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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 democratization of Hong Kong’s Legislative Council, or Legco, is one indicator of the city’s promised high degree of autonomy from the People’s Republic of China (PRC), and as such has become a key concern of some U.S. policymakers.

The postponement of the Legco elections scheduled for September 6, 2020, for a year has raised questions about the commitment of the Chinese and Hong Kong governments to democratic reform, and the provisions of the Basic Law. It also presented a challenge to the current pro-democracy Legco members on whether to continue to serve in office, or resign over the delay in the elections.

The Basic Law and Legco

The Basic Law, a law passed by China’s National People’s Congress (NPC) in 1990, “authorizes the Hong Kong Special Administrative Region (HKSAR) to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law.” The Basic Law also states that “the ultimate aim” is the election of “all the members of the Legislative Council” (as well as the Chief Executive) by universal suffrage. In addition, it stipulates that any proposal to amend the Basic Law—including those 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 deputies in the NPC, and the National People’s Congress Standing Committee (NPCSC). As a result, Legco plays a critical role in both an assessment of the current status of democracy in Hong Kong, as well as progress toward greater democratization.

Under current HKSAR law, Legco 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.” Each Legco is to serve for four years. The term of the 6th Legco since sovereignty over Hong Kong was transferred from the United Kingdom to the PRC on July 1, 1997, was to have ended on September 30, 2020.

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.

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. On May 24, 1998, the first Legco under PRC 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.

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 (such as the Civic Party and the Democratic Party) and new political parties that emerged out of the 2014 Umbrella Movement. 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 abides by the preferences of the PRC government.

The HKSAR’s 6th Legislative Council

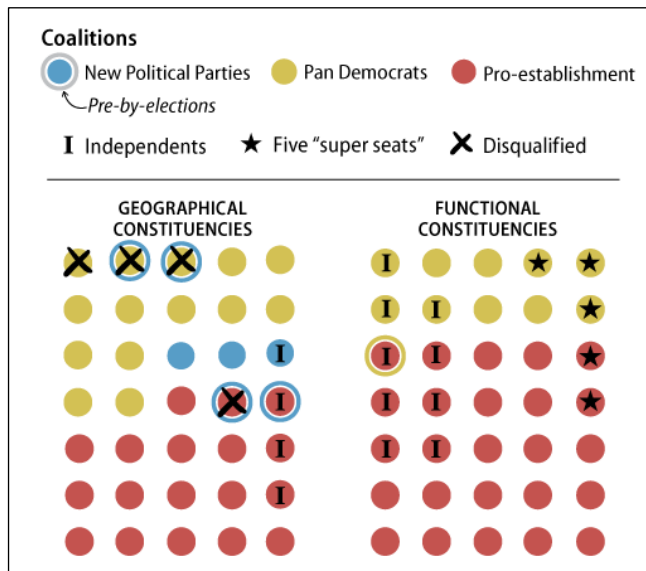
Candidates from 19 separate parties, as well as 12 independent candidates, won seats in the 6th Legco elections held in September 2016. The 2016 Legco elections also saw 7 candidates from 5 new pro-democracy political parties nominate candidates and win seats. Six of the elected candidates, including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

Disqualifications and By-Elections

After the 2016 elections were held, PRC and HKSAR officials undertook measures that led to the disqualification of several 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.

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.

By-elections were held in March and November 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 Au Nok-hin and Gary Fan Kwok-wai, who won seats in the by-elections, were not properly elected because Agnes Chow Ting and Ventus Lau Wing-hong were improperly prohibited from running in the by-election by Hong Kong's Electoral Affairs Commission (EAC). Because the next Legco elections were scheduled for September 6, 2020, the EAC decided not to hold another by-election, leaving vacant three Legco seats. On September 17, 2020, pro-establishment Legco member Rebecca Chan Hoi-yan was removed from office following a High Court ruling that

pro-democracy candidate Lau Siu-lai had been improperly disqualified from running in the by-election.

Postponed 2020 Elections

On July 31, 2020, HKSAR Chief Executive Carrie Lam Cheng Yuet-ngor announced that Legco elections scheduled for September 6, 2020, would be postponed until September 5, 2021, citing the public health risk of holding the elections during the Coronavirus Disease 2019 (COVID-19) pandemic. On August 11, 2020, China's National People's Congress Standing Committee (NPCSC) extended the term of office for the 6th Legco members for an additional year.

The Hong Kong Bar Association questioned the legality of the election postponement, saying it was inconsistent with the Basic Law and local election ordinances. The 24 pro-democracy Legco members had to decide if they would serve as a Legco member after the start of a new session on October 14 or resign in protest. Three pro-democracy members, Ray Chan Chi-chuen, Tanya Chan, Eddie Chu Hoi-dick, chose to step down.

As a result, Legco has 21 pro-democracy members and 42 pro-establishment members, including Legco President Leung. Because the pro-democracy coalition does not have a majority of geographical constituency members, they cannot block legislation proposed by the HKSAR government. However, because they hold more than a third of the seats (the Legco President does not vote on legislation), they can block amendments to the Basic Law or disciplinary actions in Legco to remove a member.

U.S. Policy

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 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 National Security Law for Hong Kong that was passed by the NPCSC (see CRS Report R46473, *China's National Security Law for Hong Kong: Issues for Congress*). On August 7, 2020, the Department of the Treasury imposed financial sanctions on 11 HKSAR and PRC officials, including Chief Executive Lam, "for undermining Hong Kong's autonomy and restricting the freedom of expression or assembly of the citizens of Hong Kong." The Department of State reportedly also has subjected the 11 sanctioned officials to entry visa restrictions. Under Treasury's sanctions, "all property and interest in property" of the sanctioned individuals in the United States or held by U.S. persons are frozen, and it is illegal for U.S. persons to make "any contribution or provision of funds, goods, or services by, to, or for the benefit of" the sanctioned individuals.

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