

LegCo General Election postponed for a year

The Hong Kong Special Administrative Region (HKSAR) Government announced today (July 31) that, amid the severe COVID-19 epidemic situation, the Chief Executive in Council has decided to postpone the 2020 Legislative Council (LegCo) General Election, originally scheduled for September 6, 2020, for a year to September 5, 2021, in order to protect public safety and public health as well as ensure elections are conducted openly and fairly.

For this, the Chief Executive in Council has invoked the Emergency Regulations Ordinance (Cap. 241) to make the Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation. The Regulation specifies the new election date, brings the current electoral process to an end, and deals with such matters as election expenses and donations. The Regulation was gazetted today and will come into effect tomorrow (August 1).

A Government spokesman said, "The epidemic situation has been extremely severe since the outbreak in early July. There is an increasing risk of a major community outbreak that may lead to a collapse of the local public hospital system, which would be a significant public crisis.

"The LegCo General Election is massive in scale. A situation with millions of voters casting their votes on the same day will create a very high infection risk. Under the existing regulation to prohibit group gatherings, it would not be possible for candidates to carry out any meaningful rallying activities. Further, a large number of voters are living, working and studying in the Mainland, while many are stranded overseas. These voters will not be able to return to Hong Kong to vote in view of the border control measures. In addition, elderly voters may refrain from voting amid the severe epidemic situation due to their higher infection risk.

"In view of the above factors, if the election is held on September 6 as scheduled, it will be difficult for the election to be a fair and open one. It may also undermine the safety of the voters, the candidates and their supporters as well as the polling staff. Therefore the HKSAR Government had to make the difficult but necessary decision to postpone the election.

"The current wave of the epidemic is likely to last for weeks or even longer. There may also be a winter surge. The LegCo performs important and substantive functions, and has an annual business cycle. Further, preparation work and the voter registration exercise will take months before an election can be held. It is reasonable and in the public interest to postpone the election for a year."

As a matter of fact, many elections have been postponed across the globe due to COVID-19. Among others, the United Kingdom postponed the local council

elections and the metro-mayoral elections due to take place on May 7, 2020, for a year to May 6, 2021.

"Under the existing Legislative Council Ordinance (Cap. 542) and the Prevention and Control of Disease Ordinance (Cap. 599), the Government cannot postpone the LegCo General Election for a year on the grounds of ensuring the openness and fairness of the election as well as protecting public health. As the present epidemic situation can be regarded as an occasion of public danger and emergency, invoking the Emergency Regulations Ordinance (Cap. 241) to make an emergency regulation to postpone the election is the only viable option," the spokesman added.

The Court of Appeal upheld the constitutionality of the Emergency Regulations Ordinance in a judgment in April 2020. The Ordinance enables the Chief Executive in Council to legislate speedily and effectively to meet all and every kind of emergency and public danger.

Article 69 of the Basic Law stipulates that the term of the LegCo shall be four years, except the first term which shall be two years. Therefore the current term of the LegCo must end on September 30, 2020. While the Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation can postpone the election date of the seventh-term LegCo for a year, it cannot deal with the lacuna in the LegCo between September 30, 2020, and the election of the seventh-term LegCo.

For this, the Chief Executive has submitted an urgent report to the Central People's Government seeking its support and guidance. The State Council replied and expressed support for the decision made by the Chief Executive in Council in accordance with the law to postpone the election of the seventh-term LegCo by one year on the grounds of public interest and in light of the concrete circumstances of Hong Kong. With respect to how to deal with the lacuna of the LegCo arising from the postponement, the Central People's Government will make a submission in accordance with the law to the Standing Committee of the National People's Congress for its decision. The HKSAR Government shall properly handle work related to postponement of the seventh-term LegCo election in accordance with the law.