

Fight the Virus Together

Postponement of the 2020 LegCo General Election

31 July 2020



Hong Kong SAR Government

- “One of the most fundamental ingredients for stopping this virus is determination, and the willingness to make hard choices to keep ourselves and each other safe.”

– WHO Director-General, 27 July 2020

- Postponing the LegCo General Election, held every four years, is a very difficult decision, but also a necessary one for suppressing COVID-19, safeguarding public safety and protecting public health, and ensuring elections are conducted openly and fairly



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I. Severe epidemic situation

- Covid-19 continues to rampage across the globe and is spreading with increased speed. Confirmed cases have doubled in the past six weeks. As at 30 July, there are 16.8 million confirmed cases, costing 660 000 lives
- As effective vaccines are still being developed, infections cannot be stopped entirely. Various places have to adopt effective measures to control the epidemic.
- Experts warned: when these measures are followed, cases go down. When they're not, cases go up.



I. Severe epidemic situation (Cont'd)

- Anti-epidemic strategy in Hong Kong:
 - Two-pronged approach – minimise cross-boundary people flows and practise social distancing
 - “Suppress and lift” – adjust the control measures timely taking into account the latest public health situation, the economy and people’s tolerance
 - Step up tracing of close contacts of infected persons
 - Enhance virus testing
 - Set up more quarantine, isolation and treatment facilities
 - Carry out extensive publicity and public education to promote personal hygiene



I. Severe epidemic situation (Cont'd)

- Cross-boundary passenger flows largely suppressed

| | Number of <u>inbound</u> passengers through sea, land and air control points | Number of <u>outbound</u> passengers through sea, land and air control points |
|--|--|---|
| January 2020 (Daily average) | 325 000 | 324 000 |
| July 2020 (Daily average up to 30 July) | 2 016 | 3 218 |

- Maintaining social distancing under “suppress and lift”
 - Prohibition on group gathering
 - Class suspension and work from home
 - Closure of public facilities and commercial premises
 - Regulating operations of catering business
 - Mandatory mask-wearing requirement
 - Prohibition on visiting patients in hospitals and residents in residential homes for the elderly



