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## Hong Kong's Proposed Extradition Bill Could Extend Beijing's Coercive Reach: Risks for the United States

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### Key Findings

- **A Hong Kong government extradition bill would—if passed into law—increase the territory's susceptibility to Beijing's political coercion and further erode Hong Kong's autonomy.** The bill, which followed a minimal public comment period and could face a final vote before July 2019, would amend Hong Kong's laws to allow extraditions to mainland China. A broad range of offenses that carry a minimum three-year jail sentence under Hong Kong law would be eligible for extradition, and the bill would remove independent legislative oversight in the extradition process. Such changes would undermine the strong legal protections guaranteed in Hong Kong and leave the territory exposed to Beijing's weak legal system and politically motivated charges.
- **The proposed changes to Hong Kong's extradition laws could create serious risks for U.S. national security and economic interests in the territory.** If passed, the bill could potentially violate several key provisions of the U.S.-Hong Kong Policy Act of 1992, which outlines U.S. policy toward the territory, including the authorization of the U.S.-Hong Kong extradition treaty and "encouraging" U.S. businesses to continue to operate in Hong Kong. The new arrangement would diminish Hong Kong's reputation as a safe place for U.S. and international business operations, and could pose increased risks for U.S. citizens and port calls in the territory.
- **As Beijing accelerates its encroachment on the territory's autonomy and guaranteed freedoms, the bill could provide it a powerful legal tool to further intrude into Hong Kong's affairs.** Passage of the bill would almost certainly make operations harder for prodemocracy advocates and the business community, who are already worried about Beijing's illegal detention of Hong Kong and other foreign citizens.

### Background

On April 3, 2019, the Hong Kong government formally introduced its extradition bill before Hong Kong's legislature, the Legislative Council (LegCo).<sup>1</sup> The bill proposes changes to the territory's extradition laws to allow ad hoc extraditions to countries and jurisdictions with which Hong Kong does not have such agreements, including mainland China, Macau, and Taiwan.<sup>2</sup> These changes would amend laws governing extradition agreements and mutual legal assistance in criminal matters in force since the 1997 handover of Hong Kong to China. At that time, the laws explicitly prohibited extradition arrangements with mainland China due to fears over its legal system and lack of human rights protections.<sup>3</sup>

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The proposed extradition bill—which could reach a final vote by July 2019—is designed to close loopholes for the over 100 countries and territories without mutual extradition arrangements with Hong Kong.\* It makes individuals eligible for extradition for 37 offenses, punishable by a minimum three-year jail sentence under Hong Kong law, including some white-collar offenses such as bribery and fraud.<sup>4</sup> The bill would also transfer authority over extradition requests from LegCo to the pro-Beijing chief executive of Hong Kong.<sup>5</sup> The revised extradition process involves the following steps:

- Upon receiving an extradition request from any government or territory outside Hong Kong, the chief executive (who is elected by a committee of mostly pro-Beijing electors) issues a certificate to request a provisional arrest;
- The court of jurisdiction (determined by the type and severity of the case) conducts an open hearing, allowing the individual being called for extradition to offer a defense, and determines whether the extradition request complies with the law. The judge decides whether to issue an arrest warrant for the fugitive; and
- The chief executive makes a final decision on whether to proceed with the arrest and rendition.<sup>6</sup>

The Hong Kong government argues that such legislation is urgently needed to fill loopholes in its extraditions policy. In a February 2018 murder case, both Hong Kong and Taiwan authorities experienced difficulty in prosecuting a Hong Kong resident accused of murdering his girlfriend in Taiwan. After the suspect fled Taiwan to return to Hong Kong, Hong Kong authorities lacked a mutual extradition agreement and could not prosecute him for his alleged crimes.<sup>7</sup> Nevertheless, Hong Kong’s High Court in April 2019 sentenced the suspect to prison on related money laundering charges. Observers expect the suspect will be eligible for release from prison in October, extending the period the Hong Kong authorities have to arrange a special extradition arrangement.<sup>8</sup>

The Hong Kong legal community and prodemocracy legislators contended the Hong Kong government could use the existing legal authorities that permit case-by-case extraditions outside of the PRC after obtaining a LegCo certification in a special arrangement with Taiwan.<sup>9</sup> In response, the Hong Kong Security Bureau argued LegCo’s involvement is problematic due to the possibility case details might be leaked and increasing suspect flight risk, in addition to the existing extradition laws not covering mainland China and Taiwan.<sup>10</sup>

