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Hong Kong Economic and Trade Offices

Hong Kong Economic and Trade Offices (HKETOs) are the official representative offices of the Government of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (PRC, or China). Following the PRC's 2020 imposition of a "national security law" (NSL) on Hong Kong, some Members of Congress have questioned whether Hong Kong remains "sufficiently autonomous" under U.S. law (as described below) to justify having its own offices in the United States, separate from the PRC's official missions. The Government of the HKSAR maintains four HKETOs in mainland China and fourteen additional offices around the world, including in New York, San Francisco, and Washington, DC. They report to the Commerce and Economic Development Bureau overseen by the HKSAR's Secretary of Finance.

Background

The PRC committed to allowing Hong Kong to "enjoy a high degree of autonomy, except in foreign and defence [sic] affairs" as part of the 1984 Sino-British Joint Declaration on the Question of Hong Kong ("Joint Declaration"), the international treaty under which the United Kingdom agreed to transfer sovereignty over Hong Kong to China in July 1997. (See CRS In Focus IF12070, *China Primer: Hong Kong*.)

The Joint Declaration stipulates that, following the 1997 handover, Hong Kong "will retain the status of a free port and a separate customs territory." It further states that the HKSAR "may establish mutually beneficial economic relations with the United Kingdom and other countries, and that "[u]sing the name of 'Hong Kong, China,' the Hong Kong Special Administrative Region may on its own maintain and develop economic and cultural relations and conclude relevant agreements with states, regions and relevant inter-national organisations." For example, Hong Kong maintains its status as an independent member of the WTO as a customs territory, with its own vote and group memberships nominally separate from those of Beijing.

Role of HKETOs

According to the HKSAR's official 2021 *Yearbook*, HKETOs "promote Hong Kong's economic and trade interests [...] by enhancing understanding of Hong Kong among opinion-formers, monitoring developments that may affect Hong Kong's economic and trade interests, and liaising with government bodies, politicians, businesses, think tanks and the media." Each HKETO is headed by a director, appointed by the HKSAR Government from its civil service. In the United States, the HKSAR has HKETOs in New York, San Francisco, and Washington, D.C. The Hong Kong Commissioner to the United States serves as the most senior representative of the HKSAR and oversees the work of the three offices.

Overseas HKETOs operate autonomously from the PRC's foreign missions except in the realm of consular affairs. PRC diplomatic and consular missions can assist overseas Hong Kong residents who are PRC citizens with lost travel documents, evacuation services, and notarial and authentication services. The Government of the HKSAR may issue travel documents for entry into and exit from Hong Kong but does so with authorization of the PRC government under the terms of the Joint Declaration.

HKETO Responsibilities

- **Trade Promotion:** HKETO interacts with U.S. policymakers, Members of Congress, local governments, and business groups to promote bilateral trade between Hong Kong and the United States.
- **Cultural Diplomacy:** HKETO hosts regular events in various cities in the United States to promote artists and musicians, as well as other cultural productions from Hong Kong.
- **Official Travel for Hong Kong Government Officials:** HKETO organizes overseas travel and arranges meetings with local policymakers and business leaders for senior Hong Kong government officials.
- **Non-Emergency Assistance to Hong Kong Residents Abroad:** Assists Hong Kong residents in the United States with non-consular issues. Consular issues, such as lost travel documents, are handled by PRC embassies or consulates.

HKETOs in the United States

U.S. policy toward Hong Kong is guided by the United States-Hong Kong Policy Act of 1992 (USHKPA; P.L. 102-383). The USHKPA states that, as a matter of policy, the United States "should invite Hong Kong to maintain [...] its official and semi-official missions in the United States, such as the [HKETO]" and the Office of the Hong Kong Trade Development Council (HKTDC), a statutory body established by the Government of the HKSAR to promote, assist, and develop trade. The USHKPA further states, "the United States should invite Hong Kong to open and maintain other official or semi-official missions to represent Hong Kong in those areas in which Hong Kong is entitled to maintain relations on its own, including economic, trade, financial, monetary, aviation, shipping, communications," and more. Prior to the PRC's imposition of a NSL on Hong Kong in 2020, the HKSAR and the United States maintained various bilateral agreements on issues ranging from counternarcotics cooperation to international tax compliance.

In the United States, HKETOs enjoy privileges, exemptions, and immunities provided by the International Organizations Immunities Act (P.L. 79-291) and Article I of the Agreement on State and Local Taxation of Foreign Employees of Public International Organizations (T.I.A.S. 12135). President Bill Clinton extended these privileges in 1997 via an Executive Order on Hong Kong Economic and Trade Offices (E.O. 13052), which Congress explicitly authorized in P.L. 105-22. Privileges enjoyed by HKETOs include the capacity to acquire and dispose of real and personal property, immunity from suit and every form of judicial process “as is enjoyed by foreign governments,” and immunity to search.

