

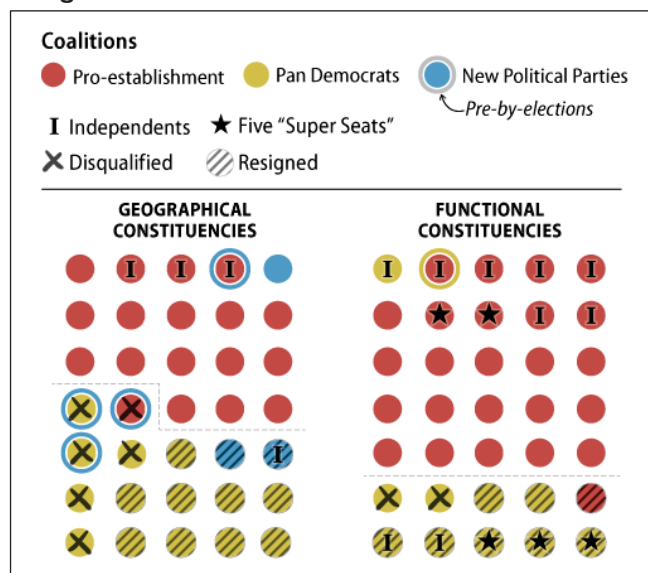
Updated November 23, 2020

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.

Since 2016, the PRC and the Hong Kong Special Administrative Region (HKSAR) governments have disqualified 13 Legco members and blocked the candidacy of several democracy advocates. In addition, HKSAR Chief Executive Carrie Lam Cheng Yuet-ngor postponed Legco elections scheduled for September 2020 for a year, citing the public health risk posed by the coronavirus pandemic. On November 17, 2020, 15 pro-democracy Legco members resigned following the disqualification of 4 other pro-democracy Legco members. Disqualifications and resignations have reduced Legco, which is supposed to have 70 members, to 41 pro-establishment coalition members and 2 pro-democracy members (see **Figure 1**).

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



Source: CRS.

The actions by the PRC government and HKSAR government have raised doubts about their commitment to democracy in Hong Kong, the rights of Hong Kong residents, and their compliance with the Sino-British Joint Declaration, an international treaty specifying China's obligations regarding the governance of Hong Kong after July 1, 1997.

The Basic Law and Legco

The Basic Law, a law required by the Sino-British Joint Declaration and 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. 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 is supposed to have 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 was to have ended on September 30, 2020, but has been extended to September 30, 2021.

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.

Legco members have historically been divided into two informal coalitions—the “pro-establishment” coalition and the “pro-democracy” opposition. The “pro-establishment” coalition contains a mixture of business and trade union leaders who are generally supportive of the PRC and HKSAR governments. 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 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 win seats.

Disqualifications and 2016 By-Elections

Following the 2016 elections, PRC and HKSAR governments undertook measures to disqualify six elected pro-democracy Legco members, and prevent the nomination of pro-democracy candidates in special by-elections. On October 18, the HKSAR government filed a suit in Hong Kong's High Court to prohibit new political party members Leung Chung-hang and Yau Wai-ching from retaking their oaths. On November 7, 2016, while the High Court case was still pending, China's National People's Congress Standing Committee (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. In addition, 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 these four Legco members.

By-elections were held in March and November 2018 to fill five of the six vacant seats. 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). Hong Kong's High Court, however, disqualified three of the by-election winners, ruling that Hong Kong's Electoral Affairs Commission (EAC) had improperly disqualified pro-democracy candidates for 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, the NPCSC approved the extension of the 6th Legco for an additional year.

2020 Disqualifications and Resignations

Prior to the extension of the 6th Legco's term in office, four of its current members had been judged ineligible to run for reelection, raising questions about their ability to remain in office. Chief Executive Lam asked the NPCSC to rule on their eligibility. On November 11, 2020, the NPCSC issued a decision on the qualifications to serve in Legco, and the HKSAR government disqualified the four Legco members. The following day, 15 pro-democracy Legco members submitted their resignations in support of the four disqualified members and in opposition to the actions of the NPCSC and the HKSAR government. In addition, two pro-democracy members resigned in protest of the elections' postponement, and another resigned for health reasons. In June, a pro-establishment member resigned to become Secretary of Labour and Welfare. For more about these events, see CRS Insight IN11533, *Hong Kong Government Disqualifies Four Legislative Council Members*.

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 Treasury Department imposed economic sanctions on 11 PRC and HKSAR officials, including Chief Executive Lam, citing the authority of EO13936. On October 14, 2020, the State Department imposed visa restrictions on the same people designated by the Treasury Department. On November 9, 2020, the State Department and the Treasury Department designated an additional 4 PRC and HKSAR officials to be subject to restrictions.

The Hong Kong People's Freedom and Choice Act of 2020 (H.R. 8428, S. 4229), the Hong Kong Refugee Protection Act (S. 4631), the Hong Kong Safe Harbor Act (H.R. 7415, S. 4110), and the Hong Kong Victims of Communism Support Act (S. 3892) would address erosion of Hong Kong's autonomy and the rights of its residents by providing Hong Kong residents with preferential or priority treatment when requesting refugee status or applying for immigration to the United States. The Hong Kong Freedom Act (H.R. 6947) would authorize the President to recognize Hong Kong as a separate and independent country from China. The Hong Kong Be Water Act (S. 2758) would direct the President to impose sanctions on, and freeze assets belonging to, individuals and entities responsible for suppressing freedoms in Hong Kong.

Michael F. Martin, Specialist in Asian Affairs

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