I. Severe epidemic situation (Cont'd)

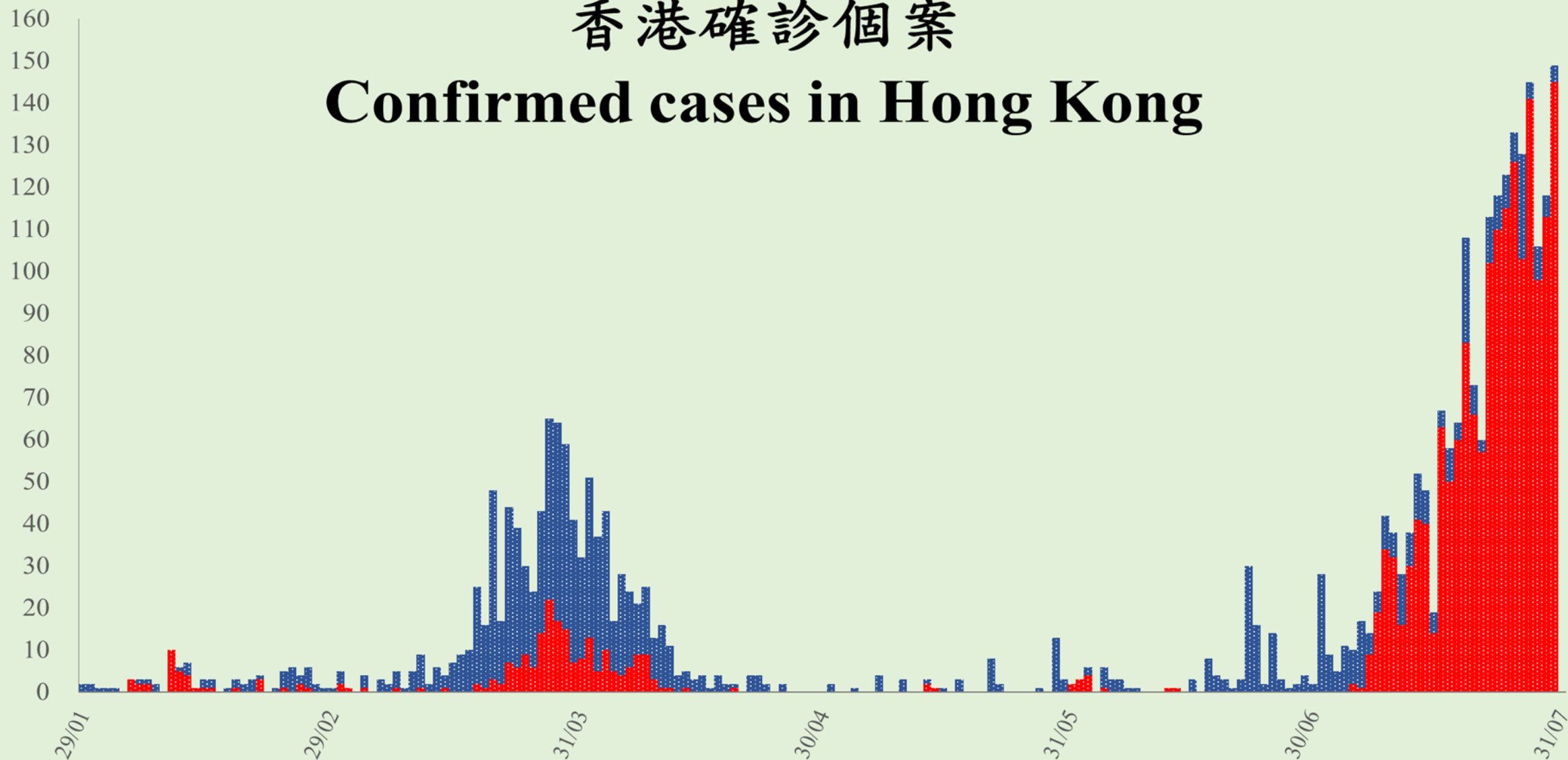
- The epidemic situation has become extremely severe since the outbreak in early July
- From July 8 to July 30, there are 1 852 new cases, up 140% from the 1 300 cases accumulated in the past six months
- The number of confirmed case on 30 July (149) hit record high
- 90% of new cases are local ones and nearly half of them have unknown infection sources
- Involving different sectors, different working environment, different districts