Hong Kong’s Status and the HKETOs

According to the USHKPA, Hong Kong will continue to receive differential treatment under U.S. law “unless otherwise expressly provided by law or by Executive order under section 202” of the USHKPA. Some U.S. policy makers have sought to reconsider the HKSAR’s differential status under U.S. law (and the question of Hong Kong’s autonomy vis-a-vis the PRC) following the May 2020 decision by China’s legislature, the National People’s Congress (NPC), to impose the NSL on Hong Kong.

On May 27, 2020, then-Secretary of State Mike Pompeo certified to Congress that Hong Kong “does not continue to warrant treatment under United States laws in the same manner as U.S. laws were applied to Hong Kong before July 1997.” The Department of State upheld this assessment in 2021 and 2022 reports mandated by the USHKPA, as amended by the Hong Kong Human Rights and Democracy Act of 2019.

On July 14, 2020, then-President Donald Trump issued an Executive Order on Hong Kong Normalization (E.O. 13936). E.O. 13936 determined that the HKSAR “is no longer sufficiently autonomous to justify differential treatment in relation to the [PRC]” and set out U.S. policy to “suspend or eliminate different and preferential treatment for Hong Kong to the extent permitted by law and in the national security, foreign policy, and economic interest of the United States.” The E.O. suspended Hong Kong’s differential treatment under a number of statutes, including Section 103 of the Immigration Act of 1990, the Arms Export Control Act, and section 721(m) of the Defense Production Act of 1950, and ordered the agency heads “to commence all appropriate actions to further the purposes” of the order.

HKETOs and Foreign Influence

U.S. media reports have scrutinized HKETOs’ influence in the United States. Some reports have focused on HKETOs’ compliance with the Foreign Agent Registration Act (FARA), which requires certain agents of foreign principals “who are engaged in political activities” to make periodic public disclosure of their relationship, as well as “activities, receipts, and disbursements in support of those activities.” Some reports have specifically drawn attention to a series of filings made between 2009 and 2019 in which registrants stated that they would “report to and be instructed by” the HKETO in Washington, DC, despite listing the HKTDC and not the HKETO as their foreign principal.

As the PRC Central Government has diminished Hong Kong’s autonomy, observers including Hong Kong democracy activists and Members of Congress have also criticized partnerships between HKETOs and U.S. public entities, including the Smithsonian’s National Museum of Asian Art, which announced in January 2023 that it intended to terminate its partnership with HKETOs. The Smithsonian Institution is a trust instrumentality of the United States created by Congress in 1846; six Members serve on its administrative Board of Regents.

Issues for Congress

Some stakeholders argue that in light of the PRC Central Government’s increasingly direct influence over the HKSAR, including the imposition of the NSL, HKETOs should cease functioning as entities autonomous from the PRC’s foreign missions. The Hong Kong Human Rights and Democracy Act (HKHRDA, P.L. 116-76) amended the USHKPA to direct the Secretary of State to certify “whether Hong Kong continues to warrant treatment under United States law” as “applied to Hong Kong before July 1, 1997.” It also made it U.S. policy “to support the high degree of autonomy and fundamental rights and freedoms of the people of Hong Kong” and “to urge the Government of the [PRC] to uphold its commitments to Hong Kong, including allowing the people of Hong Kong to govern Hong Kong with a high degree of autonomy and without undue interference.”

Following the United States’ suspension of Hong Kong’s special and differential trade status with regard to U.S. trade law, several Members of Congress have questioned allowing Hong Kong to maintain a separate economic and trade office in the United States, arguing that Hong Kong is not sufficiently autonomous to separate its economic and diplomatic policies from those of the PRC. In the 117th Congress, S. 5253, and its companion bill H.R. 9561, would have required the President to rescind the privileges, exemptions, and immunities granted to the HKETOs, so long as Hong Kong does not enjoy a “high degree of autonomy” from the PRC.

Some Members have also expressed concerns that Hong Kong’s separate representation in the United States for commercial purposes could be an alternative means for the PRC government and Communist Party of China to interact with the U.S. business community. The HKETO has played an active role in promoting economic and trade initiatives of the PRC central government, such as the Greater Bay Area, a special economic zone encompassing Hong Kong and parts of southern mainland China.

Congress may assess the Department of Justice’s oversight and capacity to monitor HKETOs’ compliance with statutes regarding the activities of foreign government entities, and particularly FARA.

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