalitions

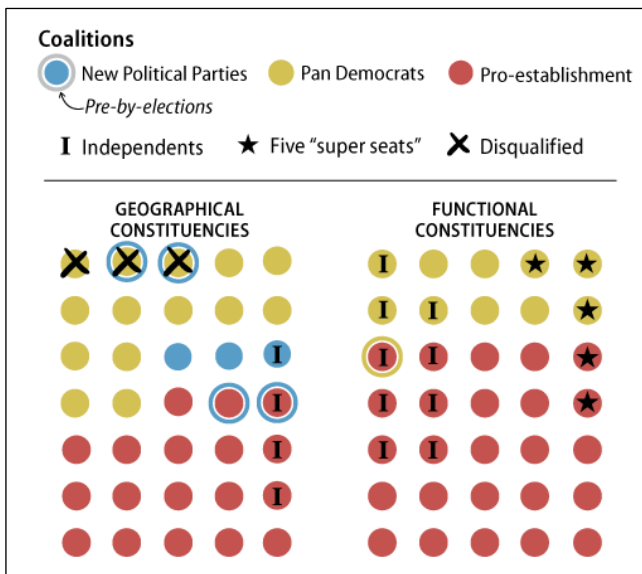
Hong Kong’s political parties can be divided into two informal coalitions. During the 2016 Legco elections, the “pro-democracy” coalition consisted of the older “pan-democrat” parties (largely based in the city’s white collar professionals and trade unions) and new political parties that emerged out of the 2014 Umbrella Movement. After the NSL’s promulgation, several of the new political parties

disbanded. The “pro-establishment” coalition contains a mixture of business and trade union leaders who are generally supportive of the PRC and HKSAR governments. In general, the “pro-democracy” coalition supports more rapid democratization, while the “pro-establishment” coalition prefers more a gradual transition.

The HKSAR's 6th Legislative Council

Candidates from 19 separate parties, as well as 12 independent candidates, won seats in the 6th Legco elections held in September 2016. The 2016 Legco elections also saw 7 candidates from 5 new political parties nominate candidates and win seats. Six of the elected candidates, including four from the new political parties and two from the pan-democrats, however, were subsequently disqualified by Hong Kong's High Court.

Figure 1. Political Composition of the 6th Legco, Following the By-Elections and Disqualifications



Source: CRS.

Note: By-elections were held in March and November 2018 to fill 5 of the 6 vacant seats resulting from the High Court's disqualifications.

Oath Controversy, Disqualifications, and By-Elections

After the 2016 elections were held, PRC and HKSAR officials undertook measures that led to the disqualification of elected pro-democracy Legco members, and prevented the nomination of pro-democracy candidates in special by-elections. Legco President Andrew Leung Kwan-yuen, a member of the pro-establishment coalition, ruled invalid the oaths taken by five Legco-elect members on October 12, 2016, including those given by new political party members, Leung Chung-hang and Yau Wai-ching. On October 18, the HKSAR government filed a suit in Hong Kong's High Court to prohibit Leung and Yau from retaking their oaths. On November 7, 2016, while the oath case was still pending in the High Court, the NPCSC issued an “interpretation” of Article 104 of the Basic Law, mandating that all Hong Kong public officials must “accurately, completely and solemnly read out the oath prescribed by law.” On November 15, the High Court ruled that Leung and Yau had “declined” to take their oaths when

they made additional statements during the oath-taking. The HKSAR government subsequently filed suits against two pan-democrats and two new political party members alleging that their oaths were not valid. On July 14, 2017, the High Court disqualified all four Legco members.

By-elections were held on March 11, 2018, and November 25, 2018, to fill five of the six vacant seats (see Figure 1). Pan-democratic candidates won two geographical constituency seats (previously held by new political party members); pro-establishment candidates won two geographical constituency seats (previously held by new political party members) and one functional constituency seat (previously held by a pan-democrat).

On December 17, 2019, Hong Kong's High Court ruled that pan-democratic party members Au Nok-hin and Gary Fan Kwok-wai, who won seats in the by-elections, were not properly elected because two new political party candidates, Agnes Chow Ting and Ventus Lau Wing-hong, were improperly prohibited from running for office by Hong Kong's Electoral Affairs Commission (EAC). Because the next Legco elections had been already scheduled for September 6, 2020, the EAC decided not to hold another by-election, leaving vacant three Legco seats.

2020 Elections

Hong Kong was scheduled to hold Legco elections on September 6, 2020, the first elections to be held under the NSL. On July 31, Chief Executive Lam announced that she was postponing the elections until September 5, 2021, because of the public health risk of holding elections during the COVID-19 pandemic.

Most of the pro-democracy parties and candidates participated in an informal primary held on July 11 and 12 to select candidates for the Legco elections. More than 610,000 people, or over 13% of the eligible voters, participated in the primary. Sixteen successful candidates associated with the new political parties of the 2016 elections have formed the “localist resistance camp,” but plan to work with the “pan-democrat” candidates in a joint effort to win a majority of seats in Legco.

On July 30, the EAC disqualified 12 of the pro-democracy Legco candidates, in part due their previous statements in opposition to the NSL. Despite the postponement of the elections, Chief Executive Lam instructed the EAC to continue its review of the candidates' nomination applications, and indicated that more disqualifications are likely to be made.

The Hong Kong Bar Association and others have questioned the legality of the postponement of the Legco elections, saying it is inconsistent with provisions in the Basic Law and local election ordinances. According to the Basic Law, Legco elections are to be held every four years, making it unclear how to constitute a Legco to serve during the intervening year. Chief Executive Lam has asked the NPCSC to make a decision on the legality of her postponement and how to form a provisional Legco.

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