Authorities in Taiwan attempted to negotiate directly with the Hong Kong authorities to work out a special arrangement, but the Hong Kong government did not respond.<sup>11</sup> Moreover, Taipei has said it would not enter into an extradition agreement with Hong Kong that defines Taiwan as part of the People’s Republic of China (PRC), and opposes the proposed bill, as it would increase the probability of Taiwan citizens being extradited to China (as has happened in other cases<sup>†</sup>).<sup>12</sup>

The Hong Kong government’s push for extradition legislation comes at the same time China is accelerating its encroachment on the territory’s autonomy and freedoms guaranteed under the “one country, two systems” policy and the Basic Law, Hong Kong’s mini constitution.<sup>13</sup> Beijing’s recent intrusions into the territory’s autonomy, particularly in rule of law, are raising concerns in Hong Kong and among foreign observers that the territory is becoming more like any other Chinese city rather than a region administered under a separate system with a “high degree of autonomy,” which Beijing has promised to maintain until at least 2047.<sup>‡</sup><sup>14</sup>

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\* Hong Kong has signed mutual extradition agreements with 20 jurisdictions and has signed mutual agreements to provide criminal legal assistance with 32 jurisdictions (both include the United States). Hong Kong Security Bureau, *Legislative Council Panel on Security Cooperation between Hong Kong and Other Places on Juridical Assistance in Criminal Matters*, February 15, 2019, 2. <https://www.legco.gov.hk/yr18-19/english/panels/se/papers/se20190215cb2-767-3-e.pdf>.

† Since 2015, Beijing has refused to facilitate repatriation of Taiwan citizens accused of telecommunications fraud in third countries that do not have diplomatic ties with Taiwan. This practice has become more commonplace following President Tsai Ing-wen’s election in 2016, as Beijing has sought to apply further pressure on the Tsai Administration. Angie Chen and Emerson Lim, “2 Taiwanese Deported to China from Philippines,” *Central News Agency*, March 8, 2019. <http://focustaiwan.tw/news/aip/201903080012.aspx>; U.S.-China Economic and Security Review Commission, *2017 Annual Report to Congress*, November 2017, 376.

‡ For more detail on the Hong Kong government’s recent tightening of political space and degrading rule of law in line with Beijing’s increasingly assertive policy, see U.S.-China Economic and Security Review Commission, *2018 Annual Report to Congress*, November 2018, 388–390, 393.

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Examples of concern about the changing political environment include:

- In 2015, mainland law enforcement conducted extrajudicial abductions of Hong Kong sellers of political gossip books which were banned in mainland China, demonstrating Beijing's disregard for rule of law in Hong Kong.<sup>15</sup> One of the booksellers, Gui Minhai, a Swedish citizen, remains in Chinese custody after a subsequent questionable charge of sharing state secrets with Swedish consular officers.<sup>16</sup>
- In 2017, at the request of Beijing, the Hong Kong government for the first time refused a U.S. extradition request, raising questions regarding the Hong Kong authorities' ability to uphold legal commitments to the United States.<sup>17</sup>
- In 2018, the Hong Kong government denied a visa renewal to *Financial Times* journalist and vice president of the Hong Kong Foreign Correspondents' Club Victor Mallet without explanation and expelled him from the territory. Many thought the move was in retaliation for the club's August 2018 event hosting the head of a Hong Kong pro-independence political party, raising concerns about freedom of expression.<sup>18</sup>

## Hong Kong Government Moves Forward with Revised Bill despite Broad Opposition

The Hong Kong authorities' extradition proposal sparked concerns from the territory's business and legal communities, prodemocracy and pro-business legislators, media organizations, and foreign observers.<sup>19</sup> In late April 2019, opponents of the bill staged a major protest involving around 130,000 people, according to the organizers (police estimated under 23,000 participants)—reportedly one of the largest protests in Hong Kong since the 2014 mass prodemocracy protests.<sup>20</sup> Critics of the proposal have expressed two primary worries: (1) Hong Kong and foreign citizens could be extradited to mainland China for political or commercial reasons; and (2) China's legal system lacks guarantees for a fair trial.<sup>21</sup> Some expressed concern over how a political offense may be defined.<sup>22</sup>