香港確診個案 Confirmed cases in Hong Kong

確診個案數字

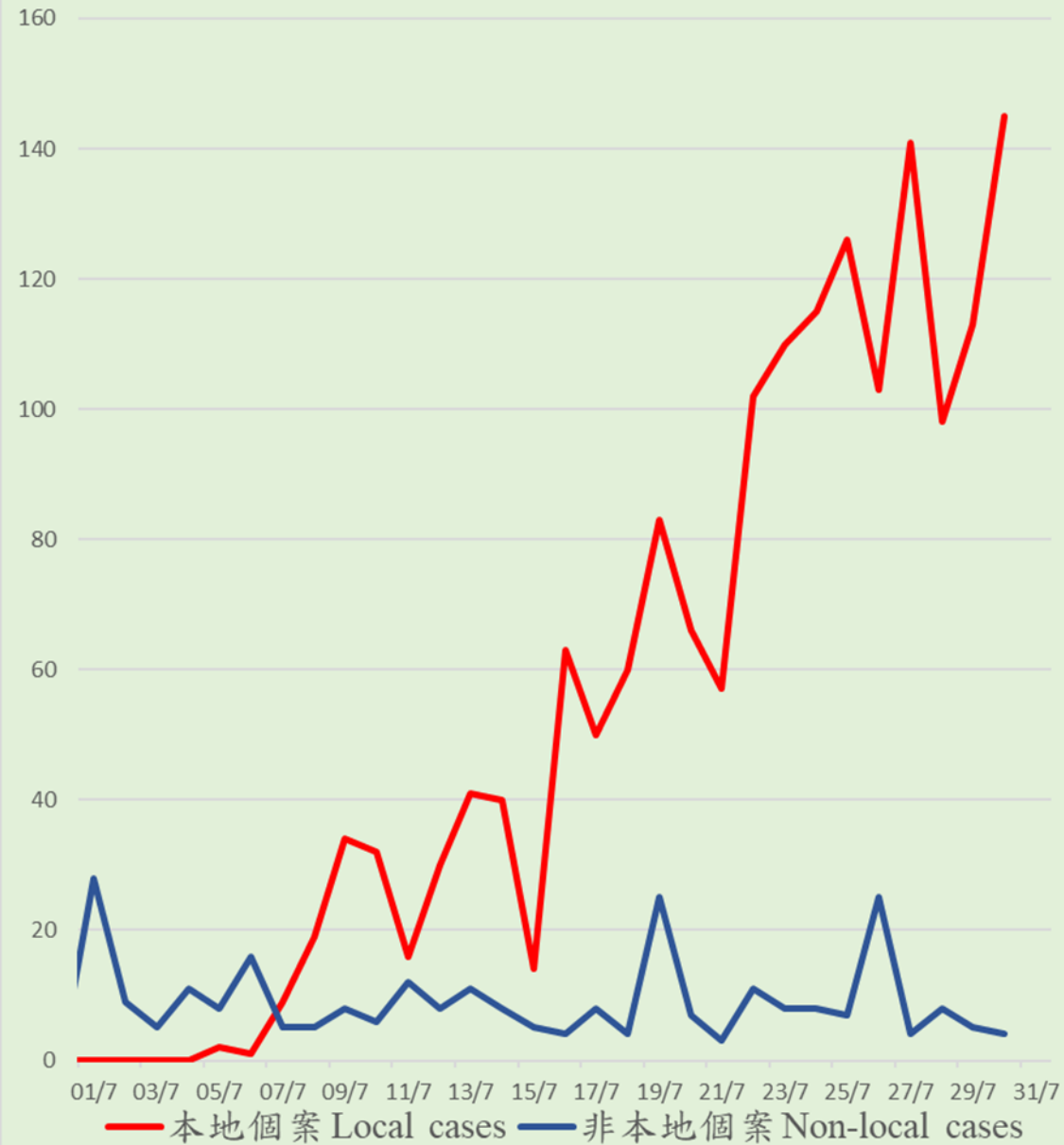
Number of cases



本地個案 Local cases

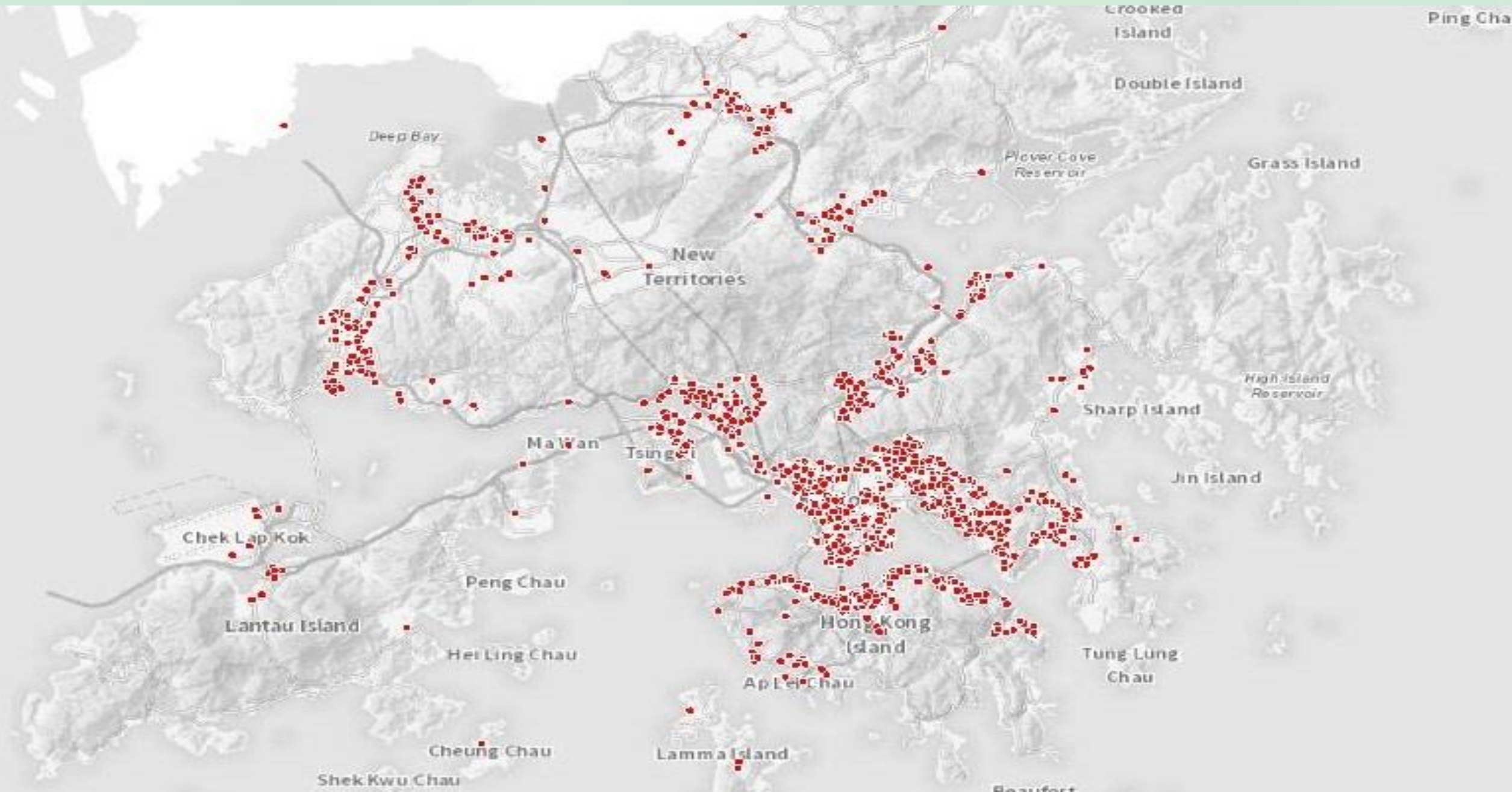
非本地個案 Non-local cases

七月的香港確診個案 Confirmed cases in Hong Kong in July



Hong Kong SAR Government

Distribution of confirmed cases in July



I. Severe epidemic situation (Cont'd)

- Overall, the epidemic situation in Hong Kong:
 - is the most serious since January 2020
 - community infection will continue and there is an increasing risk of a major outbreak
 - enhanced testing will identify more infection cases
 - public hospitals under the Hospital Authority are under huge pressure which will jeopardise the local public hospital system
 - constitutes a major public crisis



II. Impact of the epidemic on election

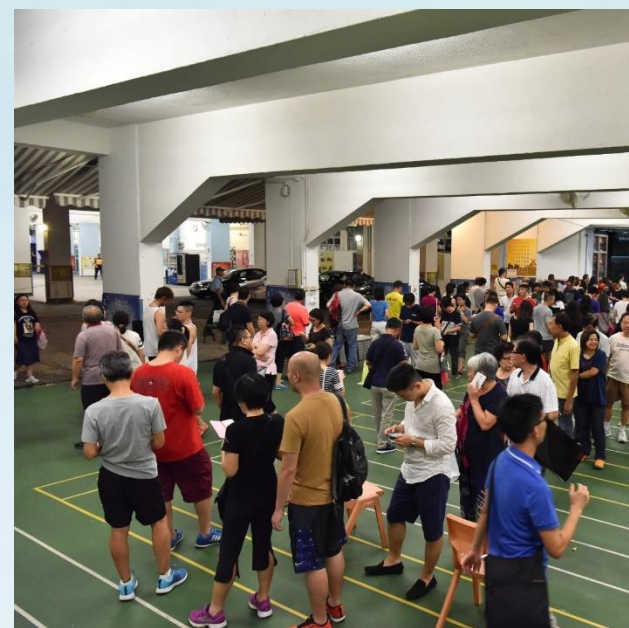
- The LegCo General Election is massive in scale: 4.4 million voters, 70 seats, 615 polling stations, 34 000 electoral staff, dedicated central counting station and media centre. It will lead to huge infection risks associated with crowd gatherings and human interactions
- With border control measures in place, hundreds of thousands of registered voters living or stranded in the Mainland and overseas cannot return to Hong Kong to exercise their right to vote
- The prohibition of group gathering (tightened to no more than two persons) makes election-related gatherings and usual electioneering activities impossible



II. Impact of the epidemic on election (Cont'd)

- Another venue has to be identified for the central counting station and media centre, as the AsiaWorld-Expo has been converted into temporary community treatment facility by the Hospital Authority
- Over 600 000 elderly registered voters (over 71-year old) may give up voting given the higher risk posed by COVID-19 to them
- Under the constraint of the existing legislation, there is no other viable arrangement such as electioneering through TV or radio, having more than one polling day, voting outside of Hong Kong, electronic voting or voting by post.





III. Overseas experience in postponing elections

- According to the International Foundation for Electoral Systems, as of 15 July, postponements of elections due to COVID-19 have been recorded in 62 countries and eight territories
- According to the International Institute for Democracy and Electoral Assistance, from 21 February to 26 July, at least 68 countries and territories across the globe have decided to postpone elections due to COVID-19. At least 49 countries and territories have decided to hold elections as originally planned
- In the United Kingdom, the Coronavirus Act 2020, a piece of emergency legislation, was passed on 25 March, postponing the local council elections in 118 districts in England and the metro-mayoral elections, including the London mayoral election, due to take place on 7 May 2020 for a year to 6 May 2021



IV. Justifications of postponing the election

- Over 3 million voters (assuming a turnout rate of 70%) need to cast their vote on the day at 615 polling stations, creating a very large infection risk

[The public health risks for holding an election on 6 September as set out in the Electoral Affairs Commission Chairman's letter to the Chief Executive dated 28 July include:

- In view of the expected high turnout rate, many polling stations will not be able to meet the public health requirements and observe the 1-metre social distancing rule. The Registration and Electoral Office estimates that 30.9% of the polling stations will need to serve 4 000 to 8 000 voters, with another 45.5% serve 8 001 to 15 000 voters



IV. Justifications of postponing the election (Cont'd)

- It will be difficult to make safe arrangements for voters under home quarantine to vote during special voting hours
- It will be difficult to observe the 1-metre social distancing rule among the electoral staff, whether at polling stations or the central counting station in which about 10 000 persons will be accommodated
- Elderly persons are a few times more likely to be infected than younger persons. There is considerable health risk for elderly voters to go to polling stations to cast their votes
- The EAC is of the view that for an election with no less than 3 million voters coming out to vote, the risk of infection is exponentially large, and that consideration must be given as to whether the poll on 6 September can still safely be conducted from a public health perspective]



IV. Justifications of postponing the election (Cont'd)

- Under the regulation to prohibit group gatherings (tightened to not more than two persons), it would not be possible for candidates to carry out any meaningful rallying activities. (In the letter from the Electoral Commission to the UK Government calling for the postponement of elections, one of the factors considered is that campaigners and parties may not be able to put their case to the electorate due to the pandemic)
- 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
- Elderly voters may refrain from voting due to their higher infection risks. Health experts and officials have been warning the elderly to stay at home as far as possible
- In view of the above factors, if the election is held on 6 September 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



IV. Justifications of postponing the election (Cont'd)

- The duration of postponement varies between places, from a few months to a year, and in some cases indefinitely. In the case of Hong Kong, the Executive Council considered a one-year postponement necessary taking account of the following considerations –
 - The current wave of epidemic is likely to last for weeks or even longer and it will then take another few weeks for the city to resume normal operations. Unless an effective vaccine could be developed and supplied, a winter surge is very likely
 - LegCo performs substantive functions in enacting and amending legislation, approving expenditure and revenue items and approving the annual Budget, and it has an annual business cycle especially in approving the annual Budget. It is therefore necessary to have LegCo conducting its normal annual business instead of being faced with a lacuna as a result of uncertainty in when a general election may be held
 - If we could not proceed with the 6 September election, we will need a lead time of three to four months to organise another election. For fairness, another voter registration exercise will be necessary to precede the re-scheduled election date, and the lead time will have to be longer as a result



V. Relevant legal analysis

- Under the existing Legislative Council Ordinance (Cap.542), there is no way to achieve a postponed LegCo election by one year, let alone a LegCo that may function as per its normal annual cycle until the next general election. The analysis is as follows:
 - Section 44(1) of Cap.542 empowers the Chief Executive to direct the postponement of a general election if, before the holding of the election, the Chief Executive is of the opinion that the election is likely to be obstructed, disrupted, undermined or seriously affected by riot or open violence or any danger to public health or safety. However, section 44(4) provides that if the general election is postponed, the Chief Executive must specify by notice in the gazette another date for the election which must not be later than 14 days after the original date
 - If the Chief Executive repeatedly invoked this power to postpone the general election, it could be regarded as an abuse of power and would be subject to legal challenge



V. Relevant legal analysis (Cont'd)

- If the Chief Executive invoked section 4(2) of Cap.542 to specify the commencement date of the 7th term of LegCo to one year later, revoked the election date of 6 September specified earlier under section 6(2) of Cap.542, as well as required the LegCo President to convene an emergency session and for the 6th term LegCo Members to continue to perform their duties under section 11(1) and (2) of Cap.542, it could also be regarded as improper use of power and be subject to legal challenge
- In the fight against COVID-19, the Chief Executive in Council has on a number of occasions made several regulations under the Prevention and Control of Disease Ordinance (Cap.599) for the purpose of protecting public health. However, the postponement of the Election is also to ensure fairness and openness in elections rather than just for public health. Therefore Cap.599 may not be relied upon



VI. Justifications for invoking the Emergency Regulations Ordinance

- As the present epidemic situation can be regarded as an occasion of public danger and emergency, invoking the Emergency Regulations Ordinance (Cap.241) is the only viable option. The justifications are as follows:
 - As the number of confirmed cases and the death toll continue to increase, election entails a lot of crowd events and social contacts which will aggravate the public health situation
 - With the nomination period coming to an end, electioneering activities are expected to increase. Hundreds of candidates, 4 million voters including those stranded in the Mainland and overseas need to know for certain if the Election will be held as scheduled



VI. Justifications for invoking the Emergency Regulations Ordinance (Cont'd)

- Postponing the Election is in the public interest, as it will reduce the risks of further infection and alleviate the pressure on the public hospital system
- The postponement of one year would avoid disruption to the normal annual LegCo business and electoral cycles
- It would avoid the improper use of powers under the existing legislative provisions and the entailing legal challenges, which would lead to uncertainty and undermine governance
- The Court of Appeal has upheld the constitutionality of the Emergency Regulations Ordinance in its judgement of 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



VII. Major provisions in the Emergency (Date of General Election)(Seventh Term of the Legislative Council) Regulation

- 5 September 2021 is specified as the new election date for holding the LegCo General Election
- The specifications relating to 6 September 2020 as the date of LegCo General Election is revoked, bringing the electoral process to an end
- Electoral officers and candidates are to comply with obligations in respect of preparing documents for public inspection
- Dealing with election expenses and donations
- The Government will pay candidates who have already incurred election expenses in accordance with the relevant Guidelines, and any deposit lodged to a Returning Officer will be returned to candidates



VIII. Central People's Government's support

- 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 ERO Emergency Regulation can only postpone the election date of the 7th term LegCo General Election for a year, but cannot deal with the lacuna in LegCo in the coming year
- The Chief Executive has therefore 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 7th 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 LegCo arising from the postponement, the Central People's Government will make a submission in accordance with the law to the National People's Congress Standing Committee for its decision. The Hong Kong SAR Government shall properly handle work related to postponement of the 7th term LegCo election in accordance with the law



THANK YOU