- Willy Lam, adjunct professor at the Chinese University of Hong Kong's Centre for China Studies, said of the bill: "It is highly conceivable that the CCP [Chinese Communist Party] leadership might place a demand on [Hong Kong Chief Executive] Carrie Lam to extradite political prisoners or prisoners of conscience deemed to be 'criminal' under the PRC legal system."<sup>23</sup>
- The Hong Kong Bar Association said the Hong Kong government failed to explain why it considers Beijing's human rights record and the criminal justice system to have improved sufficiently since 1997 to alter Hong Kong's judgement on the inadequacy of legal protections in the Mainland.<sup>24</sup>
- A group of Hong Kong media organizations led by the Hong Kong Journalists Association issued a statement asserting "[the bill] will not only threaten the safety of journalists but also have a chilling effect on freedom of expression in Hong Kong. [The bill] will make it possible for mainland authorities to demand the surrender of journalists in Hong Kong, citing all kinds of unfounded charges."<sup>25</sup>

The proposal drew rare backlash from the foreign business community, as well as Hong Kong's usually pro-Beijing business sector. In February 2019, the chairwoman of the Business and Professionals Alliance, Priscilla Leung Mei-fun, said the Hong Kong business community was concerned and proposed the Hong Kong government exempt certain white-collar crimes from the bill because "the threshold for some offenses are so different between [Hong Kong and mainland China]."<sup>26</sup> In a March 2019 letter to Hong Kong's Security Bureau, the American Chamber of Commerce in Hong Kong expressed "serious reservations" about the proposal, noting,

*Any change in extradition arrangements that substantially expands the possibility of arrest and rendition to the PRC of international business executives resident in, or transiting through, Hong Kong as a result of allegations of economic crimes made by the Mainland government—including even allegations based on*

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*actions performed entirely outside the PRC—would undermine perceptions of Hong Kong as a safe and secure haven for international business operations.*<sup>27</sup>

In response to the business community’s opposition to the proposal, the Hong Kong government excluded nine white-collar offenses\* in its final bill language, leaving in place other white-collar offenses—notably fraud and bribery—and most offenses previously eligible for extradition to countries with mutual extradition treaties.<sup>28</sup> The final bill language’s exemptions appeared to largely mollify Ms. Leung’s qualms and some other local business interests with votes in LegCo, but others—such as the Hong Kong General Chamber of Commerce and trade associations—continue to urge for more safeguards.<sup>29</sup> Notably, the foreign business community remains opposed to the bill. On March 29, the American Chamber of Commerce in Hong Kong said it “continued to have serious concerns about the revised proposal,” inferring that China’s weak legal protections remain a significant problem.<sup>30</sup>

Foreign governments and human rights organizations have also raised alarms over the bill, including its potential effects on foreign citizens residing in or transiting through Hong Kong:

- U.S. Representative James McGovern (D-MA), Chairman of the Congressional-Executive Commission on China, and U.S. Senator Marco Rubio (R-FL) issued a joint statement expressing their concerns about the proposed bill.<sup>31</sup> House Speaker Nancy Pelosi supported the statement, noting, “Members of Congress continue to support Hong Kong’s autonomy and we are monitoring this situation closely.”<sup>32</sup>
- Kurt Tong, U.S. Consul General to Hong Kong, stated that the proposed extradition changes “could have some impact on the implementation of our bilateral arrangement between the U.S. and Hong Kong.”<sup>33</sup>
- United Kingdom (UK) Foreign Secretary Jeremy Hunt noted that the UK government had conveyed its concerns to the Hong Kong government on the proposed extradition changes, and separately members of the British Parliament introduced a motion on March 29 opposing the proposal and urging the UK government to reexamine its extradition treaty with Hong Kong.<sup>34</sup>
- Global Affairs Canada, the Canadian government’s department responsible for foreign policy, reportedly raised “serious questions with the Hong Kong government about the proposed amendments to their extradition laws” and noted its priority of ensuring Canadian citizens’ security.<sup>35</sup>
- The EU Office to Hong Kong and Macao voiced concerns about its potential impact on EU citizens in Hong Kong, noting that “satisfactory safeguards should be enforced in case of ad hoc extradition.... On such a sensitive issue, a longer and more in-depth public consultation, including consultation with countries that currently have extradition arrangements with [Hong Kong], would have been desirable.”<sup>36</sup>
- Taiwan’s Mainland Affairs Council said the proposed changes would pose an increased risk for Taiwan travel and investment in Hong Kong and warned that Taiwan could issue a travel alert for Hong Kong if the bill passed.<sup>37</sup>
- Amnesty International Hong Kong, the Hong Kong Human Rights Monitor, and Human Rights Watch wrote a joint letter to Chief Executive Lam raising alarms about China’s human rights record and legal system, urging the Hong Kong government to rescind the bill.<sup>38</sup> Freedom House President Michael Abramowitz wrote a letter to Chief Executive Lam pressing for further human rights safeguards in the bill.<sup>39</sup>

## Risks to U.S. Interests and Considerations for Congress

The extradition bill could pose significant risks to U.S. national security and economic interests in the territory, and if passed and implemented may provide grounds for the United States to reexamine important elements of its current

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\*The nine excluded offenses included those relating to: (1) bankruptcy, (2) corporate law, (3) securities and futures trading, (4) intellectual property, (5) environmental pollution or protection of public health, (6) imports and exports or international transfer of funds, (7) use of computers, (8) taxes and duties, and (9) trade descriptions (items 10–12, 14, 21, 27, 35–36, and 40 under Schedule 1 of the Fugitive Offenders Ordinance). Fugitive Offenders Ordinance, Schedule 1. [https://www.elegislation.gov.hk/hk/cap503!en/sch1.pdf?FILENAME=Schedule%201.pdf&DOC\\_TYPE=Y&PUBLISHED=true](https://www.elegislation.gov.hk/hk/cap503!en/sch1.pdf?FILENAME=Schedule%201.pdf&DOC_TYPE=Y&PUBLISHED=true); Government of the Hong Kong Special Administrative Region Gazette, *Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019*, March 29, 2019. <https://www.gld.gov.hk/egazette/pdf/20192313/es3201923139.pdf>.

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relationship with Hong Kong, as outlined in the U.S.-Hong Kong Policy Act of 1992. The bill could potentially violate several key provisions of the act, which underscores U.S. support for Hong Kong’s human rights, democratization, and autonomy under the “one country, two systems” framework. These include: (1) approving the continuation in force of all preexisting treaties from before the handover of Hong Kong to China, including the U.S.-Hong Kong extradition treaty, unless the “President determines that Hong Kong is not legally competent to carry out its [treaty] obligations”; and (2) that U.S. businesses “should be encouraged to continue to operate in Hong Kong,” in accordance with applicable U.S. and Hong Kong law.<sup>40</sup> Section 202 of the act states that the president can, by executive order, suspend the application of any part of the Hong Kong Policy Act by “[determining] that Hong Kong is not sufficiently autonomous to justify treatment.”<sup>41</sup> If the bill passes LegCo, which is likely given the pro-Beijing majority, it would remove legal protections in Hong Kong that preserve its well regarded rule of law and reputation as a global financial hub.

One major concern is that the bill could allow Beijing to pressure the Hong Kong government to extradite U.S. citizens under false pretenses. This could affect the estimated 85,000 U.S. citizens and over 1,300 U.S. firms in Hong Kong—about 300 of which base their Asia regional operations in the territory.<sup>42</sup> The recent spike in arbitrary detentions of U.S., Canadian, and other foreign citizens in China on questionable charges with a lack of access to a fair trial and due process highlight the risk the new law could pose to U.S. citizens.<sup>43</sup>

Although the Hong Kong authorities have publicly stated their support for existing extradition treaties, including arrangements with the United States, the new law may be used to override those protections.<sup>44</sup> With two competing approaches to extradition, Beijing may invoke the terms most favorable to their interests. Given the open question of Beijing’s interpretation of the extradition bill, three important considerations for Congress stand out:

- The U.S. extradition treaty with Hong Kong may require reexamination in light of Beijing’s erosion of the territory’s autonomy and new questions over the legal competence of the Hong Kong government to carry out its obligations under the treaty. The 1984 Sino-British Joint Declaration, which is the basis of the U.S.-Hong Kong extradition treaty, guarantees Hong Kong a “high degree of autonomy” until 2047.<sup>45</sup>
- With the heightened potential risks of extradition for U.S. Navy personnel in the territory if detained or arrested during routine port calls, the United States could consider alternative ports for rest and replenishment in the region.
- U.S. statements raising concerns about the bill’s implications for U.S. economic and national security interests, as well as visits to Hong Kong, could encourage the Hong Kong authorities to maintain preexisting human rights and political safeguards for extraditions from Hong Kong to mainland China.

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## Endnotes